No. 25-776

IN THE
Supreme Court of the United States

YOUTH 71FIVE MINISTRIES,

Petitioner,

v.

CHARLENE WILLIAMS, INDIVIDUALLY AND AS DIRECTOR OF OREGON DEPARTMENT OF EDUCATION, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

DAN RAYFIELD
Attorney General of Oregon
PAUL L. SMITH
Solicitor General
Counsel of Record
KIRSTEN M. NAITO
Assistant Attorney General
1162 Court Street NE
Salem, Oregon 97301
(503) 378-4402
paul.l.smith@doj.oregon.gov

QUESTION PRESENTED

1. Whether the Ninth Circuit correctly held that, based on the initial record in this case, the district court did not abuse its discretion in denying preliminary injunctive relief on petitioner's religious-autonomy claim under 42 U.S.C. § 1983 challenging an agency rule, because petitioner had failed to cite any binding precedent or historical practice in support of the claim.

2. Whether the Ninth Circuit correctly reversed the district court's denial of preliminary injunctive relief because the rule—which has since been repealed—likely imposed an unconstitutional condition under the First Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited

Constitutional and Statutory Provisions

INTRODUCTION

The petition for certiorari raises two questions. The first is undeveloped, and the second was decided in petitioner's favor by the Ninth Circuit. Neither question thus warrants review by this Court, particularly where the challenged rule has since been repealed.

Petitioner's first question presented, whether a religious organization may affirmatively assert a violation of its right to religious autonomy in a 42 U.S.C. § 1983 action, was neither squarely presented to nor answered by the Ninth Circuit. Rather, the Ninth Circuit affirmed the district court's ruling that petitioner had failed to develop a record that such a claim was permissible at a preliminary juncture. In other words, this case is a poor vehicle to address the first question presented because petitioner did not squarely raise it in the courts below.

Petitioner also contends that this case presents the question of whether a state violates the First Amendment by requiring a religious organization to waive its right to employ coreligionists, including for ministerial positions, in order to access a public grant program. But the Ninth Circuit held that the challenged agency rule likely violated the First Amendment in *exactly that way* and thus reversed the district court's denial of a preliminary injunction on that basis. The Ninth Circuit also had stayed enforcement of the rule pending appeal, so petitioner received the public funding at issue, and the rule since has been repealed. This Court

should not engage in the academic exercise of reviewing the Ninth Circuit's (admittedly correct) decision.

STATEMENT OF THE CASE

Factual Background

Respondents are state officials responsible for overseeing and managing the Youth Development Division (YDD) of the Oregon Department of Education (ODE). The YDD, in turn, is charged with supporting youth success in education and the workforce; preventing youth involvement in the justice system; and reducing youth high-risk behaviors. Or. Rev. Stat. § 417.847(2). To achieve those goals, YDD administers Youth Community Investment Grants, which are distributed to community-based organizations to provide programming for at-risk youth. Pet. App. 5a. Grants are awarded through a competitive application process, and recipients must meet certain eligibility requirements. Pet. App. 7a. For the 2023–25 biennium, YDD added a new eligibility rule, requiring grant applicants to certify that they do not "discriminate in [] employment practices, vendor selection, subcontracting, or service delivery with regard to race, ethnicity, religion, age, political affiliation, gender, disability, sexual orientation, national origin or citizenship status." Pet. App. 7a–8a.

Petitioner is a non-profit religious organization that offers programming to at-risk youth while "emphasizing the importance of having a relationship with Jesus Christ," because its "'primary purpose' is to teach and

share about the life of Jesus Christ." Pet. App. 5a, 8a. Petitioner requires employees and volunteers to agree to a statement of Christian faith and be actively involved in a local church. Pet. App. 5a–6a.

Petitioner had previously been awarded grant funding from YDD and applied again for the 2023–25 biennium. Pet. App. 9a. Although petitioner believed that it was exempt from the nondiscrimination rule, it certified that its organization complied with that requirement. Pet. App. 9a. Based on petitioner's certification that it was eligible to receive funding, in addition to its other application materials, YDD conditionally awarded the grant funding. Pet. App. 9a.[1]

Four months later, an anonymous member of the public reported that petitioner discriminates in its hiring practices. Pet. App. 9a. YDD reviewed petitioner's online employment page, which contained its religious requirements for employees and volunteers. Pet. App. 9a. After contacting petitioner and confirming that it did not follow the extant non-discrimination rule in its employment practices, YDD withdrew the conditional award. Pet. App. 9a.

Procedural Background

Petitioner filed a complaint under 42 U.S.C. § 1983, alleging that respondents violated its First Amendment rights to the free exercise of religion, religious

[1] Four other faith-based organizations received funds from YDD; none of those organizations discriminate in their employment hiring practices. Pet. App. 33a, 95a.

autonomy, and expressive association. Pet. App. 9a. Petitioner sought declaratory and injunctive relief, compensatory and nominal damages, and attorneys' fees. Pet. App. 9a. Petitioner moved for a preliminary injunction reinstating the grants and enjoining respondents from refusing future grant funding based on petitioner's religious-employment practices. Pet. App. 10a.

As to its free-exercise claims, petitioner argued that strict scrutiny applied because the rule was not neutral or generally applicable. In petitioner's view, the rule was not neutral because respondents had demonstrated "hostility toward religion" by enforcing the rule against petitioner, and because the rule disqualified religious organizations "solely" because of their religious status. Pet. App. 14a–17a. Petitioner argued that the rule was not generally applicable because it was possible for grant recipients to negotiate provisions of the grant contract, and because respondents had "targeted" religious organizations for enforcement. Pet. App. 19a.

Respondents opposed the preliminary injunction, and petitioner replied with new arguments and new factual assertions in support of its free-exercise claims. Pet. App. 10a. For the first time, petitioner argued that the rule was not generally applicable because respondents had treated comparable secular activity more favorably than religious activity by funding other applicants who, in petitioner's view, discriminated on the basis of race, ethnicity, gender, and national origin.

Pet. App. 10a. In support, petitioner offered exhibits of screen shots purportedly depicting other grant recipients' websites. Pet. App. 19a–20a.

After a hearing, the district court issued an opinion and order denying a preliminary injunction, concluding that petitioner was unlikely to succeed on the merits of the claims advanced in its motion. Pet. App. 10a, 86a–107a.[2] The district court declined to consider the new arguments and evidence in petitioner's reply brief on the ground that they were untimely. Pet. App. 20a, 93a.

Petitioner appealed and sought an emergency injunction pending appeal, which a motions panel of the Ninth Circuit granted, concluding that petitioner's new arguments and evidence demonstrated that petitioner was likely to succeed on its free-exercise claims. Pet. App. 10a, 110a–21a. As a result of that injunction, respondents issued and fully funded the grants to petitioner. C.A. Dkt. 43. Respondents also repealed the rule and now require grant applicants to certify only that they do not discriminate in their provision of services, except as the law allows. C.A. Dkt. 4–5.

A Ninth Circuit merits panel affirmed the district court's denial of the preliminary injunction as to

---

[2] The district court also dismissed *all* of petitioner's claims with prejudice after respondents moved to dismiss only the damages claims based on qualified immunity. Pet. App. 10a. On appeal, respondents conceded that the district court erred in dismissing petitioner's claims for declaratory and injunctive relief, and the Ninth Circuit reversed the dismissal of those claims. Pet. App. 36a–37a.

petitioner's free-exercise and religious-autonomy claims, but reversed the denial as to petitioner's expressive-association claim. It first concluded that petitioner was unlikely to succeed on the merits of its free-exercise claims, ruling that rational basis—not strict scrutiny—applied because the rule was neutral and generally applicable. Pet. App. 22a. The rule was likely neutral because it applied to religious and secular organizations alike and did not differentiate between different religions. Pet. App. 14a–17a. And the rule was likely generally applicable because it did not allow for individualized exemptions and treated religious and secular activities the same. Pet. App. 17a–19a. The panel further affirmed the district court's exercise of discretion to decline to address the new arguments and evidence that first appeared in petitioner's district court reply brief. Pet. App. 19a–21a. The court observed that, on remand, petitioner would not be precluded from properly raising and proving those claims. Pet. App. 21a.[3]

The panel also concluded that the district court had not abused its discretion in declining to address the merits of petitioner's religious-autonomy claim,

[3] The panel originally concluded that, notwithstanding the district court's discretionary decision to decline to consider the new arguments and evidence, the proffered evidence would not compel the conclusion that respondents had treated secular and religious organizations differently. Pet. App. 60a–64a. Judge Rawlinson disagreed and concurred in the judgment. Pet. App. 84a–85a. The panel then amended its opinion to omit that conclusion, and Judge Rawlinson withdrew her concurrence. Pet. App. 4a.

reasoning that petitioner had not identified an opinion from this Court, or any other court of appeals, nor any "historical practices or understandings" of the First Amendment, to support its argument that it could assert that claim in a § 1983 action. Pet. App. 22a–25a.

Finally, and importantly, the Ninth Circuit reversed the district court's denial of a preliminary injunction on petitioner's expressive-association claim. The panel concluded that the agency likely violated petitioner's expressive-association rights by applying the non-discrimination rule to petitioner's non-grant-funded activities, which rendered the rule an unconstitutional condition under the First Amendment. Pet. App. 25a–28a, 34a–35a. Accordingly, the Ninth Circuit reversed the district court's ruling denying the preliminary injunction as to those activities.

Petitioner sought rehearing en banc. Pet. App. 4a. After no judge on the Ninth Circuit requested a vote to rehear the matter, the court denied that petition. Pet. App. 5a.

REASONS FOR DENYING THE PETITION

The decision below does not conflict with any decisions from this Court or from other courts of appeals. This case is a poor vehicle to address the question of whether a religious organization may assert a violation of "religious autonomy" in a 42 U.S.C. § 1983 action because the decision below was limited to the arguments and evidence before the district court and based on the deferential standard of review. Another recent decision

from the Ninth Circuit confirms that the opinion below did not break new ground or create a circuit split. Finally, this Court should not reach the second question presented because the Ninth Circuit answered that question in petitioner's favor.

A. The court of appeals' ruling that petitioner had failed to demonstrate that it could assert a religious-autonomy claim does not conflict with this Court's decisions or implicate a circuit split.

Petitioner's first question presented asks whether a religious organization may affirmatively assert a "religious autonomy" claim under § 1983. Pet. i. In petitioner's view, the Ninth Circuit's opinion conflicts with this Court's decisions and implicates "multiple mature splits of authority." Pet. 4. But, as argued below, this Court has never ruled on the question presented and there is no circuit split.

The "religious autonomy" claim that petitioner asserts arises out of cases involving employment lawsuits against religious organizations and the application of secular laws to overrule religious tribunals' decisions on religious principles. In *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171, 190 (2012), this Court concluded that the First Amendment protects religious organizations from lawsuits that would amount to "government interference with [the selection or retention of a minister] that affects the faith and mission of the church itself." And in *Watson v. Jones*, 80 U.S. 679, 727 (1871), this Court concluded

that civil courts must accept the rulings of religious tribunals regarding "questions of discipline, or of faith, or ecclesiastical rule, custom, or law."

Petitioner first asserts that the opinion below "conflicts with this Court's precedents" in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960). Pet. 16–17. But neither of those cases involved the first question presented here. Those cases arose from a dispute over church property between a local Russian Orthodox church and the Supreme Church Authority in Moscow, the religious governing body, which owned the property. *Kedroff*, 344 U.S. at 95–96. The local church, which had severed ties with the Moscow organization, sought to obtain possession of the property, relying on a state law that required local Orthodox churches to recognize the North American Russian Orthodox Churches as their governing body, rather than the Moscow organization. *Id.* This Court invalidated that law, concluding that it violated the First Amendment by intruding on the "ecclesiastical right" of a church to determine its own "hierarchy." *Id.* at 119.

Kreshik involved the same litigation, which returned to this Court after the state court relied on common-law to reach the same conclusion. This Court again reversed, concluding that the First Amendment did not permit a state court to reverse an "ecclesiastical" decision made by the church on any basis. 363 U.S. at 190–91. Neither case involved a religious

organization asserting an affirmative § 1983 claim; rather, those cases involved disputes between religious organizations, which ultimately led to the reversal of an unlawful state action overtly intruding on matters of internal religious governance.

Petitioner cites no circuit court that has concluded that a plaintiff may assert a § 1983 claim challenging a state action based on the religious autonomy doctrine. Instead, petitioner cites several cases from the Fourth, Fifth, and Sixth Circuits as "allowing" plaintiffs to assert such claims. Pet. 20–21.[4] But those cases do not stand for the proposition that a religious organization may assert a claim against a state entity for intruding on religious autonomy.

Northside Bible Church v. Goodson, 387 F.2d 534, 535–36 (5th Cir. 1967), for example, like *Kedroff* and *Kreshik*, involved a dispute between religious entities and individuals, which resulted in the reversal of a state law permitting a majority of church members to change internal church policy and control church property. Similarly, *Dixon v. Edwards*, 290 F.3d 699, 704–10 (4th Cir. 2002), involved a dispute between religious entities and individuals. And in *Christian Healthcare Centers, Inc. v. Nessel*, 117 F4th 826, 856–57 (6th Cir. 2024), the issue before the court was standing—the

[4] Petitioner also points to cases from the Ninth Circuit purporting to permit religious organizations to "assert" religious-autonomy claims. Pet. 21. Even if those cases stood for that proposition, which respondents dispute, at most those cases suggest that there is an intra-circuit split, best addressed by Ninth Circuit in the first instance.

court did not weigh the merits of the claims. Those cases do not support petitioner's assertion that multiple circuits "allow" affirmative religious-autonomy claims under § 1983.

Although *Commonwealth v. Beshear*, 981 F.3d 505 (6th Cir. 2020), involved a religious organization challenging a state action, it also did not reach the question petitioner poses here. There, the court affirmed a district court's ruling that the plaintiffs were unlikely to succeed on the merits of a free-exercise claim. *Id.* at 507. In its ruling, the court observed that "the ministerial exception" did not apply. *Id.* at 510. That opinion suggests that those plaintiffs relied on that exception to support a free-exercise claim, not to assert a separate religious-autonomy claim. In any event, that opinion suggests that such a claim would *not* have been permitted and does not indicate that any "split" between the circuits exists.

B. A recent decision from the Ninth Circuit confirms that the decision below was limited to the record and arguments before the district court and did not create a circuit split.

Although petitioner does not cite any case where a court has concluded that a religious organization may assert a religious-autonomy claim, as several amici observe, another Ninth Circuit panel recently reached the merits of such a claim. Samaritan's Purse Amicus Br. 13; Profs. Barclay and Garnett Amicus Br. 19. That decision confirms that the opinion below was confined

to the record before the district court and any split in authority that petitioner has identified is not squarely presented by this case.

In *Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190, 1197 (9th Cir. 2026), a religious organization sought declaratory relief that Washington State's anti-discrimination law, which prohibited "any employer" from "refusing to hire any person because of…sexual orientation," violated the First Amendment. The district court granted a preliminary injunction, concluding that the law likely violated the plaintiff's free-exercise rights and the state appealed. *Id.* at 1199.

The Ninth Circuit affirmed for a different reason. It reviewed the "deep roots [of the church autonomy doctrine] in our Nation's historical tradition" to reach the "question of first impression" that that doctrine protects "a religious organization's policy of hiring co-religionists for non-ministerial roles." *Id.* at 1201, 1203. The panel thus concluded that the "church autonomy doctrine" extends beyond ministerial positions. That panel did not grapple with the question of whether a religious organization *may* assert such a claim and appears to have presumed that an organization could do so.

Union Gospel Mission of Yakima confirms that the Ninth Circuit panel's decision in this case was not a definitive ruling on the law and was confined to the limited arguments and evidence presented to the district court. That case also demonstrates that the Ninth Circuit has addressed the novel question presented in

the petition in another case and does not support this Court weighing in on the narrow decision reached here.

To the extent that *Union Gospel Mission of Yakima* conflicts with the decision below and suggests that there is a "conflict in principle" relating to the question of whether a religious organization may assert an affirmative religious-autonomy claim, Pet. 23, any such conflict exists only in the Ninth Circuit. This Court should wait for that circuit, and perhaps the other circuits, to grapple with that conflict before granting certiorari.

Petitioner also asserts that this case presents another novel legal issue and that there is a conflict over "[w]hether the First Amendment protects religious nonprofits' autonomy to hire coreligionists for all positions, not just ministers." Pet. 23. But that is not the question that the Ninth Circuit answered in this case. In any event, as noted above, only one court has reached that issue, also in the Ninth Circuit. Thus, there is no "split" in authority on that issue either.

Petitioner relies on Justice Alito's statement respecting the denial of certiorari in *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094 (2022), a case that involved the same law that the Ninth Circuit held unconstitutional in *Union Gospel Mission of Yakima*, to assert that the Washington State Supreme Court does not protect the right of churches to hire coreligionists for all positions. Pet. 24. But, as petitioner acknowledges, this Court did not grant certiorari on

that question because the state court did not address that issue in the first instance. Pet. 24.

Accordingly, to the extent there is a split of authority on whether religious organizations have a First Amendment right to hire coreligionists for all positions, this Court should wait, as it did in *Seattle's Union Gospel Mission*, for a case where the issue is squarely presented. Here, the Ninth Circuit did *not* reach the question that petitioner asserts would "implicate multiple splits of authority" and this Court should deny the petition for that reason alone.

C. This is a poor vehicle for addressing the first question presented because the courts below did not address the arguments in the petition.

Petitioner asserts that the opinion below "conflicts sharply with history," which demonstrates that the First Amendment protects a religious organization's right to autonomy, including the right to hire coreligionists for all positions. Pet. 14. But petitioner did not bring that conflict to the attention of the Ninth Circuit. *See* Pet. App. 25a (noting that petitioner asserted no "historical practices or understandings that would justify [the court's] recognition of these novel claims under the Religion Clauses") (internal citation omitted); C.A. Dkt. 21 at 40–42; 35 at 18–22.

Similarly, petitioner did not argue below that this Court's caselaw establishes a religious organization's right to assert religious autonomy, or that other circuits "allow" religious-autonomy claims. Pet. 16–17,

20–21. Petitioner cited *Kedroff* for the first time in a reply brief footnote. C.A. Dkt. 35 at 19. And petitioner did not cite *Kreshik* at all. C.A. Dkt 21, 35. *See also* Pet. App. 24a–25a (noting that petitioner "identified no opinion the Supreme Court, [the Ninth Circuit], or any other court of appeals suggesting that plaintiffs may assert ecclesiastical abstention or the ministerial exception as § 1983 claims"). Not until its petition for rehearing en banc did petitioner cite to cases in other circuits, such as *Northside Bible Church* and *Christian Healthcare Centers*, which, in petitioner's opinion, permit religious-autonomy claims. C.A. Dkt. 49 at 22.

Notably, in *Union Gospel Mission of Yakima*, the plaintiff made the arguments that petitioner makes here. Appellee's Ans. Br. at 42–53, 162 F.4th 1190. Thus, when properly presented, the Ninth Circuit grappled with those arguments and answered that "issue of first impression" *in petitioner's favor*. *Union Gospel Mission of Yakima*, 162 F.4th at 1201.

Petitioner's failure to fully brief its arguments below makes it difficult for this Court to address them. This Court should wait for a case where the circuit court reaches the merits of petitioner's arguments, rather than reviewing them in the first instance. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 726 (2024) (declining to review a facial challenge to a law where the parties did not brief "the critical issues" because this Court is "a court of review, not of first view").

D. This Court need not reach the second question presented because the Ninth Circuit ruled in petitioner's favor.

The second question presented by petitioner is "[w]hether a state violates the First Amendment by conditioning access to grant funding by requiring a religious organization to waive its right to employ coreligionists." Pet. i. But this Court need not grant certiorari to answer that question because the Ninth Circuit answered it in petitioner's favor and imposed a preliminary injunction to protect that right.

Below, the Ninth Circuit affirmed the denial of a preliminary injunction as to petitioner's free-exercise claim, concluding that the rule was neutral and generally applicable and survived rational basis review. Pet. App. 22a. But the court reversed the denial of the injunction as to petitioner's expressive-association claim in part, ruling that the First Amendment prohibits states from conditioning access to publicly funded grants on a religious organization's agreement to employ non-coreligionists outside of the grant funded programming. Pet. App. 26a–28a, 34a–35a.

Although petitioner does not challenge that ruling, it complains that the court should have answered that question based on its free-exercise claim, rather than its expressive-association claim. Pet. 30–33. But because petitioner obtained the relief that it sought—a preliminary injunction protecting its right to employ coreligionists—albeit on a different claim, and because petitioner may pursue *all* of its claims on remand, this

Court should decline petitioner's invitation to engage in an academic exercise.

Moreover, to the extent petitioner believes it is entitled to further relief for grant-funded activities, it did not seek that relief below. The court limited the preliminary injunction to the relief that petitioner sought, *i.e.*, relief from a rule impeding its freedom of expression by "extending to all 71Five's employees and every aspect of its ministry." Pet. App. 34a; Dkt. 35 at 23. The court correctly concluded that the district court should have imposed a narrowly tailored preliminary injunction to meet the injury described on the limited record before it. Pet. App. 35a.

In sum, because the Ninth Circuit imposed the relief that petitioner asked for, respondents granted and fully funded the grants that petitioner sought, and the rule has since been repealed, this Court should not expend its resources to review its other claims at this preliminary stage.

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

DAN RAYFIELD
Attorney General of Oregon
PAUL L. SMITH
Solicitor General
Counsel of Record
KIRSTEN M. NAITO
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301
(503) 378-4402
paul.l.smith@doj.oregon.gov