

No. 25-776

IN THE
Supreme Court of the United States

YOUTH 71FIVE MINISTRIES,
Petitioner,

v.

CHARLENE WILLIAMS, Director of the Oregon
Department of Education, in her individual and
official capacities, et al.,
Respondents.

*On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Ninth Circuit*

REPLY BRIEF FOR PETITIONER

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REPLY ARGUMENT SUMMARY

There are some things the government cannot buy from you. One of those is your religious autonomy. The Court should grant review and say so.

The first question presented is whether a religious organization can bring an affirmative religious-autonomy claim challenging legislative or executive action. Pet.i. This Court's precedents make clear the answer is "yes." Pet.16–17; CLS.Br.8–13; contra Opp.8–10. That's why multiple circuits have green-lighted such claims. Pet.20–22; CLS.Br.14–16; contra Opp.10–11. But the Ninth Circuit, in this case, said no. Pet.App.22a–25a. The Court should resolve that conflict.

Oregon tries to evade review by asserting that Petitioner Youth 71Five Ministries failed to raise this issue below. Opp.11–13. That's wrong. The first question was presented, litigated, and decided at every stage. See Section III, *infra*. Oregon also complains that 71Five cites more cases and historical evidence now than it did below. Opp.14–15. But that's how appellate litigation usually works. It's no reason to leave the lower courts in conflict.

The second question presented is whether a state may condition grant funding on a religious organization's waiver of its right to employ coreligionists. Pet.i. On this, too, the Ninth Circuit's decision contravenes this Court's precedents. Pet.30–33. And it deepened two circuit splits that the Court should resolve. Pet.23–29.

Oregon, however, says that the Ninth Circuit either did not answer that question, Opp.13–14, or ruled in 71Five’s favor, Opp.16–17. These conflicting arguments cannot both be true; in fact, neither is.

The ruling below allows unbridled religious discrimination, such as denying security grants to synagogues, Jewish.Coalition.Br.15–18; it closes the federal courts to First Amendment injuries like the one suffered by 71Five here, CLS.Br.21–23; and it weakens religious bodies by denying benefits if they hire like-minded believers, Samaritan’s. Purse.Br.10–13. The Court should review these important questions and reverse. Professors.Br.3.

ARGUMENT

I. The Ninth Circuit’s religious-autonomy ruling squarely conflicts with this Court’s precedent.

The district court rejected 71Five’s religious-autonomy claims, limiting the doctrine to “an affirmative defense against suit by a disgruntled church employee, not a standalone right.” Pet.App.97a. While the religious-autonomy “doctrine may be used as a shield,” the court continued, “it has not been allowed to be used as a sword.” Pet.App.97a–98a.

The merits panel unequivocally affirmed: “we have consistently described and applied the [religious-autonomy doctrine] as an affirmative defense.” Pet.App.23a. The panel eschewed any approach “that treats the religious-autonomy doctrines as the basis for standalone claims challenging legislative or executive action, rather than as defenses against or limits upon plaintiffs’ invocation of *judicial* authority.” Pet.App.24a.

As the petition explained (at 16–17), that holding conflicts directly with *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, which allowed a religious body to mount an affirmative religious-autonomy argument on appeal challenging a legislative attempt to alter the polity of a church. 344 U.S. 94, 96, 115–21 (1952). Then *Kedroff*’s sequel—*Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960) (per curiam)—applied the religious-autonomy doctrine not as a sword against legislative action but a shield against “judicial” power. Pet.17 (citing *id.* at 191). Accord Pet.20–21 (discussing relevant circuit decisions).

Oregon says the religious-autonomy doctrine “arises out of cases involving employment lawsuits against religious organizations and the application of secular laws to overrule religious tribunals’ decisions on religious principles.” Opp.8 (citing *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 190 (2012), and *Watson v. Jones*, 80 U.S. 679, 727 (1871)). But this Court has consistently articulated the doctrine as broader than any specific factual context. And “application of secular laws to overrule religious tribunals’ decisions on religious principles” is akin to applying secular laws to condition public benefits on religious organizations abandoning their religious principles; both methods coerce religious organizations to violate their beliefs.

Oregon objects that none of this Court’s religious-autonomy cases “involved a religious organization asserting an affirmative § 1983 claim.” Opp.9–10. But if there’s a constitutional “right” to religious autonomy—and this Court has said there is, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 736–37 (2020) (citing *Kedroff*, 344 U.S. at 116)—then a religious group like 71Five can bring a suit under Section 1983 if state officials violate that right. Pet.18–19. Religious autonomy is not a second-class right.

Kedroff is instructive. By declaring a *legislative act* unconstitutional, the Court there necessarily established that the religious-autonomy doctrine extends beyond mere judicial decrees to laws or grant conditions. Oregon’s view defies Section 1983’s broad text and this Court’s precedents. *Dennis v. Higgins*, 498 U.S. 439, 445 (1991) (rejecting “attempts to limit” Section 1983).

Oregon also misses the mark in its attempt to dismiss the relevance of circuit decisions allowing the religious-autonomy doctrine to be asserted affirmatively. Opp.10–11. It’s immaterial whether those cases were brought “against a state entity.” Opp.10. The point is that other circuits have allowed affirmative religious-autonomy claims. Pet.20–22. In any event, some such suits *were* against state officials. See, e.g., *Christian Healthcare Centers, Inc. v. Nessel*, 117 F.4th 826, 852–55 (6th Cir. 2024) (reversing dismissal of suit against state officials alleging that state employment law unconstitutionally restricts hiring of co-religionists by a Christian healthcare organization and a Catholic school).

The prevalence of these cases confirms what this Court’s precedent makes clear: religious-autonomy rights may be asserted as part of an affirmative claim, just like any other constitutional right. Because the decision below squarely conflicts with that precedent, Pet.App.23a, this Court should grant the petition and reverse.

II. *Union Gospel Mission of Yakima* does not undermine the need for review because it did not answer the questions presented.

The Ninth Circuit’s recent decision in *Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190 (9th Cir. 2026), does not diminish the need for this Court’s review. Contra Opp.11–14. It “confirms” neither that the decision below is “confined” to its facts nor that the decision below failed to provide “a definitive ruling on the law.” Opp.12.

Yakima did not answer either of the questions presented here. The defendants there did not question whether the Gospel Mission could assert its right to religious autonomy under Section 1983. So the court did not analyze whether the doctrine can be raised affirmatively under Section 1983. Nor did *Yakima* involve a public grant or benefit. Thus, the Ninth Circuit did not address whether a state can condition access to public benefits on a religious organization forfeiting its constitutionally protected right to religious autonomy. *Yakima* simply held that the church-autonomy doctrine may in some circumstances protect “a religious organization’s policy of hiring co-religionists for non-ministerial roles.” 162 F.4th at 1203.

In contrast, the panel below directly answered both questions presented here. It held that religious organizations *cannot* raise religious autonomy under Section 1983 to challenge state action. Pet.App.22a–25a. And it concluded that states *may* condition access to public grants on religious organizations giving up their right to employ coreligionists inside “grant-funded initiatives.” Pet.App.6a.

Unless this Court intervenes, those “conclusions on pure issues of law” are “binding” on remand and in any subsequent appeal. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep’t of Agric.*, 499 F.3d 1108, 1114 (9th Cir. 2007). They also will be invoked as controlling authority by state defendants in similar cases throughout the Ninth Circuit—to the detriment of religious ministries and the communities they serve.

So the conflict with this Court's precedents and other circuits' decisions remain. Through *Yakima*, the Ninth Circuit may now recognize the church-autonomy doctrine protects coreligionist hiring in some circumstances. But under the panel's decision here, religious organizations can be prevented from affirmatively raising that right whenever it is threatened by legislative or executive action. And exercising that right will come "at the cost of automatic and absolute exclusion from the benefits of a public program." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017). This Court's review is urgently needed.

III. The questions presented are purely legal and were resolved below.

1. Oregon says this Court should deny review of the first question because it "was neither squarely presented to nor answered by the Ninth Circuit." Opp.1. Not so. The question was fully presented, briefed, and answered at every stage.

Start at the district court. The complaint alleges violations of Five's right to religious autonomy under Section 1983. ROA.242–43. Rather than address the merits of that claim, Oregon inserted the very issue this petition presents. It argued—both in its motion to dismiss and in opposition to the preliminary-injunction motion—that religious autonomy is strictly an "affirmative defense" and cannot be asserted as an independent "cause of action." Defs.' Resp. to Mot. for Prelim. Inj. 20–22, Dist. Ct. Doc. 31; Defs.' Mot. to Dismiss 15–17, Dist. Ct. Doc. 34.

In response, 71Five explained that the First Amendment protects its faith-based employment practices and that Section 1983 allows plaintiffs to sue for the deprivation of “any” constitutional right—there is no “Religion Clauses” exception. Pl.’s Reply in Supp. of Mot. for Prelim. Inj. 12 (MPI Reply), Dist. Ct. Doc. 35; Pl.’s Resp. to Mot. to Dismiss 21–22 (MTD Resp.), Dist. Ct. Doc. 36. 71Five also argued that Oregon’s view “cannot be reconciled” with this Court’s cases, which support a “broad principle” of religious autonomy guarding against *any* governmental intrusion into religious organizations’ internal affairs. MPI Reply 12–13 (discussing *Hosanna-Tabor* and *Our Lady of Guadalupe*); MTD Resp. 20–23 (same).

The district court sided with Oregon. It held that 71Five was unlikely to succeed on its religious-autonomy claim—and could not recover damages under that claim—because the “church autonomy doctrine” can be asserted only as “an affirmative defense,” “not a standalone right.” Pet.App.97a.

On appeal, 71Five again argued that Oregon’s narrow view of religious autonomy conflicts with Section 1983’s plain text and this Court’s precedents. C.A.Dkt.12 at 13–16 (emergency motion); C.A.Dkt.17 at 7–8 (reply in support of emergency motion); C.A.Dkt.21 at 30–33 (opening brief); C.A.Dkt.35 at 11–15 (reply brief); C.A.Dkt.49 at 14–16 (petition for rehearing). But like the district court, the Ninth Circuit held that the religious-autonomy doctrine serves solely as a restraint on “*judicial* authority.” Pet.App.24a. The doctrine can be raised only as an affirmative defense, not as a “stand-alone” Section 1983 claim against legislative or executive action. Pet.App.23a–25a.

Thus, the petition’s first question was both pressed and passed on at every stage below. Contra Opp.1. Oregon cannot seriously dispute this. So it says this case is a “poor vehicle” for the first question because the briefing below did not canvass every historical source and decision the petition cites. Opp.14–15. That objection misunderstands appellate practice. As issues are refined on appeal, the parties’ analysis necessarily deepens. It is unremarkable that the petition expands on the specific legal questions the Ninth Circuit resolved. And “[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.” *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). This Court has never required that lower-court briefing exhaust all authorities as a prerequisite to certiorari.

2. Oregon’s objection to the second question fares no better. That question asks whether a state can condition access to grant funding on a religious organization waiving its right to hire only coreligionists. Oregon insisted below that it can impose such a condition. But it now says the Court “need not reach” the issue because the Ninth Circuit “answered it in [71Five’s] favor.” Opp.16. That’s not what the record reflects.

The Ninth Circuit held that Oregon does *not* violate the Free Exercise Clause or religious-autonomy doctrine by requiring religious organizations to relinquish their faith-based employment practices. Pet.App.13a–25a. That holding applies to *all* employees and positions, whether ministerial, non-ministerial, or wholly unrelated to any grant-funded program.

In contrast, the panel’s expressive-association analysis—to which Oregon refers—was more nuanced. The panel said Oregon could not enforce the Coreligionist Group Exclusion *outside* grant-funded programs. Pet.App.34a–35a. Yet it held that the State could prohibit 71Five’s faith-based employment practices for positions working *inside* grant-funded initiatives. Pet.App.28a–34a.¹ But that conclusion says nothing about 71Five’s free-exercise or religious-autonomy claims. Nor does it protect hiring for all 71Five’s positions.

Those claims seek to ensure that the State cannot force the ministry to surrender its ministerial hiring decisions and faith-based employment practices to qualify for public benefits. See *Carson v. Makin*, 596 U.S. 767, 789 (2022) (states cannot “exclude religious persons from the enjoyment of public benefits on the basis of their anticipated religious use of the benefits”); *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 250 (2025) (“eligibility” for a religious exemption cannot “turn[] on inherently religious choices,” such as whether to “serve only co-religionists”). Oregon does not dispute that governmental entities have consistently deployed this tactic post-*Carson*. *E.g.*, *St. Mary Catholic Parish, Littleton, Co. v. Roy*, No. 25-581 (petition pending); *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163 (D. Colo. 2023). The Court could

¹ 71Five requested an injunction allowing it to fully participate in the grant program while hiring only “employees and volunteers who share its faith.” ROA.247. Oregon is wrong that 71Five did not seek “relief for grant-funded activities.” Opp.17. Otherwise, the Ninth Circuit would not have addressed the issue.

avoid much state mischief by granting the petition and resolving this important constitutional question.

Moreover, the Ninth Circuit’s expressive-association line-drawing is impossible to implement. 71Five depends on its roughly 30 employees to administer and carry out every facet of its ministry, including any grant-funded programs. ROA.197. *Every* employee is expected to reflect Christ when mentoring youth and in their daily interactions with colleagues. And *every* employee must participate “in regular times of prayer, devotion, and worship.” ROA.199. Requiring 71Five to divide its workforce between believers and nonbelievers would splinter its mission and stymie its message, ROA.197–200—“undermin[ing]” its “continued viability,” *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., respecting the denial of certiorari).

What’s more, 71Five specifically requested grant funding to reimburse a portion of some existing staff salaries, as grant terms allow. ROA.340, 366 (listing Youth Center Coordinator, Mentor Coordinator, Parent Coordinator, and Justice Coordinator positions). But the Ninth Circuit’s “inside-outside” rule would prevent funds from being used this way solely because 71Five applies faith-based requirements to those positions. Meanwhile, secular organizations can use grant funds to subsidize salaries of employees expected to share their vision and values.

In sum, 71Five seeks to participate in the grant program—and use awarded funds—*without* having to forgo its faith-based employment practices. The Free Exercise Clause guarantees that right. So the Court should also grant review of the second question.

IV. The questions presented are important to religious organizations nationwide.

The questions presented are of pressing national importance. Across the country, religious ministries, schools, and charities regularly seek to participate in public-benefit programs while remaining faithful to their beliefs. But the Ninth Circuit authorizes putting them to an untenable choice—abandon core religious practices or forfeit public benefits—while simultaneously denying them the ability to vindicate their constitutional rights. That threatens widespread and ongoing harm, and it calls for this Court’s prompt intervention. Samaritan’s.Purse.Br.10–14; CLS.Br.20–23; Jewish.Coalition.Br.14–17.

This case is also exceptionally important to 71Five. Unless this Court intervenes, 71Five will be unable to recover damages for the constitutional violations already suffered and will remain exposed to exclusion from future programs.

Oregon’s assertion that the challenged rule has been “repealed,” Opp.1, in no way alters that reality. The rule change for the current biennium cannot undo the harm already caused. And the change came only *after* an emergency injunction forced Oregon’s hand. See Opp.5. Moreover, there is nothing in the record showing that the rule has been formally repealed; Oregon’s brief in opposition just says it has been. Notably, Oregon’s brief does not argue mootness or disavow the possibility of reinstating the same condition at any time and for any discretionary reason.

Finally, “[t]he issues presented are squarely legal, and this case presents an excellent vehicle to clarify the scope of the right to religious autonomy.” States.Br.14. Because autonomy rights are “integral to a religious institution’s ability to define its doctrines and moral standards and to communicate those beliefs to its members and next generation,” Professors.Br.20, the Court should grant review and reverse.

CONCLUSION

For the foregoing reasons, and those discussed in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted,

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