No. 25-849

IN THE

Supreme Court of the United States

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
Petitioner,

v.

DAVID O'CONNELL,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

BRIEF OF *AMICI CURIAE* FORMER EEOC GENERAL COUNSEL AND RELIGIOUS NONDISCRIMINATION EXPERT IN SUPPORT OF PETITIONER

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February 19, 2026

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INTEREST OF *AMICI CURIAE*[1]

Amici are former Equal Employment Opportunity Commission ("EEOC" or "the Commission") employees. Sharon Fast Gustafson is a former General Counsel of the EEOC who, during her time there, established a Religious Discrimination Work Group and promoted religious nondiscrimination and accommodation. Rachel N. Morrison was an attorney advisor to General Counsel Gustafson and a member of the Religious Discrimination Work Group. Both are experts in religion-related employment discrimination.

Amici offer this brief to explain how the D.C. Circuit's holding invites unconstitutional government intrusion in one context where the issue frequently arises: EEOC investigations into the employment decisions of religious organizations. *Amici's* knowledge of the Commission and its practices gives them a unique perspective on how the D.C. Circuit's decision will force small religious organizations to choose between financial ruin or giving up meritorious First Amendment defenses and capitulating to government investigations or lawsuits.

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[1] *Amici* provided notice of their intent to file this brief to all counsel of record on January 28, 2026, more than 10 days prior to the filing deadline. This brief was not authored in whole or in part by counsel for any party. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than *amici curiae*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION AND SUMMARY

The First Amendment protects religious organizations from government intrusion into ecclesiastical matters. But that protection is a "dead letter" if the doctrine provides no immunity from burdensome governmental investigations and lawsuits. Pet. App. 67a (Rao, J., dissenting from denial of rehearing en banc). Religious organizations will be forced to subject internal religious matters to government scrutiny to justify their decisions and, ultimately, choose between incurring legal fees in their defense or caving to a plaintiff's demands, thereby forfeiting meritorious First Amendment defenses. For smaller religious organizations in particular, this is a Hobson's choice.

The First Amendment guarantees the "independence of religious institutions in matters of 'faith and doctrine.'" *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746 (2020). This church autonomy doctrine requires that courts "'exercise no jurisdiction' over 'subject-matter[s]' that are 'ecclesiastical in [] character.'" *Cath. Charities Bureau, Inc.* v. *Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 269 (2025) (Thomas J., concurring) (quoting *Watson* v. *Jones*, 80 U.S. 679, 733 (1871) (emphasis omitted)). Left undisturbed, the D.C. Circuit's holding would fatally undermine the Court's precedents recognizing church autonomy. By interpreting the church autonomy doctrine merely as a defense from liability rather than an immunity from suit, the D.C. Circuit greenlights unconstitutional government intrusion into the decisions of religious institutions. And the D.C. Circuit's decision has deepened an acknowledged circuit split

on the important question whether the church autonomy doctrine is an immunity from suit, warranting this Court's review.

Amici are deeply familiar with one area where this question frequently arises: EEOC investigations. The EEOC investigates charges of employment discrimination against a wide range of employers, including religious organizations. After *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 565 U.S. 171 (2012), and *Our Lady*, the Commission changed its guidance to instruct staff to determine the applicability of church autonomy at the outset of an investigation, before addressing the underlying discrimination claims. The D.C. Circuit's ruling undercuts that guidance; indeed, the EEOC has argued in recent litigation that the doctrine is not an immunity. If the church autonomy doctrine provides only a defense against liability, EEOC investigators will be free to investigate discrimination charges without regard to whether the charging employee is a minister or whether the employment decision in question was based in religious doctrine.

Such a regime opens the door to unconstitutional government interference with First Amendment rights. EEOC investigations are often expensive, time-consuming, and broad. Small religious organizations typically lack the financial wherewithal to vindicate their rights once an investigation begins, creating immense pressure to settle before defense costs become unsustainable. Such organizations often cannot afford the legal fees and other expenses associated with EEOC investigations or litigation.

Making matters worse, government officials, like anyone not specifically educated in a particular religious tradition, are ill-equipped to make informed decisions about the role doctrine may have played in ecclesiastical decisions. Indeed, the "very process of inquiry leading to findings and conclusions" by government officials risks misunderstandings. *NLRB* v. *Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979). At worst, such inquiry increases the risk of adverse government action reflecting "hostility to religion." *See, e.g.*, *Masterpiece Cakeshop, Ltd.* v. *Colo. Civil Rts. Comm'n*, 584 U.S. 617, 639 (2018).

The D.C. Circuit's holding thus has massive implications for religious organizations across the country, particularly those without the means, monetary or otherwise, to withstand an unconstitutional government investigation or litigation. This Court should grant the petition.

REASONS FOR GRANTING THE PETITION

I. The church autonomy doctrine would be ineffective if it did not protect religious organizations from the burden of litigation and governmental investigations barred by the First Amendment.

Rooted in the Religion Clauses of the First Amendment, the church autonomy doctrine rests on the premise that "'essentially religious controversies' are inappropriate subject matter for civil courts to decide." *Cath. Charities*, 605 U.S. at 269 (Thomas, J., concurring) (quoting *Serbian E. Orthodox Diocese for U.S. & Canada* v. *Milivojevich*, 426 U.S. 696, 709

(1976)).[2] The D.C. Circuit's decision deepens entrenched circuit splits regarding whether the church autonomy doctrine serves as a structural immunity against the burdens of litigation and investigations, or merely a defense to liability. *See* Pet. at 12–15, 20–22 (discussing the circuit splits).

As one side of the split correctly recognizes, the church autonomy doctrine is an immunity from suit because the danger to religious liberty goes beyond "substantive" government resolution of religious matters. *Lee* v. *Sixth Mount Zion Baptist Church*, 903 F.3d 113, 120 (3d Cir. 2018). Even "the mere adjudication of such questions would pose grave problems for religious autonomy." *Hosanna-Tabor*, 565 U.S. at 205–06 (Alito, J., concurring). "[P]rocedural" entanglement, "where the state and church are pitted against one another in a protracted legal battle," *Lee*, 903 F.3d at 120, impermissibly subjects religious organizations to "the full panoply of legal process designed to probe the mind of the church," *Rayburn* v. *Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) (discussing Title VII litigation). "Because such [governmental] interference can include the very process of judicial inquiry, the church autonomy defense is best understood as a constitutional immunity from suit." Pet. App. 84a (Rao, J., dissenting from denial of rehearing en banc); *Markel* v. *Union of Orthodox Jewish Congregations*, 124 F.4th 796, 809 n.5 (9th Cir. 2024), *cert. denied*, 145 S. Ct.

[2] Like Petitioner, *amici* use the term "church autonomy doctrine" because of its familiarity, although the principle covers all religious faiths.

2822 (2025) (internal quotation marks omitted) (because "the very process of inquiry leading to findings and conclusions may itself impinge on rights guaranteed by the Religion Clauses," "the First Amendment generally prohibits merits discovery and trial" under the church autonomy doctrine).

Other courts of appeals, including the D.C. Circuit below, have taken a contrary position, but these decisions "are wrong." Lael Daniel Weinberger & Branton Nestor, *Church Autonomy and Interlocutory Appeals* 1 (Jan. 14, 2026), https://ssrn.com/abstract=6073729 ("Weinberger"); *see* Pet. 28–29. The church autonomy doctrine "protect[s] religious institutions from judicial review and inquiry into matters of church government, faith, and doctrine." *Id*. Such governmental inquiry "threatens the religious defendant with irreparable First Amendment harm by proceeding to discovery and possibly trial." Pet. App. 52a-53a (Walker, J., concurring in denial of rehearing en banc). Thus, "it is the very process of judicial review and inquiry, not just the end result, that can violate the Constitution." Weinberger, *supra*, at 2. This case vividly illustrates these problems: the litigation exposes the Catholic Church to costly and highly intrusive judicial inquiry into subjects including the identity of papal donors, sermons describing the purpose of donations, and communications between the Bishops and the Holy See. *See* Pet. 4–8. These issues are "inextricably tied up with [the] church's" religious mission and internal governance. Pet. App. 69a-70a (Rao, J., dissenting from denial of rehearing en banc). "Practically speak-

ing, without an immunity from suit, religious institutions would face substantial transgressions into their constitutionally protected sphere of independence" from the burdens of such discovery and judicial proceedings. *Id.* at 86a.

Indeed, harmful governmental intrusion can begin long before parties even reach the courthouse steps. Government investigations present a similar threat to religious independence because "the very process of inquiry leading to findings and conclusions," *Cath. Bishop*, 440 U.S. at 502, including many tools of "discovery," will "probe the mind of the church," *Rayburn*, 772 F.2d at 1171. Faced with such an inquiry, religious organizations "might make [decisions] with an eye to avoiding . . . bureaucratic entanglement" rather than following their beliefs. *Id.*

Thus, the church autonomy doctrine is only effective if it provides protection "akin to . . . qualified immunity" and other immunity doctrines. *Petruska* v. *Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006); *see McRaney* v. *N. Am. Mission Bd.*, 157 F.4th 627, 641 (5th Cir. 2025), *petition for cert. filed*, No. 25-807 (U.S. Jan. 8, 2026) ("the [church autonomy] doctrine is a constitutional immunity from suit" and "must be resolved at the threshold of litigation"); Pet. App. 88a (Rao, J., dissenting from denial of rehearing en banc) ("The vitality of this constitutional freedom requires that, in matters implicating church autonomy, religious organizations enjoy a constitutional immunity from suit."). For the same reasons that denial of qualified or sovereign immunity is subject to immediate appeal as "an affirmative defense," so too is denial of

a church autonomy defense. *Crawford-El* v. *Britton*, 523 U.S. 574, 587 (1998); *see* Pet. App. 59a (Rao, J., dissenting from denial of rehearing en banc). The contrary holdings of the D.C. Circuit and other courts have instead made religious "defendants subject to litigation, including discovery and possibly trial," which "imperils the First Amendment rights of religious institutions." *Belya* v. *Kapral*, 59 F.4th 570, 573 (2d Cir. 2023) (mem.) (Park, J., dissenting from denial of rehearing en banc).

Because the questions presented are important issues of religious liberty on which the courts of appeals are divided, this Court should grant the petition.

II. The time and expense of EEOC investigations into a religious organization's employment decisions can infringe First Amendment rights, especially for small religious organizations.

As the Petition discusses, if the church autonomy doctrine is not recognized as an immunity, then governmental investigations into religious organizations, including by the EEOC, will pose a grave threat to religious liberty. *See* Pet. 33–34. The rulings by the D.C. Circuit and other courts that the doctrine is merely a defense to liability undermine current EEOC guidance that directs investigators to resolve threshold religious liberty issues first. Without that guidance, organizations that lack the resources to resist and vindicate their rights will be left to face the full weight of

an EEOC investigation, forcing them to choose between compliance or insolvency. That is no choice at all.

Consistent with *Hosanna-Tabor* and *Our Lady*, current EEOC guidance directs its staff to "resolve[]" the ministerial exception, a part of the church autonomy doctrine covering employment issues, "at the earliest possible stage before reaching [an] underlying discrimination claim." U.S. EQUAL EMP. OPPORTUNITY COMM'N, COMPLIANCE MANUAL § 12-I, C.2 (Jan. 15, 2021);[3] *see McRaney*, 157 F.4th at 641. That guidance is explicitly based on the premise that the exception is "not just a legal defense . . . , but a constitutionally-based guarantee that obligates the government and the courts to refrain from interfering or entangling themselves with religion." *Id*; *cf. Osborn* v. *Haley*, 549 U.S. 225, 253 (2007) ("Immunity-related issues . . . should be decided at the earliest opportunity.").[4] The

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[3] The guidance is not binding on courts, but is binding on EEOC staff. The pertinent section of the compliance manual is located at https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#h_268081423140716107487380 49.

[4] The EEOC was slow to adapt to the Court's holding in *Hosanna-Tabor*, especially compared to its rapid adoption of new guidance following other Court decisions that bear on employment issues. *Compare* U.S. EQUAL EMP. OPPORTUNITY COMM'N, COMPLIANCE MANUAL § 12-I, C.2 (Jan. 15, 2021) (reflecting change in the law nine years after *Hosanna-Tabor*) *with, e.g.*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, GUIDANCE DOCUMENT §§ I.B.1, I.C.1 (June 25, 2015), https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues (updating guidance on pregnancy discrimination three months after the

holdings of the D.C. Circuit and other courts of appeals that the church autonomy doctrine is a defense to liability rather than an immunity from suit upend this understanding and undermine *Hosanna-Tabor* and *Our Lady*.

In doing so, these decisions provide an opening for the Commission to reinsert itself into religious matters during investigations. Before *Hosanna-Tabor*, EEOC guidance was far less solicitous of the First Amendment. Rather than instructing staff to address constitutional protections first, the manual defined the ministerial exception as only covering "employees who perform essentially religious functions," and omitted any warning that the ministerial exception should be resolved early. *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, COMPLIANCE MANUAL § 12-I, C.2 (July 22, 2008), https://www.eeoc.gov/sites/default/files/migrated_files/policy/docs/religion.pdf. And in *Hosanna-Tabor*, the EEOC argued that there was no such thing as a ministerial exception at all. 565 U.S. at 189. Recently, despite its guidance providing otherwise, EEOC has argued in litigation that "'[t]he church autonomy doctrine provides religious associations neither an immunity from discovery nor an immunity from trial,'" and that "within the context of the ministerial exception, religious institutions must at times participate in discovery." Brief of the Equal Employment Opportunity Commission as *Amicus Curiae*

Court's decision in *Young* v. *United Parcel Serv., Inc.*, 575 U.S. 206 (2015)).

in Support of Appellee at 27–28, *Garrick* v. *Moody Bible Inst.*, 95 F.4th 1104 (7th Cir. 2024) (No. 21-2683), 2023 WL 6285025, (quoting *Belya* v. *Kapral,* 45 F.4th 621, 633 (2d Cir. 2022)); *see also* Def. EEOC's Combined Mem. in Opp'n to Pls.' Mots. for Summ. J. at 42, *U.S. Conf. of Cath. Bishops* v. *EEOC*, No. 2:24-cv-00691-DCJ-TPL (W.D. La. Nov. 12, 2024) (ECF No. 81) (arguing that Plaintiffs could not "demonstrate their entitlement to a categorical exemption from the Final Rule's requirements based on the church autonomy doctrine" and stating that "the church autonomy defense would necessarily need to be addressed on a fact- and case-specific basis"). Unless this Court grants review to correct the rulings of the D.C. Circuit and other courts, the EEOC could change its guidance to take this position in its investigations as well.

A return to prior form, where the EEOC aggressively pursues perceived Title VII violations by religious organizations regardless of ministerial status, would severely restrict religious liberty. Church autonomy issues, particularly the ministerial exception, frequently arise in EEOC investigations and suits. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. 171; *EEOC* v. *Roman Cath. Diocese*, 213 F.3d 795 (4th Cir. 2000); *EEOC* v. *Cath. Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996) (*Cath. Univ. II*); *EEOC* v. *Sw. Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981).

If not required to resolve church autonomy issues at the outset, EEOC staff will have free rein to launch long and onerous investigations into religious organizations, with all of their attendant costs. *See Rayburn*, 772 F.2d at 1171 ("A Title VII action is potentially a

lengthy proceeding, involving state agencies and commissions, the EEOC, the federal trial courts and courts of appeal."). EEOC investigations begin when an aggrieved person, one acting on behalf of such a person, or a member of the Commission itself files a charge of discrimination with the Commission. 42 U.S.C. § 2000e-5(b). After serving the employer with notice, Commission staff investigate the charge. *Id.* That investigatory power includes issuing and compelling compliance with subpoenas for witnesses and evidence. 29 C.F.R. § 1601.16.

The Commission has 120 days—"so far as practicable"—to determine whether there is "reasonable cause to believe that the charge is true." 42 U.S.C. § 2000e-5(b). If so, it attempts to use "informal methods of conference, conciliation, and persuasion" to resolve the matter. *Id.* If that process fails to resolve the dispute, the Commission may file suit. *Id.* at (f)(1). If the Commission determines that there is not reasonable cause to believe the charge is true, it dismisses the charge. *Id.* at (b). And if the Commission dismisses the charge, does not file suit, or fails to resolve the matter through conciliation within 180 days, it may provide notice to the aggrieved person that he or she may file suit. *Id.* at (f)(1).

In practice, investigations are much more "time-consuming" than 120 or 180 days. *See VF Jeanswear LP* v. *EEOC*, 140 S. Ct. 1202, 1202 (2020) (mem.) (Thomas, J., dissenting from denial of certiorari). The EEOC represents that the average length of an investigation is ten months. U.S. EQUAL EMP. OPPORTUNITY COMM'N, *What You Can Expect After You File a*

Charge, https://www.eeoc.gov/what-you-can-expect-after-you-file-charge (last visited Feb. 15, 2026). But this average includes investigations that are completed almost immediately, often because the EEOC lacks jurisdiction over the charge or the claims are time-barred. EEOC investigations that proceed past such threshold issues can take years. *See, e.g.*, *EEOC* v. *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 582 F. Supp. 2d 881, 883–84 (E.D. Mich. 2008) (adjudicating EEOC suit filed two years and four months after charge); *Roman Cath. Diocese*, 213 F.3d at 799 (adjudicating EEOC suit filed three years and ten months after charge); *EEOC* v. *Cath. Univ. of Am.*, 856 F. Supp. 1, 2 (D.D.C. 1994) (*Cath. Univ. I*), *aff'd*, 83 F.3d 455 (D.C. Cir. 1996) (recounting EEOC investigation that concluded two years and three months after charge).[5]

Moreover, investigations can sprawl outside the scope of a charge's allegations. In *VF Jeanswear*, for example, the EEOC issued a right-to-sue notice to the individual who filed a charge, but "continued with its own, far broader investigation" by issuing "a subpoena covering material that departed significantly" from the original allegations. 140 S. Ct. at 1205 (Thomas, J., dissenting from denial of certiorari). There is no

[5] Three Courts of Appeals have held that the EEOC need not end its investigation when it issues a right-to-sue letter. *In re AAM Holding Corp.*, 153 F.4th 252, 261 (2d Cir. 2025); *EEOC* v. *Union Pac. R.R. Co.*, 867 F.3d 843, 848 (7th Cir. 2017); *EEOC* v. *Fed. Express Corp.*, 558 F.3d 842, 851–52 (9th Cir. 2009). *But see EEOC* v. *Hearst Corp.*, 103 F.3d 462, 469 (5th Cir. 1997) (holding otherwise).

reason to think that the Commission—if operating under the D.C. Circuit's approach—will spare religious employers from these sorts of far-reaching investigations. Rather, the EEOC's position in *VF Jeanswear* would permit a "universal investigation of any employer with a pending (or concluded) charge." *EEOC* v. *VF Jeanswear, LP*, No. MC-16-00047-PHX-NVW, 2017 WL 2861182, at *6 (D. Ariz. July 5, 2017).[6]

Faced with an EEOC investigation and possible suit, religious employers must rally a legal defense or capitulate. Without immunity from suit that Commission investigators must resolve at the outset, investigations will drag on and subject religious organizations to rising costs with an indeterminate end. In *Catholic University II*, for example, the EEOC conducted an investigation for over two years before bringing suit. 83 F.3d at 459. The ensuing litigation lasted four years, including a one-week trial and appeal. *Cath. Univ. I*, 856 F. Supp. at 2; *Cath. Univ. II*, 83 F.3d at 470. The D.C. Circuit ultimately concluded that "the EEOC's two-year investigation" and the ensuing litigation "constituted an impermissible entanglement" with religious doctrine. *Cath. Univ. II*, 83 F.3d at 467. But even though Catholic University prevailed and was not ultimately liable, it was forced to divert valuable time from its mission and pay its lawyers for *six years* of EEOC investigation and litigation.

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[6] Although the district court declined to enforce the subpoena, the Ninth Circuit reversed in part. *EEOC* v. *VF Jeanswear LP*, 769 F. App'x 477, 479 (9th Cir. 2019).

Under the D.C. Circuit's holding, organizations with far fewer resources than Catholic University will have to foot these bills too. Religious congregations typically lack the funds to mount a full-fledged defense to an EEOC investigation. In 2023, the average-sized congregation (with 60 weekly in-person congregants) reported a median income of $165,000. Hartford Institute for Religion Research, *Finances and Faith: A Look at Financial Health Among Congregations in the Post-Pandemic Reality* (July 2024), https://www.covidreligionresearch.org/wp-content/uploads/2024/07/FinanceReport2024.pdf. Minority religious congregations face even greater challenges. *See id*. at 4 (noting that among non-Christian religious groups, median income is only about $53,000). Muslim and Jewish organizations, for example, are at a heightened risk of being forced to settle as "mosques, synagogues, and affiliated schools are often not connected to any central organization and therefore may lack the resources of a large denomination." Brief of *Amici Curiae* Jewish Coalition for Religious Liberty, Muslim Public Affairs Council, the Aleph Institute, and Professor Asma Uddin in Support of Petitioner at 16, *Faith Bible Chapel Int'l* v. *Tucker*, 143 S. Ct. 2608 (Mem.) (2023) (No. 22-741), 2023 WL 2526754 (JCRL Br.).

The best-case scenario for these organizations is that investigation or litigation "will ultimately vindicate" them, "but not before subjecting them to expensive" and time-consuming proceedings. Richard W. Garnett & John M. Robinson, Hosanna-Tabor*, Religious Freedom, and the Constitutional Structure*,

CATO SUP. CT. REV. 307, 329 (2012), https://www.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2012/9/scr-2012-garnett.pdf. The costs are "not only financial[], but also" consist of "the distraction" investigation or litigation poses for organizations "simply seeking to return to their ministry." *Id*; *see also Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 344 (1987) (Brennan, J., concurring in the judgment) (noting the role religious groups play in charitable endeavors). Organizations without the resources or capacity to resist must succumb to the government or structure their decisions around avoiding potential charges, rather than around their beliefs. *See* JCRL Br. at 16 (litigating claims subject to the church autonomy doctrine will "require smaller congregations to decide whether to divert donations to legal-defense funds or forsake the religious autonomy guaranteed by the First Amendment"). Thus, even "the prospects of [EEOC] litigation" or investigation can create impermissible entanglement, because a religious group's "process of self-definition would be shaped" by that fear. *Amos*, 483 U.S. at 342–44 (Brennan, J., concurring in judgment).

III. Unfettered EEOC investigations will lead to impermissible government involvement in ecclesiastical matters.

Under the erroneously narrow view of the church autonomy doctrine adopted below, EEOC investigations will inevitably lead to agency involvement with ecclesiastical matters. This is no job for Commission

investigators. It is not the place of government apparatchiks to examine the nuances of a religious doctrine, and attempt to understand its role in an employment decision. Even "[g]ood intentions" cannot "avoid entanglement with [an organization's] religious mission." *Cath. Bishop*, 440 U.S. at 502.

Investigating an employment decision that could fall under the ministerial exception will, if the doctrine is not an immunity to suit, involve wading into ecclesiastical matters. Investigators from EEOC and other agencies will approach discrimination claims against religious employers like any other, tap dancing through a minefield of doctrine all the while. *Cf. Carroll Coll., Inc.* v. *NLRB*, 558 F.3d 568, 572 (D.C. Cir. 2009) (emphasizing that the NLRB may not "troll[] through the beliefs of schools, making determinations about their religious mission, and that mission's centrality to the 'primary purpose' of the school"). That process alone offends the Constitution, as "[i]t is not only the conclusions that may be reached by [an agency] which may impinge on rights guaranteed by the Religion Clauses, but also *the very process of inquiry* leading to findings and conclusions." *Cath. Bishop*, 440 U.S. at 502 (emphasis added); *see Combs* v. *Cent. Tex. Ann. Conf. of the United Methodist Church*, 173 F.3d 343, 350 (5th Cir. 1999) (taking issue with "secular authorities . . . evaluating or interpreting religious doctrine"); *cf. Carson* v. *Makin*, 596 U.S. 767, 787 (2022) (government scrutiny of "whether and how a religious school pursues its educational

mission . . . raise[s] serious concerns about state entanglement with religion and denominational favoritism").

EEOC investigators are unlikely to be sufficiently familiar with the doctrine of any particular religious organization to correctly navigate its nuances. Investigators, like "judges[,] cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady*, 591 U.S. at 757. That risk increases when an investigator deals with an unfamiliar religion, where an employee may lack "a familiar title" or have a role defined by "an unfamiliar cultural context." JCRL Br. at 12. Several members of this Court have recognized that the government must use extra caution when engaging with "religious groups whose beliefs, practices, and membership are outside of the 'mainstream.'" *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring); *see Our Lady*, 591 U.S. at 753 (noting the danger of "privileging religious traditions with formal organizational structures over those that are less formal"); *id.* at 764 (Thomas, J., joined by Gorsuch, J., concurring) (arguing that legal analysis should be tailored "[t]o avoid disadvantaging . . . minority faiths"); *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., joined by Kagan, J., concurring) (stressing the importance of a functional analysis because "the concept of ordination as understood by most Christian churches and by Judaism has no clear counterpart" in some other religions); *cf. Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508

U.S. 520, 547 (1993) (voiding policies "stem[ming] from animosity to [a minority] religion").

That is why the church autonomy doctrine keeps government officials, including EEOC officials, out of these ecclesiastical matters. The government should not conduct investigations of religious organizations before resolving whether a case implicates the church autonomy doctrine. The D.C. Circuit's contrary holding that the doctrine is merely a defense to liability undermines *Hosanna-Tabor* and its progeny, exposing religious organizations to such inquiry. Worse still, government intrusion into religious matters can, at times, be infected by officials' bias against religion or particular religious beliefs. *See, e.g.*, *Masterpiece Cakeshop*, 584 U.S. at 639 (noting "official expressions of hostility to religion in some of the commissioners' comments"). EEOC investigators are no less fallible than other government officials. For instance, in a series of dialogue sessions involving then-General Counsel Gustafson, then-Commissioner, now-Chair Andrea Lucas, and Religious Discrimination Work Group member Morrison, some participants expressed concern that EEOC was not "view[ed] . . . as friendly to their religious beliefs."[7] By keeping the government

[7] *See* U.S. EQUAL EMP. OPPORTUNITY COMM'N, RELIGIOUS DISCRIMINATION IN EMPLOYMENT: GENERAL COUNSEL LISTENING SESSIONS FINAL REPORT at 11 (Jan. 2021). The report has been removed from the EEOC's website, but is now available on the website of the Ethics and Public Policy Center, https://eppc.org/wp-content/uploads/2023/02/Religious-Discrimination-in-Employment-General-Counsel-Listening-Sessions-Final-Report.pdf.

out of ecclesiastical matters, the church autonomy doctrine helps protect religions from the risks of government hostility.

If allowed to stand, the D.C. Circuit's holding places religious employers, particularly small or minority organizations, in the EEOC's crosshairs. EEOC investigation of discrimination charges that the church autonomy doctrine would otherwise bar is "inherently coercive," even if the employer is ultimately vindicated. *Combs*, 173 F.3d at 350.

CONCLUSION

The Court should grant the petition for writ of certiorari.

February 19, 2026

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