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 a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF PROFESSOR LAEL WEINBERGER AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICUS CURIAE*

Dr. Lael Weinberger is an assistant professor of law at George Mason University Antonin Scalia Law School.[*] He has an interest in the sound development of church autonomy law and has published scholarship on this subject. See, *e.g.*, Weinberger, *Is Church Autonomy Jurisdictional?*, 54 LOY. U. CHI. L.J. 471 (2023); Weinberger, *The Limits of Church Autonomy*, 98 NOTRE DAME L. REV. 1253 (2023); Renaud & Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67 (2008).

Many judges have relied on Dr. Weinberger's scholarship when confronting the types of issues raised here, see, *e.g.*, *Cath. Charities Bureau, Inc.* v. *Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 258 (2025) (Thomas, J., concurring) (citing *Spheres of Sovereignty*); *McRaney* v. *N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 648 (5th Cir. 2025) (Oldham, J.) (citing *The Limits of Church Autonomy*), petition for cert. pending, No. 25-807 (filed Jan. 6, 2026); *Huntsman* v. *Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 811 (9th Cir. 2025) (Bumatay, J., concurring) (citing *Is Church Autonomy Jurisdictional?*); *Garrick* v. *Moody Bible Inst.*, 95 F.4th 1104, 1123–1124 (7th Cir. 2024) (Brennan, J., dissenting) (citing *Is Church Autonomy Jurisdictional?*), including in the proceedings below, see Pet. App. 52a n.5 (Walker, J., concurring in denial of rehearing en banc) (citing *Is Church Autonomy Jurisdictional?*); *id.* at 67a (Rao, J., dissenting from denial of

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[*] No counsel for any party has authored this brief in whole or in part, and no person or entity, other than counsel, have made a monetary contribution to the preparation or submission of this brief. Counsel of record for all parties received timely notice of *amicus*'s intent to file this brief.

rehearing en banc) (citing *The Limits of Church Autonomy*).

SUMMARY OF ARGUMENT

Like a theatrical production, church autonomy litigation can be viewed as unfolding over three acts. See Horwitz, *Act III of the Ministerial Exception*, 106 NW. U. L. REV. 973, 974 (2012). Act I is the beginning of the conflict, where seeds of discord are sown, and where tensions and disputes outside the courtroom set the stage for the legal drama to follow.

As the curtain rises for Act II, legal proceedings begin. It is here that the religious institution (typically in the role of defendant) raises the shield of church autonomy, which protects religious entities of all faiths. The outcome of Act II is pivotal; if a court applies the doctrine to bar the claim, then Act III transitions to a quiet resolution, and the church moves forward without further judicial scrutiny of the underlying religious dispute. The plaintiff, of course, can immediately appeal.

If the court erroneously declines to apply the doctrine to protect the religious institution, however, then, absent an immediate appeal, Act III becomes an extended and costly legal battle. This Court, and others, have recognized that church autonomy can be offended by intrusion into religious affairs *simply because of litigation*. Constitutional harms can occur in Act III, as courts potentially find themselves in the constitutionally untenable position of interfering with the free exercise of religion and deciding matters of religious doctrine, governance, and discipline during litigation. That can be true even where courts are not actively engaged with the merits of the underlying religious dispute.

Because the denial of a defendant's church autonomy defense subjects religious institutions to unconstitutional intrusion, the process itself is the punishment. Even if the

church is ultimately vindicated after a post-judgment appeal, that cannot ameliorate the constitutional harms it suffered prior to dismissal.

Recognizing this conundrum, many federal circuit judges have written separately on the injury litigation itself inflicts. See, *e.g.*, *Belya* v. *Kapral*, 59 F.4th 570, 579 (2d Cir. 2023) (Park, J., dissenting from denial of rehearing en banc); *McRaney* v. *N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 980 F.3d 1066, 1074 (5th Cir. 2020) (Ho, J., dissenting from denial of rehearing en banc); *Garrick*, 95 F.4th at 1128–1129 (Brennan, J., dissenting); *Tucker* v. *Faith Bible Chapel Int'l*, 53 F.4th 620, 627 (10th Cir. 2022) (Bacharach, J., dissenting from denial of rehearing en banc); Pet. App. 51a–53a (D.C. Cir. 2025) (Walker, J., concurring in denial of rehearing en banc); *id.* at 92a (Rao, J., dissenting from denial of rehearing en banc). So has Justice Alito, joined by Justice Kagan. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 205–206 (2012) (Alito, J., concurring) (noting that the mere adjudication of religious questions, including "calling witnesses to testify about the importance and priority of the religious doctrine," poses "grave problems for religious autonomy").

As such, the question presented here is ripe for review, without the need for further percolation. See *Belya*, 59 F.4th at 573 (Cabranes, J., dissenting from denial of rehearing en banc) (noting that "the issues at hand are of 'exceptional importance' * * * and should be reviewed by the Supreme Court"). This Court should grant certiorari.

ARGUMENT

I. ACT III AS FIRST AMENDMENT HARM

The church autonomy doctrine is rooted in both Religion Clauses. Courts violate religious liberty when they interfere with the internal governance of a religious institution (free exercise), and impermissibly dictate religious

dogma when they take sides in such disputes (establishment). *Hosanna-Tabor*, 565 U.S. at 188–189. Thus, the church autonomy doctrine affords churches "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 747 (2020).

Religious institutions are "constitutionally protected against *all* judicial intrusion into [their] ecclesiastical affairs—even brief and momentary ones." *McRaney*, 157 F.4th at 644. When a church autonomy defense is wrongly rejected, therefore, the harm is not just liability; it is the litigation itself. Such harms are irreparable *and* unconstitutional. See *NLRB* v. *Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979) (noting that "the very process of inquiry" into a church's decisionmaking process "may impinge on rights guaranteed by the Religion Clauses"). Thus, the question whether church autonomy applies should be resolved as early as possible. If the defense is denied erroneously and the lawsuit allowed to proceed, there is no way to undo the constitutional harm that occurs solely by virtue of the litigation itself. See Weinberger, *Is Church Autonomy Jurisdictional?*, *supra*, at 504–505; Weinberger & Nestor, *Church Autonomy and Interlocutory Appeals* 1–2, SSRN (2026), https://ssrn.com/abstract=6073729. An error cannot be fixed at the end of litigation. See *Mohawk Indus., Inc.* v. *Carpenter*, 558 U.S. 100, 106 (2009); Weinberger & Nestor, *Church Autonomy and Interlocutory Appeals*, *supra*, at 25–43.

The nature of this harm means that interlocutory review is necessary to protect a religious institution's constitutional rights. See *McRaney*, 157 F.4th at 641 (explaining that "[a]bridgement of the church autonomy immunity imposes irreparable injury on the religious organization," and its denial is therefore "subject to an immediate interlocutory appeal"). When immediate review is unavailable,

an unconstitutional intrusion on religious institutions inevitably follows.

II. Case Studies: What Happens In Acts I, II, And III?

When churches lack access to interlocutory review, the right to appeal threshold church autonomy issues becomes asymmetrical. Plaintiffs can immediately appeal an erroneous grant of immunity under 28 U.S.C. § 1291. But churches faced with an adverse ruling must wait until after the case concludes. Even if the denial of church autonomy is later deemed erroneous, however, the damage is already done. Recent lawsuits provide examples of the type and extent of such damage, as well as the legal errors that cause such damage in the first place.

We start, of course, in Act I.

A. Act I: Disgruntled plaintiffs file suit

In *Faith Bible*, a church-operated Christian school terminated a teacher (a chaplain, actually) after a contentious debate about theology and pedagogy that resulted from a chapel program addressing race and the church. *Tucker* v. *Faith Bible Chapel Int'l*, 36 F.4th 1021, 1026 (10th Cir. 2022). The former teacher sued, claiming he had been fired in retaliation for opposing a racially hostile environment. *Id.* at 1026–1027.

In *Belya*, church leadership declined to elevate a particular clergyman to bishop. *Belya* v. *Kapral*, 45 F.4th 621, 625–627 (2d Cir. 2022). The clergyman sued high ranking leaders in the Russian Orthodox Church Outside of Russia, as well as a diocese of that Church and the executive body (the Synod) of the Church's highest authority (the Sobor). *Id.* at 627. He alleged that they had defamed him by claiming he falsified the papers confirming his election to the office. *Ibid.*

In *McRaney*, the board of directors of the Baptist Convention of Maryland/Delaware (BCMD) unanimously

voted to remove McRaney from his role as BCMD's executive director after a "schism developed * * * about how best to carry out" various ministry goals. *McRaney*, 157 F.4th at 632. McRaney sued, alleging tortious interference with business relationships, defamation, and intentional infliction of emotional distress. *Id.* at 633.

B. Act II: Far too often, courts erroneously deny church autonomy defenses

In all three of these cases, the defendants asserted a church autonomy defense "[a]t the outset of th[e] litigation." *Faith Bible*, 36 F.4th at 1027; see also *Belya*, 45 F.4th at 627–628; *McRaney*, 157 F.4th at 633. In response to such church autonomy motions to dismiss, plaintiffs blithely claim, and courts often perfunctorily agree, that the case does not implicate religious issues and can be resolved by applying neutral principles. See, *e.g.*, *McRaney* v. *N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 349 (5th Cir. 2020) ("[Plaintiff] asks the court to apply neutral principles of tort law to a case that, on the face of the complaint, involves a civil rather than religious dispute.").

At the Act II stage, many courts grant a church defendant's motion to dismiss only if it is *clear* that the lawsuit would necessarily require a court to decide doctrinal matters. See *ibid.* ("it is not clear that any of these determinations will require the court to address purely ecclesiastical questions"); *Belya*, 45 F.4th at 632 ("For now, it appears that the case can be litigated with neutral principles of law."); *Faith Bible*, 36 F.4th at 1045 ("If this case goes to trial, it does not reasonably mean that even a jury will ever be required to resolve any religious dispute."); *Garrick*, 95 F.4th at 1114 ("it is not conclusively apparent that adjudication of [plaintiff's] claims of pretextual firing requires the court to entangle itself in questions of religious doctrine").

Courts typically pledge to stop the litigation if it turns out that the case does, in fact, implicate doctrinal matters. See *McRaney*, 966 F.3d at 350 ("If further proceedings and factual development reveal that McRaney's claims cannot be resolved without deciding purely ecclesiastical questions, the court is free to reconsider whether it is appropriate to dismiss some or all of McRaney's claims."); *Belya*, 45 F.4th at 632–633 (suggesting that the case could still be dismissed if "further proceedings * * * uncover that the merits do turn on the church autonomy doctrine").

This reasoning is problematic on multiple grounds. For one, if it need only be *plausible* that neutral principles can resolve the dispute to survive a motion to dismiss, the parties will almost always proceed to Act III, with all the attendant intrusions on church governance and doctrine. See Weinberger, *The Limits of Church Autonomy*, *supra*, at 1277 ("If the court simply asks whether 'neutral principles' can resolve the case, the answer will (almost) always be yes." (footnote omitted)). The flimsy procedural barrier standing between defendants and Act III does not provide adequate protection for religious institutions.

For another, even if a court later dismisses a case on church autonomy grounds, that is cold comfort for defendants; by that point, the damage may already be done. See, *e.g.*, *Garrick*, 95 F.4th at 1122 (Brennan, J., dissenting) ("Litigation and its related costs create a hardship that the church autonomy doctrine was meant to avoid—an adversity that is effectively unreviewable later in a case."); *McRaney*, 157 F.4th at 645 ("[I]f the district court orders discovery into a pastor's sermon notes to adjudicate a plaintiff's claim, the pastor cannot be made whole by a take-nothing judgment months or years later."); Weinberger & Nestor, *Church Autonomy and Interlocutory Appeals*, *supra*, at 43–52.

Moreover, in nearly all cases, further proceedings are unnecessary to determine whether a claim will actually require the court to resolve religious disputes. In *McRaney*, for example, it was obvious at the outset of the case that the plaintiff's claims were barred by the church autonomy doctrine. See 980 F.3d at 1071 (Ho, J., dissenting from denial of rehearing en banc) ("It is clear from the face of McRaney's complaint (and further confirmed in his later filings) that this case is all about whether [the church]'s actions were based on valid religious reasons." (citation modified)).

That is why the second *McRaney* panel attributed the defendants' constitutional harm to legal errors that *preceded* the remand for further proceedings, rather than factual developments that distilled the issues *after* remand. See *McRaney*, 157 F.4th at 645 n.5 ("The discovery that unconstitutionally burdened the ecclesiastical defendants between our court's first decision and this one is attributable *wholly* to our first panel decision and the en banc court's denial of rehearing.") (emphasis added).

The *McRaney* saga teaches that a searching examination of a plaintiff's claims can divine whether the dispute will embroil the court in religious controversies. See *id.* at 651 (scrutinizing the elements of plaintiff's claim—without analyzing any evidence—and concluding that "[r]esolving these claims would impermissibly require a court" to resolve religious disputes); see also *S. Methodist Univ.* v. *S. Cent. Jurisdictional Conf. of the United Methodist Church*, 716 S.W.3d 475, 504 (Tex. 2025) (Young, J., concurring) (admonishing courts to "look hard to ensure that what *seems* to be secular is not a mere stalking horse—intentional or otherwise—for subjugating a religious organization to civil authority for matters that actually are ecclesiastical").

Unfortunately, courts sometimes fail to give these cases the close attention they require at the Rule 12(b)(6)

stage. Here, for example, the district court "denied USCCB's motions [to dismiss] in an oral ruling and minute order." Pet. App. 7a. And in *Belya*, the district court required the church to brief its autonomy defense "in a three-page pre-motion letter" and then "*sua sponte* construed the letter as a Rule 12(b)(6) motion to dismiss" before denying it. *Belya*, 59 F.4th at 574 (Park, J., dissenting from denial of rehearing en banc). Such peremptory dispositions are tragic, especially given the stakes.

This can combine in troubling ways with the (ordinarily fine) push toward settlement. For instance, the district court in *Faith Bible* pushed the parties towards settlement due to the "substantial" "litigation costs" the parties were incurring. Amended Scheduling Order at 10, *Tucker* v. *Faith Bible Chapel Int'l*, No. 1:19-cv-01652-RBJ-STV (D. Colo. July 24, 2023), Dkt. No. 102. It even denied the parties' joint motion for an extension of time because "[t]he best motivator for a settlement is a fixed trial date." Order, *Faith Bible*, No. 1:19-cv-01652-RBJ-STV (D. Colo. Jan. 21, 2024), Dkt. No. 122.

A court might think that aggressively promoting settlement keeps religious issues out of civil courts. But courts must not serve that goal by forcing religious institutions to settle claims that should have been dismissed at the outset of the case. That approach does not protect religious institutions from judicial entanglement; it punishes them. See *S. Methodist Univ.*, 716 S.W.3d at 502 (Young, J., concurring) ("Vindicating church autonomy is sometimes possible * * * only when a court *exercises* subject-matter jurisdiction, which can ensure that the substantive constitutional principle is not honored in name while defiled in practice.").

C. Act III: Church defendants are unconstitutionally subjected to the burdens of litigation

Erroneous denials of church immunity inflict unconstitutional and irreparable harms on religious institutions, subjecting them to judicial examination of their internal affairs, their doctrine, and the sincerity of their beliefs and actions.

These harms are *inherent* when cases erroneously proceed to Act III. Even conscientious district courts may be unable to avoid them. See *McRaney*, 157 F.4th at 645 n.5 (noting that "the very able and careful district court judge in this case" tried to limit discovery, but discovery nonetheless "unconstitutionally burdened the ecclesiastical defendants"). Nor can creative plaintiffs. See *Belya* v. *Kapral*, 775 F. Supp. 3d 766, 779–780 (S.D.N.Y. 2025) (concluding that suit implicated the church autonomy doctrine even though the plaintiff "considerably pared back his claims" in an attempt to "keep this suit about squarely secular questions"), appeal pending, No. 25-1085 (2d Cir. docketed Apr. 30, 2025). No matter what courts or plaintiffs do, a case that inquires into church doctrine or internal decisionmaking will inevitably implicate the church autonomy doctrine—the only question is whether it will be dismissed before it is too late.

Too often, it is not. In *Belya*, for example, "the parties completed discovery" after the Second Circuit denied the church's immunity defense and remanded the case. *Belya*, 775 F. Supp. 3d at 769. The church then moved for summary judgment, which the court granted after concluding that "trying this case would be impossible without violating the church's autonomy." *Id.* at 779. But the damage was already done.

The same story unfolded in *McRaney*. After the Fifth Circuit remanded for further proceedings, the church defendants "endured protracted discovery, two rounds of

summary judgment, a previous appeal, and a close en banc rehearing poll," causing the defendants' "church personnel and records to become subject to the full panoply of legal process designed to probe the mind of the church in the selection of its ministers." *McRaney*, 157 F.4th at 654 (citation modified) (quoting *Rayburn* v. *Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)). The court ultimately concluded that those proceedings violated the defendants' constitutional rights and affirmed the district court's entry of summary judgment. *Id.* at 655.

In both of these cases, the church was ultimately vindicated—but that did not ameliorate the constitutional violation. See *id.* at 653 ("Secular courts have already interposed into NAMB's and BCMD's internal affairs far too much."); see also *Faith Bible*, 53 F.4th at 627 (Bacharach, J., dissenting from denial of rehearing en banc) ("The impact of [denying interlocutory review] on religious bodies is not difficult to imagine: The majority's approach will often require deferral of an appellate decision while religious bodies endure discovery, pretrial motion practice, trial practice, and even post-judgment litigation.").

Many church defendants never reach final judgment. As a practical matter, religious institutions often have only one chance to assert a church autonomy defense. Given the costs of litigation, the constitutional harms imposed upon congregations, and the teachings of Holy Scripture, see *Matthew* 5:25 (NIV) ("Settle matters quickly with your adversary who is taking you to court."), many defendants choose to settle rather than continue fighting beyond the motion-to-dismiss stage.

That is exactly what happened in *Faith Bible*. After the Tenth Circuit held that it lacked appellate jurisdiction over the church defendant's interlocutory appeal, 36 F.4th at 1048, and denied rehearing en banc, 53 F.4th at 622, the case was remanded to the district court for further

proceedings. The district court noted that "the discovery process, preparation for trial, a lengthy jury trial," and an "inevitable appeal from the result, will be very expensive to the parties," and thus "strongly recommend[ed] that the parties participate in" mediation. Minute Order, *Faith Bible*, No. 1:19-cv-01652-RBJ-STV (D. Colo. Sep. 1, 2023), Dkt. No. 104. Unsurprisingly, the church defendant buckled under the pressure and settled the case. See Notice of Settlement, *Faith Bible*, No. 1:19-cv-01652-RBJ-STV (Feb. 5, 2024), Dkt. No. 129.

In light of these settlement pressures, the denial of a church autonomy motion is similar to the grant of class certification or the denial of many immunity defenses—the key issue is effectively won or lost at the outset. Indeed, courts and scholars have acknowledged the resemblance between the church autonomy defense and immunity to suit. See, *e.g.*, *McCarthy* v. *Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (justifying collateral review of denial of church autonomy defense because it is "closely akin to a denial of official immunity"); *Bryce* v. *Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 (10th Cir. 2002) (recognizing that "the church autonomy defense" is "similar to a government official's defense of qualified immunity"). "[T]he immunity guaranteed to sovereign entities is compromised if they have to litigate through the case," and "the same argument applies" "[i]n the church autonomy setting." Weinberger, *Is Church Autonomy Jurisdictional?*, *supra*, at 501–502. Nonetheless, many courts have come to the opposite conclusion and barred interlocutory review of denials of church autonomy defenses. See *Faith Bible*, 36 F.4th at 1025–1026, 1038–1039; *Belya*, 45 F.4th at 633–634 & n.12; Pet. App. 29a–30a.

* * *

If the decision below is allowed to stand, Petitioner will suffer unconstitutional harms that cannot be remedied if

the appeal must wait until the end of the case. Because this issue has been percolating for some time, we need not merely speculate about what this may look like after a remand; we can observe the pitfalls in *McRaney*, *Belya*, and *Faith Bible*. Further proceedings will confirm that this lawsuit challenges the manner in which Petitioner administers and spends religious offerings for the Pope's charitable works. Because that issue falls squarely within the ambit of the church autonomy doctrine, Petitioner would likely move for summary judgment—if the case even made it that far. And should Petitioner move for such relief, it would almost certainly be granted. But it will be too late; constitutional damage will have already been done.

The end of the story, however, is not foreordained. This Court should ensure that Petitioner—and other similarly situated religious defendants—are able to vindicate their constitutional rights before they suffer irreparable harm.

CONCLUSION

The Court should grant certiorari and reverse the judgment below.

Respectfully submitted.

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