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 U.S. Court of Appeals for the District of Columbia Circuit

BRIEF OF THE COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES, ASSOCIATION OF CATHOLIC COLLEGES AND UNIVERSITIES, ASSOCIATION OF ADVENTIST COLLEGES AND UNIVERSITIES, ASSOCIATION FOR BIBLICAL HIGHER EDUCATION, INTERNATIONAL ALLIANCE FOR CHRISTIAN EDUCATION, BRIGHAM YOUNG UNIVERSITY, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS, AND ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL AS *AMICI CURIAE* SUPPORTING PETITIONER

IAN SPEIR
Counsel of Record
COVENANT LAW PLLC
13395 Voyager #130-732
Colo. Springs, CO 80921
(719) 464-7357
ian@covtlaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF AMICI CURIAE[1]

Amici represent thousands of religious colleges, universities, seminaries, and K-12 schools across the United States.

The **Council for Christian Colleges & Universities** ("CCCU") represents more than 130 Christian colleges, universities, and seminaries from a wide variety of denominations. The CCCU's members provide faith-infused, high-quality education to equip students to practice virtue, exercise faith, and proclaim the Gospel in all aspects of life.

The **Association of Catholic Colleges and Universities** ("ACCU") serves as the collective voice of U.S. Catholic higher education. Through programs and services, ACCU strengthens and promotes the Catholic identity and mission of its more than 200 member institutions so that all associated with Catholic higher education can contribute to the greater good of the world and the Church.

The **Association of Adventist Colleges and Universities** ("AACU") is affiliated with the North American Division of the Seventh-day Adventist Church and consists of 13 accredited colleges and universities (12 in the United States and one in Canada). AACU members are Christ-centered communities of

---

[1] Consistent with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties' counsel of record received timely notice of the intent to file this *amicus curiae* brief pursuant to Rule 37.2.

faith committed to the preparation of graduates equipped to achieve high levels of professionalism in careers that make a meaningful difference in their communities.

The **Association for Biblical Higher Education** ("ABHE") is an association of more than 170 institutions of biblical higher education, with more than 85,000 enrolled students. ABHE institutions offer undergraduate and graduate educational opportunities through traditional residential, extension, and digital learning models. Its member schools have diverse histories and affiliations, but they are all centered on promoting a Christian education and biblical worldview through their curricula.

The **International Alliance for Christian Education** ("IACE") is a global education network encompassing more than 85 institutions of higher education and more than 30 partner organizations, all in the evangelical tradition. IACE's mission is to unify, synergize, and strengthen collective conviction around biblical orthodoxy and orthopraxy, cultural witness, scholarship, professional excellence, and resourcing of Christian education at all levels.

Brigham Young University ("BYU") is a religious postsecondary educational institution in Provo, Utah, with more than 34,000 daytime students. BYU was founded and is guided and supported by The Church of Jesus Christ of Latter-day Saints. BYU's mission is to assist individuals in their quest for perfection and eternal life. The common purpose of all education at BYU is to build testimonies of the restored gospel of Jesus Christ, in an environment enlightened

by living prophets and sustained by those moral virtues that characterize the life and teachings of the Son of God.

The **American Association of Christian Schools** ("AACS") is an association of 38 state and regional associations working together to promote high quality Christian education programs. The AACS provides institutional and personnel services to its constituents, including legislative and policy oversight and advocacy.

The **Association of Christian Schools International** ("ACSI") is a non-denominational religious association of 2,300 Christian preschools, elementary, and secondary schools and 90 post-secondary institutions in the United States. ACSI also provides support services to 24,000 Christian schools in over 100 countries. ACSI member schools educate 5.5 million children around the world, including 825,000 in the United States. Members advance the common good by providing quality education and spiritual formation to their students. Their calling relies upon a vibrant Christian faith that embraces every aspect of life.

The ability of *amici* and their members to achieve their missions free from government interference is threatened if litigants can force them to undergo ruinous merits discovery and trial before vindicating their rights under the Religion Clauses. Because "civil court inquiry" into religious decisions is "exactly" what "the First Amendment prohibits," *Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 713 (1976), the church autonomy doctrine shields religious institutions not just from liability but from the

burdens of litigation itself. Yet as explained below, *amici*'s members suffer when lower courts fail to grasp the structural protections of the Religion Clauses, thereby subjecting them to "the very harm that these defenses exist to prevent." *GEO Grp., Inc.* v. *Menocal*, No. 24-758, 607 U.S. ____, slip op. at 4 (Feb. 25, 2026) (Alito, J., concurring in judgment).

SUMMARY OF ARGUMENT

Religious schools have become ground zero in contemporary battles over the meaning and scope of the First Amendment. Across the country, they face an onslaught of legal actions targeting their religious character and faith commitments. While these disputes arise in different forms, the overall trend has thrust religious schools into the heart of conflicts over the protections of the Religion Clauses.

This case arrives at a moment of deep uncertainty in the lower courts about how those constitutional protections operate in practice. While religious schools aren't immediately in view here, the implications of this case will be immediately felt by *amici* and their member institutions. This Court repeatedly has affirmed that the First Amendment protects religious institutions' authority to decide matters of faith, doctrine, and internal governance for themselves. Yet lower courts remain divided on a critical procedural question: whether church autonomy functions merely as a defense to liability, vindicable only after years of litigation, or as a structural limit on governmental power that must be enforced at the threshold—before discovery, trial, and invasive scrutiny begin.

For religious schools, that distinction is decisive. Even when they ultimately prevail, they often must endure years of costly and distracting litigation, compelled disclosure of sensitive internal communications, intrusive inquiry into religious motivations, and the pressure to dilute religious standards in order to avoid liability. In these circumstances, the process itself becomes punishment. Subjecting religious decisions to prolonged judicial examination necessarily entangles courts and juries in questions the Constitution reserves to religious authorities.

This Court long has recognized that the Religion Clauses shield institutions not just from ultimate liability but from the process of inquiry that threatens it. As *NLRB* v. *Catholic Bishop of Chicago* makes clear, "the very process of inquiry" into religious questions risks entanglement that "may impinge on rights guaranteed by the Religion Clauses." 440 U.S. 490, 502 (1979). And that remains true even if litigants try to recast contested religious issues in "neutral" terms. *See ibid.* (entanglement risk precluded adjudication even of "factual issues such as … animus"). The First Amendment thus imposes a threshold structural constraint: before the machinery of legal process is set in motion, courts must assess whether proceeding would create impermissible entanglement with religious governance and decisionmaking.

The questions presented here implicate that structural protection. If religious institutions must endure full-scale litigation before appellate review of church autonomy is available, the constitutional guarantee is hollow. The injury lies not only in an adverse judgment, but in the compelled submission of

religious decisions to secular oversight—and in the risks of "overdeterrence, timidity, and distraction" that come with it. *GEO Grp.*, 607 U.S. ____, slip op. at 9 (Alito, J., concurring in judgment). Because those injuries cannot be undone after final judgment, immediate appellate review is essential.

The sharp rise in legal and regulatory pressure on religious institutions—especially religious schools—underscores the urgent need for this Court's guidance on all three questions presented. Even so, clarifying that the church autonomy doctrine operates as a threshold limit on government authority (Question No. 1), and that "neutral principles" don't permit courts to bypass that limit and adjudicate religious questions (Question No. 3), would go a long way to protect the First Amendment interests of *amici* and their members. *Amici* therefore urge the Court to grant review in this case.

ARGUMENT

I. Religious schools have become ground zero in the battle for First Amendment protection.

Constitutional litigation involving religious schools is now all too commonplace. From preschools to higher education, religious schools are increasingly the targets of unfair legal action—legislative restrictions, regulatory actions, official investigations, and lawsuits aimed at excluding them from the public square, punishing their religious practices, and turning religious decisions into a basis for liability. The litigation process itself, with its attendant costs and

scrutiny, is being leveraged to distract schools from their central missions and pressure them to change religious practices. The controversies lately have multiplied:

- Employee disputes that challenge schools' independence in matters of faith, doctrine, and governance. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171 (2012); *Billard* v. *Charlotte Cath. High Sch.*, 101 F.4th 316 (4th Cir. 2024) (Catholic school teacher terminated after announcing same-sex marriage).

- Laws that single out religious schools for disfavor based on their religious character and exercise. *Carson* v. *Makin*, 596 U.S. 767 (2022); *Espinoza* v. *Mont. Dep't of Rev.*, 591 U.S. 464 (2020); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449 (2017); *St. Mary Catholic Parish* v. *Roy*, 154 F.4th 752 (10th Cir. 2025), *cert. pending*, No. 25-581; *Loffman* v. *Cal. Dep't of Educ.*, 119 F.4th 1147 (9th Cir. 2024); *Loe* v. *Jett*, 796 F. Supp. 3d 541 (D. Minn. 2025).

- Student grievances rooted in disagreement with the institution's faith standards. *Hunter* v. *U.S. Dep't of Educ.*, 115 F.4th 955 (9th Cir. 2024) (challenge by LGBTQ+ students to Title IX exemption for religious colleges); *Maxon* v. *Fuller Theological Seminary*, No. 20-56156, 2021 U.S. App. LEXIS 36673 (9th Cir. Dec. 13, 2021) (Title IX challenge to CCCU member's marriage policy).

- Officially directed fishing expeditions aimed at chilling religious exercise and punishing through process. *Seattle Pac. Univ.* v. *Ferguson*, 104 F.4th 50 (9th Cir. 2024) (broad investigative demands related to CCCU member's marriage policies); *cf. First Choice Women's Res. Ctrs., Inc.* v. *Platkin*, No. 24-781.

While factual and legal contexts vary, the overall pattern is unmistakable. In the national battle over First Amendment protections, religious schools are on the front lines. They've become central players in repeat contests over the meaning of the Religion Clauses and the boundaries between church and state.

Of course, First Amendment principles established in cases like *Our Lady*, *Hosanna-Tabor*, *Carson,* and *Espinoza* go beyond religious schools. They protect all religious observers, institutional and otherwise. But the opposite is also true. Constitutional principles enunciated in non-school cases like this one reverberate in the religious school context. Here, the Court is called upon once again to protect an internal decision affecting the faith and mission of a religious institution. The effects will be felt immediately, nationwide, and across the religious spectrum, including by *amici* and the schools they represent.

Lower courts are fundamentally divided on how the substantive right of church autonomy—a doctrine rooted in both Religion Clauses—interacts with questions of procedure. Relevant here, does church autonomy operate as a threshold, structural restraint on

the adjudication of religious questions, or must religious institutions endure the burdens of discovery and trial—scrutiny that itself impinges on rights guaranteed by the Religion Clauses—before those rights are vindicated? Relatedly, are denials of church autonomy subject to immediate appellate review? This Court's guidance on these questions is critical for Petitioner, *amici* and their members, and all religious institutions.

II. For religious schools, the process has become the punishment.

Religious schools exist to educate students, inculcate faith, and form young people for virtuous citizenship. *Our Lady*, 591 U.S. at 753–54. They are critical to the nation's education system and to its moral landscape. And because they take seriously their mission of integrating faith with learning, many schools require employees to profess and adhere to faith commitments. *See, e.g.*, *id.* at 740 ("[T]eachers were expected to model and promote Catholic faith and morals." (cleaned up)). For example, to be a member of the CCCU or ABHE, a college or university must affirm certain tenets of Christian faith, including a biblical understanding of sex, gender, and marriage. *See* CCCU, Our Institutions, http://bit.ly/4b2iuJO; ABHE, ABHE Membership, https://bit.ly/4rMbmZ8. Similarly, BYU requires its faculty, administration, staff, and students to abide by an Honor Code, which includes a commitment "to conduct their lives in accordance with the principles of the gospel of Jesus

Christ." BYU, Church Educational System Honor Code, https://bit.ly/4rSiR0F.

Such religious commitments have drawn legal fire. In 2016, California legislators tried to strip Christian college students of Cal Grants because their institutions hold to biblical views on sex, gender, and marriage. *See* CCCU, The California Impact, *Advance Mag.* (Fall 2016), https://www.cccu.org/magazine/the-california-impact/. Recently, public school districts have stopped accepting teacher interns from Christian colleges for similar reasons. *See* Liz Lykins, "Moody Bible Institute sues Chicago school board," *WORLD*, Nov. 4, 2025, https://bit.ly/4suj0HD (involving CCCU and ABHE member Moody Bible Institute); "After lawsuit, WESD votes to enter new agreement with ACU," *ABC15 Arizona*, May 4, 2023, https://bit.ly/47tQQEq (involving CCCU and IACE member Arizona Christian University).

Or take another example: the Washington Attorney General's intrusive, yearslong investigation into the religious practices of CCCU member Seattle Pacific University ("SPU"). SPU is a private, liberal arts Christian university affiliated with the Free Methodist Church. As part of its religious mission and consistent with CCCU membership requirements, SPU asks faculty and staff to affirm a statement of faith and live in accordance with Christian standards of conduct, including a biblical understanding of marriage. That, and that alone, triggered a sweeping state investigation.

Under the guise of a "discrimination" probe, the Attorney General demanded voluminous and sensitive internal information from SPU, like "every instance" where the school's religious policies on sex and marriage were applied in hiring and disciplinary decisions regarding "any" employee. But the First Amendment doesn't permit state officials to sit in judgment of SPU's understanding of its own faith, nor to rummage through internal religious communications in search of a legal theory, so SPU sought protection in federal court. Then, after years of investigation and litigation—after SPU had borne the costs and burdens of protecting its religious autonomy—the Attorney General abandoned the effort. There was no finding of wrongdoing, no judgment against the school. But the *process* was the punishment. With that goal achieved, the Attorney General successfully moved to dismiss the case. *See Seattle Pac. Univ.* v. *Brown*, No. 22-cv-5540-BJR, 2025 U.S. Dist. LEXIS 263057 (W.D. Wash. Dec. 19, 2025) (dismissing SPU's claims on standing grounds).

SPU isn't alone. Other of *amici*'s member schools have been forced into protracted litigation over their religious policies. Take *Garrick* v. *Moody Bible Institute*, a case that began in January 2018 when a former faculty member who "held to egalitarian beliefs and rejected" Moody's complementarian religious views brought sex and religious discrimination claims, claiming she was treated differently than male colleagues. 95 F.4th 1104, 1107 (7th Cir. 2024). The district court dismissed her initial claims but invited her to refile and recast Moody's religious motivations as "pretext." *Id.* at 1109. She took up the invitation; the district court refused to dismiss the new claims; and

the Seventh Circuit rejected an interlocutory appeal. *Id.* at 1117. The case is still ongoing, now entering its eighth year. *See Garrick* v. *Moody Bible Inst.*, No. 18-cv-573 (E.D. Ill.); *see also DeWeese Boyd* v. *Gordon Coll.*, 487 Mass. 31 (2021) (5+ years of litigation against CCCU and IACE member for its policies on sex, gender, and marriage; case settled after courts denied ministerial exception); *Yin* v. *Columbia Int'l Univ.*, 335 F. Supp. 3d 803 (D.S.C. 2018) (3+ years of litigation against CCCU and ABHE member; court initially refused to dismiss and denied interlocutory appeal certification and then, after discovery, applied ministerial exception).

A similar pattern holds for religious schools everywhere. *See Tucker* v. *Faith Bible Chapel Int'l*, 36 F.4th 1021 (10th Cir. 2022) (4+ years of litigation by former chaplain against Christian high school; ministerial exception denied; case later settled); *Herx* v. *Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085 (7th Cir. 2014) (3+ years of litigation by Catholic school teacher terminated for religiously prohibited fertility treatments; ministerial exception denied; later judgment against school); *YU Pride All.* v. *Yeshiva Univ.*, 211 A.D.3d 562 (N.Y. App. Div. 1st Dept. 2022) (nearly 4 years of litigation against Torah-observant Jewish university for nonrecognition of LGBT student club; case later settled).

Even when the end result is protection of religious autonomy, cases often take years. *E.g.*, *Billard* v. *Charlotte Cath. High Sch.*, 101 F.4th 316 (4th Cir. 2024) (7+ years of litigation to recognize Catholic school teacher covered by ministerial exception); *Fratello* v. *Archdiocese of New York*, 863 F.3d 190 (2d Cir.

2017) (4+ years to recognize Catholic school principal covered by ministerial exception); *Fitzgerald* v. *Roncalli High Sch., Inc.*, 73 F.4th 529 (7th Cir. 2023) (3+ years for Catholic school guidance counselor); *Butler* v. *St. Stanislaus Kostka Catholic Acad.*, 609 F. Supp. 3d 184 (E.D.N.Y. 2022) (3+ years for Catholic school teacher); *Starkey* v. *Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931 (7th Cir. 2022) (3 years for Catholic school guidance counselor); *Orr* v. *Christian Bros. High Sch., Inc.*, No. 21-15109, 2021 U.S. App. LEXIS 34810 (9th Cir. Nov. 23, 2021) (1.8 years for Christian school principal); *Pulsifer* v. *Westshore Christian Acad.*, 142 F.4th 859 (6th Cir. 2025) (1.4 years for Christian school principal); *Grussgott* v. *Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655 (7th Cir. 2018) (1.4 years for Jewish day school Hebrew teacher); *Markowski* v. *Brigham Young Univ.*, 575 F. Supp. 3d (D. Utah 2022) (1.25 years to dismiss claims of university employee who trained missionaries).[2]

Add school funding controversies to the mix, and religious schools are getting squeezed at both ends. On one end, exclusion from public benefit programs chokes off funding streams, and even when schools win their legal challenges, official resistance can endure. *See, e.g.*, *St. Dominic Acad.* v. *Makin*, 744 F. Supp. 3d 43 (D. Me. 2024) (after this Court's decision in *Carson* v. *Makin*, State of Maine enacted new law to discriminate against religious schools). On the

[2] Times are calculated from the date of the initial complaint to the date of the district court or appellate decision or subsequent action (e.g., settlement) disposing of the case.

other end are the torrent of lawsuits that drain resources. When courts underenforce religious protections, schools are pressured to settle (and often do), or must submit religious practices to scrutiny and risk liability—in either case exacting a price for their religious commitments.

All this comes as schools face acute financial challenges. Last year, CCCU members The King's College (New York City) and Trinity Christian College (Illinois) closed their doors. Other religious colleges are struggling for survival. "More than half of the 79 nonprofit colleges and universities that have closed or merged since 2020, or announced that they will close or merge, were religiously affiliated." Jon Marcus, "Losing faith: Rural, religious campuses are among the most endangered," *The Hechinger Report*, May 18, 2025, https://hechingerreport.org/losing-faith-rural-religious-campuses-are-among-the-most-endangered/ (discussing ACCU members Mount Mercy University and St. Ambrose University); Bobby Ross Jr., "Closing doors: Small religious colleges struggle for survival," *Religion News Serv.*, Nov. 20, 2017, https://religionnews.com/2017/11/20/closing-doors-small-religious-colleges-struggle-for-survival/.

Entanglement risks are equally grave. Scrutiny of religious decisions forces schools to explain to secular judges and juries how their policies relate to their religious mission. *See Catholic Bishop*, 440 U.S. at 502; *Carson*, 596 U.S. at 787 ("[S]crutinizing whether and how a religious school pursues its educational mission would also raise serious concerns about state entanglement with religion and denominational favoritism."). Inquiries into motive, pretext, animus, and

"good faith" allow courts to sit in judgment over the credibility and consistency of religious tenets, even though these often won't map onto secular legal categories or contemporary sensibilities. *See Corp. of Presiding Bishop* v. *Amos*, 483 U.S. 327, 336 (1987) ("[A]n organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission."); *Milivojevich*, 426 U.S. at 713 ("arbitrariness" inquiry is "inherently" entangling); *Huntsman* v. *Corp. of President of Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 798 (9th Cir. 2025) (Bress, J., concurring in judgment) ("deeply unsettling" to cross-examine church leaders about "their subjective understanding of tithing").

Religious schools are resilient, but this litigation onslaught takes a toll, weakening both internal commitments and external defenses. Unable to "predict which … activities a secular court will consider religious," *Amos*, 483 U.S. at 336, schools may feel pressure to water down their standards. To avoid protracted controversies, they may be tempted to make policy exceptions, applying religious standards less rigorously or not at all to certain classes of students or employees—a double standard that destroys faith-centered unity and bolsters accusations of insincerity. Having to litigate their religious practices necessarily distracts schools from fulfilling their core mission. Internal communications are affected, too. Even the prospect of litigation might make schools more hesitant to speak clearly and faithfully to members, parents, students, and employees on matters of deep religious conviction. *See ibid.* ("Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.");

Huntsman, 127 F.4th at 798 ("Nothing says 'entanglement with religion' more than Huntsman's apparent position that the head of a religious faith should have spoken with greater precision about inherently religious topics….").

III. The Religion Clauses impose a structural limit on government power, requiring a threshold inquiry into entanglement risk.

"The First Amendment gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189. And it shields their religious decisions not just from liability but potentially from the "process of inquiry" itself. *Catholic Bishop*, 440 U.S. at 502. That is, the First Amendment protects religious decisions two ways: from liability *ex post* and from the *ex ante* processes that create liability exposure in the first place. That's what this Court meant in *Catholic Bishop* when it said the Religion Clauses protect "not only" against "conclusions" about liability but also against the "very process of inquiry leading to" them. *Ibid.*

That twofold guarantee is under threat. Even this Court's steady stream of recent decisions vindicating religious freedom hasn't stemmed the tide of anti-religious action in lower courts and lawmaking bodies. In this environment, telling religious observers that their religious practices *might* be protected from liability *eventually* is cold comfort. Allowing government officials and private litigants to put religious practices under a secular microscope necessarily diminishes religious freedom. If institutions are to remain "free to *decide*" religious matters "for themselves," *Our Lady*,

591 U.S. at 737, 764 (cleaned up, emphasis added), they require protection both from liability *and* from the processes that lead to it.

This doesn't mean a "general immunity from secular" legal processes. *Id.* at 746. But it does mean that, before the machinery of law is invoked against a given religious practice, the First Amendment requires a threshold look at whether the legal process itself risks an incursion upon protected religious autonomy. What might such a threshold look entail? This Court's decision in *Catholic Bishop*—another religious school case—offers an answer. While that decision's language is often quoted in this context, it has a deeper structural logic that should guide courts in early evaluations of church autonomy defenses.

Catholic Bishop involved an attempt by the National Labor Relations Board—a body with both regulatory and adjudicative functions—to exercise jurisdiction over the labor practices of religious schools and thereby supervise teacher employment disputes. 440 U.S. at 491. This Court rebuffed the effort, concluding that "the Board's jurisdiction presents a significant risk that the First Amendment will be infringed." *Id.* at 502. The Board mounted what today would be called a "neutral principles" argument, asserting that it could "avoid excessive entanglement" and adjudicate individual cases by "resolv[ing] only factual issues such as whether an anti-union animus motivated [a school's] decision." *Ibid.* That was untenable, the Court said. "Religious authority necessarily pervades the school system," *id.* at 501 (quotation omitted), and many school employment policies "were mandated by their religious creeds," *id.* at 502. In any

given dispute, the Board would "necessarily" have to "inquir[e] into the good faith" of school leaders and how a particular employment decision "relat[es] to the school's religious mission." *Id.* at 502. The Board simply couldn't do that—couldn't even undertake the "process of inquiry"—without "imping[ing] on rights guaranteed by the Religion Clauses." *Ibid.* "We see no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow." *Id.* at 504. Not only the Board, but also courts "in turn" would be "call[ed] upon … to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *Id.* at 507. Given the entanglement risks, the Court narrowly interpreted the Board's organic statute to preclude its "jurisdiction" over religious schools. *Ibid.*

Three features of *Catholic Bishop* stand out here. First, the Court rejected an inquiry into subjective "animus" or "good faith" in a context where religious considerations predominate. To subject internal decisions to that kind of scrutiny was inherently entangling because it would always ("necessarily") require an adjudicator to assess religious motivations and their "relationship to the … religious mission." *Id.* at 502; *see Hosanna-Tabor*, 565 U.S. at 205–06 (Alito & Kagan, JJ., concurring) (church autonomy doctrine forecloses pretext inquiries where "[i]n order to probe the *real* reason for" a religious decision, "a civil court—and perhaps a jury—would be required to make a judgment about church doctrine"; "mere adjudication of such questions would pose grave problems").

Equally important is what the *Catholic Bishop* Court did *not* say. The Court could have taken up the Board's suggestion of neutral adjudication, allowing the Board to abstract employment disputes from their religious context and resolve them on supposedly secular grounds. But while that might be "acceptable in an ordinary commercial setting," it "was not acceptable in an area protected by the First Amendment." 440 U.S. at 496 (explaining lower court's reasoning); *see also Hosanna-Tabor*, 565 U.S. at 190 (unanimously rejecting the prospect of applying "neutral" rules to disputes protected by church autonomy); *Huntsman*, 127 F.4th at 797 (Bress, J., concurring in judgment) ("Huntsman cannot override the First Amendment's protections by abstracting the Church's statements about tithing from their religious context."). Or similarly, the Court could have told the religious schools to wait and see—to endure Board and judicial scrutiny in individual cases and vindicate their right of church autonomy at the end. But the Court didn't do that either, instead recognizing that such an inquiry would run up against "constitutional limitations" that categorically precluded Board "jurisdiction" at all. 440 U.S. at 499.

This leads to a final observation about the decision. *Catholic Bishop* stands for the proposition that where religious decisions are at issue, the First Amendment imposes a threshold, structural limit on the exercise of government power. That's true whether power arises through regulatory supervision or case-by-case adjudication. (Both were at issue in *Catholic Bishop*.) The Court stressed that where the exercise of government power "would *implicate* the

guarantees of the Religion Clauses," *id.* at 507 (emphasis added), a court must assess whether there is "a significant risk that the First Amendment will be infringed," *id.* at 502. This is forward-looking, prophylactic language. If the First Amendment had merely protected the schools from liability after final judgment and appeal, they should have lost *Catholic Bishop* at the Supreme Court. This Court should have returned the case to lower courts or to the Board, forcing religious schools to undergo adjudication in individual cases where they could raise their religious defenses and hopefully vindicate their rights in the end. But the First Amendment required more. Because it was "[i]nevitabl[e]" that "the Board's inquiry will implicate sensitive issues that *open the door* to conflicts" with religious leaders overseeing the schools, *id.* at 503 (emphasis added)—and because courts would necessarily be drawn into those conflicts, too, *id.* at 507—a categorical, structural limit was in order.

In recognizing the First Amendment's double-layered protection for religious decisions—*substantively* against liability and *structurally* against process—*Catholic Bishop* echoes this Court's other church autonomy decisions. *See Milivojevich*, 426 U.S. at 713 ("civil court inquiry" into religious decisions is "exactly" what "the First Amendment prohibits"); *Watson* v. *Jones*, 80 U.S. 679, 729 (1871) ("submitting those decisions to review in the ordinary judicial tribunals" is unjust because "judges of the civil courts" are not "competent" in religious matters); *see also Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000) ("well established" that "courts should refrain from trolling through a person's or institution's religious beliefs"); *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133

(1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment….").

And the structural component of this protection has led courts and commentators to conclude that church autonomy functions like an immunity from suit, to be "resolved at the earliest conceivable point in litigation." *McRaney* v. *N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 157 F.4th 627, 644 (5th Cir. 2025); *e.g.*, *Tucker*, 36 F.4th at 1050-52 (Bacharach, J., dissenting); *Garrick*, 95 F.4th at 1123 (Brennan, J., dissenting); *Belya* v. *Kapral*, 59 F.4th 570, 579 (2d Cir. 2023) (Park, J., dissental); Carl Esbeck, Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine, 108 Marquette L. Rev. 705, 713 (2025) ("[T]he theory of church autonomy gives rise to an immunity from being sued."); Lael Weinberger, Is Church Autonomy Jurisdictional?, 54 Loy. U. Chi. L.J. 471, 503 (2022) ("[C]hurch autonomy … is best conceived as an immunity from suit."); Howard M. Wasserman, Prescriptive Jurisdiction, Adjudicative Jurisdiction, and the Ministerial Exemption, 160 U. Pa. L. Rev. PENNumbra 289, 316 (2012) ("the church enjoys unique constitutional immunity from the state's sovereign reach on some issues").

Further, *Catholic Bishop* supports the conclusion that, like other immunities from suit, a denial of church autonomy gives rise to a right of immediate appeal. While that wasn't the question in *Catholic Bishop*, the Court's analysis in the case maps comfortably onto the collateral-order doctrine. The "risk that

the First Amendment will be infringed" by adjudication was conceptually distinct from the merits of any particular labor dispute. *See id.* at 502. And because the "very process of inquiry" could impair First Amendment rights, that impairment wasn't reparable if inquiry proceeded; it wasn't vindicable after final resolution. *Ibid.*; *see also* Peter J. Smith & Robert W. Tuttle, Civil Procedure and the Ministerial Exception, 86 Fordham L. Rev. 1847, 1881 (2018) ("ministerial exception closely resembles qualified immunity for purposes of the collateral-order doctrine," making "immediate appeal" appropriate). Both conclusions underscore the need for a threshold appellate look at whether adjudication would impermissibly enmesh civil decisionmakers in religious questions.

CONCLUSION

The rise in litigation against religious institutions—and religious schools especially—makes the structural protections of the First Amendment more salient than ever. Subjecting religious decisions to lengthy scrutiny and liability exposure puts religious freedom at risk and diminishes institutional independence from secular control and influence. *Amici* urge the Court to grant the writ in this case.

Respectfully submitted,

IAN SPEIR
Counsel of Record
COVENANT LAW PLLC
13395 Voyager #130-732
Colo. Springs, CO 80921
(719) 464-7357
ian@covtlaw.com

March 6, 2026