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 District Of Columbia Circuit

BRIEF OF J. REUBEN CLARK LAW SOCIETY AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The J. Reuben Clark Law Society is a worldwide faith-based organization of approximately 10,000 lawyers and law students supported by the J. Reuben Clark Law School at Brigham Young University, the flagship university of The Church of Jesus Christ of Latter-day Saints. The Law Society's mission is to affirm the strength brought to the law by a lawyer's personal religious conviction. The Law Society's members strive through public service and professional excellence to promote fairness and virtue founded upon the rule of law.

The Law Society has a strong interest in advancing the proper interpretation and application of the First Amendment, including the church autonomy doctrine and its application to religious entities such as Defendant-Appellant United States Conference of Catholic Bishops (hereinafter "the Church" or "USCCB"). In support of its mission, the Law Society has previously filed amicus briefs in other religious liberty cases. *See* Brief for J. Reuben Clark Law Society as Amicus Curiae Supporting

[1] Pursuant to United States Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to United States Supreme Court Rule 37.2, amicus certifies that counsel of record for all parties received notice of the intent to file this brief at least ten days before it was due.

Defendants, *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025) (No. 21-56056); Brief for J. Reuben Clark Law Society as Amicus Curiae Supporting Defendants, *In re: The Church of Jesus Christ of Latter-Day Saints Tithing Litig.*, No. 24-md-03102, 2024 WL 4349160 (D. Utah Sep. 30, 2024). A federal appellate judge has cited the Society's amicus briefs in his opinion. *See Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 799 (9th Cir. 2025) (en banc) (Bress, J., concurring).[2]

SUMMARY OF ARGUMENT

Plaintiff David O'Connell's claims require a fact-finder to determine a reasonable parishioner's understanding of the purpose of Peter's Pence. Plaintiff must also establish both that USCCB knew the relevant statement was false and that USCCB intended to deceive him.

But a court or jury cannot make those determinations without unconstitutionally casting judgment on a religious sermon and practice. Specifically, the church autonomy doctrine precludes

[2] Judicial officers who are members of the Judges Section of the Law Society are not involved in decisions to file amicus briefs or in the drafting of those briefs. The Law Society's Religious Freedom Committee is responsible for managing amicus curiae opportunities and the preparation and filing of amicus briefs.

a fact-finder from (1) evaluating a millennium-old religious practice, USCCB's statements related to that practice, and the sermon delivered to Plaintiff; and then (2) deciding whether a parishioner's understanding of that religious practice was "reasonable." *See Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953) (courts may not "approve, disapprove, classify, regulate, or in any manner control sermons"). That inquiry "would be no different than asking a court to determine whether a particular church's policies were doctrinally correct or accorded with the congregation's beliefs." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 638 (5th Cir. 2025) (citation modified).

Interlocutory review is necessary because that unconstitutional inquiry will rear its head at an early stage in the ongoing district court proceedings. For example, to establish a reasonable parishioner's (or the USCCB's) understanding of the purpose of Peter's Pence, Plaintiff necessarily will need to depose church officials, including the minister who delivered the allegedly fraudulent sermon. Indeed, Plaintiff has already improperly demanded internal communications between USCCB and the Holy See, the governing body of the Catholic Church. *See McRaney*, 157 F.4th at 640 ("[T]he church autonomy doctrine protects a church's internal communications relating to church governance or matters of faith or doctrine."). There is thus no doubt that the church autonomy doctrine will be implicated as soon as this case returns to the district court. *See Huntsman*, 127 F.4th at 798 (Bress, J., concurring) (noting that "[r]eligious disputes restated in the elements of a

fraud claim" are "inevitably religious"). And because plaintiff is proceeding on behalf of a putative class, the improper inquiries will necessarily focus not on just one sermon or church, but on untold thousands delivered to millions of parishioners nationwide.

Finally, the gravamen of Plaintiff's fraud and other claims is that he believed his donations to Peter's Pence would be used exclusively for charitable purposes, but a portion of the funds was instead used for administrative expenses. The chilling effect that theory would have on fundraising by all charities—and especially smaller charities—is another reason heightened scrutiny should apply in the religious charitable context presented here.

The issues raised in USCCB's petition for certiorari present important questions of federal constitutional law, including questions that have not been, but should be, settled by this Court. This Court should grant the petition.

ARGUMENT

I. Plaintiff's claims require inquiries the First Amendment forbids, including determining a reasonable parishioner's understanding of the purpose of Peter's Pence, and probing a church's state of mind about that millennia-old offering.

A. Plaintiff must establish that he reasonably relied on USCCB's alleged misrepresentation, and that USCCB made the misrepresentation with knowledge of its falsity and with intent to deceive.

In the District of Columbia, a plaintiff seeking to recover on the basis of a fraudulent misrepresentation must establish that he acted in reliance on the misrepresentation. *See In re Estate of McKenney*, 953 A.2d 336, 342 (D.C. 2008). That reliance "must be found to be justifiable under the circumstances." *Democratic Nat'l Comm. v. McCord*, 416 F.Supp. 505, 507–08 (D.D.C. 1976); *E.M. v. Shady Grove Reprod. Sci. Ctr. P.C.*, 496 F.Supp.3d 338, 404 (D.D.C. 2020) ("[A] fraudulent misrepresentation is not material if a reasonable person would not have relied on it.").

In evaluating whether the plaintiff's reliance was reasonable, courts consider whether the plaintiff had an adequate opportunity to conduct an independent investigation, and whether the party making the representation had exclusive access to relevant information. *See Drake v. McNair*, 993 A.2d

607, 621 (D.C. 2010); *McKenney*, 953 A.2d at 343. Where clarifying information is readily accessible, the plaintiff's reliance on "less detailed" information is not reasonable. *Shady Grove*, 496 F.Supp.3d at 404. A plaintiff may not place "dispositive reliance" on information that an adequate investigation would have clarified. *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 707 (D.C. 1981).

Additionally, the plaintiff must establish both that the defendant knew the statement was false and that the defendant intended to deceive the plaintiff. *See Falconi-Sachs v. LPF Senate Square, LLC*, 142 A.3d 550, 555 (D.C. 2016). This element "requir[es] the fact-finder to assess the state of mind" of the defendant. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 195 (D.C. 2003). That is "a fact-based inquiry based on documentation, determinations of witness credibility and inferences." *Id.*

B. Establishing those elements calls for an improper inquiry into the purpose of Peter's Pence as understood by a reasonable parishioner and USCCB.

Plaintiff cannot establish reasonable reliance without an improper inquiry into a reasonable parishioner's understanding of the purpose of Peter's Pence. Plaintiff believed—based on unidentified language from a sermon—that Peter's Pence would "be used entirely and exclusive[ly] for emergency assistance to the poor." App. 185a. Plaintiff indicates that he did not independently investigate the purpose

of Peter's Pence.[3] *See* App. 184a (suggesting his understanding would hold even if he had "carefully researched external sources").

Whether Plaintiff's understanding was reasonable will be a key dispute in this case. **But that dispute cannot be resolved in court because the question itself—what is a reasonable parishioner's understanding of Peter's Pence—strikes at the heart of USCCB's First Amendment rights.** The church autonomy doctrine precludes a fact-finder from (1) evaluating a millennium-old religious practice, USCCB's statements related to that practice, and the sermon delivered to Plaintiff; and then (2) deciding whether a parishioner's understanding of that religious practice was "reasonable." *See Fowler*, 345 U.S. at 70 (courts may not "approve, disapprove, classify, regulate, or in

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[3] Peter's Pence has long been used for a wide variety of purposes as determined by the Pope and the Holy See. *See Peter's Pence: How to Send Your Contribution to the Holy Father*, The Vatican (June 2018), https://perma.cc/G53Z-QP7G (explaining that contributions are used both for "the relief of those most in need" and for "the many different needs of the Universal Church"); Pope Benedict XVI, *Address of His Holiness Benedict XVI to Members of the "Circolo San Pietro,"* The Vatican, 2 (Mar. 8, 2007), https://perma.cc/8CY3-82XL (Pope Benedict XVI explaining that Peter's Pence allows the Catholic Church to "accomplish her mission of evangelization and human advancement"). The term "Peter's Pence" is widely used in society. *Peter's penny*, Oxford English Dictionary, https://perma.cc/AJY4-4252 (defining the term as "a voluntary contribution to the papal treasury," and noting references from 1209 AD through modern discussions in Encyclopedia Britannica, Vanity Fair, and the New York Times).

any manner control sermons"). That inquiry "would be no different than asking a court to determine whether a particular church's policies were doctrinally correct or accorded with the congregation's beliefs." *McRaney*, 157 F.4th at 638 (citation modified); *see also Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 810 (9th Cir. 2024) (holding ministerial exception applied to employment dispute involving "only 'secular' issues" because of "the risk that stems from the process of judicial inquiry itself").

Similarly, Plaintiff cannot establish USCCB's knowledge and intent without an improper inquiry into its understanding of the purpose of Peter's Pence. The knowledge and intent requirement means a court or jury must improperly "probe the mind" of USCCB, the minister who delivered the relevant sermon, and the Holy See. *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). That inquiry into "subjective motive[s]" and "what one minister" "said to another" is strictly prohibited. *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 977, 983 (7th Cir. 2021) (en banc).

The Ninth Circuit's recent en banc opinion in *Huntsman* is illustrative. *See* 127 F.4th 784. *Huntsman* held that the plaintiff failed to prove that the defendant church engaged in fraud when it used tithing funds in a manner that allegedly differed from the purpose stated in a sermon. *See id.* at 786.

But five judges agreed that, regardless of the answer to that question, the case could not proceed any further without violating the First Amendment.

Judge Bress, joined by three of his colleagues, explained that, to resolve the plaintiff's claim, a court or jury "would need to decide that a reasonable member of [the church] would pay tithing based on the [c]hurch's representations about its spending decisions." *Id.* at 799 (Bress, J., concurring). To do that, "a factfinder would need to credit his position notwithstanding its evident contradiction with church teachings." *Id.* Judge Bress also noted that "it is startling to think that courts and juries would be examining a religious sermon for 'accuracy,'" and that the church autonomy doctrine bars a plaintiff from alleging that a church leader "should have spoken with greater precision about inherently religious topics, lest the [c]hurch be found liable for fraud." *Id.* at 796, 798. Similarly, Judge Bumatay explained that resolving the plaintiff's claim would improperly require a court or jury to decide "what a religious adherent should understand about church doctrine," and "the level of precision that [c]hurch teachings must follow to avoid fraud charges." *Id.* at 813–14 (Bumatay, J., concurring) (emphasis omitted).

Indeed, courts regularly hold that the church autonomy doctrine bars challenges to a church's decisions about how to use parishioners' donations. *See Gaddy v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints*, 148 F.4th 1202, 1216 (10th Cir. 2025) (holding church autonomy doctrine barred challenge to use of tithing funds where "an essential part of [the] fraud theory" required resolution of religious questions); *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007) (rejecting claim on basis of church autonomy doctrine because

court or jury "would be required to interpose its judgment as to both the proper role of these church officials and whether each expenditure was proper in light of [the church's] religious doctrine and practice, to the exclusion of the judgment of the church's duly constituted leadership"); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332 (4th Cir. 1997) ("Resolution of [the plaintiff's] accusation would interpose the judiciary into the [church's] decisions, as well as the decisions of the other constituent churches, relating to how and by whom they spread their message.")

The same holds true here. Assessing a reasonable parishioner's or USCCB's understanding of Peter's Pence would require a court or jury to improperly cast judgment on a religious sermon and practice. The First Amendment bars that inquiry.

II. Because the forbidden inquiry begins as soon as discovery starts, interlocutory review is necessary, and this Court should grant certiorari to resolve that question.

In holding that the district court's order does not qualify for interlocutory review, the D.C. Circuit reasoned that "district courts have ample tools at their disposal to limit discovery," App. 19a, and that defendants will have avenues for interlocutory review of future orders that intrude into religious matters, App. 20a.

That reasoning ignores the inevitable risk at play here. Because Plaintiff cannot prove his claim without improper inquiries that violate the church autonomy doctrine, *see supra* pp. 2–7, it is obvious

that improper inquiries will rear their head at an early stage. *See Huntsman*, 127 F.4th at 798 (Bress, J., concurring) ("Religious disputes restated in the elements of a fraud claim do not lose their inevitably religious character.").

For example, to establish a reasonable parishioner's or USCCB's understanding of the purpose of Peter's Pence, Plaintiff necessarily will need to depose church officials, including the minister who delivered the allegedly fraudulent sermon. *Cf. Demkovich*, 3 F.4th at 983 (holding, on interlocutory review, that ministerial exception barred plaintiff's claim, and noting "onerous" nature of "the depositions of fellow ministers and the search for a subjective motive"). Indeed, Plaintiff has already demanded internal communications between USCCB and the Holy See. App. 308a; *see also McRaney*, 157 F.4th at 640 ("[T]he church autonomy doctrine protects a church's internal communications relating to church governance or matters of faith or doctrine.").

There is thus no doubt that the church autonomy doctrine will be implicated as soon as this case returns to the district court. And because Plaintiff is proceeding on behalf of a putative class, the improper inquiries that will necessarily occur will focus not on just one sermon or church, but on untold thousands nationwide.[4] This Court should grant

[4] The proposed class action also poses other unique church autonomy issues. Plaintiff asks for an order compelling USCCB to reimburse *all* contributions to Peter's Pence. App. 191a. In other words, Plaintiff attempts to conscript millions of Church members to join an action attacking their

certiorari to ensure that religious defendants can avail themselves of the protections the church autonomy doctrine provides at all stages of a case. *See McRaney*, 157 F.4th at 644–45 (noting that a church is "constitutionally protected against *all* judicial intrusion into its ecclesiastical affairs—even brief and momentary ones," and "such intrusions cannot be remedied after the district court renders final judgment").

The D.C. Circuit's opinion attempts to sidestep *Demkovich* by noting that the church-defendant there had successfully petitioned for interlocutory review, and that USCCB could do the same in the future. *O'Connell v. United States Conference of Catholic Bishops*, 134 F.4th 1243, 1256 (D.C. Cir. 2025). But that approach elevates form over substance. Whether certified or direct, an interlocutory appeal on church autonomy grounds promotes the same constitutional mandate prohibiting an inquiry into the minds of church leadership and competing interpretations of religious practices. The risk of "unconstitutional judicial action" that "stems from the process of judicial inquiry itself" weighs in favor of allowing a

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church. That undermines core principles of religious freedom. And any opt-out mechanism would not solve that: this Court has held that procedural formalities impose an undue burden on religious liberty even when they are far less onerous than taking affirmative steps to opt out of a class action. *See Watchtower Bible & Tracat Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 164, 167 (2002) (holding permit requirement for religious canvassers "imposes an objective burden" on religious liberty and rejecting "the device of requiring previous registration as a condition for exercising" that liberty (citation omitted)).

direct interlocutory appeal, rather than requiring certification. *Markel*, 124 F.4th at 810.

The D.C. Circuit's emphasis on a certified interlocutory appeal also places substantial discretion in the hands of the district court. The denial of a motion under 28 U.S.C. § 1292(b) is not reviewable. *See Agudas Chasidei Chabad of U.S. v. Russian Fed'n*, 19 F.4th 472, 474 (D.C. Cir. 2021). Thus, absent a mechanism for interlocutory review, there is a substantial risk that church defendants will lose their First Amendment rights under the church autonomy doctrine. *See, e.g.*, *Belya v. Kapral*, 775 F.Supp.3d 766, 769 (S.D.N.Y. 2025) (granting summary judgment in favor of defendant based in part on church autonomy grounds only after district court denied certification, Second Circuit rejected interlocutory review, and church was required to proceed through discovery).

Ultimately, it is inevitable that extensive pre-trial inquiries will be required in this case—indeed, Plaintiff has already foreshadowed some of those inquiries with his document requests. *See Huntsman*, 127 F.4th at 798 (Bress, J., concurring). That inevitability warrants mandatory interlocutory review. The D.C. Circuit's decision to the contrary deepens an existing split across federal and state courts, Pet. for Cert. 19–24, and it jeopardizes fundamental religious liberties. This Court should grant the petition to resolve that split and settle an important federal question.

III. Plaintiff's fraud theories threaten all charities, religious and non-religious alike.

The gravamen of Plaintiff's fraud and other claims is that he believed his donations to Peter's Pence would be used exclusively for charitable purposes, but a portion of the funds was instead used for administrative expenses. The chilling effect that theory would have on fundraising by all charities—and especially smaller charities—is yet another reason this Court should grant the petition for certiorari.

Although all nonprofits necessarily have some overhead expenses, nonprofits reasonably and regularly focus on programming rather than overhead in their description of donor impact. *E.g.*, City of New York (@nycgov), X (Jan. 9, 2022, 7:02 PM), https://tinyurl.com/nycgovpost ("Your entire donation will go towards those impacted."); Pediatric Neurosurgery Center, Columbia Neurosurgery, https://tinyurl.com/pediatricneurosurgery ("Your donation directly advances research dedicated to safer, more effective treatments."). The reason for this is simple: nonprofit donors strongly prefer that contributions support programming rather than administrative expenses. Indeed, donations soar when donors know their donations will support programming. *See* Uri Gneezy et al., *Avoiding Overhead Aversion in Charity*, 346 Sci. 632 (2014). To minimize this "overhead aversion," nonprofits commonly emphasize programming rather than administrative expenses when describing how they use charitable donations. The societal benefit of this

approach is that it maximizes fundraising efficacy and programming while ensuring that necessary administrative expenses are accounted for.

Against this factual backdrop, it is easy to see how Plaintiff's theory would invite litigation against any charity that makes benign fundraising promises that are later viewed as not matching the donor's subjective understanding of those promises. For example, a nonprofit might assure donors that "all your donations will be used to directly advance our mission," and then use some portion of the funds to hire new staffers. A charity's fundraising letter might state that "100% of your contributions will be used to grow our impact," followed by use of the contributions to bolster its own fundraising. Hiring staffers and bolstering collections are, of course, a manner of advancing a charity's mission and growing its impact. But under Plaintiff's fraud theory, these common, benign situations would yield litigation based on assertions that the term "advance our mission" is insufficiently defined and is thus fraudulently misleading.

The threat of such litigation will most severely impact small charities that perform the bulk of the country's philanthropy. Among the nation's roughly 170,000 nonprofits organized under 26 U.S.C. § 501(c)(3), about forty percent have fewer than five employees. *Nonprofit Sector Research Data*, U.S. Bureau of Lab. Stats. (Aug. 15, 2024), https://tinyurl.com/researchdatanonprofit. Most of these charities are small operations: roughly one-third of public charities report expenses under $100,000, and two-thirds report expenses under

$500,000. Lewis Faulk et al., *Nonprofit Trends and Impacts 2021*, Urban Inst. (2021), https://tinyurl.com/urbaninstitute21. As President George H. W. Bush said in his 1989 inaugural address, these organizations are like "a thousand points of light . . . spread like stars throughout the Nation, doing good." Inaugural Address 1989, 25 Weekly Comp. Pres. Doc. 99, 100 (Jan. 20, 1989).

But these small charities face many challenges in explaining their financing to donors and the world at large as they receive contributions from various sources. Their reserve funds are inadequate to fund defenses against unexpected litigation targeting benign pronouncements. And Plaintiff's proposed class action creates new liability risks that these small nonprofits can ill afford to bear. Those increased liability risks will ultimately inhibit nonprofit fundraising, making it harder for nonprofits to secure the funds needed to continue their important humanitarian work.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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March 6, 2025