

No. 25-849

In the Supreme Court of the United States

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
Petitioner

v.

DAVID O'CONNELL

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

**BRIEF OF MAJOR RELIGIOUS
ORGANIZATIONS AND RELATED
ENTITIES AS *AMICI CURIAE*
SUPPORTING PETITIONER**

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MARCH 6, 2026

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*¹

This petition presents two questions of national importance as waves of lawsuits challenge religious organizations' use of donated funds. Those challenges pierce the heart of internal church governance and deserve First Amendment protection—not just after the fact, but at litigation's outset. Otherwise, religious organizations will suffer substantial, non-compensable harms.

These issues, moreover, are enormously important to *Amici* religious organizations and related entities.² Some *Amici* are on the front lines battling this wave of attacks on religious organizations for how their leaders choose to use donated funds (the subject of the first question presented). And without the ability to effectively claim a church autonomy defense at a case's outset (the second question), these organizations will suffer invasive and expensive discovery and litigation—injuries that many smaller, financially struggling faiths cannot weather.

Suits challenging religious authority, moreover, are not limited to donation disputes. Given the many creative ways that plaintiffs' attorneys seek to get courts to transgress the First Amendment's church autonomy doctrine, the issues presented will widely

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel for all parties received timely notification of this filing.

² *Amici* are listed in the Appendix.

reverberate across this nation's faith communities. The petition should be granted.

SUMMARY

I. While this Court has yet to squarely hold that the First Amendment's church autonomy doctrine covers a religious organization's internal decisions about how and when to use donations, most lower courts have consistently so held. And the issue has exploded across the country the past few years, making this issue of great national importance. Without the church autonomy doctrine's protection in this arena, religious organizations' ability to fulfill their divine missions as they understand them will suffer greatly.

II. The ability to resolve a church autonomy defense at the outset of years of litigation—including to immediately appeal any decision rejecting that defense—is crucial to faith communities' ability to receive the First Amendment's full protection. And given that church autonomy is as much about structural features of the Constitution as it is about the rights of religious organizations—akin to federalism or the separation of powers—the ability to immediately appeal a denial of church autonomy's protection against the invasive process of litigation is crucial. Otherwise, religious organizations will be left with no remedy for the harm caused by the litigation itself.

**ADDITIONAL REASONS
FOR GRANTING THE PETITION**

I. Whether Church Autonomy Protects Decisions About How and When to Use Donated Funds is an Issue of Pressing National Importance.

Sadly, the threat Petitioner faces over Peter's Pence is no outlier. It is part of a larger trend, involving similar lawsuits that have sprung up recently around the country. Most state and lower federal courts have recognized that prying into how a religious organization uses donations is forbidden under the First Amendment. Those decisions, and Judge Rao's dissent below, provide a roadmap for how the church autonomy doctrine protects religious organizations' internal decisions as to the use of donations. This Court should grant review to make clear that this roadmap is compelled by that doctrine.

A. Plaintiffs Around the Country Are Increasingly Challenging Religious Organizations' Use of Donated Funds.

When church members become disaffected or otherwise displeased with how the church is using tithing or other religious donations, litigation provides a ready outlet for venting that displeasure. Such lawsuits are far more than hypothetical threats.

For example, since 2019, The Church of Jesus Christ of Latter-day Saints has faced repeated but (so far) unsuccessful lawsuits by disaffected church members seeking a refund of their religious tithes and alms. In *Huntsman v. Corporation of President of Church of Jesus Christ of Latter-day Saints*, for

example, the plaintiff “became disillusioned with the church’s doctrines” regarding marriage and family. 127 F.4th 784, 786 (9th Cir. 2025). Recognizing that he could not ask a court to compel the church to refund his tithing because of disagreement with its doctrines, Huntsman instead accused the church of committing fraud by investing in non-charitable activities to grow donations for future use. *Ibid.* The heart of the alleged fraud was a disagreement between his understanding and church leaders’ understanding of the theological word *tithing*. *Id.* at 790.

After a divided Ninth Circuit panel allowed the case to proceed, an en banc panel unanimously concluded the suit was fatally defective: ten of the eleven judges (one refused to reach the issue) concluded there was no fraud and five of the judges determined the First Amendment barred the claim. *Id.* at 786, 792, 800.

But the original panel’s damage was already done. Soon after the divided Ninth Circuit panel opened the door for other disaffected church members to sue, between October 2023 and January 2024 plaintiffs filed five separate federal class actions against the Church. Those cases were consolidated into a single suit. *In re Church of Jesus Christ of Latter-Day Saints Tithing Litig.* (“*Tithing Litig.*”), 785 F.Supp.3d 1009 (D. Utah 2025). These putative class actions were a stunningly broad attack on the Church’s use of donated funds.

Proposing to represent *everyone* who had given tithes or other donations to the Church since January 1, 1998—including millions of still-faithful church

members—the plaintiffs claimed they gave tithes under “false pretenses” because they had “no reason to ever suspect” that the church “would take any portion of their donations” and invest them. Compl. ¶132, *Tithing Litigation*, 785 F.Supp.3d 1009 (D. Utah 2025) (No. 2:24-cmd-03102-RJS-DAO), ECF No. 72. Rather, they claimed they believed all donations would be used “immediately” for religious and charitable reasons. *Id.* ¶133.

The plaintiffs’ requested relief, moreover, included a permanent injunction preventing the church from investing donations for future use; an “order requiring regular public accounting *** as to the collection, use and disposition of collected funds”; the “appointment of a Special Master *** to monitor the collection, use, and disposition of collected funds”; and disgorgement of decades of tithing and other donations. *Id.* ¶193. In sum, the plaintiffs’ fundamental claim was that the Church should spend more on current priorities and save less for future needs—like taking the gospel of Jesus Christ to the entire world or saving for a future rainy day during times of global economic crisis when contributions fall.

The district court dismissed the case on statute-of-limitations grounds, while noting the Church had “raise[d] significant questions about the preclusive effect of the church autonomy doctrine.” *Tithing Litig.*, 785 F.Supp.3d at 1023. The plaintiffs appealed and the matter is before the Tenth Circuit.

Other disaffected Church members have brought similarly unsuccessful claims. One class action asserted a RICO claim alleging that tithing funds that

are “invested” in “commercial real estate and business development” are “not used only for the Lord’s or Church’s purposes.” Dismissed with prejudice, the decision was affirmed on appeal. *Gaddy v. Corporation of President of Church of Jesus Christ of Latter-day Saints*, 148 F.4th 1202 (10th Cir. 2025), *cert. denied*, No. 25-911 (U.S. Mar. 2, 2026).

Another case alleged the Church failed to disclose that some portion of tithing funds would be “invested instead of” being used immediately to feed the hungry or support missionary work. *Schofield v. Corporation of President of Church of Jesus Christ of Latter-day Saints*, No. 23 CVS 001771 (N.C. Super. Ct., Durham Cnty., filed Mar. 2, 2023). That case was likewise dismissed.

These and other recent cases demonstrate that disputes over churches’ use of donated funds are an increasing source of litigation against religious organizations. Such litigation imposes tremendous costs—diverting time, attention, resources, and finances away from religious missions. Even if religious organizations eventually prevail, the process of drawn-out litigation, including invasive discovery, becomes the punishment. And many religious organizations are small and cannot absorb substantial litigation costs, choosing to settle rather than being bled dry.

B. Religious Organizations Need the Protection of the Church Autonomy Doctrine to Ensure They Can Solicit and Dispose of Donated Funds Consistent with Their Religious Missions.

But these harms need not occur. The First Amendment *should* protect religious organizations against lawsuits challenging how they use their funds, who within the church has authority to make those decisions, and what degree of disclosure is required. Religious organizations should also be able to rely on the First Amendment to immediately fend off attacks on the church’s doctrines and beliefs under the guise of fraud.

1. The First Amendment comes into play here because, as one wise district court has put it, “[h]ow a church spends worshippers’ contributions” is an issue “central to the exercise of religion.” *Ambellu v. Re’ese Adbarat Debre Selam Kidist Mariam*, 387 F.Supp.3d 71, 80 (D.D.C. 2019). After all, a religious organization’s financial practices are shaped by its “religious doctrine and practice.” *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007). Thus, financial autonomy is necessary for a religious organization to carry out “what it underst[ands] to be its religious mission.” *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987).

As this Court has held, the First Amendment’s church autonomy doctrine requires “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). In other words, “action interfer[ing] with the *internal governance* of the church” violates the First Amendment. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012) (emphasis added). This “does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Our Lady*, 591 U.S. at 746. Moreover, “[d]etermining that certain activities are in furtherance of an organization’s religious mission” is a recognized “means by which a religious community defines itself.” *Amos*, 483 U.S. at 342 (Brennan, J., concurring).

A religious institution’s right to unfettered internal governance—and to determine which activities further its religious mission—logically includes deciding how to spend the organization’s sacred funds. Accordingly, any inquiry into “whether [a religious organization’s] financial expenditures were proper” would require “inquiry into whether the expenditures were justified in light of [the church’s] religious doctrines and practices,” which is just “the type of ecclesiastical inquiry courts are forbidden to make.” *In re Godwin*, 293 S.W.3d 742, 750 (Tex. Ct. App. 2009).

It follows that adjudicating questions about how church leaders “expend funds raised by the church” to advance its mission falls squarely “within the ecclesiastical sphere that the First Amendment protects from civil court intervention.” *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332-333

(4th Cir. 1997). Simply put, courts lack jurisdiction to resolve an “intramural church conflict” over the proper use of donated funds. *Church of Scientology Flag Serv. Org., Inc. v. City of Clearwater*, 2 F.3d 1514, 1538 (11th Cir. 1993).

2. Absent fraud based on purely secular statements, courts have repeatedly—and appropriately—rejected claims about how a church raises and uses donations. In *Harris*, 643 S.E.2d at 571, for example, the North Carolina Supreme Court rejected a claim alleging that a pastor made improper expenditures: “Because a church’s religious doctrine and practice affect its understanding of” a pastor’s authority and how church funds should be used, “seeking a court’s review of [such] matters *** is no different than asking a court to determine whether a particular church’s grounds for membership are spiritually or doctrinally correct or whether a church’s charitable pursuits accord with the congregation’s beliefs.” That “is precisely the type of ecclesiastical inquiry courts are forbidden to make.” *Ibid.* See also *Godwin*, 293 S.W.3d at 750 (recognized that determining whether a church’s “financial expenditures were proper is “the type of ecclesiastical inquiry courts are forbidden to make”).

Rejection of such claims should not be surprising: Church membership comes “with an implied consent” to the church’s authorized form of government and decision-making. *Church of Scientology*, 2 F.3d at 1536 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1872)). Members who do not like how a church uses donations “may attempt to reform the policy from within” or “may acquiesce in the policy despite their

objections or they may leave the church.” *Ibid.* But they cannot “invoke the supervisory power of the civil tribunals” to override the decisions made by the church’s highest authorities about the use of church funds. *Ibid.* (quoting *Watson*, 80 U.S. at 731).

In sum, control over financial decisions, including how to solicit and use donations, is an essential part of the autonomy the First Amendment guarantees to religious organizations. This case provides an opportunity for this Court to provide needed guidance to those lower courts that still have not gotten the message.

C. Judge Rao’s Dissent Provides a Roadmap for the Court to Make Clear that the Church Autonomy Doctrine Applies to How and When Religious Organizations Use Donated Funds.

Judge Rao’s dissent below persuasively shows why and how this Court should hold that financial autonomy is among the matters of “‘faith,’ ‘doctrine,’ and ‘internal government’” protected by the First Amendment. Pet.App.65a (quoting *Our Lady*, 591 U.S. at 747).

First, Judge Rao recognizes that the church autonomy doctrine “prevents judicial intrusion into areas essential to the independence of religious institutions.” *Ibid.*

Second, Judge Rao explains why financial administration is one of those areas where autonomy is essential: “[R]eligious donations and decisions about how to use such funds are connected to the faith, doctrine, and internal governance of” religious

organizations, which “cannot pursue their ‘central mission’ without sufficient resources,” which come mainly from donations. Pet.App.69a. (quoting *Our Lady*, 591 U.S. at 746). Donations are necessary to “employ ministers to teach and spread [the church’s] message; provide space for its members to gather in worship; and perform charitable works.” *Ibid.* Thus, “[d]ecisions about how to raise and spend religious donations are inextricably tied up with a church’s ‘right to shape its own faith and mission’ and ‘internal church governance,’ so the church autonomy defense must protect these activities.” *Ibid.* (quoting *Hosanna-Tabor*, 565 U.S. at 188).

Third, Judge Rao explains how challenges to the way a church raises and uses donated funds would require judicial entanglement in religious matters. A court would be asked to examine “the knowledge and intent of the [church] in raising money—including what it means when priests speak about religious giving from the pulpit.” Pet.App.71a.

Fourth, Judge Rao explains that the remedies sought in such cases also inevitably violate the church autonomy doctrine. O’Connell, for example, sought “sweeping injunctive relief and millions in disgorgement and damages.” Pet.App.72a. He would require the Church “to administer Peter’s Pence in a judicially prescribed manner” and is “attempting to change the way the Catholic Church speaks about, solicits, and deploys religious donations.” *Ibid.*

This is the same doctrinal roadmap this Court followed in *Hosanna-Tabor* and *Our Lady of Guadalupe*. First, in those cases the Court recognized

that the First Amendment protects matters essential to religious institutions' independence. *Our Lady*, 591 U.S. at 746. Second, the Court recognized that the ability to hire and fire ministerial employees is an area where autonomy is essential. *Hosanna-Tabor*, 565 U.S. at 188-189. Third, the Court noted that judicial intrusion into such matters would not only interfere with that essential independence but would also improperly entangle courts in religious matters. *Ibid.* Finally, the Court recognized that awarding damages for terminating an unwanted minister would interfere with a church's ability to carry out its religious mission just as much as an injunction compelling a church to reinstate an unwanted minister. *Id.* at 194.

That roadmap can be applied in any church autonomy context, including disputes over religious donations. This case provides a good opportunity for the Court to make that clear.

II. Whether Decisions About Church Autonomy Fall Within the Collateral Order Doctrine Is Also an Issue of Pressing National Importance, and Confused Courts Need This Court's Guidance.

Of course, how and when to use donations are not the only decisions by religious organizations that deserve protection under the First Amendment's church autonomy doctrine. As explained below, such organizations must make myriad internal decisions in pursuit of their religious missions. And, given that the doctrine is founded largely on who has the proper authority to make those decisions—like federalism or separation of powers—and given the expense and

intrusiveness of litigation, immediate resolution of church autonomy issues is the only way to avoid irreparable injuries to the First Amendment rights of affected religious organizations.

Fortunately, as also explained below, the dissents by Judges Rao and Walker provide excellent guidance on how this Court could usefully clarify the collateral order doctrine in this important area. To be “final” under that doctrine, of course, the decision appealed must be (1) “conclusive,” (2) “separate from the merits,” and (3) effectively “unreviewable on appeal from the final judgment.” *Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 42 (1995). As those dissents establish, all three requirements are satisfied by a court order rejecting church autonomy.

A. Church Autonomy Is Regularly Asserted by a Variety of Religious Organizations in Cases That Threaten Their Ability to Carry Out What They See as Their Divine Missions, a Protection that Becomes a Nullity if Not Subject to the Collateral Order Doctrine.

The church autonomy doctrine is the most important protection religious organizations possess against both government overreach and lawsuits that threaten their ability to carry out their religious missions. The doctrine has provided essential security in a wide variety of circumstances.

One category is disputes over religious doctrine. For example, an imam sued an Islamic religious organization for defamation after the organization

sent him a letter warning that he was engaging in “un-Islamic” behavior during sermons. *El-Farra v. Sayyed*, 226 S.W.3d 792, 793 (Ark. 2006). The state supreme court determined the case could not proceed because resolving the imam’s claims would require the court to “inquire into religious doctrine and governance” and decide whether he was acting contrary to “Islamic law.” *Id.* at 796. That would violate church autonomy.

Another category is disagreements over church governance. In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952), two church factions wrestled over who had authority to appoint an archbishop in a bid to control an important religious site. *Id.* at 95. The Court concluded it lacked authority to displace “the Church’s choice of its hierarchy” and instead deferred to the controlling “church rule.” *Id.* at 119-121.

Membership disputes and church disciplinary proceedings are another important arena left to church autonomy. *Watson*, 80 U.S. at 730 (“We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.” (citation omitted)). So too are determinations over “which individuals will minister to the faithful.” *Hosanna-Tabor*, 565 U.S. at 189.

Complaints by disgruntled members over the proper use of church finances is an additional area where church autonomy provides religious organizations an important line of defense. The tithing cases described above provide several recent illustrations.

As these examples demonstrate, along with hundreds more that could be given, the church autonomy doctrine provides essential protection to religious organizations in a variety of settings. Ensuring the doctrine's effectiveness—including immediate appeals from decisions rejecting church autonomy claims—is critical to realizing the Constitution's guarantee of religious liberty.

B. Because Church Autonomy Is a Principle of Constitutional Structure, Even Temporary Errors in the Doctrine's Application Allow Incursions into Matters that Constitutionally Must Be Controlled by Religious Authority.

The structural nature of church autonomy provides another reason. Although the doctrine protects the right of religious institutions to “decide matters of faith and doctrine without government intrusion,” *Our Lady*, 591 U.S. at 746, it does not merely guarantee individual rights. Rather, “like separation of powers and federalism,” the “differentiation of religious and political authorities” is “a structural feature of our Constitution”—and one “that contributes to its success.” Richard W. Garnett, “*The Freedom of the Church*”: (Towards) an Exposition, Translation, and Defense, 21 J. Contemp. Legal Issues 33, 39 (2013).

Church autonomy's status as a structural constitutional principle arises from multiple textual and historical sources. First is the First Amendment's text: “Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof.” U.S. Const. amend. I. Of all the Bill of Rights’ provisions, only the First Amendment expressly withdraws governmental authority. Congress—and other arms of government—cannot act in areas placed off-limits by the First Amendment. That is a structural limit on government power. *Huntsman*, 127 F.4th at 801 (Butamay, J., concurring) (“The ‘shall make no law’ language denies the federal government power over a specific subject matter.”).

History also teaches that church autonomy is a structural principle deeply rooted in the Anglo-American tradition. As Justice Thomas noted just last year, “[p]re-founding English law *** distinguished between temporal matters subject to civil courts’ jurisdiction and spiritual matters subject to ecclesiastical jurisdiction.” *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 258 (2025) (Thomas, J., concurring). And, as the full Court had previously noted, “[i]t was against this background” of treating secular and religious authorities as distinct spheres “that the First Amendment was adopted.” *Hosanna-Tabor*, 565 U.S. at 183.

Another feature confirming the structural character of the church autonomy doctrine is how the doctrine divides authority between actors. Just as federalism divides powers between the states and the federal government, and just as the separation of powers precludes one branch of government from exercising authority allocated to another, church autonomy reserves certain decisions solely for the spiritual realm. It protects the ability of religious entities to “decide for themselves, *free from state*

interference, matters of church government,” “faith,” and “doctrine.” *Our Lady*, 591 U.S. at 737 (emphasis added). Unlike many other aspects of the Constitution, when it comes to church autonomy, “the government is not the only protagonist.” Paul Horwitz, *Churches as First Amendment Institutions: of Sovereignty and Spheres*, 44 Harv. C.R.-C.L. L. Rev. 79, 86 (2009).

Because church autonomy is a principle of constitutional structure, errors in its application contravene one of the most basic features of our Founding document: A court can no more decide the correctness of religious doctrines, or the proper uses of church resources, than it can declare war or impose a tax. Indeed, judicial intrusion into religious autonomy is just as serious a breach of the Constitution’s basic structure as a president’s attempt to legislate or a state’s effort to set national security policy. When it comes to church autonomy, no amount of judicial balancing can overcome the clear command found in the Constitution.

In short, government simply has no role in the sacred precincts of religious authority. And when a trial court interjects itself into such matters during litigation, or allows a plaintiff to do so, that unlawful interjection is effectively unreviewable on appeal after a final judgment. And that is yet another important reason to allow denials of church autonomy to be appealed immediately.

C. Permitting a Court or Civil Litigant to Trespass Even Temporarily into Areas Protected by Church Autonomy Inflicts Irreparable Injuries on a Religious Organization.

There is also a powerful practical reason for the church autonomy doctrine and the need to immediately appeal a trial court ruling that does not recognize it: Confidentiality in “internal communications” is essential to a religious organization’s “decision-making processes.” *Whole Woman’s Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018). Exposing those communications to outside actors thus “intru[des] against religious bodies’ self-government.” *Ibid.* For this reason, “[i]ntra-church communications made while acting within the scope of” a church’s constitutionally protected autonomy “are subsumed in the domains” covered by church autonomy “and thereby also shielded by [the doctrine].” Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS’s Use of History to Give Definition to Church Autonomy Doctrine*, 108 Marquette L. Rev. 706, 712 (2025).

This principle applies with particular force in the back-and-forth of civil litigation. In the hands of an aggressive litigant or unsympathetic judge, discovery can become a shotgun-style attack on a religious organization’s decision-making or an instrument to pry open its most sensitive internal documents and debates. Subpoenas, document demands, and cross-examination “invade[] the religious body’s integrity” by demanding the release of otherwise private information. *Whole Woman’s Health*, 896 F.3d at 372.

Litigants often aim to “probe the mind of the church” through obtaining records of internal deliberations on confidential matters. *Rayburn v. General Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). But, as this Court has long recognized, “[i]t is not only the conclusions that may be reached” at the end of litigation that “may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry” itself. *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979).

The cases discussed above show how constitutionally sensitive courts can avoid these problems. In *Huntsman*, to avoid broad intrusion into the church’s financial records and internal decision-making, at an early status conference the church informed the judge it could produce a narrow set of confidential financial records under seal that disproved the plaintiff’s claims. The judge accepted that proposal, reviewed the documents, and granted summary judgment. The district court’s action reduced the violation of the Church’s First Amendment rights through the “incidents of litigation—depositions, subpoenas, document discovery and the like” that can “unconstitutionally disrupt the administration of a religious organization.” *Alicea v. New Brunswick Theological Seminary*, 608 A.2d 218, 222 (N.J. 1992).

Similarly, in *In re Church of Jesus Christ of Latter-Day Saints Tithing Litigation*, the court granted a motion to stay all discovery until it had ruled on the church’s motion to dismiss. In granting the motion to dismiss based on the statute of limitations and the plaintiff’s failure to plead fraud,

the court recognized that the case “raise[d] significant questions about the preclusive effect of the church autonomy doctrine.” *Tithing Litig.*, 785 F.Supp.3d at 1023. It protected the Church’s First Amendment rights by prohibiting discovery and dismissing the case on the pleadings. See also *Gaddy v. Corporation of President of Church of Jesus Christ of Latter-Day Saints*, 665 F.Supp.3d 1263, 1278 (D. Utah 2023) (dismissing plaintiff’s claims, partially on church autonomy grounds, before any discovery occurred), *aff’d*, 148 F.4th 1202 (10th Cir. 2025), *cert. denied*, No. 25-911 (U.S. Mar. 2, 2026).

Had these cases been allowed to proceed into discovery, however, “courts and juries would be examining *** religious sermon[s] for accuracy.” *Huntsman*, 127 F.4th at 798 (Bress, J., concurring). A jury would have been asked to determine whether church leaders “should have spoken with greater precision about inherently religious topics.” *Ibid.* Church leaders would have been “cross-examined on matters of religious understanding.” *Ibid.* And “a court or jury would need to [determine] what ‘tithing funds’ in the Church includes.” *Id.* at 796. A court or jury would also have needed to “mak[e] determinations about *why* a reasonable member of the Church of Jesus Christ would or should tithe,” *id.* at 799, or to “scrutinize[] the Church’s financial records and deem[] them ‘consistent’ with Church doctrine,” *id.* at 813 (Butamay, J., concurring). And a court or jury would have had to determine “who may speak for the Church,” “how Church adherents should construe the pronouncements of religious doctrine from Church leaders,” and “the level of precision that Church

teachings must follow to avoid fraud charges.” *Id.* at 813-814. Such intrusions would have been a disaster—for the church and for the First Amendment.

Such intrusions also nearly occurred in another recent case involving the Texas Conference of Catholic Bishops. In *Whole Woman’s Health*, a district court ordered the bishops to disclose sensitive internal communications on their deliberations about abortion policy, a subject of deep moral and theological importance. 896 F.3d at 366-367. But the Fifth Circuit properly rejected that result, observing that compelled production of the communications would have “undermined” the bishops’ “ability to conduct frank internal dialogue and deliberations” on contested matters. *Ibid.* And it likely would have led to “similar ongoing intrusions” by other litigants into the bishops’ “self-government.” *Ibid.*

Another recent example of discovery demands irreparably damaging church autonomy arose from a schism between a religious university and its sponsoring denomination. *HotChalk, Inc. v. Lutheran Church-Mo. Synod*, 548 P.3d 812 (Or. 2024). After the denomination chose to close the university, a company with whom the university had entered into a lucrative administrative services agreement sued the denomination for shuttering the university. *Id.* at 813-814. The company demanded “all [denominational] board meeting minutes” and “all documents and communications related to the university’s closure.” *Id.* at 814. Ultimately, the denomination produced under the compulsion of judicial process “more than 33,000 documents, including handbooks, bylaws, other governing documents,” and years’ worth of board

meeting minutes. *Ibid.* The company then tried to use those documents to browbeat the denomination into settling the company's legally unfounded multimillion-dollar suit.

Each of these examples either threatened or resulted in irreparable injury to the defendants' religious autonomy. In the tithing cases, the plaintiffs wanted to rummage through sensitive church financial information and challenge Church leaders' decisions about allocating church resources. In *Whole Woman's Health*, the plaintiff wanted to probe the mind of the church on a hotly contested issue and force the church to divert tens of thousands of dollars from its religious mission to answer the plaintiff's intrusive demands. And in *HotChalk*, the denomination produced confidential records from its senior-most councils, which the plaintiff then used to challenge in court the denomination's decision to close a schismatic subordinate institution.

Requiring religious organizations to grant litigation opponents access to their most sensitive internal records is akin to inviting Pilate and Herod as eavesdroppers to the Last Supper. It violates the integrity of the organizations' most sacred inner moments in ways that can never be fully undone, resulting in harm that is effectively irremediable after a final judgment on the merits.

D. Without Interlocutory Review, a Religious Organization Has No Means of Relief from a Court’s Refusal to Dismiss a Claim or Deny a Discovery Order that Invades Church Autonomy.

Because the very process of litigation can violate a religious institution’s constitutionally protected autonomy and inflict irreparable injuries, *Catholic Bishop*, 440 U.S. at 502, such institutions must have access to interlocutory review when a court refuses to dismiss a claim or deny a discovery order that invades church autonomy.

1. Without interlocutory review, religious institutions have no reliable way to fend off the damage that discovery and further litigation will bring, and they have no way to redress the unconstitutional intrusion into religious decision-making. By the time post-judgment review arrives, it will be too late.

Other forms of relief that might be available at the *end* of a case cannot substitute for interlocutory review. An ultimate judgment for the church cannot unwind the invasion that occurs *during* the suit. As the Fifth Circuit recently observed, for example, “if 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.” *McRaney v. North Am. Mission Bd. of S. Baptist Convention, Inc.*, 157 F.4th 627, 645 (5th Cir. 2025). See also *Mirabelli v. Bonta*, 607 U.S. --, 2026 WL 575049, *3 (2026) (“The denial of plaintiffs’ constitutional rights during the potentially

protracted appellate process constitutes irreparable harm.”).

Money damages—if even available—likewise do not offer effective relief, as they cannot undo the illicit “interference with the” religious institution’s “internal operations.” Lael Weinberger, *Is Church Autonomy Jurisdictional?*, 54 *Loyola Univ. Chi. L.J.* 471, 504 (2023). Nor can an injunction against further incursions remedy past ones. “[O]nce the harm of invading a church’s internal governance *** is incurred under the coercion of a discovery order, it cannot be undone by the payment of monetary damages *** or otherwise undone by equitable relief.” Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 *Fed. Soc’y Rev.* 244, 267 (2021). Simply put, “[i]f a church autonomy defense is erroneously denied and litigation allowed to proceed, there is no way to undo the interference with the religious institution that occurs simply by virtue of the litigation itself.” Weinberger, *supra*, at 504.

2. In this case the D.C. Circuit brushed aside these concerns on the erroneous view that “once armed with a final decision,” a church that has suffered an “infringement[]” of its autonomy “can seek relief through the standard review process.” Pet.App.20a. But that it is often too late. Even if the church obtains reversal on the merits, it cannot undo the First Amendment violation the litigation itself has caused. For, as mentioned, “[i]t is not only the conclusions that may be reached” at the end of litigation that may infringe church autonomy, “but also the very process of inquiry.” *Catholic Bishop*, 440 U.S. at 502.

In this sense, unlawful discovery and other incidents of litigation that violate church autonomy do not, as the Circuit majority below suggested, merely “impose significant hardship on litigants.” Pet.App.19a (quoting *Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 440 (1985)). They destroy a constitutionally protected right in the process, even as they violate a deep structural principle embedded in the Constitution. And for that reason too, decisions allowing such violations, even if temporary, are not fully reviewable or redressable after a final judgment.

E. The Opinions of Judges Rao and Walker Provide a Good Doctrinal Roadmap for Clarifying the Law.

Judges Rao and Walker have provided a helpful roadmap for handling this issue in their en banc opinions below. Judge Rao, for example, correctly perceives that a district court’s rejection of a church autonomy defense satisfies all three prerequisites for appealability under the collateral order doctrine. First, it is “conclusive in that it necessarily subjects a religious organization to the burdens of further litigation.” Pet.App.90a. Second, it is “‘separate’ *** from the resolution of the underlying case” because the applicability of the defense is “wholly separate from” the merits of the plaintiffs’ claims. Pet.App.91a. (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). Third, it is “effectively unreviewable on final appeal” because church autonomy “is best understood as ‘an *immunity from suit* rather than a mere defense to liability.’” Pet.App.92a (quoting *Mitchell*, 472 U.S. at 526). As Judge Rao rightly explains, “delaying review until the entry of final judgment would imperil a ***

value of a high order,” namely, the constitutionally protected “sphere of church autonomy, a paramount freedom for both religious institutions and individuals.” Pet.App.92a-93a (cleaned up).

Judge Walker seconds Judge Rao’s conclusion. He explains that “when a district court erroneously denies a motion to dismiss based on the church-autonomy doctrine, the district court threatens the religious defendant with irreparable First Amendment harm by proceeding to discovery and possibly trial.” Pet.App.52a-53a. “And that is an immediately appealable collateral order.” Pet.App.53a.

These judges—and the chorus of judges they rely upon—are correct: a district court’s rejection of a church autonomy defense should be subject to immediate interlocutory review under the collateral order doctrine. *McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (“The conditions for collateral order review are satisfied with respect to [the] appeal ***, the district judge’s ruling challenged by the plaintiffs being closely akin to a denial of official immunity. A secular court may not take sides on issues of religious doctrine.”). No other avenue can provide the necessary relief before it’s too late.

CONCLUSION

Intrusion into a religious organization’s finances invades the sacred inner core of that organization’s ability to carry out its religious mission, both now and in perpetuity. And that intrusion also tramples the First Amendment. Such organizations should not have to wait until the end of an expensive and intrusive litigation to invoke the protection the Constitution

guarantees them. This Court should grant review to correct the lower court's error and restore the full protection of the church autonomy doctrine.

Respectfully submitted,

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March 6, 2026

APPENDIX

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List of *Amici Curiae* 1a

1a

List of Amici Curiae

The Church of Jesus Christ of Latter-day Saints

BAPS Swaminarayan Sanstha

American Islamic Congress

Church of Scientology International

Islam and Religious Freedom Action Team
of the Religious Freedom Institute