No. 25-849

In the Supreme Court of the United States

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
Petitioner,

v.

DAVID O'CONNELL,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The D.C. Circuit dismissed this appeal for lack of appellate jurisdiction, without reaching the merits. Following every circuit holding on the issue, it declined to expand the collateral-order doctrine to confer a categorical right of immediate appeal for all pleading-stage denials of church-autonomy defenses.

The only question presented is:

Did the D.C. Circuit correctly decline to expand the collateral-order doctrine to pleading-stage denials of church-autonomy defenses?

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INTRODUCTION

The D.C. Circuit dismissed the appeal in this case for lack of appellate jurisdiction, without reaching the merits. So the only question presented is whether the D.C. Circuit had jurisdiction. Holding that it did would create a new right of immediate appeal for an entire category of interlocutory orders—something this Court has stressed should not be done outside the rulemaking process Congress made for that purpose.

Every circuit that has been asked to create this new category of immediate appeal—five of them—has refused. This Court has already declined to review two of those decisions.[1] Petitioner makes the same arguments here. The Court should deny certiorari again.

This Court's review of the uniform circuit holdings is especially unnecessary because this Court's precedents already confirm they are correct. This Court has already held that the church-autonomy defense is a "defense on the merits" that asks "whether the allegations the plaintiff makes entitle him to relief." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 195 n.4 (2012). That ends the issue, because a "merits defense" is not an "immunity from suit" and is not collaterally appealable. *GEO Group, Inc. v. Menocal*, No. 24-758, 607 U.S. ____, slip op. at 5 (Feb. 25, 2026).

This Court has also already held that religious organizations "receive an adequate opportunity to

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[1] *Synod of Bishops of the Russian Orthodox Church Outside of Russ. v. Belya*, 143 S. Ct. 2609 (2023); *Faith Bible Chapel Int'l v. Tucker*, 143 S. Ct. 2608 (2023).

raise … constitutional claims" of autonomy in after-the-fact judicial review. *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628 (1986). In other words, church-autonomy rights are adequately vindicable in a post-judgment appeal. *See Gordon College v. DeWeese-Boyd*, 142 S. Ct. 952, 955 (2022) (statement of Alito, J., respecting the denial of certiorari) (finding "nothing that would preclude [the defendant] from appealing" a denial of its church-autonomy defense "when the decision is actually final"). So they are not collaterally appealable.

A categorical right of immediate appeal for church-autonomy defenses would be particularly problematic because those defenses can be raised in response to any given discovery request, evidentiary motion, or question at trial. Each discovery or evidentiary ruling issued over a religious-autonomy objection would be subject to automatic, non-discretionary appeal. This Court's collateral-order precedents cannot abide this result.

In short, the petition asks this Court to take up a split that does not exist, on an issue that this Court's precedents already resolve. Certiorari is not needed.

This case is also a poor vehicle for this Court's review. Justice Jackson would likely be recused given her involvement with this case in the district court. And this Court should give *GEO Group* time to percolate in the circuit courts, rather than applying it to this category of orders in the first instance. There have been three petitions for certiorari on this issue in as many years. There will be other opportunities to decide it with a full bench and the benefit of lower-court analysis under *GEO Group*.

STATEMENT OF THE CASE

A. Legal background

Federal courts of appeals have jurisdiction only over "final decisions." 28 U.S.C. § 1291. That rule is as old as "the very foundation of our judicial system." *McLish v. Roff*, 141 U.S. 661, 665 (1891); *see* 1 Stat. 73 § 22 (1789). It "preserves the proper balance between trial and appellate courts, minimizes the harassment and delay that would result from repeated interlocutory appeals, and promotes the efficient administration of justice." *Microsoft Corp. v. Baker*, 582 U.S. 23, 36-37 (2017).

The collateral-order doctrine is a judge-made exception to that rule. It stems from this Court's decision in 1949 to give § 1291 a "practical rather than a technical construction" and deem a "small class" of orders "final" and appealable before a case is over. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

Since then, this Court has "for many years … criticized and struggled to limit" the collateral-order doctrine. *Mohawk Indus. v. Carpenter*, 558 U.S. 100, 115 (2009) (Thomas, J., concurring in part and concurring in the judgment). It has repeatedly stressed that the doctrine "is 'narrow,' 'stringent,' and of 'modest scope.'" *GEO Group*, 607 U.S. ____, slip op. at 4 (quoting *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 868 (1994) and *Will* v. *Hallock*, 546 U. S. 345, 350 (2006)). And it has cautioned courts to resist the "temptation" of applying the collateral-order doctrine even where nonfinal orders "impose significant hardship on

litigants." *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 440 (1985) (quotation omitted).

Despite this Court's efforts to keep it in check, the collateral-order doctrine created "[c]onsiderable uncertainty" and "blur[red] the edges of the finality principle." H.R. Rep. No. 101-734, at 18 (1990) (first quotation); S. Rep. No. 102-342, at 24 (1992) (second quotation). This was in part due to its all-or-nothing nature. Collateral-order status is "determined for the entire category to which a claim belongs." *Digital Equipment*, 511 U. S. at 868. So applying the doctrine in a given case automatically creates an immediate right of appeal for an entire category of orders. *See id.* at 877 ("[I]f Digital prevailed here, any district court order denying effect to a settlement agreement could be appealed immediately."). After several decades, the chaos of creating category-wide rights of appeal through case-by-case adjudication was "sorely in need of further limiting principles." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 292 (1988) (Scalia, J., concurring).

Congress intervened. It amended the Rules Enabling Act to create a rulemaking procedure for defining "when a ruling of a district court is final for the purposes of appeal under section 1291." 28 U.S.C. § 2072(c) (1990). And it permitted this Court to create new exceptions to § 1291's finality requirement—again, through rulemaking. 28 U.S.C. § 1292(e) (1992). Congress decided that rulemaking is better suited for creating category-wide interlocutory appeals because it "draws on the collective experience of bench and bar" and "facilitates the adoption of measured, practical solutions." *Mohawk*, 558 U.S. at

114. It avoids the hazards of making all-or-nothing "appealability determination[s] via case-by-case adjudication." *Id.* at 118 (Thomas, J., concurring in part and concurring in the judgment).

Courts must give "full respect" to "Congress' designation of the rulemaking process as the way to define or refine when a district court ruling is 'final' and when an interlocutory order is appealable." *Swint v. Chambers Cty. Comm'n*, 514 U.S. 35, 48 (1995). So this Court has instructed that any new categories of immediate appeal "are to come from rulemaking, … not judicial decisions in particular controversies." *Microsoft*, 582 U.S. at 39; *see McClendon v. City of Albuquerque*, 630 F.3d 1288, 1296 n.2 (10th Cir. 2011) (Gorsuch, J.) ("[A]ny pleas to expand appellate jurisdiction ought be directed to the Rules Committee, not our doorstep.").

This does not mean that appellate courts cannot hear an interlocutory appeal when necessary. Certification under 28 U.S.C. § 1292(b) and mandamus under 28 U.S.C. § 1651(a) provide "safety valves for promptly correcting serious errors" without incidentally creating an entire category of immediately appealable orders. *Mohawk*, 558 U.S. at 111 (cleaned up). These discretionary-review mechanisms are "better vehicle[s]" for remedying serious errors "than the blunt, categorical instrument of § 1291 collateral order appeal." *Digital Equipment*, 511 U. S. at 883; *see McClendon*, 630 F.3d at 1298 (Gorsuch, J.) ("Congress has already provided a way for parties to challenge a district court's erroneous assertion of jurisdiction before the entry of a final judgment. That path is paved by 28 U.S.C. § 1651(a)

and its approval of writs of mandamus."). This approach preserves respect for the final-judgment rule, lower-court dockets, and litigants by ensuring that immediate appeal is reserved for cases that actually need it.

Before the D.C. Circuit's ruling in this case, four circuits considered requests to expand the collateral-order doctrine to pretrial denials of church-autonomy defenses. All four refused. *Belya v. Kapral*, 45 F.4th 621 (2d Cir. 2022), *reh'g en banc denied*, 59 F.4th 570 (2d Cir. 2023), *cert. denied*, 143 S. Ct. 2609 (2023); *Garrick v. Moody Bible Inst.*, 95 F.4th 1104 (7th Cir. 2024), *reh'g en banc denied*, 2024 U.S. App. LEXIS 10521 (7th Cir. Apr. 30, 2024); *Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085 (7th Cir. 2014); *Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021 (10th Cir. 2022), *reh'g en banc denied*, 53 F.4th 620 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 2608 (2023); *Klein v. Oved*, 2024 U.S. App. LEXIS 6012 (11th Cir. Mar. 13, 2024). Two of the defendants in those cases asked this Court to take up the issue. It denied certiorari both times. *Belya*, 143 S. Ct. 2609; *Tucker*, 143 S. Ct. 2608.

B. Factual background

Because this case is at the pleading stage, the only facts before this Court are those alleged in the complaint (which are assumed true). *DeVillier v. Texas*, 601 U.S. 285, 288 n.1 (2024).

Peter's Pence is a collection in Catholic churches every June. App.174a. The United States Conference of Catholic Bishops ("USCCB") oversees the annual promotion of Peter's Pence in the United States.

App.174a. It creates promotional materials and distributes them for parishes and dioceses to use. App.174a-175a. These materials state—in secular terms—that donations to Peter's Pence will be used to aid victims of war, oppression, natural disaster, and disease. App.175a-178a. For example, USCCB's bulletin announcements state, "Funds from this collection help victims of war, oppression, and natural disasters." App.177a. USCCB's bulletin inserts confirm that donations will be used, for example, to purchase "food and medicines" for those in need. App.176a. And the readings USCCB distributes state that donated funds will help "people suffering in our world, especially those enduring the effects of war and violence, natural disasters, and religious persecution." App.178a.

When it made these representations, USCCB knew that the vast majority of Peter's Pence donations would not be used as aid for the needy, but would instead be invested in ventures like Hollywood movies or luxury real estate, or used for administrative overhead. App.180a-184a, App.189a. Various news outlets, including the *Wall Street Journal*, reported on this discrepancy, with commentators calling it a "bait and switch." App.180a-183a. A cardinal of the Catholic church wrote on Twitter, "I think we have to say the promotional material is not accurate, misleading or even wrong, because it does not reflect the truth." App.184a.

Plaintiff David O'Connell fell victim to this bait and switch in 2018. App.184a-185a. He donated to

the Peter's Pence collection believing, based on USCCB's representations, that his donation would be used as aid for those in need. *Id.* He would not have donated if he had known that most of the money would be used for investments and overhead. *Id.*

C. Procedural background

In January 2020, O'Connell brought suit challenging USCCB's misrepresentations about how the donated Peter's Pence funds would be used. App.169a-193a. His claims take no issue with the church's use of donations for investments or overhead—only USCCB's use of misrepresentations to solicit them. Said differently, this lawsuit is not about how the church uses collected funds; it is about whether it can obtain those funds through fraud.

USCCB answered the complaint. App.194a-224a. O'Connell served requests for documents showing the Peter's Pence promotional materials that USCCB created, lists of donors and amounts received, USCCB's knowledge of how the funds would be used, and how the funds were used. App.7a. USCCB has not responded to those requests, so the district court has had no occasion to rule on them. There has been no other discovery.

USCCB later moved to dismiss, arguing (among other things) that the lawsuit would require adjudicating religious questions in violation of its church-autonomy rights. Then-Judge Jackson heard argument before the case was reassigned to Judge Cobb, who denied USCCB's motion. Judge Cobb noted certain religious questions that she would not—

and could not—answer. These included questions of "church operations, religious doctrine, religious hierarchy, or religious decisionmaking," as well as "church governance, the makeup of church congregations or anything related to membership and, importantly, … the way the church chooses to use its funds." App.36a. She denied the motion because "at this stage, it's not apparent … that the resolution of the claims will involve impermissible religious entanglement." App.36a.

USCCB did not ask the district court to certify an interlocutory appeal under § 1292(b). Nor did it seek a writ of mandamus. Instead, it asked the D.C. Circuit to create a new categorical right of appeal for pleading-stage denials of church-autonomy defenses.

The D.C. Circuit declined. It held that pleading-stage denials of church-autonomy defenses fail all three requirements for collateral appeal. App.5a. And it found "the unanimity of our sister circuits on this question to be notable and their reasoning persuasive." App.18a. It dismissed the appeal for lack of jurisdiction. App.30a.

The D.C. Circuit then denied rehearing en banc. App.48a. Judge Edwards observed that "[n]either the Supreme Court nor any circuit has ever expanded the collateral order doctrine to categorically cover alleged denials of a church autonomy defense." App.58a. Judge Walker concurred and, while citing some dissents from other circuits, agreed that there was a "unanimity of holdings" on the issue. App.51a. Judge Rao wrote a lone dissent. App.59a.

REASONS FOR DENYING THE PETITION

I. There is no circuit split.

A. All five circuits with holdings on the issue have refused to permit collateral appeals from pretrial denials of church-autonomy defenses.

Five circuits—the D.C., Second, Seventh, Tenth, and Eleventh Circuits—have considered requests to expand the collateral-order doctrine to pretrial orders denying church-autonomy defenses. All five refused. App.30a, App.48a; *Belya v. Kapral*, 45 F.4th 621 (2d Cir. 2022), *reh'g en banc denied*, 59 F.4th 570 (2d Cir. 2023), *cert. denied*, 143 S. Ct. 2609 (2023); *Garrick v. Moody Bible Inst.*, 95 F.4th 1104 (7th Cir. 2024), *reh'g en banc denied*, 2024 U.S. App. LEXIS 10521 (7th Cir. Apr. 30, 2024); *Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085 (7th Cir. 2014); *Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021 (10th Cir. 2022), *reh'g en banc denied*, 53 F.4th 620 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 2608 (2023); *Klein v. Oved*, 2024 U.S. App. LEXIS 6012 (11th Cir. Mar. 13, 2024).

Each of these cases rejected the argument that church autonomy confers an immunity from suit, rather than a defense on the merits. App.23a (church autonomy is "a defense rather than an immunity"); *Belya*, 45 F.4th at 633 (church autonomy "serves more as an ordinary defense to liability" (quotation omitted)); *Garrick*, 95 F.4th at 1116 (church autonomy does not "confer immunity from trial"); *Herx*, 772 F.3d at 1090 (church autonomy is not "an immunity *from trial*, as opposed to an ordinary

defense to liability"); *Tucker*, 36 F.4th at 1025 (church autonomy does not "immunize[] religious employers altogether from the burdens of even having to litigate such claims"); *Klein*, 2024 U.S. App. LEXIS 6012, at *3 (church autonomy "does not immunize religious groups or figures from suit").

No circuit has held otherwise. So the circuit holdings on this issue are unanimous: pretrial denials of church-autonomy defenses are not collaterally appealable.

The only circuit that USCCB contends has split on this issue is the Fifth Circuit. Pet. 21. USCCB cites *Whole Woman's Health v. Smith*, 896 F.3d 362 (5th Cir. 2018), which allowed immediate appeal from a denial of a third party's motion to quash a subpoena.[2] *Id.* at 367-68. It did so because of "the predicament of third parties" "who cannot benefit directly from [post-judgment] relief." *Id.* *Whole Woman's Health* presents no conflict because it is about a different kind of order with unique considerations: third-party motions to quash. *See id.* (distinguishing cases not involving "discovery against a third party"). It is "inapposite" to "a class of orders concerning a party to the litigation capable of benefiting directly from a post-judgment appeal." App.24a (distinguishing *Whole Woman's Health* on this basis); *see Garrick*, 95 F.4th at 1116 n.9 (same); *Belya*, 45 F.4th at 632 (same); *Tucker*, 36 F.4th at 1046 (same).

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[2] The petitioners in *Belya* and *Tucker* also relied on *Whole Woman's Health* in arguing for a split. *See* Petition for a Writ of Certiorari, *Belya*, 143 S. Ct. 2609 ("*Belya* Cert. Pet.") at 25; Petition for a Writ of Certiorari, *Tucker*, 143 S. Ct. 2608 ("*Tucker* Cert. Pet.") at 26-27.

USCCB also relies on dicta from the Fifth Circuit's opinion in *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 155 F.4th 415 (5th Cir. 2025), *cert. denied*, 2026 U.S. LEXIS 817 (Feb. 23, 2026). That opinion states that church autonomy confers an "immunity *from suit*" that is "subject to immediate appellate review … under the collateral order doctrine." *Id.* at 432 (citing *Whole Woman's Health*, 896 F.3d at 373-74). But the collateral-order doctrine was not at issue in *McRaney*, which was on appeal from final judgment (summary judgment for the defendant). The parties did not brief it, and the court had no reason to consider it. The dicta appears in a passing (and unprompted) discussion of ways the *McRaney* majority believed the church-autonomy doctrine to be "jurisdictional" before concluding that it is not "jurisdictional" for purposes of subject-matter jurisdiction. *Id.* at 431-33. The court did not analyze the three *Cohen* requirements, engage with this Court's precedent on the collateral-order doctrine, or address the opinions from several other circuits squarely holding that denials of church-autonomy defenses are not collaterally appealable. It just cited *Whole Woman's Health*, which, as just described, is inapposite.

Moreover, other language in *McRaney* confirms that, properly understood, the collateral-order doctrine does not cover church-autonomy defenses. The *McRaney* majority acknowledged that church autonomy "operates as a defense on the merits." 155 F.4th at 430. As this Court just explained, a "merits defense" is "fundamentally different" from an "immunity" and is not collaterally appealable. *GEO*

Group, 607 U.S. ____, slip op. at 5. So while *McRaney* says in dicta that church-autonomy defenses are collaterally appealable, its description of church autonomy confirms they are not.

The Fifth Circuit's actual holdings also override the dicta in *McRaney*. In an earlier holding in the same case, the Fifth Circuit reversed a pleading-stage dismissal on church-autonomy grounds as "premature." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 351 (5th Cir. 2020), *reh'g en banc denied*, 980 F.3d 1066 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 2852 (2021). The court reasoned that "[i]f further proceedings and factual development reveal that McRaney's claims cannot be resolved without deciding purely ecclesiastical questions, the court is free to reconsider whether it is appropriate to dismiss some or all of McRaney's claims." *Id.* at 350. It follows that pleading-stage denials of church-autonomy defenses are not collaterally appealable because they do not conclusively determine the issue; there are "further steps that can be taken in the District Court to avoid" infringement of church autonomy. *Abney v. United States*, 431 U.S. 651, 659 (1977).

Thus, there is no circuit split. All the circuits with holdings on the issue agree that pretrial denials of church-autonomy defenses are not collaterally appealable. And the Fifth Circuit's actual holdings—as opposed to its unsupported dicta—entail the same result. Even the opinion containing the dicta confirms this result under *GEO Group* by acknowledging that church autonomy "operates as a defense on the merits." *McRaney*, 155 F.4th at 430.

So even after *McRaney*, judges have recognized a "unanimity of holdings" on the issue. App.51a (Walker, J., concurring in the denial of rehearing en banc); *see* App.58a (Edwards, J., concurring in the denial of rehearing en banc).

With no split among the federal circuits, USCCB turns to state-court cases.[3] Pet. 21-22. But the collateral-order doctrine "construe[s] the federal statutory language of 28 U.S.C. § 1291," which does not apply to states. *Johnson v. Fankell*, 520 U.S. 911, 917 (1997). States need not "follow the federal construction of a 'final decision,'" and are free to "employ collateral order doctrines that reject the limitations this Court has placed on § 1291." *Id.* at 916-17. Plus, state courts are not subject to Congress's choice of rulemaking as the means for creating categories of immediate appeal in federal courts. So there is no split with state-court cases, which are not about § 1291. Nor would a decision from this Court resolve any such split, because it would not be binding on the states. *Id.* at 916-18.[4]

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[3] The petitioners in *Belya* and *Tucker* cited the same states in arguing that a split exists. *See Belya* Cert. Pet. at 17, 26; *Tucker* Cert. Pet. at 17, 28.

[4] In addition, the Texas case USCCB cites did not involve any state analog of the collateral-order doctrine. Instead, the court granted a petition for a writ of mandamus, demonstrating that mandamus is an adequate means of protecting church autonomy when needed. *In re Diocese of Lubbock*, 624 S.W.3d 506, 519 (Tex. 2021). And the Connecticut case involved an anti-SLAPP statute conferring "a right independent of the first amendment itself, namely, a right to avoid the costly and onerous litigation process altogether." *Smith v. Supple*, 293 A.3d 851, 860 (Conn. 2023). An earlier Connecticut decision had allowed an interlocutory appeal of a pretrial denial of a church-

B. USCCB's citations to cases that are not about the collateral-order doctrine do not show a circuit split.

USCCB cites two other lines of cases in support of its purported immunity-vs.-merits-defense split. Pet. 14. Neither is about the collateral-order doctrine. And neither constitutes a split.

1. USCCB argues that cases applying *Catholic Bishop* create a split because sometimes the "process of inquiry" itself impinges religious-autonomy rights. *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979); *see* Pet. 14 (citing *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 808-10 & n.5 (9th Cir. 2024)). [5] But this is a different question from whether church autonomy provides a collaterally appealable right not to be tried.

That a right may sometimes be impinged before trial does not make it an immunity from suit. The "mere identification of some interest that would be 'irretrievably lost' has never sufficed." *Digital Equipment*, 511 U.S. at 872. Even pretrial orders that "impose significant hardship on litigants" must await post-judgment appeal. *Richardson-Merrell*, 472 U.S. at 440. Otherwise, "Congress's final decision rule would end up a pretty puny one." *Digital*

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autonomy defense, but that decision was "short-lived in light of the United States Supreme Court's holding in *Hosanna-Tabor* that the exception operates as an affirmative defense." *Trinity Christian Sch. v. Comm'n on Human Rights & Opportunities*, 189 A.3d 79, 82 n.4 (Conn. 2018).

[5] The petitioners in *Belya* and *Tucker* similarly argued that cases applying *Catholic Bishop* constituted a split. *Belya* Cert. Pet. at 17-19; *Tucker* Cert. Pet. at 17-19.

Equipment, 511 U.S. at 872. So the possibility that discovery or trial may sometimes impinge religious-autonomy rights does not mean the church-autonomy defense is a collaterally appealable immunity from suit.

This Court held—in the same context as *Catholic Bishop*—that post-investigation judicial review adequately protects church-autonomy rights. In *Dayton*, a religious school sought to enjoin a state investigation into sex-discrimination claims, arguing that the investigation itself violated its religious autonomy. 477 U.S. at 621. This Court allowed the investigation to proceed because the school would "receive an adequate opportunity to raise its constitutional claims" during post-investigation judicial review. *Id.* at 628. It was "sufficient" that the "constitutional claims may be raised in state-court judicial review of the administrative proceeding"—i.e., after the investigation had already taken place. *Id.* at 629. So there is no conflict between cases recognizing that investigations can cause harm and cases holding that church-autonomy rights are nonetheless vindicable in a post-judgment appeal.

Intra-circuit cases further demonstrate this consistency. For example, the D.C. Circuit has said that "the very process of inquiry" can impinge religious-autonomy rights and that "excessive entanglement may occur where there is a sufficiently intrusive investigation by a government entity." *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 466 (D.C. Cir. 1996) (quoting *Catholic Bishop*, 440 U.S. at 502). The Seventh Circuit has similarly expressed concern

over a "protracted legal process pitting church and state as adversaries." *Demkovich v. St. Andrew the Apostle Parish, Calumet City*, 3 F.4th 968, 982 (7th Cir. 2021) (quoting *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)). But both these circuits hold that the church-autonomy defense is not an immunity from suit and does not satisfy the collateral-order doctrine. *See* App.23a; *Garrick*, 95 F.4th at 1116; *Herx*, 772 F.3d at 1090. There is no inconsistency.

2. USCCB also argues for a split based on a line of cases that it says treat church autonomy as a "structural" limitation on judicial authority. [6] Pet. 14 (citing *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325-26 (4th Cir. 2024); *Conlon v. Intervarsity Christian Fellowship/USA*, 777 F.3d 829, 836 (6th Cir. 2015); and *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n.4 (3d Cir. 2018)). These cases are not about whether church autonomy provides a collaterally appealable immunity from suit. Instead, they "address a completely different question—whether a religious employer can waive, or forfeit, its affirmative ministerial exception defense by failing to raise it." *Tucker*, 53 F.4th at 624 (Ebel, J., supporting denial of rehearing en banc) (distinguishing this line of cases).

"Structural limitation" is not synonymous with "immunity from suit." These are two different concepts. There are structural limitations on the

[6] Again, the *Belya* and *Tucker* petitioners made this same argument. *Belya* Cert. Pet. at 19, 36; *Tucker* Cert. Pet. at 19, 34-35.

judiciary's power that are not immunities from suit, and vice-versa.

For example, the political-question doctrine is a defense grounded in a constitutional, structural limitation on the judiciary: the separation of powers. Like the church-autonomy doctrine, the political-question doctrine prevents courts from adjudicating questions constitutionally reserved for other entities (there, the political branches; here, religious organizations). And at least one circuit has held that it is non-waivable. *Kim v. Hanlon*, 99 F.4th 140, 153 (3d Cir. 2024). But the political-question doctrine does not confer "a 'right not to stand trial' that can justify an immediate appeal." *Doe v. Exxon Mobil Corp.*, 473 F.3d 345, 351 (D.C. Cir. 2007) (political-question defenses are not collaterally appealable[7]), *cert. denied*, 554 U.S. 909 (2008); *see Al Shimari v. CACI Premier Tech., Inc.*, 758 F.3d 516, 523 (4th Cir. 2014) (same); *Abelesz v. OTP Bank*, 692 F.3d 638, 650 (7th Cir. 2012) (same). Indeed, although the separation of powers is a structural limitation on the judiciary, "[m]ost separation-of-powers claims are clearly not" immunities from suit. *United States v. Cisneros*, 169 F.3d 763, 769 (D.C. Cir. 1999). There is no inconsistency here.

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[7] Then-Judge Kavanaugh dissented on the grounds that the court should have issued a writ of mandamus. *Exxon Mobil*, 473 F.3d at 369 (Kavanaugh, J., dissenting). To reach this conclusion, he necessarily agreed that the political-question doctrine is not collaterally appealable, because mandamus requires "no other adequate means to attain the relief." *Id.* at 367 (quotation omitted).

Similarly, Article III imposes constitutional, structural limitations on the judiciary's power to decide cases. These limitations are non-waivable and can be raised *sua sponte* by a court. But defenses grounded in Article III are not immunities from suit and are not subject to the collateral-order doctrine. *See, e.g.*, *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326, 1334-35 (11th Cir. 1999) (defenses based on Article III standing and ripeness are not collaterally appealable), *reh'g en banc denied*, 196 F.3d 1263 (11th Cir. 1999), *cert. denied*, 529 U.S. 1012 (2000). Again, there is no inconsistency. That a defense asserts a structural limitation on the judiciary's power does not mean it is a collaterally appealable immunity from suit.

The Fourth Circuit case USCCB cites further shows that USCCB's purported split is a false one. In holding that it could consider a church-autonomy defense *sua sponte*, the Fourth Circuit noted that it was "applying [the] same principles" to church autonomy as to a "statute of limitations defense" (raisable *sua sponte* in certain circumstances). *Billard*, 101 F.4th at 325 (citing *Eriline Co. S.A. v. Johnson*, 440 F.3d 648, 654-55 (4th Cir. 2006)). And the case it cited, in turn, analogized to "res judicata." *Eriline*, 440 F.3d at 655. But neither a "statute of limitations" defense nor "res judicata" confers a "right not to be tried" warranting collateral appeal. *Digital Equipment*, 511 U.S. at 873.[8] So it is consistent for

[8] The Fourth Circuit's statement that church autonomy "immunizes CCHS's decision to fire Billard" simply meant that it protects the decision from overruling by a court. *Billard*, 101 F.4th at 325. USCCB's argument for a circuit split based on this

the church-autonomy defense to be both non-waivable and not subject to collateral appeal. These are two separate questions.

C. The "neutral principles" approach is not before this Court and, in any event, is not the subject of any circuit split.

The D.C. Circuit found no jurisdiction over USCCB's appeal. So it "dismiss[ed] the appeal for lack of jurisdiction without reaching the merits of USCCB's church autonomy defense." App.30a. The D.C. Circuit did not—and could not—opine on whether O'Connell's claims could proceed using neutral principles of law or whether they impermissibly intruded on church autonomy. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause. … [T]he only function remaining to the court is that of announcing the fact and dismissing the cause." (quotation omitted)). That question is not presented for review.

USCCB contends that the D.C. Circuit split with other courts because it "allowed claims challenging matters of internal church governance to proceed under the 'neutral principles' approach." Pet. 26. But the D.C. Circuit did not allow O'Connell's claims "to proceed under the 'neutral principles' approach." It did not decide one way or the other whether O'Connell's claims could proceed under neutral principles. Nor did it decide one way or the other whether O'Connell's claims "challeng[ed] matters of internal church governance." It

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phrasing "makes far too much of one piece of loose language." *GEO Group*, 607 U.S. ____, slip op. at 11 n.4.

did not reach these questions, because it dismissed the appeal for lack of jurisdiction. App.30a. USCCB is free to raise them again on appeal after final judgment.

Nor is there any true disagreement among the circuits on this issue. Church autonomy prohibits judicial decisions on matters of "faith and doctrine" and "church government." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (quoting *Hosanna-Tabor*, 565 U.S. at 186). It does not confer "a general immunity from secular laws." *Id.* So church autonomy does not preclude claims that can be resolved without delving into faith and doctrine or church government. *See Jones v. Wolf*, 443 U.S. 595, 606 (1979) ("The neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods."); *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (no First Amendment problem where the "court's resolution of the dispute involved no inquiry into religious doctrine.").

Everyone agrees on this—including the circuits USCCB cites for its side of the purported split. *See, e.g.*, *McRaney*, 966 F.3d at 351 (reversing dismissal as "premature" where it was "not certain that resolution of McRaney's claims will require the court to interfere with matters of church government, matters of faith, or matters of doctrine"); *Ky. ex rel. Danville Christian Acad., Inc. v. Beshear*, 981 F.3d 505, 510 (6th Cir. 2020) (church-autonomy defense did not apply to claims that did not affect "matters of

doctrine and church government"); *Garcia v. Church of Scientology Flag Serv. Org., Inc.*, 2021 U.S. App. LEXIS 32601, at *27 (11th Cir. Nov. 2, 2021) ("[W]ell-established precedents" establish that "[c]ourts are free to resolve legal disputes involving churches and religion so long as their resolution 'involves no consideration of doctrinal matters.'" (quoting *Jones*, 443 U.S. at 602)).

Even USCCB has conceded on the record that if this case can be decided on neutral principles, there is no church-autonomy issue: "the cases also say that if there is a case of fraud that can be brought and can be decided purely on the basis of neutral principles, then we have a different kettle of fish." App.236a.

In short, everyone agrees that if a claim can be decided on secular grounds, without impacting religious questions or church government, the church-autonomy defense does not bar it. But that question is not presented in this appeal, which is about appellate jurisdiction.

II. The uniform circuit holdings are correct.

The collateral-order doctrine has "three non-negotiable conditions." *GEO Group*, 607 U.S. ____, slip op. at 4. A category of order must "(1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment." *Id.* (quoting *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 522 (1988)). "Failure on any component of that three-part test is fatal." *Id.*

The D.C. Circuit correctly held that pleading-stage denials of church-autonomy defenses fail all three conditions. App.5a.[9]

A. "Non-negotiable" condition 1: Pleading-stage denials of church-autonomy defenses do not conclusively determine the issue.

"To be appealable as a final collateral order, the challenged order must constitute 'a complete, formal and, in the trial court, final rejection' of a claimed right." *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 376 (1981) (quoting *Abney*, 431 U.S. at 659). There must be "no further steps that can be taken in the District Court to avoid" infringement. *Abney*, 431 U.S. at 659.

Denials of motions to dismiss based on a church-autonomy defense are not complete, formal, and final rejections of church autonomy. They are inherently tentative, and the district court can take further steps

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[9] USCCB asserts that the decision below "is at odds with this Court's precedent," citing two cases that were not about either the collateral-order doctrine or church autonomy. Pet. 23. In *Fort Wayne Books v. Indiana*, 489 U.S. 46 (1989), this Court reviewed a state court's free-speech ruling under *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)—a different doctrine with different elements that, unlike the collateral-order doctrine, does not create entire categories of automatic immediate appeal. In *Roman Catholic Archdiocese of San Juan v. Feliciano*, 589 U.S. 57 (2020), this Court vacated a Puerto Rico Supreme Court ruling on a preliminary injunction because a notice of removal had stripped the Puerto Rico courts' jurisdiction over the case. Neither case bears on the issue here: whether pretrial denials of church-autonomy defenses satisfy the strict conditions of the collateral-order doctrine.

to protect church autonomy. For example, the district court here concluded only that "at this stage, it's not apparent … that the resolution of the claims will involve impermissible religious entanglement." App.36a. If the case progresses to require involvement in religious matters, the district court made clear that it will not—and cannot—get involved. App.36a. As the D.C. Circuit observed, "USCCB can continue to assert the church autonomy defense during discovery, in future dispositive motions, before trial, and during trial." App.28a. And "it is possible that at some later stage, USCCB's church autonomy defense may require limiting the scope of the suit or the extent of discovery, or even warrant dismissal of the suit in its entirety." App.29a. These are "further steps" the district court can take to protect church autonomy. *Abney*, 431 U.S. at 659.

B. "Non-negotiable" condition 2: Pleading-stage denials of church-autonomy defenses are not completely separate from the merits.

Classes of orders are "not sufficiently separable from the merits" when "courts of appeals will often have to review the nature and content of [merits] proceedings to determine whether the standard is met." *Richardson-Merrell*, 472 U.S. at 439-40. For example, orders disqualifying counsel fail this condition because they often "involve an assessment of the likely course of the trial"—i.e., whether an attorney's testimony is likely to affect the outcome, or whether attorney misconduct is likely to infect future proceedings. *Id.* at 439.

Pleading-stage denials of church-autonomy defenses fail this requirement twice over. First, they are not separate from the merits because the church-autonomy defense is "a defense on the merits." *Hosanna-Tabor*, 565 U.S. at 195 n.4. The defense itself is a merits issue. Second, review of a church-autonomy defense will often, if not always, "involve an assessment of the likely course of the trial." *Richardson-Merrell*, 472 U.S. at 439. Courts must assess the "nature and content" of plaintiffs' claims to determine whether resolving those claims at trial will involve matters of faith and doctrine or church government. *Id.* This type of merits entanglement fails the collateral-order doctrine's second condition. *Id.*

C. "Non-negotiable" condition 3: Pleading-stage denials of church-autonomy defenses are not effectively unreviewable on appeal from final judgment.

A category of order fails the third condition unless the "legal and practical value" of the asserted right "would be destroyed if it were not vindicated before trial." *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 498-99 (1989) (quotation omitted). Waiting for post-judgment review must "practically defeat the right to any review at all." *Flanagan v. United States*, 465 U.S. 259, 265 (1984) (quotation omitted).

This generally turns on whether the asserted right is a "merits defense" or an "immunity from suit." *GEO Group*, 607 U.S. ____, slip op. at 4-7. But allowing collateral appeals for every right that could be considered an immunity "would leave the final

order requirement of § 1291 in tatters." *Will*, 546 U.S. at 351. So for purposes of the collateral-order doctrine, courts must "view claims of a 'right not to be tried' with skepticism, if not a jaundiced eye." *Digital Equipment*, 511 U. S. at 873.

This Court has never described church autonomy as an immunity from suit. Instead, it has held that the church-autonomy doctrine is a "defense on the merits" that asks "whether the allegations the plaintiff makes entitle him to relief." *Hosanna-Tabor*, 565 U.S. at 195 n.4. This ends the issue: a "merits defense" is "fundamentally different" from an "immunity" and is not collaterally appealable. *GEO Group*, 607 U.S. ____, slip op. at 5.[10]

This makes sense, because the "critical question … is whether 'the essence' of the claimed right is a right not to stand trial." *Van Cauwenberghe*, 486 U.S. at 524 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985)). And the "essence" of church autonomy is not avoiding the burdens of trial. It is religious organizations' "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952). That "power to decide" is the essence of church autonomy. It is why a court cannot set aside a church's discipline

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[10] Only "one category of cases exists outside this dichotomy," and it is not collaterally appealable: "a nonmerits-based defense that also is not an immunity … because it does not serve sufficiently 'weighty public objective[s].'" *GEO Group*, 607 U.S. ____, slip op. at 5 n.1 (quoting *Will*, 546 U. S. at 353). This wrinkle "never arises if the defense is on the merits." *Id.*

of a bishop because it interprets the church's constitution differently than the church. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 725 (1976). It is why the government cannot "contradict a church's determination of who can act as its ministers" or serve in other positions of similarly "vital religious duties." *Hosanna-Tabor*, 565 U.S. at 185 (first quotation); *Our Lady*, 591 U.S. at 756 (second quotation). Such intrusions remove religious organizations' "power to decide" by making them follow the government's decision on a religious matter, rather than their own.

Religious organizations' power to decide religious matters for themselves is not effectively destroyed if vindicated after final judgment. If a court improperly overrules a religious organization on a religious matter, that error can be reversed in a post-judgment appeal. The religious organization's autonomy will not be destroyed, because it will maintain the "power to decide for [itself]." *Kedroff*, 344 U.S. at 116.

Contrast this with the collaterally appealable immunities, all of which have at their core the right to be free from litigation. For sovereign immunity, "[t]he very object and purpose of the 11th Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (quotation omitted). Similarly, "the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action." *Mitchell*, 472 U.S. at 525. The same is true of qualified immunity. *Id.* at 525-26. And the

Double Jeopardy Clause and the Speech or Debate Clause both provide "an explicit … constitutional guarantee that trial will not occur." *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 801 (1989). The First Amendment contains no such explicit guarantee, because the essence of its protection is not freedom from litigation. It is the "power to decide" religious matters for oneself. *Kedroff*, 344 U.S. at 116.

USCCB argues that church autonomy confers an immunity from suit because it prohibits civil-court "inquiry" and "adjudication" regarding religious matters. Pet. 16-17. But as explained above, a prohibition on inquiry and adjudication does not equal a collaterally appealable immunity from suit. *Supra* § I.B (discussing, as examples, the political-question doctrine and Article III limits on adjudication). Improper adjudications of religious questions can be corrected in post-judgment appeals, just like improper adjudications of political questions and non-justiciable cases.

The core of USCCB's position hangs on a single line from *Catholic Bishop*, which stated that in certain circumstances the "very process of inquiry" into religious beliefs by a political-branch agency "may" "impinge on rights guaranteed by the Religion Clauses." *Catholic Bishop*, 440 U.S. at 502. *Catholic Bishop* was not about judicial proceedings at all, let alone a civil lawsuit between private parties. And it ruled on constitutional-avoidance grounds, without answering the "difficult" constitutional question. *Id.* at 507. Yet USCCB finds in this single line of text an immunity from suit in civil cases. This needle in a

haystack does not satisfy the "jaundiced eye" of the collateral-order doctrine. *Digital Equipment*, 511 U.S. at 873.

Nothing in *Catholic Bishop* describes church autonomy as an immunity from suit—much less in a civil lawsuit between private parties. To the contrary, *Catholic Bishop* confirms that the essence of church autonomy is the "power to decide" religious issues for oneself—a right vindicable in a post-judgment appeal. *Kedroff*, 344 U.S. at 116. The potential problem in *Catholic Bishop* was that the NLRB would "go beyond resolving factual issues" and resolve religious issues, thereby infringing religious schools' power to decide those issues for themselves. *Catholic Bishop*, 440 U.S. at 502. And *Catholic Bishop*'s progeny confirm that it was about protecting religious schools' power to decide religious issues for themselves, without "second-guessing" by the government. *See, e.g.*, *Duquesne Univ. of the Holy Spirit v. NLRB*, 947 F.3d 824, 835 (D.C. Cir. 2020) (quotation omitted).

Indeed, after *Catholic Bishop*, this Court held that church-autonomy rights threatened by government investigations are adequately vindicable in after-the-fact judicial review. *Dayton*, 477 U.S. at 628; *supra* § I.B (discussing *Dayton*). So even in the very context of *Catholic Bishop* (a government investigation into a religious school's employment decisions), this Court's precedents foreclose USCCB's claim that waiting for post-investigation review irrevocably destroys church-autonomy rights.

This Court recently confirmed the same thing in declining interlocutory review of a state court's

rejection of a church-autonomy defense at summary judgment. *Gordon College*, 142 S. Ct. 952. Although four Justices thought the ruling "reflect[ed] a troubling and narrow view of religious education," they saw "nothing that would preclude [the defendant] from appealing … when the decision is actually final," i.e., after the plaintiff "prevails in the trial court." *Id.* at 954-55 (statement of Alito, J., respecting the denial of certiorari). Thus, these Justices joined in the denial of certiorari on the "understanding" that a post-judgment appeal would adequately protect the defendant's church-autonomy rights. *Id.* at 955.

Finally, the possibility that some pretrial investigations may cross the line into entanglement does not warrant a categorical right of immediate appeal in all cases. If a particular pretrial order poses a serious and immediate threat to church autonomy, that is the province of mandamus, not the collateral-order doctrine. *See Mohawk*, 558 U.S. at 114. "As long as the class of claims, taken as a whole, can be adequately vindicated by other means, the chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for jurisdiction under § 1291." *Id.* at 107 (cleaned up).

D. A categorical right of appeal in this context would be especially damaging to the virtues of the final-judgment rule.

This Court's "practical" construction of § 1291 requires "a healthy respect for the virtues of the final-judgment rule." *Mohawk*, 558 U.S. at 106.

For the collaterally appealable immunities, impact on those virtues is limited because the immunities are all-or-nothing: either you have the immunity or you do not. Once a defendant loses a motion to dismiss on, e.g., qualified immunity, it cannot continue to raise the defense in response to particular discovery requests or cross-examination questions. This prevents a constant stream of collateral appeals.

Church autonomy is not so clear-cut. After losing a motion to dismiss, defendants may continue to argue that certain issues, lines of inquiry, or discovery requests impermissibly entangle the court in religious affairs. For example, if the D.C. Circuit were to affirm the denial of USCCB's motion to dismiss in an interlocutory appeal, USCCB could later argue that any given discovery request goes beyond the secular claims and intrudes on its religious autonomy. And it could argue at summary judgment that the case has developed to require adjudication of religious questions. And it could object to a question at trial because it comes too close to a religious subject. USCCB can (and likely will) make all of these arguments throughout this case. The final-judgment rule ensures that each of these invocations of church autonomy does not result in a separate appeal.

But if USCCB gets what it asks for, then every defendant would have a categorical right to immediately appeal every ruling issued over a church-autonomy objection, including "every time the district court issued an evidentiary or discovery order." App.58a (Edwards, J., concurring in the

denial of rehearing en banc). Each of those invocations of church autonomy would be subject to non-discretionary immediate appeal. As Judge Edwards pointed out, circuit courts "could have interlocutory review after interlocutory review after interlocutory review, endlessly," with no choice but to hear them. *Id.* And "it would be no consolation that a party's meritless … claim was rejected on immediate appeal; the damage to the efficient and congressionally mandated allocation of judicial responsibility would be done, and any improper purpose the appellant might have had in saddling its opponent with cost and delay would be accomplished." *Digital Equipment*, 511 U.S. at 873.

This arsenal of successive appeals would be available to any organization claiming religious beliefs—even those that seem "incredible, if not preposterous, to most people." *United States v. Ballard*, 322 U.S. 78, 87 (1944). For example, the Church of Wicca (witchcraft) and transcendental-meditation organizations could each file appeal after appeal in any case against them. *See Dettmer v. Landon*, 799 F.2d 929, 932 (4th Cir. 1986) (Wicca gets First Amendment protection); *Malnak v. Yogi*, 592 F.2d 197, 214 (3d Cir. 1979) (so does transcendental meditation). USCCB's categorical rule would make all such organizations effectively invulnerable to suit.

Take as an example the House of Prayer Christian Churches of America, an organization that pressured congregants into marriages and divorces, forced them to live in properties that generated income for church leaders, and defrauded veterans to funnel their Veterans Administration benefits into church-

controlled accounts.[11] A categorical right of appeal for church-autonomy defenses would make a lawsuit against this organization practically impossible. It could argue that any discovery request, evidentiary motion, or line of inquiry would intrude on its religious autonomy, and it would have an immediate, non-discretionary right of appeal every time. Indeed, it would likely make many of the same arguments USCCB makes here—e.g., that discovery into its communications, accounting, and affected members would irrevocably impair its religious autonomy.

USCCB attempts to mitigate this problem by narrowing the question presented to orders denying "dispositive" motions "on legal grounds." Pet. i. This attempt fails for two reasons.

First, USCCB's argument that such orders are conclusive and irreparable is that they determine that defendants will have to engage in discovery and trial. *See, e.g.*, Pet. 1 (describing the "state interference" as "demands for lists of papal donors, accounting for the Pope's use of Peter's Pence, and disclosure of the Bishops' internal communications"). If this warrants collateral appeal, it applies *more* strongly to orders compelling discovery or evidentiary rulings (which directly order defendants to provide information) than it does to denials of motions to dismiss (after which the court has further opportunities to limit discovery or questioning). USCCB's attempt to limit the issue to dispositive

[11] *Eight members of the House of Prayer Christian churches indicted for fraud schemes in Operation "False Profit"*, IRS.gov (Sept. 10, 2025) https://perma.cc/9CMK-BB73.

rulings just shows that what it is really after is a defense to liability.

Second, the district court's denial of USCCB's pleading-stage invocation of church autonomy was not "on legal grounds," i.e., as a matter of law. It was based on the facts alleged in the complaint, which USCCB disputes. *See* App.36a, App.194a-223a. For example, USCCB disputes the language of the representations it made about Peter's Pence. App.202a-206a. This dispute matters for USCCB's church-autonomy defense, because it determines whether understanding those statements requires interpreting religious concepts. *Compare, e.g.*, App.204a (alleging that USCCB stated, "Funds from this collection help victims of war, oppression, and natural disasters"), *with* Pet. 30 (arguing that this case requires interpretation of what it means to be a "witness to charity" and "assist the charitable works of Pope Francis"). And the district court made clear that if the facts develop to require adjudication of religious questions, it will not get involved. App.36a.

III. The question presented does not need this Court's review, and this case is a poor vehicle to decide it.

A. The church-autonomy doctrine has been around for over a hundred and fifty years. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872). During that time, it has never enjoyed categorical exemption from the final-judgment rule. Like virtually all other litigants, defendants claiming religious freedom from state action have waited until after final judgment to file their appeals. And when an intrusion is reversed,

their "power to decide for themselves" is restored. *Kedroff*, 344 U.S. at 116.

This does not mean that church-autonomy defenses cannot be applied at the threshold of litigation. If it is clear from the complaint that the lawsuit will require religious entanglement, the district court should dismiss the claims. And if certain discovery requests intrude on religious autonomy, the district court should limit them. The question here is not the timing of the defense, it is the timing—and number—of appeals. On that question, Congress determined that the strain on appellate and public resources from allowing immediate appeal as a matter of right outweighs the cost to litigants who must wait for final judgment. And that is especially true for something like church autonomy, which could generate "a constant stream of interlocutory review" from discovery and evidentiary rulings. App.57a (Edwards, J., concurring in the denial of rehearing en banc); *supra* § II.D.

When immediate appellate review is needed, certification and mandamus provide case-specific tools for correcting new or serious errors. *Mohawk*, 558 U.S. at 111. For example, in *Demkovich*, the district court denied a motion to dismiss on church-autonomy grounds but certified its decision for interlocutory review under § 1292(b). *Demkovich*, 3 F.4th at 974. The Seventh Circuit reviewed the decision and reversed it. *Id.* at 985. Similarly, when needed, a "writ of mandamus affords protection for religious-institution litigants challenging district court orders that reject First Amendment defenses." *Garrick*, 95 F.4th at 1114.

Thus, this Court need not disturb the uniform circuit holdings declining to create a new entire category of automatic interlocutory appeal.

B. At a minimum, the First Amendment can withstand the time it would take for this Court to decide the issue with a full bench. Justice Jackson would likely be recused because she oversaw this case on the district court and heard argument on USCCB's motion to dismiss. Deciding cases without a full bench "disrupt[s] and distort[s]" this Court's work and should be avoided when possible. *Moore v. United States*, 144 S. Ct. 2, 4 (2023) (statement of Alito, J.). There will be other opportunities for the full Court to decide this issue—this is the third petition for certiorari on the issue in as many years.

C. Waiting for another case to decide this issue will also give *GEO Group* time to percolate in the circuit courts. "It is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance." *CRST Van Expedited, Inc. v. EEOC*, 578 U.S. 419, 435 (2016). No court has yet applied *GEO Group* to pretrial denials of church-autonomy defenses. This Court should not do so in the first instance.

CONCLUSION

The Court should deny the petition.

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