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

REPLY BRIEF FOR PETITIONERS

KEVIN T. BAINE
EMMET T. FLOOD
RICHARD S. CLEARY, JR.
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, D.C. 20024
(202) 434-5000
eflood@wc.com

DANIEL H. BLOMBERG
Counsel of Record
REBEKAH P. RICKETTS
LAURA WOLK SLAVIS
COLTEN L. STANBERRY
JORDAN T. VARBERG
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, D.C. 20006
(202) 955-0095
dblomberg@becketfund.org

Counsel for Petitioner

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REPLY

Respondent does not dispute that his lawsuit seeks to pit millions of Catholics against their Church over what was said at Mass about an offering to the Pope. He concedes that he has demanded the Church turn over the names of every Catholic donating to the offering, detail how the Pope used it, and disclose internal deliberations with the Holy See. And he doesn't seriously dispute that his claims violate the First Amendment. Instead, like the court below, he argues that any violation can await later appeal—when redress is impossible.

That argument bulldozes centuries of history and caselaw on church-state relations in our Nation. In their place, Respondent offers a new "essence" of church autonomy that provides no protection from the coercive effects of judicial interference—here, entangling litigation that demands the return of religious offerings the Pope used solely for religious purposes. And Respondent's "neutral principles" position eviscerates the First Amendment's special solicitude for religious bodies, leaving them on essentially the same footing as McDonald's in defending against class-action litigation.

Such a sweeping departure from constitutional tradition breaks with courts, judges, and scholars nationwide and deepens three acknowledged splits. Far from offering "dicta" and "loose language," the other side of the split rejects Respondent's views not just as mistaken, but as an existential threat to matters of constitutional structure. Each of these splits is worthy of review. All three together urgently call for intervention.

I. There is an acknowledged split over whether church autonomy provides an immunity from suit.

While Respondent David O'Connell claims that the collateral-order doctrine is the "only" question in this case, BIO.i, his brief confirms that the threshold issue is whether church autonomy provides an immunity from suit. See, *e.g.*, BIO.10. So does this Court's decision in *GEO Group* v. *Menocal*, which reaffirmed that cases like this "turn on whether the defendant has asserted a defense to liability or instead an immunity from suit." 146 S.Ct. 774, 781 (2026).

As Judge Rao noted, courts are sharply split over whether church autonomy provides an immunity from suit, App.89a, with most holding it does, Pet.12-15. O'Connell embraces the minority view, insisting that religious bodies must litigate unconstitutional claims before getting any relief. BIO.10. But he fails either to disprove the split's existence or justify his side of it.

A. Lower courts and judges are divided.

Even while claiming there's no split, O'Connell fails to address much of the disagreement. He doesn't mention—much less engage—the "chorus of circuit-court dissenters" against him. App.51a (citing fifteen federal appellate judges). He ignores the several state high courts—including the D.C. Court of Appeals—that have determined that church autonomy operates as an immunity. Pet.14-15. And he doesn't dispute the Ninth Circuit's recognition in *Markel* that, where applicable, church autonomy "generally prohibits merits discovery and trial," Pet.14—the crucial indicia of an immunity as opposed to a "'mere defense' to liability," *GEO Grp.*, 146 S.Ct. at 782.

Instead, O'Connell strains to distinguish *McRaney* v. *North American Mission Board*'s holding that church autonomy confers a "constitutional immunity from suit." 157 F.4th 627, 641 (5th Cir. 2025). But *McRaney* isn't a one-off, *contra* BIO.12-13. It reflects decades of Fifth Circuit precedent recognizing that the "independent" injury caused by the "coercive" process of entangling merits litigation is "alone" "enough to bar the involvement of civil courts." *Combs* v. *United Methodist Church*, 173 F.3d 343, 350 (5th Cir. 1999); Pet.13.

Nor is *McRaney*'s immunity holding dicta. BIO.12. Rather, it was central to rejecting the plaintiff's argument for state-court remand to allow continued litigation of his claims. He argued that church autonomy was jurisdictional and so required dismissal without prejudice, which would not have preclusive effect in state court. *McRaney* held instead that church autonomy functioned like qualified immunity: a nonjurisdictional threshold issue that preclusively barred the merits of the plaintiff's claims. 157 F.4th at 646.

This holding also addresses O'Connell's argument that a merits defense cannot provide immunity from suit. BIO.1, 12-13. Like qualified immunity, a church autonomy defense doesn't require directly challenging the correctness of a plaintiff's claims, but nonetheless bars them "on the merits." *McRaney*, 157 F.4th at 643-647 (quoting *Hosanna-Tabor* v. *EEOC*, 565 U.S. 171, 195 n.4 (2012)); accord Scholars Br.8-9; *GEO Grp.*, 146 S.Ct. at 782 (noting this as another indicia of an immunity). Indeed, *McRaney* observed that the panel in this case seemed "confus[ed]" about how church autonomy functioned as a nonjurisdictional defense. 157 F.4th at 642.

And while O'Connell tries to diminish the Third, Fourth, and Sixth Circuits' holdings recognizing church autonomy's structural nature, he acknowledges that some structural limitations are immunities. BIO.17-18. Church autonomy is among them because it "immunizes" religious bodies on matters within its scope, categorically "exempt[ing]" them "from legal process." *Billard* v. *Charlotte Catholic High Sch.*, 101 F.4th 316, 325-326 (4th Cir. 2024). That's not "loose language," BIO.19-20; it's a reflection of the longstanding rule that "constitutional structure" "confines the state and its civil courts to their proper roles," barring the "very process" of "scrutiny [by] civil authorities," *Billard*, 101 F.4th at 325, 329. Belmont Abbey Br.5-13.

B. The decision below is wrong.

In "matters of church government as well as those of faith and doctrine," religious bodies retain not only their "power to decide," but also their "free[dom] from state interference" in making those decisions. *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (citing *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1872)). Thus, church autonomy protects religious organizations from "the very process of inquiry," *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1979), as "even a brief inquiry into church governance or doctrine can chill the free exercise of religion," Scholars Br.14.

Where the D.C. Circuit ignored *Watson*, *Kedroff*, and *Catholic Bishop*, Pet.12, O'Connell rewrites them. He reduces the "essence" of church autonomy to only the "power to decide," nodding to but ultimately excising *Kedroff*'s promise of "free[dom] from state interference"—the freedom that gives that power meaning. Compare 344 U.S. at 116 (citing *Watson*), with BIO.27.

And he claims courts can overlook *Catholic Bishop*'s rule as just a "needle in a haystack." BIO.28-29.

Watson, *Kedroff*, and *Catholic Bishop* are not so easily dismissed. That's why every court on the right side of the split has relied on some combination of their reasoning to protect religious groups from more than just liability. Pet.13-15; EEOC Officials Br.6-7. It's why, for instance, *Catholic Bishop* required "forward-looking, prophylactic" protection against the process of inquiry by stripping the NLRB's authority to intrude into Catholic-school governance. CCCU Br.19-20. And it's why this Court's modern precedent has held that church autonomy bars not only "judicial decisions," BIO.21, but also "intervention," "intrusion," "review," and "influence," *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746, 762 (2020).

After underreading precedent, O'Connell overreads a *Younger*-abstention case that didn't concern church autonomy: *Ohio Civil Rights Commission* v. *Dayton Christian Schools*, 477 U.S. 619 (1986). BIO.16. The respondents in *Our Lady* and *Hosanna-Tabor* tried the same thing. See Respondents' Br.46-48, *Our Lady*, No. 19-267 (U.S. Mar. 4, 2020); EEOC Br.55, *Hosanna-Tabor*, No. 10-553 (U.S. Aug. 2, 2011). Both times, this Court ignored *Dayton*. And no court in the split has found it controlling.

As Judge Rao explained, this Court's precedents demonstrate that the Religion Clauses protect religious bodies "not merely [against] final decisions," but also "the 'very process of inquiry.'" App.84a-85a. Thus, when it applies, church autonomy protects religious organizations from "all the usual 'burdens of litigation,' including a trial"—the core of an immunity. *GEO Grp.*, 146 S.Ct. at 782.

II. There is an acknowledged split over whether dispositive church autonomy defenses can be immediately appealed.

There is also an acknowledged split over interlocutory appeal for church autonomy defenses. Pet.19-20.

A. Lower courts and judges are divided.

Courts on the wrong side of the split treat the Fifth Circuit's decision in *Whole Woman's Health* as solely about the "predicament" of nonparties facing subpoenas. BIO.11. The Fifth Circuit rejects that reading, holding that, although it typically prohibits a "nonparty's [interlocutory] appeal from a discovery order," *Whole Woman's Health* was different because of the "substantial First Amendment implications." *Leonard* v. *Martin*, 38 F.4th 481, 486-487 (5th Cir. 2022); see *Vantage Health Plan* v. *Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450 n.2 (5th Cir. 2019) (*Whole Woman's Health* did not "reach the question whether third-party status alone" justified appeal). So, in the Fifth Circuit, *Whole Woman's Health* provides "firm ground" to parties *and* nonparties who seek immediate review of "pretrial orders [that] arguably infringe on First Amendment rights." *X Corp.* v. *Media Matters*, 120 F.4th 190, 195-196 (5th Cir. 2024). *McRaney* is thus correct: the Fifth Circuit allows "immediate appellate review" when churches face "irreparable injuries" to their autonomy. 157 F.4th at 644.

Next, O'Connell discounts five state high courts rejecting his position, arguing they aren't governed by *Cohen*. BIO.14. But they *are* governed by the Religion Clauses, *McClendon* v. *City of Albuquerque*, 630 F.3d 1288, 1296 (10th Cir. 2011) (Gorsuch, J.) (courts are "bound" to "reconcile" procedural rules with the

Constitution), so the relevant issue is whether respecting those clauses can require interlocutory appeal. They do, according to the "overwhelming majority" of state courts to reach the question—and the only dissenting state was led astray by *federal* decisions. States Br.2. As the numerous unanswered judges and scholars against O'Connell show, this deep division demands review. Pet.22; Muller Br.15-16.

B. The decision below is wrong.

The D.C. Circuit sided against the Bishops primarily because it rejected church autonomy as an immunity. App.22a-23a; BIO.15-17. As shown above, that was wrong.

GEO Group confirms this error was decisive. Immediate appeal is normally appropriate where the defendant asserts "an immunity from suit," 146 S.Ct. at 781, especially where it protects "important constitutional" interests, *id.* at 787 (Alito, J., concurring). Thus, church autonomy is immediately appealable for the same reasons other important immunities are: its denial is conclusive, distinct from the merits of the underlying claims, and effectively unreviewable. Pet.20, 23-24; Muller Br.18; Scholars Br.15-19.

O'Connell's counterarguments fail. First, *contra* BIO.3-5, rulemaking is not the sole way to recognize new classes of appealable orders. This Court has "not closed the book on *Cohen*," recently "designat[ing] another defense as an immunity and evaluat[ing] it in an interlocutory posture." *GEO Grp.*, 146 S.Ct. at 790 (Alito, J., concurring). Circuits, including the D.C. Circuit, routinely agree. See, *e.g.*, C.A. Muller Br.14. And were rulemaking the only answer, *GEO Group* could have been a single sentence.

O'Connell's insistence on mandamus and Section 1292(b) would likewise render *GEO Group* superfluous. BIO.35. And consigning church autonomy to such discretionary review would be "freakish," especially since courts on the wrong side of the split have regularly denied it. Weinberger & Nestor, *Church Autonomy and Interlocutory Appeals*, 102 Notre Dame L. Rev. (forthcoming 2026) (manuscript at 68 & nn.307, 337), https://perma.cc/LHX2-8GT8.

Next, *Feliciano*'s "bear[ing]," BIO.23, is clear: it involved threats of irreparable harm to the Church's core First Amendment rights, which the Solicitor General agreed justified immediate appeal, U.S. Br.8, *Feliciano* v. *Roman Catholic Archdiocese*, No. 18-921 (U.S. Dec. 9, 2019). By contrast, *Gordon College* lacked the robust presentation of irreparable harm here. BIO.30. Where such harm has been caused by pretrial "order[s] that violate[] the Constitution," members of this Court have expressed openness to immediate appeal. *Yeshiva Univ.* v. *YU Pride All.*, 143 S.Ct. 1, 3 (2022) (Alito, J., joined by Thomas, Gorsuch, and Barrett, JJ., dissenting from denial of certiorari).

Finally, respecting church autonomy opens no floodgates. BIO.31. Church autonomy defenses are uncommon, and their structural status makes them distinct even among First Amendment protections. See Weinberger & Nestor, *supra*, at 69, 73. Further, immediate appeals are generally unnecessary with appropriate case management. *Id.* at 61-62. And standard limitations on immunity appeals—such as entertaining only issues of law—apply. *Id.* at 72. Unsurprisingly, then, although six courts have for many decades allowed immediate church-autonomy appeals, O'Connell fails to identify even one example of abuse.

III. There is an acknowledged split over whether the "neutral principles" approach can circumvent church autonomy.

By adopting the "neutral principles" approach, the D.C. Circuit rendered church autonomy a "dead letter," App.67a, and joined an entrenched, growing split over whether that approach applies outside church property disputes, Pet.25-28. O'Connell's arguments that no "disagreement" exists and that the panel had nothing binding to say about it are untenable. BIO.20-22.

A. Lower courts and judges are divided.

"Everyone" does not "agree[]," *contra* BIO.21, that *Jones* v. *Wolf* governs all church autonomy cases. Five courts have followed this Court and limited the "neutral principles" approach to church-property disputes, rejecting O'Connell's idea that broadly applying the approach "cannot be said to 'inhibit' the free exercise of religion[.]" BIO.21 (quoting *Jones* v. *Wolf*, 443 U.S. 595, 606 (1979)). See Pet.27-28. Judges Rao, Walker, Park, Ho, and Bress (and those joining their opinions) have likewise warned that the approach "eviscerate[s]," "sideline[s]," and "dead[ens]" church autonomy. Pet.25-29. Indeed, just before O'Connell's response, yet another court acknowledged and joined the "split as to whether the neutral-principles exception may apply beyond the context of church property." *Singh* v. *Second Jud. Dist. Ct.*, — P.3d —, 2026 WL 903225, at *4-5 (Nev. Apr. 2, 2026).

O'Connell quibbles about only three of the courts in the split: the Fifth, Sixth, and Eleventh Circuits. BIO.21-22. But the Fifth Circuit has long held that neutral principles don't apply in church governance

disputes. *Simpson* v. *Wells Lamont*, 494 F.2d 490, 493-494 (5th Cir. 1974). *McRaney*'s first iteration agreed, as it had to, stating only that it was "[un]certain" that the case *would* "interfere with matters of church government," 966 F.3d 346, 351 (5th Cir. 2020)—a lack of certainty the court came to "[r]egret[.]" 157 F.4th at 654. As for the other circuits, O'Connell's cited cases don't change the split. One didn't address neutral principles; the other is unpublished.

B. The decision below is wrong.

Unable to credibly deny a split, O'Connell claims the D.C. Circuit didn't decide the question at all. BIO.20-21. But see C.A. Resp. to Pet. for Reh'g.17-19.

Yet the D.C. Circuit could not have been clearer: "So long as a court relies 'exclusively on' * * * neutral principles of law, it steers clear of any violations of the church autonomy doctrine." App.15a. The point bore repeating: "Put simply, if a plaintiff can plausibly assert a secular claim capable of resolution according to neutral principles of law, the First Amendment does not bar" it. App.23a.

That holding permeated the D.C. Circuit's analysis. In particular, the court closely and repeatedly tied its "neutral principles" holding to its rejection of the idea that church autonomy "establishes a constitutional right to immunity from suit in cases concerning secular claims" that "warrant[s]" "immediate review." App.22a-23a. This adoption of neutral principles was a "fundamental error" that infected its analysis of *all three* questions presented. App.63a; accord App.53a; Aleph Br.20-22.

As Judge Rao explained, this Court rejected similar neutrality end-runs in *Hosanna-Tabor* and *Our Lady*. App.67a; Aleph Br.15. Anything less invites plaintiffs to plead around church autonomy and render the First Amendment a "word game." *Chiles* v. *Salazar*, 146 S.Ct. 1010, 1023 (2026); Pet.29-31; ACNA Br.9-10. "[A]ncient" principles of church autonomy—predating the Founding—deserve better. *McRaney*, 157 F.4th at 634; Belmont Abbey Br.5-9.

IV. This case cleanly presents questions of nationwide importance.

This case presents a clean church autonomy question—whether the First Amendment limits how plaintiffs use civil courts to "structural[ly] reform" religious institutions. App.72a. O'Connell doesn't dispute that the Pope used Peter's Pence solely for religious purposes, but disagrees with his decision to use parts of the millennium-old offering for long-term stewardship and to support the Holy See. BIO.8 ("investments and overhead"); App.183a. And he asks civil judges and juries to second-guess the allegedly imprecise "essential message" in "all" the pulpit invitations: that Peter's Pence "support[s] the charitable works of Pope Francis." App.175. He thus seeks to change how "the Catholic Church speaks about, solicits, and deploys religious donations." App.72a.

If permitted to proceed, O'Connell's suit will greenlight plaintiffs cloaking internal religious disputes as fraud claims. See, *e.g.*, Major Organizations Br.3-6 (detailing rise of tithing-refund class actions). It will embolden governments to drag religious institutions through "time-consuming" investigations, knowing church autonomy violations cannot be addressed for years, if ever. EEOC Officials Br.12-14 (quoting *VF*

Jeanswear LP v. *EEOC*, 140 S.Ct. 1202, 1202 (2020) (Thomas, J., dissenting from denial of certiorari)). And it will encourage litigants to seek to force nonprofit religious organizations to endure intrusive, crushing discovery and trial—or "buckle[] under the pressure" and settle. Weinberger Br.10-13 (detailing examples of both).

O'Connell doesn't address those realities, and his vehicle arguments fall flat. First, despite representing below that the Bishops' "First Amendment issue turns on the pleadings" and not on "disputed fact[s]," App.306a; D.D.C. Dkt.51 at 10, O'Connell now claims the opposite, BIO.34. But his "dispute" comes down to "*who decides* what Catholic charity means"—"the Catholic Church or American civil courts." Garvey Br.14. That's not a jury question.

Second, O'Connell speculates that this Court may have less than a "full bench," which justifies making the First Amendment "withstand" indefinite delay. BIO.36. But greater sensitivity to the First Amendment has led this Court to decide weighty matters even with less-than-full participation. See, *e.g.*, *Agency for Int'l Dev.* v. *AOSI*, 568 U.S. 1113 (2013). Sensitivity is warranted here, given the well-known pressures of putative class-action litigation. Pet.32; cf. *Mirabelli* v. *Bonta*, 146 S.Ct. 797, 803 (2026) (recognizing "irreparable harm" from "potentially protracted appellate process").

Finally, O'Connell claims this Court should allow *GEO Group* to percolate. BIO.36. But *GEO Group* simply applied longstanding law, making percolation unnecessary.

By contrast, the issues in this case have undergone substantial percolation over the past three years. In addition to now-acknowledged, deepening circuit splits and an ever-increasing number of extensive judicial and scholarly writings, real-world irreparable harm has been put on display in the aftermath of "*McRaney*, *Belya*, and *Faith Bible*." Weinberger Br.8-13. Now is the best time to answer the exceptionally important questions presented here. Pet.31.

CONCLUSION

The petition should be granted.

Respectfully submitted.

KEVIN T. BAINE
EMMET T. FLOOD
RICHARD S. CLEARY, JR.
WILLIAMS &
CONNOLLY LLP
680 Maine Ave. SW
Washington, D.C. 20024
(202) 434-5000
eflood@wc.com

DANIEL H. BLOMBERG
Counsel of Record
REBEKAH P. RICKETTS
LAURA WOLK SLAVIS
COLTEN L. STANBERRY
JORDAN T. VARBERG
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, D.C. 20006
(202) 955-0095
dblomberg@becketfund.org

Counsel for Petitioner

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