No. _____

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

For over 1,000 years, Catholics have given an annual offering to the Pope called Peter's Pence. A parishoner claims he was misled during Mass by an invitation from the pulpit that imprecisely described the Pope's use of Peter's Pence. He sued the U.S. Conference of Catholic Bishops, seeking discovery into the donors to, uses of, and internal deliberations about Peter's Pence. He requests an injunction restraining how the Church describes and uses the offering, and a refund for himself and a class of millions of donors.

The Bishops moved to dismiss under the Religion Clauses' church autonomy doctrine. The district court refused, holding the dispute could be resolved under the "neutral principles" approach developed for church property disputes. The D.C. Circuit dismissed the Bishops' interlocutory appeal, concluding that church autonomy provides only a defense against liability, not a structural immunity from suit, and that the "neutral principles" approach avoided "any violations" of church autonomy.

The questions presented are:

1. Whether church autonomy provides a structural limit on state power that protects churches from the burdens of litigating unconstitutional claims.

2. Whether a church may immediately appeal a dispositive church autonomy defense that was denied on legal grounds.

3. Whether the "neutral principles" approach applies outside the church property context to a dispute over a church's description and use of an offering that was used solely for religious purposes.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner the United States Conference of Catholic Bishops was the defendant-appellant below. Respondent David O'Connell was the plaintiff-appellee below.

Petitioner represents that it does not have any parent entities and does not issue stock.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *David O'Connell* v. *United States Conference of Catholic Bishops*, No. 23-7173, U.S. Court of Appeals for the D.C. Circuit. Judgment entered April 25, 2025.
- *David O'Connell* v. *United States Conference of Catholic Bishops*, No. 20-cv-1365, U.S. District Court for the District of Columbia. Motion for judgment on the pleadings, motion to dismiss, and motion for summary judgment denied November 17, 2023.
- *David O'Connell* v. *United States Conference of Catholic Bishops*, No. 20-cv-31, U.S. District Court for the District of Rhode Island. Motion to transfer case granted on May 21, 2020.

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INTRODUCTION

This is a lawsuit by a parishioner over money he gave to the Pope as part of Peter's Pence, an offering Catholics have made for over 1,000 years. He demands the U.S. Conference of Catholic Bishops refund the offering to a putative class of millions of Catholics nationwide. And he demands an injunction restraining how the Church describes and uses Peter's Pence.

Such disputes are beyond the ken of civil courts. The Religion Clauses of the First Amendment ensure churches can decide for themselves, free from state interference, matters of church governance. That's what the Church's description and religious use of a millennium-old offering to the Pope *is*: a matter of church governance. Thus, the state interference required to adjudicate this lawsuit—which involves demands for lists of papal donors, accounting for the Pope's use of Peter's Pence, and disclosure of the Bishops' internal communications with the Holy See about Peter's Pence—would violate the church autonomy doctrine.

Yet instead of dismissing the lawsuit, the court of appeals ordered it to proceed. That decision, as Judge Rao explained below, was built on a "fundamental error" that renders church autonomy "a dead letter" and deepens conflicts among lower courts. And Judge Walker, invoking a "chorus" of judges and scholars, warned the decision threatens "irreparable" harm.

The decision below broke from the precedents of other courts in three ways. *First*, the D.C. Circuit joined four courts in a recognized split by holding that the Religion Clauses provide a defense to liability only, not an immunity from merits discovery or trial. That holding—which ignored this Court's precedent

that the very process of inquiry can harm church autonomy—splits with ten federal appellate and state high courts. As Judge Oldham recently explained for the Fifth Circuit, church autonomy is a structural "constitutional immunity from suit" that "must be resolved at the threshold of litigation" to protect against judicial intrusion into ecclesiastical affairs. *McRaney* v. *North Am. Mission Bd.*, 157 F.4th 627, 641 (2025).

Even in the minority circuits, eleven dissenting judges have agreed that church autonomy provides a constitutional immunity. App.84a (Rao, J.); App.51a-52a (Walker, J.); *Garrick* v. *Moody Bible Inst.*, 95 F.4th 1104, 1117 (7th Cir. 2024) (Brennan, J.); *Belya* v. *Kapral*, 59 F.4th 570, 580 (2d Cir. 2023) (Park, J., joined by Livingston, C.J., and Sullivan, Nardini, and Menashi, JJ., dissenting from denial of rehearing en banc); *Tucker* v. *Faith Bible Chapel*, 53 F.4th 620, 625 (10th Cir. 2022) (Bacharach, J., joined by Tymkovich and Eid, JJ., dissenting from denial of rehearing en banc). So have Professors McConnell and Laycock and other leading Religion Clauses scholars.

Second, the D.C. Circuit joined a separate acknowledged split when it held, along with four other courts, that denials of church autonomy defenses are ineligible for immediate appellate review. The Fifth Circuit and five state high courts disagree. They recognize that "as with any other immunity," denial of church autonomy defenses "cannot be remedied after the district court renders final judgment." *McRaney*, 157 F.4th at 644-645. Thus, "immediate appeal" is necessary to protect religious groups from "deprivations of the First Amendment's structural limits." *Id.* at 645. Again, the same chorus of dissenters and scholars agrees.

Finally, the D.C. Circuit entered a third split by holding that "any violations" of church autonomy can be avoided by applying the "neutral principles" approach. But five circuits and state high courts, following this Court's lead, reject extending that approach beyond church property disputes to circumvent church autonomy protections. And in separate writings, sixteen federal appellate judges have warned that the D.C. Circuit's rule eviscerates church autonomy, as every plaintiff purports to invoke "neutral" laws. See *Huntsman* v. *Corporation of the President of The Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 792 (9th Cir. 2025) (en banc) (Bress, J., joined by M. Smith, Nguyen, and VanDyke, JJ., concurring); *McRaney* v. *North Am. Mission Bd.*, 980 F.3d 1066, 1070 (5th Cir. 2020) (Ho, J., joined by Jones, Smith, Elrod, Willett, and Duncan, JJ., dissenting from denial of rehearing en banc); *Belya*, 59 F.4th at 580 (Park, J., dissenting); App.68a-69a (Rao, J.).

The decision below will cause irreparable harm, both now and in the future. O'Connell's claims will thrust civil courts into church pulpits and pews, attempt to pit millions of parishioners against their church, and second-guess the meaning of an offering given to the head of a foreign religious sovereign for over 1,000 years. More broadly, the decision below will deprive religious bodies of the full measure of independence guaranteed by the First Amendment. And when the lower court's neutral-principles exception is allowed to swallow the constitutional rule, that independence will be lost entirely. First Amendment issues of such "exceptional importance" merit "review[] by th[is] Court." *Belya*, 59 F.4th at 573 (Cabranes, J., dissenting from denial of rehearing en banc).

OPINIONS BELOW

The district court's oral order is unreported and reproduced at App.33a-42a. The D.C. Circuit's opinion is reported at 134 F.4th 1243 and reproduced at App.1a-30a. The opinions regarding the D.C. Circuit's denial of en banc review are reported at 2025 WL 3082728 and are reproduced at App.48a-94a.

JURISDICTION

The court of appeals entered judgment on April 25, 2025. App.125a. The petition for rehearing was denied on November 4, 2025. App.48a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]"

The text of 28 U.S.C. 1291 is reprinted in the Appendix. App.95a.

STATEMENT OF THE CASE

A. Peter's Pence

The *Obolo di San Pietro*, or "Peter's Pence," is an annual worldwide offering given by the Catholic faithful directly to the Pope. It began over 1,000 years ago, when Anglo-Saxon Catholics started sending the Pope annual contributions. *Peter's Pence: An Ancient Custom Still Alive Today*, The Vatican (June 2018), https://perma.cc/J2XZ-NUS2. It has roots in New Testament descriptions of offerings given to support the

ministry of Jesus Christ and the early church in Jerusalem. *History of Peter's Pence*, The Vatican, https://perma.cc/R6GM-P3ME (citing *Luke* 8:1-3; *John* 12:4-7). Peter's Pence is "highly symbolic as a sign of communion with the Pope"—a longstanding "expression of the participation of all the faithful in the Bishop of Rome's projects of good for the universal Church." Pope Benedict XVI, Address to Members of St. Peter's Circle (2006), https://perma.cc/MJ6D-8VTA.

The offering has long been important to the ministry of the Holy See. *Ibid.*; Pope Leo XIII, *Paternae* ¶ 14 (1899) (noting need to rely on "Peter's [P]ence constantly"); Pope Pius IX, *Saepe Venerabiles Fratres* ¶¶ 1, 4 (1871) (recognizing importance). Pope Benedict XVI explained that the "ancient collection of Peter's Pence" supports the Holy Father's "mission of evangelization and human advancement," providing "material support for the work of evangelization" and "the aid of the poor and the needy." Address to Members of St. Peter's Circle (2007), https://perma.cc/93LG-7BQP; accord Pope John Paul II, Address to Members of St. Peter's Circle (2003), https://perma.cc/9FDU-RT77; see also Congregation for Bishops, *Apostolorum Successores* ¶14 (2004) ("the special collection known as *Peter's Pence*" is "designed to enable the Church of Rome to fulfill properly its office of presiding in universal charity").

Thus, over a millennium after its inception, Peter's Pence remains a gift "offered by the faithful to the Holy Father" used both for "the many different needs of the Universal Church and the relief of those most in need." *Peter's Pence: How to Send Your Contribution to the Holy Father*, The Vatican (June 2018), https://perma.cc/KHF2-P8D8.

Peter's Pence is collected annually worldwide, typically on or near the Solemnity of Saints Peter and Paul, a liturgical feast day commemorating the martyrdom of both saints by their civil government. The offering is collected in dioceses and parishes and sent to the Vatican. The Pope controls how Peter's Pence is used. Code of Canon Law, Canons 331, 360.

Petitioner United States Conference of Catholic Bishops ("USCCB" or "the Bishops") is an assembly of bishops exercising pastoral functions on behalf of the Catholic faithful in America. USCCB offers promotional materials to dioceses that they may choose to use at their discretion, but USCCB does not oversee, collect, or distribute the offering. App.202a; *Office of National Collections*, USCCB, https://perma.cc/HRH4-JJBA. And under canon law, USCCB does not control how dioceses choose to speak about Peter's Pence. Canon 455 § 4. See also Canon 381; Canon 1266.

B. O'Connell's offering to the Pope

On January 22, 2020, Respondent David O'Connell filed a putative class-action complaint against the Bishops in federal district court. He seeks to represent "parishioners of Catholic churches throughout" the United States via a class of all persons nationwide who donated to Peter's Pence, which he estimates to be millions of individuals. App.170a, App.186a.

O'Connell's complaint alleges that he made a "cash donation" to Peter's Pence "during a Sunday Mass" at his church in Rhode Island after hearing an unspecified "solicit[ation] from the pulpit." App.184a. O'Connell alleges this solicitation misled him into thinking that Peter's Pence collections would be used "immediately" and "exclusively" for humanitarian purposes,

rather than for other religious purposes or investments intended to serve those purposes in the future. App.185a, App.187a-188a, App.189a-190a. He does not allege that the Pope or any other Church official took the offering for personal gain or nonchurch uses.

O'Connell claims that USCCB is liable in fraud for his misunderstanding because its promotional materials said Peter's Pence "support[s] the charitable works of Pope Francis for the relief of those most in need," and that contributing to Peter's Pence "witnesses to charity and helps the Holy See reach out compassionately to those who are marginalized." App.175a-176a. He requests a refund of parishioners' donations, damages, and injunctive relief restraining how the Church describes and uses Peter's Pence. App.191a.

C. District court proceedings

O'Connell sued the Bishops in the U.S. District Court for the District of Rhode Island. App.164a. On the Bishops' motion, the case was transferred to the U.S. District Court for the District of Columbia. It was assigned to then-Judge Ketanji Brown Jackson and, following her elevation, reassigned to Judge Cobb.

O'Connell served discovery requests seeking lists of all donors to Peter's Pence, all documents related to the ultimate use of Peter's Pence, all church laws and guidelines relating to Peter's Pence, and all communications with the "Holy See, Vatican City, [and] Apostolic Nunciature" relating to Peter's Pence. See, *e.g.*, App.308a. O'Connell told the district court that he will "need" such evidence to prove his claims, and that without records of the "collection, administration, accounting, or disposition" of Peter's Pence, he "cannot" make out his case. App.302a, App.305a.

The Bishops filed a motion to dismiss and for judgment on the pleadings, arguing that, among other things, O'Connell's claims violate church autonomy. In November 2023, the district court denied the motion in a short oral ruling. The court acknowledged that the church autonomy doctrine was a "threshold issue," since "federal courts lack jurisdiction over disputes that cannot be resolved without extensive inquiry into religious law and polity." App.34a. Nonetheless, it held that this case involved a "purely secular" dispute governed by "straightforward common-law principles," and therefore the "neutral principles" approach could resolve this dispute. App.35a, App.36a.

D. Appellate proceedings

On December 18, 2023, the Bishops filed a timely notice of interlocutory appeal. App.158a. After jurisdictional briefing, the D.C. Circuit sent the jurisdictional issues to a merits panel. App.115a-116a.

On April 25, 2025, the merits panel dismissed the Bishops' appeal for lack of jurisdiction. The court held that the church autonomy doctrine doesn't provide "an immunity from suit" or "trial," but is instead merely "a defense to liability" that can be adequately protected "after trial." App.22a-23a. Based on this view of the Religion Clauses' scope, the panel concluded that collateral order review under 28 U.S.C. 1291 was categorically unavailable. App.3a-5a. Further, the panel agreed with the district court that the Religion Clauses bar only judicial intrusion "into doctrinal disputes," and so resolving claims through reliance on "neutral principles of law" "steers clear of any violations of the church autonomy doctrine." App.15a. "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 judicial examination of that claim." App.23a. Thus, the panel saw further proceedings here as mere "encumbrance[s]" that could not justify "appellate court work." App.13a, App.19a.

On November 4, 2025, the D.C. Circuit denied rehearing en banc. In a 32-page opinion, Judge Rao dissented, concluding that O'Connell's lawsuit "encroaches on the heartland of matters committed to the Church's exclusive sphere" and rejecting each of the three core elements of the panel's ruling. App.93a.

First, drawing on the original meaning of the Religion Clauses and this Court's "repeated[]" decisions, Judge Rao concluded that church autonomy provides "a constitutional immunity from suit" because the "rights protected by the Religion Clauses are burdened not merely by final decisions, but also by the 'very process of inquiry leading to findings and conclusions.'" App.63a, App.84a-85a (quoting *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1979)). Second, she explained that, because church autonomy provides an immunity, courts cannot allow its protections to "be destroyed" by denying immediate appeal. App.92a. Third, Judge Rao warned that expanding the "neutral principles of law" approach beyond the church property context was a "fundamental error." App.63a. She noted that the panel's conclusions split with the Fifth Circuit and broke from precedent of the high courts of multiple states and the District of Columbia. App.89a. They also cost the Bishops any "meaningful route to protect their independence from judicial intrusion," harming "the important constitutional rights at stake." App.60a, App.94a.

Judge Walker concurred in the denial of rehearing based on the D.C. Circuit's "exceedingly high" rehearing standard, but agreed that the panel's decision "conflicts with the conclusions of many sister-circuit colleagues" and "threatens [the Bishops] with irreparable First Amendment harm." App.51a-52a, App.54a. He found the "chorus of circuit-court dissenters" "persuasive[]" in describing church autonomy as an immunity from merits proceedings and eligible for interlocutory appeal. App.51a (citing views of fifteen federal appellate judges). And he doubted the panel's reliance on "neutral principles," noting Judge Bumatay's contrary view that claims like O'Connell's inevitably intrude into religious matters. App.53a (citing *Huntsman*, 127 F.4th at 813).

Judge Edwards filed an opinion concurring in the denial, stating that his opinion for the panel was "a just application of the law" and "perfectly consistent with established law." App.55a. And even if it did create burdens that might be "imperfectly reparable" after class and merits litigation, the "mere identification of 'some interest' that would be 'irretrievably lost,'" App.56a, was less compelling than "respect for the virtues of the final decision rule," App.58a.

REASONS FOR GRANTING THE PETITION

I. The D.C. Circuit's decision sharpens an acknowledged split over whether church autonomy protects religious groups from the entanglement of litigating claims barred by the Religion Clauses.

This Court has long recognized that certain rights are not "mere[ly]" a "defense to liability" but an "entitlement not to stand trial or face the other burdens of litigation." *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985). These include constitutional immunities that "contest[] the very authority of the Government to hale [the defendant] into court to face trial." *Abney* v. *United States*, 431 U.S. 651, 659 (1977) (Double Jeopardy Clause). In such cases, the "full protection" of the right "would be lost" if the defendant were "forced to 'run the gauntlet'" and "endure a trial" that the Constitution prohibits. *Id.* at 662.

The Religion Clauses provide one such "constitutional immunity," Judge Rao explained below, as established by a long line of this Court's decisions "stretching back" over 150 years to its first church autonomy decision in *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1872). App.84a. That immunity "protects a sphere of church autonomy" in "matters of faith, doctrine, and internal governance" against "'secular control or manipulation,'" including via "judicial interference." App.84a (quoting *Kedroff* v. *Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952)). Thus, the "rights guaranteed by the Religion Clauses" may be violated "not only by the conclusions" reached in adversarial proceedings, "but also the very process of inquiry leadings to findings and conclusions." *Catholic Bishop*, 440 U.S. at 502; accord App.84a-91a, App.51a-52a.

Ignoring *Watson*, *Kedroff*, and *Catholic Bishop*, the D.C. Circuit joined four other courts in concluding that church autonomy functions solely as a defense to liability and not a protection against the process of litigation. Ten federal appellate courts and state high courts sharply disagree. Those courts recognize that church autonomy provides religious bodies a threshold structural protection against the entanglement and burden of litigating the merits of claims that run afoul of the Religion Clauses.

This split is sharp, deep, and can only be resolved by this Court. And without resolution, severe and irreparable harm to foundational church-state relations will occur.

A. The decision below exacerbates a conflict with multiple circuits and state high courts.

1. The D.C. Circuit held that church autonomy provides only a "defense to liability," and does not provide "an immunity" from "suit, discovery, or trial." App.57a, App.92a. The decision below concluded that the process of merits litigation doesn't irreparably harm a religious body's right "to manage its own nonsecular affairs free from governmental interference." App.17a. As a result, incorrectly denied church autonomy defenses must await vindication "after trial." App.23a.

That is also the law of the Second, Seventh, and Tenth Circuits, and of Massachusetts. See *Belya* v. *Kapral*, 45 F.4th 621, 633 (2d Cir. 2022) (rejecting argument that church autonomy is an "immunity from discovery and trial"); *Moody Bible*, 95 F.4th at 1116 ("the doctrine of church autonomy" does not "confer

immunity from trial"); *Tucker* v. *Faith Bible Chapel*, 36 F.4th 1021, 1025, 1037 (10th Cir. 2022) (holding that the ministerial exception "only protects religious employers from liability on a minister's employment discrimination claims," but doesn't "immunize[]" them from "having to litigate such claims"); *Doe* v. *Roman Catholic Bishop of Springfield*, 190 N.E.3d 1035, 1042-1044 (Mass. 2022) (concluding church autonomy doesn't include an immunity "from the burden of litigation and trial").

2. Those decisions represent one side of an acknowledged split of authority. App.89a. On the other side, ten federal circuits and state high courts—the Third, Fourth, Fifth, Sixth, and Ninth Circuits, and the high courts of the District of Columbia, Connecticut, Kentucky, North Carolina and Texas—hold that the Religion Clauses provide a structural protection against the burdens of litigating the merits of claims barred by church autonomy.

In a detailed opinion surveying the scope of the church autonomy doctrine, the Fifth Circuit concluded that church autonomy "is a constitutional immunity from suit" that "rests on structural, constitutional limitations," and which "protect[s] against *all* judicial intrusion into * * * ecclesiastical affairs," including merits discovery and trial. *McRaney*, 157 F.4th at 641, 644. Consequently, "like other immunities from suit, church autonomy must be resolved at the threshold of litigation." *Ibid.*; accord *McClure* v. *Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972) ("coercive effect" of judicial "investigation and review" can, without more, violate Religion Clauses).

The Ninth Circuit similarly recognizes that the "scope and purpose" of church autonomy "generally prohibits merits discovery and trial" in relevant cases because "the process of judicial inquiry itself" and the "coercive nature of the discovery process" constitute "unconstitutional judicial action." *Markel* v. *Union of Orthodox Jewish Congregations*, 124 F.4th 796, 808-810 & n.5 (9th Cir. 2024) (citing *Catholic Bishop*).

And writing for the Fourth Circuit, Judge Harris reaffirmed a "structural" understanding of the First Amendment, which "immunizes" and "exempt[s]" the religious "decisions of religious entities" from "legal process." *Billard* v. *Charlotte Catholic High Sch.*, 101 F.4th 316, 325-326 (4th Cir. 2024). That structural understanding has been adopted in the Third and Sixth Circuits as well. *Conlon* v. *InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (church autonomy is a "structural limitation imposed on the government by the Religion Clauses" that "categorically prohibits" judicial "involve[ment] in religious leadership disputes"); *Lee* v. *Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (agreeing that "the exception is rooted in constitutional limits on judicial authority"); accord *McRaney*, 157 F.4th at 644 (citing *Billard*, *Sixth Mount Zion*, and *Conlon*).

Similarly, the high courts of the District of Columbia and four states have held that the Religion Clauses "grant churches an immunity from civil [merits] discovery." *United Methodist Church* v. *White*, 571 A.2d 790, 792-793 (D.C. 1990) (Rogers, C.J.); *Presbyterian Church (U.S.A.)* v. *Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (allowing full merits discovery "before the trial court rules on the church's immunity would result in a substantial miscarriage of justice" (internal

quotations omitted)); *In re Diocese of Lubbock*, 624 S.W.3d 506, 515-516 (Tex. 2021) (church autonomy bars "any investigation" by courts of "the internal decision making of a church judicatory body"); *Smith* v. *Supple*, 293 A.3d 851, 864 (Conn. 2023) ("the very act of litigating" is barred, because "the discovery and trial process [is] itself a [F]irst [A]mendment violation"); *Harris* v. *Matthews*, 643 S.E.2d 566, 570 (N.C. 2007) ("substantial" church autonomy rights are "irreparably injured" by merits proceedings).

Even in the minority of circuits that treat church autonomy as solely a liability defense, eleven "circuit-court dissenters" have disagreed, explaining that religious bodies suffer "irreparable First Amendment harm by proceeding to discovery and possibly trial" over claims that "enmesh the courts in ecclesiastical disputes." App.51a-53a (cleaned up) (citing, among other opinions, *Belya*, 59 F.4th at 573 (Park, J., dissenting); *Faith Bible*, 53 F.4th at 627 (Bacharach, J., dissenting); *Moody Bible*, 95 F.4th at 1122 (Brennan, J., dissenting)); App.84a; see also *Belya*, 59 F.4th at 573 (Cabranes, J., dissenting) (calling for Supreme Court review).[1]

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[1] Courts adopting a threshold-immunity rationale have recognized several applications. These include requiring the earliest possible resolution of church autonomy defenses (*McRaney*), barring merits discovery or trial before that resolution (*Markel*), refusing to treat those defenses as waived (*Conlon*) or forfeited (*Billard*), respecting the independent duty of courts to raise them *sua sponte* when the parties don't (*Sixth Mount Zion*), and—relevant here—allowing immediate appeal (*White*).

B. The decision below is wrong and will cause irreparable harm to the Bishops.

1. The D.C. Circuit's decision cannot be reconciled with this Court's precedents. This Court's reasoning in *Our Lady*, *Hosanna-Tabor*, *Catholic Bishop*, *Milivojevich*, *Kedroff*, and *Watson* all "demonstrate that the Religion Clauses protect a sphere of church autonomy" that is "burdened not merely by final decisions, but also the 'very process of inquiry,'" which means that "the church autonomy defense is best understood as a constitutional immunity from suit." App.84a-85a (quoting *Catholic Bishop*, 440 U.S. at 502); accord *Belya*, 59 F.4th at 577 n.2 (Park, J., dissenting) (agreeing each of "these cases leads to th[at] same conclusion").

For instance, in *Kedroff*—decided almost 75 years ago—this Court recognized that the "nonreviewability of questions of faith, religious doctrine and ecclesiastical government" by civil courts is an essential part of religious bodies' "independence from secular control or manipulation." 344 U.S. at 115-116 & n.20 (citing *Watson*, 80 U.S. at 729). And in *Milivojevich*, this Court held that "religious controversies are not the proper subject of civil court inquiry," because "[f]or civil courts to analyze" the internal "ecclesiastical actions of a church" would require "exactly the inquiry that the First Amendment prohibits." *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 713 (1976).

Similarly, *Hosanna-Tabor* unanimously ruled that the "Religion Clauses bar the government from interfering with" or even "inquiring into" a religious leadership decision. *Hosanna-Tabor* v. *EEOC*, 565 U.S. 171, 181, 187 (2012) (quoting *Kedroff*, 344 U.S. at

119). As Justices Alito and Kagan elaborated in their concurrence, the "mere adjudication" by civil courts of matters committed to the sole discretion of the church "pose[s] grave problems for religious autonomy." *Id*. at 205-206.

Our Lady likewise reiterated that, while church autonomy does not confer a "*general* immunity from secular laws," it does bind courts "to stay out" of matters within its scope. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746 (2020) (emphasis added). The Court emphasized that "[t]he First Amendment outlaws" judicial "intervention," "intrusion," and "interference" in religious decisions protected by church autonomy, barring even judicial "influence" and "review" in such matters. *Id.* at 746, 762; see also *id.* at 783 (Sotomayor, J., dissenting) (noting that petitioners sought "complete immunity" for their ministerial decisions).

This Court's precedent thus strictly "prevents judicial intrusion into areas essential to the independence of religious institutions." App.65a (citing *Catholic Charities Bureau* v. *Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 256 (2025) (Thomas, J., concurring)).

Scholars, including "some of the country's most distinguished scholars of the Religion Clauses," *Fulton* v. *City of Philadelphia*, 593 U.S. 522, 554 (2021) (Alito, J., concurring), hold the same view. For instance, Professors McConnell, Laycock, and seven others have explained that "[t]he church-autonomy doctrine is * * * best understood as an immunity analogous to those enjoyed by government officials[.]" Scholars C.A. Amicus Br. 3; see also App.52a (collecting scholarship).

2. Allowing this case to proceed through merits litigation will result in irreparable harm to First Amendment rights.

Even if the Bishops were to successfully "run the gauntlet" of merits litigation, "endure a trial" that the Constitution prohibits, and defeat O'Connell's claims, the "full protection" of the Religion Clauses still "would be lost." *Abney*, 431 U.S. at 662. The Bishops "cannot be made whole by a take-nothing judgment months or years" after their right to independence in ecclesiastical matters has been denied. *McRaney*, 157 F.4th at 645. By that time, they will have already faced costly and intrusive demands to identify all donors to Peter's Pence, produce all documents related to the Pope's use of an offering given to him by the faithful, account for all church laws and guidelines relating to Peter's Pence, and turn over all communications with the "Holy See, Vatican City, [and] Apostolic Nunciature" relating to Peter's Pence. See, *e.g.*, App.308a, App.61a.

The "prejudicial effects of incremental litigation" into such matters "necessarily intrude[s] into church governance in a manner that [is] inherently coercive." *McRaney*, 157 F.4th at 645 (citations omitted). Wholly separate from the final judgment itself, then, "the very process" of litigation alone will pressure the Church to reevaluate its practice of a millennium-old religious offering "with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of [its] own personal and doctrinal assessments[.]" *Rayburn* v. *General Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) (Wilkinson, J.) (quoting *Catholic Bishop*, 440 U.S. at 502).

That pressure is the point. O'Connell is leveraging civil power for religious ends, "essentially seek[ing] the structural reform of a religious institution" by changing how "the Catholic Church speaks about, solicits, and deploys religious donations." App.72a.

Other courts facing similar claims have avoided such misuse of their power. For instance, just last year, the en banc Ninth Circuit unanimously rejected fraud claims over religious offerings at an early stage of litigation, preventing full-blown merits discovery. *Huntsman*, 127 F.4th at 786 (affirming limited-discovery summary judgment). Five judges concurred to emphasize that threshold resolution was essential to respecting church autonomy, because permitting such "extraordinary and patently inappropriate" refund claims to "go any further" would itself violate the First Amendment. *Id.* at 793 (Bress, J., concurring); see also *id.* at 800 (Bumatay, J., concurring) (church autonomy is a "*threshold* structural bar").

Just so. Entertaining O'Connell's claims violates church autonomy. And that "constitutes irreparable injury." *Mahmoud* v. *Taylor*, 606 U.S. 522, 569 (2025).

II. The D.C. Circuit's decision deepens a split over whether the denial of a dispositive church autonomy defense is immediately appealable.

The D.C. Circuit next determined that a dispositive church autonomy defense denied by the district court is ineligible for appeal as of right. This holding entered a distinct acknowledged split over whether the denial of a church autonomy defense warrants immediate interlocutory appeal. Five federal circuits and six state high courts have divided on that question.

A. The decision below exacerbates a conflict with the Fifth Circuit and multiple state high courts.

1. The "final decisions of the district courts" that are immediately appealable under 28 U.S.C. 1291 include a limited number of orders preceding final judgment. These orders (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits," and (3) are "effectively unreviewable on appeal from a final judgment." *Puerto Rico Aqueduct & Sewer Auth.* v. *Metcalf & Eddy*, 506 U.S. 139, 144 (1993); accord *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

The paradigmatic examples of such "collateral orders" are those that deny an "immunity from suit." *Mitchell*, 472 U.S. at 526. This Court has "repeatedly stressed the importance of resolving immunity questions at the earliest possible stage of the litigation." *Wood* v. *Moss*, 572 U.S. 744, 755 n.4 (2014) (cleaned up).

Here, the D.C. Circuit held that church autonomy doesn't merit such early resolution. The court explained that because church autonomy is not an immunity but merely a "defense to liability," it can be vindicated "after trial." App.22a-23a. Thus, interlocutory review as of right is unavailable. App.22a-23a.

The Second, Seventh, and Tenth Circuits reached the same conclusion. See *Belya*, 45 F.4th at 528; *Faith Bible*, 36 F.4th at 1047; *Moody Bible*, 95 F.4th at 1117. The Massachusetts high court likewise rejected interlocutory appeal of church autonomy defenses while acknowledging a split among state and federal courts on that issue. *Doe*, 190 N.E.3d at 1044-1045.

2. On the other side of the split is the Fifth Circuit, which is supported by five state high courts. In *Whole Woman's Health* v. *Smith*, the Fifth Circuit held that "interlocutory court orders bearing on First Amendment rights remain subject to appeal pursuant to the collateral order doctrine." 896 F.3d 362, 368 (5th Cir. 2018) (collecting cases). Relying on the Constitution's "structural protection afforded religious organizations," the Fifth Circuit explained that the collateral-order doctrine was satisfied because "the consequence of forced discovery"—production of internal church communications—would be "'effectively unreviewable' on appeal from the final judgment." *Id.* at 367, 373.

In *McRaney*, the Fifth Circuit confirmed that "breaches" of church autonomy "impose irreparable injuries on religious organizations that require immediate appellate review," citing *Whole Woman's Health* and the dissenting opinions in *Belya*, *Faith Bible*, and *Moody Bible*. 157 F.4th at 644. Far from a right that can be vindicated post-trial, church autonomy "must be resolved at the earliest conceivable point in litigation," and "as with any other immunity," its denial "cannot be remedied after the district court renders final judgment." *Id.* at 644-645. "An immediate appeal thus protects ecclesiastical organizations from unconstitutional deprivations of the First Amendment's structural limits." *Id.* at 645.

The high courts of the District of Columbia, Connecticut, Kentucky, North Carolina, and Texas agree. See App.89a (noting split). For instance, applying *Cohen*, the District of Columbia Court of Appeals explained that the denial of the church autonomy defense must be "immediately appealable as a collateral order" because "the constitutional rights of the church

to operate free of judicial scrutiny" must be "reviewed pretrial or [they] can never be reviewed at all." *White*, 571 A.2d at 792-793 (citing *Cohen*, *Watson*, *Kedroff*, and *Catholic Bishop*). Accord *Supple*, 293 A.3d at 864; *Diocese of Lubbock*, 624 S.W.3d at 515-516; *St. Joseph Catholic Orphan Soc'y* v. *Edwards*, 449 S.W.3d 727, 730 (Ky. 2014); *Harris*, 643 S.E.2d at 570. Although these courts apply their own procedural rules governing interlocutory appeals, the driving force behind allowing for immediate review—and the point on which those courts diverge from the D.C. Circuit here—is their understanding that the Religion Clauses require immediate review to prevent irreparable harm.

Here, too, circuit-court dissenters and scholars have "persuasively" echoed that conclusion. App.51a; Scholars C.A. Amicus Br. 29. In the circuits holding a contrary view, eleven appellate judges in five separate opinions have argued that their courts "misapplied the collateral order doctrine." *Belya*, 59 F.4th at 578 (Park, J., dissenting); *Moody Bible*, 95 F.4th at 1123 (Brennan, J., dissenting); *Faith Bible*, 53 F.4th at 625 (Bacharach, J., dissenting). These judges all concluded that "[t]he denial of a church autonomy defense is conclusive, separate from the merits, and effectively unreviewable on appeal after final judgment." *E.g.*, *Belya*, 59 F.4th at 578 (Park, J., dissenting). Judge Rao explained that immediate appeal is necessary to provide "meaningful" protection from having church autonomy "destroyed," App.92a, App.94a, and Judge Walker agreed that denying appeal "threatens the religious defendant with irreparable First Amendment harm," App.52a.

B. The decision below is wrong.

The D.C. Circuit's decision to privilege the policy against "piecemeal" review over the First Amendment, App.58a, is at odds with this Court's precedent. This Court has "often" permitted interlocutory appeals to determine "the proper scope of First Amendment protections," *Fort Wayne Books* v. *Indiana*, 489 U.S. 46, 55 (1989), including in the context of church autonomy rights, *Roman Catholic Archdiocese of San Juan* v. *Feliciano*, 589 U.S. 57 (2020) (considering under 28 U.S.C. 1258 an interlocutory appeal of an order foreclosing Religion Clauses defenses).

This special care for First Amendment and other "constitutional rights" "reflect[s] the familiar principle of statutory construction" that courts "should construe statutes (here § 1291) to foster harmony with * * * constitutional law." *Digital Equip. Corp.* v. *Desktop Direct*, 511 U.S. 863, 879 (1994). The statutory "policy * * * to avoid piecemeal litigation" must therefore "be reconciled with policies embodied in * * * the Constitution." *Ibid.* Indeed, the "decisive consideration" under *Cohen* is whether "delaying review * * * 'would imperil a substantial public interest' or 'some particular value of a high order.'" *Mohawk Indus., Inc.* v. *Carpenter*, 558 U.S. 100, 107 (2009).

For instance, *Abney* concluded that a criminal defendant was entitled to immediate appeal under the Double Jeopardy Clause because that was the only way to give "full protection" to the right "not to face trial[.]" 431 U.S. at 659, 662 & n.7. This rationale has been extended to a host of immunity cases—including presidential immunity, sovereign immunity, and qualified immunity—each recognizing that interlocutory

review is indispensable when the Constitution protects a party from the judicial process itself, not merely from liability. See *Puerto Rico Aqueduct*, 506 U.S. at 144 (collecting examples); Muller C.A. Amicus Br. 13.

That rationale applies with equal force here. The Religion Clauses lie "at the foundation of our political principles," *Watson*, 80 U.S. at 728, leaving "little room for the judiciary to gainsay [their] 'importance,'" App.93a (quoting *Digital Equip.*, 511 U.S. at 879). They also embody a "broad principle" of "church autonomy" that "outlaws * * * [s]tate interference in that sphere," *Our Lady*, 591 U.S. at 746, 747, which will be irrevocably violated by adjudicating claims that "plainly encroach[] on the heartland of matters committed to the Church's exclusive sphere," App.93a-94a. Thus, as in other immunity cases corrected by this Court, the "source of the [D.C.] Circuit's confusion was its mistaken conception of the scope of protection afforded by" the underlying right at issue. *Behrens* v. *Pelletier*, 516 U.S. 299, 308 (1996).

III. The D.C. Circuit's decision sharpens an entrenched split over whether "neutral principles" can be used to adjudicate church governance disputes.

Certiorari is also warranted to resolve the split over whether courts can use "neutral principles of law" to adjudicate matters related to internal church government outside the context of church property disputes. The D.C. Circuit joined the Second and Eighth Circuits and two state high courts in permitting such claims to proceed under the "neutral principles" approach. That is at odds with precedents of the Fifth, Sixth, and Eleventh Circuits, and two state high courts.

It is also wrong. As Judge Rao warned, it is "self-evident" under *Hosanna-Tabor* and *Our Lady* that "if the mere invocation of neutral principles permits a court to interfere with church autonomy, then the constitutional protection is a dead letter." App.67a. Virtually any claim can be framed in "neutral or secular terms," just as the plaintiffs did in *Hosanna-Tabor* and *Our Lady*. App.67a. Thus, what matters isn't facial "neutrality," but whether the claim requires "judicial interference" with "matters of faith, doctrine, and internal governance"—which is what "the First Amendment prohibits." App.66a. So by broadly adopting the neutral principles approach to resolve all church autonomy defenses, the D.C. Circuit committed a "fundamental error." App.63a.

A. The decision below exacerbates a conflict with three circuits and two state high courts.

1. The "neutral principles" approach was developed to resolve disputes over formal title to church property where competing factions each argued they were the "true" church entitled to ownership. See *Presbyterian Church* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969); see also Michael McConnell & Luke Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 316-319 (2016) (detailing origins). In these disputes, civil courts often cannot defer to either faction without unconstitutionally picking sides. In such cases, courts may instead look to the religious bodies' own deeds and other documents and attempt to employ ordinary principles of property ownership to resolve the dispute. See *Jones* v. *Wolf*, 443 U.S. 595, 602-603 (1979); McConnell & Goodrich, *supra*, at 316-319. But

this Court has pointedly refused to expand the approach "beyond church property to other areas of law" that concern matters of faith, doctrine, and church governance. App.68a.

The D.C. Circuit was not so reticent. Despite acknowledging that this Court's neutral principles precedent concerns "church property disputes," App.15a, it extended that approach to govern all church autonomy defenses. See App.15a, App.23a. On the court of appeals' telling, the neutral principles approach allows a court to "steer[] clear of *any* violations of the church autonomy doctrine," regardless of context, merely by "rel[ying] exclusively on objective, well-established legal concepts." App.15a (cleaned up and emphasis added). "Put simply"—and categorically—"if a plaintiff can plausibly assert a secular claim capable of resolution according to neutral principles of law, the First Amendment does not bar judicial examination of that claim." App.23a.

In so holding, the D.C. Circuit joined two other circuits and two state high courts that have allowed claims challenging matters of internal church governance to proceed under the "neutral principles" approach. See *Belya*, 45 F.4th at 630 ("us[ing] the 'neutral principles of law' approach" to permit priest's defamation claim over statements made during church disciplinary proceedings); *Drevlow* v. *Lutheran Church*, 991 F.2d 468, 470-472 (8th Cir. 1993) (allowing pastor to bring "secular" claims against denomination challenging statements relevant to his "fitness as a minister" because claims didn't "require the courts to interpret and apply religious doctrine"); *Banks* v. *St. Matthew Baptist Church*, 750 S.E.2d 605, 608 (S.C. 2013) (applying approach to permit claim by former

church trustees over statements made during church meeting); *Marshall* v. *Munro*, 845 P.2d 424, 426-428 (Alaska 1993) (employing approach to permit pastor's claims to proceed against reverend over statements made to a church).

2. By contrast, three circuits and two state high courts have rejected the neutral principles approach to adjudicate claims that arise out of church governance.

The Fifth Circuit has explained that this Court "very clearly limited" the neutral principles approach to address church autonomy concerns in intrachurch property disputes. *McRaney*, 157 F.4th at 648. Because of that limited purpose, the approach is "endogenous to the church autonomy doctrine" and "not some freestanding exception * * * that allows courts to tread on *terra sancta* in the name of 'neutrality.'" *Id.* at 648-649. Thus, even if the pastor's tort claims in that case might have been characterized as "facially 'neutral,'" they could not proceed because the "*application* of th[ose] neutral rules" would have led to "government interference with an internal church decision that affects the faith and mission of the church itself." *Id.* at 651 (quoting *Hosanna-Tabor*, 565 U.S. at 190); see also *Simpson* v. *Wells Lamont Corp.*, 494 F.2d 490, 493-494 (5th Cir. 1974) (rejecting approach in church governance disputes).

The Sixth Circuit likewise held that the "neutral principles" approach "applies only to cases involving disputes over church property" and "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchison* v. *Thomas*, 789 F.2d 392, 396 (6th Cir. 1986). Such areas are instead "governed by ecclesiastical rule, custom, and law." *Ibid.*

The Eleventh Circuit similarly rejected the neutral principles approach outside of disputes over "formal title to property." *Crowder* v. *Southern Baptist Convention*, 828 F.2d 718, 722, 725-726 (11th Cir. 1987). Beyond that context, "civil courts may not use the guise of the 'neutral principles' approach to delve into issues" concerning "matters of internal church governance." *Id.* at 724-726. Thus, even if "a civil court might be able to avoid questions of religious beliefs or doctrines in ruling[,]" it still cannot adjudicate matters "at the core of ecclesiastical concern." *Id.* at 726 (quoting *Milivojevich*, 426 U.S. at 717).

Two state high courts have reached similar results. See *Diocese of Lubbock*, 624 S.W.3d at 516 ("neutral principles" inapplicable to defamation claim challenging diocesan disciplinary proceedings because claim "implicate[d] ecclesiastical matters"); *El-Farra* v. *Sayyed*, 226 S.W.3d 792, 795-796 (Ark. 2006) ("neutral principles" inapplicable to defamation claims over plaintiff's "suitability to remain as Imam").

A wide range of federal judges—sixteen, from four circuits—have agreed in separate writings. As they have observed, applying neutral principles in a case like this would mean that "no claim would *ever* be subject to the church autonomy doctrine" because "*every* civil plaintiff purports to invoke neutral legal principles." *McRaney*, 980 F.3d at 1070 (Ho, J., dissenting). Instead, through clever drafting, "almost any * * * dispute could be pled to avoid questions of religious doctrine[,]" so "[t]aken to its logical endpoint, this approach would eviscerate the church autonomy doctrine." *Belya*, 59 F.4th at 582 (Park, J., dissenting). Wayward priests (*Belya*), pastors (*McRaney*), and imams (*El-Farra*) should not be able to "sideline the

church autonomy doctrine" so easily. *Huntsman*, 127 F.4th at 797-799 (Bress, J., concurring); accord App.67a; see also App.53a. Cf. Lael Weinberger, *The Limits of Church Autonomy*, 98 Notre Dame L. Rev. 1253, 1277 (2023) (Weinberger, *Limits*) ("Neutral principles * * * do not provide an outer limit for church autonomy. They eliminate church autonomy.").

B. The decision below is wrong.

The D.C. Circuit's opinion cannot be reconciled with this Court's precedent. Indeed, though this Court has permitted using "neutral principles" in some church property disputes, it has *never* applied it in church *governance* disputes like this one. Rather, it has expressly refused to do so.

For instance, in *Milivojevich*, this Court expressly rejected "reli[ance] on purported 'neutral principles'" to adjudicate matters relating to "internal [church] discipline and government." 426 U.S. at 715, 721, 724. That was true even though, as here, the lower courts felt they could avoid "determination of theological or doctrinal matters." *Id.* at 721.

And in *Hosanna-Tabor*, this Court unanimously rejected EEOC's request to apply the "neutral law of general applicability" standard from *Employment Division* v. *Smith* to adjudicate a minister's claims against her church. 565 U.S. at 189-190 (citing 494 U.S. 872 (1990)). The Court explained that *Smith* was inapplicable because the challenged decision was not "a mere employment decision," but instead part of "the internal governance of the church." *Id.* at 188. The church autonomy doctrine's purpose, this Court held, is to *prevent* "neutral" laws from "interfer[ing] with an internal church decision that affects the faith and

mission of the church itself." *Id.* at 190. Later, in *Our Lady*, this Court likewise barred claims arising under neutral laws because they impinged on church governance. 591 U.S. at 746-747.

In effect, using the neutral principles approach here smuggles a metastasized version of *Smith* into church autonomy. See Weinberger, *Limits* at 1277 (approach "has more in common with *Smith* than with the church property cases"). For all its faults, *Smith* at least requires courts to ensure that a law is generally applicable and free from any "subtle departures from neutrality." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 534 (1993). Under the decision below, however, it is enough for a plaintiff to invoke laws that don't facially target religion—a standard met in all but extraordinary cases. See App.23a. Thus, the court of appeals' version of *Smith* not only violates *Hosanna-Tabor* and *Our Lady*, but reintroduces an aggressive strain of *Smith* into an area of the law that is entitled to heightened First Amendment protection. See also Scholars C.A. Amicus Br. 32 (neutral principles "inapplicable" to internal church affairs).

That's particularly perilous in a case like this one. Applying neutral principles will require a civil court to define how a "reasonable" parishioner would understand an invitation—delivered from the pulpit, during Mass, for a 1,000-year-old offering—to support the Pope's "charitable works." App.176a. And it will thrust a civil jury into questioning the Church's explanation of what it means to "witness to charity," "help the Holy See reach out compassionately to those who are marginalized," and "assist the charitable works of Pope Francis." App.203a.

Both steps will "inescapabl[y]" and "quickly devolve" into deciding "inherently religious questions," such as "why a reasonable member of the Church" would give a millenium-old offering to the Pope, *Huntsman*, 127 F.4th at 792, 799 (Bress, J., concurring), or "how a religious institution should preach to its congregants" during Mass, *id.* at 814 (Bumatay, J., concurring). And "[n]othing says 'entanglement with religion' more" than adjudicating whether a church "should have spoken with greater precision about inherently religious topics." *Id.* at 792-793, 796-799 (Bress, J., concurring).

IV. The questions presented are of nationwide importance and this case is an excellent vehicle for answering them.

As Judges Rao and Walker emphasized below, echoing numerous other courts and judges, this case presents core First Amendment issues going to fundamental questions of church-state relations. App.59a-60a (Rao, J.); App.52a-53a (Walker, J.). Those issues are of "exceptional importance"—not only for religious organizations, but also for government entities bound to avoid religious entanglement—and "should be reviewed by th[is] Court." *Belya*, 59 F.4th at 573 (Cabranes, J., dissenting).

1. This case "typif[ies] the stakes for religious liberty when a church autonomy defense is denied." App.93a. Plaintiffs can easily cast their religious disputes over religious offerings or pastoral discipline in common-law terms of fraud or defamation. App.67a; *McRaney*, 157 F.4th at 648-649. Lower courts with busy dockets are then incentivized to issue short—or even oral—dispositions, denying church autonomy defenses under the neutral principles approach and

sending unconstitutional disputes to merits discovery and trial. And appellate courts are increasingly requiring religious bodies with meritorious church autonomy defenses to undergo entangling, intrusive, and costly proceedings before ever considering those defenses.

For too many religious defendants in "modern civil litigation," that is "the whole ball game." *Cunningham* v. *Cornell Univ.*, 604 U.S. 693, 708-711 (2025) (Alito, J., joined by Thomas, J., and Kavanaugh, J., concurring). Subsisting on nonprofit budgets, they will face immense pressure to settle to avoid the enormous "cost of discovery," *ibid.*, as well as the burdens and indignities of having coercive state power pry into internal religious affairs. Practically speaking, then, if a church autonomy defense is not resolved correctly at the threshold, it will often be permanently lost. A religious group can be priced out of protecting its rights. Weinberger C.A. Amicus Br. 13-17.

That goes double in a case like this one, which is not only a putative class action prying into pulpits nationwide, but demands the names of every parishioner who donated to Peter's Pence, an accounting for all the ways the Pope used their offerings, and internal communications between the Bishops and the Holy See. Cf. *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011) (recognizing heightened "in terrorem" effect of defending against class actions).

Further, even for those religious groups that can persevere to judgment, winning at the end of the case cannot restore what was lost to get there. *McRaney*, 157 F.4th at 644-645 (acknowledging irreparable harm caused by previous proceedings). The knowledge that protected religious decisions can always be sub-

jected to "protracted legal process[es]" will "significantly, and perniciously, rearrange the relationship between church and state." *Rayburn*, 772 F.2d at 1169, 1171. And that, in turn, pressures religious groups to "conform [their] beliefs and practices * * * to the prevailing secular understanding." *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring). The process of merits litigation, in other words, will itself punish the exercise of First Amendment rights.

2. The decision below also causes the government to overstep its own constitutional boundaries. See *Billard*, 101 F.4th at 325-326 (church autonomy "does not protect the church alone; it also confines the state and its civil courts to their proper roles").

For instance, the decision below drives civil courts into entanglement. Even a "very able and careful district court" can't help but enable "discovery that unconstitutionally burden[s] the ecclesiastical defendant" when the entire suit proves beyond civil bounds. *McRaney*, 157 F.4th at 645 n.5. That's why church autonomy is a threshold issue. Because "*all* judicial intrusion[s] into * * * ecclesiastical affairs—even brief and momentary ones"—are unconstitutional, they "cannot be remedied" after the fact. *Id.* at 644-645.

Government agencies will also be able to intrude into ecclesiastical matters more easily. EEOC, for instance, used to acknowledge that church autonomy is a constitutional "obligat[ion]" that "should be resolved at the earliest possible stage before reaching the underlying discrimination claim," EEOC Compliance Manual § 12, but flipped its position based on *Faith Bible* and *Belya* to deprioritize church autonomy rights, see EEOC Br. at 27-28, *Moody Bible Inst.*, 95 F.4th 1104 (No. 21-2683), Dkt. 86.

State agencies are likewise increasingly using state inquiries as leverage over religious bodies. See, *e.g.*, *First Choice Women's Res. Ctrs.* v. *Platkin*, No. 24-781; *Seattle Pacific Univ.* v. *Brown*, No. 22-cv-5540, 2025 WL 3687716 (W.D. Wash. Dec. 19, 2025). And the NLRB's repeated attempts to impose "neutral" collective-bargaining rules on religious schools face fewer impediments if courts can ignore *Catholic Bishop*, reject its core rationale, adopt the neutral principles approach, and make church autonomy injuries await post-trial review. *Duquesne Univ. of the Holy Spirit* v. *NLRB*, 947 F.3d 824 (D.C. Cir. 2020) (chronicling NLRB's efforts).

Thus, the D.C. Circuit's decision erodes the safeguards that prevent church-state entanglement. And that encourages entangling governmental overreach and diminishes the independence of religious bodies.

3. This case is an excellent vehicle to address the questions presented. It presents purely legal issues, unencumbered by the asserted factual disputes in previous cases. Cf. *Faith Bible*, 36 F.4th at 1037; *Belya*, 45 F.4th at 634. And it arises after substantial legal development in the lower courts on the constitutional issues at hand, aiding this Court's disposition.

Further, this case shows how the D.C. Circuit's approach leads to untenable results. If the Bishops' motion to dismiss had been decided just across the street in the courts of the District of Columbia, then they would have been protected by a threshold immunity and could have immediately appealed. But now, the Bishops must endure repeated, irreparable violations of their rights before they can receive appellate review. The scope of the Religion Clauses shouldn't change based on which side of C Street a lawsuit is filed.

Finally, the conflict is sharp and was squarely addressed below. The author of the panel opinion saw the court's resolution as not only "quite clear" and "perfectly consistent" with the law, but as effectuating the demands of "just[ice]." App.55a. By contrast Judges Rao and Walker saw this as a "fundamental error" which will cause "irreparable" harm to structural First Amendment rights and leave religious groups without "meaningful" protection. App.63a, App.94a (Rao, J.); App.52a (Walker, J.). And this concrete conflict reflects broader "widespread 'confusion'" in the lower courts as they are "struggling to define the contours of the church autonomy doctrine." *McRaney*, 157 F.4th at 642 & n.4 (quoting *Belya*, 59 F.4th at 582 (Park, J., dissenting)).

Only this Court can resolve these splits and provide the clarity that the Religion Clauses require and the nation's religious bodies need.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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