

No. 24-7246

In the United States Court of Appeals for the Ninth Circuit

UNION GOSPEL MISSION OF YAKIMA, WASHINGTON,
Plaintiff-Appellee,

v.

NICHOLAS W. BROWN, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF WASHINGTON, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Washington
Honorable Mary K. Dimke
(1:23-cv-03027-MKD)

**BRIEF OF THE ALEPH INSTITUTE AS *AMICUS CURIAE*
IN SUPPORT OF PLAINTIFF-APPELLEE**

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FRAP 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, The Aleph Institute states that it has no parent corporation and that no publicly held corporation owns any part of it.

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INTEREST OF THE *AMICUS*¹

The Aleph Institute (“Aleph”) is a national nonprofit Jewish organization dedicated to advancing religious life, human dignity, and both civil and religious liberty for people who are isolated from their communities. Rooted in the Orthodox Jewish, Hasidic tradition of Chabad Lubavitch, Aleph provides educational, humanitarian, and pastoral support to those incarcerated, those institutionalized or at risk due to mental illness or addiction, as well as U.S. service members and their families.

To accomplish its religious mission, Aleph sets religious qualifications for its employees—a core matter of religious governance. Those faith-informed decisions present the kind of internal religious judgments that the First Amendment places beyond the reach of civil authority. Therefore, Aleph has a substantial interest in this case as it presents constitutional issues that will affect the ability of religious organizations—including, in unique ways, minority faith communities—to have and uphold religious qualifications for employment free from civil interference.

¹ Counsel for both parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no one other than *Amicus* made any monetary contribution to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

INTRODUCTION

The doctrine of church autonomy is embedded in the very “structure of our government.” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 730 (1872). Grounded in both Religion Clauses, it protects “the independence of religious institutions” in matters of “faith and doctrine” and “church government.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 738, 746 (2020). And it also helps courts avoid becoming “entangled in essentially religious controversies.” *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 709 (1976).

Church autonomy protects decisions about the “religious eligibility requirements” for membership or employment in a religious community. *Puri v. Khalsa*, 844 F.3d 1152, 1167 (9th Cir. 2017). Indeed, it makes no sense to hold that religious bodies have sole authority to “decide who ought to be members of the church,” *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40 (1872)—a proposition so obvious that no one appears to dispute it—but not to determine the religious “standard[s]” for an employee they hire to serve those members or otherwise carry out their religious mission. *Milivojevich*, 426 U.S. at 714.

Defendants’ efforts to reduce all of church autonomy to the ministerial exception—only one “component” of the doctrine, *Our Lady*, 591 U.S. at 746-47—ignore the Constitution’s structural bounds, taking civil courts far outside their lane. The harms that flow from that error are two-edged.

First, effective religious ministry requires not just a handful of faithful leaders, but also faithful followers who sincerely believe or otherwise support the mission of their ministry. A Jewish day school led by a wholly orthodox rabbi would still lose students if its janitors and receptionists wore antisemitic attire. And while that dynamic holds distinctly true for minority faith groups, who often face greater societal pressures with fewer internal resources, no religious groups would last long if they could not ensure their formal representatives practice what they preach. Church autonomy is both a constitutional matter and an existential one.

Second, the doctrine “does not protect the church alone,” but also helps courts avoid overstepping “constitutional limits on judicial authority” and getting entangled in religious matters “beyond the[ir] ken.” *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024). Church autonomy is grounded in “structural, constitutional limitations,” *McRaney v. N. Am. Mission Bd.*, 157 F.4th 627, 644 (5th Cir. 2025), and questions that it reserves to religious bodies are those over which civil courts have “no power,” *Bouldin*, 82 U.S. (15 Wall.) at 139, and even less “competen[ce],” *Watson*, 80 U.S. (13 Wall.) at 729.

This Court should refuse Defendants’ invitation to transgress these structural limits on the state’s “rightful authorit[y],” *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 257 (2025) (Thomas, J., concurring), and thereby inflict structural harm to both church and state.

ARGUMENT

I. Church autonomy protects a religious organization’s freedom to set religious qualifications for employment.

The Religion Clauses of the First Amendment guarantee religious bodies the “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). This “principle of church autonomy” prohibits “[s]tate interference” to “dictate or even to influence such matters,” which would “obviously violate the free exercise of religion” and “constitute one of the central attributes of an establishment of religion.” *Our Lady*, 591 U.S. at 746-47. As the panel properly held, a religious organization’s decision to adopt religious qualifications for employment lies in the heartland of the church autonomy sphere.²

A. Church autonomy is a structural limit on government power.

1. Our nation recognizes a “sphere of autonomy” that is “constitutionally guaranteed to religious organizations,” *Puri*, 844 F.3d at 1157, one so strong that “no compelling state interest justifies government intrusion,” *Bollard v. Cal. Province of the Society of Jesus*,

² Both “church autonomy” and “ministerial exception” are judicial shorthand. *Our Lady*, 591 U.S. at 746-47. “Church” autonomy applies to all faiths and encompasses entities that are not houses of worship, just as the “ministerial” exception extends beyond faiths that use the title “minister.” *Id.*

196 F.3d 940, 946 (9th Cir. 1999). This concept of church and state as “two rightful authorities,’ each supreme in its own sphere,” has “deep roots in the history of Western civilization.” *Catholic Charities Bureau*, 605 U.S. at 257 (2025) (Thomas, J., concurring) (quoting Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1496-97 (1990) (*Origins*)). It dates back at least to Jesus’ famous command to “render . . . unto Caesar the things which are Caesar’s; and unto God the things that are God’s.” *Id.* at 257-58. (citing Matthew 22:21).

Western law institutionalized this command into a “dual-authority” framework, *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 803-04 (9th Cir. 2025) (Bumatay, J., concurring), in which church and state each had “their own field of action” and “their own province in which they were paramount,” *McRaney*, 157 F.4th at 634 (quoting Roscoe Pound, *A Comparison of Ideals of Law*, 47 Harv. L. Rev. 1, 6 (1933)). See also Robert J. Renaud & Lael D. Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. Ky. L. Rev. 67, 68-84 (2008) (tracing the historical development of “[t]he doctrine of separate spheres of authority for church and state”).

But the dual-authority framework “did not survive the reign of Henry VIII,” who “made the English monarch the supreme head of the Church [of England],” and later “tightened further the government’s grip on the

exercise of religion.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 182 (2012). “Seeking to escape the control of the national church” in England, Puritans and Quakers fled to New England, Pennsylvania, and Delaware. *Id.* There “[t]he budding American colonies became mired in conflict between colonial governments and minority faiths,” including “minority Protestant sects” such as Baptists—who were “infamously ... jailed in Culpeper, Virginia, for dissenting from Anglicanism”—and Presbyterians. *McRaney*, 157 F.4th at 634.

2. “[T]he First Amendment was adopted” “against this background.” *Hosanna-Tabor*, 565 U.S. at 183 (tracing the Religion Clauses’ development back to the Magna Carta). As the Supreme Court explained in *Hosanna-Tabor* and again in *Our Lady*, “the founding generation sought to prevent a repetition of the[] practices” that in 16th-century Britain “had given the Crown the power to fill high ‘religious offices’ and to control the exercise of religion in other ways.” *Our Lady*, 591 U.S. at 748; see also John Witte, Jr., *That Serpentine Wall of Separation*, 101 Mich. L. Rev. 1869, 1881 (2003) (explaining that the Founders revived the dual-authority framework while “adding new accents and applications”). The resulting “text of the First Amendment itself” “gives special solicitude to the rights of religious organizations.” *Hosanna-Tabor*, 565 U.S. at 189.

James Madison—the “leading architect of the Religion Clauses”—invoked the division of authority between church and state to explain the flaws in an act that would have incorporated the Episcopal Church, making it subject to significant state control. *Hosanna-Tabor*, 565 U.S. at 184-85. As President, Madison vetoed the bill, explaining that giving civil government control over “the organization and polity of the church” would violate the “essential distinction between civil and religious functions,” and thus “exceed[] the rightful authority to which Governments are limited.” 22 Annals of Cong. 982-83 (1811).

Given this history, it is no surprise that the Supreme Court has long described church autonomy as part of the “structure of our government.” *Watson*, 80 U.S. (13 Wall.) at 730. Lower courts have followed suit. *See, e.g., McRaney*, 157 F.4th at 644 (“structural, constitutional limitations in the First Amendment”); *Billard*, 101 F.4th at 325 (“grounded ... in constitutional structure”); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (“structural”); *Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 & n.4 (3d Cir. 2018) (same); *see also Huntsman*, 127 F.4th at 800 (Bumatay, J., concurring) (“threshold structural bar”); Branton J. Nestor, *Judicial Power and Church Autonomy*, 100 Notre Dame L. Rev. 1899, 1924-26 (2025) (collecting early federal cases “following *Watson*’s path”).

As a structural allocation of authority between church and state, church autonomy guarantees that religious institutions remain self-

governing “organism[s],” ones that direct “strictly and purely ecclesiastical” issues “over which the civil courts exercise no jurisdiction.” *Watson*, 80 U.S. (13 Wall.) at 729, 733. These principles “radiate[] ... a spirit of freedom for religious organizations” and “an independence from secular control or manipulation.” *Kedroff*, 344 U.S. at 116.

“[R]eligious freedom” therefore “encompasses the ‘power (of religious bodies) to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Milivojeovich*, 426 U.S. at 722-23. As *Our Lady* made clear, this “independence of religious institutions” follows from both Religion Clauses: “State interference in that sphere would obviously violate the free exercise of religion, and any attempt ... to dictate *or even to influence* such matters would constitute one of the central attributes of an establishment of religion.” 591 U.S. at 746 (emphasis added).

Importantly, the doctrine of church autonomy protects both church and state: It protects churches’ ability to conduct their internal affairs, while also preventing the state from becoming “entangled in essentially religious controversies.” *Milivojeovich*, 426 U.S. at 709.³

³ “This does not mean that religious institutions enjoy a general immunity from secular laws.” *Our Lady*, 591 U.S. at 746. Courts may decide claims that have nothing to do with faith, doctrine, or internal governance. See, e.g., *Rweyemamu v. Cote*, 520 F.3d 198, 208 (2d Cir. 2008) (“The minister struck on the head by a falling gargoyle as he is about to enter the church may have an actionable claim.”); *Paul v.*

B. Church autonomy is not restricted to the ministerial exception.

One “component” of church autonomy is the ministerial exception, which bars government interference in religious organizations’ personnel decisions concerning employees who perform important religious duties. *Our Lady*, 591 U.S. at 746-47. Because such employees play an important “role in conveying the Church’s message and carrying out its mission,” the ministerial exception bars their claims even when a religious organization offers no “religious reason” for its hiring decision.” *Hosanna-Tabor*, 565 U.S. at 188-89, 192, 194. Such ministerial decisions are always “strictly ecclesiastical,” *id.* at 194-95, because they concern the “lifeblood” of a religious group. *Werft v. Desert Sw. Ann. Conf.*, 377 F.3d 1099, 1102-03 (9th Cir. 2004).

1. But as *Our Lady* explained—and the panel correctly held—“the general principle of church autonomy” is not limited to the ministerial exception. 591 U.S. at 747; *see also Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190, 1203 (9th Cir. 2026), *reh’g en banc granted, opinion vacated*, No. 24-7246, 2026 WL 1758172 (9th Cir. June 18, 2026) (church autonomy “is broader than the ministerial exception”). Instead, it is a “broad principle” that also protects “matters of faith and doctrine” and “internal management decisions that are essential to [a religious]

Watchtower Bible & Tract Soc’y, 819 F.2d 875, 883 (9th Cir. 1987) (“physical assault or battery” arising out of a religious practice is justiciable). But that’s not remotely this case.

institution’s central mission.” *Our Lady*, 591 U.S. at 746, 747; *accord Puri*, 844 F.3d at 1162-64, 68 (recognizing “church autonomy” embodies “other principles of the Free Exercise and Establishment Clause” distinct from ministerial exception); *see also Tassinari v. The Salvation Army*, No. 21-10806, 2026 WL 1948096, at *6 n.12 (D. Mass. July 6, 2026) (“binding precedent makes clear that the ministerial exception is but one manifestation of the ‘general principle of church autonomy’”); Luke W. Goodrich, *Religious Hiring Beyond the Ministerial Exception*, 101 Notre Dame L. Rev. 101, 139-46 (forthcoming 2026) (discussing church autonomy protections “beyond the ministerial exception”).

Defendants’ claim of a “wall of Circuit authority” limiting church autonomy to the ministerial exception is wrong. Appellants’ Br.40. *Puri* expressly recognizes “other principles of the Free Exercise and Establishment Clauses” (which it refers to both as “church autonomy” and “ecclesiastical abstention”) that—separate and apart from the ministerial exception—“preclude the courts’ involvement in the internal affairs” of religious organizations. 844 F.3d at 1162, 1168; *see also Huntsman*, 127 F.4th at 793 (Bress, J., concurring) (applying church autonomy outside ministerial exception); *id.* at 800 (Bumatay, J., concurring) (same). And even if there was such a wall, it would conflict with binding precedent, *Our Lady*, 591 U.S. at 747, and decisions of sister circuits, *see, e.g., McRaney*, 157 F.4th at 650; *Gaddy v. Corp. of the*

President of the Church of Jesus Christ of Latter-day Saints, 148 F.4th 1202, 1212, 1216 (10th Cir. 2025).

The protection afforded by the “broad principle” of church autonomy, *Our Lady*, 591 U.S. at 747, includes decisions about religious qualifications for membership or employment in a religious community. The Supreme Court has long held that civil courts “have no power” to entertain lawsuits challenging “ordinary acts of church discipline, or of excision from membership.” *Bouldin*, 82 U.S. (15 Wall.) at 139; *see also Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1038 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. at 194-95 (“[a] suit to remove a priest on the ground that he is a heretic, or to reinstate a parishioner who has been excommunicated” has “never” been a question for the judiciary); Lael Weinberger, *The Origins of Church Autonomy: Religious Liberty After Disestablishment*, Va. L. Rev. (forthcoming 2027) (manuscript at 15) (<https://perma.cc/3K8E-PUCN>) (collecting cases). Civil courts simply “cannot decide who ought to be members of the church” or “whether the excommunicated have been regularly or irregularly cut off.” *Bouldin*, 82 U.S. (15 Wall.) at 139-40. Religious groups thus have autonomy to decide whether a member failed to “conform[] ... to the standard of morals required of them.” *Milivojevich*, 426 U.S. at 714.

This Court has likewise recognized that civil courts cannot second-guess whether a plaintiff has met “religious eligibility requirements” for

a role within a religious body. *Puri*, 844 F.3d at 1167. Religious bodies must be “afforded great latitude” in making those determinations, and where they have “concluded that they no longer want to associate” with a member, “they are free to make that choice.” *Paul*, 819 F.2d at 883.

What is true of members is even more true of employees, who represent the church, its message, and its mission. The time-worn adage that “personnel is policy,” *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 979 (7th Cir. 2021) (en banc), also holds true at religious organizations. Indeed, religious personnel selection may be uniquely unintelligible to civil courts—consider, for example, the accounts in the “Abrahamic religious traditions” of “a stammering Moses [being] chosen to lead the people, and a scrawny David to slay a giant.” *Fratello v. Archdiocese of N.Y.*, 863 F.3d 190, 203 (2d Cir. 2017).

But perhaps more importantly, *policy is policy* too. And determining that “only those committed to [the church’s] mission should conduct” its activities is a critical “means by which a religious community defines itself.” *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring); see also *Hosanna-Tabor*, 565 U.S. at 200-01 (Alito, J., joined by Kagan, J., concurring) (the “fundamental rights” of religious groups “surely include the freedom to choose who is qualified to serve as a voice for their faith”). So when states make it illegal to rest on certain religious grounds for selecting religious representatives, they control not only the

personnel of a religious body but its “faith and doctrine” too. *Kedroff*, 344 U.S. at 116. The Religion Clauses were meant to forbid government from “exercis[ing]” that type of “significant control ... in matters of personnel.” *Markel v. Union of Orthodox Jewish Congregations*, 124 F.4th 796, 808 (9th Cir. 2024).

At a practical level, the Religion Clauses also preserve courts from hopeless entanglement in religious questions. Take this case. The Washington Law Against Discrimination (WLAD) already immunizes all employers who assert a bona fide occupational qualification (BFOQ) to justify employment decisions made based on any otherwise-protected characteristic. Wash. Rev. Code § 49.60.180(1); *but cf.* Appellants’ Br.38 (fretting that respecting church autonomy would also “grant religious organizations broad immunity”). WLAD claims like those the Mission seeks protection from would face a BFOQ defense—and the Mission would have “a strong argument that belief in [its] Statement of Faith ... is a BFOQ.” *Spencer v. World Vision, Inc.*, 633 F.3d 723, 756 (9th Cir. 2011) (Berzon, J., dissenting).

But adjudicating that defense would require courts to decide whether the “essence” of the Mission’s religious “purposes” would be “undermined” by abandoning its religious employment criteria. *Hegwine v. Longview Fibre Co.*, 172 P.3d 688, 698 (Wash. 2007). Such judicial “scrutinizing” of “how a religious [group] pursues its [religious] mission” inescapably causes “entanglement.” *Carson v. Makin*, 596 U.S. 767, 787 (2022). The

“mere adjudication of such questions would pose grave problems for religious autonomy.” *Hosanna-Tabor*, 565 U.S. at 205-06 (Alito, J., joined by Kagan, J., concurring).

2. Courts across the country have avoided such conflicts by recognizing that “[w]hen a church makes a personnel decision based on religious doctrine,” “the broader church autonomy doctrine” applies. *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 n.2, 660 (10th Cir. 2002). *Bryce* is illustrative. There, a church employee sued under Title VII, alleging that church officials’ statements opposing homosexuality and her same-sex union constituted sex discrimination. *Id.* at 651-53. The Tenth Circuit declined to decide whether the plaintiff was a “minister,” *id.* at 658 n.2, instead holding that “the broader church autonomy doctrine” “extends beyond the specific ministerial exception” to include “personnel decision[s]” “rooted in religious belief.” *Id.* at 656-58, 658 n.2. Because the plaintiff challenged “a personnel decision based on religious doctrine,” her suit was barred. *Id.* at 660.

Other cases are in accord. *See, e.g., Butler v. St. Stanislaus Kostka Catholic Acad.*, 609 F. Supp. 3d 184, 198, 204 (E.D.N.Y. 2022) (“broader” “church autonomy doctrine” barred Title VII sexual-orientation discrimination claim “[e]ven if [plaintiff] did not qualify as a ministerial employee”); *Garrick v. Moody Bible Inst.*, 412 F. Supp. 3d 859, 871-73 (N.D. Ill. 2019) (citing *Bryce*, applying “overarching principle of religious autonomy” to dismiss challenge to employment decision rooted in

religious doctrine); *Aparicio v. Christian Union*, No. 18-cv-592, 2019 WL 1437618, at *9-10 (S.D.N.Y. Mar. 29, 2019) (Free Exercise Clause barred non-minister’s Title VII sex discrimination claim); *see also McRaney*, 157 F.4th at 631 (“the church autonomy doctrine” barred plaintiff’s “employment-related claims” arising in tort).

Thus, the very “structure of our government,” *Watson*, 80 U.S. (13 Wall.) at 730, protects a religious employer with a sincere “religious justification” for adopting “religious eligibility requirements” for its employees. *Puri*, 844 F.3d at 1167. That is precisely what the Mission has done by adopting its “requirement that [Mission] employees comply with its religious tenets.” *Union Gospel Mission*, 162 F.4th at 1198. Civil courts may not replace that religious judgment with their own, as “[t]he First Amendment outlaws such intrusion.” *Our Lady*, 591 U.S. at 746.

II. Government intrusion into religious employment qualifications oversteps constitutional structural bounds in a way that harms both religious bodies and civil courts.

A. Violating church autonomy harms religious bodies, including religious minorities.

Just as church autonomy protects religious organizations in the selection of their members, it also protects them in the selection of employees who serve the organization and its mission. Allowing church members to appeal membership qualifications “to the secular courts” “would lead to the total subversion of such religious bodies.” *Kedroff*, 344 U.S. at 114-15. The same risk applies if—as Defendants urge, Appellants’

Br.38-39—secular courts refuse to let religious bodies apply religious criteria in hiring. Church autonomy protections are especially important for minority faith groups, whose practices may be unknown, misunderstood, or disrespected in their communities.

1. Federal courts have regularly faced cases where little-known or unpopular religious practices collide with seemingly neutral applications of law. For example, this Court and others have protected Jewish and Muslim prisoners who needed access to kosher and Halal diets and Native American inmates whose religious beliefs conflicted with prison rules. *Rich v. Sec’y, Fla. Dep’t of Corr.*, 716 F.3d 525 (11th Cir. 2013) (kosher diet); *Shakur v. Schriro*, 514 F.3d 878 (9th Cir. 2008) (halal diet); *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005) (hair length); *Yellowbear v. Lampert*, 741 F.3d 48 (10th Cir. 2014) (Gorsuch, J.) (sweat lodge). The Third and D.C. Circuits have protected Muslim firefighters, EMS personnel, and police officers who faced a similar conflict with departmental grooming policies. *Fraternal Ord. of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999); *Potter v. District of Columbia*, 558 F.3d 542 (D.C. Cir. 2009). Native Americans have been allowed to possess eagle feathers for religious ceremonies. *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465 (5th Cir. 2014); *United States v. Hardman*, 297 F.3d 1116 (10th Cir. 2002) (en banc). Santeros have been permitted to carry out otherwise prohibited animal sacrifice. *Merced v. Kasson*, 577 F.3d 578 (5th Cir. 2009). And multiple branches of the

military have accommodated Jews, Muslims, and Sikhs who wear religious beards. Order, *Di Liscia v. Austin*, No. 1:21-cv-1047 (D.D.C. Apr. 15, 2021), Dkt. 7 (Jewish and, later, Muslim beards); *Singh v. Berger*, 56 F.4th 88 (D.C. Cir. 2022) (Sikh beard).

All of these accommodations are laudable, but all of them required litigation, sometimes protracted, to protect the rights of minority faith groups. Preventing religious observance was likely not the object of military or prison grooming codes, or a ban on carrying knives in a federal building, or a migratory birds treaty. Yet all of those policies provoked conflicts between the law and the religious obligations of minority faiths.

This is not merely a policy concern, but a constitutional one. Indeed, many of the Supreme Court's First Amendment cases involved minority faith groups facing conflict with laws that didn't have the same effect on other faiths. Recall the Amish parents who did not send children to traditional high school, Seventh-day Adventists who would not work Saturdays, Jehovah's Witnesses who would not salute a flag or manufacture weapons, Jews who wore yarmulkes with their military uniforms, Native American and Brazilian groups whose religious observance included hallucinogens, Santeros who sacrificed animals,

Muslims who wore religiously required beards, and Jews who require a *minyan* for prayer even during a pandemic.⁴

Some of these laws were targeted at an unpopular religious observance; others merely incidentally regulated a lesser-known form of religious exercise. But whether through prejudice or simple unfamiliarity, laws can fall more heavily on adherents of minority faiths than those whose practices are widely known, accepted, and even shared.

2. This same dynamic prevails when the issue is the faith, doctrine, and governance of minority religious bodies. Even the terms of the protections often at issue—such as the “ministerial” exception and the “church” autonomy doctrine—borrow from majoritarian religious constructs. Multiple members of the Supreme Court have warned that threats are higher for “religious groups whose beliefs, practices, and membership are outside of the ‘mainstream.’” *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring); *see also id.* at 198 (Alito, J., joined by Kagan, J., concurring) (stressing the importance of a functional analysis because “the concept of ordination as understood by most Christian

⁴ *See Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Sherbert v. Verner*, 374 U.S. 398 (1963); *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Thomas v. Rev. Bd.*, 450 U.S. 707 (1981); *Goldman v. Weinberger*, 475 U.S. 503 (1986); *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872 (1990); *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Agudath Israel of Am. v. Cuomo*, 141 S. Ct. 889 (2020).

churches and by Judaism has no clear counterpart” in many minority religions); *Our Lady*, 591 U.S. at 764 (Thomas, J., joined by Gorsuch, J., concurring) (arguing that courts must “avoid disadvantaging ... minority faiths”).

Wisely so, since minority faith groups have often been dragged into litigation on matters related to their faith, doctrine, and internal governance. This Court has heard several such disputes, often determining that the protections of the church autonomy doctrine applied. *See, e.g., Behrend v. S.F. Zen Ctr., Inc.*, 108 F.4th 765, 769 (9th Cir. 2024) (recognizing that plaintiff’s “menial work” was “an essential component of Zen training”); *Markel*, 124 F.4th at 805-08 (applying ministerial exception to *mashgiach*); *Puri*, 844 F.3d at 1157 (adjudicating case related to “management boards of organizations associated with the Sikh Dharma religious community”); *Huntsman*, 127 F.4th at 792 (“disaffected member of the Church of Jesus Christ of Latter-day Saints is suing the Church seeking a refund of religiously commanded tithes”) (Bress, J., concurring).

Other courts have likewise dealt with cases involving complex issues of religious practice likely unfamiliar to many outside the community. *See, e.g., Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 309 (4th Cir. 2004) (analyzing duties of *mashgiach*); *Grussgott v. Milwaukee Jewish Day Sch.*, 882 F.3d 655, 657 (7th Cir. 2018) (discussing whether “role as a Hebrew teacher can properly be considered

ministerial”); *Belya v. Kapral*, 775 F. Supp. 3d 766, 779 (S.D.N.Y. 2025) (resolving defamation case by an archimandrite against the hierarchy of the Russian Orthodox Church Outside of Russia, including its Metropolitan and Synod, over bishopric election).

When such cases reach the courts—as they do with some regularity—smaller religious bodies are called on to explain their practices, rituals, and religious governance to civil courts. And civil courts are more likely to make mistakes about unfamiliar religious practices, including even basic aspects of Judaism. *See, e.g., Kravitz v. Purcell*, 87 F.4th 111, 117, 125 (2d Cir. 2023) (faulting district court for “rel[ying] on its own authority” to determine that “thirty seconds of prayer” and twenty minutes to eat a communal meal was sufficient “to observe the Shavuot holiday”); *accord United States v. Manneh*, 645 F. Supp. 2d 98, 112 (E.D.N.Y. 2008) (listing examples of courts improperly assessing Jewish, Muslim, and Rastafarian beliefs).

3. Preserving robust church autonomy is particularly important for the survival of minority or unpopular religious groups. As noted above, *supra* at 12, determining that “only those committed to [the church’s] mission should conduct” its activities is a “means by which a religious community defines itself.” *Amos*, 483 U.S. at 342 (Brennan, J., concurring). And social science has long found that higher degrees of religious commitment and participation are correlated with distinctive religious practices that depart from societal norms. Laurence R.

Iannaccone, *Why Strict Churches Are Strong*, 99 Am. J. Sociology 1180, 1183 (Mar. 1994).

Depriving religious groups of the ability to adopt and insist upon distinctive practices thus deprives them of a key tool for their own survival. “[A] religious body’s right to self-governance must include the ability to select, and to be selective about, those who will serve as the very ‘embodiment of its message’ and ‘its voice to the faithful.’” *Hosanna-Tabor*, 565 U.S. at 201 (2012) (Alito, J., and Kagan, J., concurring). That is why the right to “condition employment” on “subscription to particular religious tenets” has long been considered core to the “autonomy of religious organizations.” *Amos*, 483 U.S. at 342 (Brennan, J., concurring).

The ministerial exception alone does not resolve these conflicts. If church autonomy has nothing to say about the application of religious standards to non-ministers, then religious groups must accept employees—and employees’ actions—that contradict the very beliefs and messages that they wish to embody, inculcate, and instill in the next generation. States could require a Jewish day school to retain a janitor who rejects and speaks against the school’s faith or forbid a synagogue to insist on ushers who can serve its sex-segregated worship services. They could ban the Church of Jesus Christ of Latter-day Saints from asking that an “assistant building engineer” at a church-owned gymnasium be a member in good standing. *Cf. Amos*, 483 U.S. at 330.

These situations have been unusual because Title VII protects religious employers who adopt such requirements. *Id.* But the expansion of state laws such as the WLAD is creating new conflicts between religious hiring practices and state nondiscrimination law. For instance, and as particularly relevant here, Washington courts re-interpreted the WLAD’s longstanding religious exemption to redundantly protect only decisions regarding ministers. *See Union Gospel Mission*, 162 F.4th at 1210 (“This tension with the First Amendment arises only from Washington courts’ recent reading of WLAD.”). Similarly, Maryland’s high court recently gave the “narrowest” reading of the religious exemption to the state’s nondiscrimination law, resulting in a law that outlaws even coreligionist hiring for most positions. *Gen. Conf. of Seventh-day Adventists v. Horton*, 787 F. Supp. 3d 99, 109 (D. Md. 2025). As a result, a court denied a preliminary injunction to the Seventh-day Adventist Church seeking relief from Maryland’s requirement that the church hire employees at its world headquarters who reject its beliefs. *Id.* at 131. Twenty state attorneys general have likewise called for narrow readings of religious protections that would leave religious groups at risk. States’ *Amicus* Brief ISO Plaintiff-Appellee, *McMahon v. World Vision Inc.*, 147 F.4th 959 (9th Cir. 2025).

Those new threats are pernicious for a religious minority group, which has more reason to “be concerned that a judge would not understand its religious tenets and sense of mission,” and is thus more

likely to allow “[f]ear of potential liability [to] affect the way [it] carrie[s] out what it underst[ands] to be its religious mission.” *Amos*, 483 U.S. at 336. Such groups can also have fewer available individuals in the population at large who they can hire and easily expect to honor their beliefs without insisting on compliance. They also have fewer resources to resist employment-related litigation. The average congregation nationally has a median income of only \$165,000—and among non-Christian religious groups, median income is less than a third of that.⁵

But employment investigations and litigation can often drag on for years. *Billard*, 101 F.4th 316 (9 years); *Fratello*, 863 F.3d 190 (6 years); *Markel*, 124 F.4th 796 (6 years). The San Francisco Zen Center sued in *Behrend* has been defending against three related claimants for a collective 15 years—and two remain ongoing. *See, e.g., Lorenzo v. S.F. Zen Ctr.*, 583 P.3d 51 (Cal. 2026); *Ehrenkranz v. S.F. Zen Ctr.*, 589 P.3d 373 (Cal. 2026). And in *Hosanna-Tabor*, the church’s seven years of defending against the claims of its former minister lasted longer than her employment to teach religion to its children. 565 U.S. at 178-81.

The litigation itself can be “far-reaching in [its] impact upon religious organizations,” straining strapped budgets and diverting the attention of imams, rabbis, granthis, and other religious leaders from serving their

⁵ Hartford Institute for Religion Research, *Finances and Faith: A Look at Financial Health Among Congregations in the Post-Pandemic Reality* (July 2024), <https://perma.cc/H9XK-PZVL>.

congregations. *Rayburn v. Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). And resolution can raise “questions of compliance [that] may result in continued court surveillance of the church’s policies and decisions.” *Id.*

To be sure, threats to the autonomy of minority faith groups by state laws are not new. *See, e.g.,* McConnell, *Origins* at 1445 (recounting that “minority Protestant sects” faced “legislative interference with their form of church governance” by colonial governments in early America). But it’s precisely to prevent such predictable conflicts that we have a First Amendment. *Hosanna-Tabor*, 565 U.S. at 183. And its protections are needed here. Forbidding religious groups from ensuring that “only those committed to th[eir] mission” should represent them is otherwise a poison pill for their “ongoing tradition of shared belief[.]” *Amos*, 483 U.S. at 342 (Brennan, J., concurring).

B. Violating church autonomy harms the judiciary.

Nor would the church be the only entity harmed by curtailing church autonomy: the state itself is also led astray. Civil courts lack both the power and the ability to second-guess religious eligibility requirements.

First, power. As described above, *supra* at 7, church autonomy is part of the very “structure of our government,” *Watson*, 80 U.S. (13 Wall.) at 730. It “does not protect the church alone,” but is “grounded ... in constitutional structure” in a way that “confines the state and its civil courts to their proper roles.” *Billard*, 101 F.4th at 325. Courts therefore

have a duty “independent of party preference” to avoid being drawn into entangling religious disputes they have no authority to resolve. *Tomic*, 442 F.3d at 1042. This independent duty is “rooted in constitutional limits on judicial authority,” *Billard*, 101 F.4th at 325-26, and is based on “a structural constitutional protection implicating the separation of powers.” *McRaney*, 157 F.4th at 644.

For that reason, courts have *sua sponte* raised and resolved church autonomy interests religious organizations have themselves ignored. *Sixth Mount Zion*, 903 F.3d at 118 n.4. Indeed, to respect the “importance [of] partitioning civil authorities from religious ones,” even where church autonomy has been affirmatively waived, courts have found “staying in our proper lane” more compelling than “enforcing a waiver” and thereby “exceeding our authority.” *Billard*, 101 F.4th at 326 (collecting cases).

Second, “competence.” *McRaney*, 157 F.4th at 644. Civil courts are simply “incompetent” to answer questions of “faith, discipline, and doctrine”—as *Watson* says, each religious group has its own experts far more “able[]” in their own tradition than a court can be. 80 U.S. (13 Wall.) at 729, 732. *Markel’s* refusal to second-guess Orthodox Jewish “orthodoxy” on the role of the *mashgiach* is built on that same recognition. 124 F.4th at 809 (religious organization’s “representation” about role of *mashgiach* “touches on both Jewish beliefs ... and Jewish practices” and thus “ends our inquiry”). So is *Behrend’s* acceptance of the

claim that performing “menial work” like “washing dishes” is “an essential component of Zen [Buddhist] training.” 108 F.4th at 767, 769.

That same “incompeten[ce]” holds true when the matter of “faith, discipline, and doctrine” at issue concerns religious eligibility for employment. *Watson*, 80 U.S. (13 Wall.) at 732. Civil courts simply “are not well positioned to determine” why Moses was better than Aaron, and David better than Saul, to lead Israel. *Fratello*, 863 F.3d at 203 (noting such matters are “difficult for a person not intimately familiar with the religion to understand,” while being “perfectly sensible—and perhaps even necessary—in the eyes of the faithful”). Nor are they competent to set “the standard of morals required” for employment at a religious ministry. *Milivojevic*, 426 U.S. at 714. These are not issues that civil courts “can[] resolve intelligently.” *Tomic*, 442 F.3d at 1042.

To be sure, civil courts have both authority and ability to assess whether there *was* a sincere religious basis for an employment decision. Courts are “seasoned appraisers of the ‘motivations’ of parties,” including whether a religious belief is being “asserted in good faith.” *Manneh*, 645 F. Supp. 2d at 112, and need not respect claims that are a “mere ‘subterfuge’” or made in “bad faith.” *Alcazar v. Corp. of the Catholic Archbishop of Seattle*, 627 F.3d 1288, 1292 (9th Cir. 2010). The Religion Clauses are the product of a “struggle for religious liberty ... through the centuries,” one where “men have suffered death rather than subordinate their allegiance to God to the authority of the State.” *Girouard v. United*

States, 328 U.S. 61, 68 (1946). Courts rightly refuse insincere attempts to appropriate this hard-earned right.

But when the state arrogates to itself the authority to rewrite religious qualifications for employment at a religious ministry, it winds up “entangled in essentially religious controversies” that are wildly beyond its ken. *Milivojevich*, 426 U.S. at 709. The “Civil Magistrate” is no more “a competent Judge of Religious truth” now than it was at the Founding. James Madison, *Memorial and Remonstrance Against Religious Assessments*, in 2 *The Writings of James Madison* 183, 187 (Gaillard Hunt ed., 1901) (condemning contrary view “an arrogant pretension falsified” by history).

CONCLUSION

The Court should affirm the decision of the panel.

Dated: July 23, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the length limits permitted by Ninth Circuit Rule 32-1. The brief is 6,252 words, excluding the portions exempted by Fed. R. App. P. 32(f). The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2026, the foregoing brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit through the Court's ACMS system. I certify that all participants in the case who are registered ACMS users will be served by the appellate ACMS system.

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