Nos. 26-1736, 26-1787

United States Court of Appeals for the Sixth Circuit

SACRED HEART OF JESUS PARISH, GRAND RAPIDS; JOSEPH BOUTELL; RENEE BOUTELL; PETER UGOLINI; KATIE UGOLINI,

Plaintiffs-Appellants / Cross-Appellees (26-1736/1787)

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan,

Defendant-Appellee / Cross-Appellant (26-1736/1787)

JOHN E. JOHNSON, JR., in his official capacity as Executive Director of the Michigan Department of Civil Rights; PORTIA L. ROBERSON, in her official capacity as a member of the Michigan Civil Rights Commission; ZENNA FARAJ ELHASON, in her official capacity as a member of the Michigan Civil Rights Commission; GLORIA E. LARA, in her official capacity as a member of the Michigan Civil Rights Commission; REGINA MARIE GASCO-BENTLEY, in her official capacity as a member of the Michigan Civil Rights Commission; ANUPAMA KOSARAJU, in her official capacity as a member of the Michigan Civil Rights Commission; RICHARD J. CORRIVEAU, in his official capacity as a member of the Michigan Civil Rights Commission; DAVID WORTHAMS, in his official capacity as a member of the Michigan Civil Rights Commission; LUKE R. LONDO, in his official capacity as a member of the Michigan Civil Rights Commission,

Defendants-Appellees (26-1736).

On Appeal from the United States District Court for the Western District of Michigan
No. 1:22-cv-01214

BRIEF OF CALVIN UNIVERSITY AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS / CROSS-APPELLEES

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 26-1736, 26-1787 Case Name: Sacred Heart of Jesus Parish v. Nessel

Name of counsel: Noel Francisco

Pursuant to 6th Cir. R. 26.1, Calvin University
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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on 10/30/2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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INTEREST OF *AMICUS CURIAE*[1]

Calvin University is a liberal arts university in Grand Rapids, Michigan, that pursues rigorous intellectual inquiry in the conviction that all persons belong to Jesus Christ. Rooted in a covenantal relationship with the Christian Reformed Church in North America (CRCNA), Calvin seeks to "equip[] students to think deeply, to act justly, and to live wholeheartedly as Christ's agents of renewal in the world."[2] "[A]ll" activities at Calvin—"teaching and learning," "athletics and the arts," "campus life and community activities"—center on that religious mission.[3]

Yet Calvin could not pursue that mission if its employees contradicted and undermined its religious beliefs and practices. Calvin accordingly expects all faculty members to affirm the Christian faith as expressed by historical Reformed confessions, and it reserves the right to prefer co-religionists when hiring non-faculty staff members. Calvin thus has a substantial interest in determining whether and to what extent the

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[1] Counsel for all parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No one other than *amicus* made any monetary contribution to fund the preparation or submission of this brief. *Id.* R. 29(a)(4)(E).

[2] Calvin University, *Who We Are*, https://calvin.edu/about/who-we-are (last visited Oct. 29, 2026).

[3] Calvin University, *What We Believe*, https://calvin.edu/about/who-we-are/what-we-believe (last visited Oct. 29, 2026).

provisions of Michigan's Elliott-Larsen Civil Rights Act ("ELCRA") apply to religious entities like the university. Calvin's interest in this issue is particularly pronounced because it was recently sued in Michigan state court by a former professor who alleged that Calvin violated the ELCRA when it decided for religious reasons not to renew his teaching contract.

INTRODUCTION

The First Amendment secures the right of the religious to fully "live out their faiths." *Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025) (citation omitted). Religious entities like Calvin may adopt their own polity, establish doctrine, select and reject leaders, and define membership—all without government interference. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). So Michigan cannot question Calvin's affiliation with the CRCNA or countermand its expectation that its faculty abide by Reformed historical creeds. Nor, as the District Court recognized, may the state override Plaintiff Sacred Heart's teaching on sexual orientation and gender or rewrite its admissions policies.

But the First Amendment's protections do not end at the doors of the chapel, with the closing of a Bible lesson, or when a denomination hires a new minister. They extend to the numerous ways religious organizations carry out their faith—including by "operating homeless shelters, hospitals,

soup kitchens, and religious legal-aid clinics"—and, correspondingly, to the organizations' choices about *who* may join in that religious mission. *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., joined by Thomas, J., respecting the denial of certiorari). "[P]ersonnel is policy," especially in religious institutions, and the government may no more force a religious group to hire individuals who actively undermine its religious mission than it may dictate details of church polity or creed. *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 979 (7th Cir. 2021) (en banc).

In the employment context, respect for a church's personnel choices first crystallized in suits challenging a church's employment decisions regarding ministers. The so-called "ministerial exception" established that civil courts may not superintend the "selection of those who will personify [a church's] beliefs." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). But the ministerial exception is "merely" a focused application of a "broader constitutional principle of church autonomy to a specific factual scenario." Lael Weinberger, *Church Autonomy, Religious Leaders, and Non-Minister Employees*, U. Chi. L. Rev. Online (forthcoming) (manuscript at 9) (Weinberger, *Non-Ministers*), *available at* https://perma.cc/T3ZY-HA9L. The same principles that

underwrite the ministerial exception establish a broader zone of independence for employment decisions, made on religious grounds, concerning the selection and retention of employees whose word, deed, and witness can either nourish or harm, advance or thwart, the mission the group pursues.

The District Court misapplied these principles. It incorrectly treated the ministerial exception as the outer bound of the protection that the church-autonomy doctrine affords religious employers. And it erroneously reasoned that because the Supreme Court has not expressly affirmed that the church-autonomy doctrine protects employment decisions about non-ministers, that Court's precedent does not *permit* that form of protection—a misreading of over a century of precedent. *Sacred Heart of Jesus Par., Grand Rapids v. Nessel*, 2026 WL 2546217, at *12 (W.D. Mich. Aug. 5, 2026).

Nor does church autonomy create a law-free zone that confers blanket immunity from secular laws or embroils judges in line-drawing for which they are not suited. Quite the opposite. Judges have been applying close legislative analogues to the church-autonomy doctrine for decades. The sky has not fallen, and the analogues, like the foundational doctrine they apply, steer judges clear of entangling inquiries that they are ill-equipped to resolve.

These principles entitle Plaintiffs to hire those who will help model and bear witness to—instead of contradict and undermine—the faith that shapes their course. The Court should reverse.

ARGUMENT

I. The Church-Autonomy Doctrine Guarantees a Religious Employer's Right to Hire Employees Who Will Advance—Not Contradict—Its Religious Mission.

A. The church-autonomy doctrine is a structural prohibition on interference with religious governance.

The church-autonomy doctrine establishes that a church's internal governance decisions belong to the church—and the church alone. The doctrine traces to Christ's injunction to distinguish the "things which are Caesar's" from "the things that are God's," and to render to each authority his own. *See* Matthew 22:21 (King James). In accord with this command, Western legal and political theorists posited that the "church and state are separate sovereigns (or dual authorities) that each hold exclusive jurisdiction over certain subject matters." *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 803 (9th Cir. 2025) (en banc) (Bumatay, J., concurring in the judgment); *accord* Richard W. Garnett, *Religious Freedom, Church Autonomy, and Constitutionalism*, 57 Drake L. Rev. 901, 906 (2009). In legal and political orders that incorporated this distinction—such as medieval England—it was "natural"

that church and state would govern "their own field[s] of action," with each having "their own province." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 634 (5th Cir. 2025) (citation omitted).

Although that arrangement "did not survive the reign of Henry VIII," it inspired the Framers—who had often "chafed" at the Crown's control "over religious offices" and whose ancestors had fled to America to "elect their own ministers"—to constitutionalize this structural limit on civil authority. *Hosanna-Tabor*, 565 U.S. at 182-83. The Religion Clauses work in tandem to prevent the government from superintending the affairs of religious institutions. The Establishment Clause prevents the government from "exert[ing] control over the doctrine and personnel of the established church." *Shurtleff v. City of Boston*, 596 U.S. 243, 286 (2022) (Gorsuch, J., concurring in the judgment). So too, the Free Exercise Clause "prevents it from interfering with the freedom of religious groups to select" or adopt the same. *Hosanna-Tabor*, 565 U.S. at 184.

The Constitution's guarantee of church autonomy was recognized from the start. Less than two decades after ratification, then-Secretary of State James Madison, the architect of the Religion Clauses, explained to a Catholic bishop who had "solicited the Executive's opinion on who should be

appointed to direct the affairs of the Catholic Church" in the newly purchased Louisiana Territory that the Constitution's "scrupulous policy" was to "guard[] against a political interference with religious affairs." *Id.* (quoting Letter from James Madison to Bishop Carroll (Nov. 20, 1806), *reprinted in* 20 Records of the American Catholic Historical Society 63, 63 (1909)).

Judicial decisions likewise tracked this constitutional principle—even well before the Religion Clauses became the subject of substantial litigation. By the time states had disestablished their churches, courts recognized that the church-state principles of American constitutionalism rendered civil authorities "incompetent judges of matters of faith, discipline and doctrine." *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282, 291 (1846); *see also* Lael Weinberger, *The Origins of Church Autonomy: Religious Liberty After Disestablishment*, Va. L. Rev. (forthcoming 2027) (manuscript at 14), *available at* https://perma.cc/M5WY-8A9S. "The judicial eye of the civil authority of this land of religious liberty," one court vividly remarked, "cannot penetrate the veil of the Church." *Shannon v. Frost*, 42 Ky. (3 B. Mon.) 253, 259 (1842).

The Supreme Court could thus declare in its first church-autonomy decision a few decades later that a "broad and sound view of the relations of church and state under our system of laws," as well as the "preponderating

weight of judicial authority," barred civil tribunals from thwarting the choices of religious bodies concerning "questions of discipline, or of faith, or ecclesiastical rule, custom, or law." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1872). The Court has reaffirmed this doctrine through the decades. *See, e.g.*, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (similar); *Serbian E. Orthodox Diocese of U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976) (similar); *Our Lady of Guadalupe*, 591 U.S. at 746 (similar).

B. The church-autonomy doctrine extends beyond ministers to membership.

The church-autonomy doctrine broadly covers an organization's religious conduct. In recent years, many church-autonomy decisions have addressed challenges to religious organizations' hiring or firing of ministers, those who "personify [the church's] beliefs." *Hosanna-Tabor*, 565 U.S. at 188. Both the Supreme Court and this Court have recognized that civil courts should not countermand the choices of religious organizations about "who will preach their beliefs, teach their faith, and carry out their mission." *Pulsifer v. Westshore Christian Acad.*, 142 F.4th 859, 862-63 (6th Cir. 2025) (quoting *Hosanna-Tabor*, 565 U.S. at 196).

This so-called "ministerial exception" is crucial: To preserve the "lifeblood" of a religious institution, the authority to select and control those

who will guide the institution must be vested in believers—and taken squarely out of Caesar's hands. *Lewis v. Seventh Day Adventists Lake Region Conf.*, 978 F.2d 940, 942 (6th Cir. 1992) (citation omitted). Otherwise, a "religious institution risks losing control over its religious function and purpose." *Pulsifer*, 142 F.4th at 864.

But the ministerial exception is just one focused application of the church-autonomy doctrine, not its entirety. For instance, the same principles underpinning the ministerial exception require courts to stay out of *membership* disputes too. Many religious organizations are not top-down; their "very existence" "is dedicated to the *collective* expression and propagation of shared religious ideals" by all members of the religious community. *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., joined by Kagan, J., concurring) (emphasis added). "[A]s an organized body of members," such a group "must have laws and ordinances … for the preservation of its doctrine and discipline, and also to maintain the purity of its membership." *Satterlee v. U.S. ex rel. Williams*, 20 App. D.C. 393, 407 (D.C. Cir. 1902).

Thus, in what the Supreme Court later described as "[o]ne of the most careful and well-considered judgments on the subject," *Watson*, 80 U.S. at 730, one court explained that because the "structure of our government" has "secured Religious liberty from the invasion of the Civil Authority," the

"judgements" of "religious associations, bearing upon their own members, are not examinable" in court. *Harmon v. Dreher*, 17 S.C. Eq. (Speers Eq.) 87, 120 (S.C. Ct. App. Eq. 1843). A few decades later, the Supreme Court affirmed that civil courts may not "decide who ought to be members of the church," *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40 (1872), or evaluate the "conformity" of those members "to the standard of morals required of them," *Watson*, 80 U.S. at 733; *see also Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 883 (9th Cir. 1987) ("Churches are afforded great latitude when they impose discipline on members or former members.").

Along the same lines, religious organizations are given leeway in the *purposes* for which they associate. *Watson*, 80 U.S. at 728-29. The First Amendment protects more than just the "more orthodox and conventional exercises of religion," such as "worship in the churches and preaching from the pulpits." *Murdock v. Pennsylvania*, 319 U.S. 105, 109 (1943). For instance, "[c]hurches often regard the provision" of community services "as a means of fulfilling religious duty and of providing an example of the way of life a church seeks to foster." *Corp. of the Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 344 (1987) (Brennan, J., concurring in the judgment). Just as choosing *who* is part of

the religious mission is a matter of church autonomy, so is determining *how* to engage in that religious mission.

Our constitutional tradition "deem[s] it vital that, if certain activities constitute part of a religious community's practice," "then a religious organization should be able to require that only members of its community perform those activities." *Id.* at 342-43. A worship community is entitled to ask only members to offer infant childcare in the church basement during the service. Or to hire only a member to serve as an A/V technician, who might project lyrics for the worship songs or handle microphone capabilities for the pastor or lectors. Or to ask only a member to serve as an usher—collecting the congregation's tithe, helping seat people in an orderly way, and addressing disturbances. *Cf.* Calvin University, *Campus Ministries*, https://calvin.edu/campus-ministries (last visited Oct. 29, 2026) (every aspect of student worship aims at "seeking God and serving him passionately"). A religious body's decision about who should perform these activities that are integral to the body's religious practices rests on religious judgments about how the activities serve the purpose for which the members come together for "collective expression and propagation" in the first place. *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., joined by Kagan, J., concurring).

C. For the same reasons, in the employment context, church autonomy extends to non-ministerial employees.

The straightforward and well-established principles that shield from state oversight a church's decision whether its ushers, A/V technicians, and infant care providers must be members in good standing *also* shield a religious organization's religiously motivated employment decisions. *Contra Sacred Heart*, 2026 WL 2546217, at *12 (suggesting that applying the church-autonomy doctrine to non-ministers "expands the underlying religious autonomy doctrine and ministerial exception more broadly than the Supreme Court's body of caselaw currently permits"); *see also* Luke W. Goodrich, *Religious Hiring Beyond the Ministerial Exception*, 101 Notre Dame L. Rev. 751, 789-98 (2026) (Goodrich, *Religious Hiring*) (collecting decisions and describing differences between the ministerial exception and the church-autonomy doctrine as applied to employment relationships).

It is well settled that the church-autonomy doctrine—like other First Amendment protections—does not apply only to houses of worship such as churches, synagogues, or mosques. Nor does it apply merely to an "entity operated by [such] traditional religious organization[s]." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 834 (6th Cir. 2015) (citation omitted). It applies to any entity "whose 'mission is marked by clear

or obvious religious characteristics,'" including "ministry and teaching." *Id.* (citation omitted) (evangelical campus mission organization); *Shaliehsabou v. Hebrew Home of Greater Wash., Inc.*, 363 F.3d 299, 310 (4th Cir. 2004) (home for the aged). Those characteristics will vary widely across religious traditions.

And courts may not premise the protections of the church-autonomy doctrine on such variance. The Establishment Clause "'clear[ly] command[s]'" that the government may not "'officially prefe[r]' one religious denomination over another." *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025) (first two alterations added) (citation omitted). Nor may the government "grant[] a denominational preference by explicitly differentiating between religions based on theological practices." *Id.* at 250. Regardless of whether a religious group's religiously grounded employment criteria correspond to something like membership rolls, parishioner lists, or signed confessions, the church-autonomy doctrine secures the right to preserve the integrity of a religious mission by selecting religious personnel based on religious criteria that the religious organization sincerely believes.

Indeed, in the same way that forcing a church to admit members who do not conform to its standard of morals would undermine church doctrine

and discipline, *see supra* at 9-10, forcing other religious organizations to employ those who are hostile to the faith or whose personal conduct and beliefs would "contradict" the employers' missions would undermine that mission altogether. *Our Lady of Guadalupe*, 591 U.S. at 747. "If States could compel religious organizations to hire employees who fundamentally disagree with them, many religious non-profits would be extinguished from participation in public life—perhaps by those who disagree with their theological views most vigorously." *Seattle's Union Gospel Mission*, 142 S. Ct. at 1096 (Alito, J., joined by Thomas, J., respecting the denial of certiorari). To force religious employers to hire hostile staff members—even in roles that do not involve overt religious instruction—is to work "significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Amos*, 483 U.S. at 335.

For instance, Michigan does not consider an athletic coach to be a minister. *Sacred Heart*, 2026 WL 2546217, at *7. Yet a coach may play an integral role in a school's religious mission. Calvin seeks to cultivate "[l]eadership development and Christian character" in its student-athletes, and it would be counterproductive if Calvin's coaches failed to live up to that standard. *See* Calvin University, *Athletic Recruitment*, https://calvin.edu/admissions/athletes (last visited Oct. 29, 2026). The

record below shows that Plaintiff Sacred Heart takes a similar view of athletics. It expects its coaches to "[i]ntegrat[e] Jesus Christ, the life of the Church and the organic unity of the Catholic faith into the athletic environment." D. Ct. ECF 1-10, at 5. A coach "whose public life" is *not* "lived in conformity with the moral teachings of the Church" is not equipped for that task. *Id.* at 6. To force the school to hire persons who denounce or flout Catholic doctrine, who refuse fidelity to Church teaching, or who do not model the Catholic faith would plainly undermine the school's efforts to form students in the Catholic tradition.

Michigan also asserts that a receptionist and medical assistant are non-ministerial employees. *Christian Healthcare Ctrs., Inc. v. Nessel*, 2026 WL 2542702, at *5 (W.D. Mich. Aug. 5, 2026). But even if those positions might not be seen as traditionally ministerial, they can be integral to a religious healthcare ministry's mission. Plaintiff Christian Healthcare Centers, Inc. (CHC) offers a "distinctly Christian alternative to traditional primary care," "discussing the spiritual aspects of medical care, praying with patients, and meeting their medical, emotional, and spiritual needs." D. Ct. ECF 1, at 2 (verified complaint). Its receptionist acts as the "'face' of the organization" to patients, and must be able to answer "questions related to CHC's distinctively Christian message and mission," "[d]irect patients and family members to

spiritual resources," and "pray with patients." D. Ct. ECF 1-16, at 2. It would subvert CHC's religious mission if the receptionist thought that the ministry's religious beliefs were erroneous, could not engage patients in religious discussion, or wore attire incompatible with the ministry's convictions.

So too for a medical assistant, who must be equipped to "[t]reat the whole patient, including members' emotional and spiritual needs," discuss the "spiritual dimensions of wellness and illness, in accordance with the teachings of historic biblical Christianity, and pray with members." D. Ct. ECF 1-13, at 2. The religious mission of the healthcare ministry would suffer if an atheist medical assistant would not or could not support a doctor as she counseled a patient, or if the assistant refused to discuss (or were incapable of discussing) the spiritual aspect of well-being with patients who wanted to discuss it.

It is for religious institutions, not civil courts, to decide which job applicants and employees will help achieve their goals. *Our Lady of Guadalupe*, 591 U.S. at 738. Precisely to bar governments from foisting these kinds of disruptive employees on religious entities, the church-autonomy doctrine allows those institutions to decide who is fit to carry out their mission.

II. Applying the Church-Autonomy Doctrine—Rather Than the Ministerial Exception Alone—Properly Balances the Interests of Religious Institutions and Employees.

A. As applied to non-ministers, the church-autonomy doctrine is *both* broader and narrower than the ministerial exception.

Underpinning the District Court's refusal to apply the church-autonomy doctrine to shield Plaintiffs was its perception that the doctrine is "broader" than the ministerial exception. *Sacred Heart*, 2026 WL 2546217, at *11. That view is only half right.

The District Court is correct that the church-autonomy doctrine applies more broadly than the ministerial exception. Necessarily so. The ministerial exception is, as the Supreme Court explained in *Our Lady of Guadalupe*, merely a "component" of the broader zone of internal self-governance that the church-autonomy doctrine secures for religious employers. 591 U.S. at 746. As described above, courts have long recognized that the First Amendment's protections for religious institutions range far beyond the hiring and firing of certain key employees: they apply to *all* internal governance decisions. *See supra* at 8-11. In short, whether the positions in question are ministerial does not resolve whether the employer enjoys the protections of church autonomy.

The District Court missed, however, the fact that the church-autonomy doctrine is, in some sense, narrower than the ministerial exception. The

ministerial exception is a categorical shield against judicial scrutiny: When a religious employer can show that the employee in question was a minister—a question that turns on whether the employee plays a prominent role in the religious mission—courts will not intervene, even to examine whether the adverse personnel action was motivated by religion. *Our Lady of Guadalupe*, 591 U.S. at 753, 762; *Palmer v. Liberty Univ., Inc.*, 72 F.4th 52, 77 (4th Cir. 2023) (Richardson, J., concurring in the judgment). The "religious character" of the decision is instead "presumed from the leadership nature of the ministerial role." Weinberger, *Non-Ministers*, manuscript at 13; *accord Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 174 (5th Cir. 2012). So when a "school with a religious mission" "entrusts a teacher with the responsibility of educating and forming students in the faith," courts will not wade "into disputes between the school and the teacher"—even if the teacher alleges that her firing was really motivated by, say, age or sex discrimination. *Our Lady of Guadalupe*, 591 U.S. at 762.

The broader church-autonomy doctrine, by contrast, applies *only* to decisions based on religious precepts. *See Gaddy v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 148 F.4th 1202, 1212 (10th Cir. 2025) ("If the alleged misconduct is rooted in religious belief, then the conduct has 'the protection of the Religion Clauses.'" (citation omitted)). It

does "*not* apply to purely secular decisions, even when made by churches." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657, 660 (10th Cir. 2002) (emphasis added) (affirming summary judgment for a church based on the church-autonomy doctrine, without applying the ministerial exception, because the decision was "based on religious doctrine"). So a religious organization invoking the church-autonomy doctrine to shield an employment decision concerning a non-minister must show at the "threshold" that the decision was "rooted in religious belief." *Id.* at 657 (citation omitted).

In addition, although courts cannot question the "accuracy" (or "orthodoxy") of the religious belief at issue, they *"could* adjudicate the sincerity" of the employer asserting it. Stephanie H. Barclay, *Replacing Smith*, 133 Yale L.J.F. 436, 446 (2023) (emphasis added). This inquiry is "not … unique" to the church-autonomy context. *Id.* Indeed, "courts have been adjudicating sincerity for a long time, and the rules for doing so are fairly clear." *Id.* at 453; *see, e.g., Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 718 (2014) (invoking the judiciary's extensive experience evaluating prisoner "claims of dubious sincerity"). A religious claimant "can be pressed on inconsistencies" or "any secular self-interest that might motivate an insincere claim." Ben Adams & Cynthia Barmore, *Questioning*

Sincerity: The Role of the Courts After Hobby Lobby, 67 Stan. L. Rev. Online 59, 62-64 (2014). Courts may consult several kinds of relevant evidence to that end. *See Butler v. St. Stanislaus Kostka Catholic Acad.*, 609 F. Supp. 3d 184, 201 (E.D.N.Y. 2022).

This distinction between the two doctrines matters in practice—as employment discrimination cases brought against religious schools show. In *Hosanna-Tabor*, for example, a religious school represented that it fired a teacher for violating its religious "commitment to internal dispute resolution," and the teacher countered that this ground was a mere "pretext[]" for disability discrimination. 565 U.S. at 194. After concluding that the teacher was a minister, the Supreme Court rebuffed her response as "miss[ing] the point of the ministerial exception." *Id.* Because the exception is not concerned with whether the church's decision "is made for a religious reason," accusations of pretext were irrelevant. *Id.*

In *Butler*, by contrast, a school invoked church autonomy when it was sued for firing a teacher. The court granted summary judgment to the school on the ground that the teacher was a minister. 609 F. Supp. 3d at 198. But the court ruled in the alternative that the principle of church autonomy would require judgment for the school even if the ministerial exception did not apply. *Id.* And in assessing the school's church-autonomy defense, the

court explained that it could analyze pretext by examining "factual questions such as whether the asserted reason for the challenged action comports with the defendant's policies and rules, whether the rule applied to the plaintiff has been applied uniformly, and whether the putative non-discriminatory purpose was stated only after the allegation of discrimination." *Id.* at 201 (quoting *DeMarco v. Holy Cross High Sch.*, 4 F.3d 166, 171 (2d Cir. 1993)).

In short, while pretext does not factor into ministerial exception cases, sincerity remains a legitimate subject of judicial inquiry when a party asserts a non-ministerial church-autonomy defense.

B. The church-autonomy doctrine is also bounded by subject-matter limits.

Other jurists—including two judges on a recent, fractured Fourth Circuit panel—have declined to apply the church-autonomy doctrine to non-ministerial employees out of concern that doing so would create a law-free zone. *See Doe v. Catholic Relief Servs.*, ___ F.4th ___, 2026 WL 3091963, at *22 (4th Cir. Oct. 16, 2026). The panel began from the mistaken premise that non-ministerial, "lay employees" do not "carry[] out the mission of the organization" and instead have an ordinary "commercial employment relationship" with the religious employer. *Id.* at *22-23. *But see supra* at 12-16. From there, the panel concluded that non-ministerial employees should receive the same "protection" as "employees of secular organizations." *Doe*,

2026 WL 3091963, at *22. Holding otherwise, it believed, would effectively "immunize all misconduct by religious entities following from religious belief." *Id.* at *19.

Yet that view of church autonomy ignores a number of subject-matter limitations that preserve a "place for the state in requiring accountability for harmful wrongdoing." Lael Weinberger, *The Limits of Church Autonomy*, 98 Notre Dame L. Rev. 1253, 1257 (2023) (Weinberger, *Limits*). The free exercise right embodied in the First Amendment does not shield conduct that endangers the "public peace" or "safety." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1461-62 (1990); *Fulton v. City of Philadelphia*, 593 U.S. 522, 575-81 (2021) (Alito, J., concurring in the judgment). So church autonomy does not extend to either historically recognized criminal conduct or direct acts of physically harmful tortious conduct. Weinberger, *Limits*, at 1316. It does not, for example, "bar criminal prosecutions for interfering with law enforcement investigations," *see Hosanna-Tabor*, 565 U.S. at 195, or shield a religious group's effort to "try one of its members for murder, and punish him with death or imprisonment," *Watson*, 80 U.S. at 732-33.

What church autonomy *does* protect against are governmental encroachments, including "creative, religion-targeting laws," that range

beyond these "historical" categories. Weinberger, *Limits*, at 1317. Under *Doe*, religious organizations would have no recourse against these incursions—and no credible way to "insist that a sacred doctrine is true and should be followed when church members [or] other employees … see that it employs individuals whose beliefs and conduct contradict the church's teaching." *Doe*, 2026 WL 3091963, at *60 (Quattlebaum, J., dissenting).

C. Courts have been applying legislative analogues to the church-autonomy doctrine for half a century.

Experience also shows that a robust church-autonomy doctrine would not lead to a "parade of horribles." *Hosanna-Tabor*, 565 U.S. at 195. Federal courts have been ably applying "legislative applications of the church-autonomy doctrine"—that is, "religious-employer exemptions" in Title VII and the Americans with Disabilities Act—for decades. *Korte v. Sebelius*, 735 F.3d 654, 678 (7th Cir. 2013); *see also* Goodrich, *Religious Hiring*, at 767-79. Title VII exempts from its nondiscrimination provisions all decisions by religious employers "with respect to the employment of individuals of a particular religion." 42 U.S.C. § 2000e-1(a); *see also id.* § 2000e-2(e)(2) (exempting religious educational institutions when they "hire and employ employees of a particular religion"); 118 Cong. Rec. 4503 (1972) (statement of Sen. Ervin) (proposing the amendment that broadened Title VII's exemption for religious employers in order to "take the political hands of

Caesar off of the institutions of God, where they have no place to be"). The ADA, similarly, exempts from its nondiscrimination provisions the actions of a religious group that prefers "individuals of a particular religion," 42 U.S.C. § 12113(d)(1), or that "require[s] that all applicants and employees conform to the religious tenets of [the] organization," *id.* § 12113(d)(2). The antidiscrimination laws of many states contain similar exemptions.[4]

Just like the church-autonomy doctrine, these statutes apply to employment decisions *even as to non-ministerial employees*. Title VII's religious exemption, for instance, covers *any* "work connected with the carrying on by such corporation, association, educational institution, or society of its activities." *Id.* § 2000e-1(a).

Just like the doctrine, these statutes protect *all of* the religious organization's religiously motivated decisions. "[A]ll of Title VII," for

[4] *See, e.g.*, Ariz. Rev. Stat. Ann. § 41-1462; Ark. Code Ann. § 16-123-103(a); Cal. Gov't Code § 12926(d); Colo. Rev. Stat. § 24-34-402(6); D.C. Code § 2-1401.03(b); Del. Code Ann. tit. 19, § 710(7); Fla. Stat. § 760.10(10); Haw. Rev. Stat. § 378-3(5); Idaho Code § 67-5910(1); Ind. Code § 22-9-5-22; Iowa Code § 216.6(6)(d); Ky. Rev. Stat. § 344.090(2); La. Rev. Stat. Ann. § 23:302(2)(b); Mass. Gen. Laws ch. 151B, § 4(18); Minn. Stat. § 363A.26(2); Mont. Code Ann. § 49-2-101(11); Neb. Rev. Stat. § 48-1103(1); Nev. Rev. Stat. § 613.320(1)(b); N.H. Rev. Stat. Ann. § 354-A:2(VII); N.J. Stat. Ann. § 10:5-12(a); N.Y. Exec. Law § 296(11); Ohio Rev. Code Ann. § 4112.02(O); Okla. Stat. tit. 25, § 1308(2); Or. Rev. Stat. § 659A.006(5)(c); R.I. Gen. Laws § 28-5-6(9)(ii); S.D. Codified Laws § 20-13-18; Utah Code Ann. § 34A-5-102(1)(i)(ii)(A); Vt. Stat. tit. 21, § 495(e); Wis. Stat. § 111.337(2)(am); Wy. Stat. Ann. § 27-9-102(b).

instance, "drops out" when a religious organization's employment "decision is founded on religious beliefs." *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring). That protection encompasses not just labels but belief and practice too.[5] Title VII exempts "decision[s] to terminate an employee whose conduct or religious beliefs are inconsistent with those of its employer"—not merely an employee who identifies with a religion different from her employer's. *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 624 (6th Cir. 2000); *see Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (acknowledging that Title VII was meant to allow religious bodies "to create and maintain communities composed solely of individuals faithful to their doctrinal practices, whether or not every individual plays a direct role in the organization's 'religious activities'").

And just like the church-autonomy doctrine, these longstanding legislative analogues allow courts to assess whether the proffered religious reason for the employment decision was pretextual. *See, e.g.*, *Herx v. Diocese*

[5] The Fourth Circuit's recent decision allowing Title VII suits when a religious organization's religious-conduct requirements can be labeled discrimination based on some other protected characteristic breaks from this longstanding interpretation and should not be followed. *Compare Doe*, 2026 WL 3091963, at *6, *with Curay-Cramer v. Ursuline Acad. of Wilmington*, 450 F.3d 130, 141 (3d Cir. 2006).

of Fort Wayne-S. Bend Inc., 48 F. Supp. 3d 1168, 1180-82 (N.D. Ind. 2014) (granting summary judgment on a disability-discrimination claim under the ADA to a Catholic diocese that declined to renew the contract of a female employee for using in vitro fertilization because that use constituted "conduct that offended the precepts of the faith," but only after concluding that the "record indicate[d] that the Diocese acted because of Mrs. Herx's choice of fertility treatment and not on any animus against infertility"); *see also* Goodrich, *Religious Hiring*, at 801 n.296 (discussing decisions and noting that the church-autonomy doctrine does not shield decisions made on pretextually religious grounds).

Courts thus already have considerable experience applying the church-autonomy doctrine. Take as an example the Eleventh Circuit's decision in *Killinger v. Samford University*, 113 F.3d 196, 198, 201 (11th Cir. 1997). The plaintiff there—a professor of divinity—sued his employer for discrimination under Title VII after he was removed from the divinity school. The employer argued that it had fired the plaintiff for religious reasons integral to the university's religious mission. The court resolved this claim by applying Title VII's religious exemption the same way the church-autonomy doctrine would apply to a religious school like Calvin or Sacred Heart. The court ruled that the university was a religious educational institution, that the university had

removed the professor based on its "purpose, principles, and tendencies as a religious institution," and that the reason for removal was that the professor's "religious beliefs … differ[ed]" from the relevant dean's. *Id.* at 199-200. The court's conclusion could have been written verbatim about the church-autonomy doctrine: Title VII's exemption, the court said, "allows religious institutions to employ only persons whose beliefs are consistent with the employer's when the work is connected with carrying out the institution's activities." *Id.* at 200; *see also* Goodrich, *Religious Hiring*, at 824-25 (noting that "Title VII's religious exemption provides a straightforward statutory basis for resolving th[e] conflicts" for which the church-autonomy doctrine provides a constitutional defense).

Courts employ standard interpretive tools when applying these legislative regimes. *See, e.g.*, *Conway v. Mercy Hosp. St. Louis*, 146 F.4th 704, 708 (8th Cir. 2025) (exploring the "ordinary meaning" of the term "religious" in Title VII). They can do the same when applying the church-autonomy doctrine directly.

CONCLUSION

The Court should reverse the District Court's summary judgment on Plaintiffs' claims that the church-autonomy doctrine bars ELCRA's application to their employment decisions.

October 30, 2026

Respectfully submitted,

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In accord with Federal Rule of Appellate Procedure 25(d) and 6th Circuit Rule 25, I certify that I electronically filed this *amicus curiae* brief on October 30, 2026, with the Clerk of the Court of the U.S. Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be made through CM/ECF.

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