Nos. 26-1736 & 26-1787

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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

Plaintiffs-Appellants/Cross-Appellees,

v.

DANA NESSEL, in her official capacity as Attorney General of Michigan; 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; RICHARD R. WHITE, III, in his 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; SKOT WELCH, in his official capacity as a member of the Michigan Civil Rights Commission; ROSANN L. BARKER, in her official capacity as a member of the Michigan Civil Rights Commission; and Luke R. Londo, in his official capacity as a member of the Michigan Civil Rights Commission,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Michigan, No. 1:22-cv-01214-JMB-PJG, Hon. Jane M. Beckering

BRIEF OF PROFESSOR LAEL WEINBERGER AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS / CROSS-APPELLEES

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DISCLOSURE STATEMENT

Amicus curiae Professor Lael Weinberger is a natural person. No corporate disclosure statement is required. *See* Fed. R. App. P. 26.1(a), 29(a)(4)(A).

Dated: October 30, 2026

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[*]

Lael Weinberger is an assistant professor of law at George Mason University Antonin Scalia Law School. He has an interest in the sound development of church autonomy law and has published extensively on the subject. *See*, *e.g.*, Lael Weinberger, *The Origins of Church Autonomy*, VA. L. REV. (forthcoming in 2027), https://ssrn.com/abstract=4933864 ("*Origins of Church Autonomy*"); Lael Weinberger & Branton Nestor, *Church Autonomy and Interlocutory Appeals*, NOTRE DAME L. REV. (forthcoming), https://ssrn.com/abstract=6073729; Lael Weinberger, *Is Church Autonomy Jurisdictional?*, 54 LOY. U. CHI. L.J. 471 (2023) ("*Is Church Autonomy Jurisdictional?*"); Lael Weinberger, *The Limits of Church Autonomy*, 98 NOTRE DAME L. REV. 1253 (2023) ("*Limits of Church Autonomy*"); Robert Joseph Renaud & Lael Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67 (2008) ("*Spheres of Sovereignty*").

Many judges have relied on Professor Weinberger's scholarship when confronting the types of issues raised here. *See*, *e.g.*, *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 258 (2025) (Thomas, J.,

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[*] No counsel for any party authored this brief in whole or in part, and no person other than *amicus* and his counsel contributed money intended to fund its preparation or submission. Counsel of record for all parties received timely notice of *amicus*'s intent to file this brief and consented to its filing.

concurring) (citing *Spheres of Sovereignty*, 35 N. KY. L. REV. at 68-84); *McRaney v. North Am. Mission Bd. of S. Baptist Convention, Inc.*, 157 F.4th 627, 648 (5th Cir. 2025) (citing *Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1276-77); *Huntsman v. Corporation of President of Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 811 (9th Cir. 2025) (en banc) (Bumatay, J., concurring in the judgment) (citing *Is Church Autonomy Jurisdictional?*, 54 LOY. U. CHI. L.J. at 481, 510); *O'Connell v. U.S. Conf. of Cath. Bishops*, 2025 WL 3082728, at *2 n.5 (D.C. Cir. Nov. 4, 2025) (per curiam) (Walker, J., concurring in the denial of rehearing en banc) (citing *Is Church Autonomy Jurisdictional?*, 54 LOY. U. CHI. L.J. at 503-05); *id.* at *7, *11-12 (Rao, J., dissenting from the denial of rehearing en banc) (citing *Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1277; *Spheres of Sovereignty*, 35 N. KY. L. REV. at 73-76; and *Origins of Church Autonomy* (manuscript at 14)); *Garrick v. Moody Bible Inst.*, 95 F.4th 1104, 1123-24 (7th Cir. 2024) (Brennan, J., dissenting) (citing *Is Church Autonomy Jurisdictional?*, 54 LOY. U. CHI. L.J. at 503-05).

Professor Weinberger submits this brief to aid the Court's analysis of the church-autonomy issues animating this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff-Appellant Sacred Heart of Jesus Parish, Grand Rapids ("Sacred Heart") "is a parish-run Catholic school in the Diocese of Grand Rapids, Michigan." *Sacred Heart of Jesus Parish, Grand Rapids v. Nessel*, 2026 WL 2546217, at *3 (W.D. Mich. Aug. 5, 2026). All of its employees must be Catholic and must "support the [Catholic] Church's moral and doctrinal teachings." *Id.* Sacred Heart also requires that all employees "become certified catechists," qualified to teach the Catholic faith. *Id.* Sacred Heart requires that its employees sign a "memorandum of understanding" outlining their religious and moral duties and further requires that staff "swear an 'oath of fidelity'" to Church teachings at a Mass. *Id.* When Sacred Heart hires new employees at all levels, it seeks applications from those who share its beliefs, including by stating its hiring criteria publicly. *Id.*

The State of Michigan says all that is unlawful. The State insists that Sacred Heart would violate Michigan employment law—specifically, its Elliott-Larsen Civil Rights Act—if it posted job listings or made hiring decisions based on the organization's avowedly Catholic mission. *Id.* at *5-8.

When Sacred Heart brought a pre-enforcement challenge to contest that law, the district court sided with the State. The court recognized significant caselaw protecting religious organizations from suits relating to their selection of *ministers*, but it refused to afford any protection for employment decisions involving non-

minister employees. *Id.* at *9-12. The district court decided that the First Amendment's church autonomy doctrine does not protect a religious organization's right to hire employees who share its religious faith. *Id.* The court held: "Sacred Heart has not provided any binding authority to support its proposed application of a broader 'co-religionist exception' or 'co-religionist doctrine.'" *Id.* at *11.

That was a mistake. In setting out that position, the district court embraced an unduly narrow view of the church autonomy doctrine championed by some academics and commentators. *See*, *e.g.*, Carl H. Esbeck, *Church Autonomy and the Co-Religionist Hiring Practice at Issue in* Union Gospel Mission of Yakima v. Brown, 102 NOTRE DAME L. REV. REFLECTIONS (forthcoming in 2026), https://ssrn.com/abstract=6496898 ("*Church Autonomy and the Co-Religionist Hiring Practice*"); *cf.* Whitney Ellenby, Comment, *Divinity vs. Discrimination: Curtailing the Divine Reach of Church Authority*, 26 GOLDEN GATE U.L. REV. 369, 408 (1996). On that view, the church autonomy doctrine and ministerial exception are functionally coterminous. Taken seriously, that argument would mean the church autonomy doctrine provides *no* protection for religious institutions that wish to hire non-minister employees who share their faith.

This brief presents a contrary view. While the ministerial exception has become well established, nothing—not doctrine, text, or history—suggests that it is the *only* First Amendment principle relevant to religious organizations' hiring

choices. Indeed, significant evidence suggests that the church autonomy doctrine provides broader protection than the district court contemplated and extends to Sacred Heart's choices here. The First Amendment protects religious institutions' right to decide for themselves matters of doctrine and self-governance, including the hiring of non-ministers. This Court should reverse the district court's judgment.

ARGUMENT

I. The Church Autonomy Doctrine Is Broader Than The Ministerial Exception

The "ministerial exception" is a particular application of a broader rule. This broader rule is known as the "church autonomy doctrine." Courts must take care not to conflate the two.

A. The Church Autonomy Doctrine Derives From The Constitution's Structure And History

The church autonomy doctrine derives from the First Amendment's Religion Clauses. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747-48 (2020). Its name, "church autonomy," points to the doctrine's chief practical application: protecting the internal affairs of religious institutions from interference, allowing them to decide for themselves matters of "faith and doctrine" and of "church government." *Id.* at 746. Government decisions about how a religious body manages these internal affairs would interfere with the free exercise of religion. And government involvement in making decisions for a religious body would amount to government establishment of religion as well.

Of course, church autonomy is not limited to those religious institutions that call themselves "churches." It applies equally to synagogues, mosques, and other houses of worship, and it has been applied to religious schools and ministries of other kinds as well. *See*, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185-87 (2012). And as is uncontested here, courts regularly apply the doctrine to religious schools. *See*, *e.g.*, *Our Lady of Guadalupe*, 591 U.S. at 736-38.

Church autonomy does not protect anything and everything that happens within a religious institution. For instance, it does not provide cover for criminal activity. *See Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1316. But it *does* protect the self-governance of religious institutions—the "internal management decisions that are essential to the institution's central mission," of which ministerial selection is but one important "component." *Our Lady of Guadalupe*, 591 U.S. at 746; *see also Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., statement respecting the denial of certiorari) (explaining that the Court's "precedents suggest that the guarantee of church autonomy is not so narrowly confined" to "employment decisions regarding formal ministers"); *McRaney*, 157 F.4th at 636 (noting that the doctrine "prohibits far more" than interference with worship or ministerial selection, protecting religious polity issues "such as membership, matters of discipline and good standing"); *Bryce v. Episcopal Church*

in Diocese of Colo., 289 F.3d 648, 655-58 (10th Cir. 2002) ("The Court has made clear that the constitutional protection extends beyond the selection of clergy to other internal church matters."); *Korte v. Sebelius*, 735 F.3d 654, 678 & n.16 (7th Cir. 2013) ("The religious-employer exemptions in Title VII and the ADA are legislative applications of the church-autonomy doctrine.").

The historical origins of this church autonomy doctrine in American law go back to the Founding. *See Origins of Church Autonomy* (manuscript at 10-11) (summarizing this history). Soon after the Louisiana Purchase, then-United States Secretary of State James Madison declined to weigh in on the appointment of ecclesiastical officers in Louisiana, stating "the case is entirely Ecclesiastical" and that "it is deemed most congenial with the scrupulous policy of the Constitution in guarding against a Political interference with religious affairs" to avoid such issues. Letter from James Madison to Bishop Carroll (Nov. 20, 1806), *reprinted in* 17 The American Catholic Historical Researches 95 (1900). Later, as president, Madison echoed this view: A "bill exceeds the rightful authority to which governments are limited," he said, when it "enacts into, and establishes by law, sundry rules and proceedings relative purely to the organization and polity of the church incorporated." Journal of the Senate, 11th Cong. 582-83 (Feb. 21, 1811).

Beginning in the nineteenth century, courts applied church autonomy in new contexts. Many early cases involved disputes arising from church property after a

church split. *See*, *e.g.*, *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 685-86 (1872). Others arose out of defamation proceedings—cases alleging that false and defamatory statements were made during a church discipline proceeding. *See*, *e.g.*, *Jarvis v. Hatheway*, 3 Johns. 180, 183 (N.Y. Sup. Ct. 1808) (slander action between church members over discipline charges fails absent malice); *York v. Pease*, 68 Mass. (2 Gray) 282, 283-84 (1854) (words spoken "in good faith" in a church proceeding are privileged); *Landis v. Campbell*, 79 Mo. 433, 437-39 (1883) (ecclesiastical decisions "made in good faith" are "conclusive upon civil tribunals").

American courts encountering these cases recognized the hazards of taking sides in churches' doctrinal disputes. *See Shannon v. Frost*, 42 Ky. (3 B. Mon.) 253, 259 (1842) ("The judicial eye . . . cannot penetrate the veil of the Church."); *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282, 291 (1846) ("The decisions of ecclesiastical courts, like every other judicial tribunal, are final," and "[a]ny other than those courts must be incompetent judges of matters of faith, discipline and doctrine."). Thus emerged the consensus that religious bodies' self-definition, self-identity, religious doctrine, and self-governance were best managed by the religious body itself. *See generally* Lael Weinberger, *Church Autonomy, Religious Leaders, and Non-Minister Employees*, UNIV. CHI. L. REV. ONLINE (forthcoming 2027) (manuscript at 7-10), https://ssrn.com/abstract=7639018 ("*Church Autonomy, Religious Leaders, and Non-Minister*

Employees"). These were matters for ecclesiastical government, not for civil government. And they were protected by the First Amendment. *See Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 712 (1976) (prohibiting Illinois state courts from setting aside archbishop's removal).

The "ministerial exception" is a logical application of these principles to a context largely unknown to early America. Employment nondiscrimination laws arose chiefly in the mid-twentieth century. *See*, *e.g.*, Civil Rights Act of 1964, Pub. L. No. 88-352, tit. VII, 78 Stat. 241, 253-66. And when plaintiffs began suing churches for their hiring and firing decisions, courts recognized that scrutinizing those decisions could lead them to second-guessing matters fraught with religious significance. Employment decisions involving ministers necessarily implicated "the internal governance of the church," and so a court weighing in on those choices would "depriv[e] the church of control over the selection of those who will personify its beliefs." *Hosanna-Tabor*, 565 U.S. at 188. Courts' deference to religious self-governance, as the First Amendment requires, became known as the "ministerial exception" to antidiscrimination laws.

Properly understood, the ministerial exception merely applies the broader constitutional principle of church autonomy to a specific factual scenario. As the Court emphasized in *Our Lady of Guadalupe*, the "constitutional foundation" for the Court's development of the ministerial exception "was the general principle of

church autonomy," not any special constitutional principle for clergy. 591 U.S. at 747. Indeed, the "prior decisions on which [the Court] primarily relied drew on this broad principle, and none was exclusively concerned with the selection or supervision of clergy." *Id.* They instead "involved a dispute about the control of church property," *id.* (citing *Watson*, 80 U.S. (13 Wall.) 679), and disputes at the intersection of church property and the "appointment and authority of bishops," *id.* at 747-48 (citing *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952), and *Milivojevich*, 426 U.S. 696). To be sure, the church autonomy doctrine protects religious institutions' choice of ministers. But it is not limited to that context.

B. The Ministerial Exception And Church Autonomy Doctrine Are Not Coterminous

As a special application of the church autonomy doctrine, the ministerial exception has a distinct feature: Once it's shown that a religious institution's employment decision involves a "minister," the judicial inquiry must end. This reflects the understanding that the "very process of inquiry" into certain core religious choices—such as the selection of ministers—can "impinge on rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). In *Hosanna-Tabor*, for example, a plaintiff threatened to file an Americans with Disabilities Act lawsuit, was fired, and then sued for retaliation. *See* 565 U.S. at 179-80. The church articulated a religious reason for firing the plaintiff:

It claimed the plaintiff had failed to follow church guidance on resolving disputes within the faith community. *Id.* at 180. The plaintiff insisted that was pretext. *Id.* at 194. But the Supreme Court sustained the church's right to choose its ministers despite the claim of pretext. The ministerial exception's "purpose" is not to "safeguard a church's decision to fire a minister" only "when it is made for a religious reason." *Id.* "The exception instead ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone." *Id.* at 194-95 (quoting *Kedroff*, 344 U.S. at 119).

To be sure, a similarly *categorical* protection may not apply to religious organizations' decisions to hire or fire non-minister employees. But that does not mean—as the district court assumed below—that the church autonomy doctrine has nothing to say about those employment decisions. Instead, the First Amendment's church autonomy doctrine protects religious organizations' hiring decisions, even as to non-ministers, so long as there are *bona fide* "religious reasons" for making their choice. *See Church Autonomy, Religious Leaders, and Non-Minister Employees* (manuscript at 13-15). Thus, unlike for ministers, a court may ask whether a religious organization's religious basis for hiring non-ministers is sincerely held or merely pretextual.

Making a religious-reason inquiry is no embarrassment to church autonomy doctrine—no "tell" that something other than church autonomy is at work. *Cf.*

Church Autonomy and the Co-Religionist Hiring Practice (manuscript at 9). Rather, the religious-reason inquiry answers the question whether a hiring or firing decision qualifies as a decision of *religious self-governance*. That is how the courts of appeals have long administered church autonomy beyond the ministerial exception: "Before the church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is 'rooted in religious belief.'" *Bryce*, 289 F.3d at 657 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)). A doctrine does not contravene the Religion Clauses because it asks, at the threshold, whether religion is truly at issue in the case.

In ministerial-exception cases, the law presumes that selecting a minister is *necessarily* a matter of church governance. Thus, a religious organization's selection of someone to "lead[] [it], conduct[] worship services or important religious ceremonies or rituals," or to "serve[] as a messenger or teacher of its faith," *Our Lady of Guadalupe*, 591 U.S. at 751, is so intimately bound up with decisions about pastoral care, theological perspective, message, character, and the like, that such a decision will *always* have religious significance, *see Hosanna-Tabor*, 565 U.S. at 188. For that reason, courts applying the ministerial exception must presume (correctly) that selecting a minister is religiously motivated. It follows that, once a religious institution shows that the employment-law matter involves a minister, the inquiry into the religious body's reasons stops.

* * *

The ministerial exception recognizes that selecting a minister is inherently religiously motivated. Accordingly, there is no need for a religious institution separately to demonstrate it had a religious reason to hire or fire a minister. But it does not follow that the church autonomy doctrine speaks to employment law *only* when the employee is a minister. To determine if other employment decisions by religious institutions could ever fall within the scope of the church autonomy doctrine, it is necessary to consider that doctrine more generally.

II. Applying Church Autonomy To Employment Situations Outside The Ministerial Exception Makes Sense

The ministerial exception does not exhaust the relevance of the church autonomy doctrine for employment-law matters. After all, the ministerial exception falls *under* the church autonomy doctrine umbrella. If a role does not qualify as ministerial, courts must nevertheless consider whether the church autonomy doctrine covers the decision. Often, it will. At its core, the doctrine protects a religious employer's right to hire individuals who share the organization's religious faith.

A. The Prima Facie Case For Covering An Employment Situation Within The Scope Of Church Autonomy

Church autonomy principles protect religious conduct, not anything done within a church or religious organization. The church autonomy doctrine applies wherever the underlying conduct at issue is religious. *See Limits of Church*

Autonomy, 98 NOTRE DAME L. REV. at 1307-08; *Our Lady of Guadalupe*, 591 U.S. at 746 (church autonomy doctrine extends beyond churches). In the ministerial-exception setting, as argued above, this religious character is *presumed* because ministers, as a category, exercise religious leadership. Outside that exception, the church autonomy doctrine can still provide protection—but the religious institution must show the religious character of the underlying decision.

Thus, the question in this case is not whether to expand the church autonomy doctrine. Instead, the question is whether that doctrine reaches the conduct at issue in this case. The answer turns on whether Sacred Heart is a religious organization making a religiously based decision to hire employees who share its faith. If so, then the church autonomy doctrine shields that decision.

This case satisfies that test. Sacred Heart is a religious organization with hiring policies flowing directly from its professed religious beliefs. Sacred Heart is a parish-run Catholic school. *Sacred Heart*, 2026 WL 2546217, at *3. The purpose of its curriculum is the pursuit of "truth," which includes "the Catholic understanding of man and woman and the purpose of each," as well as the Catholic "understanding of human anthropology." *Id.* (quotation omitted). Sacred Heart welcomes any family who seeks "the formation offered in its Catholic classical setting." *Id.* It requires that all school employees become certified to teach the Catholic faith. *Id.* And it requires that its staff take an "oath of fidelity" to the

Church at a Mass. *Id.* The organization's hiring decisions are transparently motivated by Sacred Heart's religious beliefs—what it means, in Sacred Heart's view, to practice Christianity in accordance with the creed of the Catholic Church.

For its part, the district court never questioned the sincerity of Sacred Heart's desired approach to employment. Instead, it took the organization at its word that its religious convictions drove its desire to hire only co-religionists—and yet it nevertheless declined to apply the church autonomy doctrine.

The district court's approach here is especially concerning given courts' longstanding hesitation to police membership in religious organizations. *Watson* puts "the conformity of the members of the church to the standard of morals required of them" beyond civil jurisdiction. 80 U.S. (13 Wall.) at 733; *see Origins of Church Autonomy* (manuscript at 39); *Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1311-12; *see also* Branton J. Nestor, *Judicial Power and Church Autonomy*, 100 NOTRE DAME L. REV. 1899, 1905, 1918-20, 1922 (2025). And *Watson*, the Supreme Court has explained, "radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116.

The district court's order contravenes that tradition of independence. It instead dictates who a particular faith community must welcome into their ministry.

That flouts *Watson* and subsequent precedents, too. In *Bouldin v. Alexander*, for example, the Supreme Court explained that it has "no power to revise or question ordinary acts of church discipline"; it "cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off." 82 U.S. (15 Wall.) 131, 139-40 (1872). Other decisions point in the same direction. *See Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 878-83 (9th Cir. 1987) (similar); *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 537-41 (Minn. 2016) (similar); *see also Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 342-43 (1987) (Brennan, J., concurring in the judgment) (explaining, in the context of employment, 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").

In short, the "guarantee of church autonomy" is not "narrowly confined" to "employment decisions regarding formal ministers." *Seattle's Union Gospel Mission*, 142 S. Ct. at 1096 (Alito, J., statement respecting denial of certiorari). The doctrine protects a wide array of religious organizations from being forced to hire "personnel who do not share their religious views." *Id.*

Even scholars critical of applying church autonomy doctrine to non-ministers concede that it might apply in situations quite similar to this one. Professor Esbeck, for example, says that "[t]hings are different when a religious employer restricts hiring to those who are members of the sponsoring denomination or church," because "each job applicant meeting the qualification can be objectively known." *Church Autonomy and the Co-Religionist Hiring Practice* (manuscript at 9 n.35). Sacred Heart likewise seeks to apply objective criteria here. Again, all staff must sign and abide by Sacred Heart's memorandum of understanding outlining their religious and moral duties—in addition to swearing an oath to Church teaching at Mass. *See Sacred Heart*, 2026 WL 2546217, at *3. A covenant community's signed confession is every bit as "objectively known" as a denomination's membership rolls. To constitutionalize a distinction between the two would favor religious communities organized along denominational lines over independent ministries—precisely the sorting among "inherently religious choices" (including whether to "serve only co-religionists") that the Supreme Court has unanimously condemned. *Catholic Charities*, 605 U.S. at 250.

The church autonomy doctrine that should apply to Sacred Heart applies to institutions adhering to other religions in just the same way. A religious organization's religiously based decision about who participates in its community is protected upon a showing that the decision rests on sincere religious belief. To be

sure, religions may vary in how strongly their faith mediates employment decisions. *Cf. Church Autonomy and the Co-Religionist Hiring Practice* (manuscript at 7-8). But the same goes for other applications of the church autonomy doctrine, too. For example, the concept of a "minister" is administered functionally, tradition by tradition, and complies with no "rigid formula." *Hosanna-Tabor*, 565 U.S. at 190. And membership itself is defined by each religious body's own criteria, which civil courts may not second-guess. *See Milivojevich*, 426 U.S. at 713-14.

Finally, applying the church autonomy doctrine makes particular sense here given the presence of two important safeguards: *ex ante* disclosure and consent. *See Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1313-15. Sacred Heart informs those who want to join its staff of its religious character and of the requirement that those who participate as employees live out Sacred Heart's understanding of Catholic doctrine and morals. *See Sacred Heart*, 2026 WL 2546217, at *3. They then "unite themselves" to this "voluntary religious association[]"—and thereby "consent" to its resolution of ecclesiastical matters. *Watson*, 80 U.S. (13 Wall.) at 728-29. One could imagine an employer springing on an already-hired employee various religious obligations; that scenario comes with a grave risk of abuse. *See Limits of Church Autonomy*, 98 NOTRE DAME L. REV. at 1313. But that is not what Sacred Heart has attempted here.

B. Providing A Church Autonomy Avenue For Dealing With The Non-Ministerial Employment Situation Is Superior To Putting All The Pressure On The Ministerial Exception

Were this Court to limit the church autonomy doctrine's application to employment decisions for "ministers," it would create serious practical issues. Most notably, it would disadvantage certain religious groups based on their organizational choices. Those religious institutions that provide meaningful religious roles to lay participants receive less protection than religious institutions that have employees teach or proclaim their faith in traditional ways. Consider some examples:

1. Church A has a pastor who coordinates care for bereaved families. Church B has a lay bereavement coordinator who does the same. Both churches employ their respective bereavement coordinators directly. Both would say that ministering to the grieving at a time of loss has religious significance. But Church B will, under the district court's rule, face greater legal uncertainty as to whether its religious convictions can inform its hiring and firing of bereavement counselors.

2. Religious Charity A employs an addiction-recovery coordinator with a degree in theology who teaches classes on spirituality. Religious Charity B employs an addiction-recovery coordinator who does not engage in teaching but who nonetheless must pray with those going through the program. Charity B will, under the district court's rule, face greater legal uncertainty as to whether its religious convictions can inform its hiring and firing of addiction-recovery coordinators.

3. Synagogue A and Synagogue B each have an employee performing social ministries work—that is, liaising between the synagogue and local charity operations (such as by making donations to food pantries). But in Synagogue A, that worker *also* teaches religious education classes. In Synagogue B, the worker does not. Both synagogues view the social ministries' role as a religious function of the congregation. But Synagogue B will, under the district court's rule, face greater legal uncertainty as to whether its religious convictions can inform its hiring and firing of social ministry workers.

In each of these hypotheticals, Option A could plausibly fall within the ministerial exception; Option B would be a stretch. But under the district court's rule, entities that resemble Option B now stand on comparatively uncertain footing. That approach makes little sense from First Amendment principles.

The district court's approach also places real pressure on religious institutions. If the ministerial exception provides the *only* First Amendment shield to religious institutions' employment decisions, everything rides on fitting into this category. Without clear guidance as to how the church autonomy doctrine applies outside the ministerial-exception context, courts often find it easier to define a wide range of individuals as ministers: for example, a customer-service representative, *McMahon v. World Vision Inc.*, 147 F.4th 959 (9th Cir. 2025); a work-practice apprentice, *Behrend v. San Francisco Zen Ctr., Inc.*, 108 F.4th 765 (9th Cir. 2024); a substitute

teacher, *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316 (4th Cir. 2024); a lay principal, *Fratello v. Archdiocese of N.Y.*, 863 F.3d 190 (2d Cir. 2017); a Hebrew teacher, *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655 (7th Cir. 2018) (per curiam); an organist, *Sterlinski v. Catholic Bishop of Chi.*, 934 F.3d 568 (7th Cir. 2019); and guidance counselors, *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931 (7th Cir. 2022).

None of those classifications are *necessarily* wrong on their facts. But a rule that turns on the binary classification of employees as either ministers or non-ministers creates harmful incentives—overprotecting in some respects; underprotecting in others.

Broad interpretations of who qualifies as a "minister" overprotect religious institutions by shielding them from facing scrutiny for pretextual discrimination. Because ministerial hiring and firing decisions are immune from any judicial review, *see Hosanna-Tabor*, 565 U.S. at 194, *every* expansion of the "minister" label shrinks judicial scrutiny of the employment decisions religious employers make. If some of the aforementioned decisions instead held employees to be non-minister employees, courts could have inspected the religious justifications supporting the employers' decision-making.

Overreliance on the ministerial exception also underprotects in critical respects. Where courts cannot fairly characterize an employee as a minister, they

may mistakenly conclude (as the district court did here) that the employing religious institution enjoys *no* First Amendment protection as to its choices. Applying a similar logic, one court denied the ministerial exception to (and thus denied *any* church autonomy doctrine protection) a Christian university that dismissed a professor for failing to conform with its standard of "conformity with Biblical Christianity." *Richardson v. Northwest Christian Univ.*, 242 F. Supp. 3d 1132, 1138, 1140, 1143-44 (D. Or. 2017). Similarly, a Seattle mission's religious hiring for a legal-aid clinic was left to turn only on "whether staff attorneys can qualify as ministers." *Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060, 1070 (Wash. 2021) (en banc), *cert. denied*, 142 S. Ct. 1094 (2022).

Routing the whole First Amendment inquiry through the ministerial exception creates other practical problems. For example, it pressures religious institutions to make more roles ministerial—regardless of the religious competence of the employee. If, for example, a religious institution believed it *needed* to satisfy the ministerial exception to enjoy any First Amendment protection as to its employment decisions, it may seek to assign to other employees more teaching or liturgical functions (or it may require more formal religious training, or even ordination). *See* Recent Case, *First Amendment—Religion—Fourth Circuit Schism Spotlights Unholy Consequences of Ministerial Exception Doctrine:* Palmer v. Liberty University, 137 HARV. L. REV. 1765, 1772 (2024) (warning that "crafty, or bad faith,

religious entities can capitalize on this institutional deference by ordaining employees as quasi-ministerial").

Funneling all employment issues through the ministerial exception, as the district court did here, also causes the religious rights of non-ministers to turn on the shifting political tides of state legislatures. So long as the legislature enacts "neutral, generally applicable" laws, *Employment Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 881 (1990), as the Michigan Legislature purportedly did in this case, there would be no constitutional protection for hiring co-religionists. That effectively leaves religious organizations' hiring decisions at the whim of state governments—despite the Supreme Court's admonition that church autonomy is not subject to such political whims. *Smith* "involved government regulation of only outward physical acts," whereas church autonomy concerns "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. The government cannot "lend its power to one or the other side in controversies over religious authority or dogma." *Smith*, 494 U.S. at 877; *see Hosanna-Tabor*, 565 U.S. at 190. The First Amendment forbids that outright, regardless whether the exercise of state power comes from a neutral-and-generally-applicable rule.

If the ministerial exception is coextensive with church autonomy, then everything hinges on the particulars of state drafting: the presence or absence of

exemptions, the breadth of a statute's sweep, the comparators a court will accept. Under a proper understanding of church autonomy, this case turns on an antecedent issue: whether the decision is an exercise of internal religious governance. Adopting the correct analytical approach is therefore the difference between providing the full sweep of religious protection that survives *Smith*, or merely a subset of protection that kicks in only when a law is either not neutral or not generally applicable.

* * *

This brief urges a two-tiered approach to employment decisions by religious bodies. Ministers receive special treatment under the ministerial exception. In that context, the religious significance of the religious institution's selection decision may be presumed. For all other positions within a religious body, the institution must specify the religious reason for the employment decision in order to invoke church autonomy doctrine protection. In those situations, a court may examine whether the religious motivation is *bona fide*. That approach preserves a categorical sphere for ministerial selection, while recognizing that religious organizations may possess constitutionally protected interests in employment decisions involving other important personnel. This is the best way to make sense of existing doctrine. It is also good policy. It protects religious exercise in an inclusive way, without privileging certain modes of organizing religious entities over others.

The district court's holding flouts that architecture. Its rule would excise that second tier entirely, leaving religious community-composition decisions wholly unprotected. The First Amendment—and centuries of historical practice—demand a different result.

CONCLUSION

The Court should reverse the district court's opinion.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation for an amicus brief, set by Fed. R. App. P. 29(a)(5) and Fed. R. App. 32(a)(7), because it contains 5,519 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Times New Roman 14-point type) using Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2026, I caused the foregoing brief to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the Court's electronic filing system which will electronically notify all counsel of record.

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