ORAL ARGUMENT HELD JANUARY 10, 2025

No. 23-7173

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DAVID O'CONNELL,

Plaintiff-Appellee,

v.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,

Defendant-Appellant.

On Appeal from the United States District Court for the District of Columbia, No. 1:20-cv-01365,
The Honorable Jia M. Cobb, Judge

BRIEF OF INDIANA, 22 OTHER STATES, AND THE ARIZONA LEGISLATURE AS AMICI CURIAE IN SUPPORT OF DEFENDANT-APPELLANT UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Consistent with D.C. Circuit Rule 28(a)(1), undersigned counsel certifies the following:

Parties, Intervenors, and Amici

All parties, intervenors, and amici appearing before the district court and in this court are listed in Appellants' petition for rehearing, except for the amici submitting this brief.

Rulings Under Review

References to the Rulings at issue are in the Appellant's petition for rehearing.

Related Cases

Counsel is not aware of any related cases pending before this court or any other court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CASES [CONT'D]

CASES [CONT'D]

CONSTITUTIONAL PROVISION

INTEREST OF AMICI STATES

The 23 amici States and the Arizona Legislature represent and are home to countless citizens, organizations, and institutions holding diverse religious beliefs. Sometimes debates over religious matters spill into secular courts. But the "very process of inquiry" into matters of religious faith, doctrine, and leadership "may impinge on rights guaranteed by the Religion Clauses." *NLRB v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979). So it is essential that defendants asserting that the Religion Clauses provide immunity from suit have a right to immediately appeal orders rejecting such defenses. Wrongly permitting discovery, motions practice, and trial over matters the Constitution leaves to conscience would undermine its guarantee of religious autonomy.

To protect citizens' religious freedoms, amici have a significant interest in ensuring that courts resolve religious autonomy defenses at the earliest opportunity. Amici also have a substantial interest in protecting their own officials, agencies, and judicial systems from excessive entanglement with religion. Doctrines permitting immediate review of orders rejecting religious autonomy defenses help to ensure

that no branch of government trammels religious rights, even inadvertently. The Court should grant en banc review to clarify that decisions rejecting claims of immunity under religious-autonomy principles are subject to review under the collateral-order doctrine.

ARGUMENT

The First Amendment's Religion Clauses guarantee religious institutions "autonomy" in matters of "faith," "doctrine," and "church government." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (citation omitted). Those provisions thus give religious groups the right to "shape [their] own faith and mission," and so "prohibits government involvement in . . . ecclesiastical decisions." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188–89 (2012). This includes judicial findings about "how tithed funds would be used," when a factfinder would have credit or discredit "Church teachings" to resolve the dispute. *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 799 (9th Cir. 2025) (en banc) (Bress, J., concurring).

In this case, however, the district court refused to dismiss a suit against the U.S. Conference of Catholic Bishops (USCCB)—an ecclesial

body within the Catholic Church—by parishioner David O'Connell who was displeased by the ministerial choices of the Holy See in allocating donations from around the globe. The district court sustained the action on the presumption that it could "determine, under straightforward common-law principles, whether or not fraud took place," without ruling on issues of church governance. *O'Connell v. U.S. Conference of Cath. Bishops*, 134 F.4th 1243, 1251 (D.C. Cir. 2025). This Court dismissed USCCB's appeal on the grounds that it lacks jurisdiction to review pleading-stage denials of church autonomy defense against suit. *Id.* at 1261. Instead, it decided that any church autonomy arguments could be "adequately addressed after trial." *Id.* at 1258.

Although amici are skeptical that the district court's decision can be squared with religious autonomy principles, they take no position on whether the Religion Clauses bar this suit. Amici's concern is *when* that question should be resolved—now or only after discovery, motions practice, and (potentially) trial. They urge this Court to take up the question now so that a "protracted legal process" does not itself "impinge on rights guaranteed by the Religion Clauses." *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 982–83 (7th Cir. 2021) (en banc) (quoting

NLRB v. Cath. Bishop of Chicago, 440 U.S. 490, 502 (1979) and *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)). The "harm of such a governmental intrusion into religious affairs would be irreparable." *McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013).

I. The Religion Clauses Protect Against Excessive Judicial Entanglement with Religion

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Together, the Religion Clauses "protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 (quotation omitted). They also protect the "autonomy" of religious institutions "with respect to internal management decisions that are essential to the institution's central mission." *Id.* Allowing a suit that effectively involves "religious disputes restated in the elements of a fraud claim" would simply allow the "religious character" of church governance to fall into the interference of the state through its courts. *Huntsman*, 127 F.4th at 798. The Clauses guarantee "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 v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

In guaranteeing ecclesiastical independence, the Religion Clauses do more than provide a defense against liability. They impose a "structural limitation . . . on the government." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015); *see Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (observing the ministerial exception "is rooted in constitutional limits on judicial authority"); *Tomic v. Cath. Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006) ("A federal court will not allow itself to get dragged into a religious controversy even if a religious organization wants it dragged in."). The Religion Clauses require that "[r]eligious questions are to be answered by religious bodies." *McCarthy*, 714 F.3d at 976; *see Starkey v. Roman Cath. Archdiocese of Indianapolis Inc.*, 41 F.4th 931, 944–45 (7th Cir. 2022). It "would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Serbian E.*

Orthodox Diocese for United States of Am. & Canada v. Milivojevich, 426 U.S. 696, 711 (1976) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1871)).

The "very process of inquiry" into internal religious disputes, moreover, "may impinge on rights guaranteed by the Religion Clauses." *Cath. Bishop of Chicago*, 440 U.S. at 502; *see Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577 (1st Cir. 1989). "By probing . . . ministerial work . . . , the state—acting through a court—interferes with the Free Exercise Clause, 'which protects a religious group's right to shape its own faith and mission.'" *Demkovich*, 3 F.4th at 980 (quoting *Hosanna-Tabor*, 565 U.S. at 188). "[If] a church's claim to its tithes comes from the law—or an act of government—it" is subjected to the whims of "the state [to] withhold or diminish at pleasure" the right of that church to its own funds. *Huntsman*, 127 F.4th at 812–13 (Bumatay, J., concurring) (quotations omitted). Adjudication may "enmesh the court in endless inquiries as to whether each [] act was based in Church doctrine"—a decision that courts are ill-suited to make. *Alicea-Hernandez v. Cath. Bishop of Chicago*, 320 F.3d 698, 703 (7th Cir. 2003). Or a "protracted legal process" may "pit[] church and state as

adversaries," subjecting religious institutions to pervasive monitoring and probing. *Rayburn*, 772 F.2d at 1171.

The burdens of discovery and secular scrutiny, in turn, may "produce by . . . coercive effect the very opposite of that . . . contemplated by the First Amendment." *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972); *see Demkovich*, 3 F.4th at 982–83; *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018); *In re Lubbock*, 624 S.W.3d 506, 515–16 (Tex. 2021). "Having once been deposed, interrogated, and haled into court," a religious institution may start to make spending decisions "with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments" according to the institution's religious mission. *EEOC v. Cath. Univ. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996) (quoting *Rayburn*, 772 F.2d at 1171).

Thus, as myriad courts have recognized, where the Religion Clauses apply, they "grant churches an immunity from civil [merits] discovery." *United Methodist Church, Baltimore Annual Conf. v. White*, 571 A.2d 790, 792–93 (D.C. 1990). This goes as far as providing "immunity from the travails of a trial and not just from an adverse judgment." *McCarthy*, 714

F.3d at 975; *see Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (religious institutions are "immune not only from liability, but also 'from the burdens of defending the action'").

That conclusion reflects that the act of "submitting [a] question" about religious matters "to a jury would undermine the authority and autonomy" of religious institutions guaranteed by the Religion Clauses. *McCarthy*, 714 F.3d at 978. Courts have recognized that this reality in varied contexts, including employment, where "[a]djudicating" employment claims by religious leaders against religious institutions may "lead to impermissible intrusion into, and excessive entanglement with, the religious sphere," *Demkovich*, 3 F.4th at 980, and tithing, where any suit would "put[] the [church] on trial for its own beliefs." *Huntsman*, 127 F.4th at 798 (Bress, J., concurring); *id.* at 813–14 (Bumatay, J., concurring) (explaining how the resolution of fraud claim on the merits requires a court "necessarily settle a dispute between the Church and a disaffiliated member concerning the meaning of 'tithes,'" thereby violating the church autonomy doctrine).

This Court has recognized that, "where the Government is placed in a position of choosing among competing religious visions" the result

can be "an unconstitutional entanglement with religion . . . where a protracted legal process pit[s] church and state as adversaries." *Cath. Univ. of Am.*, 83 F.3d at 465 (quotations omitted). Consistent with this Court's understanding that "civil courts should not be entangled in . . . disputes" over internal ecclesial decisions of how best to achieve the ministerial goals of a church, the church autonomy doctrine ought to apply from the outset. *Id.* at 466 (quotation omitted). Otherwise, any adjudication of immunity after the merits discovery process has already vitiated the rights of a church to be free from government intermeddling. *See Huntsman*, 127 F.4th at 813 ("[A]ny interference in church financial affairs, even approvingly, is establishment.").

II. The Collateral Order Doctrine Permits Immediate Appeal of Rulings Rejecting Religious Autonomy Defenses

To avoid impinging on the Religion Clauses, it is essential that courts decide "early in litigation" whether the Clauses bar suit. *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 n.1 (10th Cir. 2002). And it is equally important that parties be able to seek immediate appellate review of district court rulings which reject arguments that the Religion Clauses bar suit. A ruling which rejects a claim to immunity predicated on the Religion Clauses is "akin to a denial of official

immunity." *McCarthy*, 714 F.3d at 975. A right to immediate appeal is thus critical for religious defendants: "If the defense of immunity is erroneously denied and the defendant has to undergo the trial before the error is corrected he has been irrevocably deprived of one of the benefits—freedom from having to undergo a trial—that his immunity was intended to give him." *Id.*; *see id.* at 796; *see also Whole Woman's Health*, 896 F.3d at 368 (similar); *Presbyterian Church (U.S.A.)*, 566 S.W.3d at 179 (similar); *United Methodist Church, Baltimore Annual Conf.*, 571 A.2d at 792–73 (similar).

Allowing immediate appeals not only protects religious bodies from the "irreparable" harm of "governmental intrusion into religious affairs" but advances the judiciary's interests as well. *McCarthy*, 714 F.3d at 976. The more the judiciary probes a religious institution's decision-making process, the greater the danger the judiciary will meddle with matters of "ecclesiastical cognizance that are not the federal courts' concern." *Demkovich*, 3 F.4th at 983 (citations omitted); *see id.* (explaining the difference between a "threshold inquiry" and full merits discovery); *Tomic*, 442 F.3d at 1039 (observing the Religion Clauses protect against the "concern" that, "in investigating employment discrimination claims

by ministers against their church, secular authorities would necessarily intrude into church governance"). Immediate appellate review helps the judiciary steer clear of civil "entanglement[s]" with religion that "result from a protracted legal process." *Rayburn*, 772 F.2d at 1171. It ensures that secular courts do not mistakenly issue "final judgment[s]" deciding "religious questions," which could cause "confusion, consternation, and dismay in religious circles." *McCarthy*, 714 F.3d at 976, 979; *see Demkovich*, 3 F.4th at 982 ("worry[ing]" about protracted litigation and noting the "prejudicial effects of incremental litigation").

Importantly, barring an appeal now regarding the USCCB's immunity "automatically" decides that no immunity exists, because it requires the religious organization to go through "litigation and the [district] court's decision," regardless of a court of appeal's later consideration of the immunity question. *Garrick v. Moody Bible Inst.*, 95 F.4th 1104, 1122 (7th Cir. 2024) (Brennan, J., dissenting)); *see Huntsman*, 127 F.4th at 812 (Bumatay, J., concurring) ("[W]hen a party raises the [church autonomy doctrine] issue, like the Church did here, we must resolve the issue *before* turning to the merits" (emphasis added)).

Regardless of whether some circuit courts have rejected appellate review of these immunity determinations based on purported factual disputes, it is still true that the "'protracted legal process'" itself "may impinge on rights guaranteed by the Religion Clauses." *Demkovich*, 3 F.4th at 982–83 (quoting *Cath. Bishop of Chicago*, 440 U.S. at 502 and *Rayburn*, 772 F.2d at 1171). Indeed, not merely liability, but the very process of "*[a]djudicating . . . claims*" could "lead to impermissible intrusion into, and excessive entanglement with, the religious sphere." *Demkovich,* 3 F.4th at 980 (emphasis added). Especially in cases like this one, which present only pure questions of law, resolving these jurisdictional issues now are key before courts "troll[] through the beliefs" of a religious organization—an injury that "cannot be undone through a later appeal." *Loma Linda v. NLRB*, No. 23-5096, 2023 WL 7294839, at *16–17 (D.C. Cir. May 25, 2023) (Rao, J., dissenting).

Because USCCB has claimed here that these fraud claims are doctrinal disagreements about how funds are used, investigating USCCB's motivations would "irreparab[ly]" harm the very interests the Religion Clauses protect. *McCarthy*, 714 F.3d at 976. That suffices to confer appellate jurisdiction under the collateral order doctrine. *See id.*

at 976. Resolution of whether the church-autonomy doctrine applies here turns not on disputed facts, but on a purely legal assessment, which makes application of the collateral order doctrine appropriate. *Cf. Smith v. Finkley*, 10 F.4th 725, 736 (7th Cir. 2021) (observing that immediate review of an otherwise appealable collateral order is inappropriate only if "all of the arguments made by the party seeking to invoke our jurisdiction are dependent upon, and inseparable from, disputed facts") (citation omitted)); *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, No. 20-3265, 2021 WL 9181051, at *1 (7th Cir. July 22, 2021) (similar). The Court should not postpone resolution of the important question USCCB raises until after merits discovery, motions practice, and trial—at which point the immunity USCCB asserts will have been lost.

CONCLUSION

The Court should grant USCCB's petition for rehearing and resolve the immunity question.

Respectfully submitted,

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June 3, 2025

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