

Church Autonomy, Free Exercise, and the State of First Amendment Jurisprudence

With Chris Schandavel, Senior Counsel, Alliance Defending Freedom

I. Introduction: The Religious-Autonomy Doctrine and Its Growing Significance

- A. The First Amendment’s Religion Clauses establish the religious-autonomy doctrine, which guarantees religious institutions the right to decide matters of faith, doctrine, and internal governance free from state interference. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). The doctrine traces back over 150 years to *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and encompasses both the Establishment Clause’s prohibition on government entanglement in ecclesiastical decisions and the Free Exercise Clause’s guarantee that religious groups may shape their own faith and mission. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188–89 (2012).
- B. The doctrine’s most well-known application is the ministerial exception, which immunizes a religious organization’s selection of its ministers from employment-discrimination laws. But the doctrine extends beyond ministers. It forbids government interference with any “internal church decision that affects the faith and mission of the church itself.” *Hosanna-Tabor*, 565 U.S. at 190. The First Amendment thus protects “internal management decisions that are essential to the institution’s central mission.” *Our Lady of Guadalupe*, 591 U.S. at 746.
- C. The six ADF cases discussed below illustrate how the religious-autonomy doctrine applies across a range of contexts—from co-religionist hiring to employee health-plan coverage to internal speech on matters of faith.

II. Recapping 4 ADF Federal Religious-Autonomy Cases

A. [*Union Gospel Mission of Yakima v. Brown*, 162 F.4th 1190 \(9th Cir. 2026\)](#)

i. Summary of the case

1. Facts

- a. Union Gospel Mission of Yakima is a Christian ministry that serves the homeless, the hungry, the sick, and the addicted through shelters, health clinics, soup kitchens, and faith-based recovery programs.
- b. Union Gospel’s religious beliefs guide everything it does, and it considers “spiritual welfare” more important than any “physical assistance” it provides.
- c. Because Union Gospel views its employees as its “hands, feet, and mouthpiece,” it requires all employees to agree with and live out its Christian beliefs and practices—including abstaining from sexual conduct outside of biblical marriage between one man and one woman.

- d. Washington’s Law Against Discrimination (WLAD) prohibits employment discrimination based on sexual orientation. The Washington Supreme Court narrowly limited WLAD’s religious-employer exemption to apply only to ministers, removing the broader religious-employer protections that had stood for over 70 years.
- e. Union Gospel brought a pre-enforcement action against the Washington State Attorney General and Human Rights Commission, seeking an injunction prohibiting enforcement of WLAD against its co-religionist hiring practices.

2. *Case history*

- a. The district court granted a preliminary injunction, concluding Union Gospel was likely to succeed on its free-exercise claim under *Tandon v. Newsom*, 593 U.S. 61 (2021).
- b. Washington appealed to the Ninth Circuit.

ii. **Ninth Circuit’s opinion**

1. The Ninth Circuit affirmed the preliminary injunction—but on a different ground. Rather than relying on *Tandon*, the court held that Union Gospel is likely to succeed on its religious-autonomy claim.
2. The court recognized this as a question of first impression: whether the religious-autonomy doctrine protects a religious organization’s decision to hire coreligionists for *non-ministerial* positions.
3. The panel held that the religious-autonomy doctrine encompasses more than the ministerial exception. It forbids interference with “an internal church decision that affects the faith and mission of the church itself.” Because Union Gospel’s co-religionist hiring constitutes an internal management decision essential to the institution’s central mission, the doctrine applies.
4. Critically, the court held that three facts were uncontested: (1) Union Gospel is a religious institution; (2) it has a sincerely held religious belief that only coreligionists may advance its religious mission; and (3) its co-religionist hiring policy rests on that religious belief.
5. The court also articulated the doctrine’s *limits*:
 - a. The doctrine does not grant religious institutions general immunity from secular laws.
 - b. It protects only sincerely held religious beliefs and acts rooted in religious belief.
 - c. Unlike the ministerial exception (which provides categorical protection), the religious-autonomy doctrine protects non-ministerial hiring decisions *only* to the extent they’re based

on sincerely held religious beliefs. A religious institution can't discriminate on other grounds, and religious motivation can't serve as a pretext for non-religious discrimination.

- d. The court confined its holding to religious ministries like Union Gospel, declining to address whether commercial businesses or hospitals under a religious umbrella receive similar protection.

iii. **Potential implications**

1. *Within the Ninth Circuit*

- a. The decision establishes binding precedent recognizing a constitutional right to hire coreligionists for all positions—not just ministers—when rooted in sincerely held religious beliefs.
- b. But it seems to conflict with the ultimate panel decision in *Youth 71Five Ministries v. Williams* about the right only being an affirmative defense. So TBD how the Ninth resolves that internal conflict going forward.

2. *Outside the Ninth Circuit*

- a. The decision aligns with a longstanding congressional understanding: Congress has long exempted religious employers from federal employment laws that would interfere with their ability “to define and carry out their religious missions.” *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335 (1987).
- b. Provides a roadmap for challenging state anti-discrimination laws that lack adequate religious-employer exemptions.

B. [*Youth 71Five Ministries v. Williams*, 160 F.4th 964 \(9th Cir. 2025\)](#)

i. **Summary of the case**

1. *Facts*

- a. Youth 71Five Ministries is a Christian nonprofit in Oregon whose “primary purpose” is to teach and share the life of Jesus Christ. It provides voluntary programs serving at-risk youth, including youth centers and “Break the Cycle,” a mountain-biking initiative in juvenile correction facilities.
- b. 71Five requires all board members, employees, and volunteers to be “authentic followers of Christ,” subscribe to a Christian Statement of Faith, and be actively involved in a local church. It does not discriminate in its vendor selection, subcontracting, or service delivery.
- c. Oregon’s Youth Development Division runs a Youth Community Investment Grant Program. For the 2023–2025

grant cycle, the Division implemented a new anti-discrimination certification requirement—requiring grantees to certify they “do not discriminate” on the basis of religion (among other characteristics).

- d. From 2017 to 2023, the Division awarded seven grants to 71Five. In 2023, after an anonymous report about 71Five’s hiring practices, the Division withdrew over \$410,000 in conditionally awarded grants because 71Five requires employees to share its faith.

2. *Case history*

- a. 71Five sued under 42 U.S.C. § 1983, asserting free-exercise, religious-autonomy, and expressive-association claims.
- b. The district court denied a preliminary injunction, dismissed all claims with prejudice, and granted qualified immunity.
- c. On appeal, a motions panel granted an emergency injunction pending appeal. The parties then briefed and argued the case on the merits.

ii. **Ninth Circuit panel opinion**

1. *Religious autonomy*: The panel rejected 71Five’s religious-autonomy claim, holding that the religious-autonomy doctrine operates only as a defense in lawsuits—not as the basis for affirmative claims under § 1983 challenging legislative or executive action.
2. *Free exercise*: The panel affirmed the district court’s ruling that 71Five was unlikely to succeed on its free-exercise claim on the existing record, but left open “the possibility that 71Five may prove on remand” that the rule was not generally applicable.
3. *Expressive association*: The panel held that 71Five was likely to succeed on its expressive-association claim—but only with respect to the Rule’s application *beyond grant-funded activities*. The panel reasoned that the Rule’s reach into 71Five’s non-grant operations significantly burdened its right to select messengers who share its faith.

iii. **Pending cert petition (filed January 5, 2026)**

1. ADF’s cert petition presents two questions presented:
 - a. “Whether a religious organization can raise the First Amendment right to religious autonomy as an affirmative claim challenging legislative or executive action under 42 U.S.C. 1983, like other constitutional right, or whether the doctrine may only be asserted as an affirmative defense after a suit has been filed, as the Ninth Circuit held here.”
 - b. “Whether a state violates the First Amendment by conditioning access to a public grant program on a religious

organization waiving its right to employ coreligionists, including for ministerial positions.”

2. The petition identifies a 5–3 conflict on the co-religionist doctrine. Five circuits—the Third, Fourth, Fifth, Sixth, and Eleventh—now accept the co-religionist doctrine as constitutional bedrock. The Washington Supreme Court, Maryland Supreme Court, and at least one panel of the Ninth Circuit (in this case) do not.
3. The petition also identifies a 3–1 conflict over whether a religious organization can waive its religious-autonomy rights.
4. The petition also argues the decision conflicts with the *Trinity Lutheran–Espinoza–Carson* line of cases, which forbid exclusion of religious observers from generally available public benefits based on their religious character or exercise.

iv. **Potential implications**

1. If the Ninth Circuit’s ruling stands, it reduces religious autonomy to a mere affirmative defense, stripping religious organizations of any ability to affirmatively challenge executive or legislative interference with their internal affairs.
2. It allows governments to condition public-benefit participation on surrendering the right to hire coreligionists—effectively penalizing religious organizations for exercising their faith.
3. If the Supreme Court grants cert, the case could resolve the conflict in the lower courts on co-religionist hiring, clarify whether religious-autonomy claims can be asserted offensively, and establish whether government funding conditions can override First Amendment protections for religious hiring.

C. [*Christian Healthcare Centers, Inc. v. Nessel*, 117 F.4th 826 \(6th Cir. 2024\)](#)

i. **Summary of the case**

1. *Facts*

- a. Christian Healthcare Centers is a faith-based medical ministry in Michigan that provides low-cost healthcare while incorporating spiritual wellness into medical care. The ministry treats anyone but hires only employees who share its Christian beliefs.
- b. Michigan’s Elliott-Larsen Civil Rights Act (ELCRA), as amended to include sexual orientation and gender identity protections, threatens the ministry’s operations by:
 - (i) forbidding faith-based hiring for positions like its Member Services Receptionist and Medical Assistant; (ii) requiring the ministry to provide gender-transition services that conflict with its beliefs; (iii) compelling the use of pronouns inconsistent with biological sex; and (iv) prohibiting the

ministry from publishing materials explaining its religious hiring requirements.

- c. Unlike federal law and nearly every other state, Michigan's ELCRA lacks a co-religionist exemption for religious employers.

2. *Case history*

- a. The district court dismissed the case on standing grounds.
- b. The Sixth Circuit reversed, holding that Christian Healthcare faces a credible threat of enforcement and that its claims—including its religious-autonomy claim—could proceed. 117 F.4th at 852–55.
- c. The case is now back in the district court on cross-motions for summary judgment.

ii. **Key arguments on summary judgment**

1. *Religious autonomy—employment*: The Employment Clause violates the ministry's religious autonomy by dictating who it may hire for ministerial *and* non-ministerial positions. Michigan concedes the ministerial exception covers the Biblical Counselor and Physician positions but disputes protection for the Member Services Receptionist and Medical Assistant roles.
2. *Co-religionist doctrine*: Christian Healthcare argues that the Ninth Circuit's *Union Gospel Mission* decision confirms the co-religionist doctrine protects non-ministerial hiring decisions rooted in sincerely held religious beliefs. The ministry requires all employees to share its faith because every position—from receptionist to physician—contributes to its religious mission.
3. *Religious autonomy—medical services*: The Accommodation Clause forces the ministry to provide medical services (gender-transition procedures) that contradict its religious beliefs about the nature of the human person.
4. *Michigan's shifting positions*: During discovery, Michigan's officials contradicted each other—and themselves—about how ELCRA applies. One Commissioner reversed himself during his own deposition about whether the ministerial exception covers a particular position. Michigan refused to follow any formal process to bind future enforcement officials.

iii. **Potential implications**

1. The Sixth Circuit's decision to allow the religious-autonomy claim to proceed stands in direct contrast with the Ninth Circuit's panel decision in *Youth 71Five*, which held that such claims cannot be asserted affirmatively.

2. A favorable ruling on summary judgment would establish important precedent on co-religionist hiring in the healthcare-ministry context.

D. [*Sacred Heart of Jesus Parish v. Nessel*, \[117 F.4th 826 \(6th Cir. 2024\)\]](#)
(companion case decided with *Christian Healthcare Centers* in the Sixth Circuit)

i. **Summary of the case**

1. *Facts*

- a. Sacred Heart of Jesus Parish in Grand Rapids, Michigan, operates Sacred Heart Academy—a classical Catholic pre-kindergarten through twelfth-grade school. Founded over a century ago by Polish immigrants, the Parish strives to “restore all things in Christ” through a Christ-centered curriculum that forms the whole person.
- b. Sacred Heart intentionally cultivates an authentic Christian community where Catholic faith and doctrines are taught, lived, and modeled—by teachers, staff, and students alike.
- c. Michigan’s ELCRA threatens Sacred Heart by: (i) prohibiting Sacred Heart from hiring only employees who support and model the Catholic faith; (ii) dictating the school’s pronoun policies; (iii) interfering with educational policies including separating facilities and activities by biological sex; and (iv) banning publications about these faith-based policies.
- d. Parent-plaintiffs also assert that the Act infringes their fundamental right to direct the religious education and upbringing of their children.

2. *Case history*

- a. Represented by ADF, Sacred Heart and the parents sued for declaratory and injunctive relief and moved for a preliminary injunction.
- b. The district court granted Michigan’s motion to dismiss, reasoning that Michigan’s laws should be interpreted consistently with the First Amendment and that Sacred Heart therefore lacked standing.
- c. The case was appealed to the Sixth Circuit, which held that Sacred Heart had “plausibly established a credible threat that Defendants will enforce against them at least some of the challenged provisions of Michigan’s laws,” allowing the case to proceed on the merits on those claims.
- d. Cross-motions for summary judgment are now pending.

ii. **Key arguments on summary judgment**

1. *Religious autonomy—employment*: Sacred Heart argues the Employment Clause violates its autonomy by forcing it to hire individuals who disagree with its Catholic beliefs. Citing *Union Gospel Mission*, the school contends the co-religionist doctrine protects employment decisions for both ministerial and non-ministerial roles.
2. *Religious autonomy—education*: Michigan admitted that Section 402 of ELCRA facially prohibits Sacred Heart’s policies on pronouns, sexual conduct, and sex-separated facilities. While Section 403 exempts religious institutions from Section 402’s provisions “related to religion,” it does not exempt provisions related to sexual orientation and gender identity.
3. *Michigan’s shifting positions*: As in *Christian Healthcare Centers*, Michigan’s officials changed their positions throughout the litigation. During one deposition, a Commissioner reversed himself about whether the ministerial exception covers Sexton positions. Michigan is also currently prosecuting a business owner for online statements about pronoun usage—while simultaneously claiming it would not enforce similar provisions against Sacred Heart.
4. *Parental rights*: The parents argue that Michigan’s interference with Sacred Heart’s autonomy indirectly burdens their fundamental right to choose a Catholic education for their children.

iii. **Potential implications**

1. If resolved favorably, the case would establish that the religious-autonomy doctrine and co-religionist exception protect Catholic schools’ employment, pronoun, and educational policies from state anti-discrimination mandates.
2. Combined with *Christian Healthcare Centers*, the case could produce controlling Sixth Circuit precedent on the scope of religious autonomy under Michigan’s ELCRA.
3. The parental-rights dimension adds an important layer—potentially establishing that state interference with a religious school’s autonomy also burdens the constitutional rights of the families who choose that school.

III. New Applications of Religious Autonomy: Beyond Employment

A. *The Pregnancy Care Center of Rockford v. Bennett*, No. 3:25-cv-50127 (N.D. Ill.)

i. **Summary of the case**

1. *Facts*

- a. The Pregnancy Care Center of Rockford is a pro-life religious nonprofit that has served its community for over 40 years, providing free resources and counseling to families facing

unplanned pregnancies. PCC of Rockford requires a personal relationship with Jesus Christ and belief that abortion is immoral as conditions of employment.

- b. The Diocese of Springfield in Illinois serves over 120,000 Catholics across 129 parishes. The Diocese opposes abortion, contraception, sterilization, and certain reproductive technologies that destroy human life or undermine the marital union.
- c. Illinois amended its Human Rights Act (through H.B. 4867) to create a new protected characteristic: “reproductive health decisions.” The Act now forbids employers from refusing to hire or disciplining employees based on reproductive decisions; prohibits “unwelcome” or “offensive” speech on the topic (the “Offensive Speech Clause”); requires employers to accommodate reproductive decisions including time off for abortion; mandates equal benefits for reproductive decisions; and compels employers to post notices and update handbooks broadcasting these requirements.
- d. Both Plaintiffs immediately need to fill open positions but must screen applicants based on their fidelity to pro-life convictions—conduct the Act forbids.

2. *Case history*

- a. PCC of Rockford and the Diocese sued the Director of the Illinois Department of Human Rights and the Illinois Attorney General under the First and Fourteenth Amendments, seeking declaratory and injunctive relief.
- b. A motion for preliminary injunction is pending.

ii. **Key arguments**

1. *Religious autonomy—internal speech*: The Offensive Speech Clause prohibits Plaintiffs from engaging in “unwelcome” speech about reproductive decisions. But Plaintiffs’ missions *require* them to speak pervasively and severely about the immorality of abortion—in homilies, counseling, retreats, leadership meetings, conferences, and digital and print media. The Act effectively subjects the Church’s internal theological speech to a state-mandated harassment standard.
2. *Religious autonomy—hiring*: The Employment Clause forbids Plaintiffs from screening applicants based on their reproductive decisions—but PCC of Rockford conditions employment on signing an Employee Commitment promising not to obtain or facilitate an abortion, and the Diocese screens applicants through interview questions committing them to conform their conduct to Catholic doctrine.

3. *Religious autonomy—accommodations and benefits*: The Accommodation Clause forces Plaintiffs to grant employee accommodations for reproductive decisions that violate their beliefs—including time off for abortion. The Benefit Clause requires equal treatment in employment benefits regardless of the reproductive decision involved, arguably compelling insurance coverage for abortion.

iii. **Potential implications**

1. This case extends the religious-autonomy doctrine into a new arena: state regulation of internal religious speech on matters of faith and doctrine. If the state can dictate how a diocese discusses abortion within its own walls, the doctrine’s protections would be effectively hollowed out.
2. The case also tests whether the doctrine protects a religious employer’s right to condition employment on adherence to pro-life commitments—not just beliefs about marriage and sexuality.
3. A favorable ruling would establish that the religious-autonomy doctrine precludes state efforts to regulate churches’ and religious nonprofits’ internal speech, hiring, benefits, and accommodations related to reproduction.

B. *Cedar Park Assembly of God v. Kuderer [previously Kreidler]*, Nos. 23-35560, 23-35585 (9th Cir.)

i. **Summary of the case**

1. *Facts*

- a. Cedar Park Assembly of God is a Christian church in the State of Washington with hundreds of members and about 180 full-time employees. The church holds, practices, and teaches that human life is sacred from conception until natural death.
- b. Before Washington enacted its Reproductive Parity Act (SB 6219), Cedar Park maintained a health plan that excluded abortion and abortifacient-contraceptive coverage, consistent with its beliefs.
- c. The Parity Act mandates that fully insured health plans covering maternity care must also cover abortion. As a direct result of the law, Cedar Park’s insurer (Kaiser Permanente) added the objectionable coverage, and Cedar Park has been unable to find a comparable alternative. The church’s health plan has included abortion coverage for over five years against its will.
- d. The Parity Act provides various secular and religious exemptions—including exemptions for health care providers, religiously sponsored health carriers, and health care

facilities who object to covering abortion on religious or conscience grounds—but *none* that benefit houses of worship like Cedar Park.

2. *Case history*

- a. Cedar Park sued under the First and Fourteenth Amendments, raising free-exercise and religious-autonomy claims.
- b. In 2021 (*Cedar Park I*), the Ninth Circuit reversed a standing dismissal and held that Cedar Park plausibly alleged an injury traceable to the Parity Act.
- c. On remand, the district court ruled on summary judgment in favor of Washington on both the free-exercise and religious-autonomy claims.
- d. Cedar Park appealed again. On March 6, 2025, a divided Ninth Circuit panel dismissed the case for lack of standing in a 2–1 decision, holding that Cedar Park had not sufficiently demonstrated that its inability to obtain abortion-free coverage was traceable to the Parity Act or redressable.

ii. **The dissent**

1. Judge Callahan dissented, emphasizing that Cedar Park *previously* had a plan excluding abortion coverage and now cannot obtain one—precisely because the Parity Act mandates abortion coverage.
2. The dissent noted that the majority’s reasoning conflicted with the prior panel’s standing holding in *Cedar Park I*, which found traceability satisfied on essentially the same facts.
3. The dissent also pointed to undisputed evidence that Kaiser Permanente refused to provide another religious employer (Seattle’s Jesuit College Preparatory) an abortion-free health plan, and the state’s insurance commissioner concluded Kaiser was “compliant with state insurance laws” because it chose to ensure all plans complied with the abortion mandate.

iii. **Petition for rehearing en banc (filed April 3, 2025)**

1. Cedar Park’s petition argues that the panel’s standing decision conflicts with Supreme Court precedent (*TransUnion*, *Little Sisters*, *Hobby Lobby*, *Zubik*) and with Ninth Circuit precedent (*Skyline Wesleyan Church v. California Department of Managed Health Care*, *Cedar Park I*).
2. The petition frames the case as one where everyone previously agreed that “Supreme Court precedent dictates an exemption for houses of worship” from abortion-coverage mandates—yet the panel barred the courthouse doors to a church that has no other way to vindicate its constitutional rights.

3. After Cedar Park filed its en banc petition, the panel ordered Washington to file a response, and then the panel vacated its prior opinion, mooting the en banc petition.
 4. A new oral argument was held before the panel on January 8.
- iv. **Potential implications**
1. This case could establish important precedent on whether the religious-autonomy doctrine protects a church’s control over its employee health-plan coverage—an internal governance decision with profound religious significance.
 2. The standing fight also carries broader implications: if a church forced to carry abortion coverage in its health plan lacks standing to challenge the mandate, it is difficult to imagine who would have standing, effectively insulating such laws from judicial review.
 3. The case tests a new frontier for religious autonomy—extending the doctrine beyond hiring and education to a church’s internal decisions about employee benefits and healthcare coverage.

IV. Emerging Themes and Takeaways

- A. The co-religionist doctrine is gaining momentum.
- i. *Union Gospel Mission* is a significant win for the constitutional right for religious organizations to hire coreligionists for all positions—not just ministers.
 - ii. Five circuits now embrace this principle, and the Supreme Court may soon weigh in through *Youth 71Five*.
- B. Religious autonomy extends beyond employment.
- i. Cases like *Pregnancy Care Center of Rockford* and *Cedar Park Assembly of God* make the case that the doctrine protects internal governance decisions ranging from workplace speech to health-plan design.
 - ii. These applications follow logically from the doctrine’s foundational principle: the government may not intrude on matters of faith and doctrine.
- C. The affirmative-defense question demands resolution.
- i. The Ninth Circuit’s ruling in *Youth 71Five*—that religious autonomy can only be raised as a defense—creates an untenable gap. If executive or legislative officials can violate religious autonomy with impunity unless the organization happens to be sued first, the doctrine’s protections are illusory.
 - ii. The Supreme Court should grant cert to resolve that conflict.
- D. State anti-discrimination laws are the primary battleground.
- i. Michigan’s ELCRA, Washington’s WLAD, Oregon’s grant conditions, and Illinois’s Human Rights Act amendments all illustrate a common

pattern: states expanding anti-discrimination protections to cover sexual orientation, gender identity, and now reproductive decisions—without adequate exemptions for religious organizations.

E. Funding conditions as leverage.

- i. *Youth 71Five* highlights a troubling trend: governments conditioning public-benefit participation on the surrender of constitutionally protected hiring practices.
- ii. The *Trinity Lutheran–Espinoza–Carson* line of cases should foreclose this maneuver, but as *Youth 71Five* shows, not all courts agree.

Church Autonomy, Free Exercise, and the State of First Amendment Jurisprudence

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I. Two Developing Areas of Church Autonomy Jurisprudence

A. Church Autonomy as an Affirmative Defense or Structural Immunity

- i. The Supreme Court has long recognized that certain judicially respected rights require not merely a defense to liability, but a right not to stand trial or face the other burdens of litigation. A well-known example is qualified immunity, which, when applicable, shields government officials from both liability *and* litigation. In such suits, the full protection of the defendant's right would be lost if he were forced to endure the punishment that the judicial process inflicts.
- ii. The Religion Clauses provide one such constitutional immunity. Stretching back over 150 years to the Supreme Court's first church autonomy decision in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), the Court has recognized that purely spiritual and ecclesiastical matters are not subject to the civil government's authority. Thus, the "rights guaranteed by the Religion Clauses" may be violated "not only by the conclusions" reached in adversarial proceedings, "but also the very process of inquiry leading to findings and conclusions." *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979).
- iii. *Watson* called this immunity "jurisdictional." But, more recently, in *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 195 n.4 (2012), the Court held that one subcomponent of the church autonomy doctrine—known as the ministerial exception—is "an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar."
- iv. This apparent tension has contributed to a 10-5 circuit split on the nature of the church autonomy doctrine:
 1. On one side of the split are the five courts that understand church autonomy as a mere defense to liability, not a structural bar to suit. See *O'Connell v. USCCB*, 134 F.4th 1243, 1258 (D.C. Cir. 2025) ("[t]reating church autonomy as a defense rather than an immunity"); *Garrick v. Moody Bible Inst.*, 95 F.4th 1104, 1116 (7th Cir. 2024) ("the doctrine of church autonomy" does not "confer immunity from trial"); *Belya v. Kapral*, 45 F.4th 621, 633 (2d Cir. 2022) (rejecting argument that church autonomy is an "immunity from discovery and trial"); *Tucker v. Faith Bible Chapel*, 36 F.4th 1021, 1025, 1037 (10th Cir. 2022) (holding that the ministerial exception "only protects religious employers from liability on a minister's employment discrimination claims," but doesn't "immunize[]" them from "having to litigate such claims"); *Doe v. Roman Catholic Bishop of Springfield*, 190 N.E.3d 1035, 1042-1044

(Mass. 2022) (concluding church autonomy doesn't include an immunity "from the burden of litigation and trial").

2. On the other side of the split are the ten courts that recognize church autonomy as a structural protection against the burdens of litigation. *See McRaney v. NAMB*, 157 F.4th 641, 644 (5th Cir. 2025) (concluding that church autonomy "is a constitutional immunity from suit" that "rests on structural, constitutional limitations" and "protect[s] against all judicial intrusion into ... ecclesiastical affairs," including merits discovery and trial); *Markel v. Union of Orthodox Jewish Congregations*, 124 F.4th 796, 808-810, 809 n.5 (9th Cir. 2024) (recognizing that the "scope and purpose" of church autonomy "generally prohibits merits discovery and trial" in relevant cases because "the process of judicial inquiry itself" and the "coercive nature of the discovery process" constitute "unconstitutional judicial action"); *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325-326 (4th Cir. 2024) (reaffirming a "structural" understanding of the First Amendment, which "immunizes" and "exempts" the religious "decisions of religious entities" from "legal process"); *Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (agreeing that "the exception is rooted in constitutional limits on judicial authority"); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (understanding church autonomy as a "structural limitation imposed on the government by the Religion Clauses" that "categorically prohibits" judicial "involve[ment] in religious leadership disputes"); *Smith v. Supple*, 293 A.3d 851, 864 (Conn. 2023) (holding that "the very act of litigating" is barred, because "the discovery and trial process [is] itself a [F]irst [A]mendment violation"); *In re Diocese of Lubbock*, 624 S.W.3d 506, 515-516 (Tex. 2021) (holding church autonomy bars "any investigation" by courts of "the internal decision making of a church judicatory body"); *Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (allowing full merits discovery "before the trial court rules on the church's immunity would result in a substantial miscarriage of justice" (internal quotations omitted)); *Harris v. Matthews*, 643 S.E.2d 566, 570 (N.C. 2007) (recognizing "substantial" church autonomy rights are "irreparably injured" by merits proceedings); *United Methodist Church v. White*, 571 A.2d 790, 792-793 (D.C. 1990) (Rogers, C.J.) (recognizing that the church autonomy doctrine "grant[s] churches an immunity from civil [merits] discovery").
3. And even in the minority of circuits that treat church autonomy as solely a defense to liability, eleven dissenting judges have expressed agreement with the majority's view of church autonomy's structural nature. *See, e.g., O'Connell v. USCCB*, 2025 WL 3082728, at *4 (D.C. Cir. Nov. 4, 2025) (Rao, J., dissenting from denial of rehearing en banc); *Belya*, 59 F.4th at 573 (Park, J., joined by Livingston,

C.J., and Sullivan, Nardini, and Menashi, JJ., dissenting from the denial of rehearing en banc); *Faith Bible*, 53 F.4th at 627 (Bacharach, J., joined by Tymkovich and Eid, JJ., dissenting from the denial of rehearing en banc); *Moody Bible*, 95 F.4th at 1122 (Brennan, J., dissenting); see also *Belya*, 59 F.4th at 573 (Cabranes, J., dissenting from denial of rehearing en banc) (calling for Supreme Court review); see also *O’Connell*, 2025 WL 3082728, at *1-2 (Walker, J., concurring in the denial of rehearing en banc) (agreeing with the dissenting judges).

- v. The majority of courts have the better view under Supreme Court precedent, which consistently demonstrates that that the Religion Clauses protect a sphere of church autonomy that is burdened not merely by final decisions, but also “the very process of inquiry.” *Catholic Bishop*, 440 U.S. at 502; see also *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (holding that, while church autonomy does not confer a “general immunity from secular laws,” it does bind courts “to stay out” of matters within its scope); *Hosanna-Tabor*, 565 U.S. at 181, 187 (the “Religion Clauses bar the government from interfering with” or even “inquiring into” a religious leadership decision); *Catholic Bishop*, 440 U.S. at 502 (the “rights guaranteed by the Religion Clauses” may be violated “not only by the conclusions” reached in adversarial proceedings, “but also the very process of inquiry leadings to findings and conclusions”); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976) (“religious controversies are not the proper subject of civil court inquiry,” because “[f]or civil courts to analyze” the internal “ecclesiastical actions of a church” would require “exactly the inquiry that the First Amendment prohibits”); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 115-116 & n.20 (1952) (the “nonreviewability of questions of faith, religious doctrine and ecclesiastical government” by civil courts is an essential part of religious bodies’ “independence from secular control or manipulation”); *Watson*, 80 U.S. at 733 (recognizing a matter that is “strictly and purely ecclesiastical in its character” as “a matter over which the civil courts exercise no jurisdiction”).
- vi. The majority’s view is also faithful to the founding generation’s original intent behind the First Amendment’s religious protections. See *Catholic Charities Bureau, Inc. v. Wisc. Labor & Indus. Rev. Comm’n*, 605 U.S. 238, 257-58 (2025) (“From antiquity onward, many Christians have interpreted [Jesus’s statement about rendering ‘unto Caesar the things which are Caesar’s; and unto God the things that are God’s’] to mean that church and state are distinct, and that each has a legitimate claim to authority within its sphere. Pre-founding English law accordingly distinguished between temporal matters subject to civil courts’ jurisdiction and spiritual matters subject to ecclesiastical jurisdiction. The First Amendment was adopted against this background of distinct spheres for secular and religious authorities.” (cleaned up)).

B. Attempted Expansion of the Narrow Neutral Principles Approach

- i. The church autonomy doctrine clearly applies to several categories of religious inquiries. “These include (a) the selection and dismissal of clergy and faith leaders (the so-called ‘ministerial exception’); (b) the meaning of religious beliefs and doctrines; (c) the determination of religious polity, such as membership, matters of discipline and good standing, and the identification of the ‘true church’ amidst internecine disputes; and (d) internal church communications regarding any of the aforementioned activities.” *McRaney*, 157 F.4th at 636.
- ii. But a second, 5-5 split has arisen over how the church autonomy doctrine applies to claims of internal church governance.
 1. On one side of the split are the five circuits and state high courts that purport to apply “neutral principles of law” to adjudicate matters related to internal church government outside the context of church property disputes. See *O’Connell*, 134 F.4th at 1254 (holding that using the neutral principles approach allows a court to “steer[] clear of any violations of the church autonomy doctrine,” regardless of context, merely by “rel[ying] exclusively on objective, well-established legal concepts”); *Belya*, 45 F.4th at 630 (“us[ing] the ‘neutral principles of law’ approach” to permit defamation claim targeting statements made about priest during church disciplinary proceedings); *Drevlow v. Lutheran Church*, 991 F.2d 468, 470-472 (8th Cir. 1993) (allowing pastor to bring “secular” claims against denomination challenging statements relevant to his “fitness as a minister” because claims didn’t “require the courts to interpret and apply religious doctrine”); *Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605, 608 (S.C. 2013) (applying approach to permit claim by former church trustees over statements made during church meeting); *Marshall v. Munro*, 845 P.2d 424, 426-428 (Alaska 1993) (employing approach to permit pastor’s claims to proceed against reverend over statements made to a church).
 2. On the other side are the five circuits and state high courts that would limit the neutral principles approach to its original church-property context. See *McRaney*, 157 F.4th at 648 (recognizing that the “very clearly limited” neutral principles approach is “endogenous to the church autonomy doctrine” and “not some freestanding exception ... that allows courts to tread on terra sancta in the name of ‘neutrality’”); *Crowder v. Southern Baptist Convention*, 828 F.2d 718, 722, 725-726 (11th Cir. 1987) (rejecting the neutral principles approach outside of disputes over “formal title to property”); *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986) (holding that the “neutral principles” approach “applies only to cases involving disputes over church property” and “has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be”); *Diocese of Lubbock*, 624 S.W.3d at 516 (holding “neutral principles” approach

inapplicable to defamation claim challenging diocesan disciplinary proceedings because claim “implicate[d] ecclesiastical matters”); *El-Farra v. Sayyed*, 226 S.W.3d 792, 795-796 (Ark. 2006) (holding “neutral principles” inapplicable to defamation claims over plaintiff’s “suitability to remain as Imam”).

3. Sixteen judges have written separately to endorse the limited application of the neutral principles approach. *See McRaney v. N. Am. Mission Bd.*, 980 F.3d 1066, 1070 (5th Cir. 2020) (Ho, J., joined by Jones, Smith, Elrod, Willett, and Duncan, JJ., dissenting from denial of rehearing en banc); *Belya*, 59 F.4th at 582 (Park, J., joined by Livingston, C.J., and Sullivan, Nardini, and Menashi, JJ., dissenting from the denial of rehearing en banc); *Huntsman v. Corp. of the President of the Church of Jesus Chris of Latter-Day Saints*, 127 F.4th 784, 797-799 (9th Cir. 2025) (Bress, J., joined by Smith, Nguyen, and VanDyke, JJ., concurring in the judgment); *accord O’Connell*, 2025 WL 3082728, at *6 (Rao, J., dissenting from denial of rehearing en banc); *see also id.* at *2 (Walker, J., concurring in denial of rehearing en banc).
- iii. The courts confining the neutral principles approach to church property disputes are on the doctrinally correct side of the split. Although the Supreme Court has permitted using “neutral principles” in some church property disputes, it has never applied it in church governance disputes like this one. In fact, it has expressly refused to do so. In *Milivojevich*, the Court expressly rejected “reli[ance] on purported ‘neutral principles’” to adjudicate matters relating to “internal [church] discipline and government.” 426 U.S. at 715, 721, 724. And, for similar reasons, the Court in *Hosanna-Tabor* unanimously rejected the EEOC’s request to apply the “neutral law of general applicability” standard from *Employment Division v. Smith* to adjudicate a minister’s claims against her church. 565 U.S. at 189-90.
- iv. Expanding neutral principles would have disastrous effects for church autonomy protections. In effect, applying the doctrine to any claim that does not *facially* target religion would insert an aggressive strain of *Smith* into church autonomy. So, as a practical matter in addition to a doctrinal one, the neutral principles approach cannot become “some freestanding exception ... that allows courts to tread on terra sancta in the name of ‘neutrality.’” *McRaney*, 157 F.4th at 648.

C. Killing Two Birds with One Stone? – Potential Supreme Court Review in *USCCB v. O’Connell*

- i. A pending cert petition filed by the United States Conference of Catholic Bishops would allow the Supreme Court to address both the church autonomy doctrine’s nature and application.
- ii. Factual background and procedural posture:
 1. For over 1,000 years, Catholics have contributed to an annual offering called Peter’s Pence. This offering to the Pope has roots in New Testament descriptions of offerings given to support the ministry of Jesus Christ and the early church in Jerusalem. And to this day, it has remained important to the ministry of the Holy See.
 2. David O’Connell, a parishioner of a Catholic parish in Rhode Island, claims an invitation during Mass misled him by imprecisely describing the Pope’s use of Peter’s Pence. O’Connell alleges that the solicitation misled him into thinking that Peter’s Pence collections would be used immediately and exclusively for charitable purposes, which he saw as distinct from religious expenses to operate the Vatican or from investments intended to serve charitable purposes in the future.
 3. Unable to sue the Pope himself, O’Connell sued the USCCB, seeking discovery into the donors to, uses of, and internal deliberations about Peter’s Pence. He requests an injunction restraining how the Church describes and uses the offering, and a refund for himself and a class of millions of donors.
 4. The USCCB moved to dismiss under the Religion Clauses’ church autonomy doctrine. The district court refused, holding the dispute could be resolved under the “neutral principles” approach developed for church property disputes.
 5. The USCCB appealed. But the D.C. Circuit dismissed the Bishops’ interlocutory appeal, concluding that church autonomy provides only a defense against liability, not a structural immunity from suit, and that the “neutral principles” approach avoided “any violations” of church autonomy.
 6. The USCCB then petitioned the D.C. Circuit to rehear the case en banc. But the full court declined to rehear the case. However, two judges issued important separate writings respecting the denial.
 - a. Judge Rao authored a dissent concluding that O’Connell’s lawsuit “encroaches on the heartland of matters committed to the Church’s exclusive sphere” and rejecting the core elements of the panel’s ruling—including its flawed understandings of the church autonomy doctrine’s nature and its application to fraud claims. *O’Connell*, 2025 WL 3082728, at *17 (Rao, J, dissenting from denial of rehearing en banc).

