No. 25-849

# In the Supreme Court of the United States

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,

*Petitioner*,

v.

DAVID O'CONNELL,

*Respondent*.

**On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

## BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, THOMAS MORE SOCIETY, NATIONAL ASSOCIATION OF EVANGELICALS, CHRISTIAN AND MISSIONARY ALLIANCE, ETHICS AND RELIGIOUS LIBERTY COMMISSION, AND LUTHERAN CHURCH-MISSOURI SYNOD IN SUPPORT OF PETITIONER


TIMOTHY BELZ
*Counsel for Thomas More Society*
CLAYTON PLAZA LAW GROUP, L.C.
112 South Hanley Rd.
St. Louis, MO 63105
(314) 726-2800

STEVEN T. MCFARLAND
*Counsel of Record*
LAURA NAMMO
CENTER FOR LAW & RELIGIOUS FREEDOM
CHRISTIAN LEGAL SOCIETY
8001 Braddock Rd., Ste. 302
Springfield, VA 22151
(703) 894-1087
smcfarland@clsnet.org

CARL H. ESBECK
R.B. PRICE PROFESSOR
OF LAW EMERITUS
203 Hulston Hall
820 Conley Ave.
Columbia, MO 65211
(573) 882-6543

***Counsel for Amici Curiae***

## TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... iii

INTERESTS OF *AMICI CURIAE* ..... 1

PROCEEDINGS BELOW AND SUMMARY OF ARGUMENT ..... 2

ARGUMENT ..... 6

POINT I: Resort to state "neutral principles of law" sounding in tort does not permit a disgruntled donor to sidestep the First Amendment church autonomy doctrine. Rather, "neutral principles" has been consistently limited by this Court to lawsuits between two factions within a hierarchical church seeking to resolve which of the disputing parties is awarded title to local church property ..... 13

POINT II: As a threshold matter, there should be a determination by the district court as to whether the lawsuit falls into one of the discrete zones of activities reserved for the autonomy of the church. In such instances, the separation of church and government in the text of the Religion Clauses gives rise to an immunity to being sued, not a mere defense to liability. When the threshold motion to dismiss is denied, the promise of a rightly ordered church and government in the constitutional text cannot be fully

realized in the absence of interlocutory review. ..... 19

CONCLUSION ..... 24

## TABLE OF AUTHORITIES

Page(s)

**Cases**

*Billard v. Charlotte Cath. High Sch.*,
101 F.4th 316 (4th Cir. 2024) .....6, 7

*Bryce v. Episcopal Church*,
289 F.3d 648 (10th Cir. 2002).....11

*Cath. Charities Bureau v. Wisconsin Labor & Indus. Review Comm'n*,
605 U.S. 238 (2025).....10

*Conlon v. InterVarsity Christian Fellowship*,
777 F.3d 829 (6th Cir. 2015).....6, 7

*Engel v. Vitale*,
370 U.S. 421 (1962).....23

*Gonzalez v. Roman Cath. Archbishop*,
280 U.S. 1 (1929).....10, 19

*Harris v. Matthews*,
643 S.E.2d 566 (N.C. 2007).....20, 21

*Hosanna-Tabor Evangelical Lutheran Church & Sch.*,
565 U.S. 171 (2012).....7-12, 19

*Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*,
127 F.4th 784 (9th Cir. 2025) .....20

**Cases--Continued**

*Illinois ex rel. McCollum v. Bd. of Educ. of Sch. Dist.*,
333 U.S. 203 (1948) ..... 23

*Jones v. Wolf*,
443 U.S. 595 (1979) ..... 13, 18, 19

*Kedroff v. St. Nicholas Cathedral*,
344 U.S. 94 (1952) ..... 9, 10, 19

*Kreshik v. St. Nicholas Cathedral*,
363 U.S. 190 (1960) ..... 10, 19

*Maryland & Va. Churches of God v. Church of Sharpsburg*,
396 U.S. 367 (1970) ..... 10, 13, 15-18

*McClure v. Salvation Army*,
460 F.2d 553 (5th Cir. 1972) ..... 8

*McRaney v. N. Am. Mission Bd. of the So. Baptist Conv., Inc.*,
157 F.4th 627 (5th Cir. 2025) ..... 6, 7, 12, 21, 22

*O'Connell v. U.S. Conf. of Cath. Bishops*,
134 F.4th 1243 (D.C. Cir. 2025) ..... 2-6

*O'Connell v. U.S. Conf. of Cath. Bishops*,
2025 WL 3082728
(D.C. Cir. Nov. 4, 2025) ..... 4, 5, 20

**Cases--Continued**

*Our Lady of Guadalupe Sch. v. Morrissey-Berru*,
591 U.S. 732 (2020).....6, 8, 10, 19, 20

*Presbyterian Church v. Mary Elizabeth, Blue Hull Mem'l Church*,
393 U.S. 440 (1969).....13, 14, 16-18

*Rayburn v. General Conf. of Seventh-Day Adventists*,
772 F.2d 1164 (4th Cir. 1985).....8

*Rusk v. Espinoza*,
456 U.S. 951 (1982).....10

*Serbian E. Orthodox Diocese v. Milivojevich*,
426 U.S. 696 (1976).....13, 16-19

*Shepard v. Barkley*,
247 U.S. 1 (1918).....10

*Thomas v. Review Bd.*,
450 U.S. 707 (1981).....10

*Watson v. Jones*,
80 U.S. (15 Wall) 131 (1872).....8, 10, 11, 14, 15

**Statutes & Rules**

Fed. R. Civ. P. 12(b), (c).....4

Fed. R. Civ. P. 23(a), (b).....4

**Other Authorities**

Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine*, 108 MARQUETTE L. REV. 705 (2025) ..... 3, 11, 22

Code of Canon Law, Book V, Title 1, §§ 1262 and 1271 (1983) ..... 3, 4

*History of Peter's Pence*, http://perma.cc/72GK-GXYJ ..... 2

Lael Daniel Weinberger and Branton Nester, Church Autonomy and Interlocutory Appeals, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6073729 (Jan. 14, 2026) ..... 22

Pope Benedict XVI, *Address to the Members of the "Circolo San Pietro"* (Mar. 8, 2007), http://perma.cc/G53Z-QP7G ..... 2

## INTERESTS OF *AMICI CURIAE*[1]

Amici are church denominations and religious nonprofits that share an interest in the correct interpretation of the church autonomy doctrine. Our religions require us to make theologically informed decisions involving matters of internal governance that must be protected from government entwinement.

**Christian Legal Society** is a nondenominational association of Christian attorneys and law students committed to defending religious freedom for all persons. **Thomas More Society** is a national public interest law firm dedicated to restoring respect in law for religious freedom. The **National Association of Evangelicals** is the nation's largest network of evangelical Christian denominations, individual churches, schools and colleges, campus ministries, and social-service providers. The **Christian and Missionary Alliance** is a U.S.-based Christian denomination with 2,000 churches, multi-ethnic membership, and international workers in more than 70 countries. The **Ethics and Religious Liberty Commission** is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, and is charged by the SBC with addressing public policy issues such as religious freedom. **The Lutheran Church-Missouri Synod** is the second largest

---

[1] No party or party's counsel authored this brief in whole or in part, and no person except amici contributed to the expense of its preparation. On January 5, 2026, counsel of record for amici notified counsel for all named parties of their intent to file this brief.

Lutheran denomination in the U.S. with approximately 1.6 million baptized members and approximately 5,800 congregations.

## PROCEEDINGS BELOW AND SUMMARY OF ARGUMENT

Respondent O'Connell filed this lawsuit in federal district court against Petitioner United States Council of Catholic Bishops (USCCB), alleging claims for fraud and other fiscal misconduct pertaining to the promotion and management of a worldwide charitable offering to the Holy See known as Peter's Pence. *O'Connell v. U.S. Conf. of Cath. Bishops*, 134 F.4th 1243, 1248, 1249 (D.C. Cir. 2025) (*O'Connell I*). In the U.S., the charity is alleged to be overseen by USCCB. *Id.* at 1249.

This ancient ministry of alms has a long and complex history, with the earliest records of Peter's Pence dating back to 1031 A.D. In its current iteration, moneys received by the Catholic Church for Peter's Pence are conveyed to the Holy See. In turn, the funds are employed at the discretion of the Pope for works worldwide. *See History of Peter's Pence,* http://perma.cc/72GK-GXYJ. Contributions are not just for the materially afflicted, but for the "work of evangelization." Pope Benedict XVI, *Address to the Members of the "Circolo San Pietro"* (Mar. 8, 2007), http://perma.cc/G53Z-QP7G. That the spreading of the Christian gospel is part of Peter's Pence makes entanglement with the government all the more sensitive.

O'Connell is a resident of East Providence, Rhode Island, where he attended the Sacred Heart Catholic Church. In mid-2018, in response to an appeal from the pulpit during Sunday mass, O'Connell made a contribution to Peter's Pence. Two years later he brought this lawsuit. *O'Connell I,* 134 F.4th at 1249.

O'Connell alleges that the Sunday call for alms was represented as emergency aid destined to defray the immediate needs of disaster-stricken people in the world. Some funds were invested in anticipation of future contingencies, as opposed to the totality of the collected monies being immediately distributed to the needy. *Id.* at 1248, 1250. O'Connell avers that this withholding of a portion of his donation for investment was not as promised by the Catholic Church. *Id.* at 1250. In addition to fraud, the complaint has counts for unjust enrichment and breach of fiduciary duty. Specifically, O'Connell avers that USCCB had possession of money that the bishops ought not to retain, and that USCCB breached its duty to ensure that the moneys collected be promptly and completely disbursed by the Holy See. *Id.* at 1249-50.

O'Connell's complaint requests both damages and equitable relief. As damages, he seeks reimbursement of his initial contribution ("disgorgement") and more.[2] The claim of breach of fiduciary duty will necessarily impose common-law obligations as between USCCB and the Holy See that will be at cross-purposes with duties as established by the Church's polity. *Cf.* Code

[2] As to damages, page 23 of the complaint requests "costs, restitution, damages, and disgorgement," as well as "an order requiring USCCB to pay both pre- and post-judgment interest on" amounts awarded. App. 192a.

of Canon Law, Book V, Title 1, §§ 1262 and 1271 (1983). As to equitable relief, O'Connell seeks an affirmative injunction that will materially shape in the future how USCCB promotes Peter's Pence throughout America.[3] The audacious and ongoing scope of this sought-after order was remarked upon by Circuit Judge Rao. *See O'Connell v. U.S. Conf. of Cath. Bishops*, 2025 WL 3082728 at *3, *12-13 (D.C. Cir. Nov. 4, 2025) (denying petition for rehearing en banc) (Rao, J., dissenting) (*O'Connell II*).

Respondent's pleading goes on to allege the elements of a class action comprised of all donors who made contributions following a Peter's Pence appeal similar to the one O'Connell responded to at Sacred Heart Church. *O'Connell I*, 134 F.4th at 1250; *see* Fed. R. Civ. P 23(a) and (b). Nationwide class certification is requested of all donors to the philanthropic ministry.[4] The statute of limitations is said to be tolled because of alleged fraudulent concealment.[5] The putative class for which certification is sought thereby numbers in the millions of Catholic parishioners attending mass throughout the U.S., some no longer living, and would summon the claw back of donations to Peter's Pence into the tens of millions of dollars.

USCCB filed an answer and moved to dismiss (Fed. R. Civ. P. 12(b)) and, in the alternative, for judgment on the pleadings (Fed. R. Civ. P. 12(c)).

---

[3] With a view to future operations of Peter's Pence, page 23 of the complaint requests an "order temporarily and permanently enjoining Defendants *[sic]* from continuing the unlawful, deceptive, and fraudulent practices alleged in the Complaint." App. 192a.

[4] *See* pages 15-16 of O'Connell's complaint. App. 185a-186a.

[5] *See* pages 4-5 of O'Connell's complaint. App. 173a-174a.

*O'Connell I*, 134 F.4th at 1250-51. In addition to the pleadings, USCCB noted O'Connell's extensive discovery requested a list of donors and amounts received, along with USCCB's knowledge of how funds were to be used and how they were actually used. *Id.* at 1250; *see O'Connell II*, 2025 WL 3082728 at *3, *25 (remarking on O'Connell's discovery plan).

As a general matter, churches and other ecclesiastical entities can be sued. But these two motions were based on the matter in dispute falling within one of the discrete spheres of activity subject to the First Amendment doctrine of church autonomy. In a ruling from the bench, the district court denied the motions. The trial court opined that any First Amendment transgression could be evaded simply by resorting to state "neutral principles of law." *See O'Connell I*, 134 F.4th at 1248, 1250-51 (referencing transcript of oral ruling).

USCCB appealed. Because the ruling below was not a final judgment, the bishops sought an interlocutory appeal under the collateral order doctrine. *Id.* at 1248-49. However, a three-judge panel of the court of appeals dismissed for lack of appellate jurisdiction. *Id.* at 1248-49, 1261.

Strictly speaking, the panel's disposition ended here—it had jurisdiction to determine that it had no jurisdiction. There should be no ruling that reached the substance of the church autonomy doctrine. Unfortunately, the panel went on to observe that "'objective, well-established concepts,' or neutral principles of law" enables the district court to "steer[] clear of any violations of the church autonomy doctrine." *Id.* at 1254; *see id.* at 1258. This ruling

reached both the substantive core of the church autonomy defense and was erroneous as a matter of law.

The three-judge panel went beyond the dismissal for lack of appellate jurisdiction and reached the substantive law in holding that the principle of church autonomy was not a structural immunity to being sued but a mere defense to liability. *Id*. at 1254, 1257-58, 1259-60. This too was erroneous as a matter of law. On remand, this holding would unnecessarily bind the district court. Even if the trial court comes around to see that this is a church autonomy case, that "neutral principles" has no role here, and that further discovery and trial preparation are not only a waste of money and time, but also inflicts new First Amendment harms on a ministerial arm of the Catholic Church, the district court judge is bound by the rulings of the panel.

## ARGUMENT

The doctrine of church autonomy[6] protects religious freedom in a manner altogether different from the more familiar causes of action filed under the Free Exercise Clause and under the Establishment Clause. It is a third way. This is because church autonomy is attributable to the Constitution's structure,[7] as opposed to being a personal claim by a

---

[6] The Supreme Court settled on the label "church autonomy" in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020) ("The constitutional foundation for our holding was the general principle of church autonomy to which we have already referred.").

[7] *See McRaney v. N. Am. Mission Bd. of the So. Baptist Conv., Inc.*, 157 F.4th 627, 644 (5th Cir. 2025) (collecting cases); *Billard*

rights holder against the government. This explains, for example, why it is said that church autonomy is not waivable and why the standard of review does not entail a case-specific balancing of interests of the rights claimant and of the government. The structure of the Constitution can never be waived nor its enforcement balanced to fit the special circumstances of the claimant. Structure must remain fixed, continuing to work its checks and balances, as well as its limited delegations of power, for the protection of the entire body politic. Here, rather than structure via separation of powers or separation between the federal and the state governments, with church autonomy there is structure via separation of church and government.

It is helpful to think of church autonomy as an immunity from suit, one that categorically overrides contrary statutory and common law claims.[8] And this immunity arises from the structural character of church autonomy.[9] Hence, early this century the Supreme Court observed that the "ministerial exception *bars . . . a suit*" challenging a religious school's decision to dismiss a teacher. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565

---

*v. Charlotte Cath. High Sch.*, 101 F.4th 316 (4th Cir. 2024) (rejecting wavier of church autonomy defense); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) ("The ministerial exception is a structural limitation imposed on the government by the Religion Clauses, a limitation that can never be waived.").

[8] *See McRaney*, 157 F.4th at 641, 644-47 (citing cases).

[9] The connection between immunity and structure will be taken up again *infra* notes 25-30 and accompanying text, when discussing the text of the Religion Clauses and the necessity of interlocutory appeal.

U.S. 171, 196 (2012) (emphasis added). As a general matter, churches are subject to legal process. *Our Lady*, 591 U.S. at 746. But the immunity pertinent here goes to discrete zones of activities that the Supreme Court has found are within the scope of church autonomy.[10]

The principle of church autonomy was first recognized by the Supreme Court in the post-Civil War case of *Watson v. Jones*, 80 U.S. (15 Wall.) 131 (1872). And in the unanimous decision of *Hosanna-Tabor*, the doctrine of church autonomy took on its most fully developed form as a structural immunity (dubbed the "ministerial exception"[11] by the federal circuits when the immunity arises in the context of employment nondiscrimination) from government regulation that "interferes with the internal governance of the church." *Hosanna-Tabor*, 565 U.S. at 188.

In *Hosanna-Tabor*, and the Court's follow-on case of *Our Lady*, the prevailing religious schools suffered no personal religious injury. Having to employ a disabled teacher is not a religious injury. But church autonomy is not about remediating personal religious injury—the latter is for the Free Exercise Clause.

---

[10] Those discrete zones are identified in the case law *infra* notes 13–17 and accompanying text.

[11] The term "ministerial exception" was first used in *Rayburn v. General Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985). A similar result was reached earlier in *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), but *McClure* did not coin the term "ministerial exception." Generally confined to employment discrimination law, the ministerial exception is but a subset of the larger church autonomy doctrine. *Our Lady*, 591 U.S. at 746.

Rather, it is about suffering no trespass by the government into the spheres reserved for the church. *Hosanna-Tabor*, 565 U.S. at 194-95.

When confronted with a church autonomy defense, some lower courts struggle with where to locate the boundary that marks off matters of internal church governance to the exclusion of the government's regulatory powers. This Court has responded to this line-drawing task with general language, the most quoted being from *Kedroff v. St. Nicholas Cathedral*:

> [The First Amendment 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.

344 U.S. 94, 116 (1952) (footnote omitted).[12]

While the foregoing general language concerning the scope of church autonomy provides helpful starting points, this Court's cases have set apart five topical categories (or zones) where religious organizations are barred from being sued: (1) the resolution of religious questions or disputes, such as testing the validity, meaning, or importance of an

---

[12] Additional passages capturing the full scope of church autonomy are found at Carl H. Esbeck, *Church Autonomy, Textualism, and Originalism: SCOTUS's Use of History to Give Definition to Church Autonomy Doctrine*, 108 MARQUETTE L. REV. 705, 709-10 (2025) [hereinafter "Esbeck, *Church Autonomy*"].

organization's religious beliefs and practices;[13] (2) determination of a religious entity's polity, including determinations of who has final authority within the entity to settle an ongoing dispute;[14] (3) the qualifications, selection, promotion, supervision, and dismissal of ministers and other religious functionaries;[15] (4) the criteria for membership and the basis for its severance, including determining which ecclesial sub-entities are in good standing with

---

[13] *See Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981) (holding that courts are not arbiters of scriptural interpretation and thus will not entertain testimony concerning who has correct view of Jehovah's Witnesses pacifism); *Maryland & Va. Churches of God v. Church at Sharpsburg*, 396 U.S. 367, 368 (1970) (per curiam) (courts cannot adjudicate doctrinal differences); *Watson*, 80 U.S. at 725-33 (rejecting the English implied-trust rule to settle church property dispute because of its departure-from-doctrine inquiry); *see also Rusk v. Espinosa*, 456 U.S. 951 (1982) (summarily aff'd) (striking down charitable solicitation ordinance that required officials to distinguish between the "spiritual" and temporal purposes behind a church's fundraising).

[14] *See Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) (First Amendment prevents judiciary, as well as legislature, from interfering in ecclesiastical governance of Russian Orthodox Church); *Kedroff*, 344 U.S. at 119 (same); *Shepard v. Barkley*, 247 U.S. 1, 2 (1918) (aff'd mem.) (a court may not interfere with merger of two Presbyterian denominations). *See also* Justice Thomas concurring in *Catholic Charities Bureau v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238, 257 (2025), expanding on a church's autonomy to arrange its own polity to which the government must defer.

[15] *Our Lady*, 591 U.S. at 751-54; *Hosanna-Tabor*, 565 U.S. at 190-95; *Kedroff*, 344 U.S. at 116 (courts may not probe into clerical appointments); *Gonzalez v. Roman Cath. Archbishop*, 280 U.S. 1, 16 (1929) (declining to assist petitioner who sought order directing archbishop to appoint petitioner to ecclesiastical office).

the church;[16] and (5) intrachurch communications about any of the aforementioned categories of church autonomy.[17]

*Hosanna-Tabor* directs that any additions to these spheres of autonomy are to be located in our nation's founding history. 565 U.S. at 182-85. The First Amendment, observed Chief Justice Roberts, is understood as rejecting the possibility of an established national church with its pervasive regulation of the favored religion,[18] the sort of officious oversight associated with Great Britain's established Church of England. All thirteen states in rebellion were former British colonies and, as such, the Church of England was familiar to the American founders. As an arm of the English Crown, that church was widely disdained by Patriots.[19] The Chief Justice went on to identify two or three events at the founding that gave rise to what Americans then thought of as zones of church autonomy. Several more such historical events are sourced in the footnote.[20]

---

[16] *See Watson*, 80 U.S. at 733 (court has no authority over church discipline of members or the conformity of church members to the standard of morals required of them).

[17] On certain internal church communications being protected by church autonomy, *see Bryce v. Episcopal Church*, 289 F.3d 648, 657–59 (10th Cir. 2002) (communication between church and its members over reason for dismissal of youth pastor was protected by church autonomy; no need to rely on "ministerial exception").

[18] *See* Esbeck, *Church Autonomy* at 725-33.

[19] *Id.* at 720, 740-44.

[20] *Id.* at 745-59. These events include a request by New York delegates to have the Continental Congress alter the Anglican Book of Common Prayer; a French proposal forwarded to the Confederation Congress to authorize a Catholic bishopric in

Of these five zones, Point I below demonstrates that a First Amendment immunity designed to safeguard separation of church and government cannot be brushed aside by Respondent, whose pleading attempts to divert the focus of his dispute with the Church to a claim of fraud to be resolved by state "neutral principles of law." State law, by whatever manner said to be "neutral" as to religion, cannot trump church autonomy, as *Hosanna-Tabor* held. 565 U.S. at 189-90 (distinguishing *Smith*-type cases from church autonomy cases). Moreover, O'Connell's diversion to "neutral" laws sounding in tort is a naked attempt to recharacterize his dispute over how the Catholic Church should spend more of its capital on current social projects and invest less for future needs. That is a religious dispute; one of those domains that is not Caesar's.

Point II below demonstrates that when a lawsuit falls within one of the discrete zones of church autonomy, the defense operates as an immunity.[21] That structural immunity, or the church-state separation promised by the text of the Religion

---

America; a request—later waylaid—to that same Congress to approve the opening of a Catholic seminary; and multiple refusals by the Jefferson Administration to get involved in ecclesial appointments and other quarrels internal to the Catholic Church in the recently acquired Louisiana Territory.

[21] *Hosanna-Tabor* said that church autonomy is not jurisdictional. *Id.* at 195 n.4. True, but there has never been any doubt that the federal judiciary has Art. III federal question jurisdiction to hear these cases. *McRaney*, 157 F.4th at 643. Church autonomy, however, arises from the First Amendment, not Art. III, and it is the First Amendment that confers the structural immunity that matters here. *See id.* at 644-47 (observing that church autonomy is jurisdictional in one sense but not others, depending on how the term is being used).

Clauses, is a threshold question in the course of this lawsuit. That textual promise—a promise to a rightly ordered separation of church and government—cannot be fully realized unless interlocutory appellate relief is permitted.

**POINT I: Resort to state "neutral principles of law" sounding in tort does not permit a disgruntled donor to sidestep the First Amendment church autonomy doctrine. Rather, "neutral principles" has been consistently limited by this Court to lawsuits between two factions within a hierarchical church seeking to resolve which of the disputing parties is awarded title to local church property.**

Resort to "neutral principles of law" seeks to dodge the First Amendment's church autonomy doctrine. This Court has permitted resort to "neutral principles" in only three lawsuits—all intrachurch schisms where the sole issue is who gets title to the church property: *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Church*, 393 U.S. 440 (1969), *Maryland & Va. Churches of God v. Church at Sharpsburg*, 396 U.S. 367 (1970) (per curiam), and *Jones v. Wolf*, 443 U.S. 595 (1979). Right in the middle of this cluster of three church schism cases, this Court decided *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Rather than a property dispute, *Milivojevich* was about a church hierarchy's removal of an ecclesiastic, along with the division of his North American diocese into three smaller units. This Court rejected the lower court's acknowledged reliance on "neutral principles." *Id.* at 721-23. The resort to common law "neutral principles"

is very narrow, and its departure from the First Amendment rule of due deference is limited to where two factions in schism of a hierarchal church are contesting title to church property.

*Presbyterian Church* involved a doctrinal dispute between a general church and two of its local Georgia congregations. The congregations sought to leave the denomination and take with them the local church property. The locals claimed the general church had violated the organization's constitution and had departed from original doctrine with respect to biblical teaching on particular social issues. 393 U.S. at 442 n.l. At the time, Georgia still followed the English rule with its requisite fact finding into alleged departures from doctrine. On the basis of a jury finding that the general church had abandoned its original doctrines, the Georgia courts awarded the property to the local congregations. On review, the Supreme Court held that the First Amendment did not permit departure from doctrine as a rule of decision. The "American concept of the relationship between church and state" (*id.* at 445-46), the Court said, "leaves the civil court *no* role in determining ecclesiastical questions in the process of resolving property disputes." *Id.* at 447 (emphasis in original). Justice Brennan, writing for a unanimous Court, went on to observe in dicta an alternative path forward other than *Watson*'s rule of judicial deference. He wrote that civil courts may elect to resolve disputes that concerned title to local church property, provided they follow "neutral principles of law developed for use in all property disputes." *Id.* at 449. The opinion did not further define or

elaborate on what those principles of property law might be.

A year later, the Supreme Court granted review in *Church at Sharpsburg*, another case involving title to local church property in a dispute between two local churches, on the one hand, and general church authorities. Once again, the local congregations sought to leave the denomination while retaining the local church property. In an unsigned opinion, the Court approved of the Maryland court's applying state legislation

> governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property.

*Church at Sharpsburg*, 396 U.S. at 367. This was the state's version of "neutral principles," and the Supreme Court held it was an acceptable alternative for resolving the question via what Justice Brennan, concurring, termed the "formal title doctrine." *Id*. at 370. To be "neutral," the alternative to the *Watson* rule of judicial deference had to be applicable to all title disputes of a like sort, be the organization secular or religious.

Church documents could be examined to a degree,[22] but only through a secular lens: "Only express conditions [in a church document] that may be effected without consideration of [religious] doctrine are civilly enforceable" by a civil court. *Id.* at 370 n.2 (Brennan, J., concurring).

There was a danger that the "neutral principles" mentioned as dicta in *Presbyterian Church* and applied in *Church at Sharpsburg* could be overread to apply to all religious disputes, not just internecine suits seeking a resolution of title to property. Hence, the Court's ruling seven years later in *Milivojevich* was a reaffirmance of the basics. The *Milivojevich* Court—following the rule of judicial deference—rejected an Illinois bishop's lawsuit challenging a top-down reorganization of the American-Canadian Diocese of the Serbian Eastern Orthodox Church and his removal from office. The Court determined that a dispute over church polity accompanied by a cleric's removal was categorically insulated from civil review. 426 U.S. at 709, 713, 720-21. There was no dispute that the Serbian Church was hierarchical and that the sole power to remove clerics rested with the ecclesiastical body in Belgrade, Yugoslavia. *Id.* at 715. Nor was there any question that the topics at issue were at heart, matters of polity and clerical appointment. *Id.* at 709. Nevertheless, the Illinois Supreme Court ruled for the defrocked bishop because, in its view, the

---

[22] *Id.* at 369 (Brennan, J., concurring) ("To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.").

church's judicatory procedures were applied in an arbitrary manner. On review, the U.S. Supreme Court rejected an "arbitrariness" exception to the judicial deference rule when the question concerned either church polity or discipline of a bishop. *Id.* at 712-13. To accept government authority over such issues is not "consistent with the constitutional mandate [that] the civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Id.* Civil courts may not even examine whether the church properly followed its own rules of procedure. *Id.* at 713. The "concepts of due process, involving secular notions of 'fundamental fairness,'" cannot be borrowed from American civil law and grafted onto a church's polity to modernize the rules followed by church judicatories. *Id.* at 714-15.[23]

*Milivojevich* did not reduce to a mere post-schism title dispute. *Id.* at 723 n.15. The parties argued "neutral principles" permitted a civil court to interpret the church constitution. But the U.S. Supreme Court would not allow "neutral principles" to displace church autonomy. *Id.* at 721-23. Going forward, the disputing parties intended to remain as one church. In such a circumstance, the rule of judicial deference is the only option. In contrast, in both *Presbyterian Church* and *Church at Sharpsburg*, the two factions had no intent to

---

[23] *See also id.* at 712-13 (the finding that "the decisions of the Mother Church were 'arbitrary' was grounded upon an inquiry that persuaded the Illinois Supreme Court that the Mother Church had not followed its own laws and procedures," and that is an inquiry prohibited by the First Amendment).

continue in the future as one church. They had parted ways for good. That being so, the sole remaining issue for the civil court was to consider formal title. Only then was "neutral principles" a permitted option.

There is a principled reason for the "formal title" option being limited, namely: when the only issue before the civil court is title to property and the rule of decision is judicial deference to the highest judicatory, it is not uncommon for each disputing faction to point to a different judicatory as the highest ecclesial authority to which the civil court is to defer. But how is a civil judge to decide which ecclesial judicatory is the true superior decisionmaker? To resolve that question is to decide a religious question. And courts can't resolve religious questions. We have a conundrum, and "neutral principles of law" is a way out. Rather than a departure from the First Amendment, the option serves religious autonomy. But such instances are limited to cases where the sole remaining issue is title to the local property.

The final case in this line of internecine contests is unlike *Milivojevich* but like *Presbyterian Church* and *Church at Sharpsburg*. In *Jones v. Wolf*, this Court again said that state courts may, in limited instances, devise "neutral principles of law" to adjudicate disputes reduced to contests over title to property. 443 U.S. at 602-06.[24] Courts may examine

[24] The *Wolf* Court made clear that a "neutral-principles" approach is not mandated by the First Amendment. Rather, in intrachurch property disputes, the use of "neutral principles" is a *permissible* alternative to the judicial deference rule. *Id.* at 602.

church charters, constitutions, deeds, and trust indentures to resolve property disputes using "objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* at 602-03. Courts can look to state corporation and property laws. To a limited extent, they may even "examine certain religious documents, such as a church constitution, for language of trust in favor of the general church." *Id.* at 604. This serves the state's interests in providing a forum for peaceful dispute resolution and for quieting title to real property. *Id.* at 602.

There can be no resort to "neutral principles" in run-of-the-mill cases like *Milivojevich*, *Kreshik*, *Kedroff*, and *Gonzalez* where the core dispute is religious doctrine, church polity, the selection of clerical leaders, or the expelling of church members. Any doubt as to whether this Court would extend "neutral principles" beyond title disputes between two factions was tacitly answered in its unanimous decision in *Hosanna-Tabor*. *Hosanna-Tabor* was about ministerial personnel, as was *Our Lady*. There was not so much as a passing whisper of "neutral principles" in either of these two opinions, putting them at odds with Respondent's far wider application of "neutral principles."

**POINT II: As a threshold matter, there should be a determination by the district court as to whether the lawsuit falls into one of the discrete zones of activities reserved for the autonomy of the church. In such instances, the separation of church and government in the text of the Religion Clauses gives rise to an immunity to**

**being sued, not a mere defense to liability. When the threshold motion to dismiss is denied, the promise of a rightly ordered church and government in the constitutional text cannot be fully realized in the absence of interlocutory review.**

As a general proposition, churches and other ecclesiastical entities may be sued. *Our Lady*, 591 U.S. at 746. But the instant matter is altogether different. These disgruntled donor lawsuits ultimately resolve themselves as religious disputes between a parishioner and his church. Circuit Judge Rao frames the forbidden religious question here as "[a]n examination of the knowledge and intent of the Catholic Church in raising money—including what it means when priests speak about religious giving from the pulpit and Bishops implement canon law." *O'Connell II*, 2025 WL 3082728 at *12 (cleaned up). And religious questions are barred by church autonomy. *See Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 803, 808 (9th Cir. 2025) (en banc judgment for church) (Bumatay, J., concurring in the judgment). *See id.* at 798 (Bress, J., concurring in the judgment, joined by M. Smith, Nguyan, and Van Dyke, JJ.) ("Nothing says 'entanglement with religion' more than [plaintiff's] apparent position that the head of a religious faith should have spoken with greater precision about inherently religious topics, lest the Church be found liable for fraud."). Moreover, assessing O'Connell's breach of fiduciary duty claim would entail imposing a secular standard at cross-purposes with USCCB's application of the Catholic Church's canons when it comes to administering

Peter's Pence. *See Harris v. Matthews*, 643 S.E.2d 566, 568 (N.C. 2007) (claims by church members against church leaders alleging misappropriation of funds and breach of fiduciary duty would require civil court to define the scope of religious authority of these leaders, a religious question barred by church autonomy).

Even more important, the equitable injunction sought by O'Connell would embroil the district court for years in the work of overseeing and reforming the entire U.S. operations of a major social service branch of the Catholic Church. These tasks are matters concerning how an integral arm of a worldwide church appeals to laity to contribute, then decides where in the world to best provide disaster relief, and ultimately acts to best allocate a scarce resource to distressed peoples—all inherently religious decisions that different churches will respond to differently. Additionally, a civil magistrate's operation of Peter's Pence will at times alter the Catholic Church's organizational polity. For example, the sought-after class action against USCCB will inevitably put the bishops at cross-purposes with the Pope's ultimate control of Peter's Pence, thus at odds with the top-down polity of the Catholic Church. What tasks are USCCB to be doing under the equitable authority of a U.S. judge, as opposed to what tasks are left to decision-makers at the Holy See, is a question of church canons, not one for a federal officer.

Church autonomy gives rise to what is essentially an immunity from being sued.[25] The immunity derives

[25] The Fifth Circuit recently held that church autonomy gives rise to an immunity from being sued and thereby calls for interlocutory appeal, breaking with other circuits. *See McRaney*,

from the Constitution's structure, specifically the text of the First Amendment that speaks to the right-ordering of church and civil government. The first participial phrase ("respecting an establishment") in the First Amendment is different in kind from the second participial phrase ("prohibiting the free exercise"). The phrase "respecting an establishment" is not about acknowledging an unalienable right innate to every person's human dignity.[26] Rather, it is a reference to a discrete sphere of human activity (described as "an establishment of religion") deemed to be outside congressional authority ("Congress shall make no law"). This difference in the nature of the two participial phrases bespeaks a difference in function: safeguarding the dignity of a personal rights holder as opposed to disempowering government within the described sphere of activity ("an establishment").[27] The zone of disempowerment is discrete, namely: only laws about "establishment of religion" are barred, not laws about religion more generally. We thus see that the text of the Establishment Clause operates by structurally disallowing government from making law establishing a church or a religion.[28] When it comes to the doctrine of church autonomy, we have seen five discrete zones where this structural immunity is reflected in the Supreme Court's cases.[29]

---

157 F.4th at 641, 644-45. *See also* Lael Daniel Weinberger and Branton Nester, *Church Autonomy and Interlocutory Appeals*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6073729 (Jan. 14, 2026).

[26] Esbeck, *Church Autonomy* at 726.

[27] *Id*. at 726-29.

[28] *Id.* at 730-33.

[29] *See supra* at notes 13-17 and accompanying text.

When that textually required church-government separation becomes disordered, it can damage not only a church, but also the Republic.[30] Constitutional structure is there to protect more than the immediate litigants. Structure protects all who are under the Republic's authority by diffusing power and policing boundaries via checks and balances. Such disorder is all the more egregious where the trial judge becomes the active agent for bringing about such disregard for the structure in the Religion Clauses by denying a motion at the threshold of the litigation. To fully realize the healthy separation promised by the text of the Establishment Clause, the legal system has to provide for interlocutory appeal when the structural immunity is not recognized early.

---

[30] *See, e.g.*, *Illinois ex rel. McCollum v. Bd. of Educ. of Sch. Dist.*, 333 U.S. 203, 212 (1948) ("[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere."); *Engel v. Vitale*, 370 U.S. 421, 431 (1962) (The Establishment Clause's "first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion.").

## CONCLUSION

This case presents all the outstanding questions concerning the principles of church autonomy that are in need of reconciling among the federal circuits. The petition for writ of certiorari should be granted.

Respectfully submitted.

TIMOTHY BELZ
*Counsel for Thomas More Society*
CLAYTON PLAZA LAW GROUP, L.C.
112 South Hanley Rd.
St. Louis, MO 63105
(314) 726-2800

CARL H. ESBECK
R.B. PRICE PROFESSOR OF LAW EMERITUS
203 Hulston Hall
820 Conley Ave.
Columbia, MO 65211
(573) 882-6543

STEVEN T. MCFARLAND
*Counsel of Record*
LAURA NAMMO
CENTER FOR LAW & RELIGIOUS FREEDOM
CHRISTIAN LEGAL SOCIETY
8001 Braddock Rd.
Suite 302
Springfield, VA 22151
(703) 894-1087
smcfarland@clsnet.org

***Counsel for Amici Curiae***

JANUARY 23, 2026