No. 19-2142

United States Court of Appeals For the Seventh Circuit

SANDOR DEMKOVICH,

Plaintiff-Appellee,

v.

ST. ANDREW THE APOSTLE PARISH, CALUMET CITY, AND THE ARCHDIOCESE OF CHICAGO,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 1:16-cv-11576

MOTION FOR LEAVE TO FILE BRIEF FOR ROBERT F. COCHRAN, JR., TERESA COLLETT, CARL H. ESBECK, RICHARD W. GARNETT, MICHAEL P. MORELAND, ROBERT J. PUSHAW, AND EUGENE VOLOKH AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR REHEARING *EN BANC*

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Attorneys for Amici Curiae

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, proposed Amici Curiae Robert F. Cochran, Jr., Teresa Collett, Carl H. Esbeck, Richard W. Garnett, Michael P. Moreland, Robert J. Pushaw, and Eugene Volokh ("Amici"), respectfully submit this motion for leave to file the accompanying amicus curiae brief (the "Amicus Brief"), in support of rehearing *en banc*. In support of this motion, Amici respectfully state as follows:

Background of Motion for Leave

1. Amici are Professors Robert F. Cochran, Jr., of Pepperdine University School of Law; Teresa Collett, of the University of St. Thomas School of Law; Carl H. Esbeck, of the University of Missouri School of Law; Richard W. Garnett, of the University of Notre Dame School of Law; Michael P. Moreland, of the Charles Widger School of Law at Villanova University; Robert J. Pushaw, of Pepperdine University School of Law; and Eugene Volokh, of UCLA School of Law. They each hold a named endowed chair at their respective universities. Amici are further described below.

2. Counsel for Defendants-Appellants has consented to the filing of the Amicus Brief.

3. On September 25, 2020, counsel for Amici conferred with counsel for Plaintiff-Appellee, who advised on October 2, 2020, that Plaintiff-Appellee does not consent to the filing of the Amicus Brief.

4. The Amicus Brief is timely filed within seven days of the filing of Defendant-Appellants' petition for rehearing *en banc* on October 5, 2020, in light of

the October 12 court holiday.

Statement of Interest of Amici Curiae

5. Amici teach and write about the Religion Clauses of the First Amendment in general, and church autonomy and the ministerial exception in particular. These professors were among the amici-signatories in litigation raising issues regarding the Religion Clauses, including recent "ministerial exception" cases, such as *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), *Biel v. St. James School*, 926 F.3d 1238 (9th Cir. 2019), *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113 (3d Cir. 2018), and *Fratello v. Archdiocese of New York*, 863 F.3d 190 (2d Cir. 2017). The Supreme Court, the Second Circuit, and the Third Circuit adopted the Amici's position. And in *Our Lady*, the Supreme Court Justices discussed the Amici's brief during oral argument.

6. **Robert F. Cochran, Jr.**, is the Louis D. Brandeis Professor of Law Emeritus, and the founder of the Herbert and Elinor Nootbarr Institute on Law, Religion, and Ethics at Pepperdine University School of Law. He teaches courses and lectures internationally on the intersection of law and religion. He has also published extensively on law and religion, including notable works on church autonomy and the role of religion in shaping the law.

7. **Teresa Collett** is a professor at the University of St. Thomas School of Law. She has published numerous legal articles and is the co-editor of a collection of essays exploring "catholic" and "Catholic" perspectives on American law. She is an elected member of the American Law Institute, and has testified before committees

of the U.S. Senate and House of Representatives, as well as before legislative committees in several states. She served two terms on the Pontifical Council for the Family after being appointed by Pope Benedict XVI and then reappointed by Pope Francis.

8. **Carl H. Esbeck** is the R.B. Price Professor Emeritus of Law and the Isabelle Wade & Paul C. Lyda Professor Emeritus of Law at the University of Missouri School of Law. He has published widely in the area of religious liberty and church-state relations, and has taken the lead in recognizing that the modern Supreme Court has applied the Establishment Clause not as a right, but as a structural limit on the government's authority in explicitly religious matters. Professor Esbeck previously directed the Center for Law & Religious Freedom, a nonprofit public interest law firm, and served as Senior Counsel to the Deputy Attorney General at the U.S. Department of Justice.

9. **Richard W. Garnett** is the Paul J. Schierl/Fort Howard Corporation Professor at Notre Dame Law School. He teaches and writes about the freedoms of speech, association, and religion, and constitutional law more generally. He is a leading authority on the role of religious believers and beliefs in politics and society. He has published widely on these matters, and is the author of dozens of law review articles and book chapters. He is the founding director at Notre Dame Law School's Program on Church, State, and Society, an interdisciplinary project that focuses on the role of religious institutions, communities, and authorities in the social order.

10. **Michael P. Moreland** is the University Professor of Law and Religion

at Villanova University's Charles Widger School of Law and Director of the Eleanor H. McCullen Center for Law, Religion and Public Policy.

11. **Robert J. Pushaw** is the James Wilson Endowed Professor of Law at Pepperdine University School of Law and has taught at eight other law schools. He is a prolific constitutional law scholar. Many of his works explore the dangers of government interference with individual constitutional rights, including the institutional free exercise rights of parochial schools.

12. **Eugene Volokh** is the Gary T. Schwartz Distinguished Professor of Law at UCLA School of Law. He has written many law review articles on First Amendment law, as well as the casebook *The First Amendment and Related Statutes*.

13. Amici's interest is to provide the Court with a religious autonomy perspective of the "ministerial exception" as it applies in this context and a broader doctrinal analysis of the exception. This broader context makes clear that the exception ought to apply to this minister's discriminatory employment claim based on a hostile work environment, at least where, as here, the claim is based purely on allegedly offensive speech.

Reasons the Amicus Brief is Desirable and Relevant

14. Amicus briefs are allowed under Rule 29 of the Federal Rules of Appellate Procedure, in part, because they often provide additional background information regarding the issue facing the court. *See* Fed. R. App. P. 29. As then-Judge Alito has emphasized, amicus briefs play an important role and ought to be

accepted, even where parties are adequately represented: "The criterion of desirability set out in Rule 29(b)(2) is open-ended, but a broad reading is prudent . . . . Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case." *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) (granting leave to file amicus brief) (internal quotation marks omitted). *Cf. Mass. Food Ass'n v. Mass. Alcoholic Beverages Control Comm'n*, 197 F.3d 560, 567 (1st Cir. 1999) ("[A] court is usually delighted to hear additional arguments from able amici that will help the court toward right answers . . . .").

15. That is exactly the situation here, where the case "involve[s] novel or particularly complex issues." Cir. R. 29-2, advisory comm. note. This case marks the first opportunity for this Court to apply the ministerial exception since the Supreme Court's decision last term in *Our Lady of Guadalupe School v. Morrissey-Berru*, which made clear that "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." 140 S. Ct. 2049, 2060 (2020). Other Circuits have followed the Supreme Court's directive to "stay out of employment disputes" involving ministers and thus have recognized that the ministerial exception bars certain hostile-work-environment claims brought by ministers. *Skrzypczak v. Roman Catholic Diocese Of Tulsa*, 611 F.3d 1238, 1244 (10th Cir. 2010). But the panel here adopted a rigid categorical distinction between discriminatory employment claims

based on hostile work environment and those based on firing or other "tangible employment actions." *En banc* rehearing will allow the full Court to correct course and provide guidance for future ministerial exception cases in this Circuit.

16. Amici have extensively studied and written on the history and legal background of the ministerial exception. Their particular expertise in this area will provide the Court with a perspective not possessed by any party to the case. Amici believe, based on their extensive research, that the historical and legal background of the ministerial exception shows that religious organizations have autonomy to select, supervise, and control the employees who perform significant religious functions.

17. Granting this motion will allow this Court to hear Amici's perspective and benefit from their highly pertinent knowledge of the history and legal background of the ministerial exception.

18. For these reasons, Amici respectfully request that the Court grant this motion, grant the Amici leave to file the accompanying Amicus Brief, and deem the Amicus Brief properly filed without need for additional action on the part of Amici.

Dated: October 13, 2020

Respectfully submitted,

/s/ Victoria Dorfman
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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 1,455 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5), as modified by Circuit Rule 32, and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 12-point Century Schoolbook Std. font.

/s/ Victoria Dorfman
Attorney for Amici Curiae
October 13, 2020

CERTIFICATE OF SERVICE

I certify that, on October 13, 2020, I caused a true and correct copy of this document to be electronically filed using the Court's electronic filing system (CM/ECF), which automatically serves e-mail notification of such filing to the attorneys of record who are registered CM/ECF participants and each of whom may access this filing via the Court's website.

/s/ Victoria Dorfman
Attorney for Amici Curiae
October 13, 2020

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Amicus Curiae Robert F. Cochran, Jr.
Amicus Curiae Teresa Collett
Amicus Curiae Carl H. Esbeck
Amicus Curiae Richard W. Garnett
Amicus Curiae Michael P. Moreland
Amicus Curiae Robert J. Pushaw
Amicus Curiae Eugene Volokh

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Jones Day

(3) If the party or amicus is a corporation: (i) Identify all its parent corporations, if any; and (ii) List any publicly held company that owns 10% or more of the party's stock:

None of the amici is a corporation.

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INTEREST OF *AMICI CURIAE*[1]

Amici are Professors who teach and write about the Religion Clauses of the First Amendment, church autonomy, and the "ministerial exception." Amici's interest is to provide the Court with a scholarly perspective on the ministerial exception and why it must apply to this plaintiff's claims of discriminatory hostile work environment. This is an important issue that is the subject of a circuit split and warrants *en banc* review.

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the preparation or submission of the brief; and no person or entity, other than Amici and their counsel, contributed money intended to fund the preparation or submission of this brief.

INTRODUCTION

The Religion Clauses are "a two-way street, protecting the autonomy of organized religion and not just prohibiting governmental 'advancement' of religion." Michael W. McConnell, *Reflections on* Hosanna-Tabor, 35 Harv. J. L. & Pub. Pol'y 821, 834 (2012). To protect religious autonomy, the First Amendment "precludes application" of "employment discrimination laws" to "claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188 (2012). "Under this rule, courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). This doctrine recognizes that "a church's independence . . . requires the authority to select, supervise, and if necessary, remove" certain key employees "without interference by secular authorities." *Id.*

Here, there is no dispute that the plaintiff was a "ministerial employee." Panel Op. 8. As the parish music director, he played a key role in working with the clergy to plan and conduct religious services. Nevertheless, the panel held that the ministerial exception did not bar his employment-discrimination claim because he alleged a "hostile work environment" rather than wrongful termination or some other "tangible" employment action. *Id.* 3. The panel's decision is at odds with *Our Lady* and *Hosanna-Tabor*. While those cases addressed allegations of unlawful discriminatory termination, the religious-autonomy principles they embraced also

foreclose claims of a discriminatory hostile work environment, at least where, as here, the claim is based purely on allegedly offensive speech.

ARGUMENT

I. Churches Have Autonomy To Supervise And Control Key Religious Employees.

Hosanna-Tabor confirmed forty years of lower-court precedent by recognizing a "ministerial exception" that protects churches' autonomy to select and control key religious personnel. 565 U.S. at 186-90. Relying on the history and original understanding of the First Amendment, the Supreme Court concluded that "the authority to select and control" those "who will minister to the faithful . . . is the church's alone." *Id.* at 194-95. This rule provides a critical bulwark of religious autonomy. *See* Douglas Laycock, Hosanna-Tabor *and the Ministerial Exception*, 35 Harv. J. L. & Pub. Pol'y 839, 850-51 (2012).

Last term, in *Our Lady*, the Court reaffirmed this principle and held that religious organizations have a right to "autonomy with respect to internal management decisions that are essential to the institution's central mission." 140 S. Ct. at 2060. This commitment to religious autonomy follows from the First Amendment's protection of "the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 2055 (internal quotation marks omitted). Churches need control over the hiring, firing, and management of their key personnel because "church autonomy . . . involve[s] a *structural* as well as an individual component, one that recognizes the limits of the state and the separate

existence of the church." Paul Horwitz, *Essay: Defending (Religious) Institutionalism*, 99 Va. L. Rev. 1049, 1058 (2013) (emphasis added).

II. The Ministerial Exception Bars Claims, Like The One Here, Alleging A Discriminatory Hostile Work Environment.

Under *Our Lady* and *Hosanna-Tabor*, the First Amendment "precludes application" of "employment discrimination laws" to "claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor*, 565 U.S. at 188. Because this case involves a ministerial employee seeking to invoke the employment-discrimination laws against his church employer, his claim is suspect. And because he asserts a hostile-environment claim based on the church's allegedly offensive speech, his claim cannot proceed.

There is no basis for the panel's holding that this minister may sue his church for discrimination simply because he alleges a discriminatory "hostile work environment" instead of a discriminatory hiring or firing decision. Panel Op. 3. The panel stated that hostile-work-environment claims are permissible because they are "essentially tortious in nature" (Panel Op. 18), but that ignores two important differences between ordinary tort claims and discriminatory hostile-work-environment claims. First, tort law defines unlawful conduct in objective terms. By contrast, discriminatory hostile-work-environment claims would invite courts to probe the *subjective reasons* behind the alleged mistreatment of ministerial employees. Second, unlike tort claims, hostile-work-environment claims typically arise out of *speech* that is alleged to be hostile or offensive. And allowing courts to

police "hostile" or "offensive" speech among ministers poses unique First Amendment problems.[2]

A. The panel's decision would intrude on religious autonomy by inviting courts to probe the subjective reasons behind ministerial employment decisions.

Because hostile-work-environment claims are a species of discrimination claim, the plaintiff may prevail by showing that he was subjected to mistreatment that was "motivated by discrimination." *Hardin v. S.C. Johnson & Son, Inc.*, 167 F.3d 340, 346 (7th Cir. 1999). The panel so recognized here. Panel Op. 4 (the employer has altered the plaintiff's "conditions . . . of employment" by subjecting the plaintiff to "severe or pervasive hostility motivated by animus based on" a protected trait such as sex or disability). As a result, although harassment can arise from conduct whose "purpose or effect" is creating a hostile work environment based on protected status, 29 C.F.R. § 1606.8(b)(1), cases sometimes turn on whether the defendant can show a *non-discriminatory* justification. If a minister could sue his church on such a claim, then a court would have to probe whether the church's nondiscriminatory justification was the *real* reason for the minister's alleged mistreatment. Such scrutiny creates an unacceptable threat of impermissible intrusion on religious autonomy.

[2] By contrast, for example, an assault claim could be pursued by a ministerial employee without any inquiry into subjective purpose, and without chilling any religious speech.

This type of inquiry entangles the courts in matters of religious controversy. As Justice Alito explained in *Hosanna-Tabor*, "[f]or civil courts to engage in [a] pretext inquiry" in the context of a ministerial employment dispute "would dangerously undermine the religious autonomy that [the ministerial exception] protect[s]." 565 U.S. at 205 (Alito, J., concurring). After all, when a church asserts a non-discriminatory reason for the treatment of a minister, "[t]he credibility of [the] asserted reason . . . [can]not be assessed without taking into account . . . the importance that the [church] attaches to" the action in question and how important it is to the "religious function" of the minister. *Id.* For the non-discriminatory rationale to be credible, the church would have to prove that its treatment of the minister is *truly* important to the church's religious mission. "But whatever the truth of the matter might be, the mere adjudication of such questions would pose grave problems for religious autonomy: It would require calling witnesses to testify about the importance and priority of the religious [decision] in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church's overall mission." *Id.* at 205-06.

To be sure, churches do not always assert a religious reason for their ministerial employment decisions, including their interaction with and supervision of their ministers. But as *Hosanna-Tabor* recognized, limiting the ministerial exception to cases of religiously-motivated employment decisions would "miss[] the point." 565 U.S. at 194. *Compare with* Panel Op. 31-32 (distinguishing between challenged actions for which a Catholic doctrinal ground was offered and those for

which it was not). As the history of the Religion Clauses and the contemporaneous understanding during their adoption confirms, churches must have the freedom to "select and *control*" those "who will minister to the faithful." *Hosanna-Tabor*, 565 U.S. at 195 (emphasis added). This requires churches to have wide latitude over how to deal with their ministerial employees, without having to worry that the subjective reasons behind their actions may be deemed discriminatory—or that it may lead to burdensome litigation.

Accordingly, allowing courts to sit in judgment of the subjective reasons behind a church's treatment of its ministers would create an unacceptable risk of intruding on religious autonomy. *See* John D. Inazu, *More is More: Strengthening Free Exercise, Speech, and Association*, 99 Minn. L. Rev. 485, 504 (2014) ("[T]he ministerial exception provide[s] an absolute protection for churches" to make ministerial employment decisions "on whatever basis they would like."); *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 121 (3d Cir. 2018) (applying ministerial exception to contract dispute between a minister and church because "parsing the precise reasons for" ministerial employment decisions "is akin to determining whether a church's proffered religious-based reason for discharging a church leader is mere pretext, an inquiry the Supreme Court has explicitly said is forbidden").

B. The panel's decision interferes with religious speech and internal church governance.

Allowing ministers to bring hostile-work-environment claims also undermines religious autonomy in two other ways. First, it infringes on churches'

First Amendment rights by requiring courts to police the expression of "offensive" or "hostile" ideas among ministers. Second, it intrudes on internal church governance by requiring government-mandated sensitivity and anti-harassment training that can displace religious norms and methods of conflict resolution.

1. The First Amendment "gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189. In particular, the right of free expression "applies with special force . . . to religious groups, whose very existence is dedicated to the collective expression and propagation of shared religious ideals." *Id.* at 200 (Alito, J., concurring). Allowing hostile-environment claims among ministers would infringe on that right by requiring churches to prohibit "verbal or physical conduct" that "creat[es] an intimidating, hostile or offensive working environment." *See, e.g.*, 29 C.F.R. § 1606.8(b)(1). At the very least, prohibiting "verbal . . . conduct" that is "hostile" or "offensive" is a viewpoint-discriminatory ban on speech. *Id.* And merely applying the label of "harassment" to such speech does not cure the First Amendment problem because "[t]here is no categorical 'harassment exception'" to First Amendment protection. *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001) (Alito, J.).

In the context of ministerial employment, the First Amendment risk is compounded because speech among ministers often reflects religious beliefs that many consider to be offensive. For example, many religions hold beliefs on traditional roles of men and women, sexuality, transgender status, and even disability that are out of step with prevailing societal norms and could be viewed as

offensive or even hostile by secular observers. Allowing "hostile work environment" claims among ministers would thus create a direct collision between anti-discrimination law and the unfettered expression of religious beliefs in the inner sanctum of the church.

The panel did not shy away from this troubling result. It emphasized that "Reverend Dada could have chosen to express Church doctrine on same-sex marriage, or to exercise his supervisory powers, in non-abusive ways that would not add up to a hostile environment." Panel Op. 33. But it is a severe intrusion on religious freedom for courts to police how ministers "express Church doctrine" among themselves, and whether they do so in a way that "add[s] up to a hostile environment," *id.*

2. Even apart from issues of protected religious expression, the ministerial exception ensures that anti-discrimination laws do not "interfere[] with the internal governance of the church." *Hosanna-Tabor*, 565 U.S. at 188. The exception thus protects a religious institution's "autonomy with respect to internal management decisions that are essential to the institution's central mission" because "[j]udicial review of [the institution's] discharge of those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Our Lady*, 140 S. Ct. at 2060, 2055; *see also* Douglas Laycock, *Towards A General Theory of the Religion Clauses*, 81 Colum. L. Rev. 1373, 1412 (1981).

The category of protected "internal management decisions" is not limited to hiring and firing. As *Our Lady* put it, "a church's independence . . . requires the authority" not only to "select" and "remove" ministers, but also to "supervise" them "without interference by secular authorities." 140 S. Ct. at 2060.

Here, the panel's decision would lead to significant judicial interference in the supervision and training of ministerial employees. Among other things, churches would be forced to adopt a government-imposed regimen of "anti-harassment training" to govern interactions among clergy and other ministers. This imposition would be unavoidable, because one of the central issues in hostile-work-environment cases is whether the employer has "exercised reasonable care to prevent and correct . . . harassing behavior." *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998). And this often turns on whether the employer has "promulgated an anti-harassment policy," including a "complaint procedure," that is "suitable to the employment circumstances." *Id.*

Imposing such requirements on churches is a severe intrusion on religious autonomy, as the question of how to train ministers to behave and interact with each other inevitably involves religious norms and methods of conflict resolution that lie beyond the ken of secular courts. That is why the Ninth Circuit erred when it created a categorical rule allowing hostile-environment claims against religious employers for mishandling harassment complaints in *Bollard v. Cal. Province of the Society of Jesus*, 196 F.3d 940 (9th Cir. 1999). The court failed to recognize that "even if [a church] did not justify sexual harassment on religious grounds, they

could well have had religious reasons for their way of handling the plaintiff's complaints." John H. Mansfield, *A Tale of Two Organists: Suits Against Churches for Employment Discrimination and Sexual Abuse by Ministers*, 7 Geo. J.L. & Pub. Pol'y 237, 249 (2009). "Furthermore, even though the plaintiff sought only damages for harassment and not reinstatement, a substantial award could well affect how the [church would] handle [ministers'] complaints in the future, leading them to abandon a religiously-based practice and to adopt what they think will satisfy a secular standard." *Id.*

* * *

This Court should follow the Tenth Circuit in recognizing that the ministerial exception bars ministers from asserting hostile-work-environment claims, like the one here. *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1244 (10th Cir. 2010). Indeed, just as the Tenth Circuit recognized, this Court's own precedent requires this approach. *Id.* at 1245 (citing *Alicea–Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003)). *See also Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 803–04 (9th Cir. 2005) (order denying petition for rehearing) (Kleinfeld, J., dissenting) (arguing that allowing ministers to assert hostile-work-environment claims would infringe on a church's "right to select, manage, and discipline [its] clergy free from government control and scrutiny").

CONCLUSION

For the reasons stated here and in Appellant's petition, this Court should grant the petition for rehearing *en banc*.

Dated: October 13, 2020

Respectfully submitted,

/s/ Victoria Dorfman
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