

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

BRIEF FOR *AMICUS CURIAE* JOHN H. GARVEY

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INTEREST OF THE *AMICUS CURIAE*

John H. Garvey is the Clynes Distinguished Visiting Professor of Law at Notre Dame Law School, the former President of The Catholic University of America, and a nationally respected Catholic intellectual. He was also the Dean of the Boston College Law School, a past President of the Association of American Law Schools, and served as Assistant to the Solicitor General of the United States. He has written extensively on First Amendment law and Catholic thought. He has an interest in the sound development of the church autonomy doctrine.¹

CONSTITUTIONAL PROVISION AT ISSUE

The First Amendment to the Constitution provides in relevant part:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

SUMMARY OF THE ARGUMENT

Peter’s Pence is a religious offering that the Catholic Church has collected for more than fourteen hundred years. From its origins as voluntary alms brought by Anglo-Saxon rulers to Rome, through its development as a religious tax in the Middle Ages, its Reformation decline and nineteenth-century revival, into today’s worldwide practice, Peter’s Pence is an offering entrusted to the Pope for the use of the universal Church. Its timing, symbolism, and administration reflect core aspects of Catholic belief, including unity with Saint Peter and the Pope’s

¹ All parties received 10-days’ notice of the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

ultimate responsibility for the Church's charitable mission. This historical and religious context should warn courts away from deciding whether to recast this millennia-old religious offering into Respondent's preferred conception of his donation—or allowing this case to proceed any further.

Peter's Pence is not a mere raffle or charity bingo night; it is a practice deeply rooted in the Church's history, practice, and doctrine. This case asks civil, as opposed to ecclesiastical, courts to decide if a priest's homily, and the Pope's use of Peter's Pence funds, accord with Catholic charity, history, and doctrine. But Respondent's lawsuit is also premised on a misunderstanding. As a matter of Church structure, governance, and law, the United States Conference of Catholic Bishops (USCCB) does not control either the homilies of parish priests or how Peter's Pence donations are spent. Aside from missing the mark on the merits, Respondent's lawsuit requires courts to resolve inherently religious questions about church polity, doctrine, and governance.

Evaluating Respondent's claims would necessarily force a court to decide for itself who within the Church controls (or who can control) the contents of homilies, whether a particular homily is inconsistent with Catholic teaching about Peter's Pence, what a reasonable parishioner should believe about Catholic doctrine, and—most importantly—how donated funds should be administered by the Pope. Just as well might a parishioner sue the Church because a priest used the wrong words in a baptism, or was later discovered not to have been ordained.

The D.C. Circuit did not take these concerns seriously, mirroring the district court's blithe assurance that it could avoid “purely” religious questions. But this Court has repeatedly held that

civil courts cannot second guess churches on matters of faith and governance. Allowing civil courts to decide this case would improperly thrust the judiciary into an intra-religious dispute over the meaning of Catholic charity, the Pope's authority, and other religious questions.

If this Court denies certiorari those questions will be resolved in the wrong forum. Not all of the world's 1.4 billion Catholics may agree with how the Pope decides to spend Peter's Pence funds. But there are internal procedures and ecclesiastical tribunals within the Catholic Church for resolving such concerns. The First Amendment does not permit civil courts to decide whose understanding of Peter's Pence is correct or to delimit the Pope's discretion. That question belongs to the Catholic Church alone. Any dispute can and must be resolved free from state interference.

The Court should grant the petition.

ARGUMENT

I. The long history of Peter's Pence shows that questions about its purpose and use are inherently religious in nature.

The unique ecclesiastical history of Peter's Pence confirms that its nature, purpose, and use are matters of faith and church governance. From its origins as seventh-century alms offered at St. Peter's tomb to its current form as a worldwide collection supporting the Holy Father's mission, Peter's Pence represents devotion to the papacy and solidarity with the Church's evangelical work. Respondent asks courts to judge this millennia-long practice, and wrongly claims the USCCB is responsible. Under Church law, the USCCB controls neither the disposition of Peter's Pence (a matter of discretion for the Pope) nor the way

parish priests may address the subject in their homilies. Viewed in the proper light, Respondent's claim turns solely on religious doctrine, ecclesiastical structure, and Catholic understandings of charity.

A. The history, practice, and doctrine behind Peter's Pence.

1. Peter's Pence originated more than a thousand years ago as an annual gift of alms that Anglo-Saxon royalty pledged to the Pope. W.E. Lunt, *The Financial System of the Medieval Papacy in the Light of Recent Literature*, 23 Q.J. Econ. 251, 278 (1909). In the seventh and eighth centuries, English kings and nobles routinely journeyed to Rome bearing gifts for the papacy and for the tombs of Saints Peter and Paul. Rev. Paweł Lewandowski, *Peter's Pence as a Form of Financing the Needs of the Holy See*, 654 (2024). These early offerings reflected both religious devotion and an emerging sense of unity between distant Christian communities and the See of Rome. Rory Naismith & Francesca Tinti, *The Origins of Peter's Pence*, 568 Eng. Hist. Rev. 522, 522 (2019).

Historical accounts illustrate the practice. Cædwalla, king of the West Saxons, traveled to Rome to be baptized and brought gifts for the Pope. *Id.* at 522. After his death, Pope Sergius I (687–701) ordered the phrase *mystica dona gerens* engraved on his tomb, signifying that he had come to Rome “bearing sacred gifts.” *Id.* at 524. By the ninth century, such offerings had become common among rulers, and gifts to St. Peter's were closely associated with pilgrimage to the Eternal City. *Id.* at 525–26. Scholars have explained that “Peter's Pence is best understood as a systematized form of these earlier voluntary gifts to Rome, achieved thanks to strong governance and a sharpening sense of communal religious identity in the late Anglo-Saxon period.” *Id.* at 522.

2. This practice evolved during the Middle Ages. What began as voluntary gifts developed into a government-imposed levy to support the Church. Historical sources give these practices names such as “Romfeoh,” “Romescot,” or “Romepenny,” but the underlying concept was that rulers collected a special tax from households and transmitted the funds to Rome. Herbert Thurston, *Peterspence*, *The Catholic Encyclopedia* (1911); Naismith & Tinti, *supra*, at 530–35; Lewandowski, *supra*, at 655. Originating in England, the custom spread to other northern European countries during this period as well. Thurston, *supra*.

Over time, mechanisms for collecting this tax became more formalized. Naismith & Tinti, *supra*, at 533. Later legislation promulgated at Enham, England, in 1008 by Æthelred requested payments by St. Peter’s Day, and there were penalties for those who failed to pay the tax. *Id.* at 533–34, 537. Collections were often administered locally, and over time, became a general expectation among communities. *Id.* at 539–40. By the mid-twelfth century, rulers transmitted Peter’s Pence at fixed rates, though the overall sums sent to Rome began to decline. *Id.* at 539–44. As political dynamics shifted and both papal and royal authorities asserted greater independence, the practice waned. *Id.* at 545. Even so, scholars have observed that Peter’s Pence remained a notable means for foreign leaders to cultivate relationships with the Pope, emphasizing the remarkable longevity of a system directed toward a distant religious authority. *Id.* at 551.

3. The Protestant Reformation marked a significant disruption to longstanding Catholic practices, including support for Peter’s Pence. The period was characterized by sustained targeting of

Catholic institutions and traditions. Michael McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2112–14 (2003). Against that backdrop, Peter’s Pence gradually disappeared from historical records. Lewandowski, *supra*, at 663. What sources we have indicate that payments resembling Peter’s Pence were effectively paused during this era. Thurston, *supra*.

4. Peter’s Pence re-emerged in the nineteenth century under Pope Pius IX. In the 1860s, the offering was revived as a voluntary subsidy to support the Papacy following the loss of revenue from the Papal States. Thurston, *supra*. Shortly before the end of the Papal State and the loss of its territorial income in 1870, Catholics throughout Europe and beyond initiated efforts to provide material aid to the Pope, a response that offered encouragement during a period of retrenchment for the Papacy. *History of Peter’s Pence*, The Vatican, <https://perma.cc/M3VS-3AE4>.

Pope Pius IX formally reactivated Peter’s Pence in his encyclical *Saepe Venerabiles*, issued August 5, 1871, on the occasion of the twenty-fifth anniversary of his pontificate. *Saepe venerabiles* (1871), <https://perma.cc/W3CV-5YJX>. From that period forward, Peter’s Pence developed into today’s voluntary worldwide offering.

B. Peter’s Pence in today’s Church.

In its current form, Peter’s Pence is a voluntary offering collected throughout the worldwide Church on June 29—the Solemnity of Saints Peter and Paul—or on the Sunday closest thereto. By contributing to Peter’s Pence, Catholics fulfill obligations to God and respond to the Church’s call to take part in its mission. While the tradition of Peter’s Pence is over a

millennium old, the expectation that the Catholic faithful materially support the mission of the Church is far older, rooted in Scripture itself. See, *e.g.*, *Luke* 8:1–3. Safeguarding the needs of the universal Church through tithing and other forms of giving is an obligation incumbent on all Catholics. See, *e.g.*, Code of Canon Law, Canons 222, 1261. Acts of charity are “work[s] of justice pleasing to God,” USCCB, *Catechism of the Catholic Church* ¶ 2462 (Libreria Editrice Vaticana 2d ed. 1997), that help fulfill the obligation to “[t]hink of what is above, not of what is on earth.” *Colossians* 3:1-2. Peter’s Pence also reflects a broader vision of lay co-responsibility within the Church’s mission and strengthens unity between the faithful and the universal Church. See Lewandowski, *supra*, at 654.

The name and timing of the collection also underscore its religious importance. The reference to Peter emphasizes the continuity between the present Pope and Saint Peter—the rock upon which, according to Catholic belief, Jesus built His Church. *Matthew* 16:13-20. That the offering is collected on or around June 29, when the Church commemorates the martyrdom of Saints Peter and Paul at the hands of their own civil government, is also significant.

Today, the worldwide collection supports the international ministries and charitable works of the Holy See and sustains the universal mission of the Holy Father by funding activities carried out by the Dicasteries, Entities, and Bodies of the Holy See. Pope Benedict XVI, Address to Members of St. Peter’s Circle (2007), <https://perma.cc/ZD4P-C7DK>. It also funds individual initiatives of charity, solidarity, and other efforts for the common good. *Id.*

Popes have repeatedly emphasized the offering's religious and material significance. As Pope John Paul II explained:

Many expect the Apostolic See to give them the support they often fail to find elsewhere. In this perspective the Peter's Pence Collection is a true and proper participation in the work of evangelization, especially if one considers the meaning and importance of concretely sharing in the concerns of the universal Church.

Pope John Paul II, *Speech at the Circle St. Peter* (2003), <https://perma.cc/H3CA-MVMD>.

From the earliest donations from seventh-century kings to the present day, the Pope has always retained personal discretion to dispose of Peter's Pence funds in support of the religious and charitable activities of the Holy See. See, e.g., Lewandowski, *supra*, at 657. Through centuries of historical development, Peter's Pence has remained a religious offering directed toward the evangelical mission of the universal Church and entrusted solely to the Pope's discretion. Donations are a work of charity and an expression of faith in Peter's successor.

C. The Pope's control over Peter's Pence and how priests preach about it in homilies.

1. *Pope's Control.* Canon law vests responsibility for Peter's Pence in the Pope. The Roman Pontiff—"in whom continues the office given by the Lord uniquely to Peter"—"is the head of the college of bishops, the Vicar of Christ, and the pastor of the universal Church on earth," possessing "supreme, full, immediate, and universal ordinary power in the Church." Canon 331. He exercises that authority "through the Roman Curia," which conducts "the affairs of the universal

Church ... in his name and by his authority.” Canon 360.

For matters such as Peter’s Pence, bishops merely “assist in procuring those means which the Apostolic See needs” to serve the universal Church, Canon 1271, while “the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods.” Canon 1273. Peter’s Pence, as Church law and tradition confirm, is a collection “designed to enable the Church of Rome to fulfill properly its office of presiding in universal charity.” Congregation for Bishops, *Apostolorum Successores* ¶14 (2004).

Since Cædwalla first brought alms to St. Peter’s in the 600s, the Pope has exercised exclusive control of Peter’s Pence. That authority continues today, as the funds collected through Peter’s Pence are managed day-to-day by the Vatican’s Administration of the Patrimony of the Apostolic See (APSA), which is under the Pope’s supervision. *Motu Proprio, Una migliore organizzazione*, <https://perma.cc/ZQF9-FBA3>.

2. *Priests’ Homilies*. The USCCB, in common with other episcopal conferences around the world, asks bishops to encourage the collection of Peter’s Pence. But the USCCB does not control or dictate the language of individual homilies, as Respondent claims.

On the solemnity when Peter’s Pence is collected, parish priests decide whether to preach about Peter’s Pence and solicit donations during their homilies. Church law assigns responsibility for the homily to the parish pastor: “The pastor is obliged to see to it that the word of God in its entirety is announced to those living in the parish ... especially through the homily which is to be given on Sundays and holy days of obligation.” Canon 528. The Church’s Directory for Homiletics instructs that in preparing his homily, a

priest does so through prayer, study, meditation, and pastoral reflection. Vatican, *Homiletic Directory*, <https://perma.cc/W746-MMC8>. As Pope Francis explained, “[t]he preacher must know the heart of his community” so that the “dialogue” between God and His people “may be renewed and deepened.” *Evangelii Gaudium* ¶137 (2013).

The homily is not merely a reflection—it is the principal moment of preaching during the Mass. In the homily “the mysteries of faith and the norms of Christian life are to be explained from the sacred text during the course of the liturgical year.” Canon 767. Its religious significance is part of the reason the homily is entrusted to an ordained figure in the Church and “never to a lay person.” *General Instructions of the Roman Missal*, The Vatican, <https://perma.cc/F6MW-LWFC>. Far from being dictated by a nationwide conference of bishops, a priest’s homily is written with an eye towards his local community and the religious text to be read on that particular day.

3. *Respondent misstates USCCB’s role.* In the courts below, Respondent characterized the USCCB as saying: “[T]he Conference of Catholic Bishops” “told” the priests “what to say to our parishioners.” Pet. App. 242a (cleaned up). But that’s wrong. The USCCB is the episcopal conference of the Catholic Church in the United States. Pet. App. 197a. It is an entity distinct from the individual bishops throughout the country. It does not control how a parish priest delivers a homily. Nor does it censor priests’ homilies or mandate scripts for parish preaching. In the Catholic tradition, preaching a homily is a local pastoral act by the parish priest—not something dictated by the USCCB.

Respondent also claimed that the USCCB “directed” that Peter’s Pence be applied to certain purposes and “profited” from it. Pet. App. 185a; see also Pet. App. 195a. That, too, is wrong. Church history and law could not be clearer: the Pope—and not American Bishops—decides how to spend the proceeds from the worldwide offering that is Peter’s Pence. The few exceptions prove the rule, as when Pope Pius XII authorized certain bishops to donate Peter’s Pence funds to victims of World War II. Lewandowski, *supra*, at 657 n.12. That authority existed only because the Pope granted it in that special instance, not because the individual bishops possessed inherent authority to spend Vatican funds without direct authorization from the Pope.

The USCCB’s involvement with Peter’s Pence is limited to promoting the offering. Pet. App. 202a. Collected monies are sent directly from local dioceses to the Holy See. *Peter’s Pence Collection Transmittal Form*, USCCB, <https://perma.cc/2S9L-ZRPC>. The USCCB does not decide how the funds are used. Nor does it decide how (or whether) priests solicit donations for Peter’s Pence in homilies on the Solemnity of Saints Peter and Paul. The USCCB creates promotional materials that parishes may use, but parishes have full discretion to do as they will. Pet. App. 202a-205a.

II. This lawsuit asks courts to overrule the Pope’s thousand-year-old discretion to manage Peter’s Pence.

The controversy over Peter’s Pence is a dispute over religious meaning that cannot be judged by civil courts. It asks what types of expenditures fall within the Catholic definition of “charity” and how far the Pope’s discretion extends. Those are questions that are (and should be) answered by Catholic theology,

tradition, and canon law, all of which originated hundreds of years before the advent of the common law. The First Amendment removes such issues from judicial oversight.

The court of appeals did not see a problem with deciding whether the Pope can invest Peter's Pence. One judge dismissed religious concerns as "silly" and "laughable" at oral argument, as he maintained that courts can easily avoid "purely" religious issues. But the district court summarized Respondent as claiming "the charitable fund was not used to fund *charitable purposes*." Pet. App. 38a (emphasis added). What constitutes "charitable purposes" in this context is an inherently religious question. The solicitation was delivered from the pulpit during Mass to parishioners about the Church's use of donated funds. And for more than fourteen centuries, the determination of how Peter's Pence is allocated has been entrusted to the Pope's religious authority and discretion. The dispute arises only because a disgruntled parishioner—who concedes the funds were used for authorized Church purposes—simply disagrees with the Pope's conception of charity.

The gravamen of Respondent's lawsuit is that, rather than going immediately to humanitarian causes, some of Peter's Pence was invested. The complaint even quotes Pope Francis on the issue:

[N]o one should be bothered by the fact that the Vatican invests the money it collects from Catholics around the world. The sum of Peter's Pence arrives and what do I do? Put it in a drawer? No, that's bad administration. I try to make an investment.

Pet. App. 183a.

Respondent wants civil courts to overrule Pope Francis, asking for a holding that Peter’s Pence cannot be placed in “investment funds” and that “fund managers” of such investments should not receive “hefty” “commissions.” Pet. App. 170a. He even asks for an order “permanently enjoining” the Church from such practices. Pet. App. 192a.

Respondent also claims that the funds were not used for “charitable works” because, rather than going toward “emergency assistance,” they helped “defray Vatican administration expenses.” See, *e.g.*, Pet. App. 185a. Putting aside the peculiar notion that covering the Church’s operating costs is somehow not charitable, Respondent’s position effectively invites a civil court to second guess the Pope—the successor of St. Peter—on directing Peter’s Pence toward keeping the lights on in St. Peter’s itself.

How the Pope chooses to allocate Peter’s Pence is a religious question that must be left to the Catholic Church. To adjudicate the dispute, a civil court would have to “choos[e] among ‘competing religious visions’” of charity, *EEOC v. Catholic University of America*, 83 F.3d 455, 465 (D.C. Cir. 1996), exactly what the First Amendment forbids. Whether a parish priest or the USCCB is misstating the doctrine or tradition of Peter’s Pence is also a religious issue. “Nothing says ‘entanglement with religion’ more” than adjudicating whether a church “should have spoken with greater precision about inherently religious topics.” *Huntsman v. Corp. of the President of The Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 792-793, 796-799 (9th Cir. 2025) (en banc).

Amicus curiae has written that “we should allow [churches] to resolve their own disputes and enforce the outcomes they settle on.” John Garvey, *What Are Freedoms For*, 154 (1996). This rule both “secure[s] a

social benefit” for “the health of society” and protects personal freedom. *Id.* at 153. Churches are “one of the most important ... associations that stand intermediate between the individual and the state, and provide a buffer that is the best protection for personal freedom.” *Id.* Personal freedom, under the church autonomy doctrine, reflects that “those devoted to communitarian forms of religious life believe that the ends of such life—the goods pursued by their group—are more important than individual aspirations.” *Id.* at 154.

Catholics like Respondent may (and do) disagree with how the Pope allocates Peter’s Pence. But the question here is *who decides* what Catholic charity means and how those funds should be used—the Catholic Church or American civil courts. The First Amendment requires courts to leave those issues to the Church, which possesses its own internal procedures and tribunals to address precisely these sorts of disagreements. Respondent can seek a refund of his donation in ecclesiastical tribunals under Canon 1417. He can petition his bishop through Canon 392, §1 to reprimand a priest for a misrepresentation of the Pope’s discretion to spend Peter’s Pence. Respondent can also speak to the priest directly through the authority in Canon 212, §3.

Nor is this among the narrow set of cases in which civil court review of Church expenditures is appropriate for embezzlement, self-dealing, stolen or diverted funds, or the like. See Religious Organizations C.A. Amicus Br. 17-21. Respondent concedes that the Pope received the funds and spent them for Church purposes. See, *e.g.*, C.A. Response Br. 49; Br. in Opp. 2-3. Respondent’s only contention is that it was improper for the Church to invest the money and use it for overhead *and* still regard those

expenditures as “charitable.” See Pet. App. 176a (“the charitable works of Pope Francis”), Pet. App. 177a (“his charitable works around the world”), Pet. App. 178a (“the charitable works of Pope Francis”). This is a dispute about competing visions of Catholic charity, not a tort wrapped in the “cloak of religion.” *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Questions about the Pope’s discretion sit well within the boundaries of the church autonomy doctrine. Courts should not and cannot decide those questions, especially when a thousand years of tradition commit those decisions to the Pope’s sole authority.

CONCLUSION

This Court should grant certiorari, reverse the judgment of the D.C. Circuit, and resolve the numerous splits below.

Respectfully submitted,

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