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 of Columbia Circuit

BRIEF OF FEDERAL COURTS PROFESSOR DEREK T. MULLER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[*]

Derek T. Muller is a Professor of Law at Notre Dame Law School. He has taught courses on federal courts and civil procedure, among other subjects. He is a co-author of a federal courts casebook, *Federal Courts: Cases and Materials on Judicial Federalism and the Lawyering Process* (5th ed. 2022), as well as an open-access resource on federal courts and civil procedure, *Rules and Laws for Civil Actions* (2025). He has submitted amicus briefs to this Court and federal courts of appeals on a range of subjects within his expertise. Of particular relevance here, he filed amicus briefs in *Synod of Bishops v. Belya*, 143 S. Ct. 2609 (2023), *Garrick v. Moody Bible Institute*, 95 F.4th 1104 (7th Cir. 2024), and in this case before the D.C. Circuit, on whether the collateral-order doctrine permits an immediate appeal of a district court order denying the assertion of a church-autonomy defense. Because this appeal involves that same important and recurring question of appellate jurisdiction, with significant implications for the administration of federal courts, Professor Muller has an interest in this case's proper resolution. He submits this brief under Supreme Court Rule 37.2.

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[*] In accordance with Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of the *amicus*'s intent to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an exceptionally important question at the intersection of civil procedure and constitutional law. Under 28 U.S.C. § 1291, federal courts of appeals have jurisdiction over appeals from "final decisions of the district courts." That provision, which "descends from the Judiciary Act of 1789," has long been understood to confer appellate jurisdiction over more than just case-ending final judgments. *Cunningham v. Hamilton County*, 527 U.S. 198, 203 (1999). But precisely which pre-judgment orders can be immediately appealed under Section 1291—often termed "collateral orders"—has been far less clear. This Court need not explore the outer limits of the collateral-order doctrine to resolve this case. Under the Court's longstanding and widely accepted construction of Section 1291, an order denying a defendant's request to dispose of a case is immediately appealable under Section 1291 when (1) the defendant asserts a protection against the burdens of further litigation, not just a defense against liability alone, and (2) the asserted protection is rooted in constitutional principles, displacing the default federal preference for "deferring appeal until litigation concludes." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107 (2009).

That rule resolves the questions presented. In response to a suit challenging the Catholic Church's solicitation and use of charitable funds from the Peter's Pence collection (*Obolo di San Pietro*), petitioner United States Conference of Catholic Bishops moved to dismiss based on the church-autonomy doctrine. That doctrine provides more than just protection from liability; it compels courts "to stay out" of disputes over the governance and

function of religious institutions. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). And the doctrine is rooted in the structural limitations on government imposed by the Religion Clauses of the First Amendment, *see id.*, which provide a sufficient justification for departing from the default federal policy against piecemeal appeals.

Under that straightforward analysis, the denial of petitioner's church-autonomy defense was a "final decision" immediately appealable under Section 1291, much like orders denying double-jeopardy, official-immunity, qualified-immunity, or sovereign-immunity defenses—all of which have long qualified for review under the collateral-order doctrine. *See, e.g.*, *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146-47 (1993); *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985); *Nixon v. Fitzgerald*, 457 U.S. 731, 742-43 (1982); *Abney v. United States*, 431 U.S. 651, 659-60 (1977). The court of appeals accordingly had jurisdiction to resolve petitioner's appeal of the district court's ruling. *See* Pet. App. 59a-60a (Rao, J., dissenting from denial of rehearing en banc).

Although the court below and several other courts of appeals have dismissed appeals like the one in this case, the question whether a denial of a church-autonomy defense qualifies for immediate appeal has repeatedly divided thoughtful jurists. *See, e.g.*, *id.*; *id.* at 50a (Walker, J., concurring in denial of rehearing en banc); *Tucker v. Faith Bible Chapel Int'l*, 53 F.4th 620, 625-27 (10th Cir. 2022) (Bacharach, J., dissenting from denial of rehearing en banc); *Belya v. Kapral*, 59 F.4th 570, 577 (2d Cir. 2023) (Park, J., dissenting from denial of rehearing en banc). The Fifth Circuit recently deepened this divide by

holding that a denial "is subject to an immediate interlocutory appeal." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention*, 157 F.4th 627, 641 (5th Cir. 2025). Given the important and recurring nature of that question and its clean presentation in this case, this Court should grant certiorari to resolve it.

ARGUMENT

I. Section 1291 Allows Immediate Appeal Of A Pretrial Order Rejecting A Church-Autonomy Defense

The "final decisions of the district courts" that are subject to immediate appeal under 28 U.S.C. § 1291 include a limited number of orders preceding final judgment. Defining with precision the category of appealable collateral orders has proven difficult for courts and scholars alike. But the statutory text, purpose, and history—along with this Court's precedent—yield an administrable rule that resolves the questions presented here. When a district court denies a pretrial motion (1) asserting a defense against the burdens of litigation itself (2) that is rooted in constitutional principles, its order is immediately appealable under Section 1291. Because the church-autonomy defense that petitioner invoked below meets both those criteria, the D.C. Circuit should have exercised mandatory jurisdiction over petitioner's appeal.

A. Section 1291 permits immediate appeal of a limited category of "final decisions" that precede final judgment

From its earliest days, Congress has allowed appeals as of right from "final" decisions of federal district courts. *See Cobbledick v. United States*, 309 U.S. 323, 326 (1940); *see also Geo Group, Inc. v. Menocal*, 607 U.S. __,

2026 WL 513536, at *4 (Feb. 25, 2026). The Judiciary Act of 1789 conferred on federal circuit courts mandatory appellate jurisdiction over certain "final decrees and judgments" of district courts. § 22, 1 Stat. 73, 84. When Congress created the federal courts of appeals in the Evarts Act of 1891, it carried forward that provision with a modest revision, providing mandatory appellate jurisdiction over the "final decision" of a district court (or a former circuit court), except where an appeal could be taken directly to the Supreme Court. § 6, 26 Stat. 826, 828. The current statute, 28 U.S.C. § 1291, adopts substantially identical language, explaining that courts of appeals "shall have jurisdiction of appeals from all final decisions of the district courts … except where a direct review may be had in" this Court.

None of those statutes has outlined the precise contours of a "final" judgment, decree, or decision. For as long as the statutes have been on the books, however, this Court has understood their references to finality to encompass not only rulings that formally "end[] the litigation on the merits and leave[] nothing more for the court to do [except] execute the judgment," but also "a narrow class of decisions that," although they "do not terminate the litigation," must "be treated as 'final'" to vindicate the "object of efficient administration of justice in the federal courts." *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867-68, 884 (1994) (citation omitted). As this Court put it in one leading decision, "finality—the idea underlying 'final judgments and decrees' in the Judiciary Act of 1789 and now expressed by 'final decisions' in [Section 1291]—is not a technical concept of temporal or physical termination," but rather a requirement prescribed by Congress to ensure "a healthy legal system." *Cobbledick*, 309 U.S. at 326; *see*

also Geo Group, 2026 WL 513536, at *9-11 (Alito, J., concurring in the judgment) (recounting the development and purposes of the doctrine).

The historical origins of the final-judgment rule reinforce that understanding. The reference to "final judgments" in the Judiciary Act of 1789 was "declaratory of a well settled and ancient rule of English" common-law practice, under which "no writ of error could be brought except on a final judgment." *McLish v. Roff*, 141 U.S. 661, 665 (1891). The basis for that English rule was practical rather than doctrinal. At English common law, an appeal could proceed only when the record of a case was sent up from the trial court. Carleton M. Crick, *The Final Judgment as a Basis for Appeal*, 41 Yale L.J. 539, 543-44 (1932). But because there was only one "formal record" of the case ("the roll"), "it could be in only one court at a time." *Id.*

This Court's early decisions accordingly treated "final" as a term of art that typically—but not always—required a formal end of the district-court litigation to establish appellate jurisdiction. Indeed, the Court stressed that it was "obviously the object of the [appellate-jurisdiction statute] to save the unnecessary expense and delay of repeated appeals in the same suit." *Forgay v. Conrad*, 47 U.S. (6. How.) 201, 205 (1848). Still, the Court repeatedly permitted appellate review of orders that were "not final, in the strict, technical sense of that term" when doing so would be more "consonant" with "the meaning of the acts of Congress"—for example, when the decision was practically final and delaying review would inflict "irreparable injury" on the losing party. *Id.* at 203-04; *see, e.g.*, *Williams v. Morgan*, 111 U.S. 684, 699 (1884); *Bronson v. La Crosse & M.R. Co.*, 67 U.S. (2 Black) 524, 531 (1862); *Whiting v. Bank of the*

United States, 38 U.S. (13 Pet.) 6, 15 (1839); *see also* Adam Reed Moore, *A Textualist Defense of a New Collateral Order Doctrine*, 99 Notre Dame L. Rev. Reflection 1, 30-32 (2023) (citing additional examples).

When Congress amended the appellate-jurisdiction statute in 1891, it replaced the phrase "final judgments and decrees" with "final decisions"—the language that remains in force today. Although the 1891 amendment did not broaden the substantive scope of appellate rights, *see, e.g.*, *Cobbledick*, 309 U.S. at 324-26, Congress's use of the term "final *decisions*" aptly captured this Court's longstanding view that an appeal did not invariably require a formal final *judgment* or decree that resolved the case on the merits. *See, e.g.*, William C. Anderson, *A Dictionary of Law* 318 (Chicago, T.H. Flood & Co. 1889) (defining a "decision" as "[s]omewhat more abstract or more extensive than 'judgment' or 'decree'"); 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 356 (Jersey City, Frederick D. Linn & Co. 1883) (distinguishing a "decision" from "the paper commonly called the 'judgment' docketed with the clerk").

Courts of appeals promptly recognized that "the term 'final decision'" in the new statute "does not mean necessarily such decisions or decrees only which finally determine all the issues presented by the pleadings," but likewise "appl[ies] to a final determination of a collateral matter" meeting certain requirements. *Brush Elec. Co. v. Elec. Imp. Co.*, 51 F. 557, 561 (9th Cir. 1892); *see Cassatt v. Mitchell Coal & Coke Co.*, 150 F. 32, 34-36 (3d Cir. 1907) (similar). And although "the general rule requires that a judgment of a federal court shall be final and complete before it may be reviewed on a writ of error or appeal," this Court continued to embrace the "well

settled" principle that certain prejudgment orders "may be reviewed without awaiting the determination of the general litigation." *United States v. River Rouge Improvement Co.*, 269 U.S. 411, 414 (1926); *see, e.g.*, *Perlman v. United States*, 247 U.S. 7, 12-13 (1918).

Against that backdrop, Justice Robert Jackson delivered the canonical construction of "final decisions" in his opinion for the Court in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). The "effect of the" statutory appellate-jurisdiction language, the Court asserted, "is to disallow appeal from any decision which is tentative, informal or incomplete," and also from "fully consummated decisions … [that] are but steps towards final judgment in which they will merge." *Id.* at 546. But the Court made clear that, when a decision falls within the "small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated," it is a "final decision" within the meaning of Section 1291. *Id.*

Although the formulation in *Cohen* (now known as the collateral-order doctrine) was new, the underlying substance was not. *See id*. (citing cases dating back to 1828). As this Court later explained, "*Cohen* did not establish new law; rather, it continued a tradition of giving § 1291 a 'practical rather than a technical construction'"—a view that courts of appeals have consistently followed. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 375 (1981) (citation omitted).

B. Section 1291 allows an immediate appeal of a pretrial decision rejecting a defense against the burdens of litigation when the defense is constitutionally rooted

In the decades since *Cohen*, this Court has "distilled" the "requirements for collateral order appeal … to three conditions: that an order '[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment.'" *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citation omitted). The Court has emphasized that those "conditions are 'stringent,'" and should be "kept so" to prevent the collateral-order doctrine from "overpower[ing] the substantial finality interests § 1291 is meant to further." *Id.* at 349-50 (citation omitted*); see Geo Group*, 2026 WL 513536, at *4 (similar).

Reasonable disagreement exists about how well certain post-*Cohen* decisions cohere with that principle. Critics have described the current state of the doctrine as "hopelessly complicated," "dazzling in its complexity," and "an unacceptable morass." Adam N. Steinman, *Reinventing Appellate Jurisdiction*, 48 B.C. L. Rev. 1237, 1238 (2007) (citations omitted). And this Court itself has acknowledged that, "[a]s a general matter, the collateral-order doctrine may have expanded beyond the limits dictated by its internal logic and the strict application of the criteria set out in *Cohen*." *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009).

For all the debate about Section 1291's outer limits, this Court has generally agreed on its heartland, which is all that matters to resolve the questions presented. This brief therefore does not attempt to provide a com-

prehensive definition of the range of "final" prejudgment decisions under Section 1291. Instead, it suffices that this Court's precedent has unmistakably authorized the immediate appeal of a prejudgment decision under Section 1291 when the decision rejects a defense that (1) protects the losing party *against the burdens of litigation*, not just against liability, and (2) *is rooted in the Constitution* or another important source of public policy strong enough to overcome the general federal preference for post-judgment appeals. *See* Timothy P. Glynn, *Discontent and Indiscretion: Discretionary Review of Interlocutory Orders*, 77 Notre Dame L. Rev. 175, 212 (2001) (explaining that prejudgment orders that satisfy these criteria will qualify as immediately appealable even under a "stringent" interpretation of Section 1291, but "few others will"); *see also, e.g.*, *Moody Bible*, 95 F.4th at 1118, 1123 n.6 (Brennan, J., dissenting) (endorsing this approach).[1]

1. This Court has long distinguished a prejudgment decision resulting in the denial of a "right *not to be tried*" (or to face other burdens of litigation)—which may qualify for immediate appeal under Section 1291—and a decision that rejects a right merely *to be free from liability*—which may not. *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 269 (1982) (emphasis added). That is true even when the "remedy" for a violation of

[1] This approach does not address the branch of the collateral-order doctrine related to decisions (like the order rejecting a requirement to post security in *Cohen*) that would not terminate the litigation. *See, e.g.*, *Shoop v. Twyford*, 596 U.S. 811, 817 n.1 (2022) (order to transport prisoner for medical testing was immediately appealable); *Sell v. United States*, 539 U.S. 166, 176-77 (2003) (forced medication order in a criminal case immediately appealable).

the liability protection is "the dismissal of charges." *Id.*; *see Mitchell*, 472 U.S. at 526 (similar).

That "crucial distinction" follows directly from *Cohen*'s reasoning. *Hollywood Motor Car*, 458 U.S. at 269. When a defendant invokes a protection against further trial proceedings, a district court's rejection of that protection is "conclusive" of the defense, because the defendant must—by definition—continue with the trial he seeks to avoid. *Mitchell*, 472 U.S. at 527. For similar reasons, such a denial is both "separate from the merits" and "effectively unreviewable" on appeal. *Id.* at 527-28. Once the case proceeds, the defendant will have "irretrievably lost" the protection against further litigation, "even supposing the defendant were to prevail on the merits." *Geo Group*, 2026 WL 513536, at *5 (citation omitted). By contrast, when a defendant asserts only a protection against liability, a prejudgment order rejecting the defense does not necessarily satisfy any *Cohen* factor. *See id.* After all, the defendant may vindicate the protection from liability later in the trial litigation or on appeal. *See, e.g.*, *Lauro Lines v. Chasser*, 490 U.S. 495, 501 (1989); *Van Cauwenberghe v. Biard*, 486 U.S. 517, 530 (1988).

Two criminal-procedure cases decided by this Court in back-to-back Terms illustrate the distinction between a right not to be tried and a mere protection against liability. In *Abney v. United States*, the Court held that the denial of a motion to dismiss a criminal prosecution on double-jeopardy grounds is appealable under Section 1291. "[T]he Double Jeopardy Clause," the Court explained, "protects an individual against more than being subjected to double punishments"; it provides "a guarantee against being twice *put to trial* for the same offense." 431 U.S. at 660-61 (emphasis added). Because

that "protection[] would be lost if the accused were forced to 'run the gauntlet' a second time before an appeal could be taken," the Court concluded that only immediate appeal can give "full protection" to that constitutional right "not to face trial at all." *Id.* at 662 & n.7.

"In sharp distinction," the Court held a year later in *United States v. MacDonald*, 435 U.S. 850 (1978), that the denial of a motion to dismiss on speedy-trial grounds is not appealable under Section 1291. *Id.* at 858. Unlike double jeopardy, the Court reasoned, "the essence of a defendant's" speedy-trial claim is typically "that the passage of time has frustrated his ability to *establish his innocence* of the crime charged," not that he is entitled to be entirely free from trial. *Id.* at 860 (emphasis added). Simply put, "[i]t is the delay before trial, not the trial itself, that offends against the constitutional guarantee of a speedy trial." *See id.* at 861.

Given the centrality of that distinction, it naturally follows that a prejudgment order may be immediately appealable under Section 1291 when it denies an asserted "*immunity from suit*." *Mitchell*, 472 U.S. at 526. Indeed, this Court recently clarified in *Geo Group* that, when "an order denies a pretrial request to dismiss, appealability under *Cohen* will generally turn on whether the defendant has asserted a defense to liability or instead an immunity from suit." 2026 WL 513536, at *4; *see id.* at *5. Because such immunities by their nature protect a defendant from any further litigation proceedings, the Court has repeatedly held that they may qualify for immediate appeal under Section 1291. *See Puerto Rico Aqueduct*, 506 U.S. at 144-45 (state-sovereign immunity); *Mitchell*, 472 U.S. at 526 (qualified immunity); *Nixon*, 457 U.S. at 742-43 (absolute immunity); *cf. Hel-*

stoski v. Meanor, 442 U.S. 500, 508 (1979) (immunity under the Speech or Debate Clause). By contrast, the Court has held that many other asserted defenses fail to qualify as a "right not to stand trial." *Digital Equip.*, 511 U.S. at 871; *see id.* at 872-74 (collecting decisions); *see also Geo Group*, 2026 WL 513536, at *6-7 (concluding that a federal-contractor defense was not immediately appealable).

2. At the same time, this Court has recognized that Section 1291 demands something more than a mere "order[] denying an asserted right to avoid the burdens of trial" for an immediate appeal. *Hallock*, 546 U.S. at 351. In part because the notion of a "right to avoid trial" plays into "the lawyer's temptation to generalize," a "further characteristic" is needed for a prejudgment order to satisfy Section 1291. *Id.* at 350-51.

That further characteristic is a "justification for immediate appeal … sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes." *Mohawk*, 558 U.S. at 107; *see Geo Group*, 2026 WL 513536, at *11 (Alito, J., concurring in the judgment) (elaborating on this aspect of the doctrine). And one sure way to demonstrate the requisite strength is to show that the asserted protection against the burdens of litigation "is embodied in a constitutional or statutory provision." *Digit. Equip.*, 511 U.S. at 879.

Cohen confirms that Section 1291 requires an asserted protection against the burdens of litigation to reflect "some particular value of a high order." *Hallock*, 546 U.S. at 352. Indeed, "[t]he second [*Cohen*] condition insists upon '*important* questions separate from the merits.'" *Mohawk*, 558 U.S. at 107 (citation omitted). And "the third *Cohen* question, whether a right is 'adequately vindicable' or 'effectively reviewable,' simply

cannot be answered without a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement." *Digit. Equip.*, 511 U.S. at 878-79; *see Lauro Lines*, 490 U.S. at 502 (Scalia, J., concurring).

In keeping with that understanding, this Court's cases finding prejudgment orders appealable under Section 1291 have consistently involved the denial of defenses rooted in the Constitution, statutes, or similarly higher-order public policies. *See, e.g.*, *Trump v. United States*, 603 U.S. 593, 654 (2024) (Barrett, J., concurring in part) ("[W]here trial itself threatens certain constitutional interests, we have treated the trial court's resolution of the issue as a 'final decision' for purposes of appellate jurisdiction." (citation omitted)); *Puerto Rico Aqueduct*, 506 U.S. at 145 (denial of an assertion of state sovereign immunity immediately appealable in part because it "involves a claim to a fundamental constitutional protection"); *Nixon*, 457 U.S. at 749 (invoking an immunity "rooted in the constitutional tradition of the separation of powers"); *Helstoski*, 442 U.S. at 508 (Speech or Debate Clause); *Abney*, 431 U.S. at 660-61 (Double Jeopardy Clause).[2]

[2] This Court has adopted a somewhat similar framework for determining when a litigant can bypass the typical requirement to raise challenges to administrative-agency actions before the agency itself. In *Axon Enterprises, Inc. v. FTC*, 598 U.S. 175 (2023), for example, the Court held that claims challenging an agency's constitutional authority to conduct a proceeding could be asserted directly in district court, rather than only at the conclusion of the agency proceedings. *See id.* at 191-95 (relying on the Court's collateral-order-doctrine precedents).

C. The church-autonomy doctrine provides a defense against the burdens of litigation that is constitutionally rooted

A district court's denial of a church-autonomy defense squarely meets both of the criteria described above: (1) a church-autonomy defense is a protection against the burdens of litigation, not just against liability; and (2) that protection is constitutionally rooted. Accordingly, Section 1291 permits immediate appeals of orders that would force litigants asserting a church-autonomy defense to endure discovery and trial. *See McRaney*, 157 F.4th at 641; *Moody Bible*, 95 F.4th at 1117-18 (Brennan, J., dissenting); *Belya*, 59 F.4th at 573 (Park, J., dissenting); *Faith Bible*, 53 F.4th at 625-27 (Bacharach, J., dissenting); Pet. App. 59a (Rao, J., dissenting).

First, a church-autonomy defense—like immunity defenses for states or government officials—provides an "entitlement not to stand trial or face the other burdens of litigation," not a "mere defense to liability." *Mitchell*, 472 U.S. at 526. This Court has long and repeatedly recognized that, on "matters of church government as well as those of faith and doctrine," a religious organization is entitled to be "free from state interference"—not just from judicial judgments. *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Courts are accordingly "bound to stay out of" litigation over a religious entity's "internal management decisions." *Our Lady of Guadalupe*, 591 U.S. at 746; *see Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196 (2012) (similar); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 708-09, 723 (1976) (similar). In-

deed, the "very process of inquiry" into such internal religious matters "impinge[s] on rights guaranteed by the Religion Clauses." *NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979); *see Hosanna-Tabor*, 565 U.S. at 205-06 (Alito, J., concurring).

Many respected scholars and jurists have embraced that understanding. Recent scholarship has explained that the church-autonomy doctrine bars "the process of judicial review and inquiry when a suit is directed to a matter of church government, faith, and doctrine." Lael Weinberger & Branton J. Nestor, *Church Autonomy and Interlocutory Appeals*, Notre Dame L. Rev. (forthcoming 2026) (manuscript at 30), https://perma.cc/64WV-TF69. Judge Rao likewise recognized that "the church autonomy defense is best understood as a constitutional immunity from suit." Pet. App. 59a; *see also Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 798 (9th Cir. 2025) (Bress, J., concurring in the judgment) (similar). Other courts of appeals have expressed the same view. *See McRaney*, 157 F.4th at 644 ("Treating church autonomy as a structural, threshold immunity from suit accords with Supreme Court precedent."); *Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024) (explaining that the ministerial exemption "immunizes" from "legal process" covered religious decisions).

Second, the church-autonomy doctrine implicates the kind of "value of a high order" required to overcome the default policy against appeals before final judgment. *Hallock*, 546 U.S. at 352; *see Mohawk*, 558 U.S. at 107. By its terms, the doctrine embodies a protection against litigation that "originat[es] in the Constitution." *Digit. Equip.*, 511 U.S. at 879. Specifically, the doctrine flows from the Religion Clauses, *see Our Lady of Guadalupe*,

591 U.S. at 746-47; *Kedroff*, 344 U.S. at 116, which secure a structural constitutional protection against government intrusion in religious matters, *see, e.g.*, *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727-28 (1872) (grounding church-autonomy principles in the "broad and sound view of the relations of church and state under our system of laws" that "lies at the foundation of our political principles"); *accord McRaney*, 157 F.4th at 644 ("[T]he church autonomy doctrine … rests on structural, constitutional limitations in the First Amendment."); Pet. App. 74a-79a (Rao, J., dissenting) (similar); *Church Autonomy and Interlocutory Appeals*, *supra*, at 28-29 (similar). As the Seventh Circuit aptly observed, the doctrine upholds both "the injunction in Matthew 22:21 to 'render unto Caesar the things which are Caesar's, and unto God the things that are God's,'" and "also the First Amendment, which forbids the government to make religious judgments." *McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013).

The church-autonomy doctrine also serves the kind of "important … policy interests" in protecting against "indignity" and "overdeterrence, timidity, and distraction" that have led this Court to permit collateral-order appeals in the parallel context of the constitutional separation-of-powers. *Geo Group*, 2026 WL 513536, at *11-12 (Alito, J., concurring in the judgment). Just as the risk that undue judicial scrutiny can inhibit public officials from discharging their constitutional responsibility has led the Court to apply the collateral-order doctrine to assertions of governmental immunity, so too the church-autonomy doctrine protects against the "risk" of undue "judicial entanglement in religious issues" warrants application of the collateral-order doctrine. *Our Lady of Guadalupe*, 591 U.S. at 761; *see, e.g.*, *Butler v. St. Stanislaus Kostka Cath. Acad.*, 609 F. Supp. 3d 184, 199-

200 (E.D.N.Y. 2022) (church autonomy "offers some protection from 'the expense and indignity of the civil legal process'") (citation omitted).

Accordingly, a defendant can immediately appeal the denial of a church-autonomy defense under Section 1291 for the same reasons that defendants can immediately appeal denials of defenses under the Double Jeopardy Clause, the Speech or Debate Clause, principles of sovereign immunity, and the qualified- and absolute-immunity doctrines. *See, e.g.*, Lael Weinberger, *Is Church Autonomy Jurisdictional?*, 54 Loy. U. Chi. L.J. 471, 503-05 (2022); *Moore*, *supra* at 44-45; Mark E. Chopko & Marissa Parker, *Still a Threshold Question: Refining the Ministerial Exception Post*-Hosanna-Tabor, 10 First Amend. L. Rev. 233, 294 (2012). If anything, the appealability of denials of church-autonomy defenses follows *a fortiori* from the appealability of qualified-immunity defenses, because—unlike qualified immunity—the church-autonomy doctrine rests on an express and "fundamental constitutional protection." *See Puerto Rico Aqueduct*, 506 U.S. at 145.

II. This Court's Review Is Warranted

In his class-action complaint for fraud, unjust enrichment, and breach of fiduciary duty, respondent alleged that the Holy See in Vatican City failed to disclose that it might invest his contribution to the annual *Obolo di San Pietro* (Peter's Pence) collection to generate additional funds for the Pope's charitable work. Pet. App. 169a-170a, 188a-192a. Petitioner unsuccessfully moved to dismiss, asserting a church-autonomy defense. A panel of the D.C. Circuit dismissed petitioner's subsequent appeal for lack of jurisdiction. Pet. App. 30a. The court later denied rehearing en banc, over a forceful dissent from Judge Rao and a concurrence by Judge Walker, who

recognized that "[t]he panel's decision conflicts with the conclusions of many sister-circuit colleagues." Pet. App. 48a-49a, 59a-94a, 51a.

The D.C. Circuit incorrectly declined to exercise mandatory appellate jurisdiction over this case. That decision presents exceptionally important and frequently recurring questions of civil procedure and constitutional law that have deeply divided lower courts and warrant this Court's review.

A. The D.C. Circuit's decision is wrong

The D.C. Circuit erred in holding that the district court's denial of petitioner's motion to dismiss is not immediately appealable under Section 1291. As explained above, the church-autonomy doctrine protects against the "very process of inquiry" into a religious actor's decision—not simply against the entry of an adverse judgment. *Cath. Bishop*, 440 U.S. at 502; pp. 15-18, *supra*. If petitioner correctly invoked the doctrine, the district court's decision in this case will deprive petitioner of the right "not to stand trial or face the other burdens of litigation." *Mitchell*, 472 U.S. at 526. And because that right is deeply rooted in the Constitution, it overcomes the default policy against serial appeals. *See Digit. Equip.*, 511 U.S. at 879. That understanding is well supported by this Court's precedents, which have consistently read Section 1291 to authorize interlocutory review of an order denying a defendant's assertion of immunities that are substantively comparable to the church-autonomy defense. *See* pp. 9-14, *supra*.

The D.C. Circuit based its jurisdictional ruling on the premise that "[t]he church autonomy doctrine … does not confer immunity from trial such that immediate review is warranted." Pet. App. 22a. In reaching that conclusion, the panel relied on this Court's holding "that the

ministerial exception 'operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar.'" Pet. App. 23a (citing *Hosanna-Tabor*, 565 U.S. at 195 n.4). But as several judges below have correctly explained, other immunities, including absolute and qualified immunity, "protect interests similar to those safeguarded by the church autonomy doctrine" and "recognize a sphere of independence free from intrusions by the judicial process." Pet. App. 87a-88a (Rao, J., dissenting); *see id.* at 52a-53a (Walker, J., concurring).

Even assuming the church-autonomy doctrine is not "jurisdictional in the narrow Rule 12(b)(1) sense," the protection it affords remains the same. *McRaney*, 157 F.4th at 645. As the Fifth Circuit has observed, "the First Amendment '*prohibits* government involvement in ... ecclesiastical decisions,' makes it '*impermissible*' for a court 'to contradict a church's determination of who can act as its ministers,' and accordingly '*bars*' covered suits." *Id.* at 644 (quoting *Hosanna-Tabor*, 565 U.S. at 189, 185, 196). Thus, the doctrine is jurisdictional in the sense that "matters falling within its ambit are beyond the power and cognizance of civil courts"; "it rests on structural, constitutional limitations in the First Amendment"; and "breaches of it impose irreparable injuries on religious organizations." *Id.*

Once the church-autonomy doctrine is properly understood as a protection against the "burdens of litigation" and not "a mere defense to liability," *Mitchell*, 472 U.S. at 526, the remainder of the D.C. Circuit's reasoning collapses. The court held that the district court's denial of petitioner's church-autonomy defense "lack[ed] the conclusiveness required for collateral order appeal."

Pet. App. 28a. But because the church-autonomy doctrine shields religious defendants from further proceedings, the district court's order—which subjected petitioner to the very litigation the doctrine forbids—was necessarily conclusive for Section 1291 purposes. *See* pp. 15-16, *supra*.

B. This Court's intervention is needed

The D.C. Circuit's misapplication of Section 1291 reflects a broader division among lower courts on the important and recurring questions presented by this case. For example, in *Moody Bible*, the Seventh Circuit declined to hear an appeal of a district court's denial of a motion to dismiss that invoked the church-autonomy doctrine. 95 F.4th at 1106. Judge Brennan dissented from the majority's jurisdictional holding, explaining that "the collateral order doctrine categorically applies to cases involving church autonomy." *Id.* at 1118; *see id.* at 1123 n.6 (relying on a similar brief submitted by this amicus).

In another fractured decision, the Second Circuit similarly concluded that Section 1291 did not authorize immediate appellate review of a motion to dismiss asserting a church-autonomy defense. *Belya v. Kapral*, 45 F.4th 621, 625 (2d Cir. 2022). Dissenting from the court's subsequent denial of rehearing en banc on behalf of five judges, Judge Park concluded that "[r]ejections of church autonomy defenses should be immediately appealable, in the same way that denials of qualified immunity are appealable." *Belya*, 59 F.4th at 577; *see Faith Bible*, 53 F.4th at 625-27 (Bacharach, J., dissenting) (similar).

Most recently, the Fifth Circuit deepened this divide in *McRaney*. There, an ordained minister sued a mis-

sions agency of the Southern Baptist Convention, alleging tortious interference, defamation, and intentional infliction of emotional distress. 157 F.4th at 631-33. The district court granted summary judgment in favor of the agency, determining that "adjudicating [the plaintiff's] claims would 'impermissibly delv[e] into church matters in violation of' the church autonomy doctrine." *Id.* at 633 (citation omitted). In affirming, the Fifth Circuit emphasized that a church-autonomy defense "must be resolved at the threshold of litigation," with its denial "subject to an immediate interlocutory appeal." *Id.* at 641, 644. Otherwise, religious institutions would face "irreparable injuries" that could not "be remedied after the district court renders final judgment." *Id.* at 644-45.

McRaney and the "chorus of circuit-court dissenters," Pet. App. 51a (citation omitted), confirm that the D.C. Circuit adopted an unduly narrow view of Section 1291. The church-autonomy defense confers an immunity from suit grounded in the First Amendment, and its denial inflicts irreparable harm that a post-judgment appeal cannot cure. *See Geo Group* 2026 WL 513536, at *4. Without immediate appellate review, the church-autonomy doctrine would lose much of its practical force, compelling religious organizations to bear the burdens of litigation and opening ecclesiastical decisionmaking to civil scrutiny. *See id.* at *12 (Alito, J., concurring in the judgment). The collateral-order doctrine accordingly applies. The D.C. Circuit's departure from this Court's precedents—together with the sharp split in the lower courts on recurring and important questions concerning the church-autonomy doctrine—warrants this Court's intervention.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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