Case No. 25-30398

United States Court of Appeals for the Fifth Circuit

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAKE CHARLES; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAFAYETTE; CATHOLIC UNIVERSITY OF AMERICA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA R. LUCAS

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana
Case No. 2:24-cv-691; The Honorable David C. Joseph

BRIEF FOR AMICI CURIAE JEWISH COALITION FOR RELIGIOUS LIBERTY AND GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS IN SUPPORT OF APPELLANTS AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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INTEREST OF AMICI CURIAE[1]

The Jewish Coalition for Religious Liberty is a non-denominational organization of Jewish communal and lay leaders concerned with the current state of religious liberty jurisprudence. It aims to foster cooperation between Jews and other faith communities to protect the ability of all Americans to practice their faith freely. Its founders have filed *amicus* briefs in the Supreme Court of the United States and lower federal courts, published op-eds in prominent news outlets, and established an extensive volunteer network to promote support for religious liberty within the Jewish community.

The General Conference of Seventh-day Adventists is the worldwide administrative body for the Seventh-day Adventist Church, a protestant Christian denomination with more than 22 million members. The Adventist faith teaches that all Church employees must be models of the faith for Church members and witnesses to the truths of the Church in both word and deed. To that end, the General Conference has a longstanding commitment to religious liberty, including advocacy for religious liberty for the Church's employment decisions.

[1] All parties consented to this brief. No party's counsel authored any part of this brief. No party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than *amici*, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

SUMMARY

The Free Exercise Clause protects the right of individuals and religious institutions to practice their faiths free from government interference. Central to this guarantee is the church autonomy doctrine, which safeguards religious organizations' internal governance by prohibiting courts from deciding religious questions or—equally importantly—applying secular legal rules in a manner that would intrude on matters of internal religious administration. Congress expressly codified this protection in the Civil Rights Act, exempting religious employers from certain nondiscrimination provisions of Title VII and affirming that religious organizations, schools, and associations must remain free to make employment decisions consistent with their sincerely held beliefs.

The district court's summary judgment order, while correctly vacating the EEOC's broad mandate to compel religious employers to accommodate purely elective abortions, undermines the critical protections of the church autonomy doctrine. It requires religious institutions to accommodate—over their sincere religious objections—any abortion that the EEOC classifies as related to the treatment of a medical condition. By doing so, the order impermissibly substitutes the agency's (or a court's) judgment for the institution's own internal religious governance. It forces faith-based employers to change their internal standards, policies, speech, and cultures to facilitate or support procedures they regard as

sinful or unconscionable and then forces them to litigate religious defenses on a case-by-case basis during EEOC investigations. That approach disregards both the full scope of the Free Exercise Clause and the broad statutory exemptions for religious employers in the Civil Rights Act, both of which provide categorical protections that eliminate the need to defend matters related to religious doctrine before a secular tribunal.

To restore the proper constitutional and statutory boundaries and protect religious institutions' right of Free Exercise, this Court should hold that religious institutions retain the right to manage their workforces and make accommodation decisions in accordance with their sincerely held beliefs. This includes the authority to refuse an accommodation, including one concerning abortion, that would compel the institution to violate its religious obligations.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS RELIGIOUS INSTITUTIONS' FREEDOM TO EMPLOY CO-RELIGIONISTS WITH SHARED RELIGIOUS BELIEFS

A. The Church Autonomy Doctrine Protects Sincerely Held Religious Beliefs, Not Mere Religious Labels—Each Religious Institution Must Decide for Itself What Its Faith Requires

This case concerns religious institutions' constitutional authority to make employment decisions that effectuate their sincerely held beliefs regarding the sanctity of life and the theological permissibility of abortion. The church autonomy doctrine protects religious groups' ability to determine their missions and hire

employees best situated to achieve goals organized around shared religious precepts. That protection is rooted in decades of Supreme Court and Fifth Circuit precedent, as discussed in Section I.B below. It necessarily includes the authority to define each organization's own religious standards and determine who will advance its mission. The First Amendment does not permit the government to second-guess those inherently religious judgments or to force religious institutions to justify them through intrusive administrative proceedings. The issues here demonstrate the importance of those protections.

The plaintiffs are the Diocese of Lake Charles, the Diocese of Lafayette, Catholic University of America, and the U.S. Conference of Catholic Bishops (collectively, the Bishops). The Bishops follow the Catholic Church's teachings on the inviolable human dignity of the preborn, including its stance that direct abortions—abortions intended to terminate a pregnancy or to destroy a viable fetus—are grave moral wrongs contrary to Catholic doctrine. (ROA.5959.) Accordingly, the Bishops maintain employment policies and institutional standards designed to ensure that their ministries, educational institutions, and charitable works remain faithful to those religious teachings. (*See* ROA.26-31, 33.)

Since it enacted the Civil Rights Act of 1964, Congress has recognized the importance of protecting the right of religious institutions to tailor their employment policies and standards to their faiths. Congress exempted from Title

VII "religious activities of religious employers from the statutory proscription against religious discrimination in employment." *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 332 n.9 (1987); 42 U.S.C. § 2000e-1. A 1972 amendment expanded "the exemption to *all activities* of religious organizations," *Amos*, 483 U.S. at 332 n.9 (emphasis added). "The religious-employer exemption[] in Title VII … [is a] legislative application[] of the church-autonomy doctrine." *Korte v. Sebelius*, 735 F.3d 654, 678 (7th Cir. 2013). And it reflects Congress's desire to grant religious organizations "complete immunity" from Title VII scrutiny. *Hishon v. King & Spalding*, 467 U.S. 69, 77-78 & n.11 (1984).

The Supreme Court upheld this exemption from constitutional challenge in *Amos,* a case involving termination of an employee who had worked for years at a church-run gymnasium that was open to the public. The employee failed to observe the Church's religious standards, which include "regular church attendance, tithing, and abstinence from coffee, tea, alcohol, and tobacco." *Id*. at 330 n.4. The district court refused to apply the statutory exemption in Title VII and granted the employee reinstatement and backpay, but the Supreme Court reversed. It affirmed the crucial importance of Title VII's religious exemption, holding that "the statute … avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case." *Id*. at 339.

The clear takeaway is that Title VII's exemption, and the church autonomy doctrine on which that exemption is based, provides protection for religious employers to adopt "hiring practices that favor co-religionists" without interference or fear of "'potential liability.'" *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1094 (2022) (Alito, J., respecting the denial of certiorari) (quoting *Amos*, 483 U.S. at 335-36). These doctrines are crucially important under the First Amendment: it "is essential for a religious body to ensure that its representatives live up to the religious precepts they espouse because the credibility of a religion's message depends vitally on the character and conduct of its messengers." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 651 (5th Cir. 2025) (citing *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 201 (2012)) (citation modified). When an employee fails to adhere to those precepts, preserving the organization's religious integrity may require an adverse employment action—and "[c]ivil courts have no role to play in policing those matters." *Id.*

Religious communities, however, are not monolithic. Individuals who identify with the same broad faith tradition may nevertheless disagree sharply about abortion and related moral questions. Abortion, of course, provides a clear example. Consider the Catholic Church. The Bishops adhere to the Catholic Church's teaching on the inviolable dignity of the preborn. Yet according to one

report, 13% of self-identified U.S. Catholics believe abortion should be legal in all cases, and over 60% think it's relevant whether the woman's health is threatened, whether the pregnancy resulted from rape, and the length of the pregnancy. Pew Research Center, *America's Abortion Quandary* 23 (May 6, 2022). The Free Exercise Clause and the Title VII exemption each permit the Bishops to ensure compliance with the Catholic Church's teachings by those it hires to carry out their missions.

But that freedom, and conversely the EEOC's imposition, applies to many religious groups outside the Catholic Church. Religious groups often organize in part based on views concerning abortion, with some religious denominations including both pro-life and pro-choice contingents. This heterogeneity of beliefs spawns many groups that, though nominally or superficially similar, disagree on matters related to the nature and value of life. Yet these beliefs are all religiously rooted and implicate moral values that can be deeply personal and deeply divisive.

For its part, Judaism includes a long tradition of treating abortion as a profound moral issue implicating the sanctity of life. In the first century, Roman-Jewish historian Josephus understood that Jewish law "forbids women to cause abortion of what is begotten; or to destroy it afterward." Flavius Josephus, Against Apion ii, ¶ 25. A millennium later, Maimonides, a widely-revered Jewish philosopher, confirmed that rule with the exception to save the mother's life.

Mishneh Torah, Laws Concerning the Murderer, 1:9. Rabbi Joseph B. Soloveitchik, an intellectual leader of Modern Orthodoxy in the twentieth century, referred to abortion as "the murder of an unborn child." Rabbi Joseph B. Soloveitchik, *The Emergence of Ethical Man* 28 (Michael S. Berger, ed., Ktav Publishing House, Inc. 2005). At the same time, many American Jews hold different views on abortion policy and morality. As many as 83% believe abortion should be legal in many cases. Gregory A. Smith, et al., *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off*, at 244 (Feb. 26, 2025). A rule that defines the church autonomy doctrine in terms of co-religionists by label alone, without regard to actual beliefs and practices, fails to respect the diversity of sincerely-held religious convictions that exist within broader faith traditions.[2]

[2] The differences in doctrine extend to other nominally alike religious groups, too. The Lutheran Church Missouri Synod (LCMS) and the Evangelical Lutheran Church in America (ELCA), while both Lutheran by name, adopt different views on abortions. The LCMS believes abortion "is not a moral option, except as a tragically unavoidable byproduct of medical procedures necessary to prevent the death of another human being, viz., the mother.'" LCMS Life Ministry – Convention Resolutions: 1941-2023, at 15 (1979 Resolution). The ELCA's official position "encourages women with unintended pregnancies to continue the pregnancy" but also states abortion is "morally responsible" for some pregnancies. ELCA, A Social Statement on: Abortion 6-7 (1991). Forcing either group to hire from the other because both are "Lutheran" undermines religious groups' ability to determine their own membership with no compelling benefit to the government. *McRaney*, 157 F.4th at 639.

The problems created by the EEOC's impermissible rule also go beyond issues related to abortion. Other religious communities maintain faith-based standards governing employment, conduct, and institutional participation. Amicus General Conference of Seventh-day Adventists, for example, requires all employees to be baptized, tithe, and be in regular standing with the Seventh-day Adventist Church. Employees must also show an exemplary commitment to the Lord and the teachings of His Church. These standards are not incidental personnel preferences; they are integral to the Church's religious identity, are inherently religious, and are therefore beyond the competence of civil courts and administrative agencies to supervise. *See McRaney*, 157 F.4th at 639. The church autonomy doctrine and the Title VII exemption exist precisely to prevent the government from entangling itself in disputes over religious doctrine, internal governance, and standards of faith and practice.

These differences underscore why religious organizations must remain free to define their own beliefs and standards without governmental intrusion. Courts and executive agencies have no permissible goal in navigating those doctrinal differences. Questions concerning the sanctity of life, the theological permissibility of abortion, and the obligations of religious witness are quintessentially theological questions beyond the competence and power of civil authorities. In light of these differences, "determining whether a person is a 'co-religionist' will not always be

easy." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 761 (2020). But courts cannot decide that question. *Id*. Each religious organization must decide for itself how "to ensure that its representatives live up to the religious precepts they espouse." *McRaney*, 157 F.4th at 651 (internal quotations and citations omitted). Doing so is what will allow those organizations to accomplish their goals and help a large and pluralistic religious society to thrive in America.

The district court correctly recognized part of the danger to religious groups when it concluded that the EEOC's refusal to provide a clear religious exemption would force religious employers to litigate their religious objections on a "case-by-case basis" through EEOC investigations and enforcement proceedings. The "case-by-case" approach advanced by the EEOC would require government officials to decide which religious objections are sufficiently serious, sufficiently central, or sufficiently consistent to merit protection.

The Constitution does not permit civil authorities to undertake that role. A rule, for instance, that merely allows a Jewish group the freedom to hire Jewish applicants over non-Jewish ones does not offer meaningful protection. The church autonomy doctrine does not protect the right of a religious organization to hire co-religionists merely based on the questionable assumption that religious adherents favor members of their own faith over other Americans. It does so because employing co-religionists, when defined as people who practice their faith in a

similar manner, is sometimes necessary to accomplishing a religious organization's mission. Religious organizations have no desire to discriminate for the sake of discrimination. Rather, they want to hire the people best suited to support their flourishing.

Judaism covers a broad set of beliefs and practices. Therefore, a Jewish person who would be the optimal fit for one Jewish organization may be utterly unsuited to help a different Jewish organization. The mission of religious organizations may include activities where its employees having familiarity with or adherence to specific religious practices is vital. For example, if a Jewish group serves kosher food or holds events observing the Sabbath or holidays, differences among the rituals and practices of different Jewish groups may be critical. An Orthodox Jew, who has an entirely different set of beliefs regarding how to observe the Sabbath, may be no more fit than any other American to run a Sabbath program for a Reform organization. It would be cold comfort if the EEOC told that Reform organization that it could hire any Jewish person that it wanted, so long as it ignored the actual attributes that would make someone a good fit. That Reform Jewish organization looking to host Sabbath programming is only meaningfully protected by church autonomy if it is allowed to hire a practicing Reform Jew who adheres to its particular manner of Sabbath observance.

The EEOC's case-by-case review process would undermine the protections of church autonomy even if the process resulted in an exemption. A religious institution suffers constitutional injury not only when the government ultimately overrides its religious judgment, but also when the government compels the institution to submit those judgments to bureaucratic scrutiny in the first place. Requiring religious organizations to defend their beliefs through individualized administrative proceedings invites precisely the sort of intrusive inquiry into doctrine, mission, and internal governance that the Religion Clause (and the Title VII exemption) forbids. *See McRaney*, 157 F.4th at 636; *Hishon*, 467 U.S. at 77-78.

A key protection of religious autonomy is that it allows religious organizations to hire the employees best suited to carrying out their religious mission. Forcing a religious community, including and especially a minority group within a religious community, to accept members who do not share the group's religious beliefs undermines the group's effectiveness in carrying out its religious mission and is antithetical to the rights protected by the First Amendment.

For these reasons, the Court should make clear that the church autonomy doctrine protects more than a narrow right to prefer nominal co-religionists. It protects the broader constitutional authority of religious organizations to define their own faith commitments, determine which beliefs and practices are essential to

their mission, and decide for themselves who will embody and advance those commitments. The EEOC's case-by-case approach to religious objections is incompatible with those constitutional guarantees because it subjects inherently religious judgments to ongoing governmental supervision and second-guessing.

B. The Religion Clause's Protections for Religious Institutions to Manage Their Workforce According to Their Religious Beliefs Is Rooted in Supreme Court and Fifth Circuit Precedent

The First Amendment mandates that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. The Free Exercise Clause plays a vital role in religious freedom, protecting the right of individuals and institutions to "live out their faiths in daily life through 'the performance of (or abstention from) physical acts.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022) (quoting *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990)).

This clause, in mutually reinforcing cooperation with the Establishment Clause, produces the church autonomy doctrine. *See McRaney*, 157 F.4th at 635. Despite its name, the doctrine is not limited only to churches; its protections extend broadly "to *religious institutions* of all faiths." *Id.* at n.2 (emphasis added). Churches of course receive protection under the doctrine, however they are organized. *Id.* at 650 ("The church autonomy doctrine is triggered by the subject matter of the dispute, not the organizational structure of the disputants.").

Unsurprisingly, religious schools qualify, too. *Our Lady of Guadalupe Sch.*, 591 U.S. at 754-55 (discussing the "religious obligation" of education for several religions). So do for-profit corporations, if they adopt "business practices that are compelled or limited by the tenets of a religious doctrine," *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 710 (2014) (noting for-profit corporations are persons who can exercise religion for RFRA purposes), though the burden on the exercise of religion in profit-seeking enterprises must be more than "economic disadvantage" to be unconstitutional, *see Braunfeld v. Brown*, 366 U.S. 599, 605-06 (1961). In fact, in a religiously-minded business, even "the decision to provide insurance" has a "religious dimension." *Hobby Lobby Stores, Inc.*, 573 U.S. at 722.

At its core, the church autonomy doctrine guarantees religious institutions "independence in matters of faith and doctrine and in closely linked matters of internal government." *McRaney*, 157 F.4th at 635 (quoting *Our Lady of Guadalupe*, 591 U.S. at 747); *see also Union Gospel Mission of Yakima Wash. v. Brown*, 162 F.4th 1190, 1196 (9th Cir. 2026) (noting the doctrine prohibits "state meddling in the religious matters of religious organizations"). It is an umbrella that encompasses many protections: the ministerial exception (protecting religious organizations' freedom to select and control their ministers and religious leaders); the meaning and interpretation of religious beliefs (which courts may not adjudicate or second-guess); decisions of membership and discipline (including

who belongs to the organization and how members are governed); and the methods and content of internal communications (i.e., how the organization discusses and disseminates information on matters of faith). *McRaney*, 157 F.4th at 636. "Where the church autonomy doctrine applies, its protection is total." *Id.* at 641.

Here, the key "strand of the church autonomy doctrine" implicated by the district court's ruling is the prohibition on civil courts "deciding religious questions." *Id.* at 638. Matters of faith and doctrine—issues that are "strictly and purely ecclesiastical" by nature—rest exclusively within the purview of religious institutions themselves. *Id.* (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871)). "Civil courts cannot apply civil rules to religious organizations when doing so necessarily implicates questions of faith, scripture, and religious doctrine." *Id.* at 639.

A religious organization does not forfeit these protections when it hires employees to help carry out its mission. To the contrary, a religious organization decides several "inherently religious questions" when it requires employees to "adhere to and live according to its religious principles to accomplish its religious mission." *Union Gospel Mission*, 162 F.4th at 1204. Those questions bear on the institution's definition of its own faith and mission. *Id.* Employees—even those who are not religious leaders—impact "the very character of [the organization's] religious mission." *Id.* at 1197. Thus, the church autonomy doctrine protects an

institution's decision to hire "co-religionists for non-ministerial roles if that decision is based on the organization's sincerely held beliefs." *Id*.

Equally important, the church autonomy doctrine protects religious employers even when an employee raises an employment claim that appears "facially secular." *McRaney*, 157 F.4th at 647. The employee's characterization of the claim is inconsequential; instead, courts must determine whether they are being asked to "opine on 'matters of faith and doctrine'" or supervise "'internal management decisions that are essential to [a religious institution's] central mission'" to resolve the dispute. *Id.* (quoting *Our Lady of Guadalupe*, 591 U.S. at 746). If so, the church autonomy doctrine applies to bar the claim.

Congress expressly codified this constitutional protection in the Civil Rights Act of 1964. In the beginning, Title VII exempted "religious activities of religious employers from the statutory proscription against religious discrimination in employment." *Amos*, 483 U.S. at 332 n.9. A 1972 amendment expanded "the exemption to *all activities* of religious organizations," *Id*. (emphasis added), and in doing so, "lift[ed] a regulation that burdens the exercise of religion." *Id.* at 338.

The protections of this statutory exemption—like the church autonomy doctrine itself—are "total," *cf. McRaney*, 157 F.4th at 641, depriving the EEOC of jurisdiction to interfere with the religious activities of churches and other faith-motivated organizations. *See also Korte*, 735 F.3d at 758 ("The exemption is

categorical, not contingent."). In *EEOC v. Mississippi College*, for example, this Court held that once a religious institution supplies evidence that an employment action was motivated by religion, that showing "deprives the EEOC of jurisdiction to investigate further." 626 F.2d 477, 485 (5th Cir. 1980). The Supreme Court agreed in *Amos*, where it affirmed the crucial importance of Title VII's religious exemption, holding that "the statute … avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case." 483 U.S. at 339.

At bottom, the text of the Religion Clauses and Title VII's religious exemption plus more than one hundred fifty years of precedent demand that courts respect religious groups' freedom to order their own affairs, including by preferring to hire co-religionists, according to their religious beliefs without interference or fear of potential liability. *Seattle's Union Gospel Mission*, 142 S. Ct. at 1094 (Alito, J., respecting the denial of certiorari). When disputes arise about a religious group's internal decisions, "[c]ivil courts have no role to play in policing those matters." *McRaney*, 157 F.4th at 651.

II. THE COURT'S ORDER IMPERMISSIBLY PERMITS EEOC TO FORCE RELIGIOUS INSTITUTIONS TO ACCOMMODATE ABORTIONS IN VIOLATION OF THEIR CORE RELIGIOUS BELIEFS

A. The Trial Court Declined to Consider the Religious Liberty Interests Threatened by the EEOC's Final Rule

Below, the Bishops sought to prevent the EEOC from enforcing its Final Rule, purportedly promulgated under the Pregnant Workers Fairness Act. Specifically, they sought a ruling from the district court that would prohibit the EEOC from requiring them to accommodate employees' abortions in violation of their sincerely held religious beliefs concerning the sanctity of human life and from penalizing them for taking employment actions necessary to preserve their religious mission and institutional integrity. (ROA.51-52, 56-57.)

One basis for that relief is that the EEOC violated the APA by issuing a rule requiring accommodation for elective abortions (ROA.35 (Count I)), despite the absence of any text in the Pregnant Workers Fairness Act ("PWFA") regarding abortion and repeated assurances from the statute's proponents in Congress that the Act would not require abortion accommodations (*see* ROA.5955-56). The Bishops also alleged that the EEOC's rule violates the church autonomy doctrine by subjecting religious employment decisions and standards of religious fidelity to governmental review. (ROA.51 (Count VII); ROA.5974.) The court issued summary judgment only on Count I, believing that resolution of the APA claim

made it unnecessary to reach the Bishops' constitutional claims at this stage of the litigation. (ROA.9181, n.23.)

The district court further limited its remedy by vacating only the portion of the Final Rule addressing abortion accommodations. Trying to tailor relief to the EEOC's perceived statutory overreach under the PWFA, the district court removed the abortion-related language from the definitions of "related medical conditions." (ROA.9184.) But that limited disposition leaves unresolved the distinct and substantial constitutional injuries raised by the Bishops' church-autonomy claim. Even if the EEOC lacked statutory authority to impose the abortion-accommodation mandate in the first place, the district court's order does not adequately address the constitutional problem created by forcing religious employers to defend their religious judgments through case-by-case administrative scrutiny and enforcement proceedings.

This Court should therefore modify the judgment to make clear that the Religion Clause independently protects the Bishops' authority to make employment decisions and enforce institutional standards consistent with their sincerely held religious beliefs, free from governmental second-guessing or intrusive administrative review.

B. The District Court's Order Fails to Adequately Protect Religious Groups' Rights Under the Religion Clause

The district court granted summary judgment and vacated the provision of the Final Rule that includes abortion as a medical condition related to pregnancy and childbirth. (ROA.9184.) It also vacated "any Implementing Regulations or Guidance" that "require or suggest to employers that they are required to provide employees with accommodation for purely elective abortions that are not necessary to treat a medical condition related to pregnancy." (ROA.9185.) That relief was an important first step.

But the constitutional deficiency in the district court's order becomes apparent in footnote 24:

> To avoid any uncertainty, terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy are not affected by this Order. Such procedures are clearly "related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000gg(4). Covered employers are therefore required to provide accommodation to the extent set forth in the PWFA.

(ROA.9185, n.24.) In the district court's view, this carveout ensures that the EEOC can regulate the full breadth of the PWFA while preventing the EEOC from exceeding the statute's scope. What actually happens is that the relief granted becomes illusory because the order leaves religious employers exposed to many of the same constitutional harms that prompted this litigation in the first place.

The Bishops offer many reasons that the district court did not correctly interpret the PWFA. (*See* Br. of Appellants 18-30.) But even if the Constitution permitted Congress to pass the district court's version of the PWFA, it does not permit enforcement of the EEOC's abortion-accommodation rule against religious groups with sincere religious objections.

The district court's order permits this unconstitutional outcome by requiring accommodations for abortions that are "related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions." (ROA.9185, n.24. (quoting 42 U.S.C. § 2000gg(4)).) Yet it leaves undefined the criteria for a qualifying "medical condition," whether that condition is sufficiently "related to pregnancy," and whether a particular abortion supposedly "stems from" treatment of that condition. Under the district court's framework, those determinations remain committed in the first instance to the EEOC. The footnote thus provides a roadmap for EEOC to circumvent the relief granted and to impose a significant burden on the Bishops' free exercise of religion: adopt a broad understanding of what it means for an abortion to "stem[] from the underlying treatment of a medical condition."

Indeed, the Final Rule itself demonstrates how expansive the EEOC's understanding already is. The list of medical conditions includes conditions inherent in every pregnancy, like "changes in hormone levels" and "lactation and

conditions related to lactation." 29 C.F.R. § 1636.3(b). It also includes common conditions that are managed without an abortion, such as nausea or vomiting, dehydration, hemorrhoids, generic "infections," and conditions as trivial as "frequent urination." *Id.* Nothing in the district court's order prevents the EEOC from insisting that abortions connected to such broadly defined conditions remain subject to mandatory accommodation notwithstanding the Bishops' religious objections.

At a minimum, the Bishops remain compelled to evaluate whether the EEOC would deem a particular abortion sufficiently connected to a qualifying medical condition. If so, they are forced to accommodate the abortion and to violate their sincerely held religious beliefs. So while the Bishops superficially prevailed, the court still imposed the "significant burden …, on pain of substantial liability, to predict" whether they will be liable if they deny accommodations in accordance with their religious beliefs. *Amos*, 483 U.S. at 336. The church autonomy doctrine exists precisely to prevent the government from placing religious institutions in that position. Even if the EEOC possessed statutory authority to regulate abortion accommodations generally, it could not constitutionally require religious employers to submit their faith-based employment decisions to ongoing governmental supervision and second-guessing.

The Supreme Court's decision in *Hobby Lobby* reinforces the point. The Patient Protection and Affordable Care Act of 2010 required certain employers to provide group health-insurance coverage for women's "preventive care and screenings" without cost sharing. 573 U.S. at 697. Congress authorized the Department of Health and Human Services to determine what services qualified as "preventive care." *Id.* HHS ultimately included all FDA approved contraceptive methods. *Id.*

The plaintiffs challenged the contraceptive mandate under the Religious Freedom Restoration Act because four of the contraceptives function as abortifacients—drugs that prevent fertilized eggs from developing, rather than preventing fertilization. *Id.* at 691. The plaintiffs believed that providing insurance coverage for those drugs made them morally complicit in the destruction of embryonic human life. *Id.* at 724. That belief, for them, informed "the circumstances under which it is wrong for a person to perform an act that is innocent in itself but that has the effect of enabling or facilitating the commission of an immoral act by another." *Id.* The Supreme Court held that once a claimant asserts a sincere religious belief, courts may not second-guess whether that belief is mistaken, illogical, or unreasonable. *Id.* at 725. The Court required the government to accommodate religious objectors so that the mandate would not impose a substantial burden on religious exercise. *Id.* at 725-26.

The burden here is much more direct. Under the Final Rule, the Bishops would be required to provide accommodations to employees who have already obtained abortions. But just as HHS cannot decide for religious employers like Hobby Lobby which forms of complicity in abortion are religiously acceptable, the EEOC cannot decide which abortions religious employers must accommodate notwithstanding their religious convictions.

The district court's order therefore remains insufficient to protect the constitutional interests jeopardized by the EEOC's Final Rule. Religious employers that object to abortion on religious grounds must still undergo case-by-case review to determine whether a particular abortion must be accommodated under the EEOC's standards, rather than asking "whether the [EEOC] mandate imposes a substantial burden on the ability of the objecting parties to conduct business in accordance with *their religious beliefs*." *Id.* at 724.

Nor can that intrusion be justified by reference to a competing constitutional right to abortion. This is not a case requiring a court to balance two competing constitutional guarantees. The First Amendment expressly protects the free exercise of religion. U.S. Const. amend. I. But the "Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including … the Due Process Clause of the Fourteenth Amendment." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). And because

"'the constitution is superior to any ordinary act of the legislature,'" any policies or regulations "necessarily yield to the constitution." *Smith v. City of Atlantic City*, 138 F.4th 759, 771-72 (3d Cir. 2025) (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803)).

Because the church autonomy doctrine's "protection is total," *McRaney*, 157 F.4th at 641, and Title VII exemption's "categorical," *Korte*, 735 F.3d at 758, the Court does not need to balance the religious interests against the government's. But applying strict scrutiny here would not entail a different result. Supposing the government had a compelling interest in enforcing these rules, strict scrutiny would still not be satisfied here for two reasons. First, the government's assumed compelling interest in enforcing its rules is not a compelling interest in forcing compliance from these specific religious groups. *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021) ("The question, then, is not whether the City has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to CSS."). Finally, EEOC has not shown that applying this law to the Bishops is the least restrictive means of furthering whatever interest it might have. *See, e.g.*, *Hobby Lobby Stores, Inc.*, 573 U.S. at 728-29.

To the extent pre-*Dobbs* jurisprudence encouraged courts to dilute ordinary constitutional protections in abortion-related cases, that framework no longer

survives. *See SisterSong Women of Color Reprod. Just. Collective v. Georgia*, 40 F.4th 1320, 1328 (11th Cir. 2022) ("And to the extent that this Court has distorted legal standards because of abortion, we can no longer engage in those abortion distortions in the light of a Supreme Court decision instructing us to cease doing so.") Whatever policy interests may favor access to abortion, they cannot override express constitutional protections for religious exercise. Thus, between a constitutional right and a competing policy interest espoused by a government regulator, "the First Amendment has struck the balance for us." *Hosanna-Tabor*, 565 U.S. at 196.

The district court therefore erred by balancing the Bishops' constitutional rights against asserted policy interests in abortion access, rather than recognizing that the Religion Clauses independently constrain the EEOC's authority. In this dispute, the constitutional protection for the free exercise of religion must prevail. That protection is secured by allowing the Bishops—and religious organizations more broadly—to make employment and accommodation decisions consistent with their sincerely held religious beliefs, free from governmental coercion or intrusive administrative review.

Dated: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 26, 2026, I electronically filed the foregoing with the Clerk of Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All counsel of record who are registered CM/ECF users will be served by the court's electronic filing system.

s/ Frederick R. Yarger

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Dated: May 26, 2026

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