No. 24-4101

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

YOUTH 71FIVE MINISTRIES,
Plaintiff-Appellant,

v.

CHARLENE WILLIAMS, DIRECTOR OF THE OREGON DEPARTMENT OF EDUCATION, *ET AL.*,
Defendants-Appellees.

On Appeal from the United States District Court for the District of Oregon
District Court No. 1:24-CV-00399-CL

BRIEF OF *AMICI CURIAE*

CHRISTIAN LEGAL SOCIETY, COUNCIL OF CHRISTIAN COLLEGES AND UNIVERSITIES, RELIGIOUS FREEDOM INSTITUTE, COALITION OF VIRTUE, CARDINAL NEWMAN SOCIETY, GREAT NORTHERN UNIVERSITY, INTERNATIONAL ALLIANCE FOR CHRISTIAN EDUCATION, AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS, ASSOCIATION OF CLASSICAL CHRISTIAN SCHOOLS, ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, AND ASSOCIATION FOR BIBLICAL HIGHER EDUCATION IN CANADA AND THE UNITED STATES IN SUPPORT OF THE PETITION FOR REHEARING

CHRISTIAN M. POLAND
BRYAN CAVE LEIGHTON PAISNER LLP
161 North Clark Street, Suite 4300
Chicago, IL 60601

BARBARA A. SMITH
SETH M. REID
KOLTEN C. ELLIS
BRYAN CAVE LEIGHTON PAISNER LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102
seth.reid@bclplaw.com
(314) 259-2047

Attorneys for Amici Religious Organizations, Schools, and Associations

CORPORATE DISCLOSURE STATEMENT

Amici certify, pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), that all Amici are non-profit, tax-exempt organizations without any parent companies and that no publicly held company owns any interest of 10% or more in any amicus.

CERTIFICATION OF AUTHORSHIP

Amici certify, pursuant to Fed. R. App. P. 29(a)(4)(E), that no counsel for any party authored this brief in whole or in part and no entity or person (aside from Amici, their members, and their counsel) made any monetary contribution intended to fund the preparation or submission of this brief.

CERTIFICATION OF CONSENT OF THE PARTIES

Pursuant to Federal Rule of Appellate Procedure 29(b)(2) and Circuit Rule 29-2(a), Amici certify that all parties have consented to the filing of this brief.

DATED: September 25, 2025

Respectfully submitted,

/s/ Seth M. Reid

SETH M. REID
211 North Broadway, Suite 3600
St. Louis, MO 63102
seth.reid@bclplaw.com
(314) 259-2047

Counsel for AMICI RELIGIOUS ORGANIZATIONS, SCHOOLS, AND ASSOCIATIONS

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INTEREST OF *AMICI CURIAE*

Amici are an interfaith collection, listed in the Appendix, of religious schools, associations, and non-profit organizations who depend upon the Constitution's protection of religious autonomy—the right "to decide matters of faith and doctrine without government intrusion." *Our*

Lady of Guadalupe Sch. v. Morrissey-Berru, 591 U.S. 732, 746 (2020) (citation modified). Amici have an interest in protecting the right of all religious organizations to require that their staff—especially the individuals charged with carrying the faith message of a religious institution to the outside world—adhere to the faith of that institution.

The panel's opinion guts the right to religious autonomy by limiting the ability of religious institutions within the Ninth Circuit to assert it only in defense against litigation rather than, as here, furthering the right in an affirmative way. Amici support rehearing en banc to reconsider the panel's opinion and ensure it cannot become a tool to further encroach on the religious autonomy of Amici and their members.

INTRODUCTION

The Oregon Department of Education's noble goal—to provide social services to at-risk youth by funding non-profits who do that work—operates in a noxious way, because Oregon excludes from its funding scheme any religious non-profit that requires its employees to adhere to a statement of faith. Withdrawing otherwise available funding simply because a religious non-profit requires its own employees to adhere to the organization's religious tenets offends the First Amendment, disregards

Supreme Court precedent, and creates a split with other courts of appeals on a fundamental constitutional right.

Religious organizations retain the right to hire adherents of the organization's faith without fear the government will punish (or coerce) that choice. That right may be asserted like any other constitutional right against any form of government overreach (judicial, legislative, or executive). The Supreme Court has confirmed that the First Amendment protects the right to religious autonomy—the right of religious institutions to "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch.*, 591 U.S. at 747. A "component" of that right is the autonomy to select "the individuals who play certain key roles." *Id.* at 746.

Rather than apply this straightforward rule, the panel held that Youth 71Five possessed no right to religious autonomy in the context of government funding.

This arbitrarily narrows religious entities' autonomy to decide employment qualifications. It departs from Supreme Court precedent, breaks with the decisions of other circuits, and the constitutional issues are exceptionally important. The Court should grant rehearing en banc.

ARGUMENT

The panel allowed Oregon to force Youth 71Five to choose between public funding and faith-based hiring, reasoning that the "religious-autonomy doctrines" are supposedly limited to "defenses against or limits upon plaintiffs' invocation of *judicial* authority." Slip-Op. at 26. That is wrong. As the Supreme Court has explained, religious organizations may "shape [their] own faith and mission[s] through [their] appointments." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188 (2012). This right to select ministerial employees without government interference finds its "constitutional foundation" in "the general principle of church autonomy" that both Religion Clauses buttress. *Our Lady of Guadalupe Sch.*, 591 U.S. at 746–48. It is a "component" of the autonomy guaranteed by the Religion Clauses in the First Amendment. *Id.* at 746.

In short, religious organizations are free to hire coreligionists without judicial meddling (the context in which the ministerial exception arose) *and* without state coercion via funding (the context here). The right may thus be raised in a Section 1983 suit when it is infringed—as

when Oregon ransomed a religious non-profit's funding grant on the condition of religious indifference in hiring.

The panel's decision merits en banc review because it departs from Supreme Court precedent in three ways: it (1) unduly cabins the religious autonomy doctrine as only an affirmative defense; (2) contravenes Supreme Court cases in which religious autonomy was asserted by a party seeking affirmative relief; and (3) fails to appreciate that religious autonomy constrains all branches of government, not merely the judiciary.

Rehearing is also warranted because the decision creates a conflict with at least the Fourth, Fifth, and D.C. Circuits on the ability of a litigant to obtain affirmative relief for violations of its religious autonomy and the applicability of the right to legislative and executive action. Where this Court can avoid a circuit split, it should.

Finally, rehearing is warranted because this case implicates important questions about the nation's most fundamental rights. At its core, religious autonomy is religious liberty, and that fundamental value is a precious freedom our Founders fought ferociously to protect. As Chief Justice Roberts explained, the Constitution prohibits the "Federal

Government—unlike the English Crown" from interfering in religious hiring. *Hosanna-Tabor*, 565 U.S. at 184. "The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." *Id.*

A. Rehearing En Banc Is Warranted Because The Panel Decision Contradicts Supreme Court Precedent on the Right to Religious Autonomy.

The panel decision conflicts with the Supreme Court's explanation of the scope of the First Amendment thrice over.

1. The Religious Autonomy Doctrine Is a Component of the First Amendment, Not Merely an Affirmative Defense to Civil Liability in Employment Cases.

Religious autonomy is a constitutional right—a component of the First Amendment's Religion Clauses entitled to all the respect afforded constitutional rights. It is not, as the panel saw it, a mere affirmative defense to employment discrimination claims. When the panel stated that no Supreme Court case "would justify [the Court's] recognition" of religious autonomy outside an affirmative defense "under the Religion Clauses," Slip-Op. at 26, it overlooked a long line of cases doing precisely that.

The First Amendment's Religion Clauses guarantee "freedom for religious organizations" from governmental intrusion into their internal affairs—a liberty known as the religious autonomy doctrine.[1] *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). One "essential component" of a "religious body's" autonomy is its "control over" the selection of employees who perform ministerial functions. *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring).

That is why the government simply has "no role in filling ecclesiastical offices." *Id.* at 184. The unanimous Court in *Hosanna-Tabor* catalogued the deep historical roots of the right, *see id.*, and appellate courts since then stretch this history back even further. "That principle was already centuries old by the time of the Norman Conquest: Under the Saxon kings of the seventh to the tenth centuries, civil courts categorically lacked jurisdiction over clergymen unless the bishop secularized them first." *McRaney v. N. Am. Mission Bd. of S. Baptist*

[1] Amici use "religious autonomy" (not "church autonomy" or "ecclesiastical abstention") to emphasize the doctrine applies to more entities than those denominated "churches" and reflects a substantive First Amendment right.

Convention, Inc., 2025 WL 2602899, at *3 (5th Cir. Sept. 9, 2025) (citation modified); *see also Huntsman v. Corp. of the President of Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 804 (9th Cir. 2025) (Bumatay, J., concurring in the judgment) (discussing the "Investiture Conflict of the 11th century").

"It was against this background that the First Amendment was adopted." *Hosanna-Tabor*, 565 U.S. at 183. "Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 (citation modified). "State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate *or even to influence* such matters" would offend the First Amendment. *Id.* (emphasis added).

Courts have not been shy in holding that the First Amendment protects the autonomy of religious institutions in a variety of contexts. One of the Supreme Court's early articulations of the right came in

Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871).[2] The Court there refused to reconsider a determination of the General Assembly of the Presbyterian Church over which faction should control certain property. It explained that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Id.* at 727. Courts have also held that the First Amendment right to religious autonomy bars claims brought against religious institutions for breach of fiduciary duty[3] and negligent hiring or retention of ministers.[4]

The right to religious autonomy has been particularly critical in protecting the prerogative of a religious institution to select, free from coercion, the individuals who serve as "messenger[s] or teacher[s] of its faith." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring). For

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[2] Although *Watson* predated the incorporation of the First Amendment against the States, it was "informed by First Amendment considerations." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445 (1969).

[3] *Moon v. Fam. Fed'n for World Peace & Unification Int'l*, 281 A.3d 46, 68 (D.C. 2022).

[4] *Pritzlaff v. Archdiocese of Milwaukee*, 533 N.W.2d 780, 790 (Wis. 1995).

example, in *Serbian Eastern Orthodox Diocese for United States & Canada v. Milivojevich*, the Supreme Court of Illinois invalidated a decision from the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church to "defrock[]" the Bishop of the North American diocese. *See* 426 U.S. 696, 698 (1976). The Supreme Court of the United States reversed, holding that the First Amendment protected the Serbian Orthodox Church's right to determine "ecclesiastical" matters through its own procedures without further scrutiny in secular courts. *See id.* at 713–14.

This right is asserted frequently today in employment discrimination litigation, under the "shorthand" label of the "ministerial exception." *Hosanna-Tabor*, 565 U.S. 202 (Alito, J., concurring) (citation omitted). "The ministerial exception exempts a church's employment relationship with its ministers from the application of some employment statutes, even though the statutes by their literal terms would apply." *Behrend v. S.F. Zen Ctr., Inc.*, 108 F.4th 765, 768 (9th Cir. 2024) (citation modified). But the exception "stems" from the "general principle of church autonomy." *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 802 (9th Cir. 2024), *cert. denied*, 145 S. Ct. 2822

(2025). The Supreme Court's broad language on the scope of the right—including that the "State" may not "interfere" with or even "influence" it, *see Our Lady of Guadalupe Sch.*, 591 U.S. at 746—gives it force beyond the employment discrimination context.

It also underscores that the right to religious autonomy may be invoked affirmatively, not merely as a defense. Just ask Congress, which has enshrined in statute a cause of action to vindicate "any" constitutional right. 42 U.S.C. § 1983; *cf. Dennis v. Higgins*, 498 U.S. 439, 444 (1991) ("[W]e have rejected attempts to limit the types of constitutional rights that are encompassed within [Section 1983's] phrase 'rights, privileges, or immunities.'").

At bottom, the First Amendment right to religious autonomy is just that: a constitutional right. It can be asserted and vindicated like any other right. A court may not second guess it nor may a state government attempt to coerce or pressure it through funding decisions.

2. Religious Autonomy May Be (Because It Has Been) Utilized To Obtain Affirmative Relief.

The panel was also wrong to affirm the District Court's holding that religious autonomy is "not [a] 'standalone right[] that can be wielded against a state agency.'" Slip-Op. at 25 (quoting the district court with

alterations). The Supreme Court held in *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* that a religious organization can assert religious autonomy to obtain affirmative relief. 393 U.S. 440 (1969). The parties there—a Presbyterian denomination and a local congregation that had left the denomination over doctrinal differences—disagreed about who controlled church property and filed cross-claims. *Id.* at 443. While the congregation claimed that the denomination had forfeited its rights to church property under a deed of trust by "substantially depart[ing]" from its original doctrine, the denomination counterclaimed "on the ground that civil courts were without power to determine whether the [denomination] had departed from its tenets of faith and practice." *Id.* at 442–43, 450.

The Supreme Court agreed with the denomination's church-autonomy theory and reversed a state-court judgment in the denomination's favor. On remand, the Court instructed the state court "*may* undertake to determine whether" the denomination was "entitled to relief on its cross-claims"—i.e., its claims for affirmative relief springing from the church autonomy doctrine. *Id.* at 450 (emphasis

added). In other words, *Hull Memorial* endorsed an application of the religious autonomy doctrine in the exact procedural posture that the panel claimed fell beyond the doctrine's scope. *Hull Memorial* refutes a key premise of the panel's decision.

The Supreme Court later reinforced the conclusion that the religious autonomy doctrine may be raised by a party seeking affirmative relief in *Milivojevich*. There, the parties were involved in a religious dispute over whether a bishop had been properly deposed and replaced by the Serbian Orthodox Church. 426 U.S. at 697–98. Both the bishop and the Church had filed "separate complaint[s]" that "sought the same relief," and the cases were "consolidated." *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 328 N.E.2d 268, 270 (Ill. 1975).

The Supreme Court held the state courts "impermissibl[y] reject[ed]" the Church's determination, as a hierarchical religious body, of whether the disciplinary process accorded with church law. *See Miliviojevich*, 426 U.S. at 708, 724–25 (holding that "the Constitution requires that civil courts accept" the decisions of "ecclesiastical tribunals" as "binding" in matters of church "government and direction"). The Supreme Court thus reversed and remanded the case, which entailed

that the Church would prevail on its claim for injunctive relief. *See Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 387 N.E.2d 285, 288–89 (Ill. 1979) ("[t]he validity of [the bishop's] suspension and removal" was "conclusively adjudicated" by the Church and, in light of *Milivojevich*, the Church was entitled to appoint a successor bishop and take control over property formerly managed by the deposed bishop).

In both *Hull Memorial* and *Milivojevich*, the Supreme Court approved the use of the religious autonomy doctrine to seek affirmative relief. The panel departed from these cases in holding otherwise.

3. Religious Autonomy May Be Asserted Against Any Form of Coercive State Power—It Is Not Merely a Caution Against Judicial Intervention.

The panel also erred in limiting the right to religious autonomy to "defenses against or limits upon plaintiffs' invocation of *judicial* authority." Slip-Op. at 26 (emphasis in original). The panel was "aware of no court of appeals that treats the religious-autonomy doctrines as the basis for standalone claims challenging legislative or executive action" and instead limited the right to defending against the "invocation of *judicial* authority." *Id.* But Supreme Court precedent is clear that religious autonomy protects religious institutions against "state

interference," full stop—not merely from *judicial* interference. *Kedroff*, 344 U.S. at 116.

In *Kedroff*, the Supreme Court applied the doctrine to invalidate legislative action, namely, a New York law incorporating various Russian Orthodox churches into an "autonomous metropolitan district," distinct from the "Moscow synod." *Id.* at 98–99. The law was "invalid under the constitutional prohibition against interference with the exercise of religion," *id.* at 100, and, more precisely, "church administration, the operation of the churches, [or] the appointment of clergy." *Id.* at 107–08.

On remand from *Kedroff*, the New York court held a retrial on a "common-law issue" it claimed was "left open" by the Supreme Court's opinion. *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam). The state court again ruled against the Moscow Synod, holding it "could not under the common law of New York validly exercise the right to occupy the Cathedral." *Id.* But the Supreme Court rejected the state courts' mistaken reasoning—replicated by the panel here—that the religious autonomy doctrine constrains only the judiciary. *See id.* ("[I]t is not of moment that the State has here acted solely through its judicial branch, *for whether legislative or judicial, it is still the application of state*

power which we are asked to scrutinize." (emphasis added) (citation omitted)). *Kreshik* again confirms that the right to religious autonomy applies beyond Article III.

This accords with the Court's consistently broad description of the right to religious autonomy. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 184 ("[T]he new Federal Government—unlike the English Crown" may not "interfer[e] with the freedom of religious groups to select their own [ministers]."); *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 ("[A]ny attempt by government to dictate or even to influence [internal religious] matters would constitute one of the central attributes of an establishment of religion."); *Milivojevich*, 426 U.S. at 711 ("The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine . . . is unquestioned." (quoting *Watson*, 80 U.S. at 728–29)).

B. The Panel Decision Splits With Other Courts of Appeals.

That the panel decision conflicts with the Supreme Court on religious autonomy alone merits rehearing en banc. But rehearing is doubly warranted given the split of authority the decision creates.

First, the decision conflicts with decisions from the Fourth and Fifth Circuits which, like the Supreme Court, have applied the religious autonomy doctrine in contexts beyond defending an employment discrimination claim. In *Dixon v. Edwards*, the Fourth Circuit allowed the plaintiff, an Episcopalian Bishop, to assert the doctrine affirmatively in obtaining a declaratory judgment that the defendant was not the "Rector of St. John's Parish." 290 F.3d 699, 703–04 (4th Cir. 2002).

Dixon involved a dispute between the plaintiff bishop (the "Ecclesiastical Authority" over the Parish) and the defendant priest (whom the Parish's local Vestry had selected as its Rector) regarding who had authority over the Parish and its building. *Id.* at 703.

The district court granted the bishop a declaratory judgment. The Fourth Circuit affirmed based on the right to religious autonomy. Under the First Amendment, "it was for the Episcopal Church to determine whether [the plaintiff Bishop] was acting within the bounds of her role as Bishop." *Id.* at 718. Because the Episcopal Church had found "she did not act improperly," the First Amendment required the court to adhere to the determination of the church. *See id.*

So too in the Fifth Circuit. In *Northside Bible Church v. Goodson*, the Fifth Circuit affirmed a declaratory judgment for a church that a statute permitting a "sixty-five percent majority group of a local church congregation" to withdraw local church property from the parent church if the parent church had changed its "social policies," was unconstitutional. 387 F.2d 534, 535 (5th Cir. 1967). The court explained that "[j]udicial tribunals, as arms of the government, must avoid interference with established church policies and government." *Id.* at 537. Because the statute "brazenly intrude[d] upon [a] very basic and traditional practice of The Methodist Church," it violated the First Amendment. *Id.* at 538; *accord McRaney*, 2025 WL 2602899, at *12 (religious autonomy "rests on structural, constitutional limitations in the First Amendment").[5]

The panel's assertion that the religious autonomy doctrine may be invoked only as a defense against government action and not

[5] The Sixth Circuit likely agrees with the Fourth and Fifth. When plaintiffs received an injunction against an executive order issued to stop the spread of COVID-19, the panel appeared to conclude that a plaintiff could ordinarily assert the right to religious autonomy, but nonetheless vacated the injunction for other reasons. *Kentucky v. Beshear*, 981 F.3d 505, 507, 510 (6th Cir. 2020) (Order).

affirmatively ignores binding Supreme Court precedent and creates a conflict with at least two other federal courts of appeal. This Court should grant rehearing en banc to eliminate the split and clarify that plaintiffs may invoke their religious autonomy seeking affirmative relief.

Second, the panel departed from the Fifth, Sixth, and D.C. Circuits, which do not apply the right to religious autonomy only against judicial entanglement.

As explained above, the Fifth Circuit applied the doctrine against legislative action in *Northside Bible Church*. 387 F.2d at 538. The D.C. Circuit has applied the religious autonomy doctrine to constrain federal agencies. *See Duquesne Univ. of the Holy Spirit v. NLRB*, 947 F.3d 824 (D.C. Cir. 2020). In *Duquesne*, the NLRB attempted to assert jurisdiction over Duquesne University, which is affiliated Catholic, under the National Labor Relations Act. *Id.* at 826. In granting Duquesne's petition for review, the D.C. Circuit explained that the Religion Clauses' protections, including the church autonomy doctrine, preclude independent agencies from exercising jurisdiction over religious organizations. *See id.* at 827–28.

The Sixth Circuit similarly stated in *Conlon v. InterVarsity Christian Fellowship/USA* that the right to religious autonomy constrains all branches of government. 777 F.3d 829 (6th Cir. 2015). There, the court noted that religious autonomy is a "structural [constitutional protection] that categorically prohibits federal and state *governments*"—not just courts—"from becoming involved in religious leadership disputes. *Id.* at 836. (emphasis added); *see also Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 326 (4th Cir. 2024) (describing the ministerial exception as a "structural" barrier between "civil authorities [and] religious ones").

For their part, several district courts have considered the precise question here—and also disagree with the panel. *See InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785, 802, 807, 839 (E.D. Mich. 2021) (religious "organizations can sue the government for violating" their right "to select their leaders and messengers"); *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1184 (D. Colo. 2023) (state funding program prohibiting a plaintiff from hiring coreligionists "would likely violate Plaintiff's free exercise of religion, as protected by the ministerial exception").

C. These Issues Are Exceptionally Important and Merit Rehearing En Banc to Prevent State Officials from Violating the First Amendment and Chilling the Free Exercise of Religion.

The panel did not—could not—contest that religious organizations have the autonomy to govern their internal affairs in line with the organizations' religious beliefs. But its holding that the religious autonomy doctrine cannot be used to obtain affirmative relief turns the First Amendment into a dead letter. Rehearing en banc is necessary to prevent the panel opinion from eroding the Constitutional rights of Amici and other religious organizations in the Ninth Circuit.

This case presents an issue of exceptional importance because the decision threatens to deprive religious organizations of any procedural mechanism to vindicate their rights. Start with the substantive issue: "conditioning the availability of benefits" upon giving up autonomy over faith-based hiring "effectively penalizes the free exercise' of religion." *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 780 (2022) (citation modified). Conditioning grant funding on Youth 71Five's commitment to "divorce itself" from its religious belief that employees should share the organization's faith, "inevitably deters or discourages the exercise of First

Amendment rights." *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 478 (2020) (citation omitted).

Next, the shocking implication of the decision's reasoning: an open-and-shut violation of the First Amendment *cannot be remedied*. If the panel were right that religious autonomy (1) cannot be raised defensively against an executive agency's rescission of grant funding, and (2) cannot be asserted as a substantive right in a suit seeking affirmative relief, then Oregon has insulated itself from accountability for violating the Constitution. *But see Dennis*, 498 U.S. at 444 (explaining the Supreme Court has "rejected attempts to limit the types of constitutional rights" that may be enforced under Section 1983). "It strains credulity to think that the First Amendment was enacted solely to protect religious organizations' internal management from the judiciary and private lawsuits." *InterVarsity Christian Fellowship/USA*, 534 F. Supp. 3d at 805.

The religious autonomy doctrine protects against "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. When a State conditions otherwise available funding on a religious organization's

hiring practices, it pressures the religious organization to alter its internal organizing principles to qualify for those benefits. Amici and those they represent will be chilled in their exercise of religion if the panel opinion stands. What's more, they may suffer the deprivation of their constitutional rights without any way to vindicate them in court. The Constitution demands better.

CONCLUSION

For the reasons above, the Court should grant rehearing en banc.

DATED: September 25, 2025

Respectfully submitted,

/s/ Seth M. Reid

CHRISTIAN M. POLAND
BRYAN CAVE LEIGHTON PAISNER LLP
161 North Clark Street, Suite 4300
Chicago, IL 60601

BARBARA A. SMITH
SETH M. REID
KOLTEN C. ELLIS
BRYAN CAVE LEIGHTON PAISNER LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102
seth.reid@bclplaw.com
(314) 259-2047

COUNSEL FOR AMICI RELIGIOUS ORGANIZATIONS, SCHOOLS, AND ASSOCIATIONS

Pursuant to Circuit Rule 28-2.6, counsel is aware of no related cases pending before this Court.

DATED: September 25, 2025 */s/ Seth M. Reid*

SETH M. REID
BRYAN CAVE LEIGHTON PAISNER LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102
seth.reid@bclplaw.com
(314) 259-2047

Counsel for AMICI RELIGIOUS ORGANIZATIONS, SCHOOLS, AND ASSOCIATIONS

APPENDIX

CHRISTIAN LEGAL SOCIETY ("CLS"), founded in 1961, is a nonprofit, non-denominational association of Christian attorneys, law students, and law professors with members in every state and chapters on over 140 law school campuses. CLS—through its advocacy ministry, the Center for Law & Religious Freedom—pursues a pluralistic vision of a civil society that protects the full and free exercise of religion by all Americans.

THE COUNCIL OF CHRISTIAN COLLEGES AND UNIVERSITIES ("CCCU") is a higher education association representing over 170 institutions around the world, including 130 in the United States. Its institutions enroll approximately 520,000 students annually, with over 11 million alumni. The CCCU's mission is to advance the cause of Christ-centered higher education and to help its institutions transform lives by faithfully relating scholarship and service to biblical truth. CCCU is committed to graduating students who make a difference for the common good as redemptive voices in the world.

RELIGIOUS FREEDOM INSTITUTE, founded in 2016, is a nonprofit education and advocacy organization that is committed to achieving broad acceptance of religious liberty as a fundamental human right. Its

Islam and Religious Freedom Action Team serves as a Muslim voice for religious freedom.

COALITION OF VIRTUE, founded in 2023, is a nonprofit education and advocacy organization devoted to promoting virtue in society, grounded in divine guidance as embodied in the Islamic tradition.

THE CARDINAL NEWMAN SOCIETY, through The Newman Guide, promotes and defends faithful Catholic education by recognizing schools, colleges, and graduate programs that meet high standards of fidelity to Catholic teaching and formation of students in the light of the Catholic faith, without compromise to Catholic beliefs or morals. The Society's Newman Guide Network brings together leaders of recognized institutions and programs for collaboration and defense of their religious freedom.

GREAT NORTHERN UNIVERSITY equips students to be lifelong learners who demonstrate competency in their areas of education, thrive as they engage with our array of distinguished advisors, and grow in godliness within our Christ-centered community. Great Northern University is a Christian, liberal arts university rooted in Pacific

Northwest that is distinguished by meaningful relationships with faculty, rigorous academic programs, and ongoing career preparation.

THE INTERNATIONAL ALLIANCE FOR CHRISTIAN EDUCATION's mission is to unify, synergize, and strengthen collective conviction around biblical orthodoxy and orthopraxy, cultural witness, scholarship, professional excellence, and resourcing of Christian education at all levels. Functioning as a network and umbrella organization, the International Alliance for Christian Education seeks to provide enablement, connections, and collaborative opportunities for the various aspects of Christian education.

THE AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS ("AACS"), founded in 1972, is a nonprofit federation of 38 state and regional Christian school organizations, representing nearly 700 primary and secondary schools, which enroll over 115,000 students. AACS provides educational programs and services to its constituent schools, including teacher certification, school improvement, and accreditation, all of which are designed to integrate the Christian faith and life with learning and educate young people to live as good citizens according to the principles of their faith. AACS accreditation is widely recognized by state approving

agencies and the U.S. Department of Homeland Security for the Student Exchange Visitor Program.

THE ASSOCIATION OF CLASSICAL CHRISTIAN SCHOOLS ("ACCS") is a U.S. nonprofit association that is organized to promote, establish, and equip member schools that are committed to a classical approach in the light of a Christian worldview. Founded in the early 1990s, the ACCS now represents over 500 member and accredited schools. ACCS represents Classical Christian education (CCE) nationally with the largest annual conference for Classical Christian educators, resources for starting schools, and accreditation standards for established schools.

THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL ("ACSI") is a Christian educational organization that exists to strengthen Christian schools and equip Christian educators to provide an academically rigorous and explicitly Christian education. ACSI provides support services to over 23,000 schools in over 100 countries, serving over five million students.

THE ASSOCIATION FOR BIBLICAL HIGHER EDUCATION IN CANADA AND THE UNITED STATES ("ABHE"), founded in 1947, is a nonprofit network of more than 160 institutions of higher education, throughout

North America, which enroll more than 75,000 students. ABHE supports academically rigorous education that challenges students to develop critical thinking skills, a biblically grounded Christian worldview, and a manner of living consistent with that worldview. ABHE also provides accreditation of undergraduate and graduate educational programs and has been recognized by the U.S. Department of Education as a postsecondary accrediting agency since 1952. ABHE seeks to promote, advance, and protect the essence and ethos of biblical higher education through its member institutions.

CERTIFICATE OF COMPLIANCE

I certify that:

1. This brief complies with the length limits permitted by Fed. R. App. P. 29(a)(5) and Ninth Circuit Rule 29-2(c)(2) because the brief contains 4,088 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word 2016.

DATED: September 25, 2025 */s/ Seth M. Reid*

SETH M. REID
BRYAN CAVE LEIGHTON PAISNER LLP
211 North Broadway, Suite 3600
St. Louis, MO 63102
seth.reid@bclplaw.com
(314) 259-2047

Counsel for AMICI RELIGIOUS ORGANIZATIONS, SCHOOLS, AND ASSOCIATIONS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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