No. 24-154

IN THE

Supreme Court of the United States

CATHOLIC CHARITIES BUREAU, INC., BARRON COUNTY DEVELOPMENTAL SERVICES, INC., DIVERSIFIED SERVICES, INC., BLACK RIVER INDUSTRIES, INC., AND HEADWATERS, INC.,

Petitioners,

v.

STATE OF WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION AND STATE OF WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,

Respondents.

On Writ of Certiorari to the Supreme Court of Wisconsin

BRIEF OF NEW YORK STATE CATHOLIC CONFERENCE *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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February 3, 2025

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

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STATEMENT OF INTEREST OF *AMICUS CURIAE* [1]

The New York State Catholic Conference has been organized by the Roman Catholic Bishops of New York State as the institution by which the Bishops speak in the field of public policy and public affairs. When permitted by courts, the Catholic Conference participates as a party and files briefs as amicus curiae in litigation of importance to the Catholic Church and the common good of the people of the State of New York.

The freedom of Catholic individuals and institutions across the country to act according to our faith is a major concern to the Catholic Conference. The Church in New York State operates the largest network of non-governmental educational, social service, and health care providers. The Catholic Conference thus has a very significant interest in defending the religious liberty of a Catholic institution in this case, and to urge this Court to clarify its First Amendment doctrines in order to protect against any further threats to religious freedom.

SUMMARY OF THE ARGUMENT

The church autonomy doctrine is a fundamental part of the religious freedom guaranteed by the First Amendment. It requires that courts and government agencies give great deference to the internal self-

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[1] No party or counsel for a party wrote any part of this brief. No person other than amicus and its counsel made any financial contribution to the preparation of this brief. Counsel for all parties were notified of amicus's intention to file a brief ten days in advance of the filing deadline pursuant to Supreme Court Rule 37.2.

understanding of religious organizations. However, the neutral principles exception to the doctrine lacks clear standards and limiting principles and is being misapplied in many cases to curtail religious freedom.

The result of this doctrinal confusion has been discrimination against and between religious groups, particularly those that are in disfavor with political and regulatory authorities. This can be seen in the instant case, as well as other cases that have arisen in New York.

This case offers an opportunity for this Court to clarify the proper scope and application of the church autonomy doctrine and the neutral principles exception, in order to prevent further errors and abuse.

ARGUMENT

I. Lower courts and government agencies are misapplying the church autonomy doctrine and permitting violations of the First Amendment.

A. The church autonomy doctrine is an essential component of the First Amendment.

The church autonomy doctrine is an essential component of the Free Exercise and Establishment Clauses of the First Amendment. This Court has repeatedly emphasized that religious groups must be free to make decisions about their beliefs, doctrines, and internal operations without government intrusion. *E.g.*, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

This respect for religious autonomy ensures that religious groups can operate in accordance with their

beliefs, safeguarding the fundamental right to religious liberty protected by the United States Constitution. "This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020).

This doctrine is deeply rooted in our nation's history and tradition. The problem of government interference in church affairs was endemic in England, and avoiding this was a significant motivation of the colonists who came to America. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 182-83 (2012). The founders of our nation were influenced strongly by John Locke's defense of the autonomy of churches from government interference. *E.g.*, John Locke, *First Letter on Toleration* (1689), https://oll.libertyfund.org/titles/locke-the-works-vol-5-four-letters-concerning-toleration (cleaned up).

Against that background, "the founding generation sought to prevent a repetition of these practices in our country" by way of the First Amendment religion clauses. *Our Lady of Guadalupe*, 591 U.S. at 748. Respect for church autonomy can be seen in the statements of significant founders. *E.g.*, George Washington, *Letter to the Hebrew Congregation in Newport, Rhode Island* (1790), https://founders.archives.gov/documents/Washington/05-06-02-0135; Thomas Jefferson, *Letter to Ursuline Nuns of New Orleans* (1804), https://founders.archives.gov/documents/Jefferson/01-44-02-0064; and James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785), https://founders.archives.gov/documents/Madison/01-08-02-0163#JSMN-01-08-02-0163-fn-0013.

The church autonomy doctrine has been applied in a variety of situations, such as disputes over beliefs, ministry, property, and internal administration of religious institutions. W. Cole Durham and Robert Smith, *Religious Organizations and the Law* § 5.12 (2d Ed. 2023). It is a well-established and vital component of the First Amendment.

B. The church autonomy doctrine must be applied with deference to the sincere beliefs of religious organizations.

A proper application of the church autonomy doctrine entails giving "a high degree of deference to the internal self-understanding" of religious groups. W. Cole *Id.* at § 5.14. As articulated in key decisions of this Court, government agencies and courts must apply the doctrine in a neutral manner, avoiding discrimination between religious groups or undue interference in internal church matters. Government agencies and courts must avoid tailoring their legal tests based on personal views or external pressures, ensuring that religious organizations are treated fairly and equally under the law.

The "ministerial exception" to anti-discrimination laws is perhaps the best-developed application of the church autonomy doctrine. For example, in *Hosanna-Tabor*, this Court recognized the importance of ensuring that religious organizations are able to make their own employment decisions about employees whose duties are faith-based, without government interference. In such cases, the primary concern should be the sincerity of the religious belief, not its legitimacy or rationality as perceived by the government agency or a court. *Our Lady of Guadalupe,* 591 U.S. at 762-63 (Thomas, J.,

concurring). This principle ensures that courts do not "cook the test" to favor or disfavor specific religious groups, but instead honor the religious organization's self-understanding of its practices and roles.

Another key feature of this Court's jurisprudence is the repeated rejection of a formalistic approach to determining who qualifies as a ministerial employee. Instead, the Court focused on the function the individual performs and the organization's own understanding of that role. As the Court noted, "A religious institution's explanation of the role of such employees in the life of the religion in question is important". *Id.,* 591 U.S. at 757. Accordingly, the job title is not dispositive. *Id.,* 591 U.S. at 752-53. Instead, the analysis centers on whether the employee's responsibilities are integral to the faith's mission.

This is consonant with the way this Court has approached other religious liberty issues. For example, the Court has found that the corporate form of an entity does not preclude it from exercising religious liberty rights, as long as sincere religious beliefs are being implicated. *Burwell v. Hobby Lobby Stores*, 573 U.S. 682, 707-08 (2014). This recognition of religious autonomy aligns with the principle that courts should not fixate on a formalistic test of how the religious organization is legally organized or operates. Instead, the key focus is on how the religious organization itself understands its mission.

By adhering to this deferential application of the doctrine, courts uphold the integrity of the First Amendment and prevent unnecessary government overreach. The proper application of the church autonomy doctrine thus ensures that religious groups retain the freedom to practice and govern their faith without undue interference.

II. The lack of clear standards for the church autonomy doctrine encourages courts and agencies to abuse the neutral principles of law exception and to impose secular rule on religious organizations.

Unfortunately, there is a lack of clear guidance on how to consistently apply the church autonomy doctrine. While this Court has provided deferential principles in certain situations, such as the ministerial exception, a uniform framework is needed to prevent inconsistent application and ensure that courts respect the diverse ways religious groups define their missions, activities, and roles.

A. The lack of clarity stems from the flawed neutral principles exception to the church autonomy doctrine.

Much of this confusion has arisen when courts and government agencies attempt to apply this Court's neutral principles exception, as established in *Jones v. Wolf*, 443 U.S. 595 (1979). In a case involving a property dispute following a schism, this Court held that "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute" so long as it does not "require the civil courts to resolve ecclesiastical questions." *Id.* at 604.

While that may (or may not) be easy to do when it is a matter of reading property deeds, it has proven notoriously difficult to apply in other contexts. The danger is that government agencies and courts will be tempted to over-extend that exception "whenever an ostensibly neutral or secular principle or policy seems relevant". Durham and Smith, *supra* at § 5.16.

The fundamental flaw in the neutral principles exception is that it ultimately contains no guidance on how it should be applied and likewise lacks any well-defined limits. This problem was already identified by the dissent in *Jones v. Wolf*. The four dissenting Justices criticized the decision for departing from the established deferential approach to church governance that had previously been observed. *Jones*, 443 U.S. at 610-11 (Powell, J., dissenting). They also specifically noted that the Court had instituted a rule that contained no guidance for lower courts to apply: "the Court affords no guidance as to the constitutional limitations" of the newly-invented rule. *Id.* at 616.

An imaginative court or agency official can always find an applicable secular function or rule of law and use that to override the autonomy of a religious organization. The result is that "no claim would ever be subject to the church autonomy doctrine -- every civil plaintiff purports to invoke neutral legal principles." *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066 (5th Cir. 2020) (Ho, C.J., dissenting). A basic constitutional right cannot be left at the mercy of the creativity of bureaucrats, litigants, or courts, wielding an exception that potentially swallows up the rule.

The lack of clear standards is exacerbated by the fact that purported "neutral principles" are often not objective or neutral at all. Many of these supposedly neutral principles are actually inherently subjective and discretionary, which creates grave dangers of good-faith error, as well as discrimination and bias.

B. The instant case demonstrates the flaws in the neutral principles exception.

The instant case amply demonstrates the danger inherent in the neutral principles exception.

The Wisconsin Supreme Court, and the government agency before it, incorrectly discounted the relevance of the religious organization's own understanding of what it was doing. *Catholic Charities Bureau, Inc. v. Lab. & Indus. Rev. Comm'n*, 2024 WI 13, 35-36 (2024). Instead, the court claimed that it would conduct "a neutral and secular inquiry based on objective criteria, examining the activities and motivations of a religious organization". *Id.* at 45.

The result was a quagmire of government entanglement with religion. The Wisconsin court looked to an irrelevant Seventh Circuit decision and developed a list of "stereotypical religious activities" that it considered in deciding whether Catholic Charities was religious enough for its satisfaction. *Id.* at 120 (Grassl Bradley, J., dissenting).

But it is not for a secular court to decide what is a "typical" religious activity. It is certainly neither "neutral" nor "objective", in that it necessarily involves a judgement about religious matters. "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 constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Our Lady of Guadalupe*, 591 U.S. at 746.

The court essentially decided, based on a subjective test of its own invention, that Catholic Charities was just not religious enough, or was not the right kind of

religion – a matter that is beyond the competence of a civil court. As one dissenting justice correctly pointed out, the court's test improperly "relies upon each justice's subjective sense of what is genuinely religious and what is not". *Catholic Charities Bureau*, 2024 WI at 121 (Grassl Bradley, J., dissenting).

This intrusive inquiry is entirely inconsistent with this Court's mandated deferential approach, as illustrated in *Our Lady of Guadalupe* and *Hosanna-Tabor*. In effect, the Wisconsin court flipped church autonomy on its head. The court rejected Catholic Charities' self-understanding that they are a faith-based organization conducting religious activities, merely because it was able to imagine that comparable activities were being done by some other secular organizations.

The Wisconsin court's approach would open the door to grave intrusions upon religious freedom. The fact that a myriad of secular organizations perform comparable humanitarian services is utterly irrelevant to the religious nature of Catholic Charities and its works. Indeed, many of the religious activities of faith-based organizations are outside of the narrow confines of doctrinal matters and are also routinely performed by some secular institutions.

The specific activities of Catholic Charities in this case are matters of religious duty that are specifically enjoined upon Christians by Jesus Christ himself. *Gospel of St. Matthew* 25:29-46. Catholics even have a specific religious name for them – the Corporal Works of Mercy. *Catechism of the Catholic Church* §§ 2443-49. Applying the lower court's test to these kinds of activities leads to absurd results – by that illogic, Jesus himself could have failed to qualify for the religious autonomy doctrine, since healing activities

and care for the poor are also done by secular professionals.

The lower court compounded its error by claiming that its "'neutral and secular' inquiry does not intrude on questions of religious dogma." *Catholic Charities Bureau*, 2024 WI at 46. Yet under this Court's jurisprudence, the church autonomy doctrine is not so narrowly constrained. Courts and government agencies are required to defer to religious institutions in determining what issues fall within their purview on issues beyond dogmatic questions. "The First Amendment protects the right of religious institutions to 'decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Our Lady of Guadalupe*, 591 U.S. at 737(quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)); see also Durham and Smith, *supra* at § 5.12.

The error in the lower court's reasoning can be highlighted by imagining that the case had arose from an allegation of discrimination involving the hiring or firing of the director of Catholic Charities based on how he or she directed the handling of cases. There could have been no dispute that Catholic Charities should have the ability to assess the suitability of a person to exercise a leadership role that is plainly religious in nature. With that fact pattern, this would have been an easy case under the ministerial exception – that is to say, the church autonomy doctrine. *Our Lady of Guadalupe* and *Hosanna-Tabor* provide ample support for this.

It makes no sense to defer to religious organizations pursuant to the ministerial exception but interfere with the way they carry out their mission. The saying that "personnel is policy" is not just a truism. It is

actually true, particularly for religious organizations that lack financial resources but vest considerable dependence on the commitment of their staff to their mission. The church autonomy doctrine should equally restrain governmental and court interference with both personnel and policy.

The Wisconsin court's ruling thus violated the church autonomy doctrine and should be reversed.

C. Two New York cases also illustrate the problem in the neutral principles exception.

The problems created by a lack of clear standards can also be seen in two cases from New York that have already gained this Court's attention.

The first involves Yeshiva University and its refusal to recognize a gay student organization that openly dissents from Orthodox Jewish teaching on sexuality. This Court has already faced this case on an emergency application. *Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1 (2022). It is likely to return to this Court once state court proceedings are concluded.

The case is enormously important to the university and Orthodox Jews, and to other faith-based organizations in New York, including many Catholic institutions. It is particularly sensitive because the views of the Catholic Church and Orthodox Judaism are at odds with the prevailing ethos of New York City's culture and government, which are strongly in favor of the rights of "LGBT" people and are either dismissive or hostile to contrary views.

It was undisputed in the lower courts that Yeshiva University is founded on the religious beliefs of Orthodox Judaism. Indeed, the tenets and practices of

Orthodox Judaism permeate all activities of the school. Emergency Application for Stay Pending Appellate Review at 5-11, *Yeshiva Univ. v. YU Pride All.*, 2022 WL 4287266 (S. Ct. Docket 22A184, Aug. 29, 2022).

Yet the New York City Commission on Human Rights and the state courts felt free to overrule the religious judgment of the university and its rabbis about whether the school must recognize a student group that rejects those beliefs and will attempt to undermine and change them. The trial court even went so far as holding that "formal recognition" of the student group is not "inconsistent with the purpose of Yeshiva's mission". *YU Pride All. v. Yeshiva Univ.*, No. 154010/21, 2022 WL 2158381 (N.Y. Sup. Ct. 2022). That is a quintessentially religious decision that is utterly beyond the competence of a civil court to opine on, let alone to base a ruling on.

The lower court's fundamental error was in relying heavily on the fact that Yeshiva was not incorporated under the New York Religious Corporations Law, and thus whether it qualified for a statutory exception to New York City's Human Rights Law. The court's formalistic approach ignored the actual religious principles at stake. It failed to afford the university with the proper deference to its own self-definition as a religious organization. The lower court also violated this Court's finding that religious liberty rights are not precluded merely because of the type of corporation in question. *Hobby Lobby,* 573 U.S. at 707-08.

The court's error can also be seen in a simple counter-factual, similar to the one posed above regarding the instant case. Imagine that the dispute was over a claim of discrimination in the hiring or firing of the chaplain to the student group. This would

have been an easy case to decide, since there would be no dispute about the religious nature of the university, and the personnel decision would certainly fall within the ministerial exception and the church autonomy doctrine.

The misapplication of the neutral principles exception, together with the hostility of state agencies and courts towards Yeshiva's religious beliefs, has thus resulted in lengthy litigation and interference with the university's operations. This is precisely what the church autonomy is designed to avoid.

A second New York case involves a state mandate that all private insurance plans cover elective abortions. This case has a long and convoluted procedural history that stretches back almost a full decade. It has already been before this Court once and was GVR'd back to the state courts for reconsideration. *Diocese of Albany v. Emami*, 142 S. Ct. 421 (2021). The state courts stubbornly refused to recognize the grave violation of religious liberty that is at stake, and a cert petition is currently pending to bring it back to this Court again. Petition for Writ of Certiorari, *Diocese of Albany v. Harris*, (Sup. Ct. Docket No. 24-319, Sept. 18, 2024).

The case is extremely important to the Catholic Church and to other religious organizations that dissent from many of the prevailing policies in New York. Religious autonomy was an important part of the plaintiff religious organizations' original claims in state court, and in their first petition for a writ of certiorari. Petition for a Writ of Certiorari at 28-31, *Diocese of Albany v. Lacewell*, 2021 WL 1670283 (S. Ct. Docket No. 20-1501, April 23, 2021).

The abortion mandate is gravely offensive to the religious organizations because of their faith-based

belief that every human life is precious and deserves protection under law from the moment of conception. They believe that the killing of an innocent human being is gravely immoral under any and all circumstances, and that nobody may commit such a crime, cooperate in it, or obey a law that permits it. *Catechism of the Catholic Church* §§ 2270-75.

The mandate is also offensive because it only grants an exemption to religious institutions that are organized and act in a way that the state favors -- and it denies the exemption to those who fail to pass muster. This is an invidious discrimination between religious organizations, and a violation of church autonomy. Petition for a Writ of Certiorari at 19-23, *Diocese of Albany v. Lacewell, supra*.

The mandate invites state interference by empowering administrative officials to scrutinize an organization's beliefs, practices, and internal governance. The factors that mark eligibility for the exemption are inherently subjective and intrusive upon the autonomy of the organizations. The agency must determine whether "the inculcation of religious values is the purpose of the entity", and whether "the entity primarily employs persons who share the religious tenets of the entity", and whether "the entity serves primarily persons who share the religious tenets of the entity", and the organization must be incorporated in a way that complies with a provision of the federal Internal Revenue Code. N.Y. Ins. Law § 4303(cc)(5)(A).

By what standard can a civil court determine the "religious tenets" of an entity, much less inquire whether those are shared by its employees and those it serves? By what authority can a civil court second-guess how a religious organization defines

their "purpose"? Why should an arcane federal tax law control whether an organization is truly religious?

All these matters are beyond the proper scope of civil courts and government agencies. This kind of scrutiny invites abuse, discrimination, and entanglement with the internal affairs of churches.

The New York State Court of Appeals refused to hear the case when it was first presented, with the implausible and dismissive statement that "no substantial constitutional question is directly involved". *Diocese of Albany v. Vullo*, 42 N.Y.3d 213 (2024).

After the case was GVR'd for reconsideration, the New York courts continued to reject the organizations' religious freedom arguments. The Court of Appeals agreed with the state's argument that the statutory criteria are "neutral" and "objective" and did not require individual case-by-case assessments of the organization's beliefs. The court blithely denied that they are "standardless and discretionary". *Id.* at 218. That makes a mockery of this Court's doctrine that courts must give broad deference to the beliefs and practices of religious organizations.

The result of the mandate is that religious organizations are faced with a state-imposed Hobson's Choice. They must either organize themselves internally and only act according to the state's favored model, or they must violate their religious beliefs. The state has no business imposing that kind of dilemma on religious organizations acting according to their faith.

Again, the problem can be highlighted by a counterfactual similar to those posed above. Consider the chancellor of the Diocese of Albany, the lead plaintiff organization. He is an official appointed under the Canon Law of the Catholic Church, who is generally

the chief operating officer of the diocese and directly responsible for the implementation of the religious mission of the diocese. If he or she had agreed to a health benefits plan that paid for elective abortions, and the bishop fired him for doing so, there is no question that the diocese would be immune from a wrongful termination or discrimination claim thanks to the ministerial exception.

The diocese's ability to control its policies based on its faith is no less important than their ability to choose the personnel to implement it. The New York government and courts should have shown the same deference to the religious organizations' policy against cooperation with abortion that they would have shown to a personnel decision. Instead, they imposed their own approval of abortion over the faith-based objections of the religious organizations and thus violated church autonomy.

As these cases demonstrate, outside of the ministerial exception there is a lack of clear guidance on how to apply the church autonomy doctrine. The inherently subjective and discretionary nature of the neutral principles exception exacerbates the problem. This leaves the door open for courts and agencies to apply overly formalistic or artificially neutral definitions that do not respect religious autonomy, with inconsistent and discriminatory results.

III. Denominational bias and discrimination against religion will continue without clear standards for the church autonomy doctrine and the neutral principles exception.

This Court can remedy this problem by providing clear delineation of the scope of the church autonomy

doctrine and limiting the reach of the neutral principles exception. The instant case provides a perfect opportunity to do so.

More and more activities are coming under the ambit of regulatory bodies, and there are increasing conflicts between their dictates and religious organizations. The current doctrinal confusion over church autonomy makes it imperative that the Court remedy this situation. Governments that are hostile to religious beliefs and morality will continue to overreach without clear standards. The lack of limiting principles facilitates abuse by government agents who are hostile towards religious organizations, particularly those that dissent from contemporary progressive values.

This Court has seen numerous instances in which government officials of various states have openly expressed hostility towards religious organizations that dissent from the state's favored policies. *E.g.*, *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 228-29 (2d Cir. 2020) (Park, C.J., dissenting) (remarks about "ultra-Orthodox Jews"); *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617 (2018) (remarks about Christians); *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993) (remarks about practitioners of Santeria).

New York has seen a series of disparaging and hostile remarks from powerful government officials towards the disfavored beliefs of some religious organizations and people.

For example, in 2018, the then-governor -- the same one whose disparaging remarks about Orthodox Jews were noted in *Diocese of Brooklyn* – denounced religious groups that disagreed with him about moral

issues relating to abortion and "gender identity" based on their faith. He said: "their interpretation of their God's teaching they oppose a woman's right to choose... they demonize those who are transgender... it is also wrong, ugly, destructive, discriminatory and anti-American" and "any school that refuses to protect transgender students will not receive a penny of state money, and then they are out of business". Human Rights Campaign, *New York Governor Andrew Cuomo Speaks at NYC HRC Dinner* (posted Feb. 3, 2018), https://www.youtube.com/watch?v=_TPWc-ZjLUk (pertinent sections from 4:23 to 4:55 and 11:02 to 11:11). These threats were unquestionably aimed at Christian, Catholic, and Jewish schools.

The current governor has disparaged as "neanderthals" those who dared to believe that unborn children should be entitled to the same legal rights as their mothers or anyone else. Governor Kathy Hochul, *Governor Hochul Signs Nation-leading Legislative Package to Protect Abortion and Reproductive Rights for All*, posted June 13, 2022, https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-signs-nation-leading-legislative-package. Given the close association between Christian and Catholic institutions and the defense of unborn life, there were no doubts as to whom the governor was referring to.

The governor has also denounced as "evil" and "forces of darkness" the religious leaders who opposed the passage of an equal rights amendment that would have enshrined abortion rights and "gender identity" in the state constitution. Carl Campanile, *Prop 1 critics demand NY Gov. Hochul repent for calling them 'evil,' forces of 'darkness'*, New York Post (Oct. 29, 2024), https://nypost.com/2024/10/29/us-news/prop-1-

critics-demand-gov-hochul-repent-for-calling-them-evil-forces-of-darkness/. The opponents of the amendment included the Catholic bishops of the state, as well as religious leaders and individuals from many denominations.

New York City and State governments have a record of discriminatory enforcement of laws by favoring secular over religious activities. During the coronavirus pandemic, city and state officials regularly criticized and shut down Orthodox Jewish religious activities, while at the same time encouraging public protests on causes they favored. Jacob Sullum, *Bill de Blasio's blatant anti-religious discrimination*, New York Post (July 2, 2020), https://nypost.com/2020/07/02/bill-de-blasios-blatant-anti-religious-discrimination/.

New York public education authorities have been accused of discrimination against Orthodox Jewish religious schools. The schools allege that the authorities have shown consistent hostility and bias in the enforcement of requirements that private schools provide education that is a "substantial equivalent" of that received in public schools. The complaints include interference with the schools' hiring of staff, selection of instructional materials, and even the language in which instruction is given. Luke Tress, *4 Brooklyn Yeshivas File Federal Complaint Against New York State*, The Times of Israel (Jan. 13, 2025), https://www.timesofisrael.com/liveblog_entry/4-brooklyn-yeshivas-file-federal-complaint-against-new-york-state-civil-rights-office/.

Those challenged regulations are couched in neutral terms but actually grant broad subjective discretion to state officials to pass judgment on matters that should rightly fall within the church autonomy doctrine, particularly the content of instruction and the hiring

of teachers. This raises significant dangers of discriminatory enforcement and violations of church autonomy. New York courts have already rejected an earlier challenge to the regulations, which was based in part on the church autonomy doctrine. *Parents for Educ. & Religious Liberty in Sch. v. Young*, 79 Misc. 3d 454 (N.Y. Sup. Ct. 2023), *aff'd as modified*, 230 A.D.3d 83 (1st Dept. 2024). It is likely that there will continue to be conflicts between the independence of religious schools and government regulators.

New York has attempted to deny the rights of religious organizations to engage in important activities such as placing children for adoption, because the organizations decline to take actions contrary to their faith. *New Hope Fam. Servs., Inc. v. Poole*, 966 F.3d 145 (2d Cir. 2020). Bills have also been introduced that would require private schools to violate their faith by recognizing gender identity, A.1829-A/S03180-A (2023-24 N.Y. Leg. Sess.), and to stigmatize hospitals that decline to cooperate in abortion. A.1165/S.2165 (2025-26 N.Y. Leg. Sess.). Although religious institutions are not specifically mentioned in these purportedly neutral bills, there is no question that they are the primary targets that would be affected.

Governments like these cannot be trusted to respect church autonomy by applying flawed, subjective, and discretionary neutral legal principles that have no clear standards or well-defined limits.

CONCLUSION

As this case and others demonstrate, government agencies and courts continue to overreach their proper boundaries and interfere in the internal affairs of religious organizations. They do this by purporting to rely on the inherently subjective neutral legal principles exception. This invites and facilitates unconstitutional government entanglement with religion and impermissible favoritism or discrimination.

This Court should now end this confusion and abuse and define clear standards for the application of the church autonomy doctrine and the neutral principles exception.

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