

No. 24-530

---

---

IN THE  
**Supreme Court of the United States**

BETHESDA UNIVERSITY, ET AL.,

*Petitioners,*

v.

SEUNGJE CHO, ET AL.,

*Respondents.*

On Petition for a Writ of Certiorari to  
the Court of Appeal of the State of California,  
Fourth Appellate District, Division Three

**BRIEF OF *AMICI CURIAE*  
RELIGIOUS COLLEGES AND UNIVERSITIES  
IN SUPPORT OF PETITIONER**

BRIAN P. MORRISSEY\*  
DINO L. LAVERGHETTA  
MACKENZI J.S. EHRETT  
LEVI BROWN†  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
bmorriss@sidley.com

ROBERT C. UHL  
SIDLEY AUSTIN LLP  
2021 McKinney Ave  
Dallas, TX 75201

BRIAN M. TRUJILLO  
SIDLEY AUSTIN LLP  
1001 Brickell Bay Drive  
Miami, FL 33131

*Attorneys for Amici Curiae*

December 12, 2024

\* Counsel of Record

---

---

† Admitted only in Arkansas and practicing law  
under the supervision of members of the D.C. Bar.

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iv
INTEREST OF AMICI .....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	6
I. THE FIRST AMENDMENT BARS COURTS FROM ENTANGLING THEMSELVES IN THE DOCTRINAL DISPUTES OF ALL RELIGIOUS GROUPS .....	6
A. The prohibition against judicial involvement in doctrinal disputes extends to <i>all</i> religious organizations .....	6
B. Limiting the Protections of the Religion Clauses to Churches and Church-Run Entities Would be Unworkable and Lead to Absurd Results.....	13
C. The California court’s decision was wrong and merits this Court’s Correction .....	15
II. PRESERVING RELIGIOUS COLLEGES’ AND UNIVERSITIES’ FIRST AMENDMENT ABILITY TO SET DOCTRINAL REQUIREMENTS FOR THEIR LEADERSHIP IS ESSENTIAL TO THE SURVIVAL OF RELIGIOUS HIGHER EDUCATION.....	18
CONCLUSION .....	24

## TABLE OF AUTHORITIES

CASES	Page
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014) .....	4, 12
<i>Carson v. Makin</i> , 596 U.S. 767 (2022) .....	15
<i>Church of God in Christ, Inc. v. Graham</i> , 54 F.3d 522 (8th Cir. 1995).....	8
<i>Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter</i> , 492 U.S. 573 (1989) .....	14
<i>Dixon v. Edwards</i> , 290 F.3d 699 (4th Cir. 2002) .....	8
<i>Fleischfresser v. Directors of Sch. Dist. 200</i> , 15 F.3d 680 (7th Cir. 1994) .....	14
<i>Gordon College v. DeWeese-Boyd</i> , 142 S. Ct. 952 (2022) .....	16, 17
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. E.E.O.C.</i> , 565 U.S. 171 (2012).....	4, 9, 10, 11, 12, 13, 16

<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952) .....	4, 6, 7, 12, 13, 16
<i>Kennedy v. Bremerton Sch. Dist.</i> , 597 U.S. 507 (2022) .....	6
<i>Kreshik v. Saint Nicholas Cathedral</i> , 363 U.S. 190 (1960) .....	6
<i>Masterpiece Cakeshop v. Colorado Civil Rights Comm'n</i> , 584 U.S. 617 (2018) .....	12
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 591 U.S. 732 (2020) .....	4, 11, 12, 14, 8, 19, 21, 22
<i>Piletich v. Deretich</i> , 328 N.W.2d 696 (Minn. 1982) .....	8
<i>Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church</i> , 393 U.S. 440 (1969) .....	22
<i>Puri v. Khalsa</i> , 844 F.3d 1152 (9th Cir. 2017) .....	8
<i>Seattle's Union Gospel Mission v. Woods</i> , 142 S. Ct. 1094 (2022) .....	17
<i>Thomas v. Review Bd. of Ind. Employment Sec. Div.</i> , 450 U.S. 707 (1981) .....	14

<i>Town of Greece, N.Y. v. Galloway</i> , 572 U.S. 565 (2014) .....	14
<i>Trustees of New Life in Christ Church v. City of Fredericksburg, Virginia</i> , 142 S. Ct. 678 (2022) .....	17, 18

## OTHER AUTHORITIES

Thomas C. Berg, Kimberlee Wood Colby, Carl H. Esbeck, and Richard W. Garnett, <i>Religious Freedom, Church–State Separation, and the Ministerial Exception</i> , 106 NW. U. L. Rev. Colloquy 175 (2011) .....	10
Arizona Christian University, <i>Core Commitments</i> , <a href="https://www.arizonachristian.edu/about/mission/">https://www.arizonachristian.edu/about/mission/</a> .....	22
Arizona Christian University, <i>Statement of Faith</i> , <a href="https://bit.ly/3VCElAx">https://bit.ly/3VCElAx</a> .....	21
Houston Christian University, <i>Statement of Mission and Vision</i> , <a href="https://bit.ly/4iAkrA0">https://bit.ly/4iAkrA0</a> .....	21
Anayat Durrani, <i>U.S. Colleges with Religious Affiliations: What Students Should Know</i> , U.S. News & World Report (May 8, 2024), <a href="http://bit.ly/4g4RZUP">http://bit.ly/4g4RZUP</a> .....	19

Nathan Finn, <i>Can Christian Colleges Make the Grade?</i> Christianity Today (March 2024), <a href="https://bit.ly/3OoVvhh">https://bit.ly/3OoVvhh</a> .....	19
Patrick Henry College <i>Statement of Biblical Worldview</i> , <a href="http://www.phc.edu/statement-of-biblical-worldview">www.phc.edu/statement-of-biblical-worldview</a> .....	21
Patrick Henry College <i>Statement of Faith</i> , <a href="https://www.phc.edu/statement-of-faith">https://www.phc.edu/statement-of-faith</a> .....	21
Kelly Kopic, <i>Why We Still Need Christian Colleges</i> , Christianity Today (Oct. 2019), <a href="https://bit.ly/4g7YS8a">https://bit.ly/4g7YS8a</a> .....	20
Nic Querolo, <i>et al.</i> , <i>Notre Dame's Tiny Namesake Shows Plight of Religious Colleges</i> , Bloomberg (Feb. 21, 2024), <a href="https://www.bloomberg.com/news/articles/2024-02-21/notre-dame-s-tiny-namesake-shows-plight-of-religious-colleges">https://www.bloomberg.com/news/articles/2024-02-21/notre-dame-s-tiny-namesake-shows-plight-of-religious-colleges</a> .....	23
P. Jesse Rine, <i>Institutional Culture and Personal Formation: The Christian College Difference</i> , 23 J. Christian Higher Ed. 427 (2024) .....	20
David Rosowski, <i>The Cliffs of Higher Ed: Who's Going Over and Why?</i> Forbes (Feb. 3, 2024), <a href="https://bit.ly/3Opa98f">https://bit.ly/3Opa98f</a> .....	19

*Colleges Set to Fight for Fewer Students*,  
U.S. News & World Report (Sept. 10,  
2018), <https://bit.ly/3Zkcvdk> ..... 19

Sara Weissman, *Religious Colleges That  
Lean Into Their Identity Make Gains*,  
Inside Higher Ed (Nov. 19, 2024),  
<https://bit.ly/3ZszODm> ..... 20, 21



**INTEREST OF *AMICI***<sup>1</sup>

Patrick Henry College (“PHC”) is a private Protestant Christian college located in Purcellville, Virginia. The School’s mission is to prepare Christian men and women to lead the nation and shape the culture with biblical values and fidelity to the spirit of the American founding. PHC Trustees, Administrators, and Faculty must all attest to both the School’s Statement of Biblical Worldview and its Statement of Faith, the latter of which is also affirmed by all PHC students. Founded in 2000, PHC already has over 1,200 graduates, including an incoming Member of Congress, a Senate-confirmed appointee, six Supreme Court clerks, dozens of federal, state, and local government staff, members of the Armed Forces, ministers, educators, authors, lawyers, filmmakers, homemakers, and hundreds of others who live out the mission of the College in their daily lives as they carry out their lives in faithful service to Biblical principles.

Houston Christian University (“HCU”) is a Texas nonprofit corporation located in Houston, Texas. As a Christian institution of higher education, HCU is driven by its mission of affirmatively enriching the lives of all people who may come within its ambit of influence. HCU’s Christian faith permeates everything it does. It hires only faculty and staff who

---

<sup>1</sup> Counsel provided notice to all parties at least 10 days prior to the due date. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

share this faith. While it admits students of all faiths or none, HCU asks its students to live according to a set of Christian principles while enrolled.

Arizona Christian University (“ACU”) is a regionally accredited, private, non-profit Christian liberal arts university in Glendale, Arizona. Originally founded in 1960, ACU’s mission is to provide a biblically-integrated, liberal arts education that equips graduates to serve the Lord Jesus Christ in all aspects of life, as leaders of influence and excellence. ACU is the only accredited, evangelical Christian university or college in Arizona where all trustees, administrators, faculty, staff and students declare they are followers of Jesus Christ. Students affirm their faith in Christ by way of a signed attestation to the School’s Statement of Faith, and all Trustees, Administrators, Faculty, and Staff sign both the Statement of Faith and ACU’s conservative Core Commitments. The School is committed to preparing students to be leaders of influence in their community, state, nation and world—through the church, the family, business, government, education, health care, media, the arts and every area of society.

Liberty University (“Liberty”) is a distinctively Christian institution of higher learning in Lynchburg, Virginia and one of the Nation’s largest private, non-profit universities. Liberty maintains the vision of its pastor-founder, Dr. Jerry Falwell, by developing Christ-centered men and women with the values, knowledge, and skills essential to impact the world. Its governing documents specify that (1) its Board of Trustees is organized as a Christian body governed by

the Christian tenants described in its board-approved Doctrinal Position Statement; (2) each board member subscribes to the Christian mission and the tenants of the Christian faith reflected in the Holy Scriptures and the Doctrinal Statement; (3) failure to live consistently with the Doctrinal Statement or support that mission is cause for removal from the board; and (4) all the university's functions, operations and actions are consistent with the Doctrinal Statement. Liberty's residential and online curricula offer over 700 unique programs and enroll over 140,000 students.

Regent University ("Regent") is a fully accredited Christian non-profit institution of higher education. Regent's mission, to serve as a leading center of Christian thought and action by providing an excellent education from a Biblical perspective and global context to equip Christian leaders to change the world, has always been fundamental to its existence. Every class at Regent is taught from a Biblical perspective and Christian worldview. All Regent employees, from the President and Trustees, to the groundskeepers and custodial staff, must be Christian and affirm in writing their agreement with the University's Statement of Faith.

Brigham Young University ("BYU") is a religious institution of higher education in Provo, Utah, with more than 34,000 daytime students. BYU was founded and is guided and supported by The Church of Jesus Christ of Latter-day Saints. BYU's mission is to assist individuals in their quest for perfection and eternal life. The common purpose of all education at BYU is to

build testimonies of the restored gospel of Jesus Christ, in an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God.

This case interests *amici* because of their direct experience with and concern about judicial interference with the private, faith-based leadership decisions of religiously-affiliated universities.

### INTRODUCTION AND SUMMARY OF ARGUMENT

The First Amendment guarantees that religious organizations are free to carry out their faith missions without government oversight or interference. In an unbroken line of cases stretching back to the 1800s, this Court has recognized religious organizations' authority to decide for themselves matters of both faith and doctrine, including the selection of those who will minister in support of the group's religious beliefs. See, e.g., *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188 (2012); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (citing *Watson v. Jones*, 80 U.S. 679 (1871)).

This Court recognizes that the “text of the First Amendment . . . gives special solicitude to the rights of religious organizations,” and allows them to operate consistently with their religious principles. *Hosanna-Tabor*, 565 U.S. at 189; see also *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 713 (2014). Almost all of the Court's decisions in

this arena have come in cases where the religious organizations at issue were either hierarchical Churches or Church-run entities. However, nothing in the Religion Clauses or this Court's precedent suggests that those protections are limited to such institutions. To the contrary, these First Amendment protections apply to all religious organizations *writ large*.

By definition, all religious organizations—including private religious colleges and universities such as *amici*—are guided by their faith and mission. Such institutions are entitled to govern themselves in accordance with their religious principles without interference from the government. There is no basis to conclude that any category of religious organization is more or less deserving of protection. The First Amendment makes no such distinction. To hold otherwise would unjustifiably cabin the Religion Clauses and require judges to make ecclesiastical value judgments that this Court has long held impermissible.

It is particularly important to *amici* that this Court acknowledge that religious colleges and universities have autonomy to adopt and apply faith-based criteria for leadership without government interference. For *amici*, maintaining an explicitly religious identity is mission-critical to their desire to provide a faith-based education to college students.

**ARGUMENT****I. THE FIRST AMENDMENT BARS COURTS FROM ENTANGLING THEMSELVES IN THE DOCTRINAL DISPUTES OF RELIGIOUS GROUPS.****A. The prohibition against judicial involvement in doctrinal disputes extends to religious colleges and universities.**

The “most important work” of the Free Exercise Clause is “protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life[.]” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). In cases stretching back to the 1800s, this Court has acknowledged that the First Amendment “radiates . . . a spirit of freedom for religious organizations,” giving them “power to decide for themselves, free from state interference, matters of . . . faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (citing *Watson v. Jones*, 80 U.S. 679 (1871)). This means that no branch of government—not the legislature, not the executive, and not the courts—may tell religious organizations how to execute their religious missions. *Id.*; see also *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curium).

In *Kedroff*, the Court was asked to adjudicate a property dispute between two branches of the Russian Orthodox Church, one of which was based in the United States, the other based in Russia. 344 U.S. at

95–97. The dispute concerned which branch of the Church was permitted to use the St. Nicholas Cathedral in New York City as their primary place of worship and as a residence for its archbishop. *Id.* at 96. The New York legislature enacted legislation which purported to transfer the St. Nicholas Cathedral from the Russian Orthodox Church to the Russian Church in America. *Id.* at 107. This, the Court held, violated the First Amendment because it represented improper state “control over churches.” *Id.* at 110. Occupancy of the St. Nicholas Cathedral was, the Court held, “strictly a matter of ecclesiastical government[.]” *Id.* at 115. Thus, as with other disputes following “from decisions of the church custom or law on ecclesiastical issues, the church rule controls.” *Id.* at 120–21. In so holding, the Court acknowledged that the First Amendment embodies “a spirit of freedom for *religious organizations*,” which extends to questions of faith and doctrine. *Id.* at 116 (emphasis added).

The Court reaffirmed this core principle in *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, where it explicitly granted certiorari to correct a state court’s “improper judicial interference” in a church’s internal decisions. 426 U.S. 696, 698 (1976). There, a state court waded into a dispute between the Serbian Orthodox Church in North America and a former bishop, whom the Church had defrocked. *Id.* at 698, 702–08. The state court questioned and attempted to invalidate the Church’s internal regulations. *Id.* at 698. This Court promptly reversed the state court’s clear legal error, chastising the state court for “unconstitutionally undertak[ing] the resolution of

quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Id.* at 720.

Lower courts have struggled to parse the conditions under which the rule against judicial review of a church’s decisions apply.<sup>2</sup> Much of the debate centered on the authoritarian structure of the church at issue, and whether it was hierarchical (meaning that abstention applies), or non-hierarchical (abstention does not apply). As a result, in many jurisdictions, whether a court abstains from reviewing a church’s internal decisions hinges upon whether the church structure is hierarchical or not. *See Dixon v. Edwards*, 290 F.3d 699, 716–17 (4th Cir. 2002) (declining to opine on a decision by an Episcopalian bishop “[b]ecause the Episcopal Church is hierarchical” and the bishop was “the highest ecclesiastical tribunal of the Church for the purposes of this dispute.”); *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 527 (8th Cir. 1995) (finding that ecclesiastical abstention did not apply because the church at issue was a non-hierarchical church); *Piletich v. Deretich*, 328 N.W.2d 696, 700 (Minn. 1982) (declining to apply the

---

<sup>2</sup> This rule is sometimes discussed in terms of an “ecclesiastical abstention doctrine.” *See, e.g., Puri v. Khalsa*, 844 F.3d 1152, 1162 (9th Cir. 2017) (“Under [the] doctrine of ecclesiastical abstention, ‘a State may adopt *any* one of various approaches for settling church ... disputes so long as it involves no consideration of doctrinal matters.’” (quoting *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (internal alteration and quotation original))).



abstention doctrine upon finding that a church was not hierarchical).

But there is no basis for conditioning the First Amendment’s applicability on a religious institution’s authoritarian structure. Rather, as this Court’s more recent opinions have made clear, the First Amendment guarantees “religious groups”—not only hierarchical churches—the autonomy to “shape [their] own faith and mission” including through their selection of those who will minister in support of the group’s religious beliefs.<sup>3</sup> *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188 (2012) (emphasis added). Secular authorities are not competent to resolve a religious group’s disputes over which person(s) within the group are involved in shaping the group’s faith and mission, or how they may go about that work. Accordingly, courts—like all government actors—should abstain from interfering.

*Hosanna-Tabor* arose in the context of litigation involving a Church-operated school, but it should not be read to hold that First Amendment protection is

---

<sup>3</sup> The Court couched this holding in the language of a “ministerial exception.” *Hosanna-Tabor*, 565 U.S. at 188. That doctrine is inaptly named and risks an overly narrow understanding of who qualifies as a “minister” for First Amendment purposes. Justices Thomas, Alito and Kagan have all construed the so-called “ministerial exception” as broadly applicable to *all* employees of any religious organization. See *Hosanna-Tabor*, 565 U.S. at 711 (Thomas, J., concurring); *id.* at 712 (Alito, J. and Kagan, J., concurring) (applying the ministerial exception to “*any* ‘employee’ who *leads a religious organization*, . . . or serves as a messenger or teacher of its faith.”) (emphases added).

limited to Churches or Church-run religious organizations. To the contrary, the Court looked to the First Amendment’s “special solicitude to the rights of religious organizations” to reach its conclusion. *Hosanna-Tabor*, 565 U.S. at 189. Notably, the Court did not rely on either the Church-run nature of the school or the hierarchical nature of the Church running the school as essential to its holding. Instead, the decision is framed around “religious groups,” *writ large*, and rejects out of hand “the remarkable view that the Religion Clauses<sup>4</sup> have nothing to say about a *religious organization’s* freedom to select its own ministers.” *Id.* at 189 (emphasis added).

The concurring opinions further demonstrate why these First Amendment protections cannot be cabined to churches and church-run entities alone. Justice Thomas acknowledged the tapestry of faith traditions that make up “[o]ur country’s religious landscape” include “organizations with different leadership

---

<sup>4</sup> The “Religion Clauses” refers to both the Free Exercise and Establishment Clauses—from which the principles of religious-group autonomy and independence originate. See Thomas C. Berg, Kimberlee Wood Colby, Carl H. Esbeck, and Richard W. Garnett, *Religious Freedom, Church–State Separation, and the Ministerial Exception*, 106 NW. U. L. Rev. Colloquy 175, 178 (2011) (“Both Religion Clauses of the First Amendment, the Establishment Clause, and Free Exercise Clause, protect this autonomy. In this context, the two clauses overlap and reinforce each other. The Court typically categorizes religion cases under one or the other of the two clauses, but in limiting government intervention into internal church disputes, the Court has frequently relied simply on the ‘First Amendment’ or ‘the Religion Clauses.’” (collecting cases)).

structures and doctrines that influence their conceptions of ministerial status.” *Id.* at 197 (Thomas, J., concurring). That is why, of necessity, “the Religion Clauses guarantee religious organizations autonomy in matters of internal governance, including the selection of those who will minister the faith.” *Id.* at 196–97. Justices Alito and Kagan similarly noted that “[t]he Constitution leaves it to the collective conscience of each religious group to determine for itself who is qualified to serve as a teacher or messenger of its faith.” *Id.* at 202 (Alito & Kagan, J., concurring) (emphasis added). To conclude that the Religion Clauses apply *only* to Churches or Church-run institutions would dilute the First Amendment’s guarantees by unjustifiably limiting the protections of the Religion Clauses to a subset of faith institutions.

More recently, the Court reiterated that the First Amendment broadly “protect[s] the right of churches and other religious institutions to decide matters ‘of faith and doctrine’ without government intrusion.” *Our Lady of Guadalupe Sch., v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (quoting *Hosanna-Tabor*, 565 U.S. at 186) (emphasis added). While this case also arose in the context of Church-run schools, the relationship between the Church and the school was not critical to the ruling. *Id.* at 738, 743. Instead, the Court’s holding is, again, framed around “[t]he independence of religious institutions in matters of faith and doctrine” and recognizes “their autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Id.* at 746 (emphasis added). Thus, the “selection of the individuals who play certain key roles” within the

organization is a key part of furthering the religious institution's mission. *Id.* Of note, the Court's opinion is not limited to "key individuals" who serve the role of pastor or teacher in the faith. Rather, the Court leaves it to the religious institution to define (1) who its key individuals tasked with roles in furthering the mission are and (2) qualifications for its key individuals.

In sum, the principle that guarantees churches and church-run organizations the right to decide for themselves matters of "faith and doctrine" applies with equal force to religious organizations—such as religious colleges and universities—that are not formally controlled or operated by a church. *Hosanna-Tabor*, 565 U.S. at 200 (Alito J., concurring); *Kedroff*, 344 U.S. at 116. The Religion Clauses protect the rights of the faithful *writ large*. See, e.g., *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 584 U.S. 617, 639 (2018) (recognizing that Free Exercise protection extended to a for-profit bakery); see also *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 713 (2014). Nothing in the text or purpose of the First Amendment, nor this Court's precedents, supports finding that the prohibition on governmental interference in a religious organization's internal faith-based affairs applies only to churches.

The crux of this Court's precedent is that "religious bodies are free to govern themselves in accordance with their own beliefs" and are guaranteed "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor*,

565 U.S. at 199–200 (Alito & Kagan, J., concurring) (quoting *Kedroff*, 344 U.S. at 116). It matters not, therefore, whether that religious body is a “Church” or Church-run school, or whether it is an independent religious school (like *amici*). The First Amendment shields all such religious institutions from secular interference in the definition and execution of their faith and mission.

**B. Limiting the Protections of the Religion Clauses to Churches and Church-Run Entities Would be Unworkable and Lead to Absurd Results.**

Not only would cabining the abstention doctrine to churches be inconsistent with this First Amendment and this Court’s precedent, but it would also be unworkable and lead to absurd results.

*First*, such a holding would require courts to decide, in each case, what constitutes a “church” or a sufficiently “church-like” institution deserving of full protection under the First Amendment. That determination alone would cause courts to make ecclesiastical value judgments that the government is not permitted to make.

Mainstream religious institutions—churches, synagogues, temples, and mosques—may be easy calls. But, what about reading rooms (Christian Science) or auditing centers (Church of Scientology)? What specific characteristics must a faith-based institution bear to be sufficiently worthy of protection from government meddling? It is improper for courts to

engage in such inquiries. The scope of First Amendment protection “is not to turn upon a judicial perception of the particular belief or practice in question[.]” *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 714 (1981).

Given the breadth of religious traditions in America, the Court has warned that “attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.” *Our Lady of Guadalupe*, 591 U.S. at 753; *see also, e.g., Fleischfresser v. Directors of Sch. Dist. 200*, 15 F.3d 680, 690 (7th Cir. 1994) (Ripple, J., concurring) (“Indeed, it is usually adherents of . . . ‘non-mainstream’ religions who are in most need of the Amendment’s protection.”). It risks an improper display of favoritism to say that only religious organizations formally organized as churches or under church control are entitled to First Amendment protection. *Cf. Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 582 (2014) (“The First Amendment is not a majority rule, and government may not seek to define permissible categories of religious speech.”). Further, denying the protection of the Religion Clauses to religious organizations with religious beliefs outside of the mainstream would invite “disapproval towards citizens based on their personal religious choices[.]” *Cnty. of Allegheny v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573, 627 (1989) (O’Connor, J., concurring in part). As a practical matter, the “government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to non-adherents that

they are outsiders,” entitled to something less than the full range of protections secured by the First Amendment. *Id.* It is, thus, impractical to read the First Amendment narrowly to exclude non-church religious institutions from its protections.

**Second**, and relatedly, cabinining the abstention doctrine to churches and church-run entities would lead to unjustifiable results. It would lead to a situation where two schools, identical in faith and mission, but where one is organized as a church-subsidiary and the other as an independent religious school, receive different treatment from the courts. Courts would abstain from interfering with the church-run school and allow it to advance its religious mission as it sees fit, but would be free to interfere with the affairs of the independent religious school—even if they adopted identical internal decisions. Such an outcome would necessarily “raise serious concerns about state entanglement with religion and denominational favoritism.” *Carson v. Makin*, 596 U.S. 767, 787 (2022).

**C. The California court’s decision was wrong and merits this Court’s reversal.**

Time and again, this Court has held that the First Amendment bars courts from involvement in religious disputes. As discussed in sections I.A. and B, *supra*, that prohibition must equally apply to religious colleges and universities, regardless of whether they are formally affiliated with a church. The court below impermissibly meddled in Bethesda University’s religious affairs when it decided that, notwithstanding

the school's requirement that its directors adhere to an "Evangelical and Charismatic understanding and style of life," Pet. App. 45a, the school's bylaws allowed "a Protestant minister, or someone not of the Pentecostal faith" to serve on the Board. *Id.* 14a. But the court could not have determined that Protestants—but not Catholics, Jews, Muslims, Buddhists, or Wiccans—qualified as "Evangelical and Charismatic" without impermissibly entangling itself in questions of the school's faith, doctrine, and mission. *Hosanna-Tabor*, 565 U.S. at 188; *Kedroff*, 344 U.S. at 116.

This case is an ideal vehicle for the Court to resolve any doubts that the abstention doctrine applies to *all* religious organizations, not just traditional churches with hierarchical structures. In recent years, a majority of Justices have recognized the need for the Court to explicitly confirm that First Amendment protections necessarily flow to all religious organizations, not just churches. For example, four Justices called for the Court to clarify the extent to which the Religion Clauses' protections apply to professors at a private religious college. *Gordon College v. DeWeese-Boyd*, 142 S. Ct. 952, 952 (2022) (statement of Alito, J., regarding denial of certiorari). In that case, a state court adopted a "troubling and narrow view of religious education" when it determined that Free Exercise principles did not apply to a professor at a Christian college who did not teach "religion, the Bible, or religious doctrine." *Id.* at 954 (internal citation omitted). This was problematic because religious education "includes much more than instruction in explicitly religious doctrine or theology."



*Id.* at 954. The case’s procedural posture would have made it difficult to review, and the Court declined to grant certiorari, but the four Justices laid a marker: “[I]n an appropriate future case, this Court may be required to resolve this important question of religious liberty.” *Id.* at 952.

In another case, Justices Alito and Thomas concurred in the denial of certiorari for procedural reasons but stated that “the day may soon come when we must decide whether the autonomy guaranteed by the First Amendment protects religious organizations’ freedom to hire co-religionists without state or judicial interference.” *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (statement of Alito, J., respecting denial of certiorari). In that context, they recognized that the Free Exercise guarantee extends not only to Churches, but also to “religious schools, and religious organizations engaged in charitable practices” such as “homeless shelters, hospitals, soup kitchens, and religious legal-aid clinics . . . among many others.” To allow the government to interfere in such organizations’ internal religious affairs would “would undermine not only the autonomy of many religious organizations but also their continued viability.” *Id.*

In a different but related context, Justice Gorsuch noted that all “religious persons” are entitled to “decide for themselves, free from state interference, matters of . . . faith and doctrine.” *Trustees of New Life in Christ Church v. City of Fredericksburg, Virginia*, 142 S. Ct. 678, 679 (2022) (Gorsuch, J., dissenting from the denial of certiorari). Justice Gorsuch emphasized

that the Court's precedent holds that "[a]bsent proof of insincerity or fraud, a church's decisions 'on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive.'" *Id.* (quoting *Serbian Eastern Orthodox*, 426 U.S. at 729).

In short, members of this Court have repeatedly signaled that, given an appropriate vehicle, the Court should consider explicitly affirming that the protections of the Religion Clauses apply broadly to all religious organizations. This Petition provides such an opportunity.

## **II. PRESERVING RELIGIOUS COLLEGES' AND UNIVERSITIES' FIRST AMENDMENT ABILITY TO SET DOCTRINAL REQUIREMENTS FOR THEIR LEADERSHIP IS ESSENTIAL TO THE SURVIVAL OF RELIGIOUS HIGHER EDUCATION.**

"Religious education is vital to many faiths practiced in the United States." *Our Lady of Guadalupe*, 591 U.S. at 754. Indeed, "religious education and formation of students is the very reason for the existence of most private religious schools." *Id.* at 738. But the mission of "educating young people in their faith, inculcating its teachings, and training them to live their faith" does not end with religious primary and secondary schools. *Id.* at 753–54. In many cases, the calling continues into the young adult years and is carried out by private religious colleges and

universities, which provide faith-based education and instruction. Of the nearly 4,000 degree-granting institutions in the United States, 849 (over 1-in-5) are religiously affiliated. Anayat Durrani, *U.S. Colleges with Religious Affiliations: What Students Should Know*, U.S. News & World Report (May 8, 2024), <http://bit.ly/4g4RZUP>. Of those religious colleges and universities, approximately 230 (or 27%) are explicitly Catholic, *id.*, while another 200 (nearly 25%) are evangelical. Nathan Finn, *Can Christian Colleges Make the Grade?* Christianity Today (March 2024), <https://bit.ly/3OoVvhh>. These religious schools, including *amici*, are part of the long-standing American tradition of “religious institutions” whose central purpose is “educating the young in the faith.” *Our Lady of Guadalupe*, 591 U.S. at 756.

Higher education enrollment has experienced a significant decline in recent years. *See Colleges Set to Fight for Fewer Students*, U.S. News & World Report (Sept. 10, 2018), <https://bit.ly/3Zkcvdk> (describing a looming “enrollment cliff”—a 15% decrease in college-going students between the years 2025 and 2029, with continued marginal decline thereafter). Conventional wisdom is that small, private colleges (such as *amici*) will be hardest hit and, because of low enrollment, be forced to close. *See* David Rosowski, *The Cliffs of Higher Ed: Who’s Going Over and Why?* Forbes (Feb. 3, 2024), <https://bit.ly/3Opa98f>. However, to multiple commentators’ surprise, many religious colleges and universities (usually small, always private) are bucking this narrative. Instead, researchers have found that at religious schools, many of which adhere to strict faith-based principles and teaching,

enrollment is booming. See Sara Weissman, *Religious Colleges that Lean Into Their Identity Make Gains*, Inside Higher Ed (Nov. 19, 2024), <https://bit.ly/3ZszODm>. In other words, students want what religious colleges and universities offer—a faith-based approach to higher education, free from governmental interference.

The distinctly religious nature of small religious colleges—such as *amici*—is their lifeline. “It is widely acknowledged that Christian colleges and universities are distinct from other institutions of higher education due to their explicit commitment to spiritual and religious formation.” P. Jesse Rine, *Institutional Culture and Personal Formation: The Christian College Difference*, 23 J. Christian Higher Ed. 427, 427 (2024). For these schools, theology is not just a required class in a degree program, it is “a central guiding principle that permeates the entire enterprise.” *Id.* Religious colleges provide their students something that cannot be found anywhere else: a “broad, sustained, relationally based conversation led by trusted scholars about who God is, who we are, and how to live faithfully in this world.” Kelly Kapic, *Why We Still Need Christian Colleges*, Christianity Today (Oct. 2019), <https://bit.ly/4g7YS8a>. School faculty, staff, and administrators engaged in this conversation are living out their faith day-in and day-out as they “engage[] the student’s vision for every hour of the day—not just Sundays.”<sup>5</sup> *Id.* Religious

---

<sup>5</sup> Or Saturdays, as the case may be. See *Our Lady of Guadalupe*, 591 U.S. at 755–56 (surveying the history of religious schooling in

schools recognize that their students want “a community of living examples of Christians who are both intellectually engaged and deeply faithful to the gospel,” which is challenging to find at a secular institution. *Id.* Schools that can “doubl[e] down on their Christian mission are doing well.” Weissman, *supra*.

The California court’s ruling threatens to undermine *amici*’s ability to offer—and students’ ability to receive—a scholastic experience steeped in religious teachings and tradition. It is commonplace for religious schools—*amici* included—to adopt a statement of faith, which trustees, administrators, faculty and, in some cases, students, must to affirm as part of their continued involvement with the school. *See, e.g.*, Patrick Henry College, *Statement of Faith*, <https://www.phc.edu/statement-of-faith>; Houston Christian University, *Statement of Mission and Vision*, <https://bit.ly/4iAkrA0>; Arizona Christian University, *Statement of Faith*, <https://bit.ly/3VCElAx>. In some cases, schools adopt additional religious statements, which all members of school leadership must affirm. *See, e.g.*, Patrick Henry College, *Statement of Biblical Worldview*, [www.phc.edu/statement-of-biblical-worldview](http://www.phc.edu/statement-of-biblical-worldview); Arizona Christian University, *Core Commitments*, <https://www.arizonachristian.edu/about/mission/>. These religious statements, and others like them, are, like the creeds of the Christian Church, doctrinal

---

America as applied to Catholic, Protestant, Jewish, Islamic, Latter-day Saint, and Seventh-Day Adventist faith traditions).

statements of theology. Courts have no more business adjudicating who may be in (or out) of a religious school's leadership and employ on the basis of their adherence to a school's statement of faith than they do prescribing what doctrines may be in (or out) of a Church creed. *See Our Lady of Guadalupe*, 591 U.S. at 763 (Thomas, J., concurring); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969) (civil courts may not resolve “underlying controversies over religious doctrine”); Memorial and Remonstrance Against Religious Assessments, in *Selected Writings of James Madison* 21, 24 (R. Ketcham ed. 2006) (the idea that a “Civil Magistrate is a competent Judge of Religious truth” is “an arrogant pretension” that has been “falsified”).

This Court could not have been more clear: It is “obvious” that state interference in the right of a “religious institution[] to decide matters of faith and doctrine” violates their free exercise of religion. *Our Lady of Guadalupe*, 591 U.S. at 746. Religious institutions—including religious colleges and universities—are constitutionally entitled to exercise “autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Id.* On a practical level, it is also essential to the school’s continued existence, because “the real divide between success and failure in [Christian higher education] is the extent to which a school presents a clear Christian identity.” *See Nic Querolo et al., Notre Dame’s Tiny Namesake Shows Plight of Religious Colleges*, Bloomberg (Feb. 21, 2024), <https://www.bloomberg.com/news/articles/2024-02->

21/notre-dame-s-tiny-namesake-shows-plight-of-religious-colleges.

\* \* \* \* \*

In *amici's* experience, the cultivation of a Christian identity is not organic. It is a conscientious and deliberate top-down effort that starts with the school's board of trustees, the trustees' selection of the school's leadership, and the leadership's hiring of faculty. For religious higher education to survive, it is critical that religious colleges and universities set the religious and doctrinal requirements for their leaders, without subjecting themselves to second-guessing by the courts. Unless corrected by this Court, the California court's ruling strikes at the heart of the First Amendment protections that allow religious higher education to continue to thrive.

**CONCLUSION**

The Court should grant the petition and clarify that the First Amendment extends to *all* religious institutions and includes the autonomy to adopt and enforce faith-based criteria in selecting their own leadership.

Respectfully submitted,

BRIAN P. MORRISSEY\*  
DINO L. LAVERGHETTA  
MACKENZI J.S. EHRETT  
LEVI BROWN  
SIDLEY AUSTIN LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000  
bmorriss@sidley.com

ROBERT C. UHL  
SIDLEY AUSTIN LLP  
2021 McKinney Ave  
Dallas, TX 75201

BRIAN M. TRUJILLO  
SIDLEY AUSTIN LLP  
1001 Brickell Bay Drive  
Miami, FL 33131

*Attorneys for Amici Curiae*

December 12, 2024

\* Counsel of Record