

---

IN THE SUPREME COURT OF INDIANA

STATE OF INDIANA on the relation of )  
ROMAN CATHOLIC ARCHDIOCESE )  
OF INDIANAPOLIS, INC., )  
 ) Original Action from the  
Relator, ) Marion County Superior  
 ) Court  
v. )  
 ) Lower Court Cause No.  
THE MARION COUNTY SUPERIOR ) 49D01-1907-PL-27728  
COURT and THE HONORABLE )  
STEPHEN R. HEIMANN, as Special )  
Judge thereof, )  
 )  
Respondents. )

---

AMENDED BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE*  
SUPPORTING RELATOR AND URGING ISSUANCE OF WRITS  
OF MANDAMUS AND PROHIBITION ORDERING DISMISSAL

---

JOSH J. MINKLER (#18483-49)  
United States Attorney  
United States Attorney's Office  
Southern District of Indiana  
10 W. Market St., Suite 2100  
Indianapolis, IN 46204  
(317) 226-6333  
[Josh.Minkler@usdoj.gov](mailto:Josh.Minkler@usdoj.gov)

ERIC S. DREIBAND\*  
Assistant Attorney General  
  
ALEXANDER V. MAUGERI\*  
Deputy Assistant Attorney General  
  
THOMAS E. CHANDLER\*  
Attorney  
Civil Rights Division  
Appellate Section  
Ben Franklin Station  
P.O. Box 14403  
Washington, D.C. 20044-4403  
(202) 307-3192  
*Attorneys for The United States*

\**Pro hac vice* admission pending

---

# TABLE OF CONTENTS

|   | PAGE |
|---|------|
| INTEREST OF THE UNITED STATES .....   | 1    |
| STATEMENT OF THE ISSUES.....  | 2    |
| STATEMENT OF THE CASE.....  | 2    |
| SUMMARY OF ARGUMENT .....   | 10   |
| ARGUMENT  |      |
| I THE FIRST AMENDMENT RIGHT OF EXPRESSIVE ASSOCIATION PROTECTS THE ARCHDIOCESE’S DETERMINATION THAT CATHEDRAL MAY NOT SIMULTANEOUSLY EMPLOY PAYNE-ELLIOTT AND IDENTIFY AS CATHOLIC .....  | 12   |
| A. <i>The First Amendment Right Of Expressive Association Protects A Group’s Freedom Not To Associate With Individuals Or Entities Who Would Significantly Affect Its Ability To Advocate Its Viewpoints .....</i>  | 12   |
| B. <i>The Forced Inclusion Of Cathedral Within The Archdiocese’s Associational Umbrella While Cathedral Continued To Employ Payne-Elliott Would Significantly Affect The Archdiocese’s Ability To Advocate Its Public Viewpoints Regarding Marriage .....</i> | 14   |
| II THE CHURCH-AUTONOMY DOCTRINE PROHIBITS JUDICIAL INQUIRY INTO THE ARCHDIOCESE’S RELIGIOUS DIRECTIVE TO CATHEDRAL TO TERMINATE PAYNE-ELLIOTT’S EMPLOYMENT OR DISASSOCIATE FROM THE CATHOLIC CHURCH .....   | 17   |

| <b>TABLE OF CONTENTS (continued):</b>  | <b>PAGE</b> |
|--|-------------|
| A. <i>The Church-Autonomy Doctrine Prohibits Judicial Scrutiny Of A Religious Organization’s Governance And Operation Where Such Review Requires Inquiry Into Religious Doctrine .....</i>   | 17          |
| B. <i>The Archdiocese’s Faith-Based Determination That Cathedral May Not Employ Payne-Elliott Consistent With Catholic Doctrine Is Not Reviewable .....</i>  | 20          |
| III THE “MINISTERIAL EXCEPTION” PROHIBITS JUDICIAL SCRUTINY OF THE ARCHDIOCESE’S DIRECTIVE TO CATHEDRAL TO TERMINATE PAYNE-ELLIOTT’S EMPLOYMENT .....  | 23          |
| A. <i>The Ministerial Exception Insulates From Legal Liability A Religious Organization’s Exercise Of Its Right To Select Employees Who Perform An Important Religious Function .....</i>  | 23          |
| B. <i>The Ministerial Exception Component Of The Free Exercise Clause Of The First Amendment Protects The Archdiocese’s Right To Direct Cathedral To Terminate Payne-Elliott’s Employment Because His Position Was A Vital Part Of Carrying Out The Church’s Religious Mission .....</i> | 26          |
| CONCLUSION .....   | 35          |
| CERTIFICATE OF SERVICE   |             |

## TABLE OF AUTHORITIES

| <b>CASES:</b>   | <b>PAGE</b> |
|---|-------------|
| <i>Boy Scouts of Am. v. Dale</i> , 530 U.S. 640 (2000) .....  | 13-17       |
| <i>Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.</i> ,<br>714 N.E.2d 253 (Ind. Ct. App. 1999) .....                            | 19          |
| <i>Child Evangelism Fellowship of Md., Inc. v.</i><br><i>Montgomery Cnty. Pub. Sch.</i> , 373 F.3d 589 (4th Cir. 2004).....     | 1           |
| <i>Christian Legal Soc’y v. Walker</i> , 453 F.3d 853 (7th Cir. 2006) .....   | 16          |
| <i>Demkovich v. St. Andrew the Apostle Parish, Calumet City</i> ,<br>No. 19-2142, 2020 WL 5105147 (7th Cir. Aug. 21, 2020)..... | 31          |
| <i>Dietz v. Finlay Fine Jewelry Corp.</i> , 754 N.E.2d 958 (Ind. Ct. App. 2001) .....   | 20          |
| <i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. EEOC</i> ,<br>565 U.S. 171 (2012).....                               | 14, 23-24   |
| <i>Hurley v. Irish-Am. Gay, Lesbian &amp; Bisexual Grp.</i> ,<br>515 U.S. 557 (1995).....                                       | 13          |
| <i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> ,<br>344 U.S. 94 (1952).....                      | 18          |
| <i>Konkle v. Henson</i> , 672 N.E.2d 450 (Ind. Ct. App. 1996).....  | 19          |
| <i>Korte v. Sebelius</i> , 735 F.3d 654 (7th Cir. 2013),<br>cert. denied, 573 U.S. 958 (2014).....                              | 18          |
| <i>Lovell v. City of Griffin</i> , 303 U.S. 444 (1938) .....  | 12          |
| <i>Matthies v. First Presbyterian Church of Greensburg Ind. Inc.</i> ,<br>28 N.E.3d 1109 (Ind. Ct. App. 2015) .....             | 19, 21      |

| <b>CASES (continued):</b>   | <b>PAGE</b>   |
|---|---------------|
| <i>McEnroy v. St. Meinrad Sch. of Theology</i> ,<br>713 N.E.2d 334 (Ind. Ct. App. 1999),<br>cert. denied, 529 U.S. 1068 (2000)..... | 18            |
| <i>Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l<br/>Presbyterian Church</i> , 393 U.S. 440 (1969).....             | 34            |
| <i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976) .....  | 18, 21        |
| <i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> ,<br>140 S. Ct. 2049 (2020).....   | <i>passim</i> |
| <i>Roberts v. United States Jaycees</i> , 468 U.S. 609 (1984) .....   | 12-13         |
| <i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1871) .....  | 18            |
| <i>Winkler v. V.G. Reed &amp; Sons, Inc.</i> , 638 N.E.2d 1228 (Ind. 1994) .....  | 20            |
| <br><b>CONSTITUTION AND STATUTES:</b>   |               |
| U.S. Const. Amend. I .....  | 12, 17        |
| 28 U.S.C. 517 .....   | 1             |
| <br><b>RULES:</b>   |               |
| Indiana Rule of Appellate Procedure 41 .....  | 1             |
| Indiana Rule of Evidence 201(b) .....   | 22            |
| Indiana Rule of Trial Procedure 12(B)(1).....   | 6             |
| Indiana Rule of Trial Procedure 12(B)(6).....   | 6             |
| Indiana Rule of Trial Procedure 53.4(B) .....   | 8             |

**MISCELLANEOUS:**

**PAGE**

*Memorandum from the Attorney General re: Federal Law Protections for  
Religious Liberty* (Oct. 6, 2017),  
<https://www.justice.gov/opa/press-release/file/1001891/download>..... 1-2

## INTEREST OF THE UNITED STATES

The United States files this brief as *amicus curiae* pursuant to 28 U.S.C. 517 and Indiana Rule of Appellate Procedure 41. The United States has a substantial interest in religious liberty. Religious liberty is a foundational principle of enduring importance in America, enshrined in the United States Constitution and in other sources of federal law. The United States is strongly invested in ensuring that its citizens' religious freedoms are not impinged and, to that end, regularly files statements of interest and amicus briefs addressing this issue in courts at every level, from trial courts to the Supreme Court of the United States. See, e.g., *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Carson v. Makin*, No. 19-1746 (1st Cir. argued Jan. 8, 2020); *Child Evangelism Fellowship of Md., Inc. v. Montgomery Cnty. Pub. Sch.*, 373 F.3d 589 (4th Cir. 2004).

Further, the Attorney General has issued comprehensive guidance interpreting religious-liberty protections available under the United States Constitution and federal law. See *Memorandum from the Attorney General re: Federal Law Protections for Religious Liberty* (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>. As relevant here, the Attorney General has explained that religious employers are entitled to employ in key roles only persons whose beliefs and conduct are consistent with the employers' religious precepts, and, more broadly, that the United States

Constitution bars the government from interfering with the autonomy of religious organizations. *Id.* at 3, 6.

### **STATEMENT OF THE ISSUES**

1. Whether the First Amendment right of expressive association protects the Roman Catholic Archdiocese of Indianapolis's (Archdiocese's) determination of which schools may identify as Catholic under its associational umbrella.

2. Whether the church-autonomy doctrine, grounded in the First Amendment's Religion Clauses, prohibits judicial inquiry into the Archdiocese's interpretation and application of its religious doctrine as it relates to the employment of a teacher at one of its affiliated Catholic high schools.

3. Whether the "ministerial exception," grounded in the First Amendment's Religion Clauses, prohibits judicial inquiry into the Archdiocese's decisions regarding the employment of a teacher at an affiliated Catholic High School.

### **STATEMENT OF THE CASE**

1. Plaintiff Joshua Payne-Elliott is a former world language and social studies teacher at Cathedral High School (Cathedral), which was incorporated in 1972 "for the sole purpose of maintaining and operating a Roman Catholic secondary school." R.2, 16.<sup>1</sup> Cathedral's bylaws "state that the essential Holy

---

<sup>1</sup> "R. \_\_" refers to the page number of the certified record of proceedings. "Br. \_\_" refers to the page number of relator's brief in support of its verified petition for writ of mandamus and writ of prohibition.



Cross character of Cathedral as a Catholic high school shall be at all times maintained and that a mission priority is to be an educator in the faith.” R.16. To that end, the Cathedral Employee Handbook (Employee Handbook), incorporated into teacher contracts, expressly requires teachers to serve multiple religious roles, including “leading their students toward Christian maturity and \* \* \* teaching the Word of God”; “[s]erv[ing] as a role model for a Christ-centered lifestyle”; “[d]isplay[ing] a lifelong faith commitment”; “[s]upport[ing] the teachings and traditions of the Roman Catholic Church”; and “[e]mbrac[ing] the sacramental life of the school and encourag[ing] students to do the same.” R.49-50. The Employee Handbook also requires the “personal conduct” of all teachers to “convey and be supportive of the teachings of the Catholic Church,” with review of a teacher’s compliance constituting an “internal Church/School matter \* \* \* at the discretion of the pastor, administrator and/or Archbishop.” R.50-51, 80.

Cathedral is recognized as a Catholic school by the Archdiocese, an Indiana nonprofit and constituent entity of the Catholic Church, governed by the Church’s Canon Law. R.27. The Archdiocese is led by an Archbishop who has the “responsibility to oversee faith and morals as related to Catholic identity within the Archdiocese of Indianapolis.” R.16.

The Catholic Church’s Code of Canon Law authorizes the Archbishop to grant or withhold consent to a school’s identification as “Catholic” based upon his

review of whether the school follows Canon Law standards, including that its “teachers are outstanding in correct doctrine and integrity of life.” R.27 (internal quotation marks and citation omitted). The Archbishop’s ministry description of teacher responsibilities, also incorporated into teacher contracts, states that their duties include “[p]ray[ing] with and for students, families and colleagues and their intentions”; “[c]ommunicat[ing] the Catholic faith to students by direct teaching of [r]eligion and/or, as appropriate, by the integrations of moral values in all curriculum areas”; and “[c]onvey[ing] the Church’s message and carr[ying] out its mission by modeling a Christ-centered life.” R.75, 80. The description further provides that teachers are “vital ministers in sharing the mission of the Church,” requires them to “convey and be supportive of” Church teachings on “the Sacrament of Marriage,” and directs schools to treat violations of that requirement as a default of contract. R.77-78, 80.

2. In 2017, Payne-Elliott civilly married his husband, who was then a teacher at Brebeuf Jesuit Preparatory School (Brebeuf), another school within the Archdiocese. R.2-3. In May or June 2019, the Archbishop issued a “directive” to Brebeuf ordering it to dismiss Payne-Elliott’s husband from his teaching position due to his civilly recognized same-sex marriage or accept disassociation from the Archdiocese. R.3. Brebeuf declined to obey the Archbishop’s directive. R.3. On behalf of the Archdiocese, its Archbishop issued a decree stating in part that

Brebeuf “can no longer use the name Catholic and will no longer be identified or recognized as a Catholic institution by the Archdiocese.” R.3, 14.

The Archbishop issued the same directive to Cathedral, giving it the option of continuing to employ Payne-Elliott as a teacher, thus forfeiting its Catholic identity, or following the Archbishop’s command and dismissing him. R.3-4. Cathedral chose the latter option, and in late June 2019 terminated Payne-Elliott’s employment. R.4. On that date, Cathedral published a letter notifying the “Cathedral family” of an “agonizing decision, made after 22 months of earnest discussion and extensive dialogue with the Archdiocese of Indianapolis about Cathedral’s continued Catholic identity.” R.4, 16. The letter stated that the Archbishop “made it clear that Cathedral’s continued employment of a teacher in a public, same-sex marriage would result in our forfeiting our Catholic identity due to our employment of an individual living in contradiction to Catholic teaching on marriage.” R.4-5, 16. The letter then listed the host of benefits Cathedral would lose if this were to happen, and concluded that it must follow the Archbishop’s direct guidance and separate from Payne-Elliott. R.5, 16-17.

3. In July 2019, Payne-Elliott filed a complaint in the Marion County Superior Court against the Archdiocese alleging that, first, it intentionally and unjustifiably interfered with his contractual relationship with Cathedral by demanding Cathedral terminate his teaching contract and by threatening to

religiously disassociate from Cathedral if it refused to do so. R.5-6. He also alleged that the Archdiocese's conduct constituted intentional interference with his employment relationship with Cathedral. R.6.

In August 2019, the Archdiocese moved to dismiss Payne-Elliott's complaint under Indiana Rules of Trial Procedure 12(B)(1) and 12(B)(6) for lack of subject matter jurisdiction and failure to state a claim, respectively. R23-45. The Archdiocese's motion asserted three grounds for dismissal based on the First Amendment: the church-autonomy doctrine, the Archdiocese's right of expressive association, and the ministerial exception.<sup>2</sup> R.38-43.

4. In May 2020, the state trial court denied the Archdiocese's motion to dismiss. R.549-566 (May Order). First, regarding the church-autonomy doctrine, the court concluded that the doctrine precludes courts only from interfering in the decision-making of the "highest authority" within an ecclesiastical body or church on certain issues. R.552-553. The court then stated that, because Cathedral *may* have been able to appeal the Archdiocese's directive to terminate Payne-Elliott to Rome (the seat of the Roman Catholic Church), the court believed there was a reasonable possibility that Cathedral was not under the direct authority of the Archdiocese, and therefore that the directive may not have come from the "highest

---

<sup>2</sup> The Archdiocese's motion also argued that Payne-Elliott failed to allege facts sufficient to make out a claim for intentional interference with a contractual or employment relationship. R.32-38. That argument is not relevant here.

authority.” R.554-555. The court concluded that additional discovery was necessary to determine whether the directive came from the “highest authority” within the ecclesiastical body of Cathedral or the Roman Catholic Church, precluding dismissal at the pleading stage. R.555-556.

Second, on the issue of freedom of expressive association, the court distinguished the precedents cited by the Archdiocese by observing that those cases were brought either by the State to enforce one of its laws or else by a claimant asserting that a religious organization violated state law by not allowing the claimant to participate in that organization. R.561-562. The court noted that, here, Payne-Elliott was not asserting that the Archdiocese violated a specific Indiana law or prevented him from joining the Archdiocese, but rather that it interfered with his contract and employment relationship with Cathedral, a third party, without justification. R.562. The court concluded that discovery was necessary to give it “a better understanding of the underlying relationships between the entities” and therefore declined to dismiss the complaint on this basis. R.562.

Finally, with regard to the ministerial exception, the court repeated its view that the exception protects only decisions of the highest ecclesiastical authority, and it framed the relevant inquiry as who has the right to determine who is a “minister” within that ecclesiastical body. R.562-563. The court then noted that when Cathedral and Payne-Elliott entered into a teaching contract for the 2019-

2020 school year, Cathedral was aware of Payne-Elliott’s marital relationship (R.564), which the court thought “may well be an important factor in determining whether Payne-Elliott is rightly characterized as a minister at Cathedral” (R.563). The court concluded that it could not determine whether Payne-Elliott was a minister without additional discovery relating to who had the authority to determine if Payne-Elliott was a minister and whether that decision was actually made. R.564.

5. The Archdiocese moved for reconsideration. R.567-581. It argued that the Archbishop is the highest ecclesiastical authority on the matters at issue, and attached a supporting affidavit from Canon Law expert Father Joseph Newton. R.571-576, 583-588. The court denied the motion by not ruling on it within the time allotted by the court’s rules. See T.R. 53.4(B). The Archdiocese subsequently moved the trial court to certify the May Order to the Indiana Court of Appeals for interlocutory appeal; the court denied this motion as well. R.616-624, 688-693.

In June 2020, the trial court issued an order requiring the Archdiocese and Cathedral to turn over all documents requested by Payne-Elliott to the court for *in camera* review. R.655-660. Cathedral moved to reconsider this order. R.668-687, 718-729. It argued, in relevant part, that reconsideration was appropriate in light of the Supreme Court’s recent decision in *Our Lady of Guadalupe School v.*

*Morrissey-Berru*, 140 S. Ct. 2049 (2020), which “made it absolutely clear that the First Amendment bars cases like the present one that ask a Court to review a decision to terminate the employment of a Catholic school teacher on religious grounds.” R.719. Cathedral then summarized Payne-Elliott’s job responsibilities as a teacher of religion and emphasized *Our Lady*’s holding that “judicial review of the way in which religious schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.” R.720-727 (alterations and citation omitted). Cathedral concluded that “[t]he foregoing completely undercuts the entire argument presented by Mr. Payne-Elliott in opposition to Cathedral’s Motion to Reconsider and indeed his case as a whole,” and “conclusively supports Cathedral’s arguments that there is no legal or jurisdictional basis for this Court to Order Cathedral to produce internal religious documents either *in camera* or in any other fashion.” R.726. The trial court denied Cathedral’s motion. R.822-833.

6. On August 17, 2020, the Archdiocese filed the instant Verified Petition for Writ of Mandamus and Writ of Prohibition and accompanying brief in the Indiana Supreme Court, seeking an order requiring the trial court to dismiss the case and, in the alternative, requiring the trial court judge to recuse himself.

## SUMMARY OF ARGUMENT

The trial court wrongly denied relator's motion to dismiss Payne-Elliott's complaint, which is precluded by three independent grounds based on the First Amendment, any one of which is sufficient to warrant dismissal.

First, the First Amendment right of expressive association protects the Archdiocese's right not to associate with Cathedral, whose forced presence within the Archdiocese's associational umbrella if it continued to employ Payne-Elliott as a teacher would interfere with the Archdiocese's public expression of Church doctrine regarding marriage.

Second, under the church-autonomy doctrine, which is rooted in the First Amendment's Religion Clauses and longstanding Supreme Court precedent, a plaintiff like Payne-Elliott may not ask a civil court to review the religious Archdiocese's determination that a teacher at an affiliated religious school could not employ Payne-Elliott, who was publicly in a same-sex marriage, consistent with Catholic doctrine.

Finally, the "ministerial exception," also grounded in the Religion Clauses and elaborated upon by the Supreme Court's recent decision in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), shields from judicial review the Archdiocese's direction to Cathedral (or else lose its affiliation with the Archdiocese as Catholic) to terminate the employment of a high-school



teacher such as Payne-Elliott, who has an important role in fulfilling the Church’s mission to pass on its faith to the next generation.<sup>3</sup>

The foregoing First-Amendment limitations offer refuge for individual freedom—freedom of religious belief, freedom of religious exercise, and the freedom of expressive association that extends protection to individuals engaged in expression in a diverse range of civic institutions from the Boy Scouts to the NAACP or, here, the Catholic Church. Recognizing these constitutional bars to this lawsuit is fully consistent with the dignity and choice of all individuals. As the Supreme Court explained in its opinion recognizing a constitutional right to same-sex marriage, “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.” *Obergefell v. Hodges*, 576 U.S. 644, 679-680 (2015).

---

<sup>3</sup> This brief does not address other issues the Archdiocese’s petition for mandamus raised, including whether the Archdiocese has satisfied the rules governing Original Actions in the Indiana Supreme Court, *e.g.*, whether the Court’s denial of the Archdiocese’s petition would result in extreme hardship that cannot be remedied by appeal, and whether the trial court judge should be recused from the case.

## ARGUMENT

### I

#### **THE FIRST AMENDMENT RIGHT OF EXPRESSIVE ASSOCIATION PROTECTS THE ARCHDIOCESE'S DETERMINATION THAT CATHEDRAL MAY NOT SIMULTANEOUSLY EMPLOY PAYNE-ELLIOTT AND IDENTIFY AS CATHOLIC**

A. *The First Amendment Right Of Expressive Association Protects A Group's Freedom Not To Associate With Individuals Or Entities Who Would Significantly Affect Its Ability To Advocate Its Viewpoints*

The First Amendment provides that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. Amend. I; see *Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938). It has long been settled that “implicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). This implicit right of expressive association exists because “[a]n individual’s freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed.” *Ibid.* In other words, freedom of association “is crucial in preventing the majority from imposing

its views on groups that would rather express other, perhaps unpopular, ideas.”

*Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647-648 (2000).

More specifically, as relevant here, freedom of association “plainly presupposes” the flip side—that is, the “freedom not to associate.” *Roberts*, 468 U.S. at 623. “The forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.” *Boy Scouts*, 530 U.S. at 648. Thus, for example, in explaining that “the Constitution looks beyond written or spoken words as mediums of expression,” the Supreme Court has held that freedom of association allowed private parade organizers to exclude from the parade “a group imparting a message the organizers do not wish to convey.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 559, 566, 569 (1995). The Supreme Court likewise has held that the freedom of association allowed the Boy Scouts to revoke the membership of an assistant Scoutmaster whose conduct that organization believed “would derogate from [its] expressive message.” *Boy Scouts*, 530 U.S. at 661.

The Supreme Court has set forth a two-part test “[t]o determine whether a group is protected by the First Amendment’s expressive associational right.” *Boy Scouts*, 530 U.S. at 648. First, the court “must determine whether the group engages in ‘expressive association’”—*i.e.*, “some form of expression, whether it be

public or private.” *Ibid.* If the group engages in expressive association, the court then “must determine whether the forced inclusion” of an individual “would significantly affect the [group’s] ability to advocate public or private viewpoints.” *Id.* at 650.

*B. The Forced Inclusion Of Cathedral Within The Archdiocese’s Associational Umbrella While Cathedral Continued To Employ Payne-Elliott Would Significantly Affect The Archdiocese’s Ability To Advocate Its Public Viewpoints Regarding Marriage*

Applying the *Boy Scouts*’ two-part test to this case confirms that the First Amendment guaranteed to the Archdiocese the freedom not to associate with Cathedral if the latter continued to employ Payne-Elliott. First, it is undisputed that the Archdiocese, an Indiana nonprofit and constituent entity of the Catholic Church governed by the Church’s Canon Law, engages in expressive activity as “an association that seeks to transmit \* \* \* a system of values,” including beliefs about marriage. *Boy Scouts*, 530 U.S. at 650; see *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., concurring) (observing that religious entities are “dedicated to the collective expression and propagation of shared religious ideals”); *Obergefell v. Hodges*, 576 U.S. 644, 679 (2015) (emphasizing that “religions, and those who adhere to religious doctrines, may \* \* \* advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned”). The Code of Canon Law gives the Archbishop the authority to grant or withhold consent to a school’s identification

as “Catholic” based upon his review of whether the school follows Canon Law standards, including that its “teachers are \* \* \* outstanding in correct doctrine and integrity of life.” R.27 (internal quotation marks and citation omitted).

Because the Archdiocese undoubtedly engages in expressive association, the next question for this Court is whether the forced inclusion of Cathedral within the Archdiocese’s associational umbrella, which would follow from Payne-Elliott’s lawsuit if successful, would significantly affect the Archdiocese’s ability to advocate public viewpoints regarding marriage. See *Boy Scouts*, 530 U.S. at 650. To make this determination, this Court must examine the nature of the Archdiocese’s view on marriage, “giv[ing] deference to [the Archdiocese’s] assertions regarding the nature of its expression” and “to [its] view of what would impair its expression.” *Id.* at 650, 653.

The Archbishop requires teachers at parochial schools to “convey and be supportive of” Church teachings on “the Sacrament of Marriage,” and his directives to Brebeuf and Cathedral made clear that same-sex marriage contradicts Catholic teaching on marriage. R.3-4, 77-78. And the Archdiocese has explained in its brief supporting its petition that punishing it for requiring Cathedral to adhere to this teaching would impair its ability to establish standards for which ministries qualify as Catholic and to ensure that individuals who embody the Catholic faith teach by example. Br. 26-27. The Archdiocese’s representation to this Court

establishes “the nature of [its] expression with respect to” marriage and requires no additional judicial inquiry. *Boy Scouts*, 530 U.S. at 651.

The Supreme Court’s decision in *Boy Scouts* supports the Archdiocese’s position. In that case, the Court held that “the presence of” an openly gay man “as an assistant scoutmaster would \* \* \* interfere with the Boy Scouts’ choice not to propound a point of view contrary to its beliefs.” 530 U.S. at 654. So too here. Payne-Elliott is in a public same-sex marriage, and the Archbishop determined that his continued employment by Cathedral would undermine the Archdiocese’s public point of view on marriage, which is grounded in Catholic religious doctrine. “It would be difficult for [the Archdiocese] to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept members who engage in that conduct.” *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 863 (7th Cir. 2006).

The trial court did not address whether the Archdiocese satisfied the two prerequisites for First Amendment protection of its right of expressive association. Instead, the court denied the Archdiocese’s request to dismiss Payne-Elliott’s complaint because the cases the Archdiocese cited arose in different contexts. R.562. To be sure, as Payne-Elliott was not employed by the Archdiocese, he was not directly excluded from the Archdiocese in the way the assistant scoutmaster was excluded from the Boy Scouts. But Cathedral is analogous to the assistant

scoutmaster, and in any event there is no reason to read the Supreme Court’s decision as narrowly as the trial court suggested. Rather, the Supreme Court’s conclusion in *Boy Scouts*—that the State may not compel an organization “to accept members where such acceptance would derogate from the organization’s expressive message,” 530 U.S. at 661—is sufficiently broad to protect the Archdiocese’s constitutional right to expel schools whose presence would interfere with the Archdiocese’s expressive message. Accordingly, the trial court erred in denying the Archdiocese’s motion to dismiss Payne-Elliott’s complaint on this ground.

## II

### **THE CHURCH-AUTONOMY DOCTRINE PROHIBITS JUDICIAL INQUIRY INTO THE ARCHDIOCESE’S RELIGIOUS DIRECTIVE TO CATHEDRAL TO TERMINATE PAYNE-ELLIOTT’S EMPLOYMENT OR DISASSOCIATE FROM THE CATHOLIC CHURCH**

#### *A. The Church-Autonomy Doctrine Prohibits Judicial Scrutiny Of A Religious Organization’s Governance And Operation Where Such Review Requires Inquiry Into Religious Doctrine*

The First Amendment, which is incorporated against the States through the Fourteenth Amendment, provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. Amend. I. The Religion Clauses are the basis for the church-autonomy doctrine, which “respects the authority of churches to select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions free from

governmental interference.” *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) (internal quotation marks and citation omitted), cert. denied, 573 U.S. 958 (2014). “This dimension of religious liberty \* \* \* is perhaps best understood as marking a boundary between two separate polities, the secular and the religious, and acknowledging the prerogatives of each in its own sphere.” *Ibid.*

The church-autonomy doctrine also is rooted in longstanding Supreme Court precedent. “The Supreme Court has long held that the First Amendment requires civil courts to refrain from interfering in matters of church discipline, faith, practice and religious law.” *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 336-337 (Ind. Ct. App. 1999) (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1871)), cert. denied, 529 U.S. 1068 (2000). “Thus, civil courts are precluded from resolving disputes involving churches if ‘resolution of the disputes cannot be made without extensive inquiry . . . into religious law and polity . . . .’” *Id.* at 337 (quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976)). The church-autonomy doctrine affords religious organizations “an 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.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).



The church-autonomy doctrine not only immunizes the religious decisions of religious organizations from judicial review, it also underlies the “ministerial exception”—a doctrinally distinct reason this case cannot proceed, which is addressed below. As the Supreme Court explained in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), state interference in the sphere of faith and doctrine “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.” *Id.* at 2060.

Of course, not all decisions of religious organizations are immune from judicial scrutiny. As the Indiana Court of Appeals has observed, “the First Amendment does not entirely prohibit courts from opening their doors to religious organizations.” *Matthies v. First Presbyterian Church of Greensburg Ind. Inc.*, 28 N.E.3d 1109, 1113 (Ind. Ct. App. 2015) (internal quotation marks and citation omitted). Thus, “[a] court can apply neutral principles of law to churches without violating the First Amendment.” *Ibid.* “Application of neutral principles of law to a church defendant, however, has occurred only in cases involving church property or in cases where a church defendant’s actions *could not have been* religiously motivated.” *Id.* at 1113-1114 (citing *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 714 N.E.2d 253 (Ind. Ct. App. 1999)) (emphasis added); see, e.g., *Konkle v. Henson*, 672 N.E.2d 450, 456 (Ind. Ct. App. 1996) (holding that plaintiff’s claim

against church defendants for negligent hiring of a minister who molested her was not barred by the First Amendment because review of the claim “d[id] not require any inquiry into religious doctrine or practice,” but rather “only require[d] the court to determine if the Church Defendants knew of [the minister’s] inappropriate conduct, yet failed to protect third parties from him”).

*B. The Archdiocese’s Faith-Based Determination That Cathedral May Not Employ Payne-Elliott Consistent With Catholic Doctrine Is Not Reviewable*

The Archdiocese’s determination that Cathedral may not employ Payne-Elliott consistent with church doctrine is insulated from review by the church-autonomy doctrine. Resolution of Payne-Elliott’s tort claims would necessarily involve matters of religious practice, faith, and discipline, not solely application of neutral principles. That is because both of his tort claims against the Archdiocese require him to demonstrate that its actions were not “justified.” See, *e.g.*, *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1235 (Ind. 1994) (intentional interference with contract); *Dietz v. Finlay Fine Jewelry Corp.*, 754 N.E.2d 958, 970 (Ind. Ct. App. 2001) (intentional interference with employment relationship). Determining whether the Archdiocese’s actions were justified under Indiana law would require a court to evaluate, among other things, the Archdiocese’s motive and interests. See *Winkler*, 638 N.E.2d at 1235. This inquiry, in turn, would require that the court “review and interpret [the Catholic Church’s] constitution, laws, and regulations” in deciding whether the Archbishop properly applied

Catholic doctrine, or whether his decision was pretextual in nature. *Matthies*, 28 N.E.3d at 1113. This the court cannot do without causing “excessive entanglement between church and state.” *Ibid*. Rather, the First Amendment “mandate[s] that civil courts shall not disturb the decisions of the” Archdiocese, and instead “must accept such decisions as binding on them.” *Milivojevich*, 426 U.S. at 709.

The trial court did not address binding Supreme Court and Indiana court precedent on the First Amendment and the church-autonomy doctrine. Instead, the court *sua sponte* determined that the doctrine precludes courts from interfering only in the decision-making of the “highest authority” within an ecclesiastical body or church. The court then stated that Cathedral may have been able to appeal the Archdiocese’s directive to terminate Payne-Elliott to Rome, and therefore the court thought it possible that the Archdiocese was not the highest authority on the underlying matter. Thus, the court concluded that additional discovery on this issue was necessary. R.552-556.

This reasoning is not correct. As an initial matter, Payne-Elliott acknowledged in his complaint, contrary to the trial court’s theory, that “[t]he Archdiocese exercises significant control over Cathedral, including, but not limited to, its recognition of Cathedral as a Catholic school.” R.2 ¶ 8. That admission should be the end of the judicial inquiry. Moreover, the affidavit of Canon Law expert Father Joseph Newton, which the Archdiocese attached as an exhibit to its

brief in support of motion for reconsideration and for which a court can take judicial notice, further supports its contention that it is the highest ecclesiastical authority with respect to the matter at issue.<sup>4</sup> See R.585-588 ¶¶ 10-13, 17-18. And in all events, any prospect of a religious “appeal” of the Archdiocese’s decision is ultimately not relevant to this case and not a proper subject of litigation—to the extent such a religious remedy exists, then it would be for Cathedral or Payne-Elliott to pursue it through *religious* channels. The Supreme Court’s church-autonomy precedents do not permit Payne-Elliott to ask a civil court to evaluate whether the Archdiocese was justified in its religious conclusion about qualifications for teachers at affiliated religious schools.

Accordingly, the trial court erred in denying the Archdiocese’s motion to dismiss Payne-Elliott’s complaint on this ground. Rather, settled law on the church-autonomy doctrine makes clear that the First Amendment prohibits the court from questioning the legitimacy of the Archdiocese’s interpretation and application of church law to the underlying dispute.

---

<sup>4</sup> Rule 201(b) of the Indiana Rules of Evidence provides a non-exhaustive list of laws that a court may judicially notice.

### III

#### THE “MINISTERIAL EXCEPTION” PROHIBITS JUDICIAL SCRUTINY OF THE ARCHDIOCESE’S DIRECTIVE TO CATHEDRAL TO TERMINATE PAYNE-ELLIOTT’S EMPLOYMENT

A. *The Ministerial Exception Insulates From Legal Liability A Religious Organization’s Exercise Of Its Right To Select Employees Who Perform An Important Religious Function*

In *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), the Supreme Court held that the First Amendment safeguards the right of a religious organization, free from interference by civil authorities, to select those who will “personify its beliefs,” “shape its \* \* \* faith and mission,” or “minister to the faithful.” *Id.* at 188-189. To that end, the First Amendment does not allow certain claims brought against religious organizations by employees who perform an “important religious function[.]” *Id.* at 188, 192. The Court thus recognized a “ministerial exception” to governmental regulation of certain employment disputes, *id.* at 188, which “is not limited to the head of a religious congregation,” *id.* at 190. This exemption advances the Religion Clauses’ dual purpose to “protect[] a religious group’s right to shape its own faith and mission through its appointments” and to “prohibit[] government involvement in such ecclesiastical decisions.” *Id.* at 188-189. The Court did not undertake to define the full reach of that exception, finding it “enough \* \* \* to conclude, in this our first case involving the ministerial exception, that the exception cover[ed]” the

religious-school teacher at issue there, “given all the circumstances of her employment.” *Id.* at 190.

In *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), the Supreme Court applied the ministerial exception to bar employment discrimination lawsuits brought by two former elementary-school teachers at Roman Catholic schools. The Court first emphasized that the ministerial exception is part of the broader church-autonomy doctrine: “The independence of religious institutions in matters of ‘faith and doctrine’ is closely linked to independence in what we have termed ‘matters of church government.’” *Id.* at 2060 (quoting *Hosanna-Tabor*, 565 U.S. at 186). Although religious organizations do not “enjoy a general immunity from secular laws,” the Court observed, they possess “autonomy with respect to internal management decisions that are essential to the institution’s central mission,” including “the selection of the individuals who play certain key roles.” *Ibid.* For private religious schools, which primarily exist to provide “religious education and formation of students,” “the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” *Id.* at 2055. The Court observed that “educating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” *Id.* at 2064. Thus, “[j]udicial review of the way in which religious

schools discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.” *Id.* at 2055.

The *Our Lady* Court then held that a court must focus on the broader underlying purpose of the autonomy of the religious organization in matters of faith and doctrine. The particular factual circumstances it had identified in *Hosanna-Tabor* as relevant to the ministerial exception were not “inflexible requirements.” 140 S. Ct. at 2062-2064. Rather, in evaluating whether a position qualifies for the ministerial exemption, courts should “take all relevant circumstances into account and \* \* \* determine whether each particular position implicate[s] the fundamental purpose of the exception.” *Id.* at 2067. Recognizing “the religious diversity of the United States” and the fact that “judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition,” the Court emphasized that “[a] religious institution’s explanation of the role of such employees in the life of the religion in question is important.” *Id.* at 2066.

Applying these principles, the Court held that the teachers qualified for the exemption because they possessed the same “core responsibilities as teachers of religion” as the teacher in *Hosanna-Tabor* despite lacking the title of minister and possessing less formal religious training. *Our Lady*, 140 S. Ct. at 2066. The Court

concluded there was “abundant record evidence” of this and pointed to the following factors: “[e]ducating and forming students in the Catholic faith lay at the core of the mission of the schools where they taught”; their employment agreements and faculty handbook made clear that they were tasked with helping their school carry out this mission; as “elementary school teachers responsible for providing instruction in all subjects, including religion, they were the members of the school staff who were entrusted most directly with the responsibility of educating their students in the faith”; they “prayed with their students [and] attended Mass with the students”; and “they were also expected to guide their students, by word and deed, toward the goal of living their lives in accordance with the faith.” *Ibid.* The Court concluded that where “a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.” *Id.* at 2069.

*B. The Ministerial Exception Component Of The Free Exercise Clause Of The First Amendment Protects The Archdiocese’s Right To Direct Cathedral To Terminate Payne-Elliott’s Employment Because His Position Was A Vital Part Of Carrying Out The Church’s Religious Mission*

The ministerial exception covers Payne-Elliott. Payne-Elliott, like the teachers in *Hosanna-Tabor* and *Our Lady*, had the important role of teaching and fostering development of students in the Catholic faith. Although, Payne-Elliott,



like the teachers in *Our Lady*, lacked a special ministerial title differentiating him from other teachers at the school, the Archdiocese designates all teachers as responsible for its ministry of training students in the faith, titling their expectations document for teachers as “Ministry Description[:] Teacher” (R.75), and Cathedral specifies that teaching is a “vocation” (R.50). Moreover, as the Court stressed in *Our Lady* and *Biel*, he possessed “core responsibilities as [a] teacher[] of religion.” 140 S. Ct. at 2066. That is sufficient to fall within the ministerial exception.

Cathedral’s stated mission is “to be an educator in the [Catholic] faith” and its Employee Handbook, incorporated into its teaching contracts, requires the “personal conduct” of all teachers to “convey and be supportive of the teachings of the Catholic Church.” R.16, 50. To that end, Cathedral expressly requires its teachers to serve multiple religious roles, including “leading their students toward Christian maturity and with teaching the Word of God”; “model[ing] \* \* \* a Christ-centered lifestyle”; “[d]isplay[ing] a lifelong faith commitment”; “[s]upport[ing] the teachings and traditions of the Roman Catholic Church”; and “[e]mbrac[ing] the sacramental life of the school and encourag[ing] students to do the same.” R.49-50, 77. Consistent with these religious requirements, teachers at Cathedral had the responsibilities to “facilitate[] and supervise[]” mandatory “all-School Prayer Services and Masses” and to “lead the students in daily prayers in

every class every day,” for which he received “professional development and training on religious matters including how to pray with [his] students,” including “a variety of options to choose from for these daily prayers.” R.721 ¶ 8. Those responsibilities were a vital part of carrying out Cathedral’s religious mission, and they were sufficient to bring Payne-Elliott within the ministerial exception under *Hosanna-Tabor* and *Our Lady*.

Moreover, the Archdiocese’s power to set forth religious principles governing teachers at parochial schools within its purview further supports applying the ministerial exception here. The Code of Canon Law authorizes the Archbishop to grant or withhold consent to a school’s identification as “Catholic” based upon his review of whether the school follows Canon Law standards, including that its “teachers are \* \* \* outstanding in correct doctrine and integrity of life.” R.27 (internal quotation marks and citation omitted). The Archbishop’s ministry description of teacher responsibilities, also incorporated into teacher contracts within the Archdiocese, tasks them with “[c]ommunicat[ing] the Catholic faith to students by direct teaching of [r]eligion and/or, as appropriate, by the integrations of moral values in all curriculum areas”; [c]onvey[ing] the Church’s message and carr[ying] out its mission by modeling a Christ-centered life;” and “[p]ray[ing] with and for students, families and colleagues and their intentions,” among others religious functions. R.75, 80. The Archbishop’s ministry

description for teachers also requires them to “convey and be supportive of” Church teachings on “the Sacrament of Marriage”; and directs schools to treat violations of that requirement as a default of contract. R.77-78.

Accordingly, Payne-Elliott’s position as a high-school teacher instructing world language and social studies, as opposed to an elementary-school teacher who taught all subjects including religion as in *Our Lady* and *Biel*, does not undermine the application of the ministerial exception here. In this case, part of Payne-Elliott’s role was to inculcate the faith among his students, including on the specific issue of the Church’s teaching on marriage. Cf. *Our Lady*, 140 S. Ct. at 2067 n.28 (relying, in part, on the fact that “teachers are expected to engage in catechetical development”) (citation and alterations omitted).

Recognizing the application of the ministerial exception to a teacher at Cathedral in Payne-Elliott’s position follows from the totality of the circumstances and does not require the Court to conclude that any and every employee of a Catholic school would fall within its ambit. This flows from the facts set out above and also from Payne-Elliott’s status as a teacher at the same type of religious schools the Supreme Court confronted in *Our Lady* and *Biel*. Teachers are the principal actors that a religious school entrusts to carry out its mission of passing on the faith to the next generation. See, e.g., *Our Lady*, 140 S. Ct. at 2063. Teachers like Payne-Elliott are uniquely positioned to influence students, and they

can use that influence to help the students grow in faith or, if they contradict the Church's teachings, to turn students away from the faith. Indeed, the Court stressed in *Our Lady* that the "religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission." *Id.* at 2055. Thus, the fact that Payne-Elliott did not teach a class called "religion" does not defeat application of the ministerial exception here. Reading *Our Lady* that narrowly would be to repeat the Ninth Circuit's error in that case of mistakenly "treat[ing] the circumstances that [the Supreme Court [had] found relevant in [*Hosanna-Tabor*] as checklist items to be assessed." *Id.* at 2067; see also *ibid.* (calling "on courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception").

The additional factual differences between this case and the Supreme Court precedents on the ministerial exception do not preclude the exception's coverage of Payne-Elliott. First, it is not legally significant that this case involves a state tortious interference action and that *Hosanna-Tabor*, *Our Lady*, and *Biel* all involved employment-discrimination cases brought under federal statutes. Ultimately, this case concerns the decision to discharge a religious-school employee and whether the courts and litigants may probe the justifications for that

action. The concerns animating the ministerial exception are in fact heightened in this case compared to the ordinary employment-discrimination case because the Archdiocese requested Payne-Elliott’s dismissal *expressly* on religious grounds. As noted above, Cathedral published a letter notifying the “Cathedral family” of an “agonizing decision, made after 22 months of earnest discussion and extensive dialogue with the Archdiocese of Indianapolis about Cathedral’s continued Catholic identity.” R.16. The letter stated that the Archbishop “made it clear that Cathedral’s continued employment of a teacher in a public, same-sex marriage would result in our forfeiting our Catholic identity due to our employment of an individual living in contradiction to Catholic teaching on marriage.” R.16.<sup>5</sup>

Nor is it important that the relevant Supreme Court precedents applied the doctrine to protect the principle of autonomy of religious organizations in matters of faith and religious teachings as expressed through their employment

---

<sup>5</sup> The Seventh Circuit’s recent decision in *Demkovich v. St. Andrew the Apostle Parish, Calumet City*, No. 19-2142, 2020 WL 5105147 (7th Cir. Aug. 21, 2020), supports application of the ministerial exception here. The court held that suits that “do not challenge any tangible employment actions used to select and control ministerial employees,” such as a hostile-work-environment claims or tort suits for battery brought by a ministerial employee, can fall outside of the ministerial exception. *Id.* at \*1. By contrast, the court stated that “[r]eligious employers’ control over tangible employment actions—hiring, firing, promoting, deciding compensation, job assignments, and the like—provides ample protection for the free exercise of religion.” *Ibid.* This case, which involves the termination of Payne-Elliott from his position at a religious school for religious reasons, concerns the core of the ministerial exception as described by the Seventh Circuit.

relationships—that is, where a religious employer is in a commercial relationship in which it pays the employee a salary or wages and is generally subject to various employment laws, including nondiscrimination laws. The First Amendment’s ministerial exception requires courts “to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Our Lady*, 140 S. Ct. at 2060.

This is such a case. If the ministerial exception applies to ensure autonomy in determining who will represent the faith and teach and shape its doctrine in employment relationships, then *a fortiori* it must apply to a religious body simply setting forth religious principles regarding who may teach the faithful. Because the ministerial-exception doctrine is at its core a recognition of the need to protect the ability of a religious organization to define and carry out its religious mission by protecting its “autonomy i[n] the selection of the individuals who play certain key roles,” *Our Lady*, 140 S. Ct. at 2060, it protects the right of the Archdiocese as much as the right of Cathedral to determine which teachers are suitable for carrying out its core mission. For the avoidance of doubt, the United States does not assert that the Archdiocese is an employer (joint or otherwise) of Payne-Elliott; nor for the foregoing reasons is that a necessary prerequisite for application of the ministerial exception.

Although the trial court did not have the benefit of *Our Lady* when it originally denied the Archdiocese’s motion to dismiss—*Our Lady* was briefed on reconsideration by Cathedral—the trial court failed even to address *Hosanna-Tabor*. Instead the Court concluded that additional discovery was necessary to determine whether the Archdiocese or Cathedral classified Payne-Elliott as a minister and which entity had the authority to so. This description of the record is inaccurate: the Archbishop’s ministry description for teachers at parochial schools states that they are “vital ministers in sharing the mission of the Church.” R.77.

In any event, titles are not the most important factor, as *Our Lady* makes abundantly clear. See 140 S. Ct. at 2066. Rather, “[w]hat matters \* \* \* is what an employee does.” *Id.* at 2064. This standard refers to what a religious institution expects and requires of its employees. As the above discussion makes clear, both the Archdiocese and Cathedral viewed a teacher in Payne-Elliott’s position as a key employee charged with passing on its faith to the next generation.

More broadly, the court provided no reason why it is necessary to further delve through discovery into the details of the religious interplay between Payne-Elliott, Cathedral, and the Archdiocese to apply the ministerial exception here, and *Our Lady* confirms that it is not. Because “judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition,” “[a] religious institution’s

explanation of the role of such employees in the life of the religion in question is important.” 140 S. Ct. at 2066. And the Supreme Court has also emphasized that in determining the ministerial exception’s applications, “courts must take care to avoid ‘resolving underlying controversies over religious doctrine.’” *Id.* at 2063 n.10 (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969)). In other words, a court should defer to the fact that both the Archdiocese and Cathedral “expressly saw [Payne-Elliott] as playing a vital part in carrying out the mission of the [school].” *Id.* at 2066.

In sum, as the foregoing indicates, the “religious education and formation of students is the very reason for the existence of [Cathedral]” and teachers such as Payne-Elliott are integral to that work. *Our Lady*, 140 S. Ct. at 2055. It follows that “[j]udicial review of the way in which [Cathedral] discharge[s] those responsibilities would undermine the independence of [both Cathedral and the Archdiocese] in a way that the First Amendment does not tolerate.” *Ibid.* Accordingly, the trial court erred in denying the Archdiocese’s motion to dismiss Payne-Elliott’s complaint on this ground.



## CONCLUSION

The Court should issue the writ of mandamus and writ of prohibition requested by the Archdiocese and order the trial court to dismiss Payne-Elliott's complaint.

Respectfully submitted,

s/ Josh J. Minkler  
JOSH J. MINKLER (#18483-49)  
United States Attorney  
United States Attorney's Office  
Southern District of Indiana  
10 W. Market St., Suite 2100  
Indianapolis, IN 46204  
(317) 226-6333  
[Josh.Minkler@usdoj.gov](mailto:Josh.Minkler@usdoj.gov)

ERIC S. DREIBAND\*  
Assistant Attorney General

ALEXANDER V. MAUGERI\*  
Deputy Assistant Attorney General

THOMAS E. CHANDLER\*  
Attorney  
Department of Justice  
Civil Rights Division  
Appellate Section  
Ben Franklin Station  
P.O. Box 14403  
Washington, D.C. 20044-4403  
(202) 307-3192  
*Attorneys for The United States*

*\*Pro hac vice admission pending*

## CERTIFICATE OF SERVICE

I certify that on September 17, 2020, I electronically filed the foregoing document using the Indiana E-filing System (“IEFS”). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

John S. (Jay) Mercer  
FITZWATER MERCER  
One Indiana Square, Suite 1500  
Indianapolis, IN 46204  
[jsmerc@fitzwatermerc.com](mailto:jsmerc@fitzwatermerc.com)

Paul J. Carroll  
WOOTON HOY, LLC  
13 North State Street, #2A  
Greenfield, IN 46140  
[paul@wootonhoylaw.com](mailto:paul@wootonhoylaw.com)  
*Counsel for Relator*

Kathleen A. DeLaney  
Christopher S. Stake  
DELANEY & DELANEY LLC  
3646 North Washington Blvd.  
Indianapolis, IN 46205  
[kathleen@delaneylaw.net](mailto:kathleen@delaneylaw.net)  
[cstake@delaneylaw.net](mailto:cstake@delaneylaw.net)  
*Counsel for Joshua Payne-Elliott*

Thomas E. Wheeler  
Stephanie V. McGowan  
FROST BROWN TODD LLC  
201 North Illinois Street, Suite 1900  
Indianapolis, IN 46244  
[twheeler@fbtlaw.com](mailto:twheeler@fbtlaw.com)  
[smcgowan@fbtlaw.com](mailto:smcgowan@fbtlaw.com)  
*Counsel for Cathedral Trustees*

Curtis Hill  
Indiana Attorney General  
Thomas Fisher  
Solicitor General  
Office of the Attorney General  
Indiana Government Center South  
302 West Washington St., 5th Floor  
Indianapolis, IN 46204  
[tom.fisher@atg.in.gov](mailto:tom.fisher@atg.in.gov)

I also hereby certify that a copy of the foregoing was served on the following by United States First Class Mail, postage prepaid, on September 17, 2020:

The Honorable Stephen R. Heimann  
Special Judge  
Marion Superior Court No. 1  
200 East Washington St., #W-122  
Indianapolis, IN 46204  
[Stephen.heimann@trialjudges.in.gov](mailto:Stephen.heimann@trialjudges.in.gov)  
*Respondents*

Luke W. Goodrich  
Daniel H. Blomberg  
Christopher Pagliarella  
The Becket Fund for Religious Liberty  
1200 New Hampshire Ave NW  
Suite 700  
Washington, DC 20036  
[lgoodrich@becketlaw.com](mailto:lgoodrich@becketlaw.com)  
[dblomberg@becketlaw.org](mailto:dblomberg@becketlaw.org)  
[cpagliarella@becketlaw.org](mailto:cpagliarella@becketlaw.org)  
*Counsel for Relator*

*s/ Josh J. Minkler*

**JOSH J. MINKLER**

United States Attorney

United States Attorney's Office

Southern District of Indiana

10 West Market St., Suite 2100

Indianapolis, IN 46204

(317) 226-6333

[Josh.Minkler@usdoj.gov](mailto:Josh.Minkler@usdoj.gov)