

No. 21-56056

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JAMES HUNTSMAN,

*Plaintiff-Appellant,*

*v.*

CORPORATION of the PRESIDENT of THE CHURCH of JESUS  
CHRIST of LATTER-DAY SAINTS,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
Central District of California, No. 2:21-cv-02504-SVW-SK  
Hon. Stephen V. Wilson, District Judge

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**BRIEF OF THE BECKET FUND FOR RELIGIOUS LIBERTY  
AS *AMICUS CURIAE* IN SUPPORT OF  
DEFENDANT-APPELLEE**

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**FRAP 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, The Becket Fund for Religious Liberty states that it has no parent corporation and that no publicly held corporation owns any part of it.

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## INTEREST OF THE *AMICUS*<sup>1</sup>

The Becket Fund for Religious Liberty is a non-profit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. Becket has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others. It regularly litigates church autonomy cases, both in the Supreme Court of the United States and in federal and state courts nationwide. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Fitzgerald v. Roncalli High Sch., Inc.*, 73 F.4th 529 (7th Cir. 2023); *In re Diocese of Lubbock*, 624 S.W.3d 506 (Tex. 2021).

Becket submits this brief to urge the Court to apply the church autonomy doctrine and refrain from intruding into a religious institution’s internal affairs—including decisions about how a church defines and expends its sacred tithes.

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<sup>1</sup> Counsel for both parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no one other than *Amicus* made any monetary contribution to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

## INTRODUCTION

Plaintiff James Huntsman contends this is a run-of-the-mill fraud claim. But for the Court to agree, it would have to ignore the religious questions that pervade every element of his case. Huntsman objects to the way The President (or “Prophet”) of The Church of Jesus Christ of Latter-day Saints described how it would fund a revitalization project surrounding one of its most sacred sites. An alleged lack of clarity regarding which funds would be used, he claims, fraudulently induced him to continue offering tithes to the Church. He would have the Court weigh whether Church leaders spoke with sufficient precision when they announced the revitalization project. He treats the announcement of the project to the Church’s worldwide membership at one of its most important religious gatherings as nothing more than a secular speech. He urges the Court to adopt a definition of “tithing” that is broader than the Church’s definition. And he would force the Court to survey Church scripture and doctrine, along with decades of Church leaders’ spiritual instruction, to understand how members reasonably would have interpreted the Church’s statements.

The First Amendment forbids such inquiries. “[A]ny attempt by [the] government to dictate or even influence such matters” is wholly “outlaw[ed].” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). Rather, the Religion Clauses guarantee religious institutions the right “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). Huntsman’s fraud claim thus should have been dismissed from the outset.

Failure to uphold these principles threatens—and indeed has already begun—to open the floodgates to disaffected members seizing any ambiguity to sue their former faiths for fraudulently inducing tithes. Such lawsuits would endlessly entangle courts in religious conflict, eviscerating the autonomy guaranteed religious institutions by the First Amendment.

## ARGUMENT

### **I. The church autonomy doctrine bars courts from scrutinizing churches’ internal religious decisions.**

The Constitution ensures “a spirit of freedom for 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*, 344 U.S. at 116. This constitutional command requires courts to give religious organizations broad autonomy in conducting their internal religious affairs. “[A]ny attempt by [the] government to dictate or even influence such matters” would violate the First Amendment. *Our Lady*, 140 S. Ct. at 2060. Even “the very process of inquiry” into a religious entity’s internal affairs “may impinge on rights guaranteed by the

Religion Clauses.” *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Thus, “First Amendment values are plainly jeopardized when ... litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.” *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969). This is so partly because “[a]ll who unite themselves to [a religious] body do so with an implied consent” to the religious governance of that body and “are bound to submit to it.” *Kedroff*, 344 U.S. at 114 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729 (1872)). Allowing challenges to internal religious decisions in secular courts “would lead to the total subversion of such religious bodies.” *Id.* And so, time and again, the Supreme Court has affirmed that the Religion Clauses prohibit civil courts from intruding into matters of “theological controversy, church discipline, ecclesiastical government, or the conformity of [members] to the standard of morals required of them.” *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713-14 (1976); *cf. Puri v. Khalsa*, 844 F.3d 1152, 1162 (9th Cir. 2017).

Even in the most compelling circumstances, the Supreme Court has refused to second-guess religious communities’ internal religious decisions. It has refused where a state supreme court had deemed decisions of a religious body to be “arbitrary” and inconsistent with the institution’s “own laws and procedures.” *Milivojevich*, 426 U.S. at 712-13. So too where a church was purportedly commandeered by a hostile

government and infiltrated by “atheistic or subversive influences.” *Kedroff*, 344 U.S. at 108-09. And likewise where a church was alleged to have “departed from the tenets of faith and practice” in place at the time congregants had “affiliated with it.” *Blue Hull*, 393 U.S. at 441.

Indeed, principles of church autonomy mandate dismissal even where other important rights are implicated. Courts must decline to adjudicate civil rights, contract, and tort claims that would entangle them in the internal religious affairs of a religious organization. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 182-88 (2012) (no adjudication of employment discrimination claim by employee with important religious functions); *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968 (7th Cir. 2021) (en banc) (no adjudication of hostile work environment claim).<sup>2</sup> While the “interest of society” in

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<sup>2</sup> *See also In re Diocese of Lubbock*, 624 S.W.3d 506, 509 (Tex. 2021) (barring defamation claim relating to sex abuse that was “inextricably intertwined” with church law and church governance decision); *Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 542 (Minn. 2016) (adjudicating defamation claims based on statements made in religious disciplinary proceeding “would excessively entangle the courts with religion and unduly interfere with respondents’ constitutional right to make autonomous decisions regarding the governance of their religious organization”); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 937 n.12 (Mass. 2002) (rejecting defamation claim due to “absolute First Amendment protection for statements made ... in an internal church disciplinary proceeding”); *O’Connor v. Diocese of Honolulu*, 885 P.2d 361, 362 (Haw. 1994) (barring fraud, defamation, and negligence claims

enforcing civil rights is “undoubtedly important,” “so too is the interest of religious groups in choosing ... [how to] carry out their mission.” *Hosanna-Tabor*, 565 U.S. at 196. When these interests conflict, “the First Amendment has struck the balance for us.” *Id.* Churches “must be free to choose” how to conduct their own religious affairs. *Id.*

Fraud claims do not alter the analysis. *See United States v. Ballard*, 322 U.S. 78 (1944) (affirming district court’s dismissal of fraud claim against faith healers). The founders “were not unaware of the varied and extreme views of religious sects.” *Id.* at 87. Nor of the “lack of any one religious creed on which all men would agree.” *Id.* Thus, they “fashioned a charter of government which envisaged the widest possible toleration of [religious] views.” *Id.* Under this system of broad tolerance, even financial solicitations based on religious claims that “might seem incredible, if not preposterous, to most people” are not actionable via claims of fraud as to their “truth or falsity.” *Id.*

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arising from excommunication); *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 121 (3d Cir. 2018) (contract claims); *Friedlander v. Port Jewish Ctr.*, 347 F. App’x 654, 655 (2d Cir. 2009) (same); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 330 (4th Cir. 1997) (same).

## **II. Every aspect of this matter is infused with religious significance.**

There are no “neutral” principles that could be applied to resolve this case. Fundamentally religious issues, in which secular courts may not become entangled, underly every aspect of Huntsman’s claims.

### **A. The practice of tithing is inherently religious.**

Tithing is the religious practice of giving a portion of one’s income (typically one-tenth) to God as an act not only of charity, but also of faith and trust.<sup>3</sup> Thus, tithing is not merely financial support for religious organizations. Rather, for millennia, adherents across many religious traditions have contributed tithes as a sign of their willingness to submit their will to, and put their trust in, God.

Many Christian denominations share this understanding of tithing as an act of self-restraint, devotion, and trust in God. For example, Southern Baptists believe that tithing is an act of faithful stewardship that involves relinquishing control over their possessions and “trusting [God] to take care of their needs.”<sup>4</sup> For members of the United Methodist

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<sup>3</sup> A common reading of the Old Testament defines tithing as giving ten percent of one’s increase. See *Genesis* 28:22 (King James); *Leviticus* 27:30-32; *Deuteronomy* 14:22-29. The word “tithe” is derived from the Old English word for “one tenth.” Oliver B. Pollak, “*Be Just Before You’re Generous*”: *Tithing and Charitable Contributions in Bankruptcy*, 29 Creighton L. Rev. 527, 530 (1996).

<sup>4</sup> Ken Walker, *Tithing: What should the church teach its members about giving?*, Baptist Press, July 11, 2003, <https://perma.cc/K9H6-KGSP>; see also Southern Baptist Convention, *Baptist Faith & Message 2000* § XIII, <https://perma.cc/4V7G-XB2H>.



Church, tithing “reflects our trust in God and our belief that God truly knows what is best for us.”<sup>5</sup> For Seventh-day Adventists, tithing is “an act of worship.”<sup>6</sup> It is the “practice” of showing “faithfulness [to] God’s requirements.”<sup>7</sup> Thus, when Adventists tithe, they also relinquish control over worldly possessions in “recognition of the sovereignty of God” and “His ownership of all things.”<sup>8</sup>

Many Jews likewise follow the examples of Abraham, who gave away a tenth of his earnings to Melchizedek, the “priest to the most high God,”<sup>9</sup> and Jacob, who proclaimed, “this stone, which I have placed as a monument, shall be a house of God, and everything that You give me, I will surely tithe to You.”<sup>10</sup> This practice of *maaser kesafim* is closely related to the general injunctions of *tzedakah* (charity or righteousness) and *gemiluth chasadim* (doing good deeds).<sup>11</sup>

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<sup>5</sup> *Trust and Obey*, Discipleship Ministries of The United Methodist Church (Oct. 24, 2006), <https://perma.cc/8MSJ-BC4Q>.

<sup>6</sup> *Use of Tithe*, Seventh-day Adventist Church (Oct. 14, 1985), <https://perma.cc/SEW4-HFM8>.

<sup>7</sup> *Tithing Principles and Guidelines* at 15, General Conference of Seventh-day Adventists (1990), <https://perma.cc/THK6-2KY9>.

<sup>8</sup> *Handbook of SDA Theology* at 15, Adventist Beliefs, <https://perma.cc/9VAW-MYZ8>.

<sup>9</sup> *Bereshit (Genesis)* 14:18-20.

<sup>10</sup> *Bereshit (Genesis)* 28:22.

<sup>11</sup> See Adam S. Chodorow, *Maaser Kesafim and the Development of Tax Law*, 8 Fla. Tax Rev. 153, 163-64 (2007); see also generally Maaser Kesafim: On Giving a Tenth to Charity 18-40 (Cyril Domb, ed., 1999).

These tithing principles have analogous precepts in other faith traditions. In the Muslim tradition, adherents must pay yearly *zakat*, a charity payment made to the “poor, vulnerable, and deserving” that is one of the five pillars of Islam,<sup>12</sup> and “acknowledge that everything [they] own belongs to [Allah].”<sup>13</sup> Buddhists and Hindus practice *dana*—giving and generosity—as a way to promote detachment from worldly possessions.<sup>14</sup> For each of these faiths, the act of giving is uniquely spiritual.

Members of The Church of Jesus Christ of Latter-day Saints similarly view tithing as a “sacred” offering made principally as “a matter of faith” and as “one way we show our willingness to put the Lord first in our lives, above our own cares and interest.”<sup>15</sup> The “commandment” to tithe is fulfilled by members giving “one-tenth of their income back to God through His Church.”<sup>16</sup> According to the Church, tithing is designed not only “to build up the Church and to further God’s work throughout the

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<sup>12</sup> *What is Zakat?*, Zakat Foundation of America, <https://perma.cc/4B7NCC84>.

<sup>13</sup> *Zakat*, Islamic Relief Worldwide, <https://perma.cc/8SV6-GQDX>.

<sup>14</sup> Diana L. Eck, *The Religious Gift: Hindu, Buddhist, and Jain Perspectives on Dana*, 80 *Social Research* 359, 370, 375 (2013).

<sup>15</sup> Neil L. Andersen, *Tithing: Opening the Windows of Heaven*, The Church of Jesus Christ of Latter-day Saints (Oct. 2023), <https://bit.ly/3PySEmy>.

<sup>16</sup> *What Is Tithing?*, The Church of Jesus Christ of Latter-day Saints, <https://perma.cc/EJE6-N7YG>.

world,” but also to “strengthen [members’] faith in God.”<sup>17</sup> Thus, members are encouraged to tithe as a reminder that their possessions come from God. Giving is a “privilege” that lets them demonstrate “their resolve to trust in the Lord rather than in material things.”<sup>18</sup> “Tithing is about faith”<sup>19</sup> and “[o]bedience,”<sup>20</sup> not just financial support for the Church. Because tithes are “the consecrated offerings of Church members,”<sup>21</sup> given in faith and “appropriated in the manner set forth by the Lord Himself,” “[t]he tithes of the Church are sacred.”<sup>22</sup>

**B. Decisions about how to expend tithes are inherently religious.**

Spiritual and scriptural concepts not only motivate believers to offer tithes, they also animate leaders’ decisions on how to expend them. In many faith traditions, leaders have discretion—within the confines of their broad religious missions—over how tithes are used to fulfill the

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<sup>17</sup> *Id.*; see also Andersen, *supra* note 15.

<sup>18</sup> *Tithing*, The Church of Jesus Christ of Latter-day Saints, <https://perma.cc/AL7K-UNEL>.

<sup>19</sup> *Viewpoint: Make a Payment of Faith*, The Church of Jesus Christ of Latter-day Saints (July 19, 2015), <https://perma.cc/KW5J-VMEN>.

<sup>20</sup> The Church of Jesus Christ of Latter-day Saints, *Teachings of the Church: Joseph F. Smith*, Chapter 31: Obedience to the Law of Tithing, <https://perma.cc/M3JS-ZD2L>.

<sup>21</sup> David A. Bednar, *The Windows of Heaven*, The Church of Jesus Christ of Latter-day Saints (Oct. 2013), <https://perma.cc/Y8GF-Q34K>.

<sup>22</sup> Gordon B. Hinckley, *The Times in Which We Live*, The Church of Jesus Christ of Latter-day Saints (Oct. 2001), <https://perma.cc/YFF5-LPDW>.

communities' religious purposes. For example, because local Southern Baptist Convention churches are autonomous in functionality and governance,<sup>23</sup> each congregation has wide discretion in using tithing funds as it sees fit. Similarly, the General Conference of the United Methodist Church has broad discretion “[t]o determine and provide for ... distributing funds necessary to carry on the work of the Church,”<sup>24</sup> “according to instructions from the church council.”<sup>25</sup> And the Seventh-day Adventist Church broadly provides that “[t]he tithe is sacred, reserved by God for Himself,” to be “used to sustain the gospel laborers in their work.”<sup>26</sup> Local Seventh-day Adventist churches thus “remit 100 percent of the tithe contributed by the members to the conference or mission.”<sup>27</sup> And the church—“acting collectively through the General Conference Session and the Annual Council of the General Conference Committee” and “in harmony with Scripture and Spirit of Prophecy principles”—then determines ways to administer the funds.<sup>28</sup> Faith

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<sup>23</sup> See Morris H. Chapman, *Local Church Autonomy*, SBC Life, Dec. 1, 1997, <https://perma.cc/L9GN-2FWE>; see also *Baptist Faith & Message 2000*, *supra* note 4, at §§ VI, XIV.

<sup>24</sup> The Book of Discipline of the United Methodist Church, § II, Art. IV ¶ 16(9) (2016), <https://perma.cc/ZNB3-6LVT>.

<sup>25</sup> *Id.* § VI, ¶ 258(4).

<sup>26</sup> Ellen G. White, *Gospel Workers* 226 (1915 ed. 2017).

<sup>27</sup> *Handbook of SDA Theology*, *supra* note 8, at 16.

<sup>28</sup> *Use of Tithe*, *supra* note 6.

leaders from these and many other traditions often seek recourse in prayer, divine inspiration, and revelation when deciding how best to use tithes to carry out their spiritual missions.

The Church also uses significant spiritual discretion to determine how best to use tithing funds to fulfill its religious mandate. Church scripture directs that a council comprising the Church’s most senior leaders determine through revelation and discernment the “specific ways to use the sacred funds” and “make[] decisions as they are directed by the Lord.”<sup>29</sup> Accordingly, all tithes are submitted to the Church’s governing bodies in Salt Lake City to be “used for the Lord’s purposes—to build and maintain temples and meetinghouses, to sustain missionary work, to educate Church members, and to carry on the work of the Lord throughout the world.”<sup>30</sup> What this means in practice requires significant religious judgment.

At every General Conference, Latter-day Saints are invited to indicate, by raise of hand, their willingness to “sustain” or uphold the President of the Church and other members of its governing bodies as “prophets, seers, and revelators” entitled to receive spiritual inspiration

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<sup>29</sup> *Viewpoint: Make a Payment of Faith*, *supra* note 19; see also *Doctrine & Covenants* 120:1.

<sup>30</sup> *Tithing*, *supra* note 18.

and revelation from God to make such decisions.<sup>31</sup> Those “who unite themselves” to the Church thus “do so” not just “with an implied consent,” *Kedroff*, 344 U.S. at 114, but with explicit and regularly renewed acknowledgment that the Church will exercise its spiritual judgment to determine how best to use their tithes in pursuit of its religious mission.

**C. The Church’s challenged actions were inherently religious.**

From the decision to invest in revitalization, to announcing that decision in General Conference, to President Hinckley’s words distinguishing tithing from reserve fund earnings, every action Huntsman challenges via this lawsuit was deeply rooted in religious exercise.

In April 2003, then-President of the Church, Gordon B. Hinckley, announced that the Church was purchasing “the shopping mall property immediately to the south of Temple Square.” ER-250. Temple Square is the seat of Church leadership and home of the iconic Salt Lake City Temple and the renowned Tabernacle Choir. It holds deep spiritual

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<sup>31</sup> Henry B. Eyring, *Sustaining of General Authorities, Area Seventies, and General Officers*, The Church of Jesus Christ of Latter-day Saints (Oct. 2023), <https://bit.ly/4crTfjQ>; David B. Haight, *Solemn Assemblies*, The Church of Jesus Christ of Latter-day Saints (Oct. 1994), <https://bit.ly/4a3khfL> (“When we sustain the President of the Church by our uplifted hand, it ... means that we covenant with God that we will abide by the direction and the counsel that come through His prophet. It is a solemn covenant.”); *see also* Bednar, *supra* note 21 (“Lesson Number 2 ....”).



significance for members and, as Salt Lake City's largest tourist attraction, has substantial economic impact on the broader community.

In his April 2003 remarks, President Hinckley said: "We feel we have a compelling responsibility to protect the environment of the Salt Lake Temple." *Id.* He explained that the Church already owned "most of the ground" on which the mall stood, that the mall's owners had "expressed a desire to sell," and that the property needed "very extensive and expensive renovation." *Id.* He then repeated: "We have felt it imperative to do something to revitalize this area." *Id.*



Bird's-eye view of Temple Square with the office building, mall, and residential tower that were part of the revitalization project in the upper-left quadrant.

Subsequent comments by Church leaders underscored the religious nature of this decision to “protect the environment of the Salt Lake Temple” and boost the city’s economic vibrancy. *Id.* In one article, the Church’s Presiding Bishop, H. David Burton, reiterated that the Church was “irrevocably committed to the economic future of this city and to creating a vibrant and beautiful place.”<sup>32</sup> Another leader explained that, for the Church, the spiritual and temporal are inextricably intertwined: “a person who is impoverished temporally cannot blossom spiritually.”<sup>33</sup> Thus, he concluded, “the real return comes in folks moving back downtown and the revitalization of businesses .... [I]t’s [all] for furthering the aim of the church to make, if you will, bad men good, and good men better.”<sup>34</sup>

President Hinckley’s decision to announce the revitalization project during one of the Church’s semi-annual General Conferences was also religiously significant. Held every April and October, General Conference is a religious event where the Church’s top ecclesiastical leaders provide members spiritual encouragement, theological insight, and updates on

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<sup>32</sup> ER-257 n.3 (citing Lisa Ann Jackson, *Church to Move Campuses, Invest in Salt Lake City Redevelopment*, Ensign, Dec. 2003, <https://perma.cc/77BV-DWZV>).

<sup>33</sup> ER-258 n.5 (citing Caroline Winter et al., *The money behind the Mormon message*, The Salt Lake Tribune, Oct. 5, 2012, <https://perma.cc/USV4-3AVK>).

<sup>34</sup> *Id.*



current Church events.<sup>35</sup> It replaces regular Sunday worship services because the sermons delivered by church leaders are considered scripture “of equal validity with the doctrines of the written word.”<sup>36</sup> Conference sermons also become the topics of dedicated Church Sunday classes in between conferences.<sup>37</sup> At General Conference, Church leaders—including the Prophet and other top leaders—address numerous topics of spiritual significance, including tithing.<sup>38</sup> The Conferences are simultaneously translated into 70 languages (and later into 30 more) so they may be studied by members worldwide.

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<sup>35</sup> *6 Things to Know about General Conference*, The Church of Jesus Christ of Latter-day Saints (Apr. 1, 2021), <https://perma.cc/79RJ-REMR>.

<sup>36</sup> James E. Talmage, *Articles of Faith* 7 (11th ed. 1919); Dieter F. Uchtdorf, *Why Do We Need Prophets*, Ensign, Mar. 2012, at 5, <https://bit.ly/3IU0gfG> (“Listen to general conference with an ear willing to hear the voice of God given through His latter-day prophets.”); Spencer W. Kimball, *In the World but Not of It*, Brigham Young University Speeches of the Year 3 (May 14, 1968) (“No text or volume outside the standard works of the Church should have such a prominent place on your personal library shelves—not for their rhetorical excellence or eloquence of delivery, but for the concepts which point the way to eternal life.”).

<sup>37</sup> The Church of Jesus Christ of Latter-day Saints, *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints*, §§ 8.2.1.2, 9.2.1.2 (2023), <https://perma.cc/BE83-D7Y7>; Thomas S. Monson, *Until We Meet Again*, Ensign, Nov. 2008, at 106, <https://perma.cc/6JQ9-8PEJ>.

<sup>38</sup> See, e.g., Dallin H. Oaks, *Tithing*, The Church of Jesus Christ of Latter-day Saints (Apr. 1994), <https://perma.cc/8FJJ-7LLN>.

Like the announcement’s occasion, President Hinckley’s language was also rooted in religious practice and belief. Beyond assuring members that “tithing funds” would not be used to acquire or develop the property, President Hinckley explained that funding would come from “commercial entities owned by the Church” and from “earnings of invested reserve funds.” ER-250. This reference to “invested reserve funds” had its own religious significance. In an earlier Conference address on church finances, President Hinckley himself had taught that—in disbursing tithing income—the Church observes “two basic and fixed principles”: (1) “the Church will live within its means” and (2) “a fixed percentage of the income will be set aside to build *reserves*.”<sup>39</sup> President Hinckley observed that the Church had “taught its membership” these principles of self-reliance “[f]or years” and that leaders were “only trying to follow the same principle[s] for the Church as a whole.”<sup>40</sup>

These principles are further rooted in Church scripture, which encourages self-reliance so that the Church and its members might “stand independent,” both spiritually and temporally, regardless of any challenges they may face.<sup>41</sup> Thus, Church leaders have frequently

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<sup>39</sup> Gordon B. Hinckley, *The State of the Church*, The Church of Jesus Christ of Latter-day Saints (Apr. 1991) (emphasis added), <https://perma.cc/ZEB5-FFAU>.

<sup>40</sup> *Id.*

<sup>41</sup> *Doctrine & Covenants* 78:14; see also Self-Reliance, The Church of Jesus Christ of Latter-day Saints, <https://perma.cc/L9NA-JJHY>.

provided similar instruction—both before and after President Hinckley.<sup>42</sup> Members familiar with these fundamental religious teachings thus would have understood the origins, nature, and purposes of Church reserve funds.

### **III. Adjudicating Huntsman’s claim would necessarily involve religious entanglement.**

Given the inherently religious nature of tithing and its inseparability from decisions of internal government, it is unsurprising that courts have repeatedly barred lawsuits challenging how houses of worship “expend funds raised by the church for religious purposes.” *Bell*, 126 F.3d at 332-33. These courts have correctly concluded that such decisions “fall[] within the ecclesiastical sphere that the First Amendment protects from civil court intervention.” *Id.* Courts second-guessing the use of tithes “would necessarily embroil the courts into membership, church discipline, and church governance matters.” *El Pescador Church, Inc. v. Ferrero*, 594 S.W.3d 645, 658 (Tex. Ct. App. 2019) (rejecting fraud-based tithing claim).<sup>43</sup> Huntsman’s claim is no different. Indeed, it is entangling

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<sup>42</sup> See, e.g., Bednar, *supra* note 21; L. Tom Perry, *If Ye Are Prepared Ye Shall Not Fear*, The Church of Jesus Christ of Latter-day Saints (Oct. 1995), <https://bit.ly/3TxklO3> (teaching similar principles by quoting statements of earlier Church leaders from 1937).

<sup>43</sup> See also, e.g., *Ambellu v. Re’ese Adbarat Debre Selam Kidist Mariam*, 387 F. Supp. 3d 71, 80 (D.D.C. 2019) (concluding that “[h]ow a church spends worshippers’ contributions is ... central to the exercise of religion” and permitting challenge to those decisions “would constitute an

several times over, as it not only requires a civil court to second-guess the Church's own definition of tithing but would require the court to do so within the context of statements made by the Church's highest spiritual leader during a sermon to the faithful and in terms that have distinct religious meaning.

First, Huntsman's claim hinges on whether the Church intentionally misled members by stating it would use earnings on its invested reserve funds rather than direct tithes to fund a particular development project. In support of this claim, Huntsman asks this court to substitute his definition of tithing for that of the Church's leaders, including its President/Prophet, determined in accordance with Church law.

The Church maintains it used no tithing principal to fund the revitalization. Rather, as promised by President Hinckley, the project was funded with earnings on reserve funds. Huntsman contends the Court should rule for him anyway, because the "correct" definition of tithing extends to the earnings of reserve funds that had tithing as their principal. But that would require judicial "interpretation" of matters of "faith and doctrine"—specifically, the meaning of "tithing funds"—that

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impermissible judicial interference"); *Hawthorne v. Couch*, 911 So. 2d 907, 910 (La. Ct. App. 2005) (rejecting fraudulent misrepresentation claim for return of tithes because "[t]he issue of tithing is at its core a purely ecclesiastical matter" outside the review of "civil courts"); *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007) (First Amendment barred determination of "whether [an] expenditure was proper in light of Saint Luke's religious doctrine and practice").

lie wholly beyond the competence of secular courts. *Milivojevich*, 426 U.S. at 721-22; *Blue Hull*, 393 U.S. at 448.

The panel opinion shows just how inextricably intertwined the religious questions are with Huntsman’s claim. The panel concluded it was “not required to rely on or interpret the Church’s religious teachings to determine if it misrepresented how it was using tithing funds.” Op.11. But any answer to the panel’s “secular” question necessarily requires a court to determine whether the earnings of invested reserve funds fall under the Church’s definition of tithing. *See* Pet. for Reh’g.12. The panel’s framing of the question for a jury makes that clear: “could a reasonable juror conclude that the Church fraudulently misrepresented that no tithing funds—neither tithing principal nor earnings on tithing principal—would be or were being used to finance the [revitalization] project?” Op.18; *accord* Op.27. That question wrests the authority to define tithing away from the Church by assuming—as a matter of law—that both tithing principal and earnings on tithing principal qualify as tithing within the Church. But The Church of Jesus Christ does not define tithing that way. And courts cannot usurp religious governance to make such doctrinal determinations.

But Huntsman’s claim is entangling for yet another reason: it hinges in part on alleging that the Church’s then-Prophet, President Hinckley, made false statements during a spiritual sermon having the same weight as scripture, which was broadcast to the worldwide Church as part of its

spiritual formation. Op.13. *See supra* at 16-17. His claim thus not only implicates tithing generally, but also the spiritual speech that inheres in religious sermons. To resolve his claim, civil courts would have to probe what Church leadership meant and what Church members would have understood about religious statements made during a religious service.

Courts have no authority to second-guess such speech. The Constitution provides special protection for the contents of religious sermons. Courts have long recognized that the church autonomy doctrine “is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely.” *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002). Thus, it is not “in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings.” *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953). But that is precisely what Huntsman sought to do (and what the panel did) by finely parsing President Hinckley’s General Conference announcement and brushing it off as a mere “statement[] by [a] Church official[].” Op.13. This second error compounds the violation to Church autonomy and confirms yet again that Huntsman’s claim cannot be adjudicated without entangling the court in a host of religious questions.

Huntsman’s claims engender religious entanglement in other ways as well. Adjudicating falsity and reasonable reliance would require the court to survey the Church’s scripture and other teachings on self-reliance to

assess how clear it was that that reserve funds were formed from tithing set aside for future use—a practice long encouraged by the Church for both members individually and the institution itself. A court resolving this question would end up dictating the level of clarity with which the Church must speak to its members regarding its internal affairs. Otherwise, any member—like Huntsman here—could assert any ambiguity as the fraudulent inducement that caused a continued offering of tithes.

Similarly, Huntsman’s claim for damages would require a showing that, if he’d known reserve funds had tithing as principle, he would have stopped offering tithes once it was announced the revitalization project would be financed with reserve fund earnings. But by his own admission, Huntsman was a “devout” Latter-day Saint until 2017. ER-253. Thus, presumably, he accepted the Church’s teachings that tithes should be offered as an act of self-denial and submission to God’s will, not because the tithes would be put to any particular use.<sup>44</sup> And even if the Church had promised that no tithes *or earnings from tithes* would be used, the Court would have to grapple with the fact that, at each General Conference, Huntsman presumably raised his hand to affirm that he sustained President Hinckley and other Church leaders as “prophets,

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<sup>44</sup> See Andersen, *supra* note 15.

seers, and revelators” entitled to receive—at any time—revelation from God that could change the course of how tithing funds were expended.<sup>45</sup>

#### **IV. Huntsman’s claim will lead to wide-ranging negative effects on church-state relations.**

Ultimately, Huntsman’s claim devolves to one of misunderstanding. It is not at all clear it even meets the basic standards for pleading fraud. And for all the reasons set forth above, allowing such claims to proceed would invite a flood of lawsuits challenging religious institutions’ descriptions of how they carry out their work.

The panel’s suggestion that the phrase “earnings on reserve funds” was akin to a “foreign language,” Op.25, is illustrative. The Church’s General Conference is in fact broadcast simultaneously in about 70 languages around the world.<sup>46</sup> Many of those listening to President Hinckley’s statement would have been listening to a foreign language or a translation. Those listeners would have had a heightened (and possibly unavoidable) risk of misunderstanding President Hinckley’s statements due to language barriers. If that potential for misunderstanding can support a claim for fraud, courts will be flooded with religiously entangling claims for fraud by individuals disaffected from their former religious beliefs.

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<sup>45</sup> *See supra* at 12-13.

<sup>46</sup> *General Conference*, The Church of Jesus Christ of Latter-day Saints, <https://perma.cc/RY2T-9D6D>.



Thus, if successful, Huntsman's claim would dramatically expand liability for the numerous religious organizations. Those that receive offerings from the faithful as part of fulfilling their religious missions may feel the burden most acutely, and indeed already have begun to do so. Within a few short months of the panel's decision in this case, five nationwide class actions were filed against the Church, each with nearly identical allegations to Huntsman's.<sup>47</sup> Similar claims pending against the Catholic Church ask a civil court to second-guess decisions made by the Pope regarding the expenditure of funds solicited during Mass.<sup>48</sup>

A tsunami of other lawsuits against religious institutions will follow, each encroaching on matters of internal church governance and doctrine

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<sup>47</sup> See *Chappell v. Corp. of Pres. of The Church of Jesus Christ of Latter-day Saints*, No. 2:23-cv-794 (D. Utah Oct. 31, 2023); *Long v. Corp. of Pres. of The Church of Jesus Christ of Latter-day Saints*, No. 3:23-cv-3950 (S.D. Ill. Dec. 15, 2023); *Risdon v. Corp. of Pres. of The Church of Jesus Christ of Latter-day Saints*, No. 2:23-cv-372 (E.D. Wash. Dec. 21, 2023); *Browner v. Corp. of Pres. of The Church of Jesus Christ of Latter-day Saints*, No. 3:23-cv-1361 (M.D. Tenn. Dec. 22, 2023); *Judson v. Corp. of Pres. of The Church of Jesus Christ of Latter-day Saints*, No. 2:24-cv-796 (C.D. Cal. Jan. 29, 2024).

<sup>48</sup> *O'Connell v. U.S. Conf. of Catholic Bishops*, No. 1:20-cv-1365 (D.D.C. May 21, 2020). Although that lawsuit was filed prior to the panel's decision in this case, the district court's rejection of the Catholic Church's religious autonomy arguments came only a few months after the panel's opinion in this case and uses similar flawed reasoning to reach the same incorrect conclusion. See Defendant-Appellant's Jurisdictional Statement, Ex. A, at A13-A15, *O'Connell v. U.S. Conf. of Catholic Bishops*, No. 23-7173 (D.C. Cir. Jan. 22, 2024) (transcript of district court's order denying motion to dismiss)

protected by the First Amendment. How could they not? Under Huntsman's theory, any time a religious leader announces how a church, synagogue, or mosque will use congregants' donations, the religious group opens itself up to a fraud claim unless it defines every term with a secular dictionary and an accountant's precision. Even then, a jury may still get to second-guess the church's representations if just one listener can claim he somehow misunderstood religious concepts—no matter how unreasonable the misunderstanding. Religious leaders do not even need to solicit funds to be liable for fraud, according to Huntsman. Here, for example, President Hinckley's announcement suggested that tithes were *not* needed to complete the project. Instead, religious leaders simply need to speak with such slight ambiguity that a member *might* misunderstand them. Allowing such cases to proceed would invite courts to insert themselves into all manner of religious disputes. The First Amendment forbids such an outcome.

## CONCLUSION

The Court should affirm the decision of the district court.

March 22, 2023

Respectfully submitted,

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I hereby certify that on this 22nd day of March, 2024, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

/s/ Eric S. Baxter  
Eric S. Baxter  
*Attorney for Amicus Curiae*

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