IN THE INDIANA SUPREME COURT

Cause No. 20S-OR-00520

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

BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF RELATOR'S VERIFIED PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

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BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF RELATOR'S VERIFIED PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

Amici curiae constitutional law scholars respectfully submit that this Court should grant the Petition for a Writ of Mandamus.

INTEREST OF *AMICI CURIAE*

Amici curiae are constitutional law scholars with a particular interest in First Amendment Free Exercise and Establishment Clause issues. They write to aid the Court in understanding the importance of the issues presented by the Petition in this case and why this Court should grant the Petition.

Elizabeth A. Clark is Associate Director of the International Center for Law and Religion Studies at the J. Reuben Clark Law School at Brigham Young University. Professor Clark has spoken worldwide and written extensively on church-state issues and is the editor of several books on U.S. and comparative law and religion issues. She has testified before the U.S. Congress on religious freedom issues, taken part in drafting legal analyses of pending legislation affecting religious freedom in over a dozen countries, and has written amicus briefs on religious freedom issues for the U.S. Supreme Court.

Richard W. Garnett is the Paul J. Schierl/Fort Howard Corporation Professor at Notre Dame Law School. He teaches and writes about the freedoms of speech, association, and religion, and constitutional law more generally. He is a leading authority on the role of religious believers and beliefs in politics and society. He has published widely on these matters, and is the author of dozens of law review articles and book chapters. He is the founding director of Notre Dame Law School's new Program on Church, State, and Society, an interdisciplinary project that focuses on the role of religious institutions, communities, and authorities in the social order.

Robert J. Pushaw is the James Wilson Endowed Professor of Law at Pepperdine University School of Law and has taught at eight other law schools. He is a prolific constitutional law scholar. Many of his works explore the dangers of government interference with individual constitutional rights, including the institutional free exercise rights of parochial schools.

SUMMARY OF ARGUMENT

The United States Supreme Court's decisions in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) and *Hosanna–Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) recognize that the Free Exercise and Establishment Clauses of the First Amendment guarantee churches' right to autonomy from government interference with their internal affairs. The so-called church-autonomy doctrine's purpose is not only to protect personal and organizational religious liberty, but also to protect the Establishment Clause's structural limitations on government action. The church-autonomy doctrine functions to categorically forbid the state from revisiting religious decisions made by religious organizations.

Because of the church-autonomy doctrine's structural protection on the exercise of governmental power, it functions as an immunity from suit and is different from most other defenses. The structural protection afforded by the church-autonomy doctrine commends resolution of whether the protection afforded by this immunity applies before reaching the merits of a case. This approach is not unprecedented—it is the same approach that courts take when determining the application of complete and qualified immunity for public officials. A government official immune from suit is harmed by the very act of being sued. So too, a religious entity being sued for exercising its right to determine who its ministers are, what school can carry the religious entity's name, or what organizations can be officially affiliated with the entity is harmed by being dragged into the secular courts to answer for its decision.

Because the very act of maintaining litigation where the church-autonomy doctrine applies harms the structural and personal interests that the doctrine protects, courts should address the application of the doctrine expeditiously at the outset of litigation (as they do when resolving immunity questions). Indeed, the structural protections afforded by the doctrine impose

an independent duty on the courts to avoid unnecessary entanglement in quintessential religious decisions, such as choosing who will serve as a religious group's ministers or whether a larger religious entity will allow a subordinate organization to affiliate with it, *even where* the parties are willing to submit their dispute to judicial resolution. Practically, this means that courts should resolve the application of the church-autonomy doctrine at the pleading stage if possible, and if not, limit discovery to resolving whether the church-autonomy doctrine applies. And if a court determines that the church-autonomy doctrine does not apply, the party asserting the doctrine should be allowed to obtain immediate appellate relief via an original action in the appellate courts.

This case shows the very harms that occur when these rules are not heeded. Here, the trial court has already ordered Defendant, the Archdiocese of Indianapolis, to turn over hundreds of pages of internal church documents to the court. And the trial court was poised to review those documents *in camera* until this Court issued an emergency writ ordering the trial court to stay all discovery-related proceedings. Moreover, the trial court denied the Archdiocese's Motion to Dismiss because it believed it needs to inquire into whether the "directive by the Archdiocese to terminate [Plaintiff Joshua] Payne-Elliott was made by the highest authority in the ecclesiastical body . . . of the Roman Catholic Church." (R 556.) Specifically, the Court stated that "whether Payne-Elliott was a minister cannot be determined without *additional discovery*, specifically discovery relating to *who had the authority to make the ministerial decision*, whether a ministerial decision was actually made, or whether this is being brought up at this time simply as a defense." (R 564.) (emphasis added). Then, when the Archdiocese asked to certify the question because the harm of entanglement cannot be undone, the trial court denied certification. The trial court's actions are the very things against which the First Amendment protects.

Accordingly, this Court should grant the petition for a writ of mandamus and a writ of prohibition.

ARGUMENT

I. The church-autonomy doctrine protects the courts from exercising governmental authority to review religious determinations.

The church-autonomy doctrine exists to ensure that the government does not trespass across the boundary between the secular and the religious. Within our constitutional government, the people of the United States and the State of Indiana have determined that government cannot interfere with the internal affairs of religious organizations, including matters of faith, doctrine, and internal governance. This idea is frequently part of the phrase, "separation of church and state," but is not encrusted with the barnacles of two centuries of popular conception and confusion. The doctrine is most frequently invoked in judicial proceedings, and works not only to protect religious institutions but equally to protect the courts from being called upon to referee religious disputes. The facts of this case demonstrate the pitfalls inherent when courts encroach upon the boundary between the secular and the religious.

This Court has described "church-autonomy doctrine" as addressing "a church's First Amendment right to autonomy in 'making decisions regarding [its] own internal affairs,' including matters of faith, doctrine, and internal governance." *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 293 (Ind. 2003) (quoting *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 655 (10th Cir. 2002)). The United States Court of Appeals for the Seventh Circuit has helpfully explained that the doctrine "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." *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) (cleaned up). *See* Douglas Laycock, *Church Autonomy Revisited*, 7 Geo. J.L. & Pub. Pol'y 253, 254 (2009) ("A church autonomy claim is a claim to autonomous management of a religious organization's internal affairs. The essence of church autonomy is that the Catholic Church should be run by duly constituted Catholic authorities and not by legislators, administrative agencies, labor unions, disgruntled lay people, or other actors lacking authority under church law.")

The U.S. Supreme Court's decisions addressing the so-called ministerial exception show that it is a specific application of the overall church-autonomy doctrine. *See*, *e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) (stating that "'ministerial exception' is based on the "insight" that the First Amendment protects churches' "autonomy with respect to their internal management"). So, for example, the reason that decisions regarding the selection and supervision of teachers at religious schools are off limits to judicial review under the ministerial exception is because the "religious education and formation of students is the very reason for the existence of most private religious schools, and . . . 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." *Id.* at 2055 (cleaned up).

The church-autonomy doctrine is rooted in the structural concern for ensuring that courts do not become entangled in resolving religious disputes as to which they have no constitutional power. In *Hosanna-Tabor*, the U.S. Supreme Court rooted its analysis in safeguarding the boundary between the secular and the religious by tracing the history of legal protections for religion in America. 565 U.S. at 182–87. The Court focused on three cases dating back nearly

150 years, all involving property disputes, and all of which recognized that the government is categorically prohibited from contradicting ecclesiastical decisions. *Id*. at 185–87.

In *Watson v. Jones*, 80 U.S. 679 (1871), the U.S. Supreme Court declined to interfere with a denomination's determination as to which faction of a church rightly controlled the church's property. There the Court stated:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. . . . It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. [*Id.* at 728–29.]

Accordingly, the Court adopted the common-law rule that courts could not review or overturn decisions by religious bodies on "questions of discipline, or of faith, or ecclesiastical rule, custom, or law." *Id.* at 727.

Some 80 years later, the U.S. Supreme Court declared that the decision in *Watson* "radiate[d] . . . 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 v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (emphasis added). In *Kedroff*, the Court applied the First Amendment to an ecclesiastical question for the first time. *See Hosanna-Tabor*, 565 U.S. at 186. There, the Court struck down a New York law that purported to decide which Russian Orthodox faction was entitled to control a cathedral because

the issue was "strictly a matter of ecclesiastical government." *Kedroff*, 344 U.S. at 115–19. Such issues, the Court declared, are "forbidden" to the "power of the state." *Id.* at 119.

The U.S. Supreme Court returned to the harm caused by the interjection of the courts into ecclesiastical or religious questions in *Serbian Eastern Orthodox Diocese for United States of Am. & Canada v. Milivojevich*, 426 U.S. 696 (1976). There, the Court determined that courts cannot "delve into the various church constitutional provisions" because to do so would repeat the lower court's error of involving itself in "internal church government, an issue at the core of ecclesiastical affairs." *Id.* at 721. The Court explained that the First Amendment allows "religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." *Id.* at 724. Courts must accept the decisions of religious tribunals on these matters. *Id.* at 725.

These cases animated the U.S. Supreme Court's recognition of the ministerial exception in *Hosanna-Tabor*, where the Court emphasized that courts are categorically forbidden from resolving religious disputes. And, in *Our Lady of Guadalupe*, the U.S. Supreme Court only further clarified that this is a structural concern that protects the courts *and* church autonomy—and extends beyond decisions about ministers. "The Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady*, 140 S. Ct. at 2060 (cleaned up). The Court further explained that "state interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Id.*

One commentator has explained that lower courts "have properly interpreted the ministerial exception not as a personal right, but as a structural limitation on government action." Carl H. Esbeck, *After* Espinoza*, What's Left of the Establishment Clause?*, 21 Federalist Soc' Rev. 186, 200 (2020). The limitation articulated in *Hosanna-Tabor*—and reiterated in *Our Lady of Guadalupe*—"is a constraint on the power of the government . . . rooted in large part in the Establishment Clause." *Id.* And that "makes sense because what is being protected . . . is autonomy in internal operations and governance, not a right of religious staffing. *Id.* at 201. And as one of the Amici professors has explained the policy underlying the church-autonomy doctrine in a manner more accessible to most citizens:

> Well understood, 'separation of church and state' would seem to denote a structural arrangement involving institutions, a constitutional order in which the institutions of religion—not 'faith,' 'religion,' or 'spirituality,' but the 'church'—are distinct from, other than, and meaningfully independent of, the institutions of government. What is 'at stake', then, with separation is not so much—or, not only—the perceptions, feelings, immunities, and even the consciences of individuals, but a distinction between spheres, the independence of institutions, and the 'freedom of the church.' [Richard W. Garnett, *Religion and Group Rights: Are Churches (Just) Like the Boy Scouts?*, 22 St. John's J. Legal Comment. 515, 523 (2007).]

Thus, the U.S. Supreme Court's decisions in *Hosanna-Tabor* and *Our Lady of Guadalupe* stand for the proposition that the church-autonomy doctrine protects the independence of religious people and institutions from the state, *and* the courts' structural interest in avoiding the establishment of religion. Because of the structural nature of the protection afforded to courts by the ministerial exception and the broader church-autonomy doctrine, courts have declined to allow parties to waive the doctrine and thereby drag courts into religious controversies by choice or neglect. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015). *Accord Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 (3d Cir. 2018);

Tomic v. Catholic Diocese of Peoria, 442 F.3d 1036, 1042 (7th Cir. 2006), *abrogated on other grounds*, *Hosanna-Tabor*, 565 U.S. 171.

Here, the trial court has marched resolutely across the boundary established by the church-autonomy doctrine to demand a comprehensive inquiry into internal religious decisions including a review of hundreds of church records. The relationship between the church and state is such that the religious institution has no inherent ability to repel this incursion. Instead, it must rely on higher courts to order a withdrawal. That is precisely why this Court should grant the petition for a writ of mandamus.

II. Because of the protections afforded by the church-autonomy doctrine, its application should be determined before courts reach the merits.

The rationale for the church-autonomy doctrine should direct how courts address the procedural administration of a case in which church autonomy or the ministerial exception is raised as a defense. The protection of personal and organizational religious liberty encompassed by the church-autonomy doctrine includes the recognition that it is not only the decisions made by the court that "impinge" on religious liberty, but the "very process of inquiry" leading to those decisions that impinges on that liberty. *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). Indeed, "it is well established, in numerous other contexts, that courts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (cleaned up).

The structural interest in avoiding the establishment of religion also commends limiting the scope of courts' involvement in cases before determining whether the church-autonomy doctrine applies. The church-autonomy doctrine and its derivative ministerial exception are unlike most other affirmative defenses. Courts have no interest of their own in whether a party's

claims are barred by contributory negligence or duress. Because of the structural limitation imposed by the church-autonomy doctrine on the exercise of judicial authority, courts do have an interest in ensuring that the exception is applied even where the parties fail to raise the doctrine or where someone claims that they have waived it affirmatively. *See*, *e.g.*, *Lee*, 903 F.3d at 117 (upholding application of the ministerial exception where trial court raised the issue *sua sponte*); *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 658 (7th Cir. 2018) (stating that "a religious institution does not waive the ministerial exception by representing itself to be an equal-opportunity employer"), *cert. denied*, 139 S. Ct. 456 (2018).

The categorical nature of the prohibition against the state enmeshing itself in religious controversies should require courts to determine whether the church-autonomy doctrine bars a case or part of a case before considering the merits of the plaintiff's claims. In cases where it may apply, the church-autonomy doctrine has practical implications for discovery, the possible need to try disputed factual issues related to the church-autonomy doctrine, and interlocutory appeals. Although the implications here of the doctrine directly implicate the availability of interlocutory appellate review via an original action, the trial court's actions also implicate the need to address the immunity afforded by the doctrine in the trial court.

A. If discovery is needed to decide if the church-autonomy doctrine applies, discovery should be limited to that issue.

If the application of the church-autonomy doctrine is not resolved by a motion to dismiss, courts should limit discovery to topics relevant to whether the church-autonomy doctrine applies. *See* Ind. Trial Rule 26(b)(1). The reasons for this are twofold.

First, allowing broad discovery in a case involving a religious employee, as here, will result in inquiries into the employee's fitness for the position, the basis for the termination, and

whether that basis was pretextual. Indeed, this case raises additional questions that are even more plainly at the heart of internal religious decisionmaking: whether the Archdiocese of Indianapolis has the authority to declare a high school Catholic; whether it can require certain minimum standards from a Catholic high school; and whether certain behaviors contradict Church teaching. These are precisely the inquiries that the government—including the courts—cannot make. *Hosanna-Tabor*, 565 U.S. at 188–89; *Our Lady of Guadalupe*, 140 S. Ct. at 2060–61.

Second, the "process of inquiry" harms the rights protected by the Religion Clauses, *Catholic Bishop of Chicago*, 440 U.S. at 502, and discovery is a principal means by which that harm is inflicted. *See* Mark E. Chopko, Marissa Parker, *Still A Threshold Question: Refining the Ministerial Exception Post*-Hosanna-Tabor, 10 First Amend. L. Rev. 233, 293–94 (2012). Subjecting a religious organization to discovery with regard to its choice of its ministers or whether a school is sufficiently Catholic can result in the organization's leaders being deposed on matters of doctrine and religious orthodoxy, as well as the organization's fidelity to its beliefs in practice. Discovery may also result in the adversarial inquiry into the spiritual beliefs and failings of religious persons. Such inquiry may chill a religious organization's articulation and practice of its faith if it knows that it might face discovery. *See Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 343–44 (1987) ("While a church may regard the conduct of certain functions as integral to its mission, a court may disagree. A religious organization therefore would have an incentive to characterize as religious only those activities about which there likely would be no dispute, even if it genuinely believed that religious commitment was important in performing other tasks as well. As a result, the community's process of self-definition would be shaped in part by the prospects of litigation."); *Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)

("There is the danger that churches, wary of EEOC or judicial review of their decisions, might make them with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments of who would best serve the pastoral needs of their members."). This problem is compounded by the possibility of contentious motion practice where such information is likely to be made part of the public record. *Travelers Cas. & Sur. Co. v. United States Filter Corp.*, 895 N.E.2d 114, 115 (Ind. 2008) ("Both the Indiana General Assembly and this Court have adopted public accessibility as the default rule for information submitted to government entities, including the state's courts.").

Where discovery is necessary to determine whether the church-autonomy doctrine is applicable, discovery should be limited to that issue. Courts should not allow discovery that may be moot if the doctrine applies. Such discovery carries with it the very harms the church-autonomy doctrine is intended to prevent. Indeed, this case is the prototypical example of the sort of harms incurred when these rules are not heeded and precisely why this Court should grant the petition. Here, the trial court has already required the Archdiocese to hand over wide-ranging discovery to the court itself and has indicated that it plans on passing on this discovery to Payne-Elliott. Neither of those bells can be unrung.

Such an approach is not novel. It has an analogue in the official immunity context. For example, the United States Supreme Court has "emphasized that qualified immunity questions should be resolved at the *earliest* possible stage of a litigation." *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987) (emphasis added); *Fort Wayne Cmty. Sch. v. Haney*, 94 N.E.3d 325, 331 (Ind. Ct. App. 2018) (recognizing that in the context of qualified immunity, a trial court "must exercise its discretion so that officials are not subject to unnecessary and burdensome discovery or trial proceedings." (quoting *Crawford-El v. Britton*, 523 U.S. 574, 597–98 (1998)). Where

discovery is necessary to resolve whether qualified immunity applies, "any such discovery should be tailored specifically to the question of . . . qualified immunity." *Anderson*, 483 U.S. at 646 n.6. Accordingly, courts allow limited discovery to determine if qualified immunity wholly bars a suit. *See*, *e.g.*, *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012) (discussing the "careful procedure under which a district court may defer its qualified immunity ruling if further factual development is necessary to ascertain the availability of that defense."); *Solomon v. Petray*, 795 F.3d 777, 791 (8th Cir. 2015) ("Limited discovery is sometimes appropriate to resolve the qualified immunity question." (cleaned up)); *Robertson v. Lucas*, 753 F.3d 606, 623 (6th Cir. 2014) ("Discovery is disfavored in this context, but 'limited discovery may sometimes be necessary before the district court can resolve a motion for summary judgment based on qualified immunity.'" (quoting *Crawford–El*, 523 U.S. at 593 n. 14)).

Here, the trial court's imposition of wide-ranging discovery demands on the defendants results in the very unconstitutional harm that the First Amendment prohibits.

B. Orders denying the application of the church-autonomy doctrine should be immediately appealable.

Where a trial court concludes that the church-autonomy doctrine does not apply, such decisions should be immediately appealable on an interlocutory basis. The reason for this is that the litigation process itself may excessively entangle government, including the courts, in religion. There is no putting the genie back in the bottle after the courts have become excessively entangled in a religious controversy because they erred in failing to dismiss the case because of the church-autonomy doctrine.

Here, again, the treatment of interlocutory appeals from the denial of qualified immunity provides a useful analog. *See McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013). The

doctrine of qualified immunity arises from the common law but has a structural justification related to the separation of powers. Qualified immunity, if applicable, means that the defendant is not subject to suit. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). For this reason, qualified immunity is "effectively lost if a case is erroneously permitted to go to trial." *Id.* This makes a decision denying qualified immunity effectively unreviewable after a final judgment. *Id.* at 527. For that reason, orders denying qualified immunity are immediately appealable final orders under the collateral-order doctrine notwithstanding the fact that they do not finally resolve a case. *Id.* at 530. Moreover, in permitting immediate appeal under the collateral-order doctrine, federal courts have implicitly recognized that the right to appeal decisions denying qualified immunity or impermissibly resolving religious questions should not be subject to—and thus thwarted by—the discretion of the trial court to certify a question for permissive interlocutory appeal.

The same should be true of the church-autonomy doctrine. The harm caused to the defendant by the failure to apply the church-autonomy doctrine is the *same* harm incurred by the defendant in the qualified-immunity context. The defendant loses the First Amendment protection against trial—a trial that should never have occurred—and the protection from a judicial determination on its internal religious issues over which the court has no competence. While a post-judgment appeal can undo any ultimate judgment, it cannot restore the protections of the church-autonomy doctrine as guaranteed by the Religion Clauses. Indeed, in *Mitchell*, the U.S. Supreme Court determined that a similar partial restoration of qualified immunity was unacceptable. In the context of the church-autonomy doctrine, the harm is much worse. First, the defendant loses constitutional, not merely common-law, rights. Second, because the church-autonomy doctrine also protects against the government's intrusion into quintessential religious

questions—such as who a religious organization's ministers are or whether a particular sub-organization can designate itself as part of a larger religious denomination—the constitutional harm occurs *because* of the judicial proceedings. And the harm is not just to the religious entity. The harm is also to state because the court has entangled itself impermissibly with religion. Accordingly, an order declining to apply the church-autonomy doctrine should be immediately appealable under the collateral-order doctrine like decisions denying qualified immunity. *See McCarthy*, 714 F.3d at 975.

Although Indiana does not appear to have recognized a similar collateral-order doctrine available in federal court, the availability of immediate appeal to correct clearly unconstitutional judicial intrusions into religious questions should not depend on the plaintiff's choice of forum. Moreover, this Court has recognized that original actions, like the collateral-order doctrine in the federal courts, are available to where "the normal appellate process is unavailable, inadequate, or incomplete as an avenue for seeking appellate redress," and where "the denial of the writ would result in extreme hardship." *State ex rel. Petty v. Super. Ct. of Marion Cty.*, 269 Ind. 21, 22; 378 N.E.2d 822 (1978). Thus, in the absence of a rule or statute permitting immediate appeal as of right (or a certification of a permissive interlocutory appeal), this Court should permit original actions to redress violations of the church-autonomy doctrine that cannot be effectively remedied on appeal after final judgment. Here, that means that this Court should grant the petition for a writ of mandamus and a writ of prohibition.

CONCLUSION AND REQUESTED RELIEF

For all the reasons stated above, the *Amici Curiae* urge this court to grant the petition.

Dated: September 8, 2020

Respectfully submitted,

By */s/* Stephen M. Judge
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CERTIFICATE OF SERVICE

I certify that on September 8, 2020, I electronically filed the foregoing document using the Indiana E-Filing System and that service of the foregoing was made by IEFS on the following:

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