

# 16-1271cv

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IN THE  
*United States Court of Appeals*  
FOR THE SECOND CIRCUIT

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**JOANNE FRATELLO,**

*Plaintiff-Appellant,*

v.

**ROMAN CATHOLIC ARCHDIOCESE OF NEW  
YORK, ST. ANTHONY'S SHRINE CHURCH,  
AND ST. ANTHONY'S SCHOOL,**

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**PLAINTIFF-APPELLANT'S OPPOSITION TO  
*AMICUS CURIAE* BRIEF OF  
ORTHODOX CHURCH OF AMERICA**

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## **MS. FRATELLO'S OPPOSITION TO AMICUS BRIEF**

Appellant Joanne Fratello (Ms. Fratello) can only assume that the Appellee Archdiocese of New York (Archdiocese)—which is part of the Roman Catholic Church, the most powerful church on Earth—has sounded the alarm to enlist the support for organized religion in an effort to gain even more power and influence that organized religion already has in civil society. It's objection to the proposed amicus brief appears designed to simply reinforce its argument, by showing that “organized religion” stands behind the Archdiocese.

Ms. Fratello and her attorney urge this Court to recognize what the Founding Father knew, corroborated today by our increasing knowledge in the sciences, namely, that organized religion and religious dogma are dangerous to a society, and what a society needs is enlightened rationality. Propagandizing and indoctrinating American children with Christian positive values, such as virtues of religious piety and charity, may be laudable. Ms. Fratello clearly agrees that the Catholic Schools are laudable in many respects, or she would not have sought employment there and been so good an employee.

Yet religion is always self-serving to the religion group (the Church), and to the extent that secular courts protect religious practitioners outside the church house, the courts advance and endorse faith over reason.

The Founders—people of the Age of Enlightenment— would not approve of judicial advancement of religion. Enlightened thinkers of today, such as Prof. Edward O. Wilson,<sup>1</sup> provide scientific and moral explanations as to why the Founders’ disdain for organized religion was profoundly correct.

This Court will likely be expounding upon the Constitution and the Bill of Rights in this case. Congress cannot overrule it if it errs. Nor will Congress likely desire to overrule a grant of power to organized religion, because Congressional leaders will become beholden to organized religion, as the Christian Right has achieved already in much of the country. If more and more citizens become indoctrinated by the righteousness of religious belief, ignorant of the science of human nature, our Nation will descend from an Enlightened democracy (to the extent we are or have been one), into a Nation of competing tribes (religious group versus religious group; Democrat v. Republican; Ivy League v. blue collar, and so on).

No member of this Court lived in Revolutionary times and few if any experienced World War II. Few members of this Court likely have extensive science backgrounds. Yet understanding of science and history are needed to protect our Nation’s future. If this Court denies even one child the opportunity of

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<sup>1</sup> The undersigned has donated a copy of Prof. Wilson’s 2014 book THE MEANING OF HUMAN EXISTENCE to the Court’s law library via the Clerk’s Office. It is a book that every educated person—and especially jurists deciding cases that affect our children’s and our society’s future—should read and absorb, in the undersigned’s opinion.

being a better citizen—a citizen who better understands science and history—because of religious indoctrination, then this Court is both denying justice and imperiling the democracy that the Founders envisioned.

Because the Appellee Archdiocese has provided the opportunity for motion practice regarding the Amicus brief of the (Russian) Orthodox Church, presumably to emphasize the amicus brief by opposing it, the undersigned with take the opportunity, as this Court’s rules allow, to oppose the Court’s undue consideration of the filing.

**THE PROPOSED RUSSIAN ORTHODOX CHURCH’S  
AMICUS CURIAE BRIEF IS REDUNDANT**

The Roman Catholic Archdiocese objects to the proposed amicus brief, ostensibly because it “addresses issues that the Court need not reach in order to decide this appeal.”<sup>2</sup>

The proposed amicus, and all of the Archdiocese *amici*, redundantly ignore expansive rights that the ministerial immunity the Archdiocese seeks gives to organized religion, and the risks this poses to our American democracy.

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<sup>2</sup> Of course, with non-consent and *pro forma* opposition to the Orthodox Church’s motion, the Roman Catholic Archdiocese assures that the Court will read the amicus brief, and then re-read it if it (as it likely will) allows the brief. The pro-organized Church argument that “the Court need not reach” will be then be considered twice. This brief argues why the Court should reach, and reject, such issues (e.g., that school teachers of a hostile nation’s foreign-sponsored religion should not be allowed to propagandize American elementary school children with absolute immunity from civil suits by lay American teachers or principals who might object to indoctrination).

The proposed amicus and its attorneys appear to be of a fundamentalist Christian bent. Its attorney is apparently from the “Alliance for Religious Freedom,” which indicates on its website that:

“The legal system, which was built on a moral and Christian foundation, had been steadily moving against religious freedom, the sanctity of life, and marriage and family. And very few Christians were showing up in court to put up a fight. By funding cases, training attorneys, and successfully advocating for freedom in court, Alliance Defending Freedom changed that.

See, <https://www.adflegal.org/about-us>. It helps train attorney to advance the Gospel—perhaps in a manner hypothesized for a religious law office in Ms. Fratello’s main brief:

“[ADF’s] Legal Academy provided me the resources I need in order to commit my professional practice to the Lord's service.”

*--Attorney from Montana*

“I was encouraged to know that I am not alone in defending the advancement of the Gospel.”

*-Attorney from Oklahoma*

See, <https://www.adflegal.org/training/adf-academy>. ; see also, <https://www.adflegal.org/for-attorneys/attorney-network>.

**I. THE COURT SHOULD REJECT THE  
RUSSIAN ORTHODOX CHURCH’S *AMICUS CURIAE* BRIEF  
BECAUSE IT REITERATES ARCHDIOCESE *AMICI*’S  
ARGUMENTS THAT RELIGIOUS FREEDOM TRUMPS  
INTELLECTUAL FREEDOM AND ALLOWS INDOCTRINATION OF  
AMERICAN SCHOOLCHILDREN WITH  
RADICAL RELIGIOUS DOGMA**

The proposed amicus brief may exemplify the risks posed by this Court upholding ministerial immunity in this case. The Orthodox Church’s proposed amicus curiae brief presents a good example of why the “parade of horrors” described in Ms. Fratello’s main brief is a real risk, with our American democracy being undermined if religious groups can propagandize and indoctrinate school children without the constraint of a loyal American citizen and educator (e.g., a lay school teacher or principal) insisting that secular curriculum be properly taught.

Ms. Fratello asks the Court to hypothesize that the Orthodox Church in America (“Orthodox Church”) is an offshoot of a Russian Church that, in political philosophy, supported and supports the Stalinist brand of communism that so tyrannized the Soviet Union during most of the 20<sup>th</sup> Century.<sup>3</sup> Let’s also hypothesize that this Russian Church seeks to install itself on American soil, and then indoctrinate American children with Stalinist beliefs (his communistic form of “religion”).

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<sup>3</sup> This is complete hypothecation. The author has no reason to believe that the proposed amicus is anything other than comprised of American patriots. The hypothetical is merely to demonstrate what could be the case regarding any religious group. The hypothetical could be about a fundamentalist Jewish or radical Islamic jihadist religious group as well.

Proposed “Prong One” analysis

Let’s say this Russian Church of a Stalinist bent then advertises for an elementary school principal, with indicating that the applicant needs excellent secular educational credentials, and as to religion, must be a practicing member of Eastern Orthodox Christianity.

Let say an Afro-American woman, Ms. Fine Patriot, is of the Eastern Orthodox faith and applies for and is accepted for the job to teach in the Russian Church’s parochial school located in the State of Alaska.

Let’s say she Ms. Patriot sees that communist Stalinism is being preached at the elementary school, and that the required secular education “core curriculum” is not being taught. And let’s say she is then fired, because she is an Afro-American woman who objects to the children in the parochial school being indoctrinated into Stalinist communism.

Under Ms. Fratello’s “prong one” analysis, the Court should look at the employment contract, to determine whether a religious “minister” was required for the job. In the hypothetical, none was. Therefore, the Court should not inquire further, and certainly should not inquire into whether job “manuals” suggest that the job was teaching “religion” and leading its religious faith, and so therefore Ms. Patriot is a “minister.” The employment contract did not require a religious “minister” credential as a BFOQ.

Proposed “Prong Two” analysis

The Court should also examine whether a religious credential was granted by the Church in question, and one taken away, under “Prong Two” of Ms. Fratello’s proposed analysis. In the hypothetical, Ms. Patriot was required only to be a practicing member of the Eastern Orthodox Church. If she was, for example, ex-communicated by the Eastern Orthodox Church, she would thereby be disqualified for her job. However, authorized action of the Eastern Orthodox Church would be necessary, not action by the hypothesized Stalinist-bent parochial school. Moreover, in the hypothetical, no religious authority took away any religious credential. Thus, for this reason as well, under Prong Two analysis, there is no ministerial immunity for this Stalinist school.

**II. THE ORTHODOX CHURCH’S *AMICUS* BRIEF PARROTS THE ARCHDIOCESE *AMICI*’S ARGUMENT**

The Orthodox Church’s proposed brief is similar to that of the other *Amici* supporting the Archdiocese, which other *amici* briefs similarly make arguments beyond what is needed for this Court’s decision. The difference may be that Russian orthodox fundamentalists may appear less sympathetic to this Court than charitable U.S.-born Catholic nuns,<sup>4</sup> or the law school professors<sup>5</sup> who support

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<sup>4</sup> *Amici Curiae* Brief of Carmelite Sisters of the Most Sacred Heart of Los Angeles and Sisters of the Presentations of the Blessed Virgin Mary, written by Paul Zidlicky of Sidley Austin LLP.

powerful organized religion while ignoring the perils to democracy that will be incubated and then advanced by radical or fundamentalist religion.

### III. CONCLUSION

Although Ms. Fratello consented to the filing of a brief by the proposed amicus, she did not do so in order that the Archdiocese could then object and thereby cause the brief to be read twice, with the Court left with the impression that there is tremendous religious support for the Archdiocese's view.

Respectfully, most Americans wish to keep their civil rights, and would be appalled to learn that that their right to challenge employer illegality has been taken away, and American children threatened by religious indoctrination and dogma, under a misguided application of the First Amendment.

Dated: Stony Point, New York  
November 23, 2016

Respectfully Submitted,

/S/

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<sup>5</sup> *Amici Curiae* Brief of law professors Professors Douglas Laycock, Michael W. McConnell, Thomas C. Berg, Carl H. Esbeck, Richard W. Garnett, Paul Horwitz, and John D. Inazu, of Washington University School of Law, submitted by attorneys of Jones Day.