Filed: 2/18/2022 4:52 PM

IN THE INDIANA SUPREME COURT
CASE NO. ________________

JOSHUA PAYNE-ELLIOTT, *Plaintiff/Appellant*,	)	Court of Appeals Case No. 21A-CP-00936
v.	)	Appeal from the Marion Superior Court 1
ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC., *Defendant/Appellee*.	)	Trial Court Case No. 49D01-1907-PL-027728
	)	The Honorable Lance Hamner, Special Judge

APPELLEE ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS'S PETITION TO TRANSFER

John S. (Jay) Mercer, #11260-49
Wooton Hoy, LLC
13 North State Street, #2A
Greenfield, IN 46140
(317) 439-0541
jmercer@wootonhoylaw.com

Luke W. Goodrich (pro hac vice)
Daniel H. Blomberg (pro hac vice)
Joseph C. Davis (pro hac vice)
Christopher Pagliarella (pro hac vice)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave. NW, Ste. 400
Washington, DC 20006
(202) 955-0095
lgoodrich@becketlaw.org

Attorneys for Defendant/Appellee

QUESTIONS PRESENTED ON TRANSFER

Plaintiff Payne-Elliott was a Catholic high school teacher who entered a same-sex union contrary to Catholic teaching. After 22 months of discernment and dialogue, the Archbishop of Indianapolis issued an ecclesiastical directive informing the school it could no longer be recognized as Catholic unless it required its teachers to uphold Catholic teaching. Wishing to remain Catholic, the school separated from Payne-Elliott. He then sued the Archdiocese for tortious interference based on the ecclesiastical directive. The trial court dismissed the complaint, but the Court of Appeals reversed. The questions presented on transfer are:

I. Does the decision below conflict with this Court's decision in *Brazauskas*, and other Court of Appeals and federal appellate decisions, on whether the church-autonomy doctrine bars tortious-interference claims that would penalize communication among church officials on issues of internal church governance?

II. Does the decision below conflict with U.S. Supreme Court precedent (*Dale*) on whether the First Amendment's freedom of expressive association bars tortious-interference claims that would penalize a church for disassociating from a teacher or school that rejects its teachings?

III. Does the decision below conflict with U.S. Supreme Court precedent (*Our Lady*) on whether the ministerial exception bars tortious-interference claims that would interfere with the Catholic Church's choice of who can foster the faith in a Catholic school and what schools can be recognized as Catholic?

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INTRODUCTION

"The promise of the free exercise of religion … lies at the heart of our pluralistic society." *Bostock v. Clayton County*, 140 S.Ct. 1731, 1754 (2020). But the decision below threatens to undermine that promise for religious communities throughout Indiana. The decision permits plaintiffs to hale religious leaders into court to defend fundamentally religious determinations—here, an Archbishop's ecclesiastical directive setting the terms of religious affiliation with the Catholic Church. The decision also conflicts with settled precedent from this Court, and federal and state courts across the country, threatening irreparable harm to religious entities and the judiciary alike. The Court should grant transfer, resolve the conflict, and reverse.

BACKGROUND AND PRIOR TREATMENT OF THE ISSUES ON TRANSFER

I. The Archdiocese, Cathedral, and the Ecclesiastical Directive.[1]

The Roman Catholic Archdiocese of Indianapolis is part of the global Catholic Church. It is led by an Archbishop and governed by the Code of Canon Law. *See* 1983 Code c.368-402, https://perma.cc/F2GL-UT6R. In 1918, the Archdiocese founded Cathedral, a Catholic high school that is separately incorporated but remains a constituent entity of the Church. Appellant's App. Vol.2 ("App.Vol."), p.43.

Under canon law, the Archbishop must ensure that Catholic schools in his territory are faithful to Catholic doctrine and that teachers are "outstanding in correct

[1] The Archdiocese treats Payne-Elliott's factual allegations as true. Catholic canon law is judicially noticeable. *E.g.*, *Bethel Conservative Mennonite Church v. CIR*, 746 F.2d 388, 392 (7th Cir. 1984).

doctrine and integrity of life." 1983 Code c.803, § 2. Further, "no school is to bear the name Catholic" without the Archbishop's consent. *Id.* c.803, § 3.

Following canon law, Cathedral requires its teachers to foster the Catholic faith by serving as "credible witnesses of" that faith, "[s]upport[ing] the [Church's] teachings and traditions," modeling "a Christ-centered lifestyle," and "[e]mbrac[ing] the sacramental life of the school and encourag[ing] students to do the same." App.Vol.2 pp.72-73. Cathedral also requires teachers' "personal conduct" to "convey and be supportive of the teachings of the Catholic Church," as determined by "the pastor, administrator, and/or Archbishop." App.Vol.2 pp.73-74.

Payne-Elliott, a Cathedral teacher, entered a same-sex union in 2017 contrary to Catholic teaching. App.Vol.2 p.29. After "22 months of earnest discussion" with Cathedral, the Archbishop issued an ecclesiastical directive stating that to remain recognized as Catholic, Cathedral must uphold Catholic behavioral expectations for its teachers. App.Vol.2 p.43. Stating that "our Catholic faith is at the core of who we are," Cathedral complied, separating from Payne-Elliot. App.Vol.2 pp.43-44.

II. Procedural History

A. Complaint and Motion to Dismiss

After settling with Cathedral, Payne-Elliott sued the Archdiocese, asserting tortious interference based on the Archbishop's ecclesiastical directive. Dismissal was denied without hearing. The court then set a hearing on compelling disclosure of internal church communications, including—as sought by Payne-Elliott—the names

of every employee alleged to have violated Church teaching and the details of their conduct. *See* Appellee's App. Vol.4 ("Arch.App.Vol."), p.52.

B. Indiana Supreme Court Stay Order and Later Proceedings

When the trial court declined to permit interlocutory appeal, the Archdiocese filed an original action in this Court, seeking mandamus to compel dismissal and requesting an emergency writ staying discovery into internal church affairs. This Court granted the emergency writ, ordering the trial judge to "immediately stay all discovery-related proceedings." Arch.App.Vol.2 p.139.

After the trial judge *sua sponte* recused himself, this Court "evenly split" on whether to hold a hearing on the mandamus petition and therefore "declin[ed] to take any affirmative action." App.Vol.3 p.24. The Court noted this "deemed denial … does not preclude Relator from filing another original action should future circumstances warrant," and appointed a new special judge with "authority to … reconsider previous orders." *Id.*

C. Dismissal by Special Judge and Reversal on Appeal

On remand, the Archdiocese moved for judgment on the pleadings under Trial Rule 12(C) or dismissal under Trial Rule 12(B). It argued that "whether the Archdiocese's motion is considered under Rule 12(B)(1), 12(B)(6), or 56, the result is the same: the claims are barred under the First Amendment." App.Vol.3 pp.158, 86 n.2. The court granted dismissal, concluding the claims "fail pursuant to Rule 12(B)(1) … and Rule 12(B)(6)." App.Vol.2 p.26.

The Court of Appeals reversed, rejecting all possible grounds for dismissal. It rejected Rule 12(B)(1) dismissal, saying church autonomy does not implicate subject matter jurisdiction. Opinion pp.12-19. It rejected Rule 12(B)(6) dismissal, saying it was not clear "on the face of the complaint" that the First Amendment barred Payne-Elliott's claims. *Id.* pp.22-25. And it rejected judgement under Rule 56, saying it was unclear whether the court "allowed the parties any opportunity to present Rule 56 materials." *Id.* pp.20-21. It then remanded, noting "discovery in this matter is ongoing." *Id.* p.18.

ARGUMENT

I. The decision below conflicts with this Court's decisions, prior Court of Appeals decisions, and multiple federal appellate decisions on the First Amendment doctrine of church autonomy.

A. The decision below conflicts with *Brazauskas*, *McEnroy*, *Dwenger*, and multiple federal courts.

The First Amendment guarantees churches' right "to decide for themselves, free from state interference, matters of church government." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952). This is called "the church autonomy doctrine," and it bars claims that intrude "on a matter of internal church policy and administration." *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 293-94 (Ind. 2003).

Brazauskas is the leading case. There, the plaintiff alleged that a priest and bishop interfered with her hiring process by informing Notre Dame of her prior lawsuit against the diocese. 796 N.E.2d at 289, 291. She then sued the diocese for tortious interference. This Court held the First Amendment barred the claim, because

applying "tort law to penalize communication and coordination among church officials … on a matter of internal church policy and administration" "would violate the church autonomy doctrine." *Id.* at 294.

Similarly, in *McEnroy v. St. Meinrad School of Theology*, a Catholic archabbot directed a seminary to dismiss a professor who dissented from Church teaching on women's ordination. 713 N.E.2d 334, 335-36 (Ind. Ct. App. 1999). The professor then sued for tortious interference. *Id.* at 336. The Court of Appeals held the First Amendment barred the claim, because adjudication would "excessively entangle[]" the court in whether the archabbot "properly exercised his [ecclesiastical] jurisdiction." *Id.* at 337. This Court denied transfer.

Brazauskas and *McEnroy* are controlling here. Both cases—like this one—involved tortious-interference claims alleging Church officials used ecclesiastical authority to wrongfully interfere with plaintiff's employment. And both held that such claims, on their face, impermissibly entangled civil courts "in matters of church discipline, faith, practice and religious law," *McEnroy*, 713 N.E.2d at 336, violating "church autonomy," *Brazauskas*, 796 N.E.2d at 294.

Nor are these cases alone. Over a century ago, in *Dwenger v. Geary*, a father claimed a contractual right to bury his son in a Catholic cemetery; but the church declared the son "forfeited his membership" in the church, and thus his burial rights, by "a failure to observe [church] doctrines." 14 N.E. 903, 905 (Ind. 1888). This Court held—at the threshold demurrer stage—that the church could establish "rules for the government of [its] cemetery" and that "[t]he court, having no ecclesi-

astical jurisdiction, cannot review or question ordinary acts of church discipline." *Id.* at 908-09. This principle applies here: the Archdiocese can establish "rules for the government of [Catholic schools]," and a civil court cannot impose liability based on an ecclesiastical decision about what schools can be "rightfully declare[d] … Catholic." *Id.*

Federal appellate decisions likewise bar lawsuits at the threshold when, like Payne-Elliott's, they trench on church governance. *See McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013) (granting interlocutory appeal; court cannot second-guess resolution of a religious question); *Lewis v. Seventh-day Adventists Lake Region Conf.*, 978 F.2d 940, 942-43 (6th Cir. 1992) (affirming Rule 12 dismissal; plaintiff's claim questioned a religious tribunal's authority); *Myhre v. Seventh-day Adventist Church Reform Movement Am. Union Int'l Missionary Soc'y*, 719 F. App'x 926, 928 (11th Cir. 2018) (affirming dismissal of contract and tort claims involving "the application of church doctrine and procedure to discipline one of its members"). Indeed, neither Payne-Elliott nor the court below identified a single case—from any jurisdiction, anywhere, ever—allowing a case like Payne-Elliott's to proceed.

B. The decision below did not distinguish controlling cases.

The decision below cannot be reconciled with controlling caselaw. Indeed, the court below did not attempt to distinguish *McEnroy* and did not mention *Dwenger*.

As for *Brazauskas*, the court tried to distinguish it procedurally—stating *Brazauskas* "differs" because "the issues [there] were already ripe for resolution on

summary judgment," while here "discovery … is ongoing." Opinion pp.17-18. But this distinction is doubly mistaken.

First, the *Brazauskas* opinion did not turn on the summary-judgment record. Rather, it turned on facts alleged in the complaint: that (1) the plaintiff sought to impose intentional-interference "tort" liability (2) based on "communication and co-ordination among church officials" (3) "on a matter of internal church policy and administration." 796 N.E.2d at 293-94. These same facts are present here on the face of the complaint: (1) Payne-Elliott seeks to impose intentional-interference tort liability (2) based on the Archbishop's ecclesiastical directive (3) regarding Cathedral's Catholic identity. When, as here, the complaint "allege[s] facts that disclose a bar to the suit," the defendant cannot be forced into futile discovery; rather, Rule 12(B)(6) dismissal is required. *Mourning v. Allison Transmission, Inc.*, 72 N.E.3d 482, 487 (Ind. Ct. App. 2017).

Second, even assuming the Court of Appeals needed to look beyond the face of the complaint (it did not), it should have followed the same procedure adopted in *Brazauskas*—namely, "converting the motion to dismiss into a summary judgment motion" and *granting* summary judgment for the Archdiocese. *Brazauskas*, 796 N.E.2d at 290, 294. Nothing in *Brazauskas* supports a *remand* for further "discovery." Opinion p.18.

Citing *West v. Wadlington*, 933 N.E.2d 1274 (Ind. 2010), the Court of Appeals said remand was needed because (a) "the Archdiocese attached 'matters outside the pleading,'" and (b) there is "no indication that the trial court … allowed [Payne-

Elliott] any opportunity to present Rule 56 materials." Opinion pp.20-21. But this, too, is doubly mistaken.

First, the Archdiocese didn't attach matters "outside the pleadings." It attached an employee handbook, job description, and contract *referenced in the complaint and Payne-Elliott's exhibits.*[2] Under Rule 12, the Court may consider "exhibits attached to *or incorporated in* the pleading." *Brenner v. Powers*, 584 N.E.2d 569, 573 (Ind. Ct. App. 1992) (emphasis added); *see Nicosia v. Amazon.com*, 834 F.3d 220, 230-31 (2d Cir. 2016) (courts may consider documents when "incorporated by reference" or "where the complaint 'relies heavily upon [their] terms and effect'" (citing cases)). Thus, these documents were appropriate for a motion to dismiss. Alternatively, a court can simply "refuse to consider material outside the pleadings, even though submitted with a motion to dismiss, when examination of the face of the complaint alone shows that the plaintiff would not be entitled to relief under any set of circumstances." *Azhar v. Town of Fishers*, 744 N.E.2d 947, 951 (Ind. Ct. App. 2001). That path is equally appropriate here.

Second, even assuming Payne-Elliott lacked an opportunity to present Rule 56 materials, that is reversible error only if Payne-Elliott demonstrates he "is thereby prejudiced," *id.* at 950—an important limit the Court of Appeals did not mention.

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[2] App.Vol.2 p.12 ¶12 (complaint; incorporating its Exhibit A, employment agreement); App.Vol.2 p.36 (employment agreement; incorporating "Cathedral Employee Handbook" and "policies and procedures" therein); App.Vol.2 pp.12-13 ¶13 (alleging interference arose from Archdiocese seeking to impose terms of "teacher contracts at Archdiocesan schools"); *see* App.Vol.2 p.103 ¶4 (incorporating "ministry description" as part of contract).

And Payne-Elliott cannot demonstrate prejudice here. As in *Azhar*, he had "ample time" "to move to exclude the [Archdiocese's] evidence" or "submit materials in opposition" if he wanted to. *Id.* at 951. More importantly, he identified no "specific additional material" he could present to defeat summary judgment. *Id.* Nor could he, because—unlike in *West*—there is no set of facts that would allow a civil court to punish a Catholic Archbishop for issuing an ecclesiastical directive governing the religious identity of a Catholic school.

Finally, the Court of Appeals faulted the trial court for treating church autonomy as jurisdictional under Rule 12(B)(1). Opinion pp.18-19. But other Court of Appeals decisions continue to treat church autonomy as jurisdictional, even after *Brazauskas*. *Stewart v. McCray*, 135 N.E.3d 1012, 1028-29 (Ind. Ct. App. 2019) (no "subject matter jurisdiction" over "purely ecclesiastical" dispute). That conflict in state appellate decisions only underscores the need for transfer here.

* * *

At bottom, the opinion below treats church autonomy as a narrow defense that cannot be resolved before summary judgment. But that conflicts with *Brazauskas*, *McEnroy*, *Dwenger,* and a host of federal appellate cases. It also undermines a "fundamental" aspect of the First Amendment throughout this State, *Brazauskas*, 796 N.E.2d at 294, to the detriment of the judiciary and religious institutions alike.

C. Transfer is urgently needed to prevent irreparable loss of First Amendment rights and judicial entanglement in religious questions.

This conflict also threatens immediate, irreparable harm—as this Court already recognized in granting an earlier emergency stay of all "discovery-related proceedings." Arch.App.Vol.2 p.139. The harm is threefold: (1) irreparable loss of First Amendment immunity from suit; (2) irreparable loss of First Amendment protections for internal church communications; and (3) irreparable entanglement of civil courts in ecclesiastical questions. These harms make transfer especially urgent.

Loss of immunity. The U.S. Supreme Court has warned that "the very process of inquiry" into internal church affairs can "impinge on rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Thus, courts treat church autonomy as "closely akin" to "official immunity"—not only protecting against "adverse judgment[s]," but also providing "immunity" from discovery and trial. *McCarthy*, 714 F.3d at 975; *see*, *e.g.*, *Presbyterian Church v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (church autonomy provides "immun[ity] … 'from the burdens of defending the action'" (citation omitted)); *United Methodist Church v. White*, 571 A.2d 790, 792-93 (D.C. 1990) (church autonomy "grant[s] churches an immunity from civil discovery and trial"). As such, a church-autonomy defense "must be reviewed pretrial or it can never be reviewed at all," since if the case proceeds "to discovery and trial, the constitutional rights of the church to operate free of judicial scrutiny would be irreparably violated." *White*, 571 A.2d at 793.

Here, the Court of Appeals said church autonomy was not "ripe" for adjudication because "discovery in this matter is ongoing." Opinion p.18. That conclusion gets the

defense backwards. Allowing "broad discovery" when church autonomy is at stake is itself "a substantial miscarriage of justice." *Edwards*, 566 S.W.3d at 179-180. And when a church-autonomy defense is denied at the threshold, the immunity is "effectively lost." *Heard v. Johnson*, 810 A.2d 871, 877 (D.C. 2002). As the Tenth Circuit explained in *Bryce v. Episcopal Church*—which this Court "agree[d] with" in *Brazauskas*, 796 N.E.2d at 290—church autonomy "is similar to a government official's defense of qualified immunity, which is" "a question of law to be resolved at the earliest possible stage of litigation." 289 F.3d 648, 654 & n.1 (10th Cir. 2002) (citation omitted).

By delaying resolution of the Archdiocese's defense, the Court of Appeals effectively denied it—irreparably depriving the Archdiocese of its First Amendment immunity and splitting with courts across the country.

Protection for internal religious communications. Even when a religious defendant is not immune from suit, the "structural protection afforded religious organizations" under the First Amendment limits discovery into the "internal communications" of a church. *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018), *cert denied*, 139 S.Ct. 1170 (2019); *see also*, *e.g.*, *Universidad Central de Bayamon v. NLRB*, 793 F.2d 383, 401-02 (1st Cir. 1985) (Breyer, J.) (controlling opinion). In *Whole Woman's Health*, for example, the Fifth Circuit quashed a subpoena for "internal email communications" of Catholic bishops that would have "undermined" their "ability to conduct frank internal dialogue." 896 F.3d at 373.

Here, Payne-Elliott has repeatedly sought to compel internal church communications protected by the First Amendment. He seeks all documents relating to any employees "alleged to be in violation of Catholic Church teachings," including "extra-marital sex, birth control, sterilization, adultery, or fornication," their names, and details of how their conduct came to light. He also seeks all ecclesiastical "directives" regarding any "conduct that does not conform to the doctrine and pastoral practice of the Catholic Church." Arch.App.Vol.4 pp.37, 51-52, 60. The original trial judge already compelled turnover of these internal communications for *in camera* review—though even a court's "detailed review of the evidence" on internal church procedures is "impermissible." *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 717-18 (1976). The remand here threatens to impose the same irreparable harms this Court's emergency stay of discovery already tried to prevent.

Judicial entanglement in religious questions. Finally, the judiciary itself is harmed when it "allow[s] itself to get dragged into a religious controversy." *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006). Yet here, initial trial-court proceedings veered straight into religious questions—such as whether the Archdiocese has final ecclesiastical authority over Cathedral under church law, or whether the Catholic Church could legitimately distinguish between celibacy and sexual activity. App.Vol.2 p.164, App.Vol.3 pp.15-16. And Payne-Elliott seeks to drag the court (or jury) even deeper into a religious thicket—alleging the court must decide whether the Catholic Church has treated different violations of Church

teaching differently, and, if so, whether such differential treatment is justified. App.Vol.2 p.114.

Transfer is thus required to avoid a civil court weighing the "relative severity of [religious] offenses," *Curay-Cramer v. Ursuline Acad. of Wilmington*, 450 F.3d 130, 139 (3d Cir. 2006)—an "intrusion into religious affairs" causing "irreparable" harm to the judiciary itself, *McCarthy*, 714 F.3d at 976.

II. The decision below conflicts with controlling precedent on expressive association.

The decision below also conflicts with controlling precedent on the freedom of expressive association. The leading case is *Boy Scouts of America v. Dale*, in which the U.S. Supreme Court upheld the Boy Scouts' right to dismiss a gay scoutmaster. 530 U.S. 640 (2000). Under *Dale*, an expressive-association defense requires consideration of two questions: (1) whether the organization "engage[s] in some form of expression," and (2) whether the challenged action would "significantly affect the [organization's] ability to advocate public or private viewpoints." *Id.* at 641, 648. If so, "the First Amendment prohibits" it, unless the action satisfies strict scrutiny. *Id.* at 648, 659.

Here, all elements of the expressive-association defense are established on the face of the complaint. First, the Archdiocese sought to express the well-known, millennia-old "Catholic teaching on marriage." App.Vol.2 pp.31-32 ¶23. Indeed, religious groups like the Archdiocese "are the archetype of [expressive] associations." *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., joined by Kagan, J., concurring).

Second, punishing the Archdiocese for telling Cathedral what rules it must follow to remain Catholic would "significantly affect the [Archdiocese's] ability to advocate public or private viewpoints." *Dale*, 530 U.S. at 641, 650. This is not a fact-intensive inquiry; rather, *Dale* holds that courts must "give deference to an association's view of what would impair its expression." *Id*. at 653. In *Dale*, that meant deferring to the Boy Scouts' assertion that it needed to exclude a gay scoutmaster to convey its message about same-sex sexual conduct, despite a factual dispute over whether the Boy Scouts ever even attempted to convey that view. *Id.* at 665-68 (Stevens, J., dissenting). Here, it means following the common-sense principle that "[i]t would be difficult for [the Archdiocese] to sincerely and effectively convey a message of disapproval of certain types of conduct if … it must accept members who engage in that conduct" (or schools that permit it). *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 863 (7th Cir. 2006).

Dale also resolves the strict-scrutiny question as a matter of law. There, the Court held that "however enlightened" the interests served by penalizing organizations who "exclu[de] … members" based on "sexual orientation," those interests "do not justify such a severe intrusion" as requiring retention of a scoutmaster openly rejecting those views. 530 U.S. at 650, 659-61 (internal quotation marks omitted). Courts have applied this principle to protect religious groups that hire only those sharing their religious views. *See, e.g.*, *Our Lady's Inn v. City of St. Louis*, 349 F.Supp.3d 805, 821 (E.D. Mo. 2018); *Bear Creek Bible Church v. EEOC*, ___F.Supp.3d___, 2021 WL 5449038, at *26-28 (N.D. Tex. 2021). And that principle

is fully controlling here. The decision below did not mention *Dale* and cannot be squared with these cases.

III. The decision below conflicts with controlling precedent on the ministerial exception.

The decision below also conflicts with U.S. Supreme Court precedent on the ministerial exception. This First Amendment doctrine protects churches' "authority to select, supervise, and if necessary, remove a minister without interference by secular authorities." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020). In *Our Lady*, the Court applied the doctrine to bar claims by two Catholic-school teachers, because their "employment agreements and faculty handbooks specified in no uncertain terms that they were expected to help the schools" carry out their mission of forming children in the Catholic faith. *Id.* at 2066-69.

Payne-Elliott's "employment agreement[] and faculty handbook[]" show the same expectation, *id.*; *see* App.Vol.2 pp.72-73 (handbook); App.Vol.2 pp.98-99 (job description)—yet the Court of Appeals' decision permits his claims to proceed. And the conflict with *Our Lady* is even sharper here, given the nature of Payne-Elliott's claims. Specifically, *Our Lady* held that the Church's choice of "*individuals* who play certain key roles" at a Catholic school must be protected. 140 S.Ct. at 2060 (emphasis added). Here, however, Payne-Elliott does not just challenge the Archdiocese's choice of who would fill *his* role at a Catholic school—he challenges the Archdiocese's choice of which *schools* it recognizes as Catholic in the first place. Even if there were some dispute over whether Payne-Elliott was "entrust[ed] … with the responsibility of educating and forming students in" the Archdiocese's faith (there is

not), *id.* at 2069, there can be no question Cathedral had that responsibility. Thus, compared with *Our Lady*, this is an *a fortiori* case.

The Court of Appeals acknowledged the ministerial exception might bar this suit, but stated "this matter is well shy of being ripe for summary disposition." Opinion p.18. But courts regularly find the ministerial exception satisfied on the pleadings—even when the dispute is over the choice of a single employee rather than (as here) an entire school. *See, e.g.*, *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 985 (7th Cir. 2021) (directing motion to dismiss be granted); *Werft v. Desert Sw. Ann. Conf. of the United Methodist Church*, 377 F.3d 1099, 1104 (9th Cir. 2004) (affirming dismissal); *Dayner v. Archdiocese of Hartford*, 23 A.3d 1192 (Conn. 2011) (same). The Court of Appeals' decision conflicts with these cases, endangering "the independence of religious institutions" of "a wide array of faith traditions" throughout this State. *Our Lady*, 140 S.Ct. at 2055, 2064-65.[3]

CONCLUSION

The Court should grant transfer and reverse. The case should be dismissed.

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[3] While focusing on three questions presented here, the Archdiocese incorporates its appellate briefing on additional grounds for affirming the trial court. In particular, Court of Appeals decisions divide over whether tortious-interference claims require conduct that is "malicious and exclusively directed to the injury and damage of another." *Mourning*, 72 N.E.3d at 488. Here, Payne-Elliott does not allege malice; he alleges a policy applying to Catholic schools generally. App.Vol.2 pp.29-31 ¶¶13-16. This Court has acknowledged, but not yet resolved, the divide. *Am. Consulting, Inc. v. Hannum Wagle & Cline Eng'g, Inc.*, 136 N.E.3d 208, 215 (Ind. 2019).

Respectfully submitted,

/s/ John S. (Jay) Mercer
John S. (Jay) Mercer, #11260-49
Wooton Hoy, LLC
13 North State Street, #2A
Greenfield, IN 46140
(317) 439-0541
jmercer@wootonhoylaw.com

Luke W. Goodrich (pro hac vice)
Daniel H. Blomberg (pro hac vice)
Joseph C. Davis (pro hac vice)
Christopher Pagliarella (pro hac vice)
The Becket Fund for Religious Liberty
1919 Pennsylvania Ave. NW, Ste. 400
Washington, DC 20006
(202) 955-0095
lgoodrich@becketlaw.org

Attorneys for Defendant/Appellee

CERTIFICATE OF WORD COUNT

I verify that this petition contains no more than 4,200 words. It contains 4,180 words, including footnotes, in accordance with Appellate Rule 44E, excluding the material excluded from the word length limits by Appellate Rule 44C.

/s/ John S. (Jay) Mercer
John S. (Jay) Mercer, #11260-49
Wooton Hoy, LLC
13 North State Street, #2A
Greenfield, IN 46140
(317) 439-0541
jmercer@wootonhoylaw.com

CERTIFICATE OF SERVICE

I hereby certify that on February 18th, 2022, I electronically filed the foregoing Petition to Transfer with the Indiana Supreme Court and the Indiana Court of Appeals through the Indiana E-Filing System ("IEFS"). I further certify that on February 18th, 2022, the following parties were served, via their counsel at the emails below, through the IEFS in accordance with Rule 68(F)(1):

Plaintiff Joshua Payne-Elliott
Kathleen A. DeLaney, #18604-49
Christopher S. Stake, #27356-53
DeLaney & DeLaney LLC
3646 North Washington Blvd.
Indianapolis, IN 46205
kathleen@delaneylaw.net
cstake@delaneylaw.net

Amicus State of Indiana
Thomas M. Fisher
Solicitor General
Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street

Indianapolis, IN 46204
Tom.Fisher@atg.in.gov

Amicus Constitutional Law Scholars
Stephen M. Judge, # 31831-71
Paul Edgar Harold, # 25917-71
Southbank Legal: LaDue Curran Kuehn
100 E. Wayne Street, Ste. 300
South Bend, IN 46601
pharold@southbank.legal
sjudge@southbank.legal

Amicus Lambda Legal Defense & Education Fund, Inc.
Jeanine Kerridge, #27721-29
Jeffrey M. Barron, #27730-49
Kara M. Kapke, #25906-49
Barnes & Thornburg LLP
11 South Meridian St.
Indianapolis, IN 46204
jeanine.kerridge@btlaw.com
jeff.barron@btlaw.com
kara.kapke@btlaw.com

A copy was also sent by email and First Class U.S. Mail, postage prepaid, on February 18, 2022 to additional counsel for Lambda Legal not registered with IEFS, below:

Gregory R. Nivens (pro hac vice)
Lambda Legal Defense & Education Fund, Inc.
Southern Regional Office
158 West Ponce De Leon Ave.
Ste. 105
Decatur, GA 30030
gnevins@lambdalegal.org

/s/ John S. (Jay) Mercer
John S. (Jay) Mercer, #11260-49
Wooton Hoy, LLC
13 North State Street, #2A
Greenfield, IN 46140
(317) 439-0541
jmercer@wootonhoylaw.com