Nos. 26-1730, 26-1787 & Nos. 26-1736, 26-1801

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHRISTIAN HEALTHCARE CENTERS, INC.,
Plaintiff-Appellant,
v.
DANA NESSEL, IN HER OFFICIAL CAPACITY, ET AL.,
Defendants-Appellees.

SACRED HEART OF JESUS PARISH, GRAND RAPIDS, ET AL.,
Plaintiffs-Appellants,
v.
DANA NESSEL, IN HER OFFICIAL CAPACITY, ET AL.,
Defendants-Appellees.

On Appeal from the U.S. District Court for the Western District of Michigan, Nos. 1:22-cv-787-JMB-PJG, 1:22-cv-1214-JMB-PJG

BRIEF OF THE STATES OF MISSOURI, ALABAMA, ARKANSAS, FLORIDA, IDAHO, INDIANA, IOWA, KANSAS, MONTANA, NEBRASKA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA AS AMICI CURIA IN SUPPORT OF PLAINTIFFS-APPELLANTS

CATHERINE L. HANAWAY
ATTORNEY GENERAL OF MISSOURI
LOUIS J. CAPOZZI III
SOLICITOR GENERAL

William J. Seidleck
Principal Deputy Solicitor General
Graham D. Miller
Deputy Solicitor General

ATTORNEY GENERAL'S OFFICE
815 Olive Street, Suite 200
St. Louis, MO 66101
(314) 340-7652
Graham.Miller@ago.mo.gov
Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS

Under this Court's Rule 26.1(a) and Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), governmental parties are not required to supply a certificate of interested persons.

/s/ Graham D. Miller
Graham D. Miller
Counsel for Amici Curiae

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INTERESTS OF AMICI CURIAE, INTRODUCTION, AND SUMMARY OF ARGUMENT[1]

Amici curiae are the States of Missouri, Alabama, Arkansas, Florida, Idaho, Indiana, Iowa, Kansas, Montana, Nebraska, Ohio, South Carolina, South Dakota, Texas, Utah, and West Virginia. They submit this brief in support of appellants Christian Healthcare Centers and Sacred Heart Parish, Grand Rapids.

Amici States are home to countless citizens, organizations, and institutions holding diverse religious beliefs and are committed to upholding their First Amendment freedoms. That gives *amici* an interest in this Court's understanding of the First Amendment and a unique perspective. As sovereigns, *amici* must navigate the competing responsibilities of ensuring their actions comport with the First Amendment while defending state actions from constitutional challenges. *Amici* recognize the right of religious entities to be free from needless government interference as core to our pluralistic republic. One key to protecting that right is the church-autonomy doctrine, which immunizes religious organizations from lawsuits seeking to second-guess

[1] This brief is filed under Federal Rule of Appellate Procedure 29(a)(2).

theological decisions—including those concerning religious organizations' governance, membership, and doctrine. *Amici* submit this brief to highlight how nearly every State has religious exemptions built into their antidiscrimination laws and how States can enforce these laws while still respecting the autonomy of religious organizations.

ARGUMENT

The First Amendment broadly "protect[s] the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (internal quotation marks omitted). Because of this "general principle of church autonomy," courts cannot decide matters of religious doctrine, leadership, membership, or internal affairs. *Id.* at 747.

In Michigan, however, religious employers cannot require their employees to adhere and live in accordance with the organization's faith, including following the organization's religious teachings on sexuality. This deprives these religious organizations of their cherished First Amendment freedoms.

Christian Healthcare Centers is a "Christian medical-service ministry that serves the community by providing direct medical services to its patients consistent with the tenets of its faith." CHC Dkt. 188 at 4 (citation omitted). CHC holds to traditional Christian teachings on sexuality, including that engaging in same-sex sexual activity and maintaining identities inconsistent with an individual's sex are morally wrong. *See id.* at 8–9. CHC expects all of its employees—including any prospective employees—to abide by these teachings. *See id.* at 4, 8–9. For prospective employees, CHC would like to select employees who agree to CHC's Statement of Faith. *See id.* at 8–9.

Sacred Heart of Jesus Parish "is a parish-run Catholic school in the Diocese of Grand Rapids." SHJP Dkt. 116 at 5. Similar to CHC, Sacred Heart requires its employees, current and prospective, to be Catholics who support the Church's moral and doctrinal teachings, including on marriage and sexuality. *See id.* at 10–12.

However, Michigan prohibits CHC and Sacred Heart "from imposing employment-related qualifications and responsibilities" based on faith and religious teachings on its employees under Michigan's Elliot-Larsen Civil Rights Act (ELCRA). *Id.* at 10–11; *accord* CHC

Dkt. 188 at 8–9. Michigan's enforcement of the Act thus threatens religious institutions' ability to uphold the doctrines which they espouse.

Michigan believes that a religious organization's ability to favor adherents of the faith is permitted under only the First Amendment's ministerial exception, an exception that Michigan believes the ELCRA's bona fide occupational qualification provision fully covers. *See* SHJP Dkt. 98 at 18–23; CHC Dkt. 161 at 18–19. In Michigan's words, allowing a religious organization to make employment decisions based on faith would "swallow[] the [ministerial] exception." SHJP Dkt. 98 at 24. But this argument does not explain how forcing a religious organization to hire and retain staff who will not abide by its religious teachings is consistent with the First Amendment.

Nearly every other State—recognizing that the First Amendment allows religious organizations to make employment decisions based on religious faith and doctrine—has statutory exemptions for religious employers in their respective anti-discrimination laws. This Court should borrow from collective wisdom of the overwhelming majority of States and reaffirm the principle that religious institutions can "control"

the "selection of those who will personify its beliefs." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012).

In *Hosanna-Tabor*, the Supreme Court recognized the "ministerial exception": "[T]he First Amendment bar[s] a court from entertaining an employment discrimination claim brought" by "certain key employees" of a religious institution. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020). This decision "built on a line of lower court cases," *id.*, and "incorporate[d] a principle deeply rooted in the Nation's constitutional tradition," *Pulsifer v. Westshore Christian Acad.*, 142 F.4th 859, 863 (6th Cir. 2025). Although some employees may not be "so key to the institution's religious function so as to place the employee within the ministerial exception," *id.* at 864; *see also Hosanna-Tabor*, 565 U.S. at 190 (declining "to adopt a rigid formula for deciding when an employee qualifies as a minister"), the ministerial exception was derived from "the general principle of church autonomy," *Our Lady of Guadalupe*, 591 U.S. at 747.

The "ministerial exception merely recognizes that 'a component of this autonomy is the selection of individuals who play certain key roles.'" *Pulsifer*, 142 F.4th at 864 (quoting *Our Lady of Guadalupe*, 591 U.S. at

746). This broader principle of "church autonomy" is also protected under the First Amendment. *Our Lady of Guadalupe*, 591 U.S. at 747. Religious institutions have the right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

Of course, many religious organizations carry out traditionally secular activities infused with the organization's religious "mission." *E.g.*, *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 243 (2025). These secular activities may be a nonprofit organization that serves the social ministry arm of the Catholic Church, *e.g.*, *id.*, or as here a nonprofit "medical service ministry" or a "classical Catholic pre-kindergarten through twelfth-grade school," *Christian Healthcare Ctrs., Inc. v. Nessel*, 117 F.4th 826, 839–40 (6th Cir. 2024). Religious missions pervade both organizations. *See id.* at 839 (CHC "integrates Christian faith and prayer into its purpose, mission, and activities."); *id.* at 840 (Sacred Heart "primarily exists to support parents in passing on the Catholic faith through an intentional Catholic community and culture.").

Title VII exempts "religious corporation[s], association[s], educational institution[s], or societ[ies] with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation[s], association[s], educational institution[s], or societ[ies] of [their] activities." 42 U.S.C. § 2000e-1(a). However, "as originally enacted, the exemption applied only to personnel decisions related to carrying out an organization's religious activities. The revised provision, adopted in 1972, broadens the exemption to include any activities of religious organizations, regardless of whether those activities are religious or secular in nature." *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189, 192 (4th Cir. 2011) (citation omitted).

This exemption "cover[s] *all* activities of religious employers." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 339 (1987) (emphasis added). As this Court has said, a religious organization's "decision to terminate an employee whose conduct or religious beliefs are inconsistent with those of its employer" is protected under federal law. *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 624 (6th Cir. 2000). Federal law has thus long recognized

"the ability of religious organizations to define and carry out their religious missions." *Amos*, 483 U.S. at 339.

True, the protection of "religious employers to hire their co-religionists" is based on "federal statutory exemptions and their state analogs." *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1094 (2022) (Alito, J., respecting the denial of certiorari). However, Michigan—unlike the overwhelming majority of States—does not contain a religious exemption for religious employers to hire co-religionists in the ELCRA.[2] So this Court should take guidance from the other States' anti-discrimination laws and decide that "the autonomy guaranteed by the First Amendment protects religious organizations' freedom to hire co-religionists without state or judicial interference." *See Seattle's Union Gospel Mission*, 142 S. Ct. at 1094 (Alito, J., respecting the denial of certiorari).

[2] The ELCRA has a bona fide occupational qualification exception. Mich. Comp. Laws § 37.2208. Michigan has previously contended that this bona fide occupational qualification exception is consistent with Title VII and most other States' statutory exceptions for religious employers. *See* SHJP Dkt. 98 at 26. However, Michigan considers the First Amendment to require only that religious organizations may hire and fire ministers under the ministerial exception. *See id.* at 18–23; CHC Dkt. 161 at 18–19.

Nearly every other State in the Union has an anti-discrimination statute containing a religious-employer exemption roughly analogous to that of Title VII.[3] Some States, similar to Title VII, exempt religious organizations from the State's anti-discrimination law, *e.g.*, Ark. Code. Ann. § 16-123-103(a),[4] while other States do so through exempting religious organizations from the statutory definition of "employer," *e.g.*, Mo. Rev. Stat. § 213.010(8).[5] Some States, often in addition to the general

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[3] Similar to Michigan, Georgia and North Dakota contain only a bona fide occupational qualification exemption. *See* Ga. Code Ann. § 45-19-34; N.D. Cent. Code. Ann. § 14-02.4-08. Alabama, Mississippi, and North Carolina rely on Title VII to allow individuals to bring employment discrimination claims and thus have no state exemption.

[4] Ariz. Rev. Stat. Ann. § 41-1462; Colo. Rev. Stat. Ann. § 24-34-402(7); Conn. Gen. Stat. Ann. § 46a-81p; Del. Code. Ann. tit. 19, § 710(7) (nonprofits); Fla. Stat. Ann. § 760.10(10); Haw. Rev. Stat. Ann. § 378-3(5); Idaho Code. Ann. § 67-5910(1); 775 Ill. Comp. Stat. Ann. 5/2-101(B)(2); Iowa Code Ann. § 216.6(d); Ky. Rev. Stat. Ann. § 344.090(2); La. Stat. Ann, § 23:302(2)(b); Md. Code, State Gov't § 20-604(2); Mass. Gen. Laws Ann. ch. 151B, § 1(5); Neb. Rev. Stat. Ann. § 48-1103(1); Nev. Rev. Stat. Ann. § 613.320.1(b); N.J. Stat. Ann. § 10:5-12(a); N.M. Stat. Ann. § 28-1-9(B); Ohio Rev. Code Ann. § 4112.02(O); Okla. Stat. tit. 25, § 1307; R.I. Gen. Laws Ann. § 28-5-6(9)(ii); S.C. Code Ann. § 1-13-80(I)(5); S.D. Codified Laws § 20-13-18; Tenn. Code Ann. § 4-21-405; Va. Code. Ann. § 2.2-3905(E); W. Va. Code R. § 71-3-7.2–.3.

[5] Alaska Stat. Ann. § 18.80.300(5) (nonprofits); Cal. Gov't Code § 12926(d) (nonprofits); Ind. Code Ann.§ 22-9-1-3(h)(1) (nonprofits); Kan. Stat. Ann. § 44-1002(b); Me. Rev. Stat. tit. 5, § 4553(4) (nonprofits); Mont. Code Ann. § 49-2-101(11) (nonprofits); N.H. Rev. Stat. Ann. § 354-

exemptions, positively state that "religious organization[s] may require that all applicants and employees conform to the religious tenets of that organization." *E.g.*, Me. Rev. Stat. tit. 5, § 4573-A(2).[6] For religious schools, many States have an additional exemption to allow them "to hire and employ employees of a particular religion," *e.g.*, Neb. Rev. Stat. Ann. § 48-1108(2),[7] and some States give healthcare facilities "the right to make employment, staffing, contracting, and admitting privilege decisions consistent with their religious beliefs," *e.g.*, S.C. Code Ann. § 44-139-30(D).[8]

A:2(VII) (nonprofits); Utah Code Ann. § 34A-5-102(1)(h)(ii)(A)–(B); Wash. Rev. Code Ann. § 49.60.040(11) (nonprofits); Wyo. Stat. Ann. § 27-9-102(b).

[6] Fla. Stat. Ann. § 760.10(10); Minn. Stat. Ann. § 363A.26(1) (nonprofits); N.H. Rev. Stat. Ann. § 354-A:18; N.Y. Exec. Law § 296(11); Or. Rev. Stat. Ann. § 659A.006(4)–(5); 43 Pa. Stat. Ann. § 955(10); Tex. Lab. Code Ann. § 21.109(a); Vt. Stat. Ann. tit. 21, § 495(e); Wis. Stat. Ann. § 111.337(a)–(am).

[7] Ariz. Rev. Stat. Ann. § 41-1463(H)(2); Cal. Gov't Code § 12926.2(f)(1); Del. Code. Ann. tit. 19, § 711(n)(2); Haw. Rev. Stat. Ann. § 378-3(5); Iowa Code Ann. § 216.9(2); Kan. Stat. Ann. § 344.090(3); La. Stat. Ann. §§ 23:302(2)(b), 23:332(H)(2); Md. Code, State Gov't § 20-605(a)(3); Nev. Rev. Stat. Ann. § 613.350(4); Okla. Stat. tit. 25, § 1308(2); S.C. Code Ann. § 1-13-80(I)(5); Utah Code Ann. § 34A-5-106(3)(a)(ii); Va. Code. Ann. § 2.2-3905(C)(2).

[8] Cal. Gov't Code § 12926.2(d); Idaho Code. Ann. § 54-1304(8).

Although some States have recently interpreted these exemptions narrowly so as to include only "ministers," *see, e.g.*, *Woods v. Seattle Union Gospel Mission*, 481 P.3d 1060, 1067 (Wash. 2021), other States have recognized that the scope of these statutory exemptions is not "coextensive with the First Amendment's ministerial exception," *Doe v. Catholic Relief Servs.*, 300 A.3d 116, 132 (Md. 2023). For example, New Jersey recently recognized that a religious organization's "use of religious affiliation as a job qualification for 'employees engaged in religious activities' of the organization" or "'following the tenets of its religion in establishing and utilizing criteria for employment of an employee'" are protected under its exemption. *Crisitello v. St. Theresa Sch.*, 299 A.3d 781, 793 (N.J. 2023) (quoting N.J. Stat. Ann. § 10:5-12(a)).

Because religious exemptions are part of the statutory scheme, many States' courts interpret the plain language of these statutes, applying the exemption without needing to decide the constitutional issue. *See, e.g.*, *Van Scoyk v. St. Mary's Assumption Parochial Sch.*, 580 P.2d 1315, 1318 (Kan. 1978) (holding that Kansas Act Against Discrimination does not "apply to sectarian employers" because "the legislature obviously intended to exclude Sectarian employers" from the

Act "[b]y specifying and including nonsectarian corporations"). However, some state courts have determined that these religious-employer exemptions are consistent with the First Amendment.

For example, the California Supreme Court held that the "free exercise and establishment clauses give religious organizations some degree of latitude to choose their employees in order to define their religious mission." *Silo v. CHW Med. Found.*, 45 P.3d 1162, 1169 (Cal. 2002). Because California and federal law had these exemptions, the California Supreme Court did not need to decide if these exemptions were "strictly necessary to comply" with the First Amendment. *Id.* Nonetheless, the court recognized that these exemptions "promot[e] the autonomy of religious organizations implicit in the state and federal Constitutions' free exercise and establishment clauses." *Id.* (citing *Amos*, 483 U.S. 327).

Thus, religious employers must receive "considerable discretion to choose employees who will not interfere with their religious mission or message." *Id.* But irrespective of whether States have or have not interpreted their religious exemptions as being necessary under the First Amendment, the collective wisdom of *44* States and Congress in adopting

these exemptions illustrates the pervasive understanding that the First Amendment shields religious organizations' capacity to make employment decisions based on religious practice.

That the First Amendment permits a religious employer to make a religious based employment decision is further supported by how many States have interpreted their anti-discrimination statutes. Determining whether a position was purely secular would require a civil court "to dive into the murky waters of doctrinal purity, church definitions of priestly duties, and church notions of proper church administration." *See O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 391 (Haw. 1994). And even if a court could distinguish an employee's "dual role," any imposition of civil liability would have a "chilling effect on churches' autonomy to manage their own affairs." *Westbrook v. Penley*, 231 S.W.3d 389, 402 (Tex. 2007).

As courts have recognized, the "Archdiocese's decision to require an employee in one of its Catholic schools to adhere to its faith-based Guiding Principles in the school setting 'affects the faith and mission of the church itself.'" *MoChridhe v. Acad. of Holy Angels*, 29 N.W.3d 753, 762 (Minn. Ct. App. 2025) (quoting *Pfeil v. St. Matthews Evangelical*

Lutheran Church of Unaltered Augsburg Confession of Worthington, 877 N.W.2d 528, 534 (Minn. 2016)). Or in the healthcare setting, even a "low-level employee" who does not conform to the religious message of the hospital can detract from a hospital's "religiously inspired mission." *Silo*, 45 P.3d at 1169–70. Thus, courts defer to "*[a religious organization's]* conviction that the employment . . . is closely connected with or related to the [organization's] primary purposes." *King v. Warner Pac. Coll.*, 437 P.3d 1172, 1177 (Or. Ct. App. 2019) (emphasis in original). Doing otherwise would "stray into the protected domain of religious liberty." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 453 (Tenn. 2012).

So even though Michigan does not have a religious exemption in its ELCRA, the collective wisdom and understanding of nearly every other State's religious employer exemption and its application should help guide this Court's understanding of what the First Amendment requires. Michigan should not be able to skirt these requirements based on its absence of a religious exemption from the ELCRA.

CONCLUSION

The Court should reverse the district court's orders.

Dated: October 30, 2026

Respectfully submitted,

CATHERINE L. HANAWAY
Attorney General of Missouri

LOUIS J. CAPOZZI III
Solicitor General

/s/ Graham D. Miller
William J. Seidleck
Principal Deputy Solicitor General
Graham D. Miller
Deputy Solicitor General
OFFICE OF THE ATTORNEY GENERAL
815 Olive Street, Suite 200
St. Louis, MO 66101
Tel. (314) 340-7652
Fax (573) 751-0774
Graham.Miller@ago.mo.gov

Counsel for Amici Curiae

Counsel for Additional Amici States

Steve Marshall
Attorney General of Alabama

Tim Griffin
Attorney General of Arkansas

James Uthmeier
Attorney General of Florida

Raúl R. Labrador
Attorney General of Idaho

Theodore E. Rokita
Attorney General of Indiana

Brenna Bird
Attorney General of Iowa

Kris W. Kobach
Attorney General of Kansas

Austin Knudsen
Attorney General of Montana

Michael T. Hilgers
Attorney General of Nebraska

Andy Wilson
Attorney General of Ohio

Alan Wilson
Attorney General of South Carolina

Marty Jackley
Attorney General of South Dakota

Ken Paxton
Attorney General of Texas

Derek Brown
Attorney General of Utah

John B. McCuskey
Attorney General of West Virginia

CERTIFICATE OF SERVICE

I, Graham D. Miller, hereby certify that the foregoing brief has been filed with the Clerk of Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record.

Dated: October 30, 2026

/s/ Graham D. Miller
Graham D. Miller
Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32, it contains 2,763 words. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface, including serifs, using Microsoft Word 2016, in Century Schoolbook 14-point font.

Dated: October 30, 2026

/s/ Graham D. Miller
Graham D. Miller
Counsel for Amici Curiae