IN THE

Indiana Supreme Court

No. _____

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

BRIEF OF THE STATE OF INDIANA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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The State of Indiana files this brief as of right under Indiana Code section 34-33.1-1-2. The State has a substantial interest in preventing entanglement of the Indiana judiciary in religious disputes. The Indiana Court of Appeals panel below should have affirmed the trial court's rightful dismissal of the action. Instead, the panel reversed and remanded the action for further review, which can only entangle Indiana courts in church governance issues. This Court long-ago affirmed a venerable principle at the heart of this case: "[n]o power save that of the church can rightfully declare who is Catholic." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888). The Court should take this case and, applying that same principle, affirm the trial court's dismissal.

STATEMENT

Plaintiff Joshua Payne-Elliott, a teacher fired by Cathedral High School when the Archdiocese of Indianapolis instructed the school adhere to Catholic marriage doctrine or no longer be recognized as Catholic, sued the Archdiocese for tortious interference with contract. This suit has already featured unwarranted, intrusive discovery of the Archdiocese over what it means to be Catholic—a process that this Court appropriately disrupted when it permitted a new trial judge to revisit the Archdiocese's request for dismissal. But now the Court of Appeals would let all that discovery play out once again. It is time for this Court to shut this case down for good.

1. This lawsuit should have been dismissed immediately under the First Amendment's longstanding protections of church autonomy, reconfirmed just recently in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). Instead, Special Judge Stephen R. Heimann allowed the case to proceed, denied the Archdiocese leave to pursue an interlocutory appeal, opined on Catholic history during a settlement conference, questioned whether the Archdiocese is the "highest ecclesiastical authority" responsible for Cathedral High School, examined Church doctrine on homosexuality based on his personal knowledge of a gay priest, attempted to link resolution of this case to the resolution of a canon-law appeal involving another Catholic school, and otherwise entangled the judiciary in an internal dispute over the proper religious doctrine and governance.

Equally concerning, Payne-Elliott served the Archdiocese several broad discovery requests, seeking, among other things, the Archdiocese's internal records and communications concerning employees alleged to be in violation of church teachings. Judge Heimann, however, denied requests by the Archdiocese to protect it from such broad discovery into internal church matters and, instead, ordered the church to produce the documents. The Archdiocese filed a petition for writ of mandamus and writ of prohibition before this Court, requesting: (1) dismissal of the case or Special Judge Heimann's recusal; and (2) an emergency writ staying discovery. Shortly thereafter, Special Judge Heimann recused himself, and this Court denied the petition for writ of mandamus and writ of prohibition.

2. This Court's mandamus order, however, unambiguously vested the trial court with the full power and authority to reconsider the prior judge's rulings *de novo*. In response, the trial court dismissed the case "for lack of subject matter jurisdiction" and "for failure to state a claim upon which relief can be granted" under Indiana Trial Rules 12(B)(1) and 12(B)(6). *Order on Motion to Dismiss* 1.

Payne-Elliott appealed, and a panel of the Indiana Court of Appeals reversed and remanded. The court held that the trial court had subject-matter jurisdiction to consider Payne-Elliott's claims because "the trial court was cloaked with general authority to hear matters involving employment contracts and disputes" and because "the parties have yet to undertake the requisite fact-sensitive and claim specific analysis that must precede analysis of whether the First Amendment bars Payne-Elliott's claims." Op. 17–18. It further held that the motion should have been considered as a summary judgment motion, *id.* at 20–21, but that even if it was properly considered as a motion to dismiss, "Payne-Elliott's complaint satisfies Trial Rule 8's liberal pleading standard and has supplied the Archdiocese with sufficient notice to allow the Archdiocese to defend against Payne-Elliott's intentional interference claims," *id.* at 24. Finally, the court held that even if dismissal was proper, the complaint should have been dismissed without prejudice. *Id.* at 25–26.

This Court should grant the petition to transfer and affirm the trial court's dismissal of the case.

SUMMARY OF THE ARGUMENT

This Court long ago recognized that "[n]o power save that of the church can rightfully declare who is a Catholic." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888). This case continues to put that fundamental proposition to the test, as previously Judge Heimann, and now the Court of Appeals, would permit litigation over whether and how the Archdiocese may recognize Catholic schools.

The United States has a long tradition of preventing judicial entanglement in religious disputes—entanglement that can only lead to interference with church autonomy. Here, permitting in-depth discovery and litigation over the right of the Archdiocese to determine whether a particular school is Catholic would violate the First Amendment. Cases such as this questioning internal religious governance and doctrine must be dismissed outright.

Under the long-established church autonomy doctrine, the First Amendment protects religious institutions' "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020). Questions involving a church's ability to govern its own affairs and decide what makes an institution Catholic are "purely . . . of church government and discipline, and must be determined by the proper ecclesiastical authorities." *Dwenger*, 14 N.E. at 908 (citing *White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends*, 89 Ind. 136 (1883)). Thus, "civil courts exercise no jurisdiction" when the issue at hand is "strictly and purely ecclesiastical in its character." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). Indeed,

a civil court has a duty to "not allow itself to get dragged into a religious controversy." *Tomic v. Catholic Diocese of Peoria,* 442 F.3d 1036, 1042 (7th Cir. 2006).

Two possible applications—although not exclusive nor exhaustive—of church autonomy principles are the ministerial exception and the ecclesiastical abstention doctrine. Both "follow[] naturally from the church autonomy doctrine." *Demkovich v. Saint Andrew the Apostle Parish*, 3 F.4th 968, 975 (7th Cir. 2021) (en banc) (discussing ministerial exception); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 704–05 (2012) (discussing church autonomy principles underlying judicial treatment of church property disputes). But contrary to the Court of Appeals' suggestion, this case does not require resolution on either of these subsets of the doctrine. Instead, because this is a case about a church's ability to determine for itself "who is a Catholic," broader principles of church autonomy bar the courts from hearing this case.

Beyond these substantive points, the church autonomy doctrine functions procedurally as an immunity. Like sovereign, absolute, or qualified immunity, church autonomy entails immunity from suit, not just from liability. And just as with those other immunities, permitting this case to go forward would violate the rights of the Archdiocese in a way that prevailing at final judgment—or appealing a lost final judgment—cannot remedy. This Court should, therefore, grant transfer and affirm dismissal of the case.

ARGUMENT

I. Entanglement in Religious Questions Harms the Judiciary

This case concerns whether the Archdiocese of Indianapolis can determine if a school under its direction is Catholic. First Amendment doctrine squarely secures the right of the Archdiocese to do so—without interference from civil courts. The trial court properly dismissed this case rather than launch into a series of inquiries over church governance and doctrine.

The First Amendment "protect[s] the[] autonomy [of religious institutions] with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). By extension, civil courts lack authority to hear matters of religious governance: "[T]he First . . . Amendment[] permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government," and "the Constitution requires that civil courts accept their decisions as binding upon them." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724–25 (1976).

The early events of this case demonstrate what happens when courts do not respect church autonomy from the beginning of litigation. When he had the case, Judge Heimann not only refused to dismiss it, but permitted discovery on the theory that, under canon law, the Archbishop may not be the "highest ecclesiastical authority" with the power to determine whether Cathedral qualifies as a Catholic school. App. Vol. II 67– 68. (Any such question would have been news to Cathedral High

School, which readily acceded to the Archbishop's directive. *Id.* at 30–32.) Furthermore, Judge Heimann expressed his opinion that the Archdiocese had erred by treating Payne-Elliott differently than a celibate priest supposedly known by the judge to be gay. *Id.* at 71. Judge Heimann also bizarrely urged the parties to agree that legal liability would turn on the outcome of a canon law appeal concerning a different Catholic high school with a different ecclesiastical status. *Id.* at 77–78.

Judge Heimann's actions undoubtedly interfered with the Archdiocese's (and indeed, the Roman Catholic Church's) ability to govern its own affairs and decide what makes an institution Catholic. Such questions are "purely . . . of church government and discipline, and must be determined by the proper ecclesiastical authorities." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888) (citing *White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends*, 89 Ind. 136 (1883)).

Judge Heimann's actions, repetition of which the decision of the Court of Appeals would seem to enable, also demonstrate how civil courts ignoring church autonomy doctrine can become alternative fora concerning adjudication already being undertaken by canonical authorities in a separate case—as if the civil and canonical authorities were charged with carrying out the same body of law. Critically, "it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of [a religious body's] decisions could appeal to the secular courts and have them reversed." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 114–15 (1952).

Permitting litigation and investigation regarding church governance and doctrine plainly qualifies as judicial "entanglement" with religion. It constitutes "intrusive government participation in, supervision of, or *inquiry* into religious affairs." *United States v. Indianapolis Baptist Temple*, 224 F.3d 627, 631 (7th Cir. 2000) (emphasis added); *McEnroy v. Saint Meinrad Sch. of Theology,* 713 N.E.2d 334, 337 (Ind. Ct. App. 1999) (concluding that entertaining breach of contract and tortious interference claims against a Catholic seminary would make the trial court "clearly and excessively entangled in religious affairs in violation of the First Amendment"). When civil courts decide matters of church government, faith, or doctrine they "inhibit[] the free development of religious doctrine and [implicate] secular interests in matters of purely ecclesiastical concern." *Milivojevich*, 426 U.S. at 710 (quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449 (1969)).

Civil courts must assiduously avoid the temptation to engage in cases that call upon them to review questions of church doctrine and governance so that they remain "completely secular in operation." *Jones v. Wolf*, 443 U.S. 595, 603 (1979). Steering clear of such cases "promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.*

Even attempting to determine independently a division of the secular and inherently religious matters amidst litigation violates church autonomy doctrine. *See Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018) ("[I]nvolvement in attempting to parse the internal communications and discern which are *facts* and which are *religious* seems tantamount to judicially creating an ecclesiastical test in

violation of the Establishment Clause."). As this Court has said, "civil courts, if they should be so unwise as to attempt to supervise the[] judgments [of ecclesiastical courts] on matters which come within their jurisdiction, would involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals." *Dwenger*, 14 N.E. at 909 (Ind. 1888).

To that, the Court might easily add, "which would do anything but improve respect for the Courts." "The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society." Ind. Code of Jud. Conduct, Preamble. For this reason, "judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." *Id.* The implication is that judges must—out of respect for courts as institutions, respect for private citizens and organizations, and respect for the public esteem which gives courts power—strictly avoid any course of action that lends the prestige of the judiciary to an illegitimate undertaking. *See id.* Canon 1, Rule 1.3 (forbidding judges from "abus[ing] the prestige of judicial office to advance the personal or economic interests of the judge or others").

Courts are extraordinarily powerful, and the people bestow that power with the understanding that courts will apply it within strict limits and not in service of enterprises having no relation to proper adjudication. When the judiciary allows itself to become entangled in religious disputes, however, that is precisely what happens. Courts harm themselves when they go looking for churches to fix. Permitting this

case to go forward would improperly interject judicial power into ecclesiastical matters. This Court should grant transfer and affirm dismissal of the case before the judiciary suffers further loss of esteem.

II. The Church Autonomy Doctrine Applies Here to Prevent Courts from Deciding Matters that Are Purely Ecclesiastical

Courts are secular agencies with "no jurisdiction" over matters of "church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). The trial court, accordingly, had an *absolute* duty to dismiss this case—it had "no ecclesiastical jurisdiction," *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888) (quoting *Smith v. Nelson*, 18 Vt. 511, 568 (1846))—which makes the decision of the Court of Appeals so mystifying.

Missing the point of the church autonomy doctrine, the Court of Appeals suggested that questions may remain as to two subsets of the doctrine that are irrelevant to this case. First, the Court of Appeals opined that perhaps "genuine issues of material fact exist regarding . . . whether Payne-Elliott's job duties as a teacher at an Archdiocese-affiliated school rendered him a 'minister.'" Op. 17–18. Even if the ministerial exception was the relevant issue here, no additional inquiry need be made because Payne-Elliott easily satisfies the definition of minister at the pleading stage. "The religious education and formation of students is the very reason for the existence of most private religious schools." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). Payne-Elliott, as a teacher at a Catholic school, was necessarily engaged in its mission by "educating and forming students" in the faith, *id.*,

and this matter can be resolved at this stage. *See, e.g.*, *Demkovich v. Saint Andrew the Apostle Parish*, 3 F.4th 968, 985 (7th Cir. 2021) (en banc) (concluding that employee was a minister and directing district court to grant motion to dismiss). More important, however, the immunity to which the Archdiocese is entitled is grounded in the broader church autonomy doctrine, not just the ministerial exception. Because the case involves decisions regarding the religious status of an entire school, and not simply the employment decision for one person, church autonomy principles prohibit judicial interference from the very beginning.

As for the suggestion that there might be some question about "the applicability of the ecclesiastical abstention doctrine" in this case, Op. 18, no further inquiry is necessary. The ecclesiastical abstention doctrine, as discussed by the Court of Appeals in its footnote, Op. 18 n.6 ("Under the doctrine of ecclesiastical abstention, the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes. . . . Ecclesiastical abstention does not divest courts of subject-matter jurisdiction, given that it does not render courts unable to hear types of cases in general, but only specific cases pervaded by religious issues." (quoting 77 C.J.S. *Jurisdiction and Authority of Civil Courts* § 121)), concerns church property disputes and still prohibits interference "of the state into the forbidden area of religious freedom" when it attempts to "pass[] . . . control of matters strictly ecclesiastical from one church authority to another." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952). This case involves a question, not of a secular property matter that a civil court could potentially resolve,

but rather of a religious nature—"declar[ing] who is Catholic." *Dwenger*, 14 N.E. at 908. In line with the broader church autonomy doctrine, the ecclesiastical abstention doctrine could do nothing here except likewise prohibit judicial interference in this case. No inquiry on remand could clarify the issue further.

Rather, this case should proceed under principles of church autonomy. And those principles require dismissal here.

Religious organizations have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116. Above all, "[r]eligious questions are to be answered by religious bodies." *McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013). And where a lawsuit against an Archdiocese threatens church autonomy, the result must be judgment for the defendant, period. *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 288–89, 294 (Ind. 2003) (directing summary judgment for defendant where the Court concluded that 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").

The Archdiocese's religious guidance on the qualifications for Catholic schools is, "at its core," focused on matters that are "purely ecclesiastical," such that dismissal was proper because "the trial court lacked subject matter jurisdiction to adjudicate" it. *Stewart v. McCray*, 135 N.E.3d 1012, 1029 (Ind. Ct. App. 2019). The Indiana Court of Appeals has on multiple occasions held that church "personnel decisions are protected from civil court interference where review by the civil courts would require the

courts to interpret and apply religious doctrine or ecclesiastical law," and that cases concerning such decisions warrant dismissal. *Stewart v. Kingsley Terrace Church of Christ, Inc.*, 767 N.E.2d 542, 546 (Ind. Ct. App. 2002) (quoting *McEnroy v. Saint Meinrad Sch. of Theology*, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999)). Civil courts should refrain from any form of "review" when the court would be "require[d] . . . to interpret and apply religious doctrine or ecclesiastical law," such as where claims would require assessment whether canon law required the church to take a particular action or whether ecclesiastic authorities "properly exercised . . . jurisdiction." *McEnroy*, 713 N.E.2d at 337 (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 696 (1976)). This is precisely such a case.

III. The Church Autonomy Doctrine Functions as an Absolute Immunity Requiring Immediate Dismissal

What is more, the application of church autonomy doctrine must properly be understood as an absolute immunity from litigation, not merely a defense to liability. An immunity from litigation protects the beneficiary from even having to undergo the exposure and indignity of judicial proceedings. Here, for example, the Archdiocese has already suffered irreparable harm in the form of exposure of internal church documents and decisions (including those having no relation to this case). That harm will only grow if the case proceeds in the trial court. "The very process of inquiry leading to findings and conclusions" presents the possibility of "imping[ing] on rights guaranteed by the Religion Clauses." *N.L.R.B. v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979); *see also Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir.

2018) (holding that allowing discovery of internal church documents not only interferes with a church's "decision-making processes" but may "expose[] those processes to an opponent and will induce similar ongoing intrusions against religious bodies' self-government.").

Other courts have recognized that church autonomy doctrine properly functions as litigation immunity. *See McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (equating the church's immunity to "official immunity" or "immunity from the travails of a trial and not just from an adverse judgment"); *Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (church autonomy renders defendant "immune not only from liability, but also 'from the burdens of defending the action'" (quoting *Rowan Cnty. v. Sloas*, 201 S.W.3d 469, 474 (Ky. 2006))); *United Methodist Church, Balt. Annual Conference v. White*, 571 A.2d 790, 792 (D.C. 1990) (church autonomy "grant[s] churches an immunity from civil discovery and trial" (citing *Catholic Bishop of Chi.*, 440 U.S. at 503)).

Yet, if the Archdiocese must litigate this case to final judgment before the judiciary will respect that immunity, it will, in effect, lose it. "[I]mmunity entitles its possessor to be free from the burdens of defending the action, not merely . . . from liability." *Breathitt Cnty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009) (quoting *Sloas*, 201 S.W.3d at 474). Consequently, "such an entitlement cannot be vindicated following a final judgment for by then the party claiming immunity has already borne the costs and burdens of defending the action." *Id.*; *see also Dayner v. Archdiocese of Hartford*, 23 A.3d 1192, 1198–1200 (Conn. 2011) (explaining that "the very act

of litigating a dispute that is subject to the ministerial exception would result in the entanglement of the civil justice system with matters of religious policy, making the discovery and pre-trial process itself a First Amendment violation."), *overruling on other grounds recognized in Trinity Christian Sch. v. Comm'n on Human Rights*, 189 A.3d 79, 89 (Conn. 2018); *Harris v. Matthews*, 643 S.E.2d 566, 570 (N.C. 2007) (ruling that additional discovery was impermissible because, once it became clear that resolving claims would cause entanglement, allowing discovery would only worsen entanglement).

The cost of litigation, the loss of institutional dignity, and the exposure occasioned by discovery of communications and internal directives of the Archdiocese are all harms that a favorable final judgment—to say nothing of an appeal following a disfavorable one—cannot redress. Accordingly, the trial court was correct to dismiss the case, and this Court should grant transfer and ultimately reinstate that result.

CONCLUSION

The Court should grant transfer and ultimately affirm the trial court's dismissal of this case.

Dated: February 18, 2022

Respectfully submitted,

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As required by Indiana Appellate Rule 44(E), I verify that this Brief of Amicus Curiae in Support of Petitioner contains no more than 4,200 words.

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