

Nos. 23-35560, 23-35585

---

---

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

CEDAR PARK ASSEMBLY OF GOD OF KIRKLAND, WASHINGTON,  
*Plaintiff-Appellant / Cross-Appellee,*

v.

MYRON KREIDLER, *et al.*,  
*Defendants-Appellees / Cross-Appellants.*

---

On Appeal from the United States District Court  
for the Western District of Washington  
Case No. 3:19-cv-05181-BHS

---

---

**BRIEF OF *AMICI CURIAE* STATE OF SOUTH CAROLINA AND  
17 OTHER STATES SUPPORTING  
PLAINTIFF-APPELLANT/CROSS-APPELLEE'S  
PETITION FOR REHEARING EN BANC**

---

---

ALAN WILSON  
*Attorney General*

ROBERT D. COOK  
*Solicitor General*

J. EMORY SMITH, JR.  
*Deputy Solicitor General*

THOMAS T. HYDRICK  
*Asst. Dep. Solicitor General*

JOSEPH D. SPATE\*  
*Asst. Dep. Solicitor General*

BENJAMIN M. MCGREY  
*Asst. Dep. Solicitor General*

STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY  
GENERAL

1000 Assembly St.  
Columbia, SC 29201  
(803) 734-3371

josephspate@scag.gov  
*\*Counsel of Record*

*Counsel for Amici Curiae*

April 11, 2025

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i> AND SUMMARY OF ARGUMENT ....	1
ARGUMENT .....	3
CONCLUSION.....	12
ADDITIONAL COUNSEL .....	13
CERTIFICATE OF SERVICE.....	14
CERTIFICATE OF COMPLIANCE.....	15

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>Am. Ins. Ass’n v. Garamendi</i> , 539 U.S. 396 (2003).....	10
<i>Catholic League for Religious and Civil Rights v. City and County of San Francisco</i> , 624 F.3d 1043 (9th Cir. 2010).....	8
<i>Cedar Park Assembly of God of Kirkland, Washington v. Kreidler</i> , 130 F.4th 757 (9th Cir. 2025) .....	1, 2, 7
<i>Chamber of Com. of U.S. v. Whiting</i> , 563 U.S. 582 (2011).....	10
<i>Food &amp; Drug Admin. v. All. for Hippocratic Med.</i> , 602 U.S. 367 (2024).....	8
<i>Fulton v. City of Philadelphia, Pennsylvania</i> , 141 S.Ct. 1868 (2021) .....	5
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. E.E.O.C.</i> , 565 U.S. 171, 190 (2012).....	9
<i>In re Lubbock</i> , 624 S.W.3d 506 (Tex. 2021).....	2, 11
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952) .....	9
<i>National Labor Relations Board v. The Catholic Bishop of Chicago</i> , 440 U.S. 490 (1979).....	4, 5
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 591 U.S. 732 (2020).....	2, 4, 11
<i>Seattle Pac. Univ. v. Ferguson</i> , 104 F.4th 50 (9th Cir. 2024) .....	7
<i>Seattle’s Union Gospel Mission v. Woods</i> , 142 S.Ct. 1094 (2022) .....	10, 11
<i>Serbian E. Orthodox Diocese for U. S. of Am. &amp; Canada v. Milivojevich</i> , 426 U.S. 696 (1976).....	3
<i>Vasquez v. Los Angeles County</i> , 487 F.3d 1246 (9th Cir. 2007).....	8
<i>Watson v. Jones</i> , 80 U.S. 679 (1871) .....	3

**Rules**

Fed. R. App. P. 29(b)(2) ..... 1

**Other Authorities**

*Towards a General Theory of the Religion Clauses: The Case of Church  
Labor Relations and the Right to Church Autonomy,*  
81 COLUM. L. REV. 1373 (1981)..... 3

## INTEREST OF *AMICI CURIAE* AND SUMMARY OF ARGUMENT

States seldom challenge other states' laws. After all, each state enacts its own laws. But the purpose of such laws must not be forgotten. *Amici* States<sup>1</sup> have not forgotten. Indeed, our governments “deriv[e] their just powers from the consent of the governed.” *Declaration of Independence* (U.S. 1776). And our system of governance is one “of the people, by the people, for the people.” Abraham Lincoln, *Gettysburg Address*, Nov. 19, 1863. *Amici* States represent the interest of the people. And that is their interest in this case.

Cedar Park Assembly of God (“Cedar Park”) was once able to provide health insurance coverage to its employees in a manner consistent with its core convictions. “Now it cannot,” after the passage of Washington’s so-called Reproductive Parity Act (“Parity Act”). *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler*, 130 F.4th 757, 769 (9th Cir. 2025) (Callahan, J. dissenting). That’s “because the Parity Act mandates that Cedar Park’s health plan ‘provide ... coverage to permit the abortion of a pregnancy.’” *Id.* (quoting Wash. Rev. Stat. § 48.43.073(1)(a)).

---

<sup>1</sup> *Amici* States are authorized to file this brief without the consent of the parties or the leave of the Court. Fed. R. App. P. 29(b)(2).

Cedar Park, like other religious institutions, enjoys First Amendment protections that grant the church “autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). The Parity Act violates Cedar Park’s religious autonomy. Yet Cedar Park’s protestations to that effect were barely acknowledged by the district court. 1-ER-27. And its argument wasn’t even considered or addressed by a panel of this Court. *See, generally, Cedar Park*. Indeed, the panel “boot[ed] Cedar Park” on standing grounds, thereby “fail[ing] to appreciate [its] prior opinion where [it] found that Cedar Park has standing.” *Cedar Park*, 130 F.4th at 780 (Callahan, J. dissenting).

*Amici* States care about “preserv[ing] the independence of our most precious private institutions from the all-consuming power of the state.” *In re Lubbock*, 624 S.W.3d 506, 520 (Tex. 2021) (Blacklock, J., concurring). That’s why they urge this Court to grant Cedar Park’s Petition for Rehearing En Banc and permit the en banc Court to give due consideration to the merits of Cedar Park’s religious autonomy claim.

## ARGUMENT

### **A. By rejecting Cedar Park’s standing, the panel split with precedent and ignored Cedar Park’s important religious autonomy rights.**

Under the First Amendment, churches have the right to autonomously “select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.” Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1389 (1981) (internal citations omitted); *see also Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 714 (1976) (recognizing that civil courts exercise no jurisdiction “in a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.”) (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). “This right of autonomy logically extends to all aspects of church operations. There is nothing in the cases to indicate that the Supreme Court would disagree. The Court has consistently extended the right of church autonomy as far as necessary to include the cases before it.” 81 COLUM. L. REV. at 1397.

Consider *Our Lady of Guadalupe School v. Morrissey-Berru*. There, the Supreme Court examined the application of religious autonomy to employment of teachers in the parochial school context. As the Supreme Court observed, “[t]he religious education and formation of students is the very reason for the existence of most private religious schools, and therefore the selection and supervision of the teachers upon whom the schools rely to do this work lie at the core of their mission.” 591 U.S. at 738. And the Court found judicial review of the way in which religious schools discharge those responsibilities “would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.” *Id.* That’s because “the Religion Clauses protect the right of churches and other religious institutions to decide matters ‘of faith and doctrine’ without government intrusion.” *Id.* at 746 (cleaned up).

Or take *National Labor Relations Board v. The Catholic Bishop of Chicago*. In that case, the Supreme Court considered a National Labor Relations Board (“NLRB”) enforcement action against church-run schools that refused to recognize or bargain with unions representing lay faculty members at the schools. 440 U.S. 490 (1979). Some might consider the decision to engage or not engage with faculty unions to be a secular



function. But the Supreme Court found the NLRB’s “exercise of jurisdiction over teachers in church-operated schools would implicate the guarantees” of the First Amendment, *id.* at 507, because doing so would have a chilling effect on the church’s exercise of “control of the religious mission of the schools.” *Id.* at 496 (cleaned up).

Consider yet another example: the regulation of foster care agencies. The year after *Morrissey-Berru* was decided, the Supreme Court considered the City of Philadelphia’s refusal to contract with a religiously affiliated state-licensed foster care agency unless the agency agreed to certify same-sex couples as foster parents. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S.Ct. 1868 (2021). The Supreme Court ultimately concluded that “the City’s actions have burdened [the foster care agency’s] religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs,” and the Court held that the burden on religious exercise was not constitutionally permissible. *Id.* at 1876.

So too here. Protecting unborn life is essential to Cedar Park’s religious beliefs, central mission, and operation. Yet the Parity Act requires Cedar Park to facilitate access to abortion services contrary to those

tenets. In light of the religious autonomy doctrine, the lower court erred by upholding the application of the Parity Act to Cedar Park. And the panel of this Court erred by declining to even visit Cedar Park’s religious autonomy claim.

As the district court acknowledged, “[b]ecause of [the Parity Act], Cedar Park’s employees gained coverage for abortion services under their employer-sponsored health insurance plan that they would not otherwise have.” 1-ER-15–16. The lower court further admitted that the Parity Act “requires Cedar Park to facilitate access to covered abortion services contrary to Cedar Park’s religious beliefs. *Thus, [the Parity Act], under certain circumstances, could burden religion.*” 1-ER-16 (emphasis added).

Yet the district court confusingly held that the Parity Act did not burden religion because, *inter alia*, “purchasing a health insurance plan is not an ecclesiastical decision.” 1-ER-27. This conclusion not only contradicts the district court’s earlier finding that the Parity Act burdens religion, but it also misapprehends the issue in this case. The district court focused on the act of “purchasing a health insurance plan” at a high level of generality rather than the actual issue, namely the Parity Act’s requirement that Cedar Park facilitate access to abortions.

Cedar Park appealed to this Court for review, but the panel’s opinion didn’t consider Cedar Park’s religious autonomy argument at all. In fact, the only place where the phrase “religious autonomy” appears anywhere in the opinion is one instance in the opening paragraph where the Court summarized the claims originally raised by the plaintiff in this case. *Cedar Park*, 130 F.4th at 761. As a result, the religious autonomy doctrine has taken a back seat in the Ninth Circuit.

The Court’s failure to even address Cedar Park’s religious autonomy argument undermined its standing analysis. As a religious organization “with specific parameters undergirding its employment practices,” Cedar Park’s “employment decisions are plainly affected with First Amendment interests.” *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 59 (9th Cir. 2024) (cleaned up). So when the Parity Act forced Cedar Park to change the “parameters undergirding its employment practices” by providing abortion coverage for its employees, the church experienced a constitutional injury in fact. *Id.* By failing to consider Cedar Park’s religious autonomy to manage its employment practices, the panel failed to fully evaluate Cedar Park’s standing to sue in this case.

What's more, the panel's standing decision conflicts with precedents of the Supreme Court, this Court, and other circuits in myriad ways. *See, generally*, Pet. for Reh'g En Banc. *Amici* States highlight one area of conflict in particular: the panel's apparent refusal to treat the violation of First Amendment rights as an injury in fact.

According to the panel, financial injury is what matters. Op. 21-23. But that's not the law of this circuit. *See Catholic League for Religious and Civil Rights v. City and County of San Francisco*, 624 F.3d 1043, 1050 (9th Cir. 2010) (en banc); *see also Vasquez v. Los Angeles County*, 487 F.3d 1246, 1250 (9th Cir. 2007). And the Supreme Court recently reiterated that "[a]n injury in fact can be ... an injury to one's constitutional rights." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). The Parity Act violates Cedar Park's First Amendment rights by forcing it to choose between following its core religious convictions and complying with the statute. But the panel failed to recognize that constitutional injury as an injury in fact.

The State of Washington has presented Cedar Park with the choice of either curtailing its mission or approving (and even facilitating access to) abortion services inconsistent with its beliefs, mission, and operation.

Promoting the sanctity of unborn life is key to Cedar Park's beliefs and mission as a Christian ministry, and its operational discretion over the range of procedures covered by health insurance provided to its employees is central to that ministry's objectives. Washington's actions have burdened Cedar Park's religious autonomy through the Parity Act by effectively deciding that the church's doctrine is incorrect and requiring the church to change its operations to comply with the state's violative edicts if the church wants to continue operating in the same capacity.

Ultimately, the State has impermissibly usurped "an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 190 (2012). The district court erroneously upheld this unconstitutional burdening of Cedar Park's religious autonomy. And a panel of this Court turned a blind eye to the maxim that religious organizations enjoy "an independence from secular control or manipulation." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The en banc Court should grant rehearing, confirm Cedar Park's standing, and decide the religious autonomy claim on the merits.

**B. Amici States’ unique position underscores that this case involves an issue of exceptional importance.**

*Amici* States’ unique posture in this appeal should underscore the uniquely flagrant First Amendment violation at issue and uniquely important interests it implicates.

*Amici* States play a role in regulating “the employment relationship.” *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 588 (2011). And regulation of insurance is left “generally to the States.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 428 (2003). Yet *Amici* States are mindful of the constitutional bookends of their authority. And they have an interest in preserving and protecting the rights of their citizens, including First Amendment rights. Amidst this tension, *Amici* States discern the importance of standing up for religious autonomy in this case.

The panel’s decision has severe consequences for churches in this Circuit, including many residing in *Amici* States. “To force religious organizations” to conduct their internal affairs without the protections of religious autonomy “would undermine not only the autonomy of many religious organizations but also their continued viability.” *Seattle’s Union Gospel Mission v. Woods*, 142 S.Ct. 1094, 1096 (2022) (Alito, J., statement respecting the denial of certiorari). Indeed, “if States could compel

religious organizations” to make organizational decisions that fundamentally undercut the organization’s religious convictions, “many religious non-profits would be extinguished from participation in public life—perhaps by those who disagree with their theological views most vigorously.” *Id.* And “driving such organizations from the public square would not just infringe on their rights to freely exercise religion but would greatly impoverish our Nation’s civic and religious life.” *Id.*

The “general principle of church autonomy” in the First Amendment grants churches “independence in matters of faith and doctrine and in closely linked matters of internal government.” *Morrissey-Berru*, 591 U.S. at 747. After all, a “church is not truly free to manage its affairs, practice its faith, and publicly proclaim its doctrine if lawyers and judges lie in wait to pass human judgment” on those affairs. *In re Lubbock*, 624 S.W.3d at 521 (Blacklock, J., concurring). The district court barely acknowledged Cedar Park’s argument under this principle and a panel of this Court did even less. The en banc Court should review this critical issue and set the record straight.

## CONCLUSION

This Court should grant the Petition for Rehearing En Banc.

Respectfully submitted,

s/ Joseph D. Spate

Alan Wilson

*Attorney General*

Robert Cook

*Solicitor General*

J. Emory Smith, Jr.

*Deputy Solicitor General*

Thomas T. Hydrick

*Asst. Dep. Solicitor General*

Joseph D. Spate\*

*Asst. Dep. Solicitor General*

Benjamin M. McGrey

*Asst. Dep. Solicitor General*

*Counsel for Amici Curiae*

STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY

GENERAL

1000 Assembly St.

Columbia, SC 29201

(803) 734-3371

josephspate@scag.gov

*\*Counsel of Record*

April 11, 2025



## ADDITIONAL COUNSEL

STEVE MARSHALL  
Attorney General  
State of Alabama

ANDREW BAILEY  
Attorney General  
State of Missouri

TREG TAYLOR  
Attorney General  
State of Alaska

AUSTIN KNUDSEN  
Attorney General  
State of Montana

TIM GRIFFIN  
Attorney General  
State of Arkansas

MICHAEL T. HILGERS  
Attorney General  
State of Nebraska

JAMES UTHMEIER  
Attorney General  
State of Florida

MARTY JACKLEY  
Attorney General  
State of South Dakota

CHRISTOPHER M. CARR  
Attorney General  
State of Georgia

KEN PAXTON  
Attorney General  
State of Texas

RAÚL R. LABRADOR  
Attorney General  
State of Idaho

DEREK BROWN  
Attorney General  
State of Utah

BRENNA BIRD  
Attorney General  
State of Iowa

JASON MIYARES  
Attorney General  
Commonwealth of Virginia

KRIS KOBACH  
Attorney General  
State of Kansas

JOHN B. MCCUSKEY  
Attorney General  
State of West Virginia

LIZ MURRILL  
Attorney General  
State of Louisiana

## CERTIFICATE OF SERVICE

I certify that on April 11, 2025, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that the foregoing document is being served on this day to all counsel of record registered to receive a Notice of Electronic Filing generated by CM/ECF.

April 11, 2025

s/ Joseph D. Spate  
Joseph D. Spate

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains  words, including  words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
  - it is a joint brief submitted by separately represented parties.
  - a party or parties are filing a single brief in response to multiple briefs.
  - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated .
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature  Date   
(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)