No. 25-30398

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAKE CHARLES; SOCIETY OF THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF LAFAYETTE; CATHOLIC UNIVERSITY OF AMERICA,

Plaintiffs-Appellants,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION; ANDREA R. LUCAS,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Louisiana (Lake Charles)
No. 2:24-cv-00691, Hon. David C. Joseph

BRIEF OF MANHATTAN INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

Counsel certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made so the judges of this court may evaluate possible disqualification or recusal.

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Dated: May 22, 2026 *<u>/s/ Thomas R. McCarthy</u>*

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INTEREST OF *AMICUS CURIAE*[1]

The Manhattan Institute for Policy Research (MI) is a nonpartisan research foundation dedicated to developing and disseminating ideas that foster greater economic choice and individual responsibility. MI's constitutional studies program promotes that mission by championing the Constitution's original public meaning and the separation of powers. To further that message, MI regularly appears as *amicus* in this Court and others. *See, e.g.*, *Kennedy v. Braidwood Mgmt., Inc.*, No. 24-316 (U.S. Mar. 27, 2025); *Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S. July 20, 2023); *Marfil v. City of New Braunfels*, No. 22-50908 (5th Cir. Dec. 16, 2022). This case interests MI because it raises important issues of agency authority, church autonomy, and the separation of powers in the service of a flourishing civil society.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress passed the Pregnant Workers Fairness Act to protect healthy pregnancies—not take a position in debates over abortion. The Final Rule inverts that scheme, reading the Act's silence on abortion as a sweeping delegation that forces millions of employers to "accommodate" abortions and even police "unwelcome" abortion-related speech. 89 Fed. Reg. 29,096, 29,183-86 & 29,214-18 (Apr. 19, 2024). That is not the regime Congress created—or could create without explicitly saying so.

[1] Per Federal Rule of Appellate Procedure 29, counsel for *amicus curiae* certifies that it authored this brief. No party or counsel for any party funded the preparation or submission of this brief. All parties have consented to the filing of this amicus brief.

I. Since the early years of the administrative state, the Supreme Court has reliably applied the major-questions doctrine to broad claims of agency authority, recognizing that our representatives speak clearly before assigning vast powers to others—not unlike how average citizens might talk to their agents. *E.g.*, *Interstate Commerce Comm'n v. Cincinnati*, *N. O. & T. P. R. Co.*, 167 U.S. 479, 505 (1897) (presuming that Congress doesn't delegate broad powers through "doubtful and uncertain language"); *Biden v. Nebraska*, 600 U.S. 477, 513 (2023) (Barrett, J., concurring) (similar). That commonsense principle applies with special force to social issues, because everyday Americans—the subjects of the "textualist enterprise," *Nebraska*, 600 U.S. at 509 (Barrett, J., concurring)—expect Congress to "speak clearly" before picking a side in the culture wars, *see BST Holdings, L.L.C. v. OSHA*, 17 F.4th 604, 617 (5th Cir. 2021). The Act's vague references to "medical conditions" and "reasonable accommodations" fall far short of the necessary clarity. 42 U.S.C. §2000gg-1(1).

II. That conclusion is especially appropriate here because the Final Rule tramples the church-autonomy doctrine—one of the Religion Clauses' core "structural" protections. *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018). The Supreme Court has repeatedly recognized that the major-questions doctrine "protect[s] the Constitution's separation of powers," ensuring that administrative agencies don't invade Congress's domain. *West Virginia v. EPA*, 597 U.S. 697, 737 (2022) (Gorsuch, J., concurring). The church-autonomy doctrine works the same way, serving as a "structural" check that bars civil authorities from second-guessing "ecclesiastical decisions" like

church doctrine and discipline. *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 157 F.4th 627, 642-44 (5th Cir. 2025). The Final Rule transgresses those bounds, vesting judges, juries, and the EEOC with authority to regulate a religious institution's "code of conduct," "mission statements," and more. 89 Fed. Reg. at 29,142-48 & n.201. Congress didn't "clearly" authorize such an unconstitutional regime. *NLRB v. Cath. Bishop of Chicago*, 440 U.S. 490, 501 (1979). The Court should say so.

ARGUMENT

I. The Final Rule burdens religious exercise without clear congressional authorization.

Ordinary Americans use clear and direct language when they delegate important responsibilities to others. They expect no less from Congress. For more than a century, the Supreme Court has followed that commonsense intuition, observing that Congress speaks clearly when it delegates broad powers to agencies. *E.g.*, *United States v. Eaton*, 144 U.S. 677, 688 (1892). That observation applies with special force to "hotly debated" social issues. *BST Holdings*, 17 F.4th at 617. And it's stronger still for rules that touch on "national values" like free exercise. *Cath. Bishop of Chicago*, 440 U.S. at 501. The Final Rule falls far short of that high standard.

A. The major-questions doctrine requires Congress to speak clearly before regulating controversial social issues like religious exercise.

It's a familiar rule that "words are to be understood in their ordinary, everyday meanings." SCALIA, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69 (2012) (cleaned up); *Gibbons v. Ogden*, 22 U.S. 1, 71 (1824). To abide by that rule, judges must ask how "a skilled, objectively reasonable user of words" would understand a statute's

text. *Nebraska*, 600 U.S. at 509 (Barrett, J., concurring). And to answer that question, courts must draw on "common sense" assumptions about how ordinary Americans communicate. *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026) (plurality op.); *Nebraska*, 600 U.S. at 512 (Barrett, J., concurring).

One of those basic assumptions is that speakers address major issues—like important business decisions, family matters, and social policy—through clear and specific language. *Nebraska*, 600 U.S. at 513-14 (Barrett, J., concurring); *see also Gonzales v. Oregon*, 546 U.S. 243, 267 (2006). So when a parent tells her babysitter to "make sure the kids have fun" while she's gone over the weekend, for example, she isn't authorizing a three-day "road trip to an amusement park." *Nebraska*, 600 U.S. at 513 (Barrett, J., concurring). Nor does a local health official authorize his constituents to vaccinate their neighbors or quarantine the sick when he tells them to "keep each other healthy during flu season." *Cf. BST Holdings*, 17 F.4th at 617-18. And the same is true for the state representative who tells his district to "clean up our streets before the parade"—an instruction that *does not* authorize local residents to bulldoze an unkempt house at the end of the parade route. *Cf. Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 761-64 (2021). The reason? Ordinary readers "expect much more clarity" before assuming that another's instructions license such "out-of-the-ordinary" or unconstitutional conduct. *Nebraska*, 600 U.S. at 514 (Barrett, J., concurring).

Courts have long applied the same logic to statutes that delegate broad powers to agencies. *West Virginia*, 597 U.S. at 740-41 (Gorsuch, J., concurring) (collecting cases).

Soon after the rise of the administrative state, the Supreme Court demanded "clear and direct" language for broad congressional delegations, *Cincinnati*, 167 U.S. at 505, reasoning that "if congress intended" to delegate broadly, "it would have done so distinctly," *Eaton*, 144 U.S. at 688. A decade later, state and federal courts echoed that principle, declaring it a "universally held" rule that agencies "must be able to point to . . . clear and express terms" before exercising broad powers. *Gulf & Ship Island R. Co. v. Railroad Comm'n*, 94 Miss. 124, 134-35 (1909) (collecting cases); *accord Siler v. Louisville & Nashville R. R. Co.*, 213 U.S. 175, 193-94 (1909). Thirty years later, the Supreme Court reaffirmed that rule, recognizing that broad agency powers require "definite and unmistakable" statutory language. *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 255 (1939); *see also FTC v. Bunte Bros.*, *Inc.*, 312 U.S. 349, 355 (1941). And in the modern era, the Court has reliably assumed that Congress doesn't grant agencies "unprecedented power[s]" absent "a clear mandate." *Indus. Union Dep't., AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 645 (1980) (plurality op.); *see also, e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000); *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

Today, the Supreme Court applies those principles through the "major questions doctrine." *Nebraska*, 600 U.S. at 514 (Barrett, J., concurring). That doctrine functions as a "commonsense principl[e] of communication," *id.*, which assumes Congress—much like the parents, health officials, and politicians above—will draft clear instructions when delegating major matters to others. *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302,

324 (2014). Or as the Supreme Court has put it: "We expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Alabama Ass'n of Realtors*, 594 U.S. at 764 (cleaned up); *West Virginia*, 597 U.S. at 723; *FDA*, 529 U.S. at 160; *Nebraska*, 600 U.S. at 504.

That rule applies with extra force to delegations that regulate "hotly debated" social issues. *BST Holdings*, 17 F.4th at 617. After all, when Congress legislates on those controversial topics, "reasonable" readers expect that it will speak clearly. *Nebraska*, 600 U.S. at 509 (Barrett, J., concurring); *accord Gonzales*, 546 U.S. at 267. And that expectation no doubt remains when Congress allegedly takes a side in the culture wars, *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014), because "enormous" social decisions are typically made "by democratically elected Members of Congress"—not "unelected agency administrators," *FDA*, 529 U.S. at 190 (Breyer, J., dissenting) (cleaned up); *accord Nebraska*, 600 U.S. at 505-06.

This expectation is stronger still when Congress regulates matters that hold a "unique place in American history and society"—religious liberty being foremost among them. *See FDA*, 529 U.S. at 159; *Cath. Bishop of Chicago*, 440 U.S. at 501. First Amendment freedoms "plainly rank high in the scale of our national values." *Cath. Bishop of Chicago*, 440 U.S. at 501 (cleaned up). And that is especially true for religious liberty—America's "first freedom," *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 23 (2020) (Gorsuch, J., concurring), which our Nation has a "rich" history of protecting, *Fulton v. City of Philadelphia*, 593 U.S. 522, 572-78 (2021) (Alito, J., concurring).

So ordinary Americans would doubtless expect Congress to speak "clearly" before letting agencies regulate religion. *Cath. Bishop of Chicago*, 440 U.S. at 501 (cleaned up); *BST Holdings*, 17 F.4th at 617.

B. The Pregnant Workers Fairness Act doesn't clearly authorize the Final Rule's abortion-accommodation regime.

The Final Rule falls short of the clarity the major-questions doctrine demands. To "overcome" that doctrine's "skepticism" of broad agency delegations, the EEOC must point to "clear" statutory language that authorizes the Final Rule's abortion mandate. *West Virginia*, 597 U.S. at 732. It can't. Text, context, and precedent all show that the Pregnant Workers Fairness Act—which is "designed to ensure healthy pregnancies"—doesn't silently allow the EEOC to short-circuit the law's core aim. *Louisiana v. EEOC*, 784 F. Supp. 3d 886, 897 (W.D. La. 2025).

1. Start with the Act's text. *Nebraska*, 600 U.S. at 511 (Barrett, J., concurring). The Act requires certain employers to reasonably accommodate "physical or mental condition[s]" that are "related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions." 42 U.S.C. §2000gg(2), (4); §2000gg-1(1)-(5). And it bars employers from refusing those accommodations or "tak[ing] adverse action" against an employee who requests them. 42 U.S.C. §2000gg-1(1), (5). The EEOC's abortion mandate "doesn't fit into the ordinary meaning" of that text. *Tennessee v. EEOC*, 737 F. Supp. 3d 685, 701 (E.D. Ark. 2024), *rev'd on other grounds*, 129 F.4th 452 (8th Cir. 2025). And even the EEOC concedes that the Act doesn't "explicit[ly] mention … abortion"—not

once. 89 Fed. Reg. at 29,111. That statutory silence is far from the "clear congressional authorization" the major-questions doctrine requires. *West Virginia*, 597 U.S. at 723.

2. "[C]ontext" proves the point. *FDA*, 529 U.S. at 133. When Congress passed the Act with bipartisan support, "lawmakers from both sides" recognized that it "does not address abortion." *Louisiana v. EEOC*, 705 F. Supp. 3d 643, 660 (W.D. La. 2024). The Act's proponents—Republican and Democrat—each stressed that the EEOC "could no[t] issue any regulation that requires abortion leave," ROA.8908 (quoting Sen. Casey (D)), thus rejecting any claim that the Act "would do anything to promote abortion," *id.* (quoting Sen. Cassidy (R)). And hundreds of advocacy groups from across "the ideological spectrum" read the Act the same way. *Id.* If scores of representatives, hundreds of advocacy groups, and thousands of supporters all thought the Act didn't require abortion accommodations, then the Act simply can't supply the clarity the major-questions doctrine demands. *See FDA*, 529 U.S. at 159-60. "Common sense" requires no less, *Nebraska*, 600 U.S. at 521 (Barrett, J., concurring)—even for those who might question the value of legislative history in other statutory contexts.

3. Precedent confirms that fact. When Congress passed the Act, it legislated against a "long line of cases" criticizing rules just like this one. *Cath. Benefits Ass'n v. Burrows*, 732 F. Supp. 3d 1014, 1019 (D.N.D. 2024); *Cath. Bishop of Chicago*, 440 U.S. at 501. When the Department of Health and Human Services required religious employers to provide contraception, the Supreme Court rejected that unyielding mandate, observing that it "clearly imposes a substantial burden" on free exercise. *Burwell*, 573 U.S. at

720 & 726; *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 667 & 687 (2020). When the EEOC tried to apply a separate set of civil-rights mandates to religious institutions, this Court said that regime "almost assuredly burdens the exercise" of "religious practice." *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 937 (5th Cir. 2023). And when another court confronted this very rule, it applied the same Fifth Circuit precedent and said the Final Rule was "a substantial burden" on religious "beliefs." *Cath. Benefits Ass'n*, 732 F. Supp. 3d at 1026 (quoting *Braidwood*, 70 F.4th at 938). Congress knows that these regulations raise "serious constitutional questions." *Cath. Bishop of Chicago*, 440 U.S. at 501. It wouldn't try to authorize them through such "cryptic" statutory text. *Gonzales*, 546 U.S. at 267-68.

II. The major-questions doctrine applies to the Final Rule because it trenches on church autonomy.

The Final Rule independently triggers the major-questions doctrine because it violates church autonomy. The major-questions doctrine guards the separation of powers, policing agencies that try to invade Congress's domain. The same separation-of-powers principles animate the Religion Clauses, which bar civil courts from regulating ecclesiastical disputes. The Final Rule transgresses that boundary, vesting judges, juries, and the EEOC with the power to regulate internal church discipline. The major-questions and church-autonomy doctrines doubly bar that intrusion on religious liberty.

A. The major-questions doctrine applies to rules that burden church autonomy.

Since the Founding, the Court has developed several "clear-statement rules" to safeguard the separation of powers, applying those protections to laws that encroach on tribal, state, and foreign sovereignty. *West Virginia*, 597 U.S. at 736-37 (Gorsuch, J., concurring) (collecting cases). The major-questions doctrine extends those protections to Congress and the American people. *Id.* at 723 (majority). The Court should apply the same clear-statement rule to religious institutions like the United States Conference of Catholic Bishops. *E.g.*, *Cath. Bishop of Chicago*, 440 U.S. at 501.

Start with the clear-statement rule's history. Since the Founding, the Court has demanded that Congress speak clearly before regulating a foreign nation's "sovereignty." *E.g.*, *The Apollon*, 22 U.S. 362, 370-71 (1824); *United States v. Palmer*, 16 U.S. 610, 631-33 (1818). The Court has long required the same "clear expression" for laws regulating tribal sovereigns. *E.g.*, *Ex parte Kan-gi-shun-ca*, 109 U.S. 556, 572 (1883); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 790 (2014). And the same rule applies to federal laws that trench on state sovereignty. *E.g.*, *United States v. Greene*, 26 F. Cas. 33, 34 (C.C. D. Me. 1827); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55-56 (1996).

The major-questions doctrine works the same way. It safeguards the "separation of powers," ensuring that agencies don't transgress the bounds that Congress sets for them. *West Virginia*, 597 U.S. at 723; *see also NFIB v. Dep't of Lab.*, 595 U.S. 109, 122 (2022) (Gorsuch, J., concurring). It polices those bounds by requiring Congress to speak

"clear[ly] and direct[ly]" before delegating away its powers. *Cincinnati*, 167 U.S. at 505; *West Virginia*, 597 U.S. at 738-40 (Gorsuch, J., concurring). And that rule, in turn, requires the Court to "narrow[ly]" construe "statutory delegations" that give agencies the lawmaking authority Article I vests exclusively in Congress. *Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989); *West Virginia*, 597 U.S. at 741 (Gorsuch, J., concurring).

Those separation-of-powers principles also govern the First Amendment's structural protections. *See Cath. Bishop of Chicago*, 440 U.S. at 501. Courts and commentators have long recognized that the church-autonomy doctrine embodies the "separation of powers," barring civil authorities from regulating religious ones. *McRaney*, 157 F.4th at 644 (collecting cases); *Whole Woman's Health*, 896 F.3d at 366 & 373. Long before the Founding, governments invoked that doctrine to separate "church courts and state courts," reasoning that "civil courts categorically lacked jurisdiction" over their religious counterparts. *McRaney*, 157 F.4th at 634. The Framers reaffirmed that principle, recognizing that "religious opinions [are] not the objects of civil government, nor any way under its jurisdiction." *Id.* at 635 (quoting John Leland, *The Yankee Spy* (1794)). Reconstruction-Era courts said the same, holding that civil authorities can't regulate ecclesiastical "dispute[s]," *Watson v. Jones*, 80 U.S. 679, 733 (1872), because they "have no power to revise or question ordinary acts of church discipline," *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872). And modern courts have agreed, observing that the Religion

Clauses, like the "separation of powers," are a matter of "constitutional structure." *Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024).[2]

To respect those structural guarantees, this Court should apply the same interpretive rules that the Supreme Court's other clear-statement cases demand. *See Cath. Bishop of Chicago*, 440 U.S. at 501. Under that approach, this Court must presume that Congress doesn't regulate the "sovereign power" of ecclesiastical bodies, because doing so "would be [a] usurpation of [their] jurisdiction." *E.g.*, *The Apollon*, 22 U.S. at 370-71 (foreign nations); *Alabama Ass'n of Realtors*, 594 U.S. at 764 (states); *Michigan*, 572 U.S. at 788-90 (tribes); *see also McRaney*, 157 F.4th at 644 (churches). With that presumption in place, the Court must then hold that the Pregnant Workers Fairness Act doesn't "embrace" matters of church governance unless it "expressly" regulates those topics. *Greene*, 26 F. Cas. at 34 (states); *The Apollon*, 22 U.S. at 370-71 (foreign nations); *Michigan*, 572 U.S. at 790 (tribes). Or as the Supreme Court has put it: "[W]e must first identify the affirmative intention of the Congress clearly expressed before concluding that the Act grants jurisdiction" over churches and other religious institutions. *Cath. Bishop of Chicago*, 440 U.S. at 501. The Act supplies no clear expression. *Supra* §I.B. The Final Rule thus exceeds the EEOC's "authority." 5 U.S.C. §706(2)(C).

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[2] *See also, e.g.*, *Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015); *Belya v. Kapral*, 59 F.4th 570, 579 (2d Cir. 2023) (Park, J., dissenting from the denial of rehearing en banc).

B. The Final Rule trenches on church autonomy.

Even if the Act supplied the "clear congressional authorization" the major-questions doctrine requires, the Final Rule must fall because it violates the church-autonomy doctrine. *See* 5 U.S.C. §706(2)(B). That doctrine protects "the right of religious institutions to decide . . . matters of church government" and discipline. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 & 747 (2020); *accord Bouldin*, 82 U.S. at 139. And it "limit[s] the role" of government "in the resolution of religious controversies"—even when they "incidentally affect civil rights." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976). The Final Rule transgresses those bounds. Two reasons stand out.

1. The Final Rule effectively transforms the EEOC into an ecclesiastical court, allowing it to permanently enjoin core church decisions like hiring, firing, and staff discipline. Under that Rule, religious institutions can't codify "code[s] of conduct" that bar abortion or discipline employees that get one. 89 Fed. Reg. at 29,096, 29,106-12, 29,141-42, 29,187 & n.201. That broad injunction—backed by the coercive power of civil authorities—collides with the church-autonomy doctrine, which lets religious groups set "the standard of morals" their religion requires. *Milivojevich*, 426 U.S. at 714; *Our Lady*, 591 U.S. at 737 & 747. And the Rule compounds that offense by forbidding the same institutions from firing "someone who . . . do[es] not act in accordance with church doctrine." *Headley v. Church of Scientology Int'l*, 687 F.3d 1173, 1180 (9th Cir. 2012); *Braidwood Mgmt.*, 70 F.4th at 938. Civil authorities can't second-guess church discipline in that way. *See Our Lady*, 591 U.S. at 746.

2. The Final Rule also requires civil authorities to serve as factfinders in religious disputes, forcing them to decide when a church's beliefs are important enough to outweigh an employee's abortion accommodations. 89 Fed. Reg. at 29,153-54, 29,205. Under the Final Rule, the EEOC, civil courts, and lay juries must decide whether a church's claim of hardship is "undue" based on "individualized evidence"—an inquiry that asks whether an abortion mandate "would fundamentally alter the nature" of the church. *Id.* at 29,154. To accomplish that task, civil authorities must assess the "credibility" of a church's undue-hardship "claim[s]." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 205 (2012) (Alito, J., concurring); *see also Our Lady*, 591 U.S. at 747. And to make that assessment, those authorities must decide "what the accused church really believes, and how important that belief is to the church's overall mission." *Hosanna-Tabor*, 565 U.S. at 206. Such a sprawling investigation would "cause the State to intrude upon matters" that are the province of "ecclesiastical" bodies, not civil ones. *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972). That regime—and the "judicial intrusion" it would inevitably inspire, *McRaney*, 157 F.4th at 644-45—is "the very opposite" of what the church-autonomy doctrine requires, *McClure*, 460 F.2d at 560; *accord Combs v. Cent. Tex. Ann. Conf.*, 173 F.3d 343, 350 (5th Cir. 1999).

CONCLUSION

For these reasons, this Court should conclude that the Final Rule's abortion-accommodation mandate violates the major-questions doctrine.

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CERTIFICATE OF COMPLIANCE

This brief complies with Rules 29(a)(5) and 32(a)(7) because it contains 3,738 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced typeface using Microsoft Word in 14-point Garamond font.

Dated: May 22, 2026 /s/ *Thomas R. McCarthy*

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: May 22, 2026 /s/ *Thomas R. McCarthy*