No. 06-1041-CV

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUSTINIAN RWEYEMAMU and
BUGURUKA ORPHANS AND COMMUNITY ECONOMIC DEVELOPMENT, INC.,
Plaintiffs-Appellants,
v.
MICHAEL COTE and THE NORWICH ROMAN CATHOLIC DIOCESAN CORPORATION,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Connecticut
Case No. 3:05-CV-00969 (WWE)

BRIEF AMICUS CURIAE OF THE SALVATION ARMY NATIONAL CORPORATION, THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE LUTHERAN CHURCH-MISSOURI SYNOD, THE INTERNATIONAL CHURCH OF THE FORESQUARE GOSPEL, THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AND THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS IN SUPPORT OF APPELLEES, IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

The United States Conference of Catholic Bishops is a not-for-profit corporation incorporated in the District of Columbia. It has no parent corporation and no publicly held corporation holds 10% or more of its stock.

The Salvation Army National Corporation is a nonprofit religious corporation organized under the laws of New Jersey. It has no parent corporation and no publicly held corporation holds 10% or more of its stock.

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INTEREST OF AMICI

Amici are denominational entities which share the concern that the government may not intrude into, and potentially second-guess, the normal ecclesiastical processes that are established by our denominations to review clerical complaints about ministerial employment decisions. Those claims manifestly do not belong in the civil courts, and the rule of constitutional law in the United States bars civil courts from exercising subject matter jurisdiction over them. Individual statements of interest are attached hereto. Counsel for both appellants and appellees have consented to the filing of this brief.

SUMMARY OF ARGUMENT

Clergy may not litigate the terms and conditions of their ministry or their ministerial relationship to their churches in the civil courts. To avoid entangling the civil courts in religious matters, especially including the selection, retention or discipline of ministers, courts have concluded they lack the constitutional power or authority – that is, the necessary subject matter jurisdiction – to entertain such questions. It is settled law that churches[1] have the absolute 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*, 344 U.S. 94, 116 (1952). The bright line exclusion of religious claims extends to all those brought

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[1] Although we refer to "churches" throughout we use the term broadly to encompass religious organizations however they call themselves.

by a minister against a church arising out of that minister's work. Amici regard this Circuit's recent panel decision in *Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006), as contrary to this rule and urge dismissal of the instant case as barred by the First Amendment.

ARGUMENT

1. Courts Lack Subject Matter Jurisdiction Over Cases Brought by Ministers Against Their Own Churches Regarding the Terms and Conditions of Their Ministry.

The constitutional bar to subject matter jurisdiction in cases where ministers raise complaints arising out of their relationships to their own churches or denominational structures has its origins in *Watson v. Jones*, 80 U.S. 679 (1872). There the Court decided that civil courts were not to review questions which necessarily implicate issues of religious doctrine even in the guise of deciding a "non-religious" issue such as who owned a church's property. Pursuant to this country's bedrock religious liberty principle, persons have the right to unite themselves into voluntary religious associations and "[i]t is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." *Id.* at 729. This is both because those who join with a church are held to consent to its faith, discipline, law and self-organization, and because

civil courts are not competent to make such decisions in any event. *Id.* at 728-29. Clearly, the question of who will minister for a church is quintessentially a "case[ ] of ecclesiastical cognizance". "[C]ivil courts exercise no jurisdiction… where a subject matter of dispute [is] strictly and purely ecclesiastical in character", like issues "concerning theological controversy, church discipline [or] ecclesiastical government". *Id.* at 733.

Early in the last century, the *Watson* reasoning was followed in a case dealing with claims by an Episcopalian clergyman who sought civil court review of a church tribunal's conviction of him for rape and ecclesiastical offences. *Satterlee v. U. S. ex rel. Williams*, 20 App. D.C. 393, 1902 WL 19675 (C.A.D.C. 1902). The Court of Appeals of the District of Columbia spoke directly to the specific jurisdictional issue presented here. The court concluded "that where the subject-matter of the judgment or determination of the ecclesiastical court attempted to be brought under review by a civil court, is of ecclesiastical cognizance", as was removal from the Episcopalian priesthood in that case, "no civil court has jurisdiction or power to revise it or question its correctness." *Id.* at *13. A court lacks the power, in that court's words, even to "entertain an application" for such review. *Id.* at *10. It is this same lack of power to entertain questions regarding a ministerial employment decision which is properly

recognized not as an affirmative defense, but as a lack of subject matter jurisdiction.

In *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107 (1952), the Supreme Court recognized these protections were rooted in the First Amendment, finding a constitutional bar to civil governmental regulation of "church administration, the operation of churches, [or] the appointment of clergy". The Court strengthened this rule in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 676 (1976). Because the civil courts have no business assessing, let alone deciding, "matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law," the courts could not hear a case brought by a bishop contesting his dismissal from office. *Id.* at 713.

The cases clearly stating that, properly speaking, civil courts lack subject matter jurisdiction to decide disputes between clergy and their churches arising out of a ministerial relationship are legion.[2] E.g., *EEOC v. Catholic University of America*, 83 F.3d 455 (D.C. Cir. 1996); *Bell v. Presbyterian Church*, 126 F.3d 328 (4th Cir. 1997); *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972); *Simpson*

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[2] In this Circuit the lower courts repeatedly have recognized this rule. *See Kraft v. Rector, Churchwardens and Vestry of Grace Church, et al.*, 2004 WL 540327 (S.D.N.Y. 2004) (bars claims for breach of an employment contract and a variety of tort claims arising out of an Episcopal priest's termination from a position as Vicar of a church); *Musante v. Notre Dame of Easton Church*, 2004 U.S. Dist. Lexis 5611, 93 F.E.P. Cas. 886 (D.Conn. 2004) (claims by Director of Religious Education barred).

v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974); *Combs v. Central Texas Annual Conf. of United Methodist Church,* 173 F.3d 343 (5th Cir. 1999); *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986); *Lewis v. Seventh-day Adventists Lake Region Conference*, 978 F.2d 940 (6th Cir. 1992); *Young v. Northern Illinois Conf. of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994); *Alicea-Hernandez v. Catholic Bishop of Chicago*, 320 F.3d 698 (7th Cir. 2003).[3]

It is not, properly speaking, the potential adverse decision against a religious body that the First Amendment forbids, but the "very process of inquiry" into religious law, church administrative structure and practice. *See NLRB v. Catholic Bishop of Chicago*, 440 U.S. 450, 502, 503 (1979) (emphasizing Establishment Clause, as well as Free Exercise Clause, concerns.) It is precisely because the issue is one of subject matter jurisdiction – the very power of a court to decide an issue at all – that the ministerial exception applies regardless of the particular reason for the church's action. The intrusion itself, and the judicial inquiry into the degree of intrusion, are the constitutional injuries. *Combs v. Central Texas Annual*

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[3] Even where a case is disposed of based upon Fed. R. Civ. Proc. 12(b)(6), the failure to state a claim is due to the fact that courts lack the authority to hear the case. "Civil courts have no jurisdiction" to decide ecclesiastical disputes. *Natal v. Christian & Missionary Alliance*, 1988 WL 159169 (D. P.R. 1988) at *3, *aff'd*, 878 F.2d 1575, 1576 (1st Cir. 1989) (it is "beyond peradventure that civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice."); *Dowd v. Soc'y of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988) (well-settled that religious controversies are not the proper subject of civil court inquiry); *Bryce v. Episcopal Church in the Diocese of Colorado*, 121 F.Supp. 2d 1327 (D.Colo.), *aff'd*, 289 F.3d 648 (10th Cir. 2002) (supporting broad church autonomy rights, even outside of pure ministerial employment context).

Conf., 173 F.3d at 345. Even apart from whether a civil court would have to "evaluat[e] or interpret[ ] religious doctrine", the First Amendment's Religion Clauses prevent the government from "intrud[ing] into religious governance". *Id.* at 350.

Likewise, a church's motivation for ministerial employment decisions is irrelevant. *Catholic Univ.*, 83 F.3d at 464-5, 461 ("[I]n excepting the employment of a minister from Title VII, '[w]e need not find that the factors relied upon by [a] Church [are] independently ecclesiastical in nature...'" (quoting *Minker v. Baltimore Annual Conf. of United Methodist Church*, 894 F.2d 1354, 1357 (D.C. Cir. 1990)); *Rayburn v. General Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1168, 1169-70 (4th Cir. 1985) ("[T]he free exercise clause... protects the act of a decision rather than a motivation behind it," and Establishment Clause prohibits governmental intrusion into ministerial employment decisions.) [4] Civil courts simply do not have any role to play in evaluating matters of church governance,

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[4] *But see Petruska v. Gannon University,* ___ F.3d ___, 2006 WL 1410038 (3rd Cir. 2006), in which the Third Circuit opined that the ministerial exception applied only to situations where churches had a religious rationale for an employment decision, and not to claims of "employment discrimination unconnected to religious belief, religious doctrine, or the internal regulations of a church." *Petruska*, 2006 WL 1410038 at *5. That court recognized that its decision was directly contrary to the rule accepted in every other circuit to have decided the issue, *id.* at *15-16, so the opinion is of questionable value. In any event, as revealed by the Complaint in this case, Fr. Rweyemamu's claims necessarily implicate doctrinal matters such as whom a Bishop believes is best fitted to be a Pastor of a parish, and whether Catholic Church tribunals at the Vatican will provide Fr. Rweyemamu relief under the Code of Canon Law, the "internal regulations" of the Church. Thus, even the Third Circuit panel in *Petruska* would presumably recognize Fr. Rweyemamu's claims as being beyond its power to adjudicate.

including clergy selection, removal, discipline or any other employment decisions, whether they would need to evaluate or interpret religious principles or not.

The instant case implicates a particular, narrower line of ministerial exception cases that deal with whether civil courts have any power at all to review the decisions of internal church tribunals, administrative bodies or "church courts" in relation to the discipline or removal of their own clergy. This line of cases also begins with *Watson v. Jones*, *supra*, in which the Supreme Court broadly rejected the suggestion that civil courts could review decisions of the appropriate religious decision-making bodies. *Serbian* reinforced this concept. Whether a church had followed its own internal rules or not, the Supreme Court said, civil courts could not inquire into the procedures or the criteria a church used to decide ecclesiastical questions like fitness for a religious office. "[T]his is exactly the inquiry that the First Amendment prohibits. . . ." *Serbian*, 426 U.S. at 712-13. In *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir.), *cert. den.*, 479 U.S. 885 (1986), the Sixth Circuit affirmed the dismissal of a suit brought by a minister against his church and its officials for forcing him into retirement. The minister's employment relationship with his church is entirely a matter of "internal church discipline, faith and organization", and so civil courts lack subject matter jurisdiction to intrude into that dispute. *Id.* at 396. *Accord, Lewis v. Seventh-day Adventists Lake Region*

Conference, 978 F.2d 940, 941 (6th Cir. 1992) (fitness for ministry beyond jurisdiction of court).

In so doing, these courts did not decide whether the church bodies' decisions were correct or not. Neither did they decide whether some particular statute, like the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, *et seq.* (2003) ("RFRA"), provided affirmative protection for the decisions in question. They properly found that the civil courts lacked the constitutional power to consider the merits of the cases before them, at all, where that would require the civil courts to review the decisions of church tribunals and so, unavoidably, intrude into the faith, law, discipline, organization or governance of churches.[5]

Fr. Rweyemamu was a parochial vicar – in lay terms an assistant pastor – who claimed he was not made Pastor, and was removed as parochial vicar, for reason of race and national origin discrimination.[6] He has made use of the Catholic Church's internal processes to appeal from his failure to be selected. He stated in

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[5] Some legal scholars have particularly emphasized the Establishment Clause roots of this line of cases. *See* Ira C. Lupu & Robert Tuttle, *Sexual Misconduct and Ecclesiastical Immunity*, 2004 BYU L. Rev. 1789, 1795-6, 1805-19; Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L.Rev 1 (1998) (Establishment Clause is an affirmative limitation on governmental power to act at all.)

[6] Civil courts' lack of power to decide ministerial employment disputes has been specifically emphasized in the context of claimed discriminatory practices. *See*, for example, *Starkman v. Evans*, 198 F.3d 173, 176 (5th Cir. 1999) (disability discrimination claims under Americans with Disabilities Act), *Rayburn*, 772 F.2d at 1167-68 (race and sex discrimination claims under Title VII), *Pardue v. Center City Consortium Schools*, 875 A.2d 669, 677 (D.C. App. 2005) (court lacks subject matter jurisdiction to decide race discrimination claim by ministerial employee.)

Paragraph 9 of his "Complaint/Affidavit", attached to the CHRO Affidavit of Illegal Discriminatory Practice, that he had "filed with the respondent [Diocese] under church Canon law a Petition of Recourse Against An Administrative Decree" complaining of his nonselection as Pastor. In the Complaint filed in the District Court below, Fr. Rweyemamu also states that he "filed a complaint with Church officials, specifically challenging whether [his Bishop] had followed Canon Law and Church custom in filling" the pastorship, and "immediately appealed . . . to the Vatican in Rome" when he was subsequently removed as Parochial Vicar. Joint Appendix at 2, 3. Fr. Rweyemamu is dissatisfied with the results of these internal appeals but he is bound by the adverse ecclesiastical decision in his case. The above cases make clear that secular courts simply have no role in reviewing the decisions of "the highest church judicatories to which the matter has been carried . . .". *Watson*, *supra* at 727. As the *Satterlee* court wrote a century ago, "the weight of authority is so strongly preponderant against the rights or jurisdiction of the civil courts to review or control the ecclesiastical courts, in matters of ecclesiastical cognizance, that the question can hardly be said to be left open for discussion, and especially not in the Federal jurisdiction . . .". *Satterlee*, 1902 WL 19675 at *11.

No litigant can "waive" a court's lack of subject matter jurisdiction or voluntarily litigate a matter over which a court lacks subject matter jurisdiction.

Thus, "a court's subject matter jurisdiction cannot be expanded to account for the parties' litigation conduct . . .". *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004). Three propositions are clear from both the rules and the caselaw: it is the continuing duty of the court itself to assess and decide whether it possesses subject matter jurisdiction in the first place, the lack of subject matter jurisdiction may be raised by anyone and at any point during a proceeding, and it is the affirmative obligation of the plaintiff to demonstrate that it exists. Fed. R. Civ. Proc. 12(h)(3); *Kontrick*, 540 U.S. at 455. *Abortion Rights Mobilization, Inc. v. United States Catholic Conference*, 487 U.S. 72 (1988); *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986); *Mitchell v. Maurer*, 293 U.S. 237 (1934); *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)(court should examine, and determine *sua sponte*, whether subject matter jurisdiction is present or not).

Plaintiffs have the burden of proving, by a preponderance of the evidence, that a court has subject matter jurisdiction, before the court may go forward to consider the matter at all. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (suit properly dismissed under Rule 12(b)(1) when District Court "lacks the . . . constitutional power to adjudicate it."); *Marcus v. State of Kansas, Department of Revenue*, 170 F.3d 1305 (10th Cir. 1999); *Richmond, Fredericksburg & Potomac Ry. Co. v. United States*, 945 F.2d 765 (4th Cir.), *cert. den.*, 503 U.S. 984 (1992);

Trentacosta v. Frontier Pacific Aircraft Industries, Inc., 813 F.2d 1553, 1558-9 (9th Cir. 1987) (plaintiff must establish subject matter jurisdiction with evidence other than allegations in Complaint or other pleadings); *Bryce v. Episcopal Church in the Diocese of Colorado*, 121 F.Supp. 2d 1327, 1336 (D. Colo.), *aff'd*, 289 F.3d 648 (10th Cir. 2002). Here, no further proceeding is needed. The Complaint alleges facts that show this case is constitutionally barred. Dismissal for lack of subject matter jurisdiction was the proper remedy.

2. This Panel Should Not Follow *Hankins v. Lyght,* Which Should Be Reconsidered.

The *Hankins* panel recognized that the barrier to a minister litigating against his church about his ministry is substantial. And although it concluded that the constitutionally-based ministerial exception arguments urged by the church, and the protections accorded by RFRA, were not identical, it improperly found the statutory RFRA defense to be more comprehensive. The *Hankins* panel thought it better to rest a defense on a statute, than on judge-made exceptions to a statute:[7]

> the district court dismissed the case based on a "ministerial exception" that some courts had read into various anti-discrimination laws-an unresolved issue in this circuit-including the ADEA. Whatever the merits of that exception as statutory interpretation or policy, it has no basis in statutory text, whereas the RFRA, if applicable, is explicit legislation that could not be more on point.

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[7] The Circuit panel in *Hankins* also seems to have viewed the church's Rule 12(b)(1) argument before the trial court as having involved only claimed deficiencies in the EEOC's treatment of Rev. Hankins' administrative complaint. *Hankins*, 441 F.3d at 100 ("The district court, ruling orally, declined to decide the 12(b)(1) motion, which was apparently based on deficiencies in the EEOC's review of appellant's charge.")

> Given the absence of other relevant statutory language, the RFRA must be deemed the full expression of Congress's intent with regard to the religion-related issues before us and displace [sic] earlier judge-made doctrines that might have been used to ameliorate the ADEA's impact on religious organizations and activities.

Hankins, 441 F.3d at 102-3. In so stating, the *Hankins* panel revealed its misunderstanding of the nature of the ministerial exception. It is not an exercise in "statutory interpretation or policy", as the panel majority believed, nor is it an exception to particular statutes adopted by judges to "ameliorate" those statutes' effects on religious organizations. While the ministerial exception is found in the caselaw and so is "judge-made", it exists because the Establishment and Free Exercise Clauses, working in tandem, prevent judicial evaluation or interpretation of religious concepts, and prevent judicial intrusion into the internal organization or governance of churches. *Catholic University*, 83 F.3d at 465, 467.

Thus, the panel's error proceeded logically from the misconception that the ministerial exception was merely a judge-made, common law exception to employment laws, rather than a longstanding rule rooted in both Religion Clauses of the federal Constitution. It is a way of describing a court's lack of power to decide issues of the employment relationships of churches to their ministers, the lack of the "power to entertain" such a question. *Satterlee*, 20 App. D.C. at *10. The ministry exception means both that the *Hankins* decision was wrongly decided

by its panel, and it also places all of Fr. Rweyemamu's claims outside of the subject matter jurisdiction of the civil courts.[8]

The panel in *Hankins* also wrote:

> appellees argued in the district court and here-and continue to argue-that application of the ADEA to the relationship between their church and appellant substantially burdens their religion. They continue to assert the "ministerial exception," which in their view tracks the Free Exercise clause of the Constitution and the Establishment Clause as well. Appellees' Brief at 4-15; see *Elvig v. Calvin Presbyterian Church*, 397 F.3d 790, 790 (9th Cir. 2005) ("[T]he 'ministerial exception' to Title VII is carved out from the statute based on the commands of the Free Exercise and Establishment Clauses of the First Amendment.") In substance, therefore, they ask us to apply the RFRA, but not to mention it.

Hankins, 441 F.3d at 104. Thus, the *Hankins* panel both suggests that the church in that case was describing the ministerial exception only as a doctrine that prevented the imposition of substantial burdens on their religious practice, and misconceived the effect of application of the ministerial exception as being largely the same as the application of RFRA. Both of these concepts are seriously flawed.

As shown above, the "ministerial exception" is a shorthand phrase used to describe a constitutionally-protected set of relationships into which civil courts cannot "insinuate[e] themselves". *McDaniel v. Paty*, 435 U.S. 618, 638 (1978) (Brennan, J., concurring in the judgment). The reach of RFRA is far more limited,

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[8] The D.C. Circuit implicitly rejected the same position when it decided that the National Labor Relations Board lacked jurisdiction over a religiously related university for First Amendment reasons, and so did not reach the university's secondary argument that it was protected by RFRA. *University of Great Falls v. NLRB*, 278 F.3d 1335, 1345 (D.C. Cir. 2002).

providing no protections at all if the government can demonstrate a narrowly tailored, compelling interest. The former goes to jurisdiction, the latter, to remedy. Further, of course, RFRA's protections, like other statutory protections, may be waived or forfeited, as the panel notes. *Hankins*, 441 F.3d at 104. A lack of subject matter jurisdiction cannot.[9]

Where the ministerial exception applies, it is not balanced against governmental interests, nor does it apply only when the alternative would be to impose a "substantial burden" on religion. As in other cases, interference with church governance is *per se* unlawful and the courts make no attempt to apply a balancing test, as seen in *Watson*, *Kedroff, Serbian Orthodox* and the consistent line of appellate authority cited above. The government interest is not balanced against churches' autonomy interests because civil courts lack the subject matter

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[9] The dissent in *Hankins* argued that RFRA did not apply to Rev. Hankins' suit because RFRA does not apply to disputes involving only private parties. *Hankins*, 441 F.3d at 109, 114 (Sotomajor, J., dissenting.) The language of RFRA, however, states that a "person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. §2000bb-1(c). RFRA applies by its terms whenever a party depends on an exercise of governmental power to effect a result, such that a remedy may be had by obtaining an order against the government. *In re Young*, 141 F.3d 854 (8th Cir. 1998). RFRA operates to restrict the exercise of governmental power, and so may apply even in disputes between private parties where the government's powers are invoked. The instant case provides an example of a situation where this has occurred, in that Fr. Rweyemamu has invoked the executive power of the State of Connecticut to investigate and presumably prosecute asserted violations of antidiscrimination laws, and has also invoked the judicial powers of government by bringing suit to overturn Connecticut's finding of no reasonable cause due to lack of jurisdiction. He has also invoked the powers of the federal courts to apply Title VII. All these are exercises of governmental power to which RFRA could apply. Church autonomy may be compromised by judicial, as well as legislative or executive, action. *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960).

jurisdiction to do so. The panel decision in *Hankins* notwithstanding, this court should not entertain claims by ministerial personnel arising out of employment disputes with their churches since such matters fall outside the subject matter jurisdiction of civil courts.

CONCLUSION

For these reasons, amici respectfully suggest that the District Court's dismissal for lack of subject matter jurisdiction should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2006, I caused 25 true and correct paper copies of the foregoing brief *amicus curiae* to be sent by U.S. Mail, first class postage prepaid, to the United States Court of Appeals for the Second Circuit, and two true and correct paper copies of the same brief to be sent by U.S. Mail, first class postage prepaid, to:

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I have also caused a PDF copy of this brief, scanned for viruses, to be sent by e-mail to the court at briefs@ca2.uscourts.gov, and to the above counsel, this 19th day of June, 2006.

Michael L. Costello

CERTIFICATE OF SCANNING FOR VIRUSES

In accordance with Local Rule 32 of this Circuit, the undersigned certifies that the PDF form of the attached brief submitted to the court in this matter and provided to all counsel by e-mail, has been scanned for viruses and that no virus has been detected.

Michael L. Costello

INDIVIDUAL STATEMENTS OF INTEREST

The Salvation Army is an international religious and charitable organization with its headquarters in London, England. The Salvation Army is a branch of the universal Christian Church, its own religious denomination. The amicus in this action is the Salvation Army National Corporation, a nonprofit religious corporation organized under the laws of the State of New Jersey. The Salvation Army National Corporation is the corporate instrumentality of The Salvation Army National Headquarters which is responsible for coordination national policies of the four independent Territories of The Salvation Army in the United States. The Salvation Army joins this amicus brief because of its concern with the constitutional implications that would be presented if courts were permitted to consider issues involving the fundamentally ecclesiastical relationship between a church and its clergy in conflict with *McClure v. The Salvation Army*, 460 F.2d 553, *cert. den.,* 409 U.S. 896 (1972).

The United States Conference of Catholic Bishops ("USCCB") is a not-for-profit corporation, the members of which are the active Catholic Bishops in the United States. USCCB advocates and promotes the pastoral teachings of the U.S. Catholic Bishops in such diverse areas of the nation's life as the free expression of ideas, fair employment and equal opportunity for the underprivileged, protection of

the rights of parents and children, the sanctity of life, and the importance of education. Values of particular importance to the Conference are the protection of the First Amendment rights of religious organizations and their adherents, and the proper development of federal jurisprudence in this regard.

The Church of Jesus Christ of Latter-day Saints is an unincorporated religious association headquartered in Salt Lake City, Utah. Church membership exceeds 12.5 million, with more than 27,000 congregations throughout the world. Firmly embedded in the tradition and teachings of the Church are the concepts of religious freedom and toleration: "We claim the privilege of worshiping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where or what they may." Article of Faith, No. 11. It is of paramount importance to the Church that religious communities have the right to determine their own criteria for selecting, regulating, and discharging ministers and others holding positions of religious significance within their organizations. As such, the Church strongly supports the Church Autonomy Doctrine and the ministerial exception, which are directly at issue in this case.

The Lutheran Church-Missouri Synod ("The Synod") is a nonprofit corporation organized under the laws of the State of Missouri. It is the second

largest Lutheran denomination in North America, with approximately 6,000 member congregations and 2,500,000 baptized members. As such, The Synod has a keen interest in religious freedom under the federal Constitution, including the application of the ministerial exception to disputes between churches and their ministerial personnel.

The General Council on Finance and Administration is an international agency of the United Methodist Church charged with protecting the church's legal interests. It joins as amicus in this matter in support of the imperative need for churches to be able to organize themselves and manage their own clergy according to their own beliefs and polity, without interference from the civil courts.

The General Conference of Seventh-day Adventists is the highest administrative level of the Seventh-day Adventist Church and represents nearly 59,000 congregations with more than 14 million members worldwide. In the United States the North American Division of the General Conference oversees the work of more than 5,000 congregations with more than one million members. The church employs over 4,500 ministerial workers in the United States to carry out its mission in all fifty states. The Seventh-day Adventist Church has a strong interest in maintaining the freedom to determine who will minister to its members.

The International Church of the Foursquare Gospel ("ICFG"), a California nonprofit corporation, was established in 1927 to propagate and disseminate the principles of Christianity embraced in the Foursquare Gospel. As a hierarchical church, the ICFG operates Foursquare Gospel churches in the United States, and around the world. As of the year 2005, there were 1,891 Foursquare churches in the 50 states of the U.S. having 260,644 members and 6,772 credentialed ministers. There are over 5 million adherents worldwide attending some 49,000 Foursquare churches. ICFG bylaws reserve to the board of directors, acting in response to divine direction, the right and authority to license ministers, appoint them to local Foursquare churches, and to remove them from such appointments, when appropriate. The people of the Foursquare "family' are blessed, as are all Americans, to live in a country where the autonomy of churches of all religions in core matters of faith is the law of the land. The ability of the church to select, appoint, instruct, discipline and even remove its clergy, in response to the revealed will of God and without governmental intervention, is indeed a core article of faith. The questions posed by the case at bar put the continued existence of these fundamental religious freedoms at risk. This is the interest of the International Church of the Foursquare Gospel in the matter before the court.