No. 20-1230

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FAITH BIBLE CHAPEL INTERNATIONAL,
a Colorado non-profit corporation,

Appellant,

v.

GREGORY TUCKER,

Appellee.

On Appeal from the United States District Court
for the District of Colorado
Docket No. 1:19-cv-01652-RBJ-STV
The Honorable R. Brooke Jackson

BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF APPELLANT'S ARGUMENT FOR REVERSAL

Conor B. Dugan
Matthew T. Nelson
Warner Norcross + Judd LLP
1500 Warner Building
150 Ottawa Avenue NW
Grand Rapids, MI 49503
(616) 752-2000
mnelson@wnj.com
conor.dugan@wnj.com
Attorneys for *Amici Curiae*

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BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF APPELLANT'S ARGUMENT FOR REVERSAL

Amici curiae constitutional law scholars respectfully submit that this Court should conclude that it has jurisdiction to hear Appellant Faith Bible Chapel International's appeal under the collateral-order doctrine.

INTEREST OF *AMICI CURIAE*[1]

Amici are constitutional law scholars with a particular interest in First Amendment Free Exercise and Establishment Clause issues. They write to aid the Court in understanding the importance of the issues presented in this case.

Elizabeth A. Clark is Associate Director of the International Center for Law and Religion Studies at the J. Reuben Clark Law School at Brigham Young University. Professor Clark has spoken worldwide and written extensively on church-state issues and is the editor of several books on U.S. and comparative law and religion issues. She has testified before the U.S. Congress on religious freedom issues, taken part in drafting legal analyses of pending legislation affecting religious freedom in over a dozen countries, and has written amicus briefs on religious freedom issues for the U.S. Supreme Court.

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[1] Pursuant to this Court's Rule 29(a)(2) and (4)(E), *amici curiae* state that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amici curiae* and their counsel made a monetary contribution to the preparation or submission of this brief. All parties have been timely notified of the filing of this brief and have consented to its filing.

Robert Cochran is the Louis D. Brandeis Professor of Law and Director of the Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics at Pepperdine University. He has made the Religion Clauses of the Constitution an important part of his work as a teacher and scholar.

Richard W. Garnett is the Paul J. Schierl/Fort Howard Corporation Professor at Notre Dame Law School. He teaches and writes about the freedoms of speech, association, and religion, and constitutional law more generally. He is a leading authority on the role of religious believers and beliefs in politics and society. He has published widely on these matters, and is the author of dozens of law review articles and book chapters. He is the founding director of Notre Dame Law School's new Program on Church, State, and Society, an interdisciplinary project that focuses on the role of religious institutions, communities, and authorities in the social order.

Robert J. Pushaw is the James Wilson Endowed Professor of Law at Pepperdine University School of Law and has taught at eight other law schools. He is a prolific constitutional law scholar. Many of his works explore the dangers of government interference with individual constitutional rights, including the institutional free exercise rights of parochial schools.

Eugene Volokh is the Gary T. Schwartz Distinguished Professor of Law at the UCLA School of Law. He has taught and written about First Amendment law

for over 20 years, and has authored dozens of law review articles on the subject as well as the textbook *The First Amendment and Related Statutes* (7th ed. 2020).

SUMMARY OF THE ARGUMENT

The church-autonomy doctrine and the associated ministerial exception exist to protect the fundamental rights against governmental establishment of religion or interference with its free exercise. But these rules also serve a structural function of protecting courts from becoming entangled in religious controversies that courts are simply not competent to resolve. Because these constitutional interests can be irreparably harmed by the very fact of the judicial proceeding itself, the denial of a motion to dismiss or motion for summary judgment on the grounds that the ministerial exception bars suit is immediately appealable under the collateral-order doctrine. Indeed, unlike many other orders that are immediately appealable under the collateral-order doctrine, an appeal in this context directly serves to protect against the infringement of constitutional rights.

To understand the importance of immediate review of such an order, insight into the purposes behind the ministerial exception is useful. The United States Supreme Court's decisions in *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) and *Hosanna–Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) recognize that the Free Exercise and Establishment Clauses of the First Amendment guarantee churches' and religious

organizations' rights to autonomy from government interference with their internal affairs. The so-called church-autonomy doctrine's purpose is not only to protect personal and organizational religious liberty, but also to protect the Establishment Clause's *structural* limitations on government action. The church-autonomy doctrine functions to categorically forbid the state from revisiting certain religious decisions made by religious organizations.

Because of the church-autonomy doctrine's structural protection on the exercise of governmental power, it protects the government, especially the courts, from addressing matters of religion as to which it has no competence and thereby undermining its credibility and authority, as well as protecting the fundamental rights of religious organizations and individuals. For those reasons, the doctrine functions as an immunity from suit and is different from most other defenses. That structural protection justifies resolution of whether the immunity applies at the outset of the case—before the merits—and, if necessary, via interlocutory appeal. This approach is not unprecedented—it is the same approach courts take when determining the application of complete and qualified immunity for public officials. A government official immune from suit is harmed by the very act of being sued. So too, a religious entity being sued for exercising its right to determine who its ministers are, what school can carry the religious entity's name,

or what organizations can be officially affiliated with the entity is harmed by being dragged into the secular courts to answer for its decision.

Thus, these purposes undergird the reason for immediate appeal of an order denying a motion to dismiss or for summary judgment based on the argument that the church-autonomy doctrine bars suit. The very act of maintaining litigation where the church-autonomy doctrine applies harms the structural and personal interests the doctrine protects. Courts must address the doctrine's application expeditiously at the outset of litigation (as they do when resolving other immunity questions). And where, as here, the trial court denies the application of the doctrine, the Court of Appeals must immediately hear the appeal. To allow a trial court to continue litigation that should have been barred by the church-autonomy doctrine perpetuates the very harm the doctrine seeks to avoid.

Indeed, this case illustrates the harms that occur when these rules are not heeded. Here, the district court has rejected Faith Bible's argument that Tucker's claims must be dismissed because his separation occurred for religious reasons. And, on top of that, the district court has rejected Faith Bible's plea to stay the case while this Court hears the appeal. Instead, it has plowed ahead with merits discovery and set pre-trial deadlines and a trial date for next summer. The district court's actions are the very things against which the First Amendment protects. If Faith Bible is right that the church-autonomy doctrine bars suit in this case, all of

this upcoming discovery and litigation rings a bell that cannot be unrung. Accordingly, this Court should conclude it has jurisdiction to hear the appeal under the collateral-order doctrine.

ARGUMENT

This Court has appellate jurisdiction under the collateral-order doctrine to review the denial of the church-autonomy doctrine's application and the associated ministerial exception.

The rationale for the church-autonomy doctrine and the associated ministerial exception has important procedural implications for how courts administer cases in which church autonomy or the ministerial exception is credibly raised as a defense. The church-autonomy doctrine and the ministerial exception serve both to protect the First Amendment religious rights of individuals and organizations as well as the structural interest in avoiding entangling the government, including the judiciary, in religious disputes. Because an erroneous interlocutory order that rejects the application of the church-autonomy doctrine or the ministerial exception causes the very harms these rules are intended to prevent and in so doing unconstitutionally entangles the courts in religious questions, appellate courts should apply the collateral-order doctrine to review such orders.

A. The purposes underlying the church-autonomy doctrine demonstrate why the district court's order is immediately appealable.

Church-autonomy doctrine and the related ministerial exception exist to ensure that the government does not trespass across the boundary between the secular and the religious. Within our constitutional government, the people of the United States have determined that government cannot interfere with the internal affairs of religious organizations, including matters of faith, doctrine, and internal governance. This idea is frequently part of what people mean when they invoke the phrase, "separation of church and state." The church-autonomy doctrine enforces this separation, albeit without the barnacles of two centuries of popular misconception and confusion. Like the First Amendment Religion Clauses that vivify it, the church-autonomy doctrine protects religious institutions *and* the courts. It protects courts for several reasons. By injecting themselves into religious questions, courts undermine their credibility and authority. They also have no competence to answer religious questions—a bit like hiring a plumber to do one's taxes.

This Court has explained that the church-autonomy doctrine "prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 655 (10th Cir. 2002). The doctrine stems from the First Amendment's

Religion Clauses, and it affirms the constitutional right of churches to "decide for themselves" matters of church government, faith, and doctrine free from state interference. *Id.* A claim of church autonomy "is a claim to autonomous management of a religious organization's internal affairs." Douglas Laycock, *Church Autonomy Revisited*, 7 Geo. J.L. & Pub. Pol'y 253, 254 (2009). "The essence of church autonomy is that [a church] should be run by duly constituted [religious] authorities and not by legislators, administrative agencies, labor unions, disgruntled lay people, or other actors lacking authority under church law." *Id.*

As one of the *Amici* professors has explained the policy underlying the church-autonomy doctrine as follows:

> Well understood, "separation of church and state" would seem to denote a structural arrangement involving institutions, a constitutional order in which the institutions of religion—not "faith," "religion," or "spirituality," but the "church"—are distinct from, other than, and meaningfully independent of, the institutions of government. What is "at stake", then, with separation is not so much—or, not only—the perceptions, feelings, immunities, and even the consciences of individuals, but a distinction between spheres, the independence of institutions, and the "freedom of the church." [Richard W. Garnett, *Religion and Group Rights: Are Churches (Just) Like the Boy Scouts?*, 22 St. John's J. Legal Comment. 515, 523 (2007).]

The U.S. Supreme Court's decisions addressing the so-called ministerial exception show that it is a specific application of the overall church-autonomy doctrine. *See*, *e.g.*, *Our Lady*, 140 S. Ct. at 2060 (stating that the "'ministerial

exception' is based on the "insight" that the First Amendment protects churches' "autonomy with respect to their internal management"). So, for example, the reason decisions regarding the selection and supervision of teachers at religious schools are off limits to judicial review under the ministerial exception is because the "religious education and formation of students is the very reason for the existence of most private religious schools, and . . . 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.* at 2055 (cleaned up). This Court has acknowledged the ministerial exception as an application of the church-autonomy doctrine, holding, for instance, that it "prevents adjudication of Title VII employment discrimination cases" brought by "any employee who serves in a position that is important to the spiritual and pastoral mission of the church." *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1243 (10th Cir. 2010).

Ultimately, the church-autonomy doctrine is rooted in the structural concern for ensuring that courts do not become entangled in resolving religious disputes as to which they have no constitutional power. In *Hosanna-Tabor*, the U.S. Supreme Court rooted its analysis in safeguarding the boundary between the secular and the religious by tracing the history of legal protections for religion in America. 565 U.S. at 182–87. The Court focused on three cases dating back nearly 150 years, all

involving property disputes, and all of which recognized that the government is categorically prohibited from contradicting ecclesiastical decisions. *Id.* at 185–87.

In *Watson v. Jones*, 80 U.S. 679 (1871), the U.S. Supreme Court declined to interfere with a denomination's determination as to which faction of a church rightly controlled the church's property. There the Court stated:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. . . . It 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 728–29.]

Accordingly, the Court adopted the common-law rule that courts could not review or overturn decisions by religious bodies on "questions of discipline, or of faith, or ecclesiastical rule, custom, or law." *Id.* at 727.

Some 80 years later, the U.S. Supreme Court declared that the decision in *Watson* "radiate[d] . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, *free from state interference*, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox*

Church in N. Am., 344 U.S. 94, 116 (1952) (emphasis added). In *Kedroff*, the Court applied the First Amendment to an ecclesiastical question for the first time. *See Hosanna-Tabor*, 565 U.S. at 186. There, the Court struck down a New York law that purported to decide which Russian Orthodox faction was entitled to control a cathedral because the issue was "strictly a matter of ecclesiastical government." *Kedroff*, 344 U.S. at 115–19. Such issues, the Court declared, are "forbidden" to the "power of the state." *Id.* at 119.

The U.S. Supreme Court returned to the harm caused by the interjection of the courts into ecclesiastical or religious questions in *Serbian Eastern Orthodox Diocese for United States of Am. & Canada v. Milivojevich*, 426 U.S. 696 (1976). There, the Court determined that courts cannot "delve into the various church constitutional provisions" because to do so would repeat the lower court's error of involving itself in "internal church government, an issue at the core of ecclesiastical affairs." *Id.* at 721. The Court explained that the First Amendment allows "religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." *Id.* at 724. Courts must accept the decisions of religious tribunals on these matters. *Id.* at 725.

These cases animated the U.S. Supreme Court's recognition of the ministerial exception in *Hosanna-Tabor*, where the Court emphasized that courts

are categorically forbidden from resolving religious disputes. And in *Our Lady*, the Supreme Court further clarified that this is a structural concern that protects the autonomy of churches *and* courts—and extends beyond decisions about ministers. "The Religion Clauses protect the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion." *Our Lady*, 140 S. Ct. at 2060 (cleaned up). And under the ministerial exception "courts are *bound* to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id.* (emphasis added). The Court further explained that "state interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Id.*

One commentator has explained that lower courts "have properly interpreted the ministerial exception not as a personal right, but as a structural limitation on government action." Carl H. Esbeck, *After* Espinoza*, What's Left of the Establishment Clause?*, 21 Federalist Soc'y Rev. 186, 200 (2020). The limitation articulated in *Hosanna-Tabor*—and reiterated in *Our Lady*—"is a constraint on the power of the government . . . rooted in large part in the Establishment Clause." *Id.* And that "makes sense because what is being protected . . . is autonomy in internal

operations and governance, not a right of religious staffing." *Id.* at 201. As the Supreme Court stated in *Our Lady*, while the church-autonomy doctrine does not "mean that religious institutions enjoy a general immunity from secular laws, it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission." 140 S. Ct. at 2060 (cleaned up). And for this reason, various federal courts have agreed that a defendant cannot waive the ministerial exception. The "constitutional protection" implicated by the church-autonomy doctrine "is not only a personal one; it is a structural one that *categorically* prohibits federal and state governments from becoming involved in religious leadership disputes." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (emphasis added); *see also Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n. 4 (3d Cir. 2018) (concluding that church had not waived the ministerial exception because it "is rooted in constitutional limits on judicial authority."); *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006) (courts "have an interest independent of party preference for not being asked to decide" religious issues), *abrogated on other grounds*, *Hosanna-Tabor*, 565 U.S. 171.

Thus, the U.S. Supreme Court's decisions in *Hosanna-Tabor* and *Our Lady* stand for the proposition that the church-autonomy doctrine protects the

independence of religious people and institutions from the state, *and* the courts' structural interest in avoiding the establishment of religion.

The structural interest in avoiding the establishment of religion means the church-autonomy doctrine and the ministerial exception are unlike most other affirmative defenses. Courts have no intrinsic interest in whether a party's claims are barred by contributory negligence or duress. But because of the structural limitation imposed by the church-autonomy doctrine on the exercise of judicial authority, courts do have an interest in ensuring that the exception is applied even where the parties fail to raise the doctrine or where someone claims that they have waived it affirmatively. *See*, *e.g.*, *Lee*, 903 F.3d at 117 (upholding application of the ministerial exception where trial court raised the issue *sua sponte*); *Grussgott v. Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 658 (7th Cir. 2018) (stating that "a religious institution does not waive the ministerial exception by representing itself to be an equal-opportunity employer"), *cert. denied*, 139 S. Ct. 456 (2018).

Accordingly, the categorical nature of the prohibition against the state enmeshing itself in religious controversies requires courts to determine whether the church-autonomy doctrine bars a case or part of a case before considering the merits of the plaintiff's claims. In cases where it may apply, the church-autonomy doctrine has practical implications for discovery, the possible need to try disputed

factual issues related to the church-autonomy doctrine, and interlocutory appeals. All those issues have arisen in this case.

B. Orders denying the application of the church-autonomy doctrine should be immediately appealable under the collateral-order doctrine.

Because of the structural concerns as well as the fundamental personal protections at risk, interlocutory trial court decisions that the church-autonomy doctrine or ministerial exception do not apply should generally be immediately appealable. The litigation process itself may excessively entangle government, including the courts, in religion. And the parties' fundamental rights may be violated by the very continuation of the litigation. There is simply no putting the genie back in the bottle after the courts have become excessively entangled in a religious controversy because they erred in failing to dismiss the case under the church-autonomy doctrine.

This is precisely the sort of harm against which the collateral order doctrine protects. As this Court has explained, to have appellate jurisdiction "under the collateral order doctrine," a "district court's order must [1] conclusively determine the disputed question [on appeal], [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from a final judgment." *Miller v. Basic Research*, LLC, 750 F.3d 1173, 1176 (10th Cir. 2014) (cleaned up). With respect to the last of these factors, the

"decisive consideration" is "whether delaying review until the entry of final judgment would imperil a substantial public interest or some particular value of a high order." *Id.* (quotation omitted). It is hard to imagine many interests more important or values higher than the vindication of the First Amendment.

The treatment of interlocutory appeals from the denial of qualified immunity provides a useful analog. *See Skrzypczak*, 611 F.3d at 1242 ("The ministerial exception, like the broader church autonomy doctrine, can be likened to a government official's defense of qualified immunity." (cleaned up)); *McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013). The doctrine of qualified immunity arises from the common law but has a structural justification arising from the separation of powers. Qualified immunity, if applicable, means that the defendant is not subject to suit. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). For this reason, qualified immunity is "effectively lost if a case is erroneously permitted to go to trial." *Id.* This makes a decision denying qualified immunity effectively unreviewable after a final judgment. *Id.* at 527. For that reason, orders denying qualified immunity are immediately appealable final orders under the collateral-order doctrine notwithstanding the fact that they do not finally resolve a case. *Id.* at 530. Moreover, in permitting immediate appeal under the collateral-order doctrine, federal courts have implicitly recognized that the right to appeal decisions denying

qualified immunity should not be subject to—and thus possibly thwarted by—the discretion of the trial court to certify a question for permissive interlocutory appeal.

Qualified immunity is not the only analog. A pretrial order denying a motion to dismiss an indictment on double jeopardy grounds is another. See *Abney v. United States*, 431 U.S. 651, 659 (1977) (double jeopardy issue was collateral and thus immediately appealable precisely because defendant was "contesting the very authority of the Government to hale him into court to face trial on the charge against him"). The denial of 11th Amendment state immunity and foreign sovereign immunity are two others. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993) (order denying a motion to dismiss on Eleventh Amendment grounds is a final decision appealable under the collateral-order doctrine); *Pettigrew v. Oklahoma ex rel. Oklahoma Dep't of Pub. Safety*, 722 F.3d 1209, 1212 (10th Cir. 2013) (same); *Permanent Mission of India to the United Nations v. City of New York*, 551 U.S. 193, 197 (2007) (denial of a claim to foreign sovereign immunity is immediately appealable under the collateral-order doctrine); *Southway v. Cent. Bank of Nigeria*, 198 F.3d 1210, 1214 (10th Cir. 1999) (same). In all these cases, courts recognize the harm simply being haled into court causes. Immediate appeal is necessary if courts are to unwind that harm before it is irreparable. The same should be true of the church-autonomy doctrine. Indeed, the harm to the parties and the courts is much worse when the

church-autonomy doctrine or ministerial exception are wrongly not applied. Not only does the defendant lose constitutional rights—like in the context of double-jeopardy and sovereign immunity—but because the church-autonomy doctrine also protects against the government's intrusion into quintessential religious questions—such as who a religious organization's ministers are—the constitutional harm occurs *because* of the judicial proceedings. And the harm is not just to the religious entity. The harm is also to the state because the court has entangled itself impermissibly with religion.

It is well established that courts must "refrain from trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (cleaned up). In the absence of an interlocutory appeal from an order denying the application of the church-autonomy doctrine or the ministerial exception, this trolling will occur. And for that reason, this Court has acknowledged the benefit of addressing these issues early: "By resolving the question of the doctrine's applicability early in litigation, the courts avoid excessive entanglement in church matters." *Bryce*, 289 F.3d at 654 n.1 (10th Cir. 2002).

This same interest warrants application of the collateral-order doctrine. An order declining to apply the church-autonomy doctrine should be immediately appealable under the collateral-order doctrine like decisions denying qualified

immunity. *See McCarthy*, 714 F.3d at 975. Here, that means this Court should conclude it has jurisdiction to hear Faith Bible's appeal.

Here, the district court's denial of summary judgment and insistence on proceeding with discovery during the appeal violate the key purposes of the church-autonomy doctrine. This Court would compound the harm if it were to conclude that it does not now have jurisdiction. In short, concluding that the collateral order doctrine is inapplicable here would subject Faith Bible to judicial review of an internal church dispute—precisely that against which the church-autonomy doctrine is meant to protect. It would also impermissibly entangle the district court in religious matters. Thus, to delay review would imperil both the rights of Faith Bible to be free from entanglement and the structural concerns protected by the church-autonomy doctrine. Those *are* substantial public interests and value of a high order. Nor should this Court be afraid that applying the collateral-order doctrine to church-autonomy doctrine cases will suddenly open the floodgates to appeals. In the last three years, a search shows that there have been no decisions involving the church-autonomy doctrine or the ministerial exception in the Tenth Circuit.

CONCLUSION AND REQUESTED RELIEF

For all the reasons stated above, the *Amici Curiae* urge this Court to conclude it has jurisdiction.

Dated: October 20, 2020

s/ Conor B. Dugan

Matthew T. Nelson
Conor B. Dugan
Warner Norcross + Judd LLP
1500 Warner Building
150 Ottawa Avenue NW
Grand Rapids, MI 49503
(616) 752-2000
mnelson@wnj.com
conor.dugan@wnj.com
Attorneys for *Amici Curiae*

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(g)(1) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 4,366 words, excluding the parts of the brief exempted under Rule 32(f) and 10th Cir. R. 32(B), according to the count of Microsoft Word.

Lastly, I certify that pursuant to this Court's guidelines on the use of the CM/ECF System:

a) All required privacy redactions have been made per 10th Cir. R. 25.5 and Fed. R. App. P. 25(a)(5);

b) The hard copies that will be or have been submitted to the Clerk's Office are *exact* copies of the ECF filing; and

c) The ECF submission was scanned for viruses with the most recent version of a commercial virus-scanning program (last updated [date]) and, according to the program, is free of viruses.

Dated: October 20, 2020

s/ Conor B. Dugan
Conor B. Dugan

CERTIFICATE OF SERVICE

I certify that on October 20, 2020, I caused the foregoing to be served electronically via the Court's electronic filing system on all parties to this appeal.

s/ Conor B. Dugan
Conor B. Dugan