

<p><b>COLORADO COURT OF APPEALS</b></p> <p>Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203</p>	<p>DATE FILED: May 16, 2022 3:40 PM FILING ID: 3E0F5146AFB59 CASE NUMBER: 2021CA1855</p>
<p><b>Appeal from:</b> Colorado District Court, Arapahoe County Case No. 2019CV31980 (Hon. Peter Frederick Michaelson)</p>	
<p><b>Plaintiff-Appellant:</b> Barbara Morris, M.D. v. <b>Defendants-Appellees:</b> Centura Health Corporation, a Colorado non-profit corporation; and Catholic Health Initiatives Colorado d/b/a Centura Health-St. Anthony Hospital, a Colorado non-profit corporation.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Attorneys for Proposed Amici Curiae:</b> Eric N. Kniffin (Reg. No. 48016) Lewis Roca Rothgerber Christie LLP 90 S. Cascade Ave., Suite 1100 Colorado Springs, CO 80903 (719) 386-3017 (phone) / (719) 386-3070 (fax) ekniffin@lewisroca.com</p> <p>John A. Meiser (IN Bar No. 36736-71)* Francesca M. Genova (IN Bar No. 37163-71)* Notre Dame Law School Religious Liberty Clinic 1338 Biolchini Hall Notre Dame, IN 46556 (574) 631-3880 (phone) / (574) 634-1431 (fax) jmeiser@nd.edu / fgenova@nd.edu</p> <p><i>*Pro Hac Vice Application Pending</i></p>	<p>Court of Appeals Case Numbers: 2021CA1855 &amp; 2021CA1896</p>
<p style="text-align: center;"><b>BRIEF OF AMICI CURIAE CATHOLIC MEDICAL ASSOCIATION AND COPTIC MEDICAL ASSOCIATION OF NORTH AMERICA IN SUPPORT OF APPELLEES</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

**The amicus brief complies with the applicable word limits set forth in C.A.R. 29(d):**

It contains 4,219 words, and thus does not exceed the limit of 4,750 words (half the length of the principal brief limit of 9,500 words). *See* C.A.R. 28(g)(1); C.A.R. 29(d).

**The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).**

**I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.**

*s/ Eric N. Kniffin*

---

Eric N. Kniffin (Reg. No. 48016)

Lewis Roca

90 S. Cascade Ave., Suite 1100

Colorado Springs, CO 80903

(719) 386-3017 (phone) / (719) 386-3070 (fax)

ekniffin@lewisroca.com

## TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE.....	i
TABLE OF AUTHORITIES .....	iii
INTERESTS OF <i>AMICI CURIAE</i> .....	1
INTRODUCTION & SUMMARY OF ARGUMENT.....	2
ARGUMENT .....	5
I.    Physician-assisted suicide—or “medical aid in dying”—is antithetical to the Christian understanding of medicine.....	5
II.   The First Amendment prohibits courts from becoming entangled in disputes over religious beliefs and policies like this one .....	8
III.  The consequences of allowing claims like Dr. Morris’s could be dire for religious healthcare professionals .....	14
CONCLUSION.....	19

## TABLE OF AUTHORITIES

### CASES

<i>Bd. of Educ. v. Grumet</i> , 512 U.S. 687 (1994) .....	15
<i>Bishop &amp; Diocese of Colo. v. Mote</i> , 716 P.2d 85 (Colo. 1986) .....	10, 11
<i>Bryce v. Episcopal Church in the Diocese of Colo.</i> , 289 F.3d 648 (10th Cir. 2002) .....	9, 10, 11
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014) .....	4, 13
<i>Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.</i> , 450 F.3d 130 (3d Cir. 2006) .....	13
<i>Fulton v. City of Philadelphia</i> , 141 S. Ct. 1868 (2021).....	14
<i>Hosanna-Tabor Evangelical Lutheran Church &amp; Sch. v. EEOC</i> , 565 U.S. 171 (2012) .....	9, 11
<i>Jones v. Crestview S. Baptist Church</i> , 192 P.3d 571 (Colo. App. 2008).....	10, 11, 12
<i>Lee v. Sixth Mt. Zion Baptist Church of Pittsburgh</i> , 903 F.3d 113 (3d Cir. 2018) .....	10
<i>Moses v. Diocese of Colo.</i> , 863 P.2d 310 (Colo. 1993) .....	9
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 140 S. Ct. 2049 (2020).....	4, 8, 10, 11

<i>People v. Philips</i> , N.Y. Ct. Gen. Sess. (1813) (unreported) (abstracted in 1 W.J.L. 109 (1843)) .....	15
<i>Roman Cath. Diocese of Brooklyn v. Cuomo</i> , 141 S. Ct. 63 (2021).....	15
<i>Seefried v. Hummel</i> , 148 P.3d 184 (Colo. App. 2005).....	11
<i>Serbian E. Orthodox Diocese for U.S. &amp; Can. v Milivojevich</i> , 426 U.S. 696 (1976) .....	9, 10
<i>Stansbury v. Marks</i> , 2 U.S. 213 (Pa. 1793) .....	15
<i>Tandon v. Newsom</i> , 141 S. Ct. 1294 (2021).....	15
<i>Thomas v. Review Bd. of Ind. Emp. Sec. Div.</i> , 450 U.S. 707 (1981) .....	13, 15
<i>Van Osdal v. Vogt</i> , 908 P.2d 1122 (Colo. 1996) .....	9, 13
<i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1872).....	9, 10
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972) .....	15

## STATUTES

Colo. Rev. Stat. § 25-48-117(1).....	15
Colo. Rev. Stat. § 25-48-118(1).....	15

## OTHER AUTHORITIES

Darrel W. Amundsen, <i>Medicine and Faith in Early Christianity</i> , 56 <i>Bull. Hist. Med.</i> 326 (1982) .....	6
St. Thomas Aquinas, <i>Summa Theologiae</i> (Fathers of the English Dominican Province, trans. 1947), <a href="https://aquinas101.thomisticinstitute.org/st-iiiaiae-q-64#SSQ64OUTP1">https://aquinas101.thomisticinstitute.org/st-iiiaiae-q-64#SSQ64OUTP1</a> .....	6
St. Augustine, <i>City of God</i> (George E. McCracken trans., Harvard U. Press 1957)...	6
Barry Bussey, <i>Stigma and Shame</i> , <i>Convivium</i> (May 22, 2019), <a href="https://bit.ly/3FOoQuL">https://bit.ly/3FOoQuL</a> .....	16
<i>Canadian Court Tells Doctors They Must Refer for Euthanasia</i> , <i>Coal. for HealthCARE and Conscience</i> (Jan. 20, 2021), <a href="https://bit.ly/3Kod11T">https://bit.ly/3Kod11T</a> .....	16
<i>Catechism of the Catholic Church</i> (2d ed. 2016) .....	5
Kirsten Evenblij et al., <i>Physicians’ Experiences with Euthanasia: A Cross-Sectional Survey Amongst a Random Sample of Dutch Physicians to Explore Their Concerns, Feelings and Pressure</i> , 20 <i>BMC Fam. Prac.</i> , no. 177, 2019 .....	17
Exodus 20:13.....	6
Gary Ferngren, <i>Medicine and Health Care in Early Christianity</i> (2009) .....	6
Maryam Guiahi et al., <i>Patient Views on Religious Institutional Health Care</i> , <i>JAMA Network Open</i> , Dec. 27, 2019 .....	17
Father Nikolaos Hatzinikolaou, <i>Prolonging Life or Hindering Death? An Orthodox Perspective on Death, Dying, and Euthanasia</i> , 9 <i>Christian Bioethics</i> 187 (2003).....	6, 7
John 9:1–12 .....	6

Edward J. Larson & Darrel W. Amundsen, <i>A Different Death: Euthanasia and the Christian Tradition</i> (1989) .....	7
John W. Love, <i>The Concept of Medicine in the Early Church</i> , 75 <i>Linacre Q.</i> 225 (2008).....	6
Matthew 8:14–15 .....	6
<i>Religious Groups’ Views on End-of-Life Issues</i> , Pew Research Ctr. (Nov. 21, 2013), <a href="https://pewrsr.ch/3ItT2Nz">https://pewrsr.ch/3ItT2Nz</a> .....	18
Kristin A. Robinson et al., <i>Religious and Spiritual Beliefs of Physicians</i> , 56 <i>J. Relig. &amp; Health</i> 205 (2017).....	18
Sacred Congregation for the Doctrine of the Faith, <i>Samaritanus Bonus: On the Care of Persons in the Critical and Terminal Phases of Life</i> (2020), <a href="https://bit.ly/3MiNk2C">https://bit.ly/3MiNk2C</a> .....	2, 5, 7
Seventh-day Adventist Church, <i>A Statement of Consensus on Care for the Dying</i> (Rev. May 9, 2013), <a href="https://www.adventist.org/official-statements/care-for-the-dying">https://www.adventist.org/official-statements/care-for-the-dying</a> .....	5, 7
<i>The Official Catholic Directory</i> (ed. Eileen Fanning) (2021) .....	17
U.S. Conf. of Cath. Bishops, <i>Ethical and Religious Directives for Catholic Health Care Services</i> (6th ed. 2018) .....	2, 8, 11, 12

## **INTERESTS OF *AMICI CURIAE***

*Amici curiae* are two associations of Christian healthcare professionals. The Catholic Medical Association is the largest association of Catholic individuals in healthcare. CMA defends the rights of its members to follow their deeply held religious beliefs in the medical profession while also providing them spiritual and professional support and advocating on their behalf. The Coptic Medical Association of North America aims to unite Egyptian Christian medical professionals in North America and to provide compassionate healing worldwide by serving the sick, mentoring future generations, and equipping local ministries.

In this case, *amici* seek to defend the fundamental right of religious healthcare professionals to practice medicine in accordance with their beliefs and to preserve a place for individuals and institutions of all faiths in the medical profession.



## INTRODUCTION & SUMMARY OF ARGUMENT

At its core, this case concerns a religious hospital’s right to provide care in accordance with its faith commitments. Centura Health is a Christian healthcare system that is composed of Catholic and Seventh-day Adventist hospitals, including St. Anthony Hospital, the Catholic Hospital for which Dr. Morris worked. In service of their religious mission, Centura Health and St. Anthony Hospital (collectively, “Centura”) require their doctors to abide by the Ethical and Religious Directives for Catholic Health Care Services, which prohibit them from, among other things, assisting suicide<sup>1</sup>—a grave evil in the Christian moral tradition. *See* U.S. Conf. of Cath. Bishops, *Ethical and Religious Directives for Catholic Health Care Services* 21 (6th ed. 2018) [hereinafter USCCB]. Indeed, Centura’s freedom to operate consistently with its faith is only as strong as its ability to require its employees—the very people who *carry out* Centura’s mission—to practice medicine in a way that will uphold its religious commitments. The First Amendment to the United

---

<sup>1</sup> In this brief, *amici* use the term “assisted suicide” as it is understood in traditional Christian moral theology, not as it is specifically defined in Colorado criminal statutes or in the End of Life Options Act (“EOLOA”). The term here refers to actions that are done with the direct intention to assist a person in ending his or her own life—for example, by prescribing drugs that will cause the intentional death of a patient. *See generally Samaritanus Bonus: On the Care of Persons in the Critical and Terminal Phases of Life* (2020), <https://bit.ly/3MiNk2C> [hereinafter *Samaritanus Bonus*]. This includes, of course, providing or participating in “medical aid in dying” under EOLOA.

States Constitution guarantees Centura exactly that right, and it demands that civil courts refrain from becoming entangled in debates over the meaning of Centura's religious beliefs or which forms of conduct violate them.

Dr. Morris's lawsuit seeks to undermine this central freedom. On this score, the parties do not dispute the critical facts. All agree that Centura's religious beliefs demand that it not participate in physician-assisted suicide and that its policy prohibiting doctors from doing so is rooted in those beliefs. *See* Appellant's Opening Br. at 2. And all agree that Dr. Morris sought "to help Mr. Mahoney pursue medical aid-in-dying" and that she took steps in support of that end. *Id.* at 16. Yet Dr. Morris claims that Centura could not fire her for these actions because they weren't, in her estimation, all that significant. And she seeks a court order that would effectively *require* Centura to allow conduct that—notwithstanding Dr. Morris's view of the matter—its religious commitments explicitly forbid.

Though Dr. Morris (like the district court<sup>2</sup>) obscures the issue by suggesting that this case is only a matter of "contract interpretation," this characterization

---

<sup>2</sup> Despite the seemingly plain significance of this case to Centura's religious freedom, the court below curiously asserted that "the issue presented in this case do[es] not implicate Centura's first amendment rights." Order Granting Defs.' MSJ in Part (Sept. 9, 2021), at 4 ¶ 6.a. As demonstrated in this brief, and as argued by Centura below, this is patently incorrect.

dramatically understates the consequences for the religious freedom of faith-based hospitals. Indeed, the question that Dr. Morris asks the court to interpret is the meaning of Centura’s religiously grounded command not to “condone or participate in” assisted suicide. Her principal argument is that the amount of support she lent Mr. Mahoney was not significant enough to violate that command. But that question—the “difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act . . . that has the effect of enabling or facilitating the commission of an immoral act by another”—is one that courts “have no business addressing.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014). Indeed, it has long been clear that “[t]he First Amendment protects the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (internal quotation marks and citation omitted).

The First Amendment demands that religious organizations not be forced to litigate the meaning of central religious tenets like Centura’s belief in the moral complicity of doctors who assist a patient in ending his own life. Fortunately, the lower court agreed with Centura about the meaning of the policy and found that Dr. Morris had indeed violated it. But religious institutions should not be forced to

subject questions of religious doctrine like this to the scrutiny of civil authorities in the first place. And any ruling in Dr. Morris’s favor—that is, any finding that Centura’s religiously based policy actually means what Dr. Morris believes it should—would effectively force the hospital to allow its doctors to perform acts that its religious beliefs forbid. Such a ruling would risk alienating and perhaps forcing out of practice the many thousands of healthcare professionals, like members of *amici*’s organizations, whose beliefs demand that they refuse to engage in certain acts like physician-assisted suicide.

In order to fulfill the guarantees of the First Amendment and its vital protections for religious medical professionals and healthcare organizations, this Court must not countenance claims like Dr. Morris’s. *Amici* urge the Court to affirm the judgment below.

## ARGUMENT

### **I. Physician-assisted suicide—or “medical aid in dying”—is antithetical to the Christian understanding of medicine.**

Christian doctrine teaches that human beings are created in the image and likeness of God, no matter their physical or psychological condition. *See, e.g.*, Sacred Congregation for the Doctrine of the Faith, *Samaritanus Bonus*, *supra* n.1 (quoting 1 Cor. 11:7; 2 Cor. 3:18). In this view, human life is inviolable, and it is a grave sin to assist someone in the act of killing himself or herself. *See, e.g.*,

*Catechism of the Catholic Church* 2268 (2d ed. 2016); Seventh-day Adventist Church, *A Statement of Consensus on Care for the Dying* (Rev. May 9, 2013), <https://www.adventist.org/official-statements/care-for-the-dying>. Every death from suicide or euthanasia “is an insult against God—no matter how ‘good’ it may be called” by others. Father Nikolaos Hatzinikolaou, *Prolonging Life or Hindering Death? An Orthodox Perspective on Death, Dying, and Euthanasia*, 9 *Christian Bioethics* 187, 196 (2003); *see also id.* (“[The Eastern Orthodox] Church condemns as unethical and insulting for the medical profession every medical act which . . . provokes the hastening of the moment of death.”).

This teaching is consistent since Christianity’s earliest days and is grounded in the commandment “thou shall not kill.” *See, e.g.*, Exodus 20:13; Matthew 8:14–15; John 9:1–12; *see also* Darrel W. Amundsen, *Medicine and Faith in Early Christianity*, 56 *Bull. Hist. Med.* 326, 335, 349 (1982); Gary Ferngren, *Medicine and Health Care in Early Christianity* 109–11 (2009); John W. Love, *The Concept of Medicine in the Early Church*, 75 *Linacre Q.* 225, 229 (2008). In the fifth century, for example, St. Augustine taught that “thou shalt not kill” means to kill “neither another nor thyself.” 1 St. Augustine, *City of God* 95 (George E. McCracken trans., Harvard U. Press 1957). In the medieval period, St. Thomas Aquinas elaborated that the person committing suicide “usurps to himself judgment of a matter not entrusted

to him.” St. Thomas Aquinas, *Summa Theologiae*, Second Part of the Second Part, Question 64, art. 5 (Fathers of the English Dominican Province, trans. 1947), <https://aquinas101.thomisticinstitute.org/st-iiiaiae-q-64#SSQ64OUTP1>. And in the sixteenth century, a Christian moral theologian advised that a physician sins whenever he gives a harmful drug “even if he administers it out of pity or in order to please the patient.” Edward J. Larson & Darrel W. Amundsen, *A Different Death: Euthanasia and the Christian Tradition* 136 (1989). Even following the Reformation, the condemnation of assisted-suicide was shared by nearly all Christian denominations. *Id.* at 142–65.

In traditional Christian moral theology, suicide is understood to be “intrinsically evil,” meaning that it can never be pursued, even for the sake of another good like alleviating a patient’s suffering. *Samaritanus Bonus*, *supra* n.1. Under this view, there is no morally acceptable “form of complicity or active or passive collaboration” in suicide. *Id.* Instead, a doctor must respect “the gift of [a patient’s] life” over “the will of the patient” who seeks to end his or her life. Hatzinikolaou, *supra*, at 193; *see also* Seventh-day Adventist Church, *supra* (“Any [medical] action taken should be in harmony with divine principles regarding the sanctity of life. . . . Seventh-day Adventists do not practice ‘mercy killing’ or assist in suicide (Genesis 9:5–6; Exodus 20:13; 23:7). They are opposed to the intentional taking of

the life of a suffering or dying person.”). Thus, many Christian healthcare professionals sincerely believe that they may play *no* role in physician-assisted suicide nor allow their employees to counsel patients to seek suicide. That appears certainly to be true for Centura and St. Anthony Hospital here, as the Ethical and Religious Directives make clear. According to those directives, “Catholic health care institutions may never condone or participate in euthanasia or assisted suicide in any way.” USCCB, *supra*, at 21. Such hospitals must instead have “Christian love as the animating principle of health care,” through which suffering is seen “as a participation in the redemptive power of Christ’s passion, death, and resurrection; and . . . death, transformed by the resurrection, [is] an opportunity for a final act of communion with Christ.” *Id.* at 6. The Directives instruct that “[p]atients should be kept as free of pain as possible so that they may die comfortably and with dignity,” but actions should not be taken with the intent to *hasten* that death. *Id.* at 21.

## **II. The First Amendment prohibits courts from becoming entangled in disputes over religious beliefs and policies like this one.**

At this point, the key issue in Dr. Morris’s breach-of-contract claim appears to be whether she complied (as she was required to) with the Ethical and Religious Directives for Catholic Health Care Services. As their very name makes clear, and as discussed above, these directives cannot be understood as anything other than *religious*: they instantiate a central tenet of Centura and St. Anthony’s Christian

faith. For one-hundred-and-fifty years, the U.S. Supreme Court has affirmed that “[t]he First Amendment protects the right of religious institutions ‘to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.’” *Our Lady of Guadalupe*, 140 S. Ct. at 2055 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952)); *see also, e.g., Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 697–99 (1976); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727–29 (1872). Accordingly, this court must decline Dr. Morris’s invitation to challenge the truth of Centura’s religious beliefs about the moral permissibility of her actions.

This “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 is rooted in both the Free Exercise Clause and the Establishment Clause of the First Amendment: it protects the free exercise rights of the religious organization to determine religious doctrine and governance for itself, *id.*, and it prevents courts from violating the Establishment Clause by becoming entangled in religious matters, *see id.* at 654 n.1; *Van Osdal v. Vogt*, 908 P.2d 1122, 1132 (Colo.



1996) (“While some government entanglement with religion is inevitable, excessive entanglement is constitutionally impermissible.”).

As the Supreme Court of Colorado has recognized, the doctrine mandates that “courts must not become embroiled in disputes involving a religious organization if the court would be required to interpret or weigh church doctrine.” *Moses v. Diocese of Colo.*, 863 P.2d 310, 320 (Colo. 1993). Courts may apply neutral principles to disputes involving religious organizations only if “th[e] court’s analysis does not trespass into the forbidden area of resolving doctrinal issues.” *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85, 100 (Colo. 1986). Courts must thus determine at the outset “whether the underlying dispute is a secular one, capable of review by a civil court, or an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law.” *Jones v. Crestview S. Baptist Church*, 192 P.3d 571, 573 (Colo. App. 2008) (quotation omitted); *see also Bryce*, 289 F.3d at 657 (similar). The underlying area of law is irrelevant—any claim which would require such involvement must not be adjudicated. *See, e.g., Watson*, 80 U.S. at 727–28 (church property dispute); *Milivojevich*, 426 U.S. at 721–25 (appointment of church leaders); *Our Lady of Guadalupe*, 140 S. Ct. at 2060 (employment discrimination claim by schoolteacher); *Bryce*, 289 F.3d at 648 (harassment claim).

Thus, while a court may often adjudicate contract claims involving religious organizations without offending the First Amendment, it may not weigh in on *religious* questions while doing so. *See, e.g., Lee v. Sixth Mt. Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 122 (3d Cir. 2018). If a contract “incorporates religious concepts,” the court “must defer to the resolution of the [religious] doctrinal issue by the authoritative ecclesiastical body.” *Mote*, 716 P.2d at 95–96 (internal quotation marks and citation omitted). Indeed, this Court has applied the church autonomy doctrine to breach-of-contract claims when the underlying questions concerning whether the plaintiff properly performed his job duties were “largely ecclesiastical and thus not subject to court inquiry under the First Amendment.” *Jones*, 192 P.3d at 573; *see also Seefried v. Hummel*, 148 P.3d 184, 191 (Colo. App. 2005) (affirming dismissal of claim for intentional interference with business relationships because its consideration would “necessarily insert a civil court into the basis for the church’s” employment decision).<sup>3</sup>

---

<sup>3</sup> The plaintiff in *Jones* was the pastor of a church, which would today plainly implicate the so-called “ministerial exception” recognized in *Hosanna-Tabor*, 565 U.S. 171, and *Our Lady of Guadalupe* 140 S. Ct. 2049. As the Supreme Court recognized in *Our Lady of Guadalupe*, *see* 140 S. Ct. at 2060, and as the Tenth Circuit stated in *Bryce*, the “ministerial exception” is a narrow part of the “broader church autonomy doctrine,” which “extends beyond the selection of clergy to other church matters.” *Bryce*, 289 F.3d at 656, 658 n.2.

Here, the Ethical and Religious Directives are indisputably religious—and the debate over what forms of conduct violate them is necessarily religious, as well. The Directives are promulgated by the United States Conference of Catholic Bishops, a religious body; their dictates flow from the religious belief in “respect [for] the sacredness of every human life from the moment of conception until death”; and they bind St. Anthony Hospital, a Catholic hospital. USCCB, *supra*, at 8; *see also id.* at 4 (referring to the Ethical and Religious Directives as “authoritative guidance”); *id.* at 9 (“Catholic health care services must adopt these Directives as policy, [and] require adherence to them within the institution as a condition for medical privileges and employment . . . .”); Defs.’ MSJ (Aug. 2, 2021), at 3. As discussed above, the Directives’ prohibition against assisted suicide is based on religious moral doctrine concerning the nature of the human person, God’s commandment not to kill, and the meaning of human life, death, and healing. Dr. Morris’s effort to have this court to weigh in on these matters is “barred by the First Amendment.” *Jones*, 192 P.3d at 573.

Dr. Morris’s attempt to evade church-autonomy issues by asserting that she never participated meaningfully in the EOLOA process but merely expressed her “ethical beliefs” fares no better. Appellant’s Opening Br. 15–16, 22–24. There is no dispute that (at a minimum) Dr. Morris supported Mahoney in his quest to end

his life from their first meeting on July 22, 2019, when she evaluated him, opined that he “qualifies for aid-in-dying under the EOLOA Act,” and then transferred him to her care. *See id.* at 8 (internal quotation marks and alterations omitted).<sup>4</sup> The question of whether actions like these are enough to violate a religiously based command not to “condone or participate” in assisted suicide is one rooted in moral theology and deeply held beliefs about human complicity. The U.S. Supreme Court has made clear that this question—the “difficult and important question of religion and moral philosophy, namely, the circumstances under which it is wrong for a person to perform an act . . . that has the effect of enabling or facilitating the commission of an immoral act by another”—is one that courts “have no business addressing.” *Burwell*, 573 U.S. at 724; *see also, e.g., Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.*, 450 F.3d 130, 140 (3d Cir. 2006) (evaluating whether “opposing the war in Iraq is as serious a challenge to Church doctrine as is promoting a woman’s right to abortion . . . would infringe upon the First Amendment Religion clauses”). Simply put: because it is “not within . . . judicial competence to inquire” into whether a religious believer “correctly perceived the

---

<sup>4</sup> It appears that Dr. Morris did much more than that, as well. *See, e.g.,* Defs.’ MSJ at 7–9.

commands” of his faith, courts must not “undertake to dissect religious beliefs.” *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715–16 (1981).

Centura’s prohibition of participating in assisted suicide is “an expression of the beliefs of the church and the ‘embodiment’ of the religion.” *Van Osdal*, 908 P.2d at 1132; *see id.* at 1132 n.17. Any “attempt[] to separate” Dr. Morris’s claims from Centura’s assertion of those beliefs would impermissibly and excessively entangle this Court in matters of religion. *Id.* at 1132. This Court must decline to parse Centura’s religious beliefs about the culpability of Dr. Morris’s actions.

### **III. The consequences of allowing claims like Dr. Morris’s could be dire for religious healthcare professionals.**

It is axiomatic that the First Amendment protects religious believers from many governmental actions that would force them to violate their sincerely held beliefs. Originally, Dr. Morris sought to do that explicitly—demanding a judicial declaration that “Centura may not lawfully prohibit Dr. Morris from . . . providing AID related services,” including by prescribing assisted-suicide drugs themselves. Compl. ¶ 103. Although Dr. Morris has since abandoned those claims, she now attempts to reach the same result through different means, still seeking a court ruling that Centura was required to allow her to support physician-assisted suicide in ways that its religious beliefs forbid. Whether that result comes under the new guise of

“contract interpretation” or by more direct command, the potentially devastating consequences for religious healthcare professionals are the same.

As Centura argued before the district court, Defs.’ MSJ at 15–21, the First Amendment protects religious organizations from state commands to engage in conduct or employ persons who would undermine their religious tenets. *See, e.g., Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1884 (2021) (Alito, J., concurring) (warning against state commands to “[e]ither engage in conduct . . . contrary to the traditional Christian understanding . . . or abandon a mission that dates back to the earliest days of the Church”). Courts have long recognized that many religious practices demand accommodation, even as religious liberty jurisprudence has otherwise shifted. *See, e.g., Thomas*, 450 U.S. at 711; *Stansbury v. Marks*, 2 U.S. 213 (Pa. 1793); *People v. Philips*, N.Y. Ct. Gen. Sess. (1813) (unreported) (abstracted in 1 W.J.L. 109 (1843)); *see also Bd. of Educ. v. Grumet*, 512 U.S. 687, 706 (1994) (“[G]overnment may (and sometimes must) accommodate religious practices . . . .” (internal quotation marks and citation omitted)). Indeed, even a state’s “apex” interests must sometimes yield to the need to accommodate religious exercise. *See Wisconsin v. Yoder*, 406 U.S. 205, 214, 216–17 (1972). Just last year, the U.S. Supreme Court held that even the critical interest in preventing the spread of COVID-19 did not justify New York’s and California’s measures to close

religious worship services. *See Tandon v. Newsom*, 141 S. Ct. 1294 (2021); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2021). For its part, Colorado’s legislature explicitly allows healthcare providers with objections to assisted-suicide not to participate in the procedure. Colo. Rev. Stat. §§ 25-48-117(1), 25-48-118(1). As Centura well explained below, if that exemption were interpreted not to protect Centura’s actions here, the First Amendment would require a court to do so. *See* Defs.’ MSJ at 15–21.

This Court should not now, through “contract interpretation,” do what the state legislature declined to do, and indeed *could not* do, directly: require a hospital to participate in the assisted-suicide process in contravention of its religious beliefs. That result would not only violate the First Amendment and offend religious medical professionals’ and institutions’ deeply held beliefs but would, in turn, pressure them to leave the practice altogether. This has already begun happening in other countries. For example, a Canadian court recently ruled that doctors who conscientiously object to euthanasia must still provide an “effective referral” to patients seeking the procedure so that they do not feel “rejection, shame and stigma.” Barry Bussey, *Stigma and Shame*, Convivium (May 22, 2019), <https://bit.ly/3FOoQuL>. Many doctors have expressed that effective referrals make them complicit in the killing of another and may require them to leave the profession. *Canadian Court Tells Doctors*

*They Must Refer for Euthanasia*, Coal. for HealthCARE and Conscience (Jan. 20, 2021), <https://bit.ly/3Kod11T>. Even where doctors have not been sanctioned for their refusal to participate in euthanasia, a study of doctors in the Netherlands found that euthanasia requests “have a substantial impact on physicians.” Kirsten Evenblij et al., *Physicians’ Experiences with Euthanasia: A Cross-Sectional Survey Amongst a Random Sample of Dutch Physicians to Explore Their Concerns, Feelings and Pressure*, 20 BMC Fam. Prac., no. 177, 2019, at 9. Nearly half of the doctors surveyed “felt pressure by society in general to grant [euthanasia] requests”—with doctors who refused placed under the greatest pressure of all. *Id.* at 3. “As a result,” the study warns, “physicians may experience less room for a careful decision making process and . . . may even feel forced to cross their own moral boundaries.” *Id.* at 9.

Pressuring religious individuals and institutions out of the medical profession would be devastating not only for doctors of faith but for the healthcare system as a whole. Nearly one in five hospitals in America is religiously affiliated. Maryam Guiahi et al., *Patient Views on Religious Institutional Health Care*, JAMA Network Open, Dec. 27, 2019, at 1, 2. In Colorado, Catholic hospitals served almost 1.3 million people in 2021, with Catholic health care centers and homes for the elderly serving an additional 17,000 people. *The Official Catholic Directory* 321, 366, 1105 (ed. Eileen Fanning) (2021) (listing the statistics for the three dioceses in Colorado:



the Diocese of Colorado Springs, the Archdiocese of Denver, and the Diocese of Pueblo, respectively). And a substantial number of medical professionals serving in secular institutions also have religious commitments. *See, e.g.*, Kristin A. Robinson et al., *Religious and Spiritual Beliefs of Physicians*, 56 J. Relig. & Health 205, 210, 212 (2017) (finding that 29% of Mayo Clinic doctors reported that religious or spiritual beliefs influenced their decision to become a doctor and 64% considered religion important in their lives). And religious beliefs opposed to physician-assisted suicide are hardly unique to the Christian faith. *See, e.g.*, *Religious Groups' Views on End-of-Life Issues*, Pew Research Ctr. (Nov. 21, 2013), <https://pewrsr.ch/3ItT2Nz> (reporting that majority teaching in Christianity, Judaism, Islam, and Buddhism prohibits assisted suicide and euthanasia).

In sum, far from “not implicat[ing] Centura’s first amendment rights,” Order Granting Defs.’ MSJ in Part at 4, Dr. Morris’s breach of contract claim seeks to force—through a court order—Centura and St. Anthony Hospital to employ doctors who take actions that violate one of the central dictates of their faith. Such a ruling not only offends the most basic protections of the First Amendment but threatens to drive the many thousands of healthcare professionals who share the religious beliefs of Centura and *amici* out of the practice.

## CONCLUSION

*Amici* respectfully urge this Court to affirm the judgment of the court below.<sup>5</sup>

Dated: May 16, 2022

Respectfully submitted,

*s/ Eric N. Kniffin*

---

Eric N. Kniffin (Reg. No. 48016)

Lewis Roca

90 S. Cascade Ave., Suite 1100

Colorado Springs, CO 80903

(719) 386-3017 (phone) / (719) 386-3070 (fax)

ekniffin@lewisroca.com

John A. Meiser (IN Bar No. 36736-71)\*

Francesca M. Genova (IN Bar No. 37163-71)\*

Notre Dame Law School Religious Liberty Clinic

1338 Biolchini Hall

Notre Dame, IN 46556

(574) 631-3880 (phone) / (574) 634-1431 (fax)

jmeiser@nd.edu

fgenova@nd.edu

*Counsel for Amici Curiae*

*Catholic Medical Association and*

*Coptic Medical Association of North America*

*(\*Pro Hac Vice Application Pending)*

---

<sup>5</sup> *Amici* thank Joseph Graziano, Daniel Loesing, and Olivia Rogers, students in the Notre Dame Law School Religious Liberty Clinic, for their assistance with this brief.

## CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of May, 2022, I served the foregoing Brief of *Amici Curiae* via Colorado Courts E-Filing on all parties of record.

*s/ Tracy M. King*

\_\_\_\_\_  
Of Lewis Roca Rothgerber Christie LLP

***In accordance with C.A.R. 30(f), a printed copy of this document with original signatures is maintained by Lewis Roca Rothgerber Christie LLP and will be made available for inspection by other parties or the Court upon request.***