NO. 18-921

IN THE
Supreme Court of the United States

ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN, PUERTO RICO, et al.,
Petitioners,

v.

YALÍ ACEVEDO FELICIANO, SONIA ARROYO VELÁQUEZ, ELSIE ALVARADO RIVERA, et al.,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Puerto Rico

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED *AMICUS CURIAE* BRIEF OF THE ETHICS & RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION IN SUPPORT OF PETITIONERS

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1. *Amicus Curiae* The Ethics & Religious Liberty Commission of the Southern Baptist Convention, pursuant to Supreme Court Rule 37(2)(a) and (b), respectfully moves this Court for leave to file the accompanying *amicus curiae* brief in support of the petition for a writ of certiorari filed by the Roman Catholic Archdiocese of San Juan, Puerto Rico, et al., in Case Number 18-921.

2. On February 5, 2019, counsel for *amicus curiae* requested consent from all parties to file the accompanying brief. Counsel for Petitioners granted consent and filed a blanket letter of consent on February 6, 2019. Consent was also received from Respondent Catholic Employee Pension Trust, Respondents the Roman Catholic Dioceses of Caguas and Fajardo-Humacao, Respondent Academia San José, Respondent Academia del Perpetuo Socorro, Respondent Academia San Ignacio de Loyola, and Respondent Peretuo Socorro Academy.

3. On February 6, 2019, counsel of record for the Respondents-Plaintiffs answered that Plaintiffs would *not* consent to the filing of the *amicus curiae* brief. Counsel for *amicus curiae* explained that the Court routinely grants motions to file *amicus curiae* briefs, and that consent was an administrative convenience to the Court. Counsel for Plaintiffs made clear that Plaintiffs would not consent and preferred to compel the Court to formally address the motion.

4. This case involves the Puerto Rico Supreme Court's decision to disregard the separate Roman Catholic juridical persons in Puerto Rico and to treat them collectively as a single, nonexistent entity, the so-called "Roman Catholic and Apostolic Church in Puerto Rico."

5. This unprecedented ruling conflicts with more than 100 years of this Court's precedents, all holding that church autonomy includes matters involving ecclesiastical polity and administration. The Puerto Rico Supreme Court erred in deciding for itself what constitutes "the Catholic Church" in Puerto Rico.

6. The proposed *Amicus Curiae* makes this motion for leave to file in support of Petitioners.

7. No party or party's counsel authored any part of the accompanying brief, nor did proposed *Amicus Curiae* or their counsel receive any money from a party to fund preparing or submitting the brief.

8. The contemporaneously filed brief addresses this Court's church-autonomy holdings and explicates their importance not only to the Roman Catholic Church, but to other denominations and religious organizations.

For these reasons, the motion for leave to file the attached *amicus curiae* brief should be granted.

Respectfully submitted.

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QUESTION PRESENTED

Whether the First Amendment prohibits civil courts from creating a fictitious entity that conjoins separate parts of a religious organization in violation of a church's determination of its own structure and governance, to subject all included parts to joint and several liability.

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AMICUS CURIAE'S STATEMENT OF INTEREST[1]

Proposed *amicus curiae* The Ethics & Religious Liberty Commission of the Southern Baptist Convention ("ERLC") is the moral concerns and public policy entity of the Convention ("SBC"), the nation's largest Protestant denomination, with over 46,000 churches and 15.2 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. The ERLC follows litigation regarding churches and their corporate structure and organization, particularly when the government attempts to second-guess that core, ecclesiastical function, as happened here. The ERLC has a strong interest in ensuring that the First Amendment remains a bulwark against government interference in matters of church governance, including corporate form.

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[1] *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. All counsel were timely notified of this filing as required by Supreme Court Rule 37.2.

INTRODUCTION AND SUMMARY OF ARGUMENT

The First Amendment was drafted in part to establish a "scrupulous policy . . . against a political interference with religious affairs." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 184-85 (2012) (quoting 22 Annals of Cong. 982–83 (1811)). That is why this Court's decisions interpreting and applying the First Amendment have long recognized that religious organizations possess broad autonomy in all matters of doctrine and governance. *E.g.*, *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 722 (1976); *Hosanna-Tabor*, 565 U.S. at 185-86.

The decision of the Puerto Rico Supreme Court in this case takes a very different and wayward path, concluding that the First Amendment *dictates* that courts second-guess church governance systems. And the implications to church governance are staggering. What the Puerto Rico Supreme Court has done to the Roman Catholic Church could just as easily be done by any state or federal court, anywhere, to Methodists, Lutherans, Presbyterians, Baptists, Anglicans, Mormons, Seventh Day Adventists, Muslims, Jews, or any other denomination.

If there is any question that Plaintiffs are asking the courts to usurp the authority of religious entities to organize and govern themselves, it is answered in the Brief in Opposition. In it, Plaintiffs unabashedly: (1) fault "The Catholic Church" for failing to present the Puerto Rico courts with "evidence" as to the Church's legal personality, Pls.' Opp'n 10–11; (2) criticize the Catholic Church for basing its arguments on "Canon Law," which Plaintiffs say does

not bind Puerto Rico courts, *id.* at 13–14; (3) further argue that canon law is only an "internal regulation of the Catholic Church" and is thus "not binding in court cases dealing with contractual matters unrelated to religion," *id.* at 21–23; (4) challenge Petitioners' interpretation of canon law as it applies to Catholic churches in Puerto Rico, *id.* at 23–24; and (5) castigate the Catholic Church's arguments as "self-serving" and assert that the Church lacks the power to decide its own structure as it relates to obligations, *id.* at 28–29. As discussed in Argument section III, below, these are dumfounding positions, particularly when Canon Law within the Catholic Church is the literal embodiment of its ecclesiastical governance.

As applied to the judiciary, church autonomy is a lack of subject matter jurisdiction that prevents courts from resolving disputes that are strictly and purely ecclesiastical in character. *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). This Court should grant the petition, vacate the decision of the Puerto Rico Supreme Court, and decisively reaffirm the autonomy of religious organizations to decide their own ecclesiastical structures, free from government—or plaintiff—interference.

BACKGROUND

Amicus Curiae relies generally on the Statement of the Case as presented in the Petition for a Writ of Certiorari. But several salient facts in this case warrant special attention.

The Puerto Rican trial court held that *all* Roman Catholic entities in Puerto Rico belong to the sole, unified "legal personhood held by the Catholic Church." App. 240. Based on this conclusion, the court

ordered the "Roman Catholic and Apostolic Church in Puerto Rico" to pay $4.7 million, and when that nonexistent entity failed to make the requisite payment within 24 hours, the court authorized its sheriff to immediately begin seizing assets of every Catholic entity on the island, by force. App. 223–24, 227. Though the Puerto Rico Circuit Court of Appeals reversed, the Puerto Rico Supreme Court affirmed and reinstated the trial court's ruling.

There is nothing that prevents other courts in the United States and its Territories from similarly second-guessing church organizational structures, of any denomination. Nor is there anything that would logically stop a court from issuing such a ruling that stops at the court's jurisdictional borders. Roman Catholic dioceses and parishes in Maine and Montana could be saddled with joint and several liability for judgments rendered against completely separate ecclesiastical and legal entities in Puerto Rico.

This is not a case asking whether a court can establish liability against a religious entity; it is whether a court can create new ecclesiastical defendants by imagining a church that never existed. It is difficult to conceive a legal ruling that creates a greater intrusion into church affairs.

ARGUMENT

I. Church autonomy is deeply rooted in the Free Exercise and Establishment Clauses.

This Court uses the church-autonomy principle when resolving disputes between the Church and State under the First Amendment. This Court's first opinion addressing a civil court's jurisdiction over matters involving religious organizations is *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679 (1871). The case involved a schism between a local Presbyterian Church and the national General Assembly regarding slavery and the ownership and use of church property. *Id.* at 684–700. The government of the Church was exercised in a series of hierarchical ecclesiastical tribunals knows as Church Sessions (the local churches), Presbyteries, Synods, and a General Assembly (the highest governing authority). *Id.* at 727.

The Kentucky Court of Appeals overruled a decision of the Presbyterian General Assembly, holding that certain ruling elders of the local church were not elders and did not need to be recognized as such by the congregation. *Id.* at 699–700. This Court reversed, articulating for the first time the rule of law recognized as the basis for church autonomy:

> [W]here a subject-matter of dispute, strictly and purely ecclesiastical in its character, — a matter over which the civil courts exercise no jurisdiction, — a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them . . . [i]t may be said here, also, that no jurisdiction has been

> conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it . . . . [*Id.* at 733.]

This Court has expanded church autonomy from its original foundation to limit every branch of government. As applied to the judiciary, church autonomy is a lack of subject matter jurisdiction that prevents courts from resolving disputes that are strictly ecclesiastical in character. *Id.* When applied to the legislative and executive branches, church autonomy strikes down laws that unlawfully prohibit or burden the free exercise of religion. *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 107 (1952).

Church autonomy now has a carefully defined scope that affects many Free Exercise and Establishment Clause cases. At its core, church autonomy gives religious organizations and denominations independence from secular control or manipulation and the power to decide for themselves—free of state interference—matters of church government as well as those of faith and doctrine. *Id.* at 116.

II. The scope of church autonomy extends to church structure.

The church-autonomy doctrine includes ecclesiastical polity and its administration, including matters concerning the interpretation of a religious organization's organic documents. *E.g.*, *Serbian E. Orthodox Diocese*, 426 U.S. at 708–24; *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam); *Kedroff*, 344 U.S. at 119; *Shepard* v. *Barkley*, 247 U.S. 1, 2 (1918) (aff'd mem.). This principle flows from *Kedroff* and *Kreshik*, two cases arising out of the same underlying controversy.

Canon law for the Orthodox Church in America conferred upon the Archbishop of the North American Archdiocese, as the appointee of the Patriarch of Moscow, the use and occupancy of the St. Nicholas Cathedral in New York City. *Kedroff*, 344 U.S. at 95–97. But New York's Religious Corporations Law purported to bestow that right to authorities selected by a convention of North American churches. *Id.* at 97–100. In no uncertain terms, *Kedroff* held that the New York law was unconstitutional. *Id.* at 119. *Kedroff* explained that the controversy concerning the right to use St. Nicholas Cathedral was a matter of ecclesiastical government: the power of the Supreme Court Authority of the Russian Orthodox Church to appoint the ruling heirarch of the archdiocese of North America. *Id.* at 115. This Court concluded that the New York law was invalid because it displaced one church administrator with another, and it passed control of matters that were strictly ecclesiastical from one church to another. *Id.* at 119.

The First Amendment, held the Court, includes "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." *Id.* at 116 (emphasis added).

Kreshik applies the same principle articulated for legislation in *Kedroff* to judicial interference with church polity and its administration. After remand from the first opinion, the New York courts held that secular authority in the U.S.S.R. was effectively dominating the Russian Patriarch and that his appointee, the Archbishop of the North American Archdiocese, could not under New York common law validly occupy the Cathedral. 363 U.S. at 191. This Court reversed yet again, holding that when the government acts through its legislative *or* judicial branch, the same rule of religious freedom applies. *Id.* New York common law could not determine who was to occupy the Cathedral because the matter was one of church polity. *Id.*

Serbian East Orthodox Diocese reinforced the application of church autonomy to church governance and administration. There, an Illinois court impermissibly rejected the decision of the highest ecclesiastical tribunals of the Orthodox Church, and it inquired into church polity, when it reinstated a defrocked and suspended Bishop. 426 U.S. at 708. This Court reversed, concluding that the courts lacked jurisdiction to decide such a dispute:

> For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil

> courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity. *Id.* at 709.

Accord, *e.g.*, *Md. & Va. Eldership of Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring) (per curiam).

This Court in *Serbian East Orthodox Diocese* also clarified that courts cannot construe or interpret various church constitutional provisions or organic documents. 426 U.S. at 721. A court's only legitimate role is ensuring that matters of internal church government, the core of ecclesiastical affairs, or questions of church polity are committed to an ecclesiastical authority. *Id.* When any of these issues are present, courts lack jurisdiction to decide the dispute. In other words, courts are prohibited from interfering in matters of internal church governance or from interpreting a church's written constitution or ecclesiastical law. *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979) (the First Amendment "requires that civil courts defer to the resolution of issues of religious doctrine or polity").

III. The petition should be granted to correct the Puerto Rico Supreme Court's intrusion into church governance.

By defining for itself what constitutes "The Catholic Church" in Puerto Rico, the Puerto Rico Supreme Court interfered with a subject that is "strictly a matter of ecclesiastical government." *Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff*, 344 U.S. at 115). And this is not a matter that affects only the Roman Catholic Church.

In many congregational denominations, each congregation independently and autonomously runs its own theological, financial, and administrative affairs. 1 W. Cole Durham & Robert Smith, Religious Organizations and the Law § 3:13 (2013). But so long as one congregation shares the same denomination and theology as another, nothing would stop a court from declaring them to be the same entity. This is particularly true if the congregations participate in the same theological body, synod, or convention.

As for hierarchical churches, like the Roman Catholic Church, they may view independent entities such as Catholic hospitals as central to the Church's religious mission. *E.g.*, *Catechism of the Catholic Church*, ¶¶ 1506–09 (2d ed. 1994). Yet Catholic healthcare entities are often set up as public "juridic persons" under Catholic canon law. (Juridic persons are an aggregate of persons and things that oversee a Catholic entity to ensure it complies with Catholic teachings. 1983 Code of Canon Law c.114, § 1.) So, while viewed as an integral part of the Church as a whole, such entities are not controlled by a Catholic diocese. 1983 Code of Canon Law c.116, § 1 (explaining how juridic persons fulfill their respective mission in the name of the Church).

Under the Puerto Rico Supreme Court's decision, either one of these ecclesiastical structures can be pierced, subjecting entities that were not even parties to the litigation to joint and several liability for the judgment. In the corporate world, the analogy would be independent automobile dealerships. Most automakers contract with independent dealer entities that are solely responsible for profit and loss, but subject to certain guidelines suggested by the automaker, such as branding and suggested retail prices. In the world the Puerto Rico Supreme Court has created, any court could take a judgment against one independent Ford dealer and extend joint and several liability for that judgment to Ford's entire independent dealer network. This reasoning poses obvious danger to denominations like the Southern Baptists, who meet as a collective conference periodically but consist of a voluntary association of legally separate and independent churches.

Equally harmful, the Puerto Rico Supreme Court's decision invites the very type of church-state entanglement that the church-autonomy doctrine is supposed to prevent. This Court has warned that the First Amendment may be violated not only by judicial decisions, but by the very inquiry that results in a court's findings and conclusions of law. *NLRB* v. *Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Judicial inquiry into internal church matters, like those here, are an unconstitutional "resolution of quintessentially religious controversies." *Hosanna-Tabor*, 565 U.S. at 187 (quoting *Milivojevich*, 426 U.S. at 720).

This infringement into church doctrine is manifest in Plaintiffs' Brief in Opposition. Plaintiffs first fault "The Catholic Church" for failing to present the Puerto Rico courts with "evidence" as to the Church's legal personality, Pls.' Opp'n 10–11. But the purpose of church autonomy is to protect religious organizations from having to define their religiously established personas in a court of law.

Next, Plaintiffs criticize the Catholic Church for basing its arguments on "Canon Law," which Plaintiffs say does not bind Puerto Rico courts, *id.* at 13–14. That's precisely the point; Puerto Rico courts should not be using civil law to trump canon law when it comes to Church governance and organization.

Plaintiffs further argue that canon law is only an "internal regulation of the Catholic Church" and is thus "not binding in court cases dealing with contractual matters unrelated to religion," *id.* at 21–23. Again, Plaintiffs misunderstand church autonomy. The Church's internal regulations regarding its corporate structure are not subject to second guessing by civil courts.

Plaintiffs also challenge Petitioners' interpretation of canon law as it applies to Catholic churches in Puerto Rico, *id.* at 23–24. Such a challenge is preposterous. No court should be reinterpreting canon law in a manner that is antithetical to the Church's understanding of its own doctrine.

Finally, Plaintiffs castigate the Catholic Church's arguments as "self-serving," and they assert that the Church lacks the power to decide its own structure as it relates to obligations, *id.* at 28–29. Church autonomy says that the Catholic Church *does* have that right, and civil courts cannot interfere with it.

As noted in the Introduction, Plaintiffs' positions are bewildering, given that Canon Law within the Catholic Church is the literal embodiment of its ecclesiastical governance. This is a paradigm of the kind of judicial activism that the First Amendment is supposed to protect against.

IV. The church autonomy doctrine cannot be waived.

One final note about Plaintiffs' assertions in this Court. They contend that Petitioners have somehow waived any defense as to the Roman Catholic Church's structure. *E.g.*, Pls.' Opp'n 5–8. But because the church autonomy doctrine is based on structural constitutional principles designed to prevent government entanglement with religion, the doctrine should fall into the category of "nonjurisdictional structural constitutional obligations" that cannot be waived. *Freytag* v. *C.I.R.*, 501 U.S. 868, 878–80 (1991) (holding structural principles that the Appointments Clause embodies cannot be waived because they serve the institutional interests of the government as a whole). "[N]otions of consent and waiver cannot be dispositive" when the limitations at issue "serve institutional interests." *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 851 (1986).

Hosanna-Tabor, and the religious freedom cases upon which it is based, establish that the refusal of civil courts to decide religious matters is a fundamental structural principle of our constitutional system. The Religion Clauses "*bar* the government from interfering with the decision of a religious group to fire one of its ministers," make it "*impermissible* for the government to contradict a church's determination of who can act as its ministers," and

"*prohibit*[ ] government involvement in such ecclesiastical decisions." *Hosanna-Tabor*, 565 U.S. at 181, 185, 189 (emphases added). Accord, *e.g.*, *Conlon* v. *InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (holding that the ministerial exception is a "structural" protection, "one that categorically prohibits federal and state governments from becoming involved in religious leadership disputes"); *Tomic* v. *Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. 171 (2012) ("the ministerial exception, like the rest of the internal-affairs doctrine, is not subject to waiver or estoppel").[2]

In sum, judicial interference in ecclesiastical affairs would place a court in "an untenable position" in "violent opposition to the constitutional principle of the separation of church and state." *Combs* v. *Cent. Tex. Annual Conference of United Methodist Church*, 173 F.3d 343, 350 (5th Cir. 1999); accord *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 466 (D.C. Cir. 1996) (same, in the context of affirming the district court's decision to raise the ministerial exception *sua sponte*). Allowing purported waivers of the church autonomy doctrine would force the courts to evaluate what remains quintessentially a religious question. This Court should reject Plaintiffs' invitation to do so here.

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[2] Because courts should not subject religious organizations to "proof" of their organizational structures, this subject matter is distinguishable from an issue like the applicability of the ministerial exception, which this Court has said is an affirmative defense. *Hosanna-Tabor*, 565 U.S. at 195 n.4. In the case of a church's corporate form, courts lack the power to adjudicate the issue.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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