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 VELÁZQUEZ, ELSIE ALVARADO RIVERA, ET AL.,
Respondents.

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

MOTION FOR LEAVE TO FILE AND BRIEF OF UNITED STATES CONFERENCE OF CATHOLIC BISHOPS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

ANTHONY R. PICARELLO, JR.
JEFFREY HUNTER MOON
MICHAEL F. MOSES
U.S. CONFERENCE OF CATHOLIC BISHOPS
3211 4TH STREET, N.E.
WASHINGTON, DC 20017

EUGENE SCALIA
Counsel of Record
THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, DC 20036
(202) 995-8206
escalia@gibsondunn.com

DANIEL NOWICKI
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

ROBERT E. DUNN
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304

Counsel for Amicus Curiae

MOTION FOR LEAVE TO FILE BRIEF FOR THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

The United States Conference of Catholic Bishops (the "Conference" or "USCCB") respectfully moves for leave to file the accompanying *amicus curiae* brief in support of petitioners. Counsel for petitioners have consented to the filing of this brief, but counsel for respondents have withheld consent. The parties received timely notice under Rule 37.2(a) of the Rules of this Court.

The Conference is an assembly of the leadership of the Catholic Church of the United States to which all active Cardinals, Archbishops, and Bishops belong. The Conference seeks to coordinate and encourage Catholic activities in the United States; to protect religious liberty; to conduct religious, charitable, and social welfare work at home and abroad; to aid in education; to care for migrants and refugees; and generally to further these goals through education, publication, and advocacy. The Conference regularly files *amicus curiae* briefs in cases that raise issues of concern to Catholic Church specifically and religious freedom generally.

The Conference's brief highlights the importance of the constitutional issues at stake in this petition to religious entities in the United States, and explains that the decision of the Puerto Rico Supreme Court violated the First Amendment by interfering with internal Church governance and infringing on the free exercise of religion. The Conference fears that the rule of law adopted by the court below, if left uncorrected, could spawn disastrous consequences for the Conference, its

members, and religious institutions throughout the United States.

For the foregoing reasons, the Conference believes that its brief will be of assistance to the Court in its consideration of the petition, and respectfully requests that leave to file be granted.

Respectfully submitted.

ANTHONY R. PICARELLO, JR.
JEFFREY HUNTER MOON
MICHAEL F. MOSES
U.S. CONFERENCE OF CATHOLIC BISHOPS
3211 4TH STREET, N.E.
WASHINGTON, DC 20017

EUGENE SCALIA
Counsel of Record
THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, DC 20036
(202) 995-8206
escalia@gibsondunn.com

DANIEL NOWICKI
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

ROBERT E. DUNN
GIBSON, DUNN & CRUTCHER LLP
1881 Page Mill Road
Palo Alto, CA 94304

Counsel for Amicus Curiae

February 15, 2019

QUESTION PRESENTED

Whether the First Amendment empowers courts to override the chosen legal structure of a religious organization and declare all of its constituent parts a single legal entity subject to joint and several liability.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Treatises

BRIEF FOR *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE*[*]

The United States Conference of Catholic Bishops (the "Conference" or "USCCB") is an assembly of the leadership of the Catholic Church of the United States to which all active Cardinals, Archbishops, and Bishops belong. The Conference seeks to coordinate and encourage Catholic activities in the United States; to protect religious liberty; to conduct religious, charitable, and social welfare work at home and abroad; to aid in education; to care for migrants and refugees; and generally to further these goals through education, publication, and advocacy. The Conference fears that the rule of law adopted by the court below, if left uncorrected, could spawn disastrous consequences for the Conference, its members, and religious institutions throughout the United States.

BACKGROUND

This case originated as a dispute over a pension plan, and raised seemingly straightforward questions regarding which entities, if any, are obligated to fund Respondents' pensions, and what assets, if any, may validly be used for that purpose.

---

[*] Pursuant to Supreme Court Rule 37.6, *amicus* represents that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Respondents were previously employed by one of three schools: the Perpetuo Socorro Academy, San Ignacio de Loyola Academy, and San José Academy. Each school is geographically located within the Archdiocese of San Juan, which also administered the pension plan. App-163-164, 231-232. Although the schools are apparently unincorporated, the Archdiocese of San Juan has represented its intent to ensure that their obligations are paid. *See* Pet. 32.

In prior proceedings, the Puerto Rico Supreme Court held that the three schools are liable for payment of Respondents' pensions. App-229-230. The case was remanded to the trial court (the "Court of First Instance" or "CFI") to determine whether Respondents could seek recovery only from the schools themselves, or whether there were other entities that could be held liable for the schools' obligations. App-229-230.

On remand, Respondents did *not* ask the CFI to use standard legal tools—such as agency law or the alter-ego doctrine—to determine whether other entities besides the schools could be held liable for the pension obligations. Instead, Respondents adopted a different strategy: they sought to make *every* asset owned by *every* Catholic entity on the island available to satisfy the debt, on the theory that the entire Catholic Church is a single monolithic entity. At Respondents' request, the Puerto Rico Department of State (the "Department") issued a corporate certificate declaring the existence of a heretofore unknown corporate entity called the "Roman Catholic and Apostolic Church" (in Spanish, "la 'Iglesia Católica Apostólica y Romana'"), and asserting that every church, parish, and any other Catholic organization that could be characterized as a "division or dependency" ("division o dependencia") of

this body was part of this newly discovered corporation. [R-1 to stay pet.].

Armed with the Department's certification, Respondents demanded that every "Catholic" entity on the island be forced to pay them the purportedly overdue pension payments. The CFI agreed with Respondents, recognized the existence of the newly fashioned "Roman Catholic" super-corporation described in the certificate, and proceeded to order the local sheriff to seize the Puerto Rican assets of any "Roman Catholic" entity. App-223.

The Court of Appeals balked at this outcome and held, correctly, that the "Roman Catholic and Apostolic Church," although a single *religion*, is not a single corporation or legal entity, and that no order or judgment could be enforced against it. App-133.

The Puerto Rico Supreme Court reversed and reinstated the CFI's order, claiming that "the Catholic Church has and enjoys its own legal personality in Puerto Rico." App-14. It baldly asserted that all "entities created by the Catholic Church serve as alter egos" of the Church and of each other, *ibid*., but it did not base this decision on any recognizable alter ego or agency analysis and did not consider whether each diocese and parish was actually intertwined with and inseparable from all the others. *Ibid*. Indeed, Petitioners demonstrated that the island's dioceses are separate juridic persons under canon law and pursuant to treaty, which means that each diocese holds and manages its own property under the supervision of its own bishop. Although this evidence went directly to the question whether the various dioceses are the alter egos or agents of one another, the Puerto Rico Supreme Court

wrongly opined that any consideration of canon law would necessarily violate the Establishment Clause. App-8, 14.

The court thus held that every Catholic entity on the island is part of a single corporation known as "the Catholic Church," and that this entity and all of its members are jointly and severally liable for the pension obligations. App-13.

SUMMARY OF ARGUMENT

The court's creation of an entity called the "Roman Catholic and Apostolic Church"—which followed the Department of State's recognition of this previously unidentified monolithic Catholic entity—was inconsistent with First Amendment principles and reflects an impermissibly discriminatory departure from ordinary principles of civil law. This act of judicial willfulness will have disastrous results for the faithful in Puerto Rico. Pet. 30-32. Moreover, the rule of law adopted below would have grave consequences for the integrity and internal structure of religious institutions across the United States. Given the exceptional importance of the constitutional issues at stake in this case—and the gross injustice that would result from allowing the decision below to stand—this Court should grant review.

I. In Puerto Rico, as in practically all U.S. jurisdictions, plaintiffs may reach the assets of entities purportedly affiliated with the debtor only if they can show that the debtor acted as the agent of those affiliated entities or that the debtor and its affiliates are so intermingled that their individual identities may be ignored and their assets treated as the debtor's own.

Here, the Puerto Rico courts concluded that *none* of the Catholic entities in Puerto Rico—the schools, parishes, or dioceses—was incorporated or had civil personhood under Puerto Rico law. But even if that were correct, neutral civil law principles would have required a determination as to which entities controlled or were intermingled with the unincorporated schools—and what assets should thus be available to pay the pension obligations. In analyzing questions of church control over internal church properties and organizations, this Court has consistently required judicial deference to the determinations of church authorities, at least absent fraud or collusion. Accordingly, the Puerto Rico courts should have conducted this inquiry by consulting the Church's authoritative determinations regarding its internal organization as reflected in canon law, which defines the relationships between the various Catholic entities and clarifies which Church entities are authorized to administer and control property. Yet the Supreme Court of Puerto Rico refused even to consider canon law, asserting that to do so would violate the Establishment Clause. The court's failure to defer to the Church's doctrinal determinations regarding its internal structure conflicts with this Court's precedent. Review is warranted.

Further, by ignoring the Church's canon law, the court effectively took it upon itself to determine how Catholic entities on the island should be internally organized—all in clear violation of the First Amendment. By declaring that every "Roman Catholic" entity is part of a court-created corporation bound to pay the debts of the three schools, the court effectively required that the named defendant in this case—the

Archbishop of San Juan—act as the over-arching administrator of every "Roman Catholic" asset and entity in Puerto Rico. Indeed, such centralized control is now a necessity, because each Catholic organization in the commonwealth can now apparently encumber the assets of every other Catholic organization, nullifying centuries of ecclesiastical doctrine to the contrary. If the Archbishop fails to force any of the many dioceses and parishes in Puerto Rico to offer up their assets, he could be subject to a contempt order. But under Church doctrine, the only assets the Archbishop controls are those of his Archdiocese—he does not even control or administer the assets of the parishes *within* the geographical limits of the Archdiocese (which covers roughly a sixth of the island), much less exert any administrative authority over the assets of the other five dioceses in Puerto Rico.

In addition, the court necessarily embroiled itself in the question of what entities are, in fact, sufficiently "Roman Catholic" to be part of its newly devised corporation and thus subject to its judgment. This will require precisely the type of judicial interpretation of doctrinal commitments this Court has repeatedly held civil courts are incapable of performing—which provides yet another reason for review and reversal.

II. In addition to wrongly ignoring authoritative Church determinations regarding internal organization based on its misinterpretation of the First Amendment, the court below also violated the First Amendment by failing to apply Puerto Rico's civil law in a neutral manner. In declaring all constituent parts of the Church to be members of a single corporation—"the Roman Catholic and Apostolic Church in

Puerto Rico," App-2—the court invented a collective-liability principle applicable only to the Catholic Church.

If the various dioceses and parishes the court lumped into this fictitious entity were not religious institutions, the bizarre remedy adopted here would plainly be unlawful. But because these entities are Catholic—i.e., because they adhere to the teachings of the Church and recognize the religious authority of the Pope—the Supreme Court of Puerto Rico declared that they must pay for any debts incurred by any other Catholic entity on the island. That unfavorable treatment, imposed solely because of the Church's religious character, violates the First Amendment.

III. The rule of law adopted by the court below threatens the ability of churches across the country to exercise their right, long protected by the First Amendment, to organize their internal affairs without undue state interference. Tort plaintiffs and church creditors frequently seek to obliterate or reinvent ecclesiastical organizational structures as a means of expanding the pool of assets available to satisfy their claims. If courts in the United States follow the Puerto Rico Supreme Court's lead and restructure religious institutions according to their own preconceptions, the result would be a severe infringement on the free exercise of religion.

Accordingly, this Court should grant the petition for a writ of certiorari and reverse the judgment of the Puerto Rico Supreme Court.

ARGUMENT

I. THE DECISION BELOW THREATENS THE ABILITY OF CHURCHES TO GOVERN THEMSELVES AND UNCONSTITUTIONALLY ENTANGLES THE COURT IN RELIGIOUS QUESTIONS.

The Puerto Rico Supreme Court held that it was constitutionally prohibited from deferring or even referring to the Church's determinations regarding its internal organization (which are set forth in canon law) because the dispute here involves "external matters of the Catholic Church in its role as employer versus the petitioner employees in a purely contractual dispute." App-11. This decision to ignore canon law was reversible error.

Under well-established civil law principles, a third party can be liable for the debts of an obligor (such as the schools) only if the obligor is the third party's agent or is so intermingled with the third party as to be its alter ego. Here, the Church's own doctrine and canon law prohibit the type of principal-agent control or intermingling that would support a conclusion that every Catholic entity on the island is the "alter-ego" of some over-arching Catholic entity. The Puerto Rico Supreme Court erred in construing the First Amendment to preclude consideration of the Church's own structural rules when purporting to apply the alter-ego doctrine, particularly in the absence of any evidence that any of the entities the court held jointly-and-severally liable was violating internal Church rules. *See Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976) (at least in the absence of fraud or collusion, the First

Amendment "mandate[s] that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, *internal organization*, or ecclesiastical rule, custom, or law") (emphasis added).

Further, the court's order effectively forces the Archbishop of San Juan (named as the representative of the schools) to exercise control over all Church property in Puerto Rico. But the Archbishop's authority to control church property—and his *in*ability to control property outside his archdiocese—is a matter of internal church governance controlled by canon law. The court's decision thus interferes with the hierarchical structure established by the Church, in violation of the First Amendment. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 120–21 (1952) ("[I]n those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls.").

A. Under Canon Law, Each Archdiocese, Diocese, and Parish Is a Separate Person That Manages Separate Property.

The Catholic Church is generally organized into "particular churches"—such as dioceses—which are "communit[ies] of the Christian faithful in communion of faith and sacraments with their bishop ordained in apostolic succession." *Catechism of the Catholic Church* ¶¶ 832-33, Libreria Editrice Vaticana (2d ed). As a matter of Church doctrine and canon law, individual bishops "govern the particular Churches assigned to them." *Id.* ¶ 894 (internal quotation marks

omitted). An individual bishop thus controls *only* the property of the "particular Church"—the diocese—entrusted to him.

Dioceses and archdioceses are separate "juridic persons," which are "subjects in canon law of obligations and rights which correspond to their nature." 1983 Code cc. 113 § 2, 373. Each juridic person has the "innate right to acquire, retain, administer and alienate temporal goods in pursuit of its proper ends independently of civil power." *Id.* at cc. 1254, § 1, 1255. The Church thus presumes that juridic persons will buy, administer, and sell property (subject to other canon law requirements). *Id.* at c. 1254-1298 (regulating the purchase, ownership, administration, and sale of Church property by juridic person to whom it belongs). "The bishop is the administrator for property belonging to the diocese," which is "the juridic person that the bishop administers." Marie T. Reilly, *Catholic Dioceses in Bankruptcy* 8 (2018), https://elibrary.law.psu.edu/bankruptcy/105 (citing New Commentary on the Code of Canon Law 1477 (John P. Beal et al. eds. 2000)).

One consequence of this division of responsibility is that "[p]roperty that belongs to one juridic person cannot simultaneously belong to another juridic person." Reilly, *supra*, at 8; *see also* Adam J. Maida & Nicholas P. Cafardi, *Church Property, Church Finances, and Church Related Corporations* 26 (1983) ("[A]ll property is the property of one public juridic person or another."). Accordingly, property belonging to one diocese does not belong to any other diocese, and no bishop other than the bishop of a given diocese may control, encumber, or dispose of that diocese's property.

Parishes also administer and control their own property. Although parishes within a diocese are under the bishop's general supervision, the "bishop does not administer parish property." Reilly, *supra*, at 8 (citing 1983 Code c. 532). Rather, he appoints a pastor who "administers the property belonging to the parish." *Ibid*. Religious institutes—which are also juridic persons—likewise "administer property outside the supervisory authority of the bishop of the diocese in which they are geographically located." *Id.* at 9 n.47 (citing 1983 Code c. 586).

In short, Church assets "belong to many owners: the Apostolic See, individual dioceses, institutes of consecrated life, societies of apostolic life, parishes, other public juridic persons, private juridic persons, and natural persons individually and in association." New Commentary on the Code of Canon Law 1452 (John P. Beal et al. eds. 2000). The assets of entities affiliated with the Catholic Church are not intermingled, and only the proper individual—a bishop, parish pastor, leader of a religious institute, etc.—may control, transfer, or encumber a given property.

B. The Puerto Rico Supreme Court's Alter-Ego "Analysis" Ignored the Church's Internal Organization in Violation of the First Amendment.

The Puerto Rico Supreme Court ignored the Church's internal structure and instead proclaimed, with practically no analysis, that every archdiocese, diocese, parish, religious institute, and school—and any other entity associated with the "Catholic Church" in Puerto Rico—are merely the "alter egos" of a single corporate entity. App-14. But Puerto Rico's

"alter ego" doctrine—like the doctrine applied in practically every state—necessarily entails a fact-based analysis of which entities and individuals control one another and their property. *See D.A.Co. v. Alturas Fl. Dev. Corp. y otro*, No. CE-87-220, 1993 WL 840226 & n.3 (P.R. Mar. 9, 1993) (explaining veil-piercing and alter-ego doctrines in Puerto Rico and their similarity to other jurisdictions). Under Puerto Rican law, an entity "is the alter ego or business conduit" of another "when there is such unity of interest and ownership that the personalities of the [entity] and [those who control it]—whether natural or artificial persons—are intermingled and, as a result, the [entity] actually is not a separate and independent entity." *Id.* "The burden of proof is not met by simply alleging that the corporation is an alter ego of a person, but with concrete evidence that there was no adequate separation between the personalities of the corporation" and its alleged alter egos. *Id.*[1]

Determining whether two dioceses are "intermingled" or co-extensively administered requires looking

[1] It is unclear why the Puerto Rico Supreme Court invoked the "alter ego" doctrine at all. The "alter ego" doctrine, also commonly known as "piercing the corporate veil," is typically applied only when the defendant-obligor is an actual corporation. *See D.A.Co.*, 1993 WL 840226. Where, as here, the obligor is an unincorporated entity, courts apply general rules of agency to determine whether the unincorporated obligor was acting on behalf of some unnamed principal when it incurred the obligation in question. *See* Reporter's Notes to Restatement (Second) of Agency § 14M (1958) (explaining that agency can include both natural persons and corporations, and noting the differences between agency and corporation-specific "veil piercing" doctrine). Nevertheless, the doctrines are largely similar, and because the Puerto Rico Supreme Court couched its decision in "alter ego" terms, *amicus* addresses the alter ego doctrine.

to the rules governing their operations and the entities' adherence to those rules in practice. In the Catholic Church, the relationships between various entities are *controlled by canon law*. It is thus impossible to faithfully apply the alter-ego doctrine to Church entities without reference to canon law. As this Court has repeatedly explained, when civil property or contract disputes require analysis of internal organization and structure—and when that structure is controlled by doctrinal law—"the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Jones v. Wolf*, 443 U.S. 595, 604 (1979); *see also Milivojevich*, 426 U.S. at 709 ("[W]here 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[.]").

The court's disregard for canon law is particularly problematic here because the court's order effectively reorganizes the Church and forces it to violate its own hierarchical structure. By declaring that every "Roman Catholic" entity is part of a commonwealth-created monolithic corporation and therefore bound to pay $4.7 million, the court overrode internal Church doctrine constraining the authority of particular individuals and entities to control and encumber the assets of other church entities, and effectively required the named defendant in this case—the Archbishop of San Juan—to act as the administrator of every "Roman Catholic" asset in Puerto Rico. Indeed, if he fails to force any of the many dioceses and parishes in

Puerto Rico to offer up their assets, he could be subject to a contempt order. *See* App-221-224.

But the First Amendment squarely prohibits courts from overriding a "Church's choice of its hierarchy" in this fashion. *Kedroff*, 344 U.S. at 119. At least in the absence of fraud or collusion, this Court's precedent "leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 447 (1969). Thus, absent a finding that the non-party Church entities had disregarded the laws of the Church and exercised control over the obligor entities, or that the Archbishop had somehow done so with respect to church organizations outside of his Archdiocese, the First Amendment prohibited the civil courts from ignoring canon law and deciding for themselves how Catholic organizations should administer their assets.

In short, the Puerto Rico Supreme Court's conclusion that the First Amendment *prohibited* reference to canon law got it exactly backwards. This Court has never held that the Establishment Clause prevents courts from consulting canon law—or the internal laws of any other religious group—when resolving disputes implicating church property. And where, as here, a civil law question of property ownership turns on issues of hierarchical control and agency, the Religion Clauses require courts to give deference to a church's chosen organizational structure. The decision of the Puerto Rico Supreme Court thus violates

core constitutional principles and conflicts with the practice of other appellate courts.[2]

C The Decision Below Creates the Very Religious Entanglement It Purported to Avoid.

By holding that all "divisions" of the "Roman Catholic and Apostolic Church" now owe $4.7 million to Respondents, the court's decision also raises the question of which entities are sufficiently "Catholic" to constitute "divisions" of the "Roman Catholic and Apostolic Church." App-14 (relying on the Department's corporate certificate); [R-1 to stay pet.] (claiming all "divisions" of Roman Catholicism are part of a single corporation).

Answering this question will require the very intrusion into church doctrine—and religious entanglement—that the Puerto Rico Supreme Court purportedly sought to avoid. Is a private charity a division of the Church if its owners and operators promote the Catholic faith? What of a school founded by Catholic parents to provide their children a religious-based education? To answer such questions, a court must determine whether an entity is—because of the beliefs it

---

[2] *See, e.g., Stevens v. Roman Catholic Bishop of Fresno*, 123 Cal. Rptr. 171, 175 (Cal. Ct. App. 1975) (rejecting argument that canon law was "irrelevant to the issue of agency" and considering canon law in determining whether a Bishop was vicariously liable for a priest's tort); *Does 1-9 v. Compcare, Inc.*, 763 P.2d 1237, 1242 (Wash. App. 1988) (finding agency relationship because the "duty of obedience which [the priest] owed the Diocese encompassed all phases of his life and correspondingly the Diocese's authority over its cleric went beyond the customary employer/employee relationship" (citing *Code of Canon Law,* Canons 265, 273, 290, 1333, 1350, 1395 (1985))).

manifests—properly part of the "Roman Catholic" structure. But that is a religious question that civil courts are not competent to decide. *See Kedroff*, 344 U.S. at 119.

The court will also have to decide whether a nominally Catholic organization is part of the "Roman Catholic" church even if it has abandoned Church doctrine or rejected the authority of the local bishop. But civil courts are likewise forbidden from deciding whether the "new tenets and doctrines" of a particular religious adherent are "variant" from Church doctrine. *Presbyterian Church*, 393 U.S. at 443-44, 447.

II. THE PUERTO RICO SUPREME COURT VIOLATED THE CONSTITUTIONAL REQUIREMENT OF NEUTRALITY TOWARD RELIGION.

The decision below suffers from an additional constitutional infirmity. Although the Puerto Rico Supreme Court purported to adjudicate this dispute based on "neutral principles of law," App-9-10, there is no generally applicable legal principle that allows a court to manufacture a corporation out of thin air for the purpose of expanding the assets available to plaintiffs. By inventing a new rule of corporation law custom-made for the Catholic Church, the court violated the bedrock principle of neutrality toward religion.

1. In declaring that the Catholic Church has a single "legal personality" in Puerto Rico, the court purported to rely on the 1898 Treaty of Paris and this Court's *Ponce* opinion. App-5-8. But neither authority supports its conclusion.

On August 8, 1511, Pope Julius II created the first Catholic entity in Puerto Rico, known as the diocese of "the Island of San Juan." Corrigan, *The Hierarchy in Our Colonial Possessions*, The Catholic Historical Review, Vol. 4, No. 1 (Apr., 1918), p. 80. The diocese later became better known as the "Diocese of Puerto Rico," and it originally covered the entirety of the island. *See id*.

Although the diocese acquired property and transacted business under canon law, in the early-to-mid nineteenth century, assets of the diocese—and of other dioceses throughout Spain—were seized by the Spanish government pursuant to anti-clerical laws that disregarded the ownership rights of canonical entities. *See Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 315 (1908).[3] The Spanish state's power struggle with the Church was finally resolved through a series of mid-nineteenth century "concordats" between "the Spanish government and the papacy," which recognized that ecclesiastical entities—like the diocese—had the power to own and dispose of civil property as if they were civil corporations. *Id*. at 315-16. To effectuate these agreements, the Spanish corporations code recognized that the formation of church corporations was governed by the concordats, not by typical rules of incorporation under civil law. *Id*. at 309-10.

The United States took possession of Puerto Rico following the Spanish-American War, but it preserved

[3] The party referred to as the "Roman Catholic Apostolic Church in Porto Rico" in the U.S. Reports was actually the Diocese of Puerto Rico. *See Ponce*, 210 U.S. at 297 (explaining the suit was commenced by "the bishop of that diocese").

the effect of the concordats by recognizing the corporate authority that ecclesiastical organizations had enjoyed under Spanish rule. In the Treaty of Paris, the United States agreed that Spain's relinquishment of territory would "[]not in any respect impair the property or rights which by law belongs to the peaceful possession of property of all kinds, of . . . *ecclesiastical* or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories." *Id*. at 310 (emphasis added).

Applying this provision of the Treaty, this Court held in *Ponce* that the nearly four-centuries-old Diocese of Puerto Rico was—as a pre-existing "ecclesiastical" body governed by the concordats—able to own property, transact business, and file suit as if it were a civil corporation, despite the absence of any formal incorporation documents. *Id*. at 319 (rejecting the argument that "the various laws of Porto Rico relating to the formation and regulation of business corporations" apply to the diocese); *see also Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929) (recognizing the archbishop of the Archdiocese of Manilla, another ecclesiastical entity governed by the Treaty, as "a juristic person" amenable to suit).

But *Ponce* did not conclude that the only Catholic entity with civil personhood in 1898 was the Diocese of Puerto Rico, or that the Diocese was merely a fragment of some enormous international corporation known as the "Catholic Church." *See* 210 U.S. at 311. To the contrary, under the concordats, and thus under the Treaty, *each* individual diocese, parish, and other juridical person had its own *separate and distinct* legal personality, as it had under canon law. *See id.* at

310 (Treaty preserved rights of all "ecclesiastical . . . *bodies* . . . having legal capacity to acquire and possess property") (emphasis added); App-238 (concordats between Spain and the Holy See recognized that the "dioceses, parishes, and other territorial circumscriptions" *each* "enjoy civil legal personhood as soon as they are canonical"). *Ponce* thus provides no support for the Puerto Rico Supreme Court's conclusion that the Catholic Church has only a *single* legal personality.

The court's decision to create a single Catholic entity liable for the debts of any Catholic institution on the island is thus untethered to any neutral source of law. Rather, the court created a *new* rule of law specifically for the Catholic Church (and one explicitly contrary to its doctrinal views), in violation of the First Amendment.

3. "The Free Exercise Clause bars even 'subtle departures from neutrality' on matters of religion." *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 534 (1993)). Here, the court's and government's departure from longstanding civil law was not subtle.

The Catholic Church is *a religious body* that manifests itself in various forms, some of them corporate. Accordingly, the fact that an entity or natural person can be described as "Catholic" offers no insight into the nature of its civil personality, much less the scope of its debts, assets, and contractual obligations.

Petitioners here are concededly members of the same religious faith as the entities that organized the now-insolvent retirement trust fund. But Petitioners'

religious communion with those entities is completely irrelevant to the question whether they are liable for the trust's debts. The court below nonetheless decided this case on the basis of religious identity alone—issuing a blanket ruling that all "Catholic" organizations are liable.

That ruling cannot be squared with the Free Exercise Clause, which "'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (quoting *Church of Lukumi*, 508 U.S. at 533, 542).

Demanding that every "Catholic" entity be held liable for any obligation incurred by any other "Catholic" entity is assuredly an unconstitutional disability based on religious status. *Cf. Trinity Lutheran*, 137 S. Ct. at 2019. If a contract were breached by an affiliate of a secular association with a shared set of principles or beliefs—an Elks Club, college fraternity, or lodge of Masons, for example—the court would not order that every other affiliate sharing those principles is obligated, *solely by virtue of their shared beliefs*, to collectively pay the debt. Shared belief does not create shared civil identity. Yet the court's reasoning contemplates that any adherent of any religion could be dragged into court and forced to pay the debts of *any other* adherent. The court's refusal to apply the same rules to Catholic entities that would apply to secular ones violated the First Amendment.

III. THE ISSUE PRESENTED IS EXCEPTIONALLY IMPORTANT FOR RELIGIOUS INSTITUTIONS ACROSS THE COUNTRY.

The question of law resolved by the court below—namely, the First Amendment standard for determining whether creditors of one church entity can reach assets owned or controlled by other church entities—is an issue of immediate and recurring importance to religious institutions in the United States.

Over the past 15 years, for example, at least eighteen religious entities have sought bankruptcy protection in chapter 11 as a result of tort suits filed against them. *See* Catholic Dioceses in Bankruptcy, Penn State Law eLibrary, https://elibrary.law.psu.edu/bankruptcy/. One of the "critical issues" raised in such proceedings "is whether diocesan creditors can reach the assets of separate legal entities under some version of alter ego liability." Stephen M. Bainbridge & Aaron H. Cole, *The Bishop's Alter Ego: Enterprise Liability and the Catholic Priest Sex Abuse Scandal*, 46 J. Cath. Leg. Stud., 65, 68 (2007). This is because, in attempting to expand the pool of available assets, plaintiffs sometimes "seek[] a form of enterprise liability in which the diocese and any separately incorporated parishes are treated as part of a single enterprise for liability purposes." *Id*. at 82. For example, in one such bankruptcy proceeding, creditors moved to consolidate over 200 church-affiliated entities, including the archdiocese, its parishes, several schools, and various chaplaincies. Memorandum in support of Motion for Substantive Consolidation, *In re: The Archdiocese of Saint Paul & Minneapolis*, No. 15-30125, ECF No. 631 (D. Minn. Bnkr.). Similarly, creditors of

another diocese sought to reach the assets of local parishes, arguing that the diocese was "intertwined with the interests of the Parishes and Diocese Affiliated Entities[.]" Mem. of Pts. & Auth. ISO of Mot. to Commence, Prosecute, and Settle Litig., *In re Roman Catholic Bishop of Great Falls, Montana,* No. 17-60271, ECF No. 221 at 1 (D. Mont. Bnkr. Nov. 2, 2017).

Confronted with these claims, courts have analyzed whether various church institutions "are alter egos of one another or part of a single enterprise[.]" Bainbridge at 67. In applying those legal rules in light of internal church structure, courts have declined in most cases to conclude that dioceses and the ministries beneath them are alter egos of one another. *See, e.g. In re Archdiocese of Saint Paul & Minneapolis*, No. 15-30125, 553 B.R. 693, 703 (D. Minn. Bnkr. July 28, 2016) (denying motion to consolidate assets because "[e]ven if the Archbishop exercises control of the Catholic entities and properties, such exercises of authority, alone, fail to constitute an abuse of the corporate form."); *Doe v. Gelineau*, 732 A.2d 43, 51 (R.I. 1999) (no enterprise liability on diocese for torts of affiliated entity because there was insufficient evidence the diocese "has substantially participated in, much less controlled, the finances, operations, and/or management of [the entity] to the extent that the latter's separate corporate identity should be disregarded and liability imposed upon [the diocese]"); *Taeger v. Catholic Family & Community Servs.*, 995 P.2d 721, 734 (Ariz. Ct. App. 1999) (declining to hold diocese liable under alter-ego theory for tort allegedly committed by

non-profit church entity because the bishop did not exercise day-to-day control over the entity or its directors).

Plaintiffs have leveled similar "enterprise liability" claims against other religious groups. *E.g.*, *Folwell v. Bernard By & Through Bernard,* 477 So. 2d 1060, 1063 (Fla. Dist. Ct. App. 1985) (rejecting attempt to hold Episcopal diocese vicariously liable for local church's tort); *Eckler v. Gen. Council of the Assemblies of God*, 784 S.W.2d 935, 939-40 (Tex. App. 1990) (rejecting argument that individual church was agent of the Assemblies of God General Council); *Hilani v. Greek Orthodox Archdiocese of Am.*, 863 F. Supp. 2d 711, 721-22 (W.D. Tenn. 2012) (rejecting argument that Greek Orthodox churches in Tennessee were the alter egos of New York Archdiocese).

These cases illustrate the recurring nature of the question presented, as well as the Puerto Rico Supreme Court's departure from the legal analysis applied elsewhere to date. The lower court's decision to hold five dioceses liable for obligations incurred by schools in a different diocese is particularly troubling. Imposing such liability across long-established church divisions exerts powerful judicial compulsion for churches to reorganize themselves. After all, if one diocese can be liable for the debts of another, hierarchical churches will be pressured to consolidate control under a single head to manage assets and liabilities. But creating such a centralized authority would directly conflict with longstanding church structures and organizational doctrine, which provide for substantial degrees of local governance in most religious denominations, not just the Catholic Church. Forcing

religious groups to change their organizational structures intrudes on internal church governance in violation of the First Amendment. *See Watson v. Jones*, 80 U.S. 679, 733-34 (1871); *Kedroff*, 344 U.S. at 119; *Presbyterian Church*, 393 U.S. at 449; *Milivojevich*, 426 U.S. at 717-18.

The Puerto Rico Supreme Court's view of the Church as a monolithic entity, if adopted by other courts, would threaten numerous religious institutions with far flung liabilities and thus force them to change their internal organization. To prevent such a clearly unconstitutional precedent from taking root, this Court should grant the petition and reaffirm that the First Amendment does not authorize courts to supplant the Church's organizational structure with one of its own invention.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted.

ANTHONY R. PICARELLO, JR.
JEFFREY HUNTER MOON
MICHAEL F. MOSES
U.S. CONFERENCE F
CATHOLIC BISHOPS
3211 4TH STREET, N.E.
WASHINGTON, DC 20017

EUGENE SCALIA
Counsel of Record
THOMAS G. HUNGAR
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, DC 20036
(202) 995-8206
escalia@gibsondunn.com

DANIEL NOWICKI
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

ROBERT E. DUNN
GIBSON, DUNN & CRUTCHER LLP
1881 PAGE MILL ROAD
PALO ALTO, CA 94304

Counsel for Amicus Curiae

February 15, 2019