No. _____

IN THE
Supreme Court of the United States

KENNETH SHELTON,
Petitioner,
v.
ANTHONEÉ PATTERSON,
Respondent.

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

It is well settled that the First Amendment Religion Clauses robustly protect the freedom of a Church to govern itself according to religious law and practices. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952). The lower courts, however, continue to find imaginative but doctrinally incorrect justifications for departing from the Court's teaching on this important constitutional question. *See, e.g.*, *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, 589 U.S. ____ (2020), 140 S.Ct. 696 (per curiam). The persistence of these cases is attributable, in large measure, to the need for this Court to reaffirm, renew, and apply the principles established in *Kedroff* to the current generation of controversies around religious freedom.

The instant case presents such an opportunity. Here, the Pennsylvania court, having once recognized that the core dispute was about the leadership of a church, nevertheless reversed course and resurrected an order it previously had vacated as *ultra vires*, essentially now directing that a non-member of a religious community be installed in the highest leadership position of the Church, displacing its duly elected leader. Against that backdrop, the case below presents the following issue for plenary review:

> Whether a church's First Amendment rights are violated when, under the guise of "neutral principles," a civil magistrate selects the leadership of the church in violation of that church's doctrine, custom, and practice?

LIST OF PARTIES

The Petitioner, Bishop Kenneth Shelton, was the defendant below. The Respondent, plaintiff below, is Anthoneé Patterson.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Bishop Kenneth Shelton, respectfully prays for a writ of certiorari to review the decision of the Commonwealth Court of Pennsylvania, No. 439 C.D. 2018, filed on April 15, 2019.

OPINION BELOW

The most recent opinion of the highest state court to review the merits, the Commonwealth Court of Pennsylvania, is unreported at No. 439 C.D. 2018, 2019 WL 1591859, and appears at Appendix A (App. 1–13). The denial of the Application for Rehearing appears at Appendix B (App. 14). The Supreme Court of Pennsylvania's order denying review is reported at 221 A.3d 185 (no published opinion) (November 26, 2019), and appears at Appendix C (App. 15).

JURISDICTION

The Commonwealth Court of Pennsylvania issued the decision for which Bishop Shelton seeks review on April 15, 2019. (App. 1–13.) On April 29, 2019, Bishop Shelton timely filed an application for rehearing, which was denied on June 14, 2019. (App. 14.) The Supreme Court of Pennsylvania denied Bishop Shelton's timely Petition for Allowance of Appeal on November 26, 2019. (App. 15.) On February 12, 2020, pursuant to Rule 13.5, Justice Samuel A. Alito granted Bishop Shelton's application to extend the time to file this petition to and including April 24, 2020. This Court has jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, in pertinent part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]

U.S. Const. amend. I.

STATEMENT OF THE CASE

Respondent, Anthoneé Patterson, a former member of the Church of the Lord Jesus Christ of the Apostolic Faith, has continuously used the civil courts to oust its duly elected leader, Petitioner, Kenneth Shelton. No civil court has authority to do that. Yet, that could be the end result of the decision for review here, absent this Court's action.

A. Factual Background as to the Church and Church Corporation

The Church of the Lord Jesus Christ of the Apostolic Faith (the "Church") was founded in 1919 by Bishop S.C. Johnson. Its headquarters is located at "Apostolic Square" in Philadelphia, Pennsylvania. The Church is hierarchical in nature and has more than 50 local churches throughout the United States. The Church is not incorporated, but a civil agency called the "Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc." (the "Church Corporation") was incorporated as a Pennsylvania nonprofit corporation in 1947 as a way to hold and administer property and transact the business of the Church. The Church's General

Assembly[1] also acts annually on behalf of the entire Church community to care for its ecclesiastical business. As an article of faith, the Church community has one "Bishop" who, after election by the General Assembly, serves as the "General Overseer" of the Church for the rest of his life. (*See* Bylaws at Article VII; App. 19–20.) The General Overseer is entrusted with the care and custody of the Church's property for the good of the Church. Thus, the Church Corporation holds all of the Church's property in trust for the benefit of the Church, under the superintendence of the General Overseer.

B. The General Overseer as President of the Church Corporation Under Church Doctrine, Custom, and Practice

1. Under the Church's Bylaws, which express the Church's beliefs, the General Overseer also serves as the President of the Church Corporation, a position he also holds for the rest of his life. (Bylaws at Articles VII and XIV; *id.* at 19, 22.) By virtue of his office, the General Overseer is always the President of and

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[1] The "General Assembly" is an annual session of the Church congregation at which matters of ecclesiastical governance and doctrine are reviewed and enacted. The General Assembly is also the name of the congregation. The Church's Bylaws appear at Appendix D (App. 16.) The Church Corporation's Articles of Incorporation appear at Appendix E (App. 26). The Church's Bylaws provide that "[a]ny session called by the General Overseer shall also be designated as a general assembly and have all the rights and powers and authority of the annual general assembly." (Bylaws at Article I; *id.* at 16.) The Bylaws further provide that the "quorum for the transaction of business before the General Assembly shall be fifty members voting before matters of the General Assembly." (Bylaws at Article IV; *id.* at 17.)

Trustee for the Church Corporation. (*Id.*) Additional Trustees of the Church Corporation—who must be nominated and approved by the General Overseer—are elected annually, and they hold their offices until their successors are elected by the General Assembly. (*Id.*)

2. The prior General Overseer died in 1991. His succession was contested by a few including Respondent, who was then a member of the Church. At the September 1992 annual meeting of the General Assembly, however, Petitioner Kenneth Shelton was duly elected General Overseer by a majority of approximately 5,000 Church members in attendance, in accordance with the General Assembly Bylaws. Since 1992, Bishop Shelton has served as the General Overseer and automatically as President of the Church Corporation. Bishop Shelton has provided steadfast spiritual leadership and guidance to his parishioners, who have filled the pews in the Church's sanctuary every Sunday for decades. The Church is a thriving community that has enthusiastically coalesced around Bishop Shelton, depends on his leadership, and has no wish to disrupt the harmonious status quo.

C. Respondent's Litigation to Replace Bishop Shelton as General Overseer and President

1. Respondent Patterson is a now-former member of the Church who lives in Florida. He was disfellowed and excommunicated in 1992.[2] As noted above,

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[2] On August 31, 2006, the Church Council of Priests issued an additional Proclamation that the Church "will not accept

Patterson was a member of a minority faction that left the Church body in 1992. Since 1995, Patterson has waged what can only be described as a crusade against Bishop Shelton, relentlessly pursuing duplicative and abusive legal actions across the country in an ongoing and ceaseless attempt to oust Bishop Shelton and gain control of the Church, the Church Corporation, and its assets.

In a 1995 Complaint he filed in a Philadelphia trial court, Patterson alleged widespread misfeasance and demanded, *inter alia*, (1) the appointment of a receiver to take control of the assets of the Church held by the Corporate Trustee; (2) annual financial reports for the years 1991–1994; (3) an accounting; (4) an order substituting Patterson as General Overseer; and (5) new elections for certain Church offices.[3] Any legal import attached to the issues Patterson raised in the Complaint is now merely historic, except for the fourth request for relief, *i.e.*, an order making Patterson General Overseer and supplanting Bishop Shelton, which remains at the heart of the instant dispute. Patterson requested that relief under Pennsylvania's Nonprofit Corporation Law ("NPCL"). Contrary to what Patterson asserted, no court can order the substitution of the leadership of a Church under the NPCL.

Anthonee Patterson or any of those who aid, abet or associate with him as members or officers of this Church, as they have demonstrated that they hold religious and doctrinal views contrary to our own." The Proclamation appears at Appendix F (App. 29).

[3] Patterson's 1995 Complaint appears at Appendix G (App. 30).

2. In December 2005, after a decade of litigation in the Pennsylvania courts, the parties consented to arbitration of the NPCL issues. The trial court ordered Patterson's NPCL claims into arbitration and the case was dismissed.[4] From April to July 2006, the arbitrator issued a series of adjudications. He decided there were certain violations of the NPCL and ordered the appointment of a receiver to audit the Church's records and make a report.

But he also went much further. He concluded that Bishop Shelton should not lead the Church and that—professedly applying "neutral principles of law"—the Church should be awarded to Patterson because he "acted in harmony with the laws, usages, and customs of the General Assembly."[5] To do so, he suspended operation of Article Seven of the Church's Bylaws (which state that the General Overseer is the President of the Church Corporation) because it "lacks constitutional status."[6] (App. at 86.) But plainly, that

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[4] The Court of Common Pleas of Philadelphia County's January 10, 2006 Order referring Patterson's 1995 Complaint to arbitration appears at Appendix H (App. 41).

[5] The April 26, 2006 Arbitration Adjudication appears at Appendix I (App. 43). The arbitrator issued a Supplemental Adjudication on May 8, 2006 appointing a receiver for the Church's property. The May 8, 2006 Supplemental Adjudication appears at Appendix J (App. 65). The trial court confirmed these Adjudications by Order dated July 10, 2006 and Patterson entered judgment on July 20, 2006. The July 10, 2006 Order appears at Appendix K (App. 68). The July 20, 2006 Notice of Judgment appears at Appendix L (App. 71).

[6] The July 25, 2006 Final Adjudication and Decree appears at Appendix M (App. 74). On April 17, 2007, during the pendency of

Article is an exercise of the Church's constitutionally guaranteed prerogative to engage in ecclesiastical self-governance, and it frames the dispute that regrettably still languishes in the secular courts today. That dispute persists because, under the arbitrator's adjudications, the entirety of the Church's operations is to be turned over to Patterson, against the Church's doctrinal tenets.

This award not only exceeded the permissible scope of the arbitration as a matter of the secular common law, but also violated the protected rights of Bishop Shelton as a religious leader and the rights of the Church. The arbitrator recognized the constitutional impediment but rationalized his decision by stating that Bishop Shelton was only being removed as President of the Church Corporation and not as General Overseer.

The arbitrator removed Bishop Shelton as President of the Church Corporation and transferred control of the Church's assets and property to Patterson, a non-member of the Church who was never elected to any such office by the Church's officers. The arbitrator further removed other duly

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Bishop Shelton's appeal to vacate the arbitration adjudications, Patterson filed a Praecipe to Enter Judgment with the trial court and requested that the text of the April 26, 2006 Arbitration Adjudication, the May 8, 2006 Supplemental Adjudication, and the July 25, 2006 Final Adjudication and Decree be entered on the docket as though they were final judgments. The April 17, 2007 Praecipe to Enter Judgment appears Appendix N (App. 95). As discussed *infra*, the Commonwealth Court in 2017 sanctioned these judgments, concluding that they represent "the last valid judgments in this case." *Patterson III*, 175 A.3d at 450 n.7 (App. at 162).

elected officers of the Church Corporation and gave Patterson the power to hold elections—powers that, under the Church Bylaws, are exclusively reserved to the General Overseer and reflect religious custom and practice as articles of faith.

D. The Pennsylvania Commonwealth Court Vacates the Arbitration Adjudications in 2008 and Dismisses Patterson's Complaint in 2015

1. Bishop Shelton petitioned to vacate the arbitration adjudications on the ground that the arbitrator's authority did not extend to the governance of the Church or the Church Corporation, both in fact and as a matter of law, especially given the protected religious nature of the question of Church leadership.[7] In January 2008, the Commonwealth Court of Pennsylvania agreed with Bishop Shelton and vacated the arbitration adjudications as *ultra vires*. The court further ordered that Patterson's claims under the NPCL be remanded for trial. *See Patterson v. Shelton*, Nos. 1967 C.D. 2006, 1968 C.D. 2006, 2008 WL

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[7] Under Pennsylvania law, common law arbitration awards may not be vacated "unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award." 42 Pa. C.S.A. § 7341. A common law arbitration award may also be vacated, where, as here, "the arbitrator exceeds the scope of his authority." *Jefferson Woodlands Partners, L.P. v. Jefferson Hills Borough*, 881 A.2d 44, 48 (Pa. Commw. Ct. 2005).

9401359, (Pa. Commw. Ct. Jan. 31, 2008) (*Patterson I*, or the "2008 Opinion") (App. at 110–19).[8]

2. On remand to the trial court, Bishop Shelton renewed his motion to dismiss on the ground that resolution of Patterson's NPCL claims would impermissibly entangle the court in ecclesiastical and doctrinal matters. The trial court agreed and dismissed the Complaint, and, in December 2015, the Commonwealth Court affirmed that ruling. *See Patterson v. Shelton*, No. 2147 C.D. 2014, 2015 WL 9260536 (Pa. Commw. Ct. Dec. 18, 2015) (*Patterson II*, or the "2015 Opinion") (App. at 133–147).[9] Patterson exhausted all available appeals of the 2015 Opinion, effectively disposing of any and all remaining claims and fully and finally concluding the litigation. *See Patterson v. Shelton*, 137 S.Ct. 297 (Oct. 11, 2016) (denying Patterson's petition for writ of certiorari of the 2015 Opinion). And the case should have ended there, consistent with settled First Amendment principles.

E. In a Remarkable About-Face, in 2017, the Commonwealth Court Rules Patterson Can Enforce the Arbitration Adjudications

In May 2016, Patterson filed a motion with the trial court on the closed docket of the original (twice dismissed and terminated) case, seeking to strike the Commonwealth Court's *2008* Opinion and order

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[8] The 2008 Opinion appears at Appendix O (App. 98). Patterson exhausted his appeals of the 2008 Opinion. *See Patterson v. Shelton*, 963 A.2d 471 (Pa. Oct. 14, 2008) (denying Patterson's petition for allowance of appeal of 2008 Opinion.)

[9] The 2015 Opinion appears at Appendix P (App. 120).

vacating the arbitration adjudications. The trial court denied Patterson's motion. But then, in November 2017, the Commonwealth Court reversed the trial court, and struck its own ten-year-old order holding that the First Amendment deprives the courts of jurisdiction. *See Patterson v. Shelton*, 175 A.2d 442, 449–50 (Pa. Commw. Ct. 2017) (*Patterson III*, or the "2017 Opinion") (App. at 160–62).[10] Essentially, the Commonwealth Court appears to have held that once the arbitration decision was rendered it was not subject to further review, even under Pennsylvania statute or the U.S. Constitution. *Id.*[11]

F. In 2019, the Commonwealth Court Reaffirms the 2017 Opinion, Violating Bishop Shelton's Rights as General Overseer of the Church

Attempting to reconcile the 2017 Opinion with bedrock jurisdictional principles—*i.e.* that a court must have jurisdiction or it cannot enter any valid judgment, and that objections to subject matter jurisdiction based on the First Amendment cannot be waived—on January 31, 2018, Bishop Shelton filed a motion with the trial court to strike its prior orders concerning the 2006 arbitration adjudications for lack

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[10] The 2017 Opinion appears at Appendix Q (App. 148).

[11] The Pennsylvania Supreme Court denied review and this Court denied a Petition for a Writ of Certiorari. Bishop Shelton filed that Petition to protect his First Amendment rights. Simultaneously, Bishop Shelton continued to pursue remedies in the trial court on remand. The trial court did not grant the relief Bishop Shelton requested in those proceedings, and the matter is ripe for review.

of jurisdiction. The trial court denied that motion, and Bishop Shelton appealed to the Commonwealth Court. In an opinion dated April 15, 2019, the Commonwealth Court reaffirmed its 2017 Opinion.[12] As a result—and despite having otherwise been victorious in this litigation—Bishop Shelton and the Church he has led since 1992 are facing the very real possibility that the courts will award the Church and Church Corporation to Patterson.

REASONS FOR GRANTING THE PETITION

The core dispute here is simple: whether Patterson can use the civil courts—through a common law arbitration proceeding—to oust Bishop Shelton and transfer control of the Church and Church Corporation to himself. But though the answer to that question should be straightforward under this Court's First Amendment jurisprudence—that courts lack the subject matter jurisdiction or competence to adjudicate such ecclesiastical disputes—the doctrine was ignored in the instant case. The result here serves to illuminate the doctrinal uncertainties that have plagued federal and state courts in the absence of direction from this Court regarding the scope and effect of the Religion Clauses enshrined in the First Amendment. These simple but important constitutional issues are central to church self-governance and to the centuries-old foundational principle that civil courts cannot encroach upon those

[12] As set forth above, Bishop Shelton sought reargument with the Commonwealth Court (App. B at 14) and review from the Pennsylvania Supreme Court (App. C at 15), but both applications were denied.

areas of protected religious exercise. This case therefore presents a rare opportunity for the Court to reconcile disparate, inconsistent views among federal and state courts on whether, when, and how courts can enter the religious thicket on leadership questions within a church.

A. A Civil Magistrate Cannot Select the Head of the Church, Especially in Violation of That Church's Doctrine, Custom, and Practice

Patterson's original 1995 Complaint may have faded from view, but the relief he seeks has been the same from the outset—Patterson wants the Pennsylvania courts to replace Bishop Shelton as General Overseer of the Church. The Commonwealth Court effectively did just that when it blessed the arbitrator's decision to remove Bishop Shelton as President of the Church Corporation and install Patterson in his place. If the decision below stands, Patterson will have control over the Church's property, in violation of the Church's Bylaws and the sincerely held beliefs of the Church's members. The matter now before the Court is whether it is constitutionally permissible for a civil magistrate to essentially do what Patterson asked for when he filed his Complaint, *i.e.*, the removal of Bishop Shelton and his own installation in Bishop Shelton's ecclesiastical leadership role. (*See* Patterson's 1995 Complaint, App. at 32–39.)

As this Court first recognized more than 150 years ago in *Watson v. Jones*, no court is competent to replace the head of a Church. 80 U.S. 679, 726 (1871) ("The rule of action which should govern the civil courts . . . is, that, whenever the questions of

discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them."). And this Court reaffirmed decades later in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.* that state-sanctioned interference into church leadership violates the Free Exercise Clause of the First Amendment. 344 U.S. 94, 106–08 (1952) (statute purporting to transfer control of New York cathedral church from central governing hierarchy to opposing faction violated the Free Exercise Clause); *see also, e.g.*, *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 190–91 (1960) (same result in litigation).

As explained above, in the year following the preceding General Overseer's death in 1991, a majority of the General Assembly of approximately 5,000 Church members elected Kenneth Shelton as General Overseer. When he was confirmed as General Overseer, Bishop Shelton automatically became President of the Board of the Church Corporation under the Bylaws. (*See* Bylaws at Articles VII and XIV, App. at 19, 22.) In the lawsuit he filed against Bishop Shelton in 1995, Patterson sought to undo these valid General Assembly election results. Patterson claimed in his 1995 Complaint, among other things, that Bishop Shelton had violated several provisions of the NPCL and, consequently, he ought to be replaced as General Overseer (not corporate president) by Patterson. (*See* App. at 39.) Patterson had no need to seek the Presidency because, as a

matter of church governance, that office belongs to the General Overseer for his life.

The arbitrator, of course, went far beyond the scope of what the trial court empowered him to decide, ordering the removal of Bishop Shelton, but only as to his position as President of the Church Corporation, implicitly recognizing he lacked authority to undo the Bishop's valid election to a Church office. In the process, however, he ran roughshod over any article of the Church's documents that stood in the way of that result, severing the office of General Overseer and the Presidency, transferring control of the Church's assets and property to Patterson, removing other duly elected officers of the Church Corporation, and giving Patterson the power to hold Church elections for those positions—positions that cannot be filled without the approval of the General Overseer. (App. at 22.) The Commonwealth Court's decision sanctioning these unconstitutional results cannot be squared with the guarantees of *Watson* and *Kedroff*, and, as explained below, highlights the doctrinal chaos and confusion that ensues when courts attempt to apply "neutral principles" to issues of church governance. This case is the proper vehicle to provide much-needed doctrinal guidance on these questions.

In a sense, without that guidance, Patterson being named "President" only assures the persistence of conflict because the parties will continue to dispute the Church leadership. The controversy over which Bishop Shelton seeks resolution via the instant Petition is why the dispute was permitted in the courts in the first place. It is apparent from a review of recent decisions in this arena that the courts believe they can artificially sever the civil from the ecclesiastical, when

what inevitably follows from such an approach is the invalidation of constitutionally protected religious exercise. By overreading the meaning of the terms "secular" and "neutral" as used by this Court in *Jones v. Wolf*, 443 U.S. 595 (1979), some courts are able to posit that the "religious" exists in some separate analytical sphere, when in fact, *any* interference by the courts in the activities of a corporate entity that serves as the Church's connection to the civil realm risks infringement of First Amendment rights. And selecting the Church's leadership is a per se violation. *See Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, 589 U.S. ____ (2020), 140 S.Ct. 696, 702 (Alito, J., concurring).

B. The Court Should Grant Certiorari to Resolve the Split in Authority Among the Lower Courts Over Whether Courts May Decide Issues of Church Leadership or Governance Under the Guise of "Neutral Principles"

1. It is settled law that "the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive." *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929); *see also Wolf*, 443 U.S. at 602 ("[T]he [First] Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.") (citing *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 724–25 (1976) and *Watson*, 80 U.S. at 733–34 (1871)). The contrary conclusion below conflicts with the decisions of other courts and turns settled principles of this Court's First Amendment jurisprudence on

their heads. Only intervention from this Court can correct this egregious, state-sanctioned assault upon Bishop Shelton's and the Church's First Amendment rights.

Indeed, the decision below magnifies and exacerbates the split in the lower courts concerning the tension between application of the "neutral principles" test and the proper deference to a church when even "secular" or "administrative" issues inherently involve matters of church practices and beliefs. The Commonwealth Court's rulings illustrate one side of the split in the lower courts over the proper application of the Court's rulings in *Wolf*, *Serbian*, *Watson*, and *Kedroff*. While *Wolf* and *Serbian* sanctioned a "neutral principles" approach to church property disputes, the lower courts have applied versions of that test in all manner of church disputes, encroaching on—and often violating—the church autonomy and free exercise rights guaranteed by this Court's decisions in *Watson* and *Kedroff*.

This Court's recent opinion in *Feliciano*, though decided by this Court on narrow, technical grounds, illustrates the split in the application of the church autonomy doctrine that has bedeviled the lower courts since *Wolf*. 589 U.S. ___ (2020), 140 S.Ct. 696 (per curiam). In *Feliciano*, the Supreme Court of Puerto Rico held that former employees' claims for pension payments arising out of their employment in three individual religious schools could be resolved by executing on the assets of any Catholic entity in Puerto Rico under "neutral principles" and, therefore, the court's resolution of those claims did not violate the First Amendment. *Id.* at 698–99. In making that determination, the Puerto Rico Supreme Court relied

on the existence of the "Roman Catholic and Apostolic Church"—a single entity recognized in the Treaty of Paris and the civil agency of the Catholic Church when the Church in Puerto Rico consisted of a single canonical entity at the end of the nineteenth century. *Id.* at 699. A century later, and operating under two successive Codes of canon law, the Catholic Church in fact was and is a constellation of entities that each have juridic personality. But, ignoring those entities' existence under a "neutral principles" review, the Puerto Rico Supreme Court never considered that the relief sought would trample the church's free exercise rights and rejected the notion that it had to respect the corporate structure the Catholic church in Puerto Rico had chosen for itself. *Id.* at 698. Elevating seeming "secular" issues over religious doctrinal reality, the decision was a paradigmatic example of interference in Church governance under the guise of *Wolf* "neutral principles" review.

Justice Alito's concurring opinion in *Feliciano*, joined by Justice Thomas, recognizes that "the First Amendment at a minimum demands that all jurisdictions use neutral rules in determining whether particular entities that are associated in some way with a religious body may be held responsible for debts incurred by other associated entities." *Id.* at 702 (Alito, J., concurring) (citing Brief for United States as *Amicus Curiae* on Pet. for Cert. 8–13). That neutral approach should extend to the "difficult questions" beyond that inquiry, "including (1) the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities and (2) whether, and if so to what degree, the

First Amendment places limits on rules on civil liability that seriously threaten the right of Americans to the free exercise of religion as members of a religious body." *Id.* The proper approach to these questions is squarely before this Court in the instant Petition. And as demonstrated below, the scattershot approaches of the lower courts attempting to resolve these issues is anything but uniform or neutral.

For example, like the Puerto Rico Supreme Court in *Feliciano*, the Supreme Court of Tennessee, settling upon a "hybrid neutral principles approach" (after a scholarly review of the jurisdictional splits in approaches and authority in this arena), concluded that it could opine on the effect of the church's corporate organization to resolve a church property dispute between a national church organization and a local church. *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 171–72 (Tenn. 2017). Examining the governing documents of the church, the *Haley* court determined that (1) the local church's property was held in trust for the benefit of the national church, and (2) the national church was entitled to summary judgment on the question of control, even though it also recognized that the local bishop had the right to use and exercise control over the local church's real property and to administer and supervise the personal property of the local church. *Id.* at 173.

The D.C. Court of Appeals reached a similar result in *Turner v. Hines*, concluding that the trial court could adjudicate allegations of corporate misfeasance

by church leaders. (App. at 171–75).[13] By distilling the allegations in the complaint into the narrow question whether there was misappropriation of funds by the church pastor, the *Turner* court ignored whether the pastor's use of funds may have been authorized under the church's governing documents. *Id.* Instead, it concluded that the claims for conversion, breach of fiduciary duty, unjust enrichment, and civil conspiracy "are resolved by applying well-developed neutral principles of law." *Id.* at 173 (quoting *Family Federation for World Peace v. Moon*, 129 A.3d 234, 249 (D.C. 2015)).

Here, as explained above, under the Church Corporation's Bylaws, it holds the Church's property in trust for the benefit of the Church and its members. Accordingly, the Church Corporation's activities cannot be separated from the Church's, a concept long recognized and respected in the laws of this country. *See, e.g.*, *Wheelock v. First Presbyterian Church*, 51 P. 841, 843 (Cal. 1897) ("The Civil Code of this state [ ] expressly permits religious bodies to incorporate; but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. . . . The corporation is a subordinate factor in the life and purposes of the church itself."). The decisions below on review here show a disregard for the inextricable ties between the governance of the Church and the Church Corporation similar to that

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[13] The D.C. Court of Appeals' decision in *Turner v. Hines* is unpublished. *See* 201 A.3d 578 (D.C. 2019). For the Court's convenience and ease of reference, it appears at Appendix R (App. 163). This Court denied certiorari in *Turner*. 140 S.Ct. 642 (Dec. 9, 2019).

reflected in *Feliciano*, *Haley*, and *Turner*. The Commonwealth Court's sleight of hand below—sanctioning the arbitration adjudications while paying lip service to church autonomy—highlights the doctrinal confusion. And, indeed, other courts have reached the opposite result on nearly identical factual circumstances.

For example, under facts very similar to this case, the Supreme Court of North Dakota concluded in *State ex rel. Heitkamp v. Family Life Svcs, Inc.* that the state could not remove officers from or reconstitute the board of a religious nonprofit corporation without violating the First Amendment. 616 N.W.2d 826, 839–41 (N.D. 2000). There, the Attorney General of North Dakota brought an action against Family Life Services alleging statutory violations and various acts of corporate misfeasance. *Id.* at 830. The state sought civil penalties, injunctive relief, and dissolution of the religious corporation. *Id.* at 831. The trial court, like the arbitrator here, concluded that the religious corporation was liable, ordered removal of all of the board members, expanded the seats on the board, and reconstituted the board, specifying the manner for selecting new members. *Id.* at 830. The Supreme Court of North Dakota reversed that aspect of the trial court's judgment because, under *Kedroff* and *Watson*, the trial court's attempt to "select entities that would follow the same religious beliefs and ideology of the founders necessarily involved the court in deciding FLS's religious doctrine and polity and placed the court in an excessive entanglement with religion in conflict with the principles underlying both the Establishment Clause and Free Exercise Clause of the First Amendment." *Id.* at 840. *See also, e.g.*, *Wipf v.*

Hutterville Hutterian Brethren, Inc., 808 N.W.2d 678, 685–86 (S.D. 2012) (holding that courts could not dissolve nonprofit religious corporation under South Dakota's nonprofit corporation statute because "the underlying disputes implicate religious doctrine and controversies").

Finally, the Supreme Court of North Carolina, also under factual circumstances like those of this case, held that the court could not constitutionally "interpose its judgment" as to certain expenditures of church resources and whether the expenditures were proper in light of church religious doctrine and practice. *Harris v. Matthews*, 643 S.E.2d 566, 571 (N.C. 2007). In *Harris*, as here, a dissident church faction brought suit under North Carolina's nonprofit corporation statute alleging conversion of funds, breach of fiduciary duty, and civil conspiracy after a majority faction voted to amend its corporate structure and create a trust to hold the church's property. *Id.* at 568. The *Harris* court explained that it could not adjudicate plaintiffs' claims without becoming entangled with religious doctrine: "Determining whether actions, including expenditures, by a church's pastor, secretary, and chairman of the Board of Trustees were proper requires an examination of the church's view of the role of the pastor, staff, and church leaders, their authority and compensation, and church management." *Id.* at 571. The court further reasoned that "[b]ecause a church's religious doctrine and practice affect its understanding of each of these concepts . . . This is precisely the type of ecclesiastical inquiry courts are forbidden to make." *Id.* Other examples on similar facts abound. *See, e.g.*, *Schmidt v. Catholic Diocese of Biloxi*, 18 So.3d 814, 829–30 (Miss.

2009) (plaintiffs' claims for injunctive relief encumbering church property barred by First Amendment because the remedy infringed right of church to govern itself); *Westbrook v. Penley*, 231 S.W.3d 389, 394–97 (Tex. 2007) (pastor could not be held liable for various torts arising out of marriage counseling because pastor's secular actions could not be separated from his religious actions); *Moon v. Moon*, ---F.Supp.3d---, 19 Civ. 1705, 2019 WL 6916689, at *7–8 (S.D.N.Y. Dec. 19, 2019) (court could not apply a neutral principles test to resolve claim for rightful leadership of church).

The Commonwealth Court's erroneous ruling here, along with its sister courts' holdings in *Feliciano*, *Haley*, and *Turner*, cannot be reconciled with the conclusions reached by the courts in *Heitkamp* and *Harris.* Each court ostensibly applied the same principles derived from *Wolf*, *Watson*, and *Kedroff*. The unifying theme in all of these cases is that lower courts feel empowered to apply the "neutral principles" test from *Wolf* to intrachurch governance and leadership disputes, not only to property disputes, and that they reach irreconcilable results when they do so. The cause of this confusion is fairly traceable to the absence of more definitive doctrinal guidance from this Court. Granting Bishop Shelton's petition will present an opportunity for the Court to resolve this split among the courts below and provide for proper application of the "neutral principles" test, with the kind of clear boundaries that ought to exist in this essential area of constitutional law.

2. The stated goal of neutral-principles review is to allow courts and churches to review and resolve all disputes consistently and in accord with, not contrary

to, a Church's beliefs. There is tension in these issues, not just between *Wolf* and *Kedroff*, but also in how to draw lines between the religious and the secular, which is evident in the confused and inconsistent application of these rules among the lower courts and in the Commonwealth Court's own decisions below.

Only this Court can resolve that issue, and the instant case is a uniquely suitable vehicle for it to do so.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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