No. 19-1253

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

STRADLEY RONON STEVENS & YOUNG, LLP

Mark E. Chopko
2000 K Street, N.W.
Suite 700
Washington, D.C. 2006-1871
(202) 419-8410
mchopko@stradley.com

Danielle Banks
Counsel of Record
Adam D. Brown
Brandon M. Riley
2005 Market Street
Suite 2600
Philadelphia, PA 19103
(215) 564-8116
dbanks@stradley.com

Counsel for Petitioner, Bishop Kenneth Shelton

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INTRODUCTION

The petition presents a crucial question of religious freedom concerning a church's First Amendment right to be free from civil interference into its leadership, structure, and religious doctrine under the guise of "neutral principles."

In urging this Court to look away from these foundational constitutional issues, Respondent Patterson does not address the doctrinal principles raised in the petition, or even offer this Court any reason to ignore them.[1] Indeed, he cites no cases or authority. Instead, his case against review rests entirely on a stale and disputed factual narrative, in a transparent attempt to impugn Petitioner Shelton's credibility and distract the Court from the bedrock issues at stake in this matter.

For nearly thirty years, Patterson's goal has been to replace Bishop Shelton as General Overseer. He has always believed he, and not Bishop Shelton, is the rightful Bishop for the Church. Illustrating the point, Patterson—excommunicated by the Church many years ago—signed his Letter in Opposition as "Bishop Anthonee Patterson." (Opp. at 4.) Likewise, he now

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[1] Patterson appears to have authored his Letter in Opposition himself as if he is now proceeding *pro se* before this Court, even though he was represented by counsel in the proceedings below. Undersigned counsel assumed that same counsel continued to represent Patterson in this appeal and served them with the petition. Throughout this litigation, however, Patterson has alternately presented himself as *pro se* or represented by counsel when he believes one or the other may benefit him. Accordingly, to the extent the Court would ordinarily be inclined to extend the traditional deference afforded to *pro se* litigants, it should refrain from doing so in this instance.

says he would be fully satisfied with an unconstitutional decision of an arbitration that proposed to install him as President of the Church Corporation. (*Id.* at 3–4.) Those claims reinforce the First Amendment problems inherent in Patterson's position, in that the Church believes as a matter of faith, governance, and structure that the General Overseer, Bishop Shelton, and not Church outsider Patterson, shall likewise serve as the President of the Church Corporation, and thus as steward of the property held in trust for the Church for his lifetime. This religious tenet is enshrined in the Church's founding documents. The Pennsylvania courts, like the arbitrator, unconstitutionally ignored these matters of faith and internal governance under a perverse incantation of "neutral principles" review. As the petition explains, unfortunately, they are hardly alone in such folly. Courts across the country have taken divergent and often constitutionally impermissible approaches over whether issues of church leadership or governance are justiciable as disputes involving "neutral principles," illustrating the pressing need for review. The Court should grant the petition.

ARGUMENT

1. Across the country, houses of worship act through civil corporate entities to conduct business, hold title to property, employ staff, and conduct other activities. The organization and operation of these entities almost always express deeply held doctrinal views about how and by whom authority is exercised in the faith community. Their constitutionally protected right to do so is expressly articulated by this Court in *Kedroff v. St. Nicholas Cathedral of Russian*

Orthodox Church in N. Am., 344 U.S. 94 (1952). From time to time, members of that faith community may have disagreements over the governance and operation of those corporate entities, and those disputes may ultimately spill over into the civil courts. This Court in *Jones v. Wolf*, 443 U.S. 595 (1979), offered the lower courts a way forward in such cases under the rubric of neutral principles review, but it has not acted in the intervening decades as those same courts have struggled to thread the needle offered by *Wolf* to resolve disputes without infringing rights assured under *Kedroff*. The instant case is only one example of what happens when a civil court takes an exceedingly narrow view of the scope of religious agency expressed through civil corporate entities and an overly broad view of its ability to parse the secular and avoid the religious.

2. Patterson's only response to this doctrinal tension between *Kedroff* and *Wolf* in the lower courts is to recycle stale factual allegations of corporate misfeasance from the early 1990s that he originally presented in his 1995 Complaint—allegations that Bishop Shelton has always vigorously denied. (Opp. at 1–3; *see also* App. at 30–40.) These allegations, however, are a historical footnote in the life of this matter that are no longer of any consequence.[2] Patterson raises them here only to distract the Court from the important First Amendment principles at

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[2] For example, an employee (not Bishop Shelton) used a Church credit card to make personal purchases, and that employee was identified, discharged, and referred for prosecution. Neither Bishop Shelton nor the Church makes any claim of broad immunity for being held accountable for its own wrongdoing.

stake: He argues that because of his disputed claims about mismanagement of the Church under Bishop Shelton's leadership, the infringement of Bishop Shelton's, and his Church's, First Amendment rights can be bypassed. That response fails for two important reasons.

First, even if Bishop Shelton or some other Church leader violated his ethical duties to the Church, the State can play no role in picking his successor. That is and has always been a matter for the Church to decide under *Kedroff*. But that principle was intentionally flouted here. The arbitrator reviewing alleged violations of corporate law obligations went far beyond the Church Corporation accounting issues the parties agreed to arbitrate, deciding, *inter alia*, that Bishop Shelton should be stripped of his control of the Church's property and that elections for a new General Overseer should be held because, the arbitrator thought, Patterson "acted in harmony with the laws, usages, and customs of the General Assembly before the dispute and dissension arose." (App. at 63, 77–78.) In its 2008 Opinion, the Commonwealth Court rightly vacated these arbitration adjudications as *ultra vires*.[3] *Patterson I*, 2008 WL 9401359 (Pa. Commw. Ct. Jan. 31, 2008) (App. at 110–119). The Commonwealth Court then affirmed the trial court's dismissal of the remaining issues for lack of jurisdiction under the First

[3] Contrary to what Patterson asserts in the opposition, Opp. at 3, that vacatur was in accord with Pennsylvania statutory law. *See, e.g.*, *Jefferson Woodland Partners, L.P. v. Jefferson Hills Borough*, 881 A.2d 44, 48 (Pa. Commw. Ct. 2005) ("[A]n award may also be corrected if the arbitrator exceeds the scope of his authority.") (collecting cases).

Amendment. *Patterson II*, 2015 WL 9260536 (Pa. Commw. Ct. Dec.18, 2015) (App. at 133–147). But then, in 2017, the Commonwealth Court inexplicably held that *Wolf* required it to strike its own 2008 order vacating the arbitration adjudication, retroactively exhuming the arbitration adjudication, and reinstituting the same relief *the Commonwealth Court itself* had held was *ultra vires* in 2008 and then held *unconstitutional* in 2015. *Patterson III*, 175 A.3d 442 (Pa. Commw. Ct. 2017) (App. at 160–62). The Commonwealth Court's 2019 reaffirmance of that 2017 opinion is at issue here. (App. at 1–13). These contradictory decisions cannot be squared with the constitutional guarantees of *Kedroff* and *Wolf*, and these are the legal principles that are now at stake—not disputed corporate accounting allegations from more than 25 years ago.

Second, although he said he believed that Patterson "acted in harmony with the laws, usages, and customs of the General Assembly," the arbitrator recognized he could not install Patterson as General Overseer without violating the First Amendment. (App. at 77–78.) Instead, the arbitrator purported to remove Bishop Shelton as President of the Church Corporation so he could place Patterson in control of the Church's property. To do so, he suspended operation of the provisions of the Church Bylaws and Articles of Incorporation—corporate documents that reflect the Church's doctrine that the General Overseer shall also be the President of the Church Corporation for his lifetime so that control of Church property vests forever under the General Overseer's control. (App. at 86.) If a religious leader violates his obligations and steals from his Church, he is justly

subject to both religious and secular sanction. But one sanction the Religion Clauses deny the State is the appointment of *a non-member* to a leadership position, in derogation of the Church's own doctrine.

Patterson concedes that the disputed arbitration award "places [him] in the position of receiver for the Church's secular corporate entity and the property it holds and controls in the name of the Church." (Opp. at 4.) Thus, should the opinion below stand, non-member Patterson will be in control of the Church property itself—the actual buildings where worship is held—and Bishop Shelton and his congregation will be locked out—a result Patterson foreshadows by declaring Bishop Shelton "can be the Bishop anywhere he wants to[.]" (*Id.*) In addition, other duly elected officers of the Church Corporation will be removed and Patterson will be able to hold Church elections—all powers reserved for the General Overseer as articles of faith. By resurrecting the adjudications (after properly invalidating them in 2008 and 2015), the Commonwealth Court misapplied the principles of *Kedroff*, *Wolf*, and their progeny, just as dozens of lower courts have done since this Court rendered those opinions.

3. That is the crux of the issue: how can a civil magistrate decide a dispute that infringes upon the church's constitutionally guaranteed right of self-governance in a way that is contrary to that church's religious beliefs? Lower courts should apply the same "neutral rules" that extend to the "difficult questions" of whether civil authorities may question a church's understanding of its governing structure and whether the First Amendment places a limit on civil liability to the extent such liability threatens the free exercise

rights of the church's members. *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, 589 U.S. ____ (2020), 140 S.Ct. 696, 702 (Alito, J., concurring). The petition demonstrates that they struggle to do so and that they urgently need guidance from this Court. Patterson offers no reasons why this case is not suitable for review.

4. Last Term, this Court reviewed and decided certain consolidated cases that presented the doctrinal situations analogous to those presented here. In 2012, a unanimous Court held there is a Ministerial Exception in both Religion Clauses of the First Amendment. *Hosanna-Tabor Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171 (2012). The Court applied that exception to a teacher who exhibited four factual characteristics that indicated she was a "minister," including that she had that title. Lower courts split on whether those factors were determinative or simply illustrative. Confronted with litigation from employees who lacked that title but still performed vital religious functions, churches argued that a taxative 4-factor list struck the balance in a way that exposed too many churches to claims that infringed their protected constitutional liberties. In *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ___ (July 8, 2020), 140 S. Ct. 2049, this Court corrected that narrow view, holding that it was unconstitutionally invasive and not deferential enough to the ability of religious bodies to govern themselves:

> If titles were all-important, courts would have to decide which titles count and which do not, and it is hard to see how that could be done without looking behind the titles to what the

> positions actually entail. Moreover, attaching too much significance to titles would risk privileging religious traditions with formal organizational structures over those that are less formal.

591 U.S. at ___, 140 S. Ct. at 2069.

Just as this Court acted in the area of the ministerial exception to avoid having courts take too narrow a view of the churches' protected interests in managing the religious workplace that expresses religious doctrine, the Court needs to act here. As this case illustrates, too many courts are threading the *Wolf* needle in ways that override the protections long guaranteed by this Court. Such efforts invariably chill the robust exercise of religious rights in the control and governance of temporal affairs, as it did in the area of personnel management. In this specific case, the decision also has the effect of imposing an unwanted leader on a religious community, in violation of rights assured to the Church. *Hosanna-Tabor*, 565 U.S. at 188. Just as it did in *Guadalupe*, when it exercised its authority to give direction to lower courts that plainly were conflicted as to the proper application of the Religion Clauses, the Court should grant the petition here.[4]

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[4] Given the plain error, this case would also be suitable for summary disposition, to grant, vacate, and remand with instructions to dismiss the matter and settle this long course of litigation.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Mark E. Chopko
STRADLEY RONON STEVENS & YOUNG, LLP
2000 K Street, N.W.
Suite 700
Washington, D.C. 2006-1871
(202) 419-8410
mchopko@stradley.com

Danielle Banks
Counsel of Record
Adam D. Brown
Brandon M. Riley
STRADLEY RONON STEVENS & YOUNG, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103
(215) 564-8116
dbanks@stradley.com

Counsel for Petitioner Bishop Kenneth Shelton

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