No. _____

In the
Supreme Court of the United States

DR. MARCUS TURNER, SR., RUSSELL MOORE, JR., AND BEULAH COMMUNITY IMPROVEMENT CORP.,
Petitioners,

v.

ALVA C. HINES, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents two important questions concerning the First Amendment's protection of churches against the power of the state. A disaffected faction of a Baptist church, without any authorization from the church, sued the church leadership seeking relief *solely on behalf of the church*. This faction sought intrusive injunctive relief that would paralyze the church and deliver it into the hands of the court, or the plaintiffs.

This Court has long held that churches have a First Amendment right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 116 (1952). But the D.C. Court of Appeals, along with two other lower courts, applies a one-part "neutral principles of law" test to determine whether the case raises any issues of "religious doctrine." This inquiry focuses solely on the plaintiffs' claims and not on the relief sought. Finding no "doctrinal" issues, the Court of Appeals ruled for the plaintiffs.

At least five lower courts, more faithful to *Kedroff*, add a second inquiry – whether the case intrudes coercively into the internal affairs and governance of the church.

And on the second question presented, there is a split between the D.C. Court of Appeals and the D.C. Circuit.

The questions presented are:

I. Does the First Amendment require courts, in applying "neutral principles of law" in a church dispute,

to consider (1) whether the judicial inquiry "intrudes coercively into church governance" even when (2) there is no "religious doctrinal" matter at issue?

II. Does the First Amendment require courts, in applying "neutral principles of law" in a church dispute, to analyze both (1) the claims and (2) the scope and nature of the relief sought?

PARTIES TO THE PROCEEDINGS

Petitioners are Dr. Marcus Turner, Sr., Russell Moore, Jr., and Beulah Community Improvement Corporation, all of whom were defendant-appellants in the case below.

Respondents Alva C. Hines, Tracy D. Jones, Marcia V. Jones, Norma Hunter, Betty Givens, Daisy Johnson, Willie M. Crosby, William Minor, James R. Brown, Delores C. Brown, Samuel J. Forrest, Joyce Forrest, Lydell Mann, Sr., Jean M. Gaskins, Beatrice H. Scott, Hazel E. Green, Edith D. Minor, and Walter M. Williams are eighteen individuals who were plaintiffs-appellees in the proceeding below.

CORPORATE DISCLOSURE STATEMENT

Petitioner Beulah Community Improvement Corporation is a non-profit corporation, exempt from taxation under 26 U.S.C. § 501(c)(3). It does not have parent companies and is not publicly held.

STATEMENT OF RELATED PROCEEDINGS

This case was initiated in the District of Columbia Superior Court and appealed to the District of Columbia Court of Appeals prior to this petition. In those two courts, the cases are referred to as follows:

- *Alva C. Hines, et al. v. Dr. Marcus Turner Sr., et al.*, 2015 CA 001406 B, D.C. Superior Court (final order triggering the right to appeal, entered on April 15, 2016).
- *Dr. Marcus Turner, Sr., et al. v. Alva C. Hines, et al*, 16-CV-0444, D.C. Court of Appeals (final judgment issued March 12, 2019; mandate issued March 20, 2019).

There are no additional proceedings in any court that are directly related to this case.

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This case presents two questions about how to apply the "neutral principles of law" standard for determining whether a secular court may hear a dispute involving a religious organization. First, must courts that apply the "neutral principles of law" analysis use a two-part or one-part test? Is it enough, in other words, for a court to determine that it does not need to consider any religious "doctrinal" issues? Or must it also scrutinize whether the case would require the court to intrude coercively into church governance? Second, must a court applying the "neutral principles of law" standard examine not only the liability presented by the lawsuit, but the request for relief as well?

The Baptist church in this case is governed by a board of three elders. The pastor, who is on the board of elders, is the chief elder. The case began when a disaffected faction of the church sued the pastor, another elder, and the church's community development corporation ("CDC").[1] Although none of the eighteen individual plaintiffs/respondents are deacons, officers, or otherwise part of the church leadership, they seek monetary and injunctive relief against the defendants *on behalf of the church only*, not on their own behalf. Among other things, the respondents petition for a permanent injunction against the pastor and another elder to prohibit them

[1] The CDC is a nonprofit organization affiliated with the church. The CDC works to advance the church's mission by tending to the poor and disadvantaged. App. 77-78.

from exercising any authority over the church's finances or property. This relief, if granted, would effectively paralyze the church and deliver its governance into the hands of the court, or the respondents.

This lawsuit is the *third* suit that members of the same faction have brought alleging essentially the same claims against the pastor, the elder, and other leaders of the church. Two of the respondents were also plaintiffs in the other lawsuits. Although both of the previous two suits were dismissed with prejudice, they pursued this third complaint.

To protect the independence of churches from secular control or manipulation, the First Amendment prohibits courts from interposing themselves in matters of church government. *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North Am.,* 344 U.S. 94, 116 (1952). The First Amendment guarantees churches "power to decide for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine." *Id.* (emphasis added). Justice Alito explained the necessity for this rule in his concurrence in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*:

> Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have acted as critical buffers between the individual and the power of the State."…[T]he autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil

> laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs.

565 U.S. 171, 199 (2012)(Alito, J., concurring; citation and internal brackets and quotation marks omitted).

1. The District of Columbia Court of Appeals acknowledged *Kedroff* and *Hosanna-Tabor* only in passing (App. 12), and based its analysis on a different approach. According to the Court of Appeals, a secular court could hear the plaintiffs/respondents' claims without violating the First Amendment because "liability may be adjudicated under neutral principles of tort law…" App. 4.

Instead of drawing on the teaching of *Kedroff* and *Hosanna-Tabor*, the Court of Appeals relied solely on this Court's decision in *Jones v. Wolf*, 443 U.S. 595, 602, 603 (1979). Based on *Jones*, the Court of Appeals previously held that "'civil courts may resolve disputes involving religious organizations as long as the courts employ neutral principles of law and their decisions are not premised upon their consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" *Meshel v. Ohev Shalmon Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005) (quoting *Jones*, 443 U.S. at 602). See also App. 12-13 (quoting *Meshel*). The Court of Appeals has concluded that under *Jones*, the "neutral principle of law" approach is sufficient by itself to "avoid[] prohibited entanglement in questions of religious doctrine, *polity*, and practice by relying exclusively upon objective, well-established concepts of

law that are familiar to lawyers and judges." *Meshel*, at 354 (quoting *Jones*, emphasis added). See also App. 13. The D.C. Court of Appeals is joined in this approach by the Second Circuit and the Supreme Court of New Jersey. See *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409 (CA2 1999); *F.G. v. MacDonell*, 150 N.J. 550, 696 A.2d 697 (1997).

But other courts have concluded that the "neutral principles of law" approach, by itself, is insufficient to ensure that courts do not infringe the First Amendment. The Fifth Circuit, drawing on *Kedroff*, has held that a court must also consider a second factor: whether the case would require it "necessarily [to] intrude into church governance in a manner that would be inherently coercive." *Combs v. Central Texas Annual Conference of United Methodist Church*, 173 F.3d 343, 350 (CA5 1999). A court must pursue this examination "even if the alleged [issues] were purely nondoctrinal."

The D.C. Circuit, in an opinion on which the Fifth Circuit relied heavily, held that "[a]n excessive entanglement [in violation of the First Amendment] may occur where there is a sufficiently intrusive investigation by a government entity" into internal church affairs. *E.E.O.C. v. Catholic University of America*, 83 F.3d 455, 466 (CADC 1996). Quoting this Court's decision in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979), the D.C. Circuit added that "'[i]t is not only the conclusions that may be reached by [an agency] which may impinge on rights guaranteed by the Religion Clauses, *but also the very*

process of inquiry leading to findings and conclusions.'" *Catholic University*, 83 F.3d at 466 (emphasis added).

Although this two-part test approach may have originated in employment discrimination claims, it is by now deeply rooted in other areas of tort law. At least three other courts – the Supreme Courts of Texas, Mississippi, and North Carolina – have used some form of this two-part test to claims for defamation, breach of fiduciary duty, professional negligence, conversion, civil conspiracy, and intentional infliction of emotional distress, and other claims. The first question presented is based on a deep, ongoing, and entrenched split.

2. The second split concerns whether courts must analyze both liability issues *and the scope and nature of the relief sought* when determining the restrictions the First Amendment places on the case. While the District of Columbia Court of Appeals and the Puerto Rico Supreme Court have held that courts are required to analyze only issues of liability, the D.C. Circuit and the Supreme Court of Mississippi have held that courts must consider the nature of the relief sought as well. Compare *Turner v. Hines*, No. 16-CV-444 (D.C. Jan. 16, 2019), App. 4 ("*liability* may be adjudicated under neutral principles of tort law without infringing on [petitioners'] claimed First Amendment immunity")(emphasis added) and *Feliciano v. Roman Catholic and Apostolic Church*, 200 DPR 458 (P.R. 2018) with *Costello Publ'g Co. v. Rotelle*, 670 F.2d 1035, 1050 n.31 and accompanying text (CADC 1981)(directing district court to avoid remedies that would interfere with defendant religious organization's

First Amendment rights); *Greater Fairview Missionary Baptist Church*, 160 So.3d 223 (Miss. 2015)(requiring courts to shape relief to meet demands of the First Amendment.

The Puerto Rico Supreme Court's decision in *Feliciano*, is most illuminating. Like the D.C. Court of Appeals, Puerto Rican courts use "neutral principles of law" approach. App. to Petition for Writ of Certiorari in *Archdiocese of San Juan v. Feliciano*, O.T. 2018, No. 921, p. 9a-10a (certified translation of *Feliciano*, emphasis added). Like the D.C. Court of Appeals, but in opposition to the D.C. Circuit and the Supreme Court of Mississippi, the Puerto Rico Supreme Court does not address whether the First Amendment restricts the nature or scope of the remedy sought. The court's lack of concern for First Amendment restrictions showed in the breath-taking extent of the relief the court ordered. The second question presented is based on this consequential split.

DECISIONS BELOW

The opinion of the District of Columbia Court of Appeals is unpublished, and is reproduced at App. 3-18. The Court of Appeals order denying the timely petition for rehearing en banc is reproduced at App. 1-2.

The relevant orders of the District of Columbia Superior Court, which are all unreported, are reproduced sequentially at App. 19-67.

STATEMENT OF JURISDICTION

On January 16, 2019, the District of Columbia Court of Appeals released its opinion, and denied a

timely petition for a rehearing en banc on March 12, 2019. On June 5, 2019, the Chief Justice granted an extension to file a petition for certiorari to June 10, 2019. On July 10, 2019, the Chief Justice granted a further extension up to and including July 30, 2019.

This Court has jurisdiction under 28 U.S.C. § 1257(a). This case involves important First Amendment rights that may be lost if this Court waits until after trial and judgment is entered. Under these circumstances, this Court has jurisdiction to issue a writ of certiorari even though the case is still pending. See *National Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977). See also *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482–83 (1975). See Statement of the Case, Section C, below, for further details.

PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The First Amendment provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. Amdt. I.

STATEMENT OF THE CASE

Petitioners challenge a court order denying their motion to dismiss the complaint at the pleadings stage. Because a trial would deprive the petitioners of their First Amendment rights to be free from judicial interference, they seek immediate redress to protect those rights. See Section C, below.

The complaint contends that the church's pastor, with the assistance of an elder and the church's CDC (both of whom are also petitioners), "engag[ed] for over a decade in a series of unauthorized, wasteful, and improper transactions involving Church funds and real property." *Turner*, App. 5. The question is whether the proper forum to adjudicate those claims is a secular court or the church itself.

The District of Columbia Court of Appeals chose to rest its answer to this question solely on whether the claims in the complaint could be decided using "neutral principles of law" without consideration of doctrinal matters. App. 12-13. "The touchstone for determining whether civil courts have jurisdiction" to hear a church dispute, the Court of Appeals has declared, "is whether the courts may employ neutral principles of law and ensure that their decisions are not premised on the consideration of doctrinal matters….." *Family Federation for World Peace v. Moon*, 129 A.3d 234, 249 (D.C. 2015)(citations and internal quotation marks omitted). The court described the allegations in the complaint as "primarily boil[ing] down to whether [the pastor], with [the elder's and the CDC's] assistance, misappropriated the Church's money for his own use and encumbered or disposed of the Church's real estate without the authorization required by the Church's Constitution."[2] The Court of Appeals held that the complaint met this "neutral principles of law" test

[2] Petitioners vehemently deny these allegations and many of the other allegations in the complaint. But, for the purposes of reviewing the claims in the complaint, the Court of Appeals assumed the allegations were true.

because it purported to recite claims for conversion, breach of fiduciary duty, unjust enrichment, and civil conspiracy – claims the Court of Appeals concluded "all 'rely upon doctrines basic to our legal system' and are resolved by applying familiar, well-developed, neutral principles of law." App. 14 (quoting *Family Federation*, 129 A.3d at 249.)

Although it recognizes that the church constitution includes religious language, the Court minimized the importance of the religious content and focused only on secular-sounding provisions. The Court did not examine, for example, how the religious language used to describe the pastor's authority affected the contours and scope of that authority.

Even more troubling, the opinion never even mentions other important factors. The opinion never acknowledges, for example, that the complaint alleges injuries only to the church and sought relief on behalf of the church alone. App. 107-08. Nor did it note that none of the plaintiffs is mentioned more than once in the complaint, and then only to name the plaintiff and baldly assert his or her membership in the church.[3] The opinion never asks whether the plaintiffs had authority to speak on behalf of the church, particularly in asserting claims against the church's leadership. Nor does it ever consider the nature and scope of the

[3] Petitioners deny that respondents are members of the church, but that fact is irrelevant for purposes of this appeal. Whether respondents are members cannot be determined until trial. But it is the very process of the judicial inquiry that infringes on the church's First Amendment rights. See *NLRB*.

relief sought which, if granted, could paralyze the church.

The decision of the Court of Appeals also never examines whether it could grant relief by referring some or all of the claims to the church to resolve. The decision does not contemplate, for example, whether it or the trial court could or should fashion procedures, similar to the ones sanctioned by the Supreme Court of Mississippi, that would allow it to refer the dispute to the church for internal ecclesiastical review. See *Greater Fairview Missionary Baptist Church.* Nor did it ask, as would be required in the D.C. Circuit, whether the relief sought would "entangle [the court] in the decision-making process of the Church with regard to its religious obligations…." *Costello*, 670 F.2d at 1050 n.31. This failure is particularly important because the complaint seeks (1) an injunction prohibiting two of the church's three-member board of elders from exercising authority over church finances or property; and (2) a "full accounting of the financial records" of the church, the pastor, and the elder. See the complaint's prayer for relief at App. 107. In a word, the Court of Appeals never directly confronted important aspects of how the case could interfere with the church's right to govern itself.

A. Factual Background

According to the complaint, Beulah Baptist Church of Deanwood Heights (the church) is a missionary Baptist church that was founded in 1909. App. 72. Beulah's 1997 Constitution, on which the complaint heavily relies, begins with a preamble proclaiming that Beulah is a New Testament church. 1997 Church

Constitution, Article II, App. 111. Not surprisingly, the church constitution uses Biblical language to describe the pastor as "overseer, leader, advisor, and teacher" – a direct reference to the Bible. 1997 Church Constitution, Article IV, Section 1, App. 113. The word "overseer" is particularly important because it appears in twice in 1 Timothy 3, the Biblical text that 1997 Church Constitution cites as Beulah's guideline for choosing a pastor.1997 Church Constitution, Article IV, Section 4, App. 115.

Some Bible translations render the Greek word for "overseer" ("episkopos") as "leader," while others translate it as "bishop." Compare 1 Timothy 3:1 (New International Reader's Version, Biblica 2014) with 1 Timothy 3:1 (Amplified Bible, Classic Edition, The Lockman Foundation 1987).[4] Indeed, the word "episkopos" is the source of the words "bishop" and "episcopal." *Bishop,* The Merriam-Webster Dictionary 72 (2016). Among other things, the church constitution granted the pastor authority as "overseer" over all of Beulah's affairs, financial as well as spiritual. Additionally, the constitution obligates the pastor to "carry out the purpose of the Church" and gives him the authority to perform "duties common to Pastors in Missionary Baptist Churches." *Id.*, Article IV, Sections 1-2, App. 113-14. Moreover, the church constitution entrusts the pastor with obtaining the

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[4] According to the National Baptist Convention – a leading authority for Missionary Baptist Churches – "[i]n the Baptist tradition, pastors and bishops are, for all intents and purposes, the same." http://www.nationalbaptist.com/resources/church-faqs/pastor-clergy-faqs.html, last visited on January 31, 2019.

recommendations of Beulah's boards (including its Board of Trustees), but does not require the pastor to accept those recommendations. 1997 Church Constitution, Article IV, Section 1, App. 113. Article V of the 1997 Church Constitution requires the deacons to "assist the Pastor as the Disciples assisted Christ," drawing a direct analogy between the pastor's authority and the authority of Jesus Christ. 1997 Church Constitution, Article V, Section 1.a, App. 116.

The church adopted new bylaws in 2012 that created a three-member board of elders to govern the church. Complaint, ¶ 84, App. 93. Two of the three current elders are petitioners. *Id*., ¶¶ 84-85, App. 93.

In 2014, the church ran into financial difficulties and was briefly in foreclosure. *Id*., ¶ 89, App. 94. Respondents allege that they found out about the foreclosure from a story published in the Washington Post in January 2014. *Id.* On March 14, 2014, a dissident group, including two of the respondents in this case, filed a lawsuit against the pastor, the church's CDC, and other defendants. 9/4/15 Order at App. 48-49. At about the same time that lawsuit was dismissed, dissidents (once again including two of the respondents) filed another lawsuit on June 13, 2014. *Id*., at 49. That lawsuit was also dismissed as part of a settlement agreement. App. 50.

In spite of the publicity and three separate lawsuits, neither the church nor any of its leaders have joined the respondents. More than five years later, the pastor is still pastor, and the church has not taken any actions to remove or discipline him. The church's decision is clear.

B. Procedural Background

While the second lawsuit was still pending, plaintiff-respondents filed this third complaint on March 3, 2015, and amended the complaint on June 17, 2015. See App. 51, 56. Petitioners moved to dismiss the complaint on the ground that it violates the First Amendment. The Superior Court granted the motion on September 4, 2015 (App. 47), but reversed itself and reinstated the elder and CDC in an order issued on February 16, 2016. App. 28. In its February 16 order, the Superior Court held that the First Amendment did not protect any of the petitioners (including the pastor).[5] Petitioners filed motion for reconsideration, and the Superior Court denied the motion in an order issued on April 15, 2016. App. 19. Petitioners filed a timely notice of appeal, and the District of Columbia Court of Appeals exercised jurisdiction under the collateral order doctrine. On January 16, 2019, the Court of Appeals issued an order remanding the case to the Superior Court. App. 3. Petitioners filed a timely motion for rehearing, which the Court of Appeals denied on March 12, 2019. App. 1. Petitioners filed timely applications to extend the time to file this petition, and the Chief Justice granted both applications, extending the time to file this petition to July 30, 2019.

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[5] Although the trial court dismissed the claims against the pastor on *res judicata* grounds, it did not order a separate final judgment. See App. 4, 39. Respondents, moreover, continue to seek an accounting of his finances and permanent injunctive relief against him. Amended Complaint, App 107. Consequently, the pastor continues to have a live, vital interest in the outcome of this petition.

C. Jurisdiction

Under 28 U.S.C. § 1257(b), the District of Columbia is treated as though it were a state, and this Court's jurisdiction rests on 28 U.S.C. § 1257(a). Although this case is pending in the lower courts, this Court has jurisdiction to prevent the loss of an important First Amendment right. Under *Cox,* this Court has jurisdiction to issue a writ of certiorari to protect a federal right where (1) the federal question determines the outcome of the case and (2) the federal right might be lost or seriously eroded if the case were allowed to proceed to judgment. See *Cox*, 420 U.S. at 482–83.

Where a lower court erroneously permits a case involving a church to proceed, the trial itself offends the First Amendment and deprives the church and its leaders of a valuable constitutional right. Cf. *NLRB*, 440 U.S. at 502 ("the very process of inquiry" in quasi-judicial proceeding investigating a church can infringe the church's First Amendment rights). And where the First Amendment prohibits the lower court from trying the case, the question arising under the First Amendment determines the outcome of the case.

Not surprisingly, lower courts have uniformly held that churches and their leadership are entitled to an interlocutory appeal to protect their constitutional rights. See *Swanson v. Roman Catholic Bishop of Portland*, 1997 ME 63, ¶ 6; 692 A.2d 441, 443 (1997) (interlocutory appeal allowed because "the church is entitled to protection from the very process of litigation itself" if the First Amendment applies); *Harris v. Matthews*, 361 N. C. 265, 269–71, 643 S.E.2d 566, 569-70 (N.C. 2007) (ecclesiastical abstention doctrine

safeguards a substantial First Amendment right and an order erroneously denying motion to dismiss would work an irreparable injury if not corrected before final judgment; citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)); *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727, 737 n. 36 (Ky. 2014) (same); *Heard v. Johnson*, 810 A.2d 871, 877 (D.C. 2002) (First Amendment protects church from immunity to suit that would be lost if the case went to trial; citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

This Court, moreover, has held that it has jurisdiction to grant certiorari to prevent or remediate the deprivation of the First Amendment right. See *National Socialist Party*. In *National Socialist Party*, this Court held that a lower court's interlocutory order denying protection of a First Amendment right constituted a separable, final, collateral order appealable under the collateral order doctrine. Just as an appellate court has jurisdiction under the collateral order doctrine to hear the interlocutory appeal, this Court has jurisdiction under § 1257 to protect the First Amendment right. *Id*. See also *Abney v. United States*, 431 U.S. 651, 660 (1977)(holding that considerations giving this Court jurisdiction over a pending matter under § 1257 are identical to those giving a federal circuit court of appeals jurisdiction under the collateral order doctrine).

And just as this Court has § 1257 jurisdiction over double-jeopardy cases to prevent the loss of a fundamental constitutional right that would otherwise be forfeited or seriously damaged by a trial, this Court

also has jurisdiction under § 1257 to grant certiorari in this case to prevent the evanescence of the church's First Amendment rights by trial. Compare *Harris v. Washington*, 404 U.S. 55 (1971) (recognizing this Court's jurisdiction under § 1257 over double jeopardy cases) and *Abney*, 431 U.S. at 660 with *National Socialist Party* (citing *Abney* and *Cox* in support of this Court's jurisdiction over a pending case involving a dispositive First Amendment matter). This Court has jurisdiction to grant this petition.

REASONS FOR GRANTING THE WRIT

I. There is an Acute, Irreconcilable Split Concerning Whether Judicial Inquiry that Intrudes Coercively into the Church's Self-Governance Violates the First Amendment.

There is a deep and irreconcilable split concerning whether a court must determine whether a private lawsuit "intrudes coercively" into church governance, even when the case may be resolved by "neutral principles of law" without resting the decision on issue of religious "doctrine." At least five lower courts – two circuits and two supreme courts – hold to one form or another of this two-part test. But at least three state supreme courts hold that nothing more is required than to determine whether "neutral principles of law" are needed to resolve the case without having to settle "doctrinal" issues. This Court should grant certiorari on the first question presented to resolve this split.

A. The D.C. and Fifth Circuits and the Texas, Mississippi, and North Carolina Supreme Courts Have Adopted the Two-Part Test.

Several lower courts have rejected the one-part test adopted by the District of Columbia Court of Appeals in favor of a two-part test. The Fifth Circuit has adopted and reaffirmed a two-part test requiring courts to determine whether a case requires them to "intrude coercively" into church governance, even when the case could be decided according to neutral principles of law. The Supreme Courts of Texas, Mississippi, and North Carolina have adopted functionally identical tests and applied them to a wide range of tort claims. The Supreme Courts of Mississippi and North Carolina are particularly remarkable because they have explicitly denied claims for conversion, breach of fiduciary duty, unjust enrichment and civil conspiracy brought by congregants on behalf of the church – precisely the claims at issue in this case – because they infringe the First Amendment.

Significantly, the District of Columbia Court of Appeals is at loggerheads with the District of Columbia Circuit Court of Appeals, which also applies this two-step approach. That conflict creates the potential for cases raising the same claims in the District of Columbia to reach different results depending on which court hears the cases.

1. In the lead case, *Combs*, 173 F.3d at 350, the Fifth Circuit emphatically rejected the very test that the D.C. Court of Appeals applied in this case. In *Combs*, a female cleric of the United Methodist Church

sued her church and church conference for sex discrimination under Title VII. She had returned from maternity leave to find that she had been terminated from her position as Associate Minister for the church. *Combs*, 173 F.3d at 344.

In this pre-*Hosanna-Tabor* case, the minister argued that the issues she raised did not implicate church "doctrine" and could thus be decided according to "neutral principles of law" without violating the First Amendment. *Combs,* 173 F.3d at 350.

The Fifth Circuit rejected her argument because it addressed only the first of the First Amendment's two concerns. "The second quite independent concern," the Fifth Circuit held, "is that in investigating employment discrimination claims by minsters against their church, secular authorities would necessarily intrude into church governance in a manner that would be inherently coercive, *even if the alleged discrimination were purely nondoctrinal*." *Ibid*. (emphasis added). "This second concern alone is enough to bar the involvement of the civil courts." *Ibid*.

2. Going even further than the Fifth Circuit, the Supreme Court of Texas applies the two-part rule to torts for defamation, professional malpractice, intentional infliction of emotional distress, breach of fiduciary duty, and negligence. *Westbrook v. Penley*, 231 S.W.3d 389, 394, 397 (Tex. 2007). In *Westbrook*, a congregant sued her pastor, a licensed marriage counselor from whom she had sought counseling. *Id*., at 394.

The Supreme Court of Texas decided that he could not be held liable. Even assuming the counseling was purely secular, the court held that it could not separate the pastor's actions as counselor from his acts as a pastor. "In his dual capacity," the court wrote, the pastor owed the congregant "conflicting duties…as [her] counselor… and as her pastor…" *Id.*, at 391-92. The court held that "parsing those roles for purposes of determining civil liability…, where health or safety are not at issue, would unconstitutionally entangle the court in matters of church governance…." *Id.*, at 392.

The congregant argued that the pastor breached a secular duty of confidentiality as a licensed counselor, and that her claim against him did not require resolution of a theological matter – exactly the "neutral principles of law" standard that District of Columbia Court of Appeals has said is sufficient to satisfy the First Amendment. *Id.*, at 396-97. But the Texas Supreme Court disagreed. While it might be true that the congregant's claim could be decided without having to resolve a theological question, "that doesn't answer whether [allowing a secular court to decide the case] would unconstitutionally impede the church's authority to manage its own affairs." *Id.*, at 397. Citing *Kedroff*, the court concluded that civil courts have an obligation, separate and distinct from their obligation to apply only "neutral principles of law" to the disputes before them, to "be careful not to intrude upon internal matters of church governance." *Ibid.*

3. The Supreme Court of Mississippi applied this two-part test in exactly the same circumstances as this case and reached the exact opposite result. Like the

District of Columbia Court of Appeals, "Mississippi has adopted the 'neutral principles of law' approach for resolving church property disputes." *Schmidt v. Catholic Diocese of Biloxi*, 18 So.3d 814, 824 (Miss. 2009). But unlike the District of Columbia, Mississippi holds that they are not applicable to ecclesiastical matters even if those matters are not doctrinal. See *Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc.*, 716 So.2d 200, 210-11 (Miss. 1998)(adopting "neutral principles of law" approach but affirming trial court that excluded evidence of one church seeking to siphon members from a sister church as involving ecclesiastical issues outside the parameters of "neutral principles").

In *Schmidt,* the Mississippi Supreme Court applied this two-step approach to dismiss precisely the types of claims that District of Columbia Court of Appeals, relying solely on the whether the case raised "doctrinal" issues, has allowed to proceed. In *Schmidt*, Catholic parishioners sued their parish priest, their bishop, and their Catholic diocese for misleading them about a fundraising campaign to rebuild a parish church destroyed by Hurricane Katrina. *Schmidt,* 18 So.3d at 818, 830. Using its two-step approach, the Supreme Court of Mississippi held that the parishioners could sue for injuries they had sustained individually, but not for injuries their parish had sustained. The court held that if the church had promised parishioners that their donations would be used for a specified purpose but diverted the contributions to a different purpose, the parishioners could assert fraud claims and seek a refund. *Id.*, at 830.

But the court also held that the First Amendment prohibits those same parishioners from asserting breach of trust and breach of fiduciary duty claims that would have given the parishioners control over the parish. *Id.*, at 819-20, 828-29. Like the plaintiffs/respondents in this case, the parishioners alleged that the parish property was held in trust for their benefit, and that the church leaders had breached that trust by diverting funds designated to rebuild the parish. Compare *id.*, at 819-20 to Complaint, ¶¶ 6-23, 106, App. 74-77, 98-99. And like this case, the parishioners sought an injunction to prevent the church leaders from selling, conveying, or encumbering the parish property. Compare *Schmidt,* 18 So.3d at 820 to Complaint, Prayer for Relief, App. 107.

But unlike this case, the Supreme Court of Mississippi held that the parishioners' claims were barred by the First Amendment. *Schmidt,* 18 So.3d at 829. "[C]ivil courts," the court held, "may not second-guess church administrative or management decisions, or substitute their judgment in place of the church's." *Id.*, at 829. Although the parishioners were entitled to refunds of the contributions they made for the parish rebuilding project that were diverted to other purposes, they were not entitled to the injunctive relief they sought. *Id.*, at 829-30. The parishioners' claims intruded too deeply into the church's ability to govern itself.

4. In a case on all fours with this one, the North Carolina Supreme Court also reached a result in direct conflict with the decision of the District of Colombia Court of Appeals in this case. *See Harris v. Matthews*.

In *Harris*, a group of disaffected church members sued the pastor and two other leaders of a Missionary Baptist Church for injuries the church purportedly suffered. The plaintiffs alleged that the pastor and his cohorts took advantage of a bylaw change in the financial management of the church to misappropriate funds from the church. Like the plaintiffs/respondents in this case, the plaintiffs in *Harris* asserted claims – on behalf of the church only – for conversion, breach of fiduciary duty, and civil conspiracy. *Id.*, at 268, 643 S.E.2d at 568.

But unlike in this case, the Supreme Court of North Carolina held that it could not decide the case using neutral principles of law. *Id.*, at 273, 643 S.E.2d at 571. "To address plaintiffs' claims," the court held, "the trial court would be required to interpose its judgment…as to the proper role of…church officials…to the exclusion of the judgment of the church's duly constituted leadership." *Ibid.* Because the case would require the trial court to intrude too coercively into the church's self-governance, "[n]one of these issues can be addressed using neutral principles of law." *Ibid.* "This is precisely the type of ecclesiastical inquiry courts are forbidden to make." *Ibid.*

5. This split is exacerbated by the conflict between the D.C. Circuit and the D.C. Court of Appeals. In a decision quoted extensively by the Fifth Circuit in *Combs*, the D.C. Circuit rejected the argument that a college professor's employment discrimination claim against a Catholic university could be decided by neutral principles of law. *Catholic University.* The professor, a Catholic nun, alleged sex discrimination in

the university's decision to deny her tenure in its Canon Law Department. *Id.* The E.E.O.C. argued that her case could "be resolved without entangling the Government in questions of religious doctrine, polity, and practice by invoking neutral principles of law…." *Id.*, 83 F.3d at 465-66 (citation and internal quotation marks omitted). The E.E.O.C. reasoned that her qualifications as a scholar could be analyzed without raising doctrinal issues. But the D.C. Circuit held that "while it is true that the [tenure committee] was a secular body and that it examined [the professor's] qualifications in accordance with the secular criteria set forth in the Faculty Handbook,…it is by no means clear that its decision was unaffected by religious considerations." *Ibid.*

The court further held that the E.E.O.C. investigation and subsequent lawsuit intruded coercively into the school's tenure process, "caus[ing] a significant diversion of…time and resources." *Id.*, at 467. The inquiry itself risked discouraging faculty from making tenure decisions based on appropriate "doctrinal assessments." *Ibid.* Thus, "'the very process of inquiry'" itself "'impinge[d] on rights guaranteed by the [First Amendment]….'" *Id.*, at 466 (quoting *NLRB*, 440 U.S. at 502). "[B]y encroaching on the ability of a church to manage its internal affairs," the E.E.O.C. and court infringed the university's First Amendment rights. *Id.*, at 460 (quoting *Kedroff*).

B. The D.C. Court of Appeals, the Second Circuit, and the New Jersey Supreme Courts Adhere to the One-Part Test.

Decisions from the D.C. Court of Appeals, the Second Circuit, and the Supreme Court of New Jersey all directly conflict with the two-part test. These cases all hold that courts will satisfy the First Amendment so long as the issues presented in the case can be decided by neutral principles of law without determining or relying on religious doctrine.

1. As described above, the District of Columbia Court of Appeals has held that "civil courts may resolve disputes involving religious organizations as long as the courts employ neutral principles of law and their decisions are not premised upon their consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Meshel v. Ohev Shalmon Talmud Torah*, 869 A.2d 343, 354 (D.C. 2005) (quoting *Jones v. Wolf*, 443 U.S. 595, 602 (1979)). The Court of Appeals has referred to this test as "[t]he touchstone for determining whether civil courts have jurisdiction" to hear a church dispute. *Family Federation for World Peace v. Moon*, 129 A.3d 234, 249 (D.C. 2015)(citations and internal quotation marks omitted). The Court of Appeals has read this Court's precedents to mean that this approach is sufficient, by itself, to "avoid[] prohibited entanglement in questions of religious doctrine, *polity*, and practice by relying exclusively upon objective, well-established concepts of law that are familiar to lawyers and judges." *Meshel*, at 354 (quoting *Jones*, emphasis added).

The Court of Appeals held that plaintiffs/respondents' claims for conversion, unjust enrichment, breach of fiduciary duty, and civil conspiracy were "causes of action [that] all 'rely upon doctrines basic to our legal system' and are resolved by applying familiar, well-developed, neutral principles of law." App. 14 (quoting *Family Federation*, 129 A.3d at 249). Based on this analysis, the Court of Appeals affirmed the trial court's order denying petitioners' motion to dismiss.

The Court of Appeals acknowledged *Kedroff* and *Hosanna-Tabor* only in passing, and it never separately considered whether the case intruded coercively into the church's right to self-governance. It never considered, for example, whether the case could deprive the church of its right to choose its pastor because of the broad equitable relief sought by the complaint. See *Smith v. White*, 2014-Ohio-130, 7 N.E.3d 552, 563-64, 569 (Ohio App. 2014)(holding that the First Amendment barred a claim of breach of fiduciary duty against the pastor seeking an accounting of church finances because such an action amounted to a suit to remove the pastor, which should be referred to the church instead). Nor did it consider whether the claims would interfere with the church's management, or whether the trial court was being asked to interpose its judgment for that of the church's. The court's decision therefore conflicts directly with the decisions described in Section I.A., above.

2. The Second Circuit also conflicts directly with the decisions described in Section I.A. In *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409 (CA2 1999), the Second Circuit held that the

religious teachings of a church could be used as the basis for establishing tort liability against the church. The issue in the case, as the Second Circuit described it, was "whether, as a matter of fact, [the plaintiff's] following of the teachings and belief in the tenets [of the church] gave rise to a fiduciary relationship between [the plaintiff] and the church." *Id.*, at 431.

The Second Circuit, like the D.C. Court of Appeals, understood its obligation under the First Amendment to be strictly limited to determining whether the issues presented by the case required it to resolve any theological issues. *Ibid.* Citing *Jones*, the Second Circuit held that it was enough that "neither the district court nor we have made any decision for or against any religious doctrine or practice." *Ibid.* The Second Circuit further held that a plaintiff could build a case for breach of fiduciary duty out religious beliefs that "are alleged to give rise to a special legal relationship between him and his church…." *Ibid.* Because the church could "point[] to no disputed religious issue which the jury or the district judge in this case was asked to resolve," there was no violation of the First Amendment. *Ibid.* The Second Circuit never acknowledged *Kedroff* or made any attempt to analyze whether the proposed fiduciary relationship would (a) damage the church's relationship with its clergy or (b) otherwise harm the church's ability to govern its internal affairs.[6]

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[6] The plaintiff in *Martinelli* sued the church hierarchy for failing to protect him and others when they were children from sexual assault by a priest under the hierarchy's supervision. *Id.*, at 414. Under such circumstances, it makes sense to balance the church's

3. In *F.G. v. MacDonell*, 150 N.J. 550, 555-56, 696 A.2d 697, 700 (1997), the New Jersey Supreme Court approved of using "neutral principles of law" to scrutinize a minister's notes of his sermons for evidence of tort liability against the minister. The plaintiff in *F.G.* alleged that the minister had inappropriately disclosed the plaintiff's sexual relationship with another clergyman. *Ibid.* Applying "neutral principles of law," the New Jersey Supreme Court held that "[w]hether [the plaintiff] may maintain her action against [the minister] depends on whether a court may adjudicate her claims *without becoming entangled in church doctrine*." *Ibid.* (emphasis added).

In *F.G.*, the New Jersey Supreme Court relied exclusively on whether the case presented "doctrinal issues" that would prevent using "neutral principles of law." It gave no consideration to whether the claim itself would intrude coercively into internal church affairs.

First Amendment rights against the harm done to the plaintiff: "[J]ustifications for the ecclesiastical abstention are at their lowest ebb in circumstances where religious institutions or their employees harm innocent and unconsenting third parties." *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 451 (Tenn. 2012) (internal citation and quotation marks omitted). But it is still remarkable that the Second Circuit, in fidelity to *Kedroff*, did not undertake any analysis at all.

II. There is a Significant Split Concerning Whether the "Neutral Principles of Law" Test Analyzes Only the Claims, Or the Nature of the Relief Requested As Well.

There is also a dramatic split among the lower courts over whether courts using "neutral principles of law" may analyze only the claims or must also analyze whether the scope and nature of the relief sought comports with the First Amendment. The District of Columbia Court of Appeals and the Puerto Rico Supreme Court analyze liability only; the D.C. Circuit and the Mississippi Supreme Court analyze both.

1. As explained above, the District of Columbia Court of Appeals concentrates on liability issues when determining whether the First Amendment permits a court to hear a church dispute. As it explained in its opinion in this case, the Court of Appeals concluded that "the ecclesiastical abstention doctrine does not require dismissal of the suit…because it appears that [petitioners'] *liability* may be adjudicated under neutral principles of tort law…." App. 4 (emphasis added). When analyzing the issues that were presented by this case, the court characterized them as "simply issues of the permissible use or disposition of property" and did not discuss any matters concerning the scope or nature of the relief sought. App. 14.

2. Likewise, the Puerto Rico Supreme Court does not concentrate on the scope or the nature of the relief sought when it scrutinizes whether a court may entertain a church dispute. See *Feliciano v. Roman Catholic and Apostolic Church*, 200 DPR 458 (P.R. 2018). When the court analyzed whether a civil court

could decide the dispute in *Feliciano*, it concentrated exclusively on the nature of the claims, not the relief. App. to Petition for Writ of Certiorari in *Archdiocese of San Juan v. Feliciano*, O.T. 2018, No. 921, p. 9a-11a (certified translation of *Feliciano*). The Puerto Rico Supreme Court described the dispute as "external matters of the Catholic Church in its role as employer versus the petitioner employees in a purely contractual dispute." *Id*., at 11a.

In the relief phase, the only issue the Puerto Rico Supreme Court considered was whether the defendant was (a) the entire Catholic Church in Puerto Rico or (b) some smaller, more narrowly-defined set of Catholic institution(s). *Id*., at 13a-14a. The court did not consider whether the First Amendment placed any restrictions on the nature or scope of the relief it could order. The court affirmed an order directing the sheriff to seize assets anywhere in Puerto Rico belonging to any Catholic institution to pay the unfunded retirement liability of three Catholic schools.

3. That approach conflicts directly with the holdings of the DC Circuit Court of Appeals and the Supreme Court of Mississippi. In *Costello*, the D.C. Circuit ordered the district court take certain precautions in awarding relief against church defendants. The plaintiff in that case was a religious book publisher that asserted anti-trust claims several Catholic organizations disapproving a liturgical book sold by the publisher. *Id*., at 1038-40. The D.C. Circuit remanded the case with instructions to allow the anti-trust claims to go forward but with restrictions to avoid impinging on the Catholic organizations' religious

freedom First Amendment rights. Citing *Jones*, the D.C. Circuit ordered the district court to be particularly circumspect in ordering anti-trust damages that could interfere with the organizations' management of their religious obligations: "[I]f antitrust violations should be found, the court must, of course, be sensitive to the nature of the religious organizations involved in prescribing any antitrust remedies that might be warranted as well as in weighing competing First Amendment and antitrust interests." *Id.*, at 1050 n.31.

Likewise, in *Greater Fairview Missionary Baptist Church*, the Supreme Court of Mississippi reaffirmed that, under appropriate circumstances, a civil court could order a church vote and establish procedures for the vote. This process was the appropriate remedy when needed to ensure that the church, not the court, resolved an internal church dispute. *Ibid.*

III. This Case Addresses an Extremely Important First Amendment Issue.

It is more than forty years since this Court last decided a case like *Kedroff* or *Jones* involving the First Amendment in an intra-church dispute, and without this Court's guidance, the caselaw has developed serious and irreconcilable splits. This case is extremely important for at least three reasons: (1) it directly affects more than 100,000 churches, synagogues, and mosques with over 34 million members in the United States; (2) it will provide important guidance to lower courts that will improve the development of the law; and (3) it addresses important issues that this Court left open in *Hosanna-Tabor* concerning First Amendment protections for churches.

A. This Case Presents an Important First Amendment Church Autonomy Issue that Affects Millions of Americans.

The practical dimensions of this problem make this an urgent question for the Court to address. There are over 54,000 Baptist churches in the United States with over 19,600,000 congregants that are associated with the Baptist World Alliance, for an average of a little less than 400 congregants per church. See Baptist World Alliance, Statistics (http://bwanet.org/statistics, last viewed July 15, 2019). There are another 47,000 plus churches with over 14,000,000 more members in the Southern Baptist Convention, which is not associated with the Baptist World Alliance. See Southern Baptist Convention, Fast Facts About the SBC (http://www.sbc.net/BecomingSouthernBaptist/FastFacts.asp, last viewed July 16, 2019). And there are many more non-Baptist churches, synagogues, and mosques that, like all Baptist churches, are organized in a "congregational" manner, in which there is no hierarchy above the local church. These religious institutions have no higher authority (other than scripture or God) than the congregation itself. They therefore often cannot take advantage of this Court's rule that civil courts should defer to the judgments of the judicatures of hierarchical churches. *See, e.g., Kedroff*. Then, as this Court has observed, "the very process of inquiry…may impinge on rights guaranteed" by the First Amendment. *NLRB*, 440 U.S. at 502. Hundreds of thousands of American churches and their tens of millions of congregants will be affected by this case.

B. Guidance from This Court Will Assist Lower Courts Both in Effectively Managing Church Disputes and in Shaping Appropriate Relief.

Courts that are more faithful to *Kedroff's* and *Hosanna-Tabor's* command to respect a church's right to self-governance are more sensitive to the issues that intrusive or extensive relief present. A reckless court can threaten the ability of even a large religion to operate freely by failing to tailor relief carefully. *E.g., Feliciano.*

That sensitivity also makes the courts more flexible when a matter arises that needs to be addressed. When a matter needs to be referred to a church for resolution, lower courts have developed creative tools for addressing these issues. If, for example, if a dissident faction alleges that the church's leaders have misappropriated or mismanaged the church's money, the court can refer that dispute to the church. Under appropriate circumstances, the court may order certain procedures be followed to ensure the fairness and legitimacy of the church proceeding. See *Greater Fairview Missionary Baptist Church*, 160 So.3d at 228, 232.

Just as federal courts frequently certify state law issues to the highest court of the relevant state, secular courts should refer many church disputes (or the dispositive issues in them) to the governing authority of the individual church for their determination. See *id.*, at 232-33 (if church has not spoken on an ecclesiastical issue, court should restore status quo to enable the church to act). Cf. *McCarthy v. Fuller*, 714

F.3d 971, 976 (CA7 2013) (requesting *amicus brief* from Vatican to resolve whether defendant was a Roman Catholic nun). These tools can be extremely useful both in resolving internal church disputes and in crafting non-intrusive equitable relief. This Court's guidance in this area will assist lower courts in recognizing, developing, and using these tools.

C. This Case Addresses Important Questions Left Open by this Court in *Hosanna-Tabor* About First Amendment Protections for Churches

This case is an extension of the critical issue presented in *Hosanna-Tabor*: Just as this Court determined that Title VII must be interpreted to avoid infringing the church's First Amendment right to order its internal affairs, so that principle encompasses this case as well. As Justice Alito observed in his concurrence in *Hosanna-Tabor*:

> [T]he autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. The Constitution guarantees religious bodies "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

Hosanna-Tabor, 565 U.S. at 199-200 (Alito, J, concurring; quoting *Kedroff*, 344 U.S. at 116).

The danger in allowing courts to limit their First Amendment inquiry to whether the case can be resolved according to "neutral principles of law" involves where a court draws that line. A secular court could draw the line between secular and religious matters in a manner that is much different from how the church itself would draw that line. As this Court has repeatedly recognized,

> it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission.

Corporation of Presiding Bishop of Church of Jesus Christ of Latter–day Saints v. Amos, 483 U.S. 327, 336 (1987). *See also Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J, concurring); *Amos*, 483 U.S. 343-44 (Brennan, J, concurring) ("As a result, the community's process of self-definition would be shaped in part by the prospects of litigation.").

"What makes the application of a religious-secular distinction difficult is that the character of an activity is not self-evident." 483 U.S. at 343-44 (Brennan, J, concurring). A theologian or a minister – or even an average member of a church – will often understand a religious principle or phrase in a much different

manner than a judge, whose professional training is in law and not religion. "[T]his prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity. While a church may regard the conduct of certain functions as integral to its mission, a court may disagree." *Id*.

Frequently, the litigants to a church dispute will not be able to articulate a religious doctrine that captures those principles in a manner the secular courts can understand and apply. In those cases, courts that rely solely on single-step "neutral principles of law" test are likely to misconceive the scope of the protectable religious interests and err in their application of the First Amendment.

The District of Columbia Court of Appeals made exactly that mistake in this case. When it catalogued the issues presented by this case, the Court of Appeals described them as "not issues of religious doctrine" because "they do not involve review of *policy* matters reserved to ecclesiastical judgment." App. 13-14 (emphasis added). But the essence and power of religion, the very thing that makes it effective as a bulwark against the potentially oppressive abuse of the power of the state, cannot be reduced to a series of policy statements or prescriptions. Such a crabbed understanding of the scope of what the First Amendment protects leaves no room for either the ineffable or the tangible dimensions of religious experience. These are dimensions that can be captured only in the manner in which religious institutions order their liturgies, their internal relationships, the distribution of authority, and so many other elements

that make up their internal affairs. Only a broader test that can account for the wider panorama of religious life and experience can effectively protect the First Amendment values at play.

IV. This Case is an Excellent Vehicle for Resolving the Questions Presented

This case presents a clean, straightforward legal issue concerning whether the lower court should have considered not only whether it could resolve the litigation without referring to religious doctrinal issues but also whether it would necessarily intrude into church governance. The plaintiffs/respondents did not bring any claims on their own behalf but sued solely for relief for the church. The church itself is not a plaintiff, and the respondents seek an accounting and permanent injunctive relief that would prevent the ministers the church has chosen for itself from governing the church. This case presents these issues cleanly without having to wrestle with side-issues concerning the church's legal obligations to other parties.

This case, for instance, does not involve the complications that would be involved in:

- an employment law case, involving difficult questions concerning the contractual and public obligations a corporate employer owes its employees;
- a case brought by a congregant for personal injuries the congregant sustained;

- a case in which either individuals, state, or any institution other than the church was purportedly defrauded;
- claims involving the rights of third parties who are strangers to the church; or
- cases involving criminal investigations or other obligations to the State, or involve any other complications.

This is instead a very clean case involving only the issues described in Questions Presented.

CONCLUSION

Petitioners respectfully request that this Court grant the petition for writ of certiorari or in the alternative, if this Court grants the petition for a writ of certiorari in *Archdiocese of San Juan v. Feliciano*, O.T. 2018, No. 921, that this petition be held in abeyance pending that decision, as that decision may provide guidance in the instant dispute.

Respectfully submitted,

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