Nos. 20-1158

IN THE
Supreme Court of the United States

THE NORTH AMERICAN MISSION BOARD OF THE SOUTHERN BAPTIST CONVENTION, INC.,

Petitioner

v.

WILL MCRANEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS AND ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*[1]

The American Association of Christian Schools ("AACS") is one of the leading organizations of Christian schools in the country. Founded in 1972 and now in operation for almost fifty years, AACS represents more than 100,000 students in more than 750 schools. AACS serves Christian schools and their students through a network of thirty-eight state affiliate organizations and two international organizations. The general purposes and objectives of AACS are to aid in promoting, establishing, advancing, and developing Christian schools and Christian education in America.

The Association of Christian Schools International ("ACSI") is a nonprofit Christian educational organization. Founded in 1978, ACSI serves over 500,000 students and 2,000 Christian preschools, elementary schools, secondary schools, and post-secondary institutions in the United States. ACSI exists to strengthen Christian schools and equip Christian educators worldwide as they prepare students academically and inspire them to become devoted followers of Jesus Christ. ACSI advances excellence in Christian schools by enhancing the professional and personal development of Christian educators and providing vital support functions for

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[1] All parties have consented to the filing of this brief, and its filing 13 days before the March 25, 2021, deadline serves as notice to the parties. No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation of this brief.

Christian schools. Its vision is to be a leading international organization that promotes Christian education and provides training and resources to Christian schools and Christian educators, resulting in schools that contribute to the public good through effective teaching and learning and that are biblically sound, academically rigorous, socially engaged, and culturally relevant; and in educators who embody a biblical worldview, engage in transformational teaching and discipling, and embrace personal and professional growth.

SUMMARY OF ARGUMENT

The First Amendment's Religion Clauses protect religious organizations' governance decisions from government interference, and the Court has applied this principle to protect the governance decisions of religious schools. Many religious schools, however, minister to students without the oversight of a church, synagogue, mosque, or other similar religious body. Instead, these schools collaborate with other religious organizations like *amici* AACS and ACSI to accredit their educational programs and certify their teachers and administrators—consistent with both organizations' doctrinal standards.

The Fifth Circuit's holding would apply state tort law to this relationship, creating a two-tiered system of religious liberty that favors hierarchical religious organizations over congregational, associational, or otherwise more horizontal ones—even when they make the same decisions for the same reasons. Under the Fifth Circuit's reasoning, if AACS or ACSI decide to withdraw certification or credentials from a

teacher that functions as a minister, and if that loss of certification or credentials results in employment termination, then AACS or ACSI could be subject to claims that the ministerial exception would otherwise bar, merely because the credentialing body was external to the school itself. The Fifth Circuit's decision gives *amici* associations and their member schools second-class status, interferes with their doctrinal choice of non-hierarchical governance, conflicts with this Court's precedent protecting the governance decisions of religious schools, and threatens to lower the quality of religious education available to students and their families.

ARGUMENT

I. The Court Should Grant Certiorari Because The Fifth Circuit's Decision Impermissibly Disadvantages Non-Hierarchical[2] Religious Organizations.

The First Amendment to the U.S. Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Pursuant to these Religion Clauses, this Court has long recognized that the First Amendment protects the right of religious organizations "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 of*

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[2] *Amici* use "non-hierarchical" to refer to religious organizations that use an associational, fraternal, or other more horizontal structure.

Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1952).

These protections are broad, particularly as they apply to questions of church governance and employment matters. This Court recently—and unanimously—recognized a "ministerial exception" to employment discrimination laws, grounded in the Religion Clauses, that bars "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 190 (2012). But the Fifth Circuit below carved a hole in the right of religious organizations to make governance decisions free from government interference, providing that protection to hierarchical religious organizations while denying the same level of protection to non-hierarchical religious organizations. The second-class status the Fifth Circuit affords non-hierarchical religious organizations is inconsistent with the First Amendment.

A. The Religion Clauses Provide the Same Level of Protection to Hierarchical and Non-Hierarchical Religious Organizations.

The Court has long recognized that the First Amendment requires deference to religious organizations' governance decisions and procedures. *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 720 (1976) (finding that civil courts were obligated to accept the decisions of ecclesiastical tribunals as binding where a hierarchical religious organization had established them). This

doctrine, referred to as the church autonomy doctrine or ecclesiastical abstention doctrine, holds that, in matters of religious organization governance, "the church rule controls." *Kedroff*, 344 U.S. at 113 (quoting *Watson v. Jones*, 80 U.S. 679, 727 (1871)) (deferring to the "highest . . . church adjudicatory"); *Milivojevich*, 426 U.S. at 720 (1976) (deferring to "final church adjudicatory").

Nothing in this Court's precedents suggests that the protections apply only when the "church rule" (e.g., the decision of the religious organization) comes from a hierarchical religious organization but not when it comes from a non-hierarchical religious organization. Indeed, these protections are just as important, if not more important, to religious organizations that choose to use a lateral associational or fraternal structure rather than a vertical or hierarchical form of organization. Such religious organizations' ability to define and maintain their own identity, their religious doctrines, and their religious mission rests in their ability to extend or withdraw affiliation with the members that comprise their religious association.

Moreover, in the related context of assessing whether to apply the ministerial exception to employment decisions involving certain job titles, this Court warned against "attaching too much significance to titles" that "would risk privileging religious traditions with formal organizational structures over those that are less formal." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020). By the same token, when weighing whether the ecclesiastical abstention is required, courts should apply the same

standard applicable to the ministerial exception and not "attach too much significance" to whether a claim is premised on the formal employer-employee relationship found in traditional hierarchical religious organizations because doing so "would risk privileging religious traditions with formal organizational structures over those that are less formal." *Id.*

B. The Fifth Circuit's Decision Gives Non-Hierarchical Religious Organizations Second-Class Status.

The Fifth Circuit's decision privileges religious organizations that employ individuals over those religious organizations that interact with those same individuals through less formal means. In the case below, Respondent alleged that Petitioner, a national religious organization, caused his termination from an independent, regional religious organization by making false statements about Respondent's conduct in negotiating a gospel ministry partnership agreement between the two organizations. Respondent alleged that Petitioner's statements to his employer tortiously interfered with his business relationship and intentionally inflicted emotional distress on him. *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 349 (5th Cir. 2020). The Fifth Circuit held that the complaint, on its face, did not necessarily "require the court to address purely ecclesiastical questions" because Respondent was not "challenging the termination of his employment" by his employer or "asking the court to weigh in on issues of faith or doctrine." *Id.* at 349–50. The Fifth Circuit remanded the case, ordering the trial court to apply "neutral principles of tort law" unless the Petitioner

provided evidence that it had a religious reason for its alleged conduct. *Id.*

This decision therefore implies that the *legal form* of a relationship between a religious organization and its co-religionists determines the level of protection afforded by the First Amendment's Religion Clauses. Under the Fifth Circuit's logic, if the Southern Baptist Convention in the case below had employed a hierarchical model of church governance such as the model of church government employed by the Episcopal Church,[3] the claim brought by Respondent would have been barred by the First Amendment. But because the Southern Baptist Convention's relationship with Respondent took on a different form, arising out of the Convention's non-hierarchical governance structure, the Fifth Circuit's holding gives the Convention less protection. Such disparate treatment of hierarchical and non-hierarchical religious organizations is inconsistent with the First Amendment, which makes no distinction between the two.

The Fifth Circuit's decision effectively creates two classes of religious organizations distinguished only by the internal choice of organizational form—a choice predicated on the doctrinal principles specific to the organization's religious traditions. In one class

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[3] Many churches affiliated with the Southern Baptist Convention trace their theological roots back to the Separatist Movement in seventeenth century England in which the forerunners to modern Baptist churches explicitly rejected the hierarchical authority structure of the Church of England. *See* Robert G. Torbet, *A History of the Baptists* 20 (2d ed. 1963).

are religious organizations that interact with ministers, teachers, and other co-religionists in a hierarchical fashion, often via the employer-employee relationship. The Fifth Circuit then provides lesser protection to a second class of religious organizations whose relationships with these same ministers and co-religionists are more diffuse and not marked by a formal hierarchy. These organizations often exercise authority outside of the prototypical employer-employee context. In the Fifth Circuit's view, these organizations must face lawsuits arising out of an individual's termination (such as claims alleging tortious interference with an employee contract) merely because the organizations interact with co-religionists through the contractual relationships typical of non-hierarchical religions rather than through the employer-employee relationships typical of hierarchical religions. *McRaney*, 966 F.3d at 350.

While this two-tiered system may leave hierarchical religious organizations relatively unscathed, non-hierarchical religious organizations may be forced to submit to costly, time-consuming, and intrusive litigation in order to receive the constitutional protections to which they are entitled. Such a two-tiered system runs counter to the First Amendment, which protects religious organizations independent of their internal organizing decisions. Accordingly, the Court should grant certiorari to correct this misapplication of the Religion Clauses by the Fifth Circuit.

II. The Court Should Grant Certiorari Because the Fifth Circuit's Decision Threatens the Religious Liberty of Religious Schools.

The ministerial exception has found particular purchase in the religious education context. This Court first expressly acknowledged the exception in a case involving an elementary school teacher associated with a Lutheran Church in *Hosanna-Tabor*, 565 U.S. at 192. Just last term, the Court reaffirmed the importance of the doctrine for religious schools, noting that "[r]eligious education is vital to many faiths practiced in the United States." *Our Lady of Guadalupe*, 140 S. Ct. at 2065. However, the Fifth Circuit's decision threatens this Court's guarantee of religious autonomy for many of these religious schools and the religious bodies that work closely with them.

A. The Governance Decisions of Religious Schools Are Entitled to the Protections of the Ecclesiastical Abstention Doctrine.

The Fifth Circuit emphasized that its decision was premised on the idea that it was "not clear that any of [the] determinations [necessitated by Respondent's Complaint] will require the court to address purely ecclesiastical questions." *McRaney*, 966 F.3d at 349. But the Fifth Circuit's implication that the ecclesiastical abstention exception applies only when courts are faced with "purely ecclesiastical questions" is inconsistent with *Hosanna-Tabor*: "The purpose of the [ministerial] exception is not to safeguard a church's decision to fire a minister only when it is

made for a religious reason." *Hosanna-Tabor*, 565 U.S. at 194.

Particularly in the religious education context, decisions related to the "selection of the individuals who play certain key roles" are protected by the ecclesiastical abstention doctrine, regardless of whether the decision was made for explicitly religious reasons. *Our Lady of Guadalupe*, 140 S. Ct. at 2060. In *Our Lady of Guadalupe*, the Court affirmed the application of the ministerial exception where a teacher's termination was based "on classroom performance—specifically, [the teacher's] difficulty in administering a new reading and writing program, which had been introduced by the school's new principal as part of an effort to maintain accreditation and improve the school's academic program." *Id.* at 2064. The Court went on to acknowledge that even facially non-religious criteria could be motivated by religious considerations. *Id.* ("Presumably the purpose of [academic] requirements is to make sure that the person holding the position understands the faith and can explain it accurately and effectively.").

Thus, even facially non-religious adjudications involving religious schools will involve deliberations relevant to issues of religion and religious autonomy. Indeed, for many religious organizations there is no bright line between the sacred and the secular, the spiritual and the temporal, as even secular learning serves a spiritual purpose. *See id.* By taking it upon themselves to adjudicate which issues *are* religious, courts would be setting themselves up to make decisions that are appropriately left within the purview of the religious institution itself. *See, e.g.*, *Walz v. Tax*

Comm'n of City of New York, 397 U.S. 664, 669–70 (1970) ("Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so."). The ecclesiastical abstention doctrine and ministerial exception are meant to guard against this exact kind of intrusion by "ensur[ing] that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical,'—is the church's alone." *Hosanna-Tabor*, 565 U.S. at 195 (quoting *Kedroff*, 344 U.S. at 119).

B. The Fifth Circuit's Decision Would Weaken Religious Liberty Protections for Religious Organizations that Provide Credentialing Services to Religious Schools.

The Fifth Circuit's two-tiered framework for applying the ecclesiastical abstention doctrine disadvantages religious organizations like *amici.*

In *Hosanna-Tabor,* and then again in *Our Lady of Guadalupe*, this Court recognized that the Religion Clauses protect the rights of religious educational institutions to exercise control in the selection and continuing employment of their teachers, prohibiting employment-related litigation against the institutions. *Hosanna-Tabor*, 565 U.S. at 188-89; *Our Lady of Guadalupe*, 140 S. Ct. at 2066. Like the schools in *Hosanna-Tabor* and *Our Lady of Guadalupe*, schools accredited by AACS or ACSI are faith-based institutions that seek to fulfill their religious obligations through education.

However, many AACS- and ACSI-member schools operate independently from the oversight of a church. These schools rely on collaboration with other religious organizations to administer and govern their activities, including by availing themselves of the accreditation services of AACS and ACSI. As religious organizations responsible for overseeing the accreditation, certification, credentialing, or membership requirements of their religious school members, *amici* have established a set of accreditation and membership criteria consistent with their doctrinal standards. Thus, in order to be eligible for membership or for accreditation, a school must meet a number of standards, including, for example, a commitment to hiring school personnel who "are in agreement with the doctrinal statement and other general policies of the schools." American Association of Christian Schools, *2020 Accreditation Manual* (2020), https://www.aacs.org/wp-content/uploads/2020/02/2020-Accd-Manual-4.-Standards-for-Accd.pdf.

In *Hosanna-Tabor* and *Our Lady of Guadalupe*, the churches associated with the respective educational institutions were responsible for credentialing the schools and teachers they employed. *See Hosanna-Tabor*, 565 U.S. at 177; *Our Lady of Guadalupe*, 140 S. Ct. at 2058–59. But many religious schools are not connected to a church that provides credentialing and accreditation services; in those cases, these religious schools look to organizations like AACS and ACSI to fill this role. As with the religious employees in *Hosanna-Tabor* and *Our Lady of Guadalupe*, teachers accredited through AACS and

ACSI must meet both doctrinal and academic requirements. But with AACS and ACSI-member schools, the bodies setting and assessing the fulfillment of those requirements are external to the school itself.

This structural difference between a hierarchical religious organization that effectively provides its own credentialing and accreditation services and a non-hierarchical religious organization that relies on external religious groups like AACS and ACSI for credentialing and accreditation services does not change the import or role that religious education holds in these families' lives. In *Our Lady of Guadalupe*, the Court acknowledged that many religions place an emphasis on education as part of their faiths, affirming that protection of this practice is not predicated on a centralized educational structure. *Our Lady of Guadalupe*, 140 S. Ct. at 2065–66. As with other Constitutional religious protections, the presence or absence of a centralized religious structure does not affect the applicability of the ecclesiastical abstention doctrine to religious educational institutions. *See, e.g.*, *Milivojevich*, 426 U.S. at 724–25 (1976) ("the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters").

Nonetheless, the Fifth Circuit's reasoning would provide protection to religious schools that provide their own credentialing and accreditation services, but deny the same level of protection to religious accreditation bodies external to the school. In

the context of employment determinations, schools affiliated with hierarchical religions would be immunized from the types of claims brought by Respondent because the decision to terminate would be wholly internal to a single religious organization. However, under the Fifth Circuit's reasoning, if AACS or ACSI decided to withdraw certification or credentials from a teacher and that loss of certification or credentials resulted in employment termination, AACS or ACSI could be subject to claims involving the same underlying conduct, merely because the credentialing body was external to the school itself. This would be true even if the reasons for terminating the teachers in both situations were identical. The ecclesiastical abstention doctrine turns on whether the state would be interfering with the internal governance of the religious organization, not on how the particular claims are styled in the complaint.

This disparate treatment of religious organizations is harmful: if the Fifth Circuit's decision is permitted to stand, organizations like AACS and ACSI would not enjoy the full First Amendment protections extended to other religious organizations that happen to have a different organizational structure. Such a result would undermine the Constitutional mandate that government be neutral in how it treats different religions, not extending preferential treatment as between religions. *See Walz*, 397 U.S. at 669 (holding that "the basic purpose" of the Religion Clauses "is to insure that no religion be sponsored or favored, none commanded, and none inhibited"); *Larson v. Valente*, 456 U.S. 228, 244–46 (1982) ("The clearest command of the Establishment Clause is that

one religious denomination cannot be officially preferred over another.").

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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