No. 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

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE STATES OF TEXAS, ALABAMA, ARIZONA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TENNESSEE, AND UTAH AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Oklahoma, South Carolina, Tennessee, and Utah.[1]

Amici States' interest in this case is twofold. First, Amici States seek to protect the First Amendment rights of religious institutions within their borders. The Religion Clauses of the First Amendment forbid the "establishment of religion" and guarantee the "free exercise" of religion, U.S. Const. amend. I, meaning religious institutions have the freedom to decide matters of faith, doctrine, and internal governance without governmental interference. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). Imposing state tort liability on religious institutions based on such decisions threatens that freedom. The Fifth Circuit's decision permitting state-law tort claims to move forward against the North American Mission Board of the Southern Baptist Convention (the "Mission Board") fails to recognize that the First Amendment gives "special solicitude" to the rights of religious institutions to govern themselves. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 189 (2012); *see generally McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346 (5th Cir. 2020) (*McRaney I*).

Second and relatedly, Amici States have an interest in keeping their courts from deciding, contrary to the

[1] No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. On March 8, 2021, counsel of record for all parties received notice of amici's intention to file this brief.

First Amendment, matters of religious doctrine or governance. State courts frequently look to federal courts for the interpretation and application of the First Amendment. *See, e.g.*, *Westbrook v. Penley*, 231 S.W.3d 389, 398-99 (Tex. 2007); *El-Farra v. Sayyed*, 226 S.W.3d 792, 793-794 (Ark. 2006); *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 293 (Ind. 2003). The Fifth Circuit's decision to extend this Court's neutral-principles rule to the tort context, when it applies only in church property cases, will mislead state courts into resolving other claims that undermine the independence and autonomy of religious institutions. *See McRaney I*, 966 F.3d at 349-50. Amici States have an interest in preventing their courts from being used to suppress religious freedom.

SUMMARY OF ARGUMENT

I. The Fifth Circuit misconstrued both the church autnomony doctrine and the neutral-principles rule when it held that McRaney's claims against the Mission Board could proceed. Rather than limit application of the neutral-principles rule as this Court has—to a subset of church property disputes—the Fifth Circuit treated it as an invitation to adjudicate disputes regarding the internal affairs and decisions of religious institutions through state-law tort claims. But as demonstrated most recently in the Court's ministerial-exception cases, certain decisions and actions of religious institutions are off-limits for courts. The Fifth Circuit's expansion of the neutral-principles rule threatens to swallow the larger rule of church autonomy.

II. Many state courts have correctly interpreted and applied this Court's precedent. But a few permit state-law tort claims against religious institutions concerning decisions and actions that are protected by the First

Amendment. Even the specific claims raised by McRaney have received disparate treatment in courts across the country. Without guidance from this Court, religious institutions will receive different First Amendment protections depending on a plaintiff's choice of forum.

III. As demonstrated by the Fifth Circuit's 9-8 decision to deny rehearing en banc, this case concerns a closely contested issue. *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 980 F.3d 1066, 1066-67 (5th Cir. 2020) (*McRaney II*). And as demontrated by the two dissents from the denial of rehearing en banc, the panel made multiple errors. *Id.* at 1067-75 (Ho, J., dissenting from denial of rehearing en banc); *id.* at 1075-82 (Oldham, J., dissenting from denial of rehearing en banc). The Court should address this issue now, before those errors chill religious institutions from exercising their First Amendment freedoms.

ARGUMENT

I. The Neutral-Principles Rule Does Not Allow Tort Plaintiffs to Avoid the Church Autonomy Doctrine.

One hundred fifty years ago, the Court recognized that there is a sphere in which religious institutions may operate free from governmental interference. *Watson v. Jones*, 80 U.S. 679, 727 (1871). This Court has since explained that this doctrine arises directly from the First Amendment. Now rooted in the First Amendment's Religion Clauses, the church autonomy doctrine provides that religious institutions are free to decide matters of faith, doctrine, and internal governance without governmental intrusion. *Our Lady of Guadalupe*, 140 S. Ct. at 2061.

State-law tort claims against religious institutions threaten that constitutionally protected freedom. The Fifth Circuit believed McRaney's claims could move forward as long as the court applied "neutral principles of tort law." *McRaney I*, 966 F.3d at 349-50. But the neutral-principles rule is limited to property disputes. It is not, and never has been, an invitation for courts to decide all manner of claims involving religious institutions if a "neutral principle" can be found. The Court's intervention is necessary to ensure that courts do not allow state-law tort claims to impair the First Amendment rights of religious institutions.

A. The church autonomy doctrine protects the independence of religious institutions.

In 1871, this Court held that, when it comes to "questions of discipline, or of faith, or ecclesiastical rule, custom, or law," the decisions of the highest church authority are final and binding on courts. *Watson*, 80 U.S. at 727. Although the ruling was not grounded in the First Amendment, as that Amendment had yet to be incorporated against the States, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115-16 (1952), this Court later noted that the *Watson* decision "radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation," *id.* at 116.[2]

Guided by that spirit eighty years later, the Court held that the First Amendment protects the right of religious institutions "to decide for themselves, free from

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[2] Although *Watson* may have been the first time this Court considered the principles of the church autonomy doctrine, the doctrine's origins can be traced back centuries before this Nation's founding. *McRaney II*, 980 F.3d at 1075-80 (Oldham, J., dissenting from denial of rehearing en banc).

state interference, matters of church government as well as those of faith and doctrine." *Id.* As a result, government may not "regulate[] church administration, the operation of the churches, [or] the appointment of clergy." *Id.* at 107. The Court has found it "obvious[]" that "[s]tate interference in that sphere [matters of faith and doctrine]" and "any attempt by government to dictate or even to influence such matters" would violate the First Amendment. *Our Lady of Guadalupe*, 140 S. Ct. at 2060; *see also People of State of Ill. ex rel. McCollum v. Bd. of Educ. of Sch. Dist. No. 71*, 333 U.S. 203, 212 (1948) ("For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere.").

This freedom from governmental regulation—the church autonomy doctrine—does not give religious institutions "a general immunity from secular laws." *Our Lady of Guadalupe*, 140 S. Ct. at 2060. It does, however, "protect their autonomy with respect to internal management decisions that are essential to the institution's central mission." *Id.*; *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring) ("[W]e 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.").

This case presents a stark example. The actions here that respondent challenges include decisions by a religious institution (the Mission Board) about which religious organizations to partner with, who should speak at religious meetings, and what may be displayed inside the institution's headquarters. *McRaney I*, 966 F.3d at 349 (describing allegations). Imposing state-law tort liability for these decisions allows the government to indirectly

regulate protected activities of religious institutions—contrary to the First Amendment and the church autonomy doctrine.

B. The neutral-principles rule applies only to a subset of church property disputes.

The Fifth Circuit held that McRaney's claims could move forward, despite the church autonomy doctrine, if the district court applied "neutral principles of tort law." *Id.* at 349-50. But the neutral-principles rule originated in, and is limited to, a subset of church property disputes. The Fifth Circuit erred by expanding it to state-law tort claims.

Church property disputes present a unique challenge to States and courts: Two competing parties cannot control the same piece of property. Someone must own it. Thus, the Court has recognized that States have "an obvious and legitimate interest in the peaceful resolution of property disputes." *Jones v. Wolf*, 443 U.S. 595, 602 (1979). This leads to a corresponding interest for States in "providing a civil forum where the ownership of church property can be determined conclusively." *Id.*

Nonetheless, the Court has not prescribed a specific method by which States must resolve property disputes, holding instead that "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Id.* (quoting *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring) (emphasis in original)). One approach a State may take is simply to defer to the decision of the highest church authority, as the Court did in *Watson*, 80 U.S. at 727. *See also Md. & Va.*

Eldership, 396 U.S. at 368-69 (Brennan, J., concurring) (describing deference option in *Watson*).

But another approach approved by the Court is to apply "neutral principles of law." *Jones*, 443 U.S. at 602. This option was first identified in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, a property dispute in which the Court rejected the Georgia courts' use of a rule that asked whether a church had departed from the tenets of its faith. 393 U.S. 440, 449 (1969). The Court concluded that this "departure-from-doctrine" rule violated the First Amendment but noted that "neutral principles of law" could be applied to property disputes without "establishing" a church in violation of the First Amendment. *Id.* at 449-50.

Even then, as explained by Judge Ho in his dissent from the denial of rehearing en banc, the neutral-principles rule is for the benefit of religious institutions: It allows them to structure their organization "in terms accessible to a secular court" so that they may seek the assistance of civil courts in resolving property disputes, if they so choose. *McRaney II*, 980 F.3d at 1071 (Ho, J., dissenting from denial of rehearing en banc). Thus, the Court has treated the neutral-principles rule as a permissible intrusion into church autonomy, not because it is "neutral," but because the church has affirmatively acted to enable secular courts to make those decisions.

This is because, as with resolving disputes not related to property, in resolving church property disputes, there remains a "substantial danger" that States may become "entangled in essentially religious controversies." *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976). Thus, the First Amendment "severely circumscribes the role that civil

courts may play" in resolving these disputes. *Jones*, 443 U.S. at 602 (quoting *Presbyterian Church*, 393 U.S. at 449).

Since *Presbyterian Church*, this Court has approved the use of the neutral-principles rule to resolve property disputes. *Jones*, 443 U.S. at 602. Under that rule, courts may examine church documents, such as deeds, charters, and church constitutions, and apply state laws regarding property and trusts to determine which party owns the property. *See generally id.* at 601-04. But even then, the court must defer to the highest ecclesiastical authority to the extent the interpretation of any document requires resolution of a doctrinal issue. *Id.* at 604.

C. The ministerial-exception cases reveal the Fifth Circuit's flawed reasoning.

Since first introducing the neutral-principles concept over fifty years ago, *Presbyterian Church*, 393 U.S. at 449, the Court has only ever applied it to property disputes. *See Jones*, 443 U.S. at 602; *Md. & Va. Eldership*, 396 U.S. at 367; *Presbyterian Church*, 393 U.S. at 449. The Court's analysis in its recent ministerial-exception cases confirms that the neutral-principles rule is confined to the property context and demonstrates the Fifth Circuit's error in expanding the rule to tort claims.

1. In *Hosanna-Tabor* and *Our Lady of Guadalupe*, the Court considered whether age- and disability-discrimination claims could proceed when brought by a former employee against her religious employer. *Our Lady of Guadalupe*, 140 S. Ct. at 2055; *Hosanna-Tabor*, 565 U.S. at 176-77. After reviewing the historical attempts of government to interfere in the decisions of religious institutions, the Court held that the First Amendment requires a ministerial exception that prohibits governments from legislating the relationship between a

religious institution and its minister. *Hosanna Tabor*, 565 U.S. at 182-88; *see also Our Lady of Guadalupe*, 140 S. Ct. at 2060 ("[C]ourts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions."). Thus, the employment-discrimination claims could not proceed. *Our Lady of Guadalupe*, 140 S. Ct. at 2055; *Hosanna-Tabor*, 565 U.S. at 196.

In reaching its decision, the Court concluded that the ministerial exception applies regardless whether the reason for the termination was religious. *Hosanna-Tabor*, 565 U.S. at 194-95. Rather than protect only religious decisions, the purpose of the exception is to safeguard the authority of the religious institution to control who will minister to its constituents. *Id.* Judicial review of those decisions would "undermine the independence of religious institutions in a way that the First Amendment does not tolerate." *Our Lady of Guadalupe*, 140 S. Ct. at 2055.

2. As explained in the Mission Board's petition, the ministerial-exception cases required the Fifth Circuit to rule for the Mission Board. Pet. 17-18, 21. But the analysis in *Hosanna-Tabor* and *Our Lady of Guadalupe* also demonstrate the error in the Fifth Circuit's assumption that all cases that *could* be decided with neutral principles *should* be decided. Take *Our Lady of Guadalupe* as an example: the employers did not offer religious reasons for the terminations, but performance-based reasons. 140 S. Ct. at 2058, 2059. Thus, the employment disputes could, theoretically, have been decided on neutral principles—without analysis of any church doctrine. Yet the Court still held those employment decisions were off limits for courts, *id.* at 2055—not because there was no neutral principle, but because court interference in those

employment decisions would violate the religious institutions' autonomy, *id.* at 2061.

Going further, the Court identified three cases in *Hosanna-Tabor* as the constitutional foundation of its ministerial-exception holding: *Watson*, 80 U.S. 679, *Kedroff*, 344 U.S. 94, and *Serbian Eastern Orthodox*, 426 U.S. 696. *Hosanna-Tabor*, 565 U.S. at 185-87; *see also Our Lady of Guadalupe*, 140 S. Ct. at 2061. All three cases concerned church property disputes. *Serbian E. Orthodox*, 426 U.S. at 698; *Kedroff*, 344 U.S. at 95; *Watson*, 80 U.S. at 718-19. Yet despite deriving the ministerial exception from the analysis in church property cases, the Court did not also adopt the neutral-principles rule, implicitly confirming that the rule is limited to property cases.

3. The ministerial-exception cases also show the flaw in the Fifth Circuit's conclusion that the case could proceed on neutral principles unless and until the Mission Board produces evidence of a "valid religious reason" for its actions. *See McRaney I*, 966 F.3d at 351. To be entitled to the ministerial exception, the religious employer does not have to defend its employment decision with a religious reason, much less prove it is "valid." In *Hosanna-Tabor*, the plaintiff argued that she should be able to challenge the religious reason for her termination as pretextual. 565 U.S. at 194. The unanimous Court held that argument "misses the point." *Id.* The ministerial exception does not protect a church's decision to terminate a minister only for religious reasons; rather, it protects a church's ability to govern itself by determining who will lead it. *Id.* at 194-95.

The question in church autonomy cases, then, is not whether neutral principles will enable the court to decide the case; rather, the question is whether deciding the

case (by whatever means are appropriate) will impair the autonomy of religious institutions to decide their own matters of faith, doctrine, mission, and governance. The Fifth Circuit asked the wrong question and, consequently, reached the wrong result. Its error has put the Mission Board in the position of having to defend its actions with evidence of a religious reason for taking them. Such potential for liability, if allowed to stand, will certainly chill religious institutions from acting in accordance with their beliefs in the future.

II. State Courts Do Not Uniformly Apply the Church Autonomy Doctrine and Neutral-Principles Rule.

Given that federal subject-matter jurisdiction is often lacking when religious institutions are sued for state-law tort claims, state courts are frequently called upon to decide issues of church autonomy and neutral principles. As discussed below, some get it right, recognizing the religious institution's autonomy to make decisions regarding its faith, doctrine, mission, and governance. But others, like the Fifth Circuit, use the neutral-principles rule to interfere with those decisions and the institution's independence. The Court's guidance is necessary to ensure that all religious institutions have the same freedom, no matter the State in which they are located.

A. The Fifth Circuit's decision conflicts with multiple state supreme courts.

A number of state courts have correctly declined to expand the neutral-principles rule beyond the property context, recognizing that the church autonomy doctrine protects the conduct challenged as tortious. In *Westbrook*, for example, the Texas Supreme Court considered a professional-negligence claim that arose from a pastor's revelation to his congregation, for purposes of

church discipline, matters discussed with the plaintiff in counseling. 231 S.W.3d at 391. The court assumed the counseling was purely secular in nature and recognized that, "theoretically," a court might be able to decide the case without resolving a theological question. *Id.* at 391, 397. Nevertheless, the court dismissed the claim, determining that liability would have a "chilling effect on churches' autonomy to manage their own affairs." *Id.* at 402. The court refused to use the neutral-principles rule outside the property context, reasoning that even if a professional-negligence claim could be *defined* by neutral principles, its *application* would infringe on the church's autonomy. *Id.* at 400.[3]

In *El-Farra*, the Arkansas Supreme Court considered a breach-of-contract claim brought by an imam against the religious center that formerly employed him. 226 S.W.3d at 793. The plaintiff asserted that the breach-of-contract claim could be decided by neutral principles because it did not involve questions of doctrine. *Id.* at 794-95. But the court held that the neutral-principles rule could not be used because (1) this was not a property case, (2) doctrine was involved, and (3) "the First Amendment protects the act of decision rather than the motivation behind it." *Id.* at 795-96.

In Indiana, a plaintiff sued her former religious employer for blacklisting and tortious interference with business relationships after a potential employer denied her a job based on information provided by her former

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[3] While *Westbrook* and several other cases cited in this brief concern claims brought by congregants, rather than ministers, they serve to demonstrate how state courts are analyzing tort claims under the church autonomy doctrine. That McRaney is a minister makes application of the church autonomy doctrine all the more apparent here, as the decision of who leads a church is a "strictly ecclesiastical" matter. *Hosanna-Tabor*, 565 U.S. at 194-95.

employer. *Brazauskas*, 796 N.E.2d at 288. The Indiana Supreme Court held that permitting such claims would violate the church autonomy doctrine—despite a partial dissent arguing that neutral principles could be used. *Id.* at 294; *see also id.* at 296 (Sullivan, J., concurring in part and dissenting in part). And the Washington Supreme Court rejected the neutral-principles rule in a case claiming negligent supervision and retention in church leadership, explaining that "[w]hether the situation involves religious reasons or interpretation of religious scripture or doctrine is not determinative of the First Amendment protections to the church." *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357, 368 (Wash. 2012). Instead, the court held that interfering in the selection of church leadership would "significantly, and perniciously, rearrange the relationship between church and state." *Id.*; *see also* Pet. 29-31 (discussing additional cases).

The Fifth Circuit's decision stands contrary to these cases, which determined that resolving tort claims against religious institutions invaded their autonomy (even if decided with neutral principles). *See, e.g.*, *Erdman*, 286 P.3d at 368; *Westbrook*, 231 S.W.3d at 402. And there can be no question that resolving McRaney's claims would infringe the Mission Board's autonomy: McRaney admitted that "this cause of action had its roots in Church policy." *McRaney II*, 980 F.3d at 1067 (Ho, J., dissenting from denial of rehearing en banc) (quoting McRaney's district-court filing). Thus, it is irrelevant whether the tort claims could be defined with neutral principles. They cannot be applied to the Mission Board without infringing its autonomy, so a secular court is required to dismiss.

B. State courts inconsistently apply the neutral-principles rule.

While many States have correctly limited the neutral-principles rule to church property disputes, that limitation is not universal. *See, e.g.*, *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 357 (D.C. 2005) (stating "we can think of no legitimate reason why the Establishment Clause would permit civil courts to resolve property disputes, but not others, according to objective, well-established, and purely secular legal principles"). Looking just at the causes of action pleaded by McRaney—defamation, intentional infliction of emotional distress, and intentional interference with business relationships—there is a split among state courts regarding if and when neutral principles can be applied to those claims.

1. State courts are decidedly split when it comes to defamation claims in the religious context. For example, in *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, former parishioners brought a defamation claim concerning statements made by a pastor during church disciplinary proceedings. 877 N.W.2d 528, 530 (Minn. 2016). The court found the suit barred by the First Amendment as it would "unduly interfere with [the church's] constitutional right to make autonomous decisions regarding the governance of their religious organization." *Id.* at 542.

In *Ex parte Bole*, the Alabama Supreme Court considered defamation within a church regarding misappropriation of funds. 103 So. 3d 40, 48 (Ala. 2012). The court dismissed the claim because it concerned a matter of church discipline and to hold otherwise would chill communication among church members regarding church leadership. *Id.* at 72. And in *Lippard v. Holleman*, an

appellate court in North Carolina reached a more mixed result, concluding that neutral principles could not apply to a defamation claim brought by the church pianist, but only because determining the truth or falsity of the challenged statements would require resolving doctrinal issues. 844 S.E.2d 591, 601-11 (N.C. Ct. App. 2020), *appeal dismissed*, *review denied*, 847 S.E.2d 882 (N.C. 2020), *cert. filed*, No. 20-1174 (U.S. Feb. 25, 2021).

In contrast, the South Carolina Supreme Court permitted a defamation claim against a pastor concerning statements he made at a congregational meeting. *Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605, 606 (S.C. 2013). The court concluded that the claim could be decided under neutral principles, as the alleged defamatory statements did not concern faith or doctrine, even though they concerned internal church governance. *Id.* at 607-08 ("[A] tortfeasor is not shielded from liability simply by committing his torts within the walls of a church or under the guise of church governance.").

Although not referencing neutral principles, the Alaska Supreme Court allowed a pastor to bring a defamation claim against a synod executive for statements made to the pastor's prospective employer. *Marshall v. Munro*, 845 P.2d 424, 428 (Alaska 1993). Finding that the alleged defamation was not part of an internal dispute or disciplinary process, the court permitted the claim. *Id.* at 427-28. The Fifth Circuit relied on this decision to justify its ruling in this case. *McRaney I*, 966 F.3d at 350.

There is, thus, a split among state courts regarding whether and when defamation claims may be brought against religious institutions and those acting on their behalf.

2. Although not as deep a split as in the area of defamation, there remains a level of confusion among state

courts regarding the application of the church autonomy doctrine and neutral-principles rule to questions of intentional infliction of emotional distress. An appellate court in Illinois dismissed intentional infliction of emotional distress and defamation claims brought by a priest against two parishioners. *Stepek v. Doe*, 910 N.E.2d 655, 668-69 (Ill. App. 2009). Because the statements that were the basis of the claim were made "solely within the context of the Church's internal disciplinary proceeding," the court held that the neutral-principles rule did not apply. *Id.* at 669.

In *Thibodeau v. American Baptist Churches of Connecticut*, a Connecticut appellate court dismissed a claim of negligent infliction of emotional distress brought against the defendant, who served as a clearinghouse for ministry opportunities and had flagged plaintiff as unfit for ministry. 994 A.2d 212, 216 (Conn. App. Ct. 2010). The court concluded that the negligent-infliction claim was too closely related to the ecclesiastical functions of the defendant and could not be resolved with neutral principles. *Id.* at 227-28; *see also Heard v. Johnson*, 810 A.2d 871, 880-85 & n.5 (D.C. 2002).

But in *Connor v. Archdiocese of Philadelphia*, the Pennsylvania Supreme Court held that neutral principles permitted a negligent-infliction-of-emotional-distress suit regarding a student's expulsion from a religious school. 975 A.2d 1084, 1097-98 (Pa. 2009). The court explicitly rejected the argument that the neutral-principles rule could not apply in tort, which involves an unforeseen wrong as opposed to one that can be anticipated through drafting secular documents. *Id.* at 1098.

3. Finally, the split continues with respect to intentional interference with business relationships. The Massachusetts Supreme Judicial Court dismissed a claim for

tortious interference with potential advantageous relationships brought by a pastor against the leadership of his former church after they published a complaint against him. *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301, 312 (Mass. 2004). Because the complaint was part of the church's disciplinary process, the lawsuit was prohibited. *Id.*

Further, in cases discussed earlier, the Indiana Supreme Court dismissed a claim of intentional interference with business relationships, *Brazauskas*, 796 N.E.2d at 294, but the Alaska Supreme Court permitted a claim of tortious interference with a contract in *Marshall*, 845 P.2d at 427-28.

As demonstrated, States are not uniform in their treatment of the intersection of tort law, church autonomy, and neutral principles. While this petition may not resolve every future tort claim, the Court can begin to set forth the analysis courts must undertake when deciding whether interference in the decisions of religious institutions is permissible.

III. The Court Should Grant This Petition.

After holding that there is a ministerial exception in *Hosanna-Tabor*, the Court recognized that the next step would be to address "other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers." 565 U.S. at 196. Now is the time for the Court to take that next step.

Contrary to the Fifth Circuit's suggestion, there is no need to await further factual development in this case. Indeed, to do so would compromise the autonomy guaranteed by the First Amendment: "[T]he church should not be subjected to . . . broad-reaching discovery . . . prior to an [ecclesiastical] immunity determination."

Presbyterian Church (U.S.A.) v. Edwards, 566 S.W.3d 175, 179 (Ky. 2018).

Under the church autonomy doctrine, it is not the details of the claims that determine whether autonomy applies, but whether the claims themselves infringe on autonomy. That is why this Court was able to decide the ministerial-exception cases without first determining why the plaintiff had been terminated. *See e.g.*, *Hosanna-Tabor*, 565 U.S. at 194-95.

Thus, the Fifth Circuit's decision to delay resolution of the issue until the Mission Board produces evidence of a "valid religious reason" for its actions is irreconcilable with the church autonomy doctrine. *McRaney I*, 966 F.3d at 350-51. It would have courts judging the validity of religious motivations, something that is unquestionably unacceptable. *See, e.g.*, *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979) (stating that a religious institution's First Amendment rights may be impinged merely by governmental inquiry into "the good faith of [a] position asserted by . . . clergy-administrators and its relationship to [the organizations'] religious mission"); *Milivojevich*, 426 U.S. at 713 (rejecting arbitrariness challenge to church's actions); *Presbyterian Church*, 393 U.S. at 449-50 (rejecting departure-from-doctrine approach to resolving property disputes).

A church should not have to limit its religious acts for fear that a judge might not understand its religious tenets and sense of mission. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987). "Fear of potential liability might affect the way an organization carrie[s] out what it underst[ands] to be its religious mission." *Id.* But that is what the Fifth Circuit's ruling does. It requires religious institutions to curb their activities unless they

feel confident of convincing a court that its actions were taken for valid religious reasons—rather than operating in the freedom and independence guaranteed them by the First Amendment. The Court should grant the petition and ensure state courts may not be used to wrongly inhibit the constitutional rights of religious institutions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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