No.

In the Supreme Court of the United States

KIM LIPPARD AND BARRY LIPPARD,

Petitioners,

v.

LARRY HOLLEMAN AND ALAN HIX,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of North Carolina

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has held that the First Amendment's Religion Clauses allow courts to hear some civil claims that arise from ecclesiastical settings—*i.e.*, settings relating to matters of church governance and administration—if those claims can be resolved using neutral principles of law. *See Jones v. Wolf*, 443 U.S. 595, 602–06 (1979).

The Court also has held that the Religion Clauses prohibit courts from hearing some other civil claims that arise from ecclesiastical settings, even if those claims can be resolved using neutral principles of law. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196 (2012).

The Court has left open the question of how the Religion Clauses apply to tort claims, such as claims for defamation. *See id.*

The question presented is:

Whether the First Amendment's Religion Clauses prohibit courts from hearing defamation claims that arise from ecclesiastical settings, even when the claims can be resolved using neutral principles of law.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Kim Lippard and Barry Lippard were plaintiffs-appellants below.

Respondents Larry Holleman and Alan Hix were defendants-appellees below.

Diamond Hill Baptist Church was an original defendant below, but was voluntarily dismissed and is not a party here.

No party is a nongovernmental corporation.

RELATED PROCEEDINGS

- *Lippard v. Holleman*, No. 180A17-2, North Carolina Supreme Court. Order denying discretionary review and dismissing appeal entered September 23, 2020.
- *Lippard v. Holleman*, No. COA18-873, North Carolina Court of Appeals. Judgment entered May 19, 2020.
- *Lippard v. Holleman*, No. 13-CVS-2701, North Carolina Superior Court, Iredell County. Judgment entered April 17, 2018.
- *Lippard v. Holleman*, No. 180A17, North Carolina Supreme Court. Order dismissing appeal entered August 17, 2017.
- *Lippard v. Holleman*, No. COA16-886, North Carolina Court of Appeals. Judgment entered May 2, 2017.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Kim and Barry Lippard respectfully submit this petition for a writ of certiorari to review the judgment of the North Carolina Court of Appeals.

OPINIONS BELOW

The opinions of the North Carolina Court of Appeals (App. 1a–90a, 97a–119a) are reported at 844 S.E.2d 591 and 2017 WL 1629377. One order of the North Carolina Superior Court (App. 91a–96a) is unreported; others (App. 97a–119a) are reported at 2016 WL 5946418 and 2014 WL 12564008. The order of the North Carolina Supreme Court denying review (App. 120a–121a) is reported at 847 S.E.2d 882.

JURISDICTION

The North Carolina Court of Appeals entered judgment on May 19, 2020. App. 1a. The North Carolina Supreme Court denied discretionary review and dismissed petitioners' appeal on September 23, 2020. *Id*. at 120a-121a. On March 19, 2020, this Court issued a standing order that extended the time for filing this petition until February 22, 2021. The Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

INTRODUCTION

This case presents a question on which the lower courts are deeply and openly divided: Do the Religion Clauses allow courts to hear defamation claims that arise from ecclesiastical settings if those claims can be resolved using neutral principles of law?

This Court's decisions do not directly answer this question. The Court has held that the Religion Clauses *allow* courts to hear disputes over the ownership of church property if the courts can resolve those disputes using neutral principles of law. *See Jones v. Wolf*, 443 U.S. 595, 602–06 (1979). The Court also has held that the Religion Clauses *prohibit* courts from hearing ministers' challenges to the termination of their employment, even if the courts can resolve those challenges using neutral principles of law. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194–96 (2012). The Court has not addressed, however, the Religion Clauses' application to other cases, such as tort and contract actions. *See id*. at 196.

Lacking definitive guidance, the lower courts have adopted different approaches for applying the Religion Clauses to various civil claims. These inconsistent approaches have produced a conflict on the application of the Religion Clauses to defamation claims in particular.

To illuminate the conflict, consider an example. Suppose that a church holds a meeting about whether to fire a minister. During that meeting, a church official makes two statements. First, he states that the minister's religious beliefs diverge from church doctrine. Second, he states that the minister assaulted a member of the church.

Courts agree that the Religion Clauses prevent the minister from bringing a defamation claim based on the first statement. Courts disagree, however, about whether the Religion Clauses prevent the minister from bringing a defamation claim based on the second statement. This disagreement flows from a conflict over the governing legal principles.

Six federal courts of appeals and state courts of last resort would not allow the minister to bring a defamation claim based on the second statement about assault. These courts hold that the Religion Clauses prevent courts from hearing defamation claims that arise from ecclesiastical settings, even when the claims can be resolved using neutral principles of law. Because both statements in the example were made in an ecclesiastical setting—a meeting on a matter of church governance—these courts would not permit a defamation claim based on either statement.

Five federal courts of appeals and state courts of last resort, in contrast, would allow the minister to bring a defamation claim based on the second statement. These courts hold that the Religion Clauses allow defamation claims that arise from ecclesiastical settings if the claims can be resolved using neutral principles of law. A defamation claim based on the first statement in the example could not be resolved using neutral principles because the truth or falsity of that statement turns on a question of religious doctrine. Thus, these courts would not allow a defamation claim based on the first statement. A defamation claim based on the second statement, however, could be resolved using neutral principles because the truth or falsity of that statement does not turn on an ecclesiastical question. Thus, these courts would allow a defamation claim based on the second

statement, even though the statement was made in an ecclesiastical setting.

The First Amendment should not produce different outcomes in defamation cases based solely on geographic happenstance. This Court should resolve the conflict and secure uniformity on this important federal question.

This case is an excellent vehicle for doing so. In the decision below, the North Carolina Court of Appeals joined the courts holding that the Religion Clauses bar defamation claims that arise from ecclesiastical settings, even if the claims can be resolved using neutral principles of law. *See* App. 2a, 51a. The court resolved petitioners' defamation claim based on the Religion Clauses alone, so this case squarely presents the question on which courts are divided.

A few days ago, the Court also received a petition seeking review of a Fifth Circuit decision that joined the opposite side of the conflict from the North Carolina Court of Appeals. *See* Pet. for Writ of Cert., *N. Am. Mission Bd. of S. Baptist Convention, Inc. v. McRaney*, No. __ (U.S. Feb. 17, 2021) ("*McRaney* Pet."). That petition overlaps with this one and bolsters the conclusion that review is warranted here. At the same time, this case differs from *McRaney* in some factual respects that make this case an especially useful vehicle for addressing the question presented. *See infra* pp. 34–35. Whether or not the Court grants review in *McRaney*, therefore, the Court should grant review in this case.

STATEMENT

A. Factual background

1. During the time period relevant to this case, petitioners Kim and Barry Lippard were members of Diamond Hill Baptist Church. App. 3a. Diamond Hill also employed Mrs. Lippard as the church pianist, a position she held for 34 years. *Id.* at 3a, 98a; ROA11.[1] Respondent Larry Holleman was Diamond Hill's pastor, and respondent Alan Hix was the minister of music. App. 3a.

2. In August 2012, a dispute arose between Mrs. Lippard and Hix. App. 3a. The details of that dispute are immaterial for purposes of this Court's review. In general terms, however, the dispute related to a music solo assignment for a church service. *Id.* Hix had assigned Mrs. Lippard the solo, but he later reassigned it to another choir member. *Id.*

Holleman met with Diamond Hill's deacons to discuss whether, in light of the dispute, Mrs. Lippard should be dismissed from her position as church pianist. App. 3a–4a. Holleman also attempted to resolve the dispute through reconciliation sessions. *Id.* Those sessions proved unsuccessful. *Id.* The deacons and the church's personnel committee later recommended that Mrs. Lippard be dismissed. *Id.* at 4a.

The final decision on whether to dismiss Mrs. Lippard rested with the Diamond Hill congregation. App. 4a. The congregation met in late November 2012 to consider the issue. *Id.* at 5a.

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[1] "ROA" refers to the record on appeal in the North Carolina courts.

At that meeting, Holleman read and distributed a document explaining the recommendation to remove Mrs. Lippard from her position. App. 5a. The document stated that Mrs. Lippard had been unwilling to commit to the church's reconciliation process or acknowledge wrongdoing. *Id.* at 5a, 22a. It also stated, among other things, that Mrs. Lippard had made slanderous comments about a fellow choir member, and that she had accused Hix of lying and hiding sheet music. *Id.* at 23a; *see also id.* at 99a–100a.

The congregation met to vote a few days later, in early December 2012. App. 5a. The congregation voted against dismissal, and Mrs. Lippard remained Diamond Hill's church pianist. *Id.* at 5a–6a.

3. Holleman and Hix continued, for several months, to make statements about the Lippards and the parties' underlying dispute to members of the congregation. App. 100a.

For example, Holleman stated in an April 2013 email that Mr. Lippard had "blocked [Hix's] exit from the music room and was aggressively going after [Hix], pointing his finger in [Hix]'s face," which Holleman had "recently learned was illegal and could have very well been reported as a crime." App. 6a.

Hix also stated in a January 2013 email that there were "verifiable facts and Biblical scriptures which [the Lippards were] openly denying and defying." App. 6a, 27a.

4. Mrs. Lippard eventually resigned as church pianist, and the Lippards stopped attending Diamond Hill. App. 6a–7a.

B. Procedural background

1. The Lippards brought a common-law defamation claim against Holleman and Hix in North Carolina state court. App. 7a. The claim rested on a number of statements, including those described above. *See*, *e.g.*, *id.* at 22a–23a, 27a, 34a.[2]

Holleman and Hix moved to dismiss the defamation claim, arguing that it raised ecclesiastical questions. *See* App. 101a. The trial court denied the motion. *Id.* at 118a–119a.

Holleman and Hix later moved to dismiss again. App. 102a. A different trial judge heard the motion and granted it, holding that the Religion Clauses barred the defamation claim. *Id.* at 116a–117a.

The Lippards appealed, and the North Carolina Court of Appeals vacated the trial court's decision. *See* App. 97a–98a. The appellate court ruled that state law did not allow the second trial judge to overrule the first. *Id.* at 112a. As part of its reasoning, the Court of Appeals held that some of the defamatory statements at issue could be understood as libel per se, including Holleman's accusation of criminal conduct against Mr. Lippard. *Id.* The court remanded for further proceedings. *Id.* at 113a.

2. On remand, Holleman and Hix moved for summary judgment. App. 9a. They argued, among other things, that the Religion Clauses of the First Amendment barred the defamation claim. *See id.*; ROA204.

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[2] The Lippards originally named Diamond Hill as a defendant, asserting claims against it for defamation and ultra vires activity. App. 7a. The Lippards later voluntarily dismissed the claims against Diamond Hill. *Id.* The only remaining claim is the defamation claim against Holleman and Hix. *Id.*

The trial court granted summary judgment for Holleman and Hix. App. 91a–96a. It ruled that the Religion Clauses foreclosed the Lippards' claim. *Id.* at 94a. It also ruled that summary judgment was warranted on unrelated state-law grounds. *Id.* at 94a–96a. For example, in the court's view, the statements at issue were not defamatory per se. *Id.* at 95a.

3. The Lippards appealed. They challenged all of the trial court's rationales for granting summary judgment, including its First Amendment ruling.

A divided panel of the Court of Appeals affirmed. App. 2a. The majority addressed only the First Amendment question, ruling that the Religion Clauses barred the defamation claim. *Id.* at 2a, 51a. The majority expressed no view on the other grounds in the trial court's order. *See id.* at 51a.

On the First Amendment question, the majority held that the Religion Clauses foreclose defamation claims that arise from ecclesiastical settings—specifically, claims resting on statements "made during an internal religious dispute regarding ecclesiastical matters." App. 2a; *see also id.* at 51a (similar).

The majority also held that the Religion Clauses foreclose defamation claims when the defamatory statements' truth or falsity turns on ecclesiastical questions, and thus cannot be resolved using neutral principles of law. *See* App. 19a ("For defamation claims, we must consider whether a statement is true or false without examining or inquiring into ecclesiastical matters or church doctrine."); *see also id.* at 15a–16a (referring to the application of neutral principles of law).

The majority thus held that an inability to resolve a defamation claim using neutral principles is sufficient, but not necessary, for the Religion Clauses to bar the claim. Even if a defamation claim *can* be resolved using neutral principles, the majority's approach bars the claim if the statement at issue was made in an ecclesiastical setting.[3]

Applying that approach, the court concluded that the Religion Clauses barred the Lippards' defamation claim as to some of the statements at issue due to an inability to apply neutral principles of law. For example, the court concluded that the truth or falsity of Holleman's statements that Mrs. Lippard was unwilling to commit to the church's reconciliation process turned on ecclesiastical questions. *See* App. 24a.

The court held that the Religion Clauses barred the Lippards' claim as to several other statements, however, based solely on the ecclesiastical setting in which those statements were made. For example, the majority acknowledged that Holleman's statement about Mr. Lippard accosting Hix did not "directly involve scripture." App. 34a. The majority did not

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[3] The Court of Appeals described the body of law governing the Religion Clauses' application to civil claims as the "ecclesiastical entanglement doctrine." *E.g.*, App. 11a, 15a–17a. Other courts use different names for the same concept, such as "ecclesiastical abstention doctrine" or "church autonomy doctrine." *See*, *e.g.*, *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 966 F.3d 346, 347 (5th Cir. 2020); *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 532 (Minn. 2016). Many courts, including this Court, also use the phrase "ministerial exception" to describe the Religion Clauses' specific application to employment claims brought by certain employees against their religious employers. *See*, *e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060–61 (2020).

dispute that neutral principles of law could thus be applied with respect to that statement. Nor did it dispute that neutral principles could be applied with respect to Holleman's statement that Mrs. Lippard had slandered a fellow choir member and accused Hix of lying, and to Hix's statement that the Lippards were denying verifiable facts. *See id.* at 23a–24a, 27a–28a. Yet the majority ruled that the Religion Clauses prevented the Lippards from pursuing a defamation claim based on these statements because the statements arose from an ecclesiastical setting. *See id.* at 23a–24a, 27a–28a, 30a–34a, 49a–50a.

4. Chief Judge McGee dissented from the majority's holding that the Religion Clauses bar a defamation claim merely because the claim arises out of an ecclesiastical setting. App. 52a; *see also id.* at 77a–78a. She concluded that the First Amendment instead forecloses a defamation claim only when the statements' truth or falsity turns on a religious question. *Id.* at 53a. If, in contrast, a court can resolve the claim using neutral principles of law, Chief Judge McGee would have held that the claim may proceed. *See id.* at 66a–68a.

Applying that approach, Chief Judge McGee concluded that the Religion Clauses allow the Lippards to proceed with their defamation claim based on several of the statements at issue. *See* App. 70a–71a. For example, in her view, the Religion Clauses did not protect Holleman's statement about Mr. Lippard confronting Hix; nor did they protect Hix's statement that the Lippards were denying verifiable facts. *See id.* at 74a–75a, 79a–81a. Chief Judge McGee reasoned that the truth or falsity of these statements did not turn on religious questions. *See id.*

Chief Judge McGee nevertheless concurred in the affirmance of summary judgment. App. 53a–54a. In her view, the statements at issue were not defamatory per se, and the Lippards had not shown special damages. *See id.* at 81a. She thus concluded that the defamation claim failed under state law. *See id.* Chief Judge McGee did not reconcile this reasoning with the Court of Appeals' conclusion in the Lippards' previous appeal that some of the statements at issue could be understood as libel per se. *See id.* at 112a.

5. The Lippards sought review of the panel's First Amendment ruling in the North Carolina Supreme Court under N.C. Gen. Stat. §§ 7A-30 and 7A-31. The court denied review. App. 120a–121a.

REASONS FOR GRANTING THE PETITION

This Court's review is warranted for several reasons.

First, courts are divided on the question presented.

Six federal courts of appeals and state courts of last resort—the Sixth Circuit; the Alabama, Massachusetts, Minnesota, and Oklahoma Supreme Courts; and the District of Columbia Court of Appeals—agree with the panel majority in this case. These courts hold that the Religion Clauses *foreclose* defamation claims that arise from ecclesiastical settings, even if the claims can be resolved using neutral principles of law.

Five other federal courts of appeals and state courts of last resort—the Fifth Circuit and the Alaska, Pennsylvania, South Carolina, and Virginia Supreme Courts—agree with the partial dissent in this case. These courts hold that the Religion Clauses *allow* defamation claims that arise from ecclesiastical settings

if the claims can be resolved using neutral principles of law.

Second, the decision below is erroneous. The panel majority's approach effectively grants a license to defame in ecclesiastical settings. This Court's decisions do not justify that result.

Third, the question presented is recurring and important. The many decisions on each side of the conflict show that this question arises with regularity. The question also has significant practical and doctrinal implications.

Finally, this case is an ideal vehicle for resolving the question presented. The Court of Appeals squarely addressed that question, and there are no obstacles to this Court's review.

I. The decision below deepens an entrenched and acknowledged conflict.

The lower courts are at odds on the question presented. This split is acknowledged, mature, entrenched, and outcome-determinative. The Court should grant review to eliminate the conflict.

A. There is a 6-5 conflict on the question presented.

1. Six federal courts of appeals and state high courts hold that the Religion Clauses bar defamation claims that arise from ecclesiastical settings, even if the claims can be resolved using neutral principles of law. Several intermediate state appellate courts, including the court below, have recently held the same.

a. The Minnesota Supreme Court's decision in *Pfeil v. St. Matthews Evangelical Lutheran Church*,

877 N.W.2d 528 (Minn. 2016), exemplifies this approach. In *Pfeil*, two church members claimed that they were defamed at a church meeting held to excommunicate them and at a later hearing held to reconsider the excommunication. *See id.* at 531. The alleged defamation included statements that the members had "perpetuated falsehoods" and accused a pastor of theft. *Id.* at 538.

The members argued that the Religion Clauses allow a defamation claim if the claim can be resolved using neutral principles of law. *See id.* The Minnesota Supreme Court rejected that argument. *See id.* at 538, 541. The court held that the proper inquiry instead focuses on the setting in which the statements at issue were made. *See id.* at 541–42. If the statements were made "in the context of a religious disciplinary proceeding" and disseminated only within the religious organization, the court held that the First Amendment prohibits a defamation claim. *Id.* at 542. The court concluded that the statements in *Pfeil* satisfied this categorical rule; the Religion Clauses therefore foreclosed the members' claim. *See id.* at 541–42.

As *Pfeil* observed, the Massachusetts Supreme Judicial Court and the Sixth Circuit have adopted the same categorical, setting-based approach to defamation claims. *See id.* at 537 n.9 (citing *Hiles v. Episcopal Diocese*, 773 N.E.2d 929 (Mass. 2002); *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986)).

In *Hiles*, the Massachusetts Supreme Judicial Court held that the Religion Clauses barred a priest's defamation claim because the defamatory statement at issue was made in connection with a disciplinary proceeding against him. *See* 773 N.E.2d at 935–37. An "absolute First Amendment protection" exists, the

court concluded, "for statements made by a Church member in an internal church disciplinary proceeding." *Id*. at 937 n.12. Under that rule, it is immaterial whether the defamation claim can be resolved using neutral principles. Indeed, no obstacle to applying neutral principles was apparent in *Hiles*, when the statement at issue accused the priest of a sexual relationship with a parishioner. *See id*. at 933.

In *Hutchison*, the Sixth Circuit similarly held that the Religion Clauses foreclosed a minister's defamation claim (among others) because that claim arose from disciplinary proceedings against the minister. *See* 789 F.2d at 392–93, 396. Here again, it did not matter whether the defamation claim, which rested on statements depicting the minister as unable "to work with congregations and get along with members," *id*. at 393, could be resolved using neutral principles of law. To the contrary, the court concluded that the neutral-principles framework from *Jones* applies only to church property disputes. *See id*. at 396.

Three other state high courts have also embraced the same approach:

- The Alabama Supreme Court held that the Religion Clauses barred a pastor's defamation claim because the statements at issue were made in connection with investigating and removing the pastor. *See Ex parte Bole*, 103 So. 3d 40, 48, 51, 71–72 (Ala. 2012). The court reached that result without disputing the pastor's argument that the statements themselves (which accused the pastor of misappropriating funds) did not address ecclesiastical matters. *See id*. at 48, 51.

- The D.C. Court of Appeals held that the First Amendment foreclosed a pastor's defamation claim because the statements at issue were made in the course of terminating the pastor's employment. *See Heard v. Johnson*, 810 A.2d 871, 874–75, 883–85 (D.C. 2002). It made no difference whether the claim could be resolved using neutral principles of law because the D.C. Court of Appeals, like the Sixth Circuit, concluded that the neutral-principles framework applies only to church property disputes. *See id.* at 880.
- The Oklahoma Supreme Court held that the Religion Clauses barred two church members' defamation claims because the statements at issue, accusing the members of fornication, were made in connection with proceedings to excommunicate them. *See Hadnot v. Shaw*, 826 P.2d 978, 980–81, 987–988 (Okla. 1992).

b. The North Carolina Court of Appeals embraced this same categorical approach below. The court held that the Religion Clauses foreclose a defamation claim that rests on statements "made during an internal religious dispute regarding ecclesiastical matters." App. 2a; *see also id.* at 51a (similar). That rule bars defamation claims that arise from ecclesiastical settings, even if the claims can be resolved using neutral principles of law. Indeed, the court did not dispute that neutral principles could be applied to determine the truth or falsity of several of the statements at issue in this case. The court nevertheless held that the Religion Clauses barred the Lippards' claim based on those statements because the statements were made in connection with an ecclesiastical dispute. *See supra* pp. 9–10.

Intermediate appellate courts in several other states also have recently taken the same view of the question presented as the North Carolina Court of Appeals and the other courts discussed above.[4]

2. Five federal courts of appeals and state high courts (and several intermediate state appellate courts) have taken the opposite view of the question presented. These courts hold that the Religion Clauses do not categorically bar defamation claims that arise from ecclesiastical settings. Rather, consistent with the partial dissent in this case, these courts hold that the Religion Clauses *permit* defamation claims that can be resolved using neutral principles of law, even if those claims arise from ecclesiastical settings.

The South Carolina Supreme Court's decision in *Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605 (S.C. 2013), illustrates this approach. *Banks* arose when a pastor told his congregation that three of the church's trustees had mismanaged church property and lied. *See id*. at 606–07. At the pastor's urging,

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[4] *See*, *e.g.*, *In re Alief Vietnamese All. Church*, 576 S.W.3d 421, 424–25, 433–35 (Tex. App. 2019) (holding Religion Clauses barred deacon's defamation claim because statements at issue, which accused deacon of adultery, were made in connection with internal dispute over church governance); *Sumner v. Simpson Univ.*, 238 Cal. Rptr. 3d 207, 221–23 (Cal. Ct. App. 2018) (holding same for minister's defamation claim because statements at issue were connected with terminating minister's employment); *Orr v. Fourth Episcopal Dist. African Methodist Episcopal Church*, 111 N.E.3d 181, 190–192 (Ill. App. Ct. 2018) (similar).

the congregation removed the trustees from their positions. *See id*. at 606. When the trustees sued the pastor for defamation, he argued that the Religion Clauses barred the claim because he made his statements in an ecclesiastical setting: a congregational meeting about removing the trustees from their roles. *See id*. at 607–08.

The South Carolina Supreme Court rejected that argument. It held that the Religion Clauses could not bar the trustees' defamation claim based solely on the ecclesiastical setting in which the pastor made his statements. *See id*. at 608. Rather, it was necessary to determine whether the claim could be decided using neutral principles of law. *See id*. at 607–08.

Had the pastor stated that the trustees violated church law, the court observed, the claim would have required resolution of religious matters, and the Religion Clauses would have barred the claim. *Id*. at 608. The statements at issue, however, were "simple declarative statements about the actions of the [t]rustees." *Id.* at 607. The court thus concluded that the defamation claim could be resolved using neutral principles, and that the Religion Clauses allowed the claim to proceed. *See id*. at 607–08.

The court summarized its holding in terms that highlight the conflict on the question presented: "We cannot allow the setting in which the statements were made to defeat the jurisdiction of the circuit court where the claim is susceptible to resolution through neutral principles of law." *Id*. at 608.

The Fifth Circuit recently adopted the same approach as the South Carolina Supreme Court. *See McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 966 F.3d 346 (5th Cir. 2020). The Fifth

Circuit then nearly took the question en banc, with eight judges dissenting from the denial. *See McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1066–67 (5th Cir. 2020) (denying petition for rehearing en banc by a 9-8 vote); *id.* at 1067 (Ho, J., dissenting from denial); *id.* at 1075 (Oldham, J., dissenting from denial).

In *McRaney*, the hierarchy of the Southern Baptist Church terminated a minister from his leadership position. *See* 966 F.3d at 349 (panel op.); 980 F.3d at 1067–68 (Ho, J., dissenting from denial). The minister sued a religious organization within that hierarchy for defamation, alleging that the organization made false statements that led to his termination. *See* 966 F.3d at 349 (panel op.). The organization argued that the Religion Clauses barred the defamation claim because the statements were made in connection with ecclesiastical matters, including "ministry strategies." *Id.* at 350 n.2.

As the judges who voted to rehear the case en banc explained, an approach prohibiting defamation claims that arise from ecclesiastical settings would have required dismissal of the minister's claim. *See* 980 F.3d at 1067, 1070 (Ho, J., dissenting); *id.* at 1075 (Oldham, J., dissenting). The panel, however, rejected that approach. *See* 966 F.3d at 349–51 & n.2. The correct approach, the panel held, is to examine whether the defamation claim requires the court to address "purely ecclesiastical questions," or whether the claim can instead be resolved under neutral principles of law. *Id.* at 349–50.

In applying that approach, the panel considered the statements at issue, which accused the minister of refusing to meet with the defendant organization's president. *See id.* at 349, 350 n.2. Because those

statements were "not ecclesiastical in nature," *id*. at 350 n.2, the panel held that the defamation claim could be resolved under neutral principles and could therefore survive dismissal. *See id*. at 350–51.

In *McRaney*, the Fifth Circuit relied on a decision of the Alaska Supreme Court that embraced the same approach: *Marshall v. Munro*, 845 P.2d 424 (Alaska 1993). In *Marshall*, a church official made allegedly defamatory statements about a pastor, including a statement that the pastor was divorced. *See id*. at 425. The official made those statements when responding, as part of his official duties, to an inquiry from another church where the pastor was seeking employment. *See id*. Yet the court held that this ecclesiastical setting was not dispositive. *See id*. at 428–29. Rather, the Religion Clauses allowed the pastor's defamation claim to proceed because the claim would not require the court to decide religious questions. *See id*.

Two other state high courts also have adopted this same position:

- The Virginia Supreme Court held that the Religion Clauses allowed a deacon to bring a defamation claim against a pastor because the veracity of the statement at issue—which accused the deacon of assaulting a member of the church—did not turn on ecclesiastical questions, and because the claim thus could be decided using neutral principles of law. *See Bowie v. Murphy*, 624 S.E.2d 74, 76–77, 79–80 (Va. 2006). The court ruled that the ecclesiastical setting in which the statement was made (a church meeting about removing the deacon from his position) did not itself bar the claim. *See id*. at 79.

- The Pennsylvania Supreme Court held that the Religion Clauses allowed a student who had been expelled from a religious school to bring a defamation claim based on statements accusing him of bringing a penknife to the school. *See Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084, 1102–06, 1113 (Pa. 2009). The court reasoned that the claim could be resolved using neutral principles of law. *See id.* at 1113. It rejected the defendants' argument that the First Amendment barred the claim merely because the statements were made in connection with disciplinary proceedings. *See id.* at 1104; *see also id.* at 1102–03, 1108 (citing *Marshall* and *Bowie* with approval).

Several intermediate state appellate courts have also recently adopted the same approach as *Banks*, *McRaney*, and these other decisions.[5]

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[5] *See*, *e.g.*, *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 664–65 (Fla. Dist. Ct. App. 2018) (holding Religion Clauses barred priest's defamation claim, not merely because claim arose from the context of church discipline, but because claim—which rested, for example, on statement that priest was unfit to serve—could not be resolved using neutral principles); *Dermody v. Presbyterian Church (U.S.A.)*, 530 S.W.3d 467, 469–70, 473–74 (Ky. Ct. App. 2017) (similar); *Galetti v. Reeve*, 331 P.3d 997, 1002 (N.M. Ct. App. 2014) (rejecting argument that Religion Clauses barred minister's defamation claim merely because statements at issue were made in connection with minister's termination); *Tubra v. Cooke*, 225 P.3d 862, 871–73 (Or. Ct. App. 2010) (holding Free Exercise Clause did not bar pastor's defamation claim arising from statements that he misappropriated church funds and showed a willingness to lie, even though statements were made by church officials in connection with internal church dispute about pastor's conduct).

B. The conflict is acknowledged, mature, entrenched, and outcome-determinative.

1. Courts and commentators have recognized the conflict on the question presented. For example, in *Pfeil*, the Minnesota Supreme Court observed that courts applying the Religion Clauses to defamation claims "have generally adopted one of two approaches." 877 N.W.2d at 537. The court then identified numerous decisions on both sides of the conflict, including many of the decisions addressed above. *See id*. & nn.9–10.

Other courts have similarly acknowledged the conflict. *See*, *e.g.*, *Heard*, 810 A.2d at 883–84 (recognizing conflict between *Marshall* and decisions such as *Hutchison* and *Hiles*, and following the latter); *Tubra*, 225 P.3d at 871–72 & n.10 (recognizing conflict between *Marshall* and *Heard*, and following *Marshall*). The academic literature also has documented the conflict.[6]

2. The conflict is mature and entrenched. Numerous courts have weighed in on each side of the split,

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[6] *See*, *e.g.*, Alexander J. Lindvall, *Forgive Me, Your Honor, for I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices*, 72 S.C. L. REV. 25, 36 (2020) ("Courts are sharply divided on whether the ecclesiastical abstention doctrine immunizes religious officials from defamation suits when the allegedly defamatory statement was made during a religious proceeding."); Mark P. Strasser, *A Constitutional Balancing in Need of Adjustment: On Defamation, Breaches of Confidentiality, and the Church*, 12 FIRST AMEND. L. REV. 325, 337 (2013) (observing that courts applying Religion Clauses to defamation claims have "not yet agreed on a uniform approach, leading to inconsistent results and a jurisprudence without a firm foundation").

and several of those decisions drew dissenting opinions.[7] The arguments on each side of the conflict have thus been fully aired. The 6-5 conflict on the question presented is also far too deep and firmly established to have any prospect of resolving itself.

Nor is further percolation warranted in light of this Court's decision in *Hosanna-Tabor*. *Contra* Br. in Opp., *Pfeil v. St. Matthews Evangelical Lutheran Church*, No. 16-210, at 16–18 (U.S. Oct. 13, 2016). *Hosanna-Tabor* did not address the Religion Clauses' application to defamation claims. It instead expressly left open the question of how the Religion Clauses apply to tort claims. *See* 565 U.S. at 196. Unsurprisingly, therefore, the conflict here has not only persisted since *Hosanna-Tabor*, but has deepened, with the Fifth Circuit and the South Carolina Supreme Court adopting the neutral-principles approach to defamation claims in post-*Hosanna-Tabor* decisions. Numerous intermediate state appellate courts have also joined each side of the conflict since *Hosanna-Tabor*, *see supra* pp. 16, 20, confirming that the split will endure unless this Court intervenes.

This Court's recent decision in *Morrissey-Berru* does not alter that conclusion. That decision addressed which employees are "ministers" for purposes of *Hosanna-Tabor*'s bar on employment discrimination claims. *See* 140 S. Ct. at 2063–69. *Morrissey-Berru* addressed no other claims. Thus, like *Hosanna-*

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[7] *See*, *e.g.*, *McRaney*, 980 F.3d 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); *Pfeil*, 877 N.W.2d at 542–47 (Lillehaug, J., dissenting); *Banks*, 750 S.E.2d at 608–12 (Toal, C.J., dissenting); App. 51a–81a (McGee, C.J., concurring in part, dissenting in part, and concurring in the judgment).

Tabor, *Morrissey-Berru* will not resolve the conflict here. Indeed, in *McRaney*, the Fifth Circuit panel mentioned both *Morrissey-Berru* and *Hosanna-Tabor*. *See* 966 F.3d at 350 n.3. The judges dissenting from the denial of rehearing en banc also relied heavily on those decisions. *See* 980 F.3d at 1067, 1069 (Ho, J., dissenting from denial); *id.* at 1075 (Oldham, J., dissenting from denial). Yet the panel still exacerbated the conflict and allowed a defamation claim that arose from an ecclesiastical setting to proceed.

It is also true that an eight-Justice Court denied certiorari in *Pfeil*, and that the Court earlier denied certiorari in *Banks*. *See Pfeil v. St. Matthews Evangelical Lutheran Church*, 137 S. Ct. 493 (2016); *Brantley v. Banks*, 574 U.S. 814 (2014). The Court, however, often grants certiorari on an issue after denying it in the past. In *Hosanna-Tabor* itself, the petitioner noted that the Court had denied certiorari in three ministerial exception cases, but observed that the relevant conflict had recently "become sharper and deeper." Pet. for Writ of Cert., *Hosanna-Tabor*, No. 10-553, at 24–25 (U.S. Oct. 22, 2010). The same is true here.

3. The conflict on the question presented is not an academic disagreement; it instead leads to contrary results in cases with equivalent facts. For example:

- *Pfeil* and *Banks* involved equivalent statements (accusing the plaintiffs of dishonesty) made in equivalent settings (church meetings about whether to discipline the plaintiffs). *Pfeil* held that the First Amendment barred the resulting defamation claim; *Banks* held that it did not. *Compare Pfeil*, 877 N.W.2d at 531, 538, 542 *with Banks*, 750 S.E.2d at 606, 608.

- *Hutchison* and *McRaney* involved equivalent statements (accusing ministers, in essence, of being difficult to work with) made in equivalent settings (terminating the ministers from their positions in church leadership). *Hutchison* held that the First Amendment barred the resulting defamation claim; *McRaney* held that it did not. *Compare Hutchison*, 789 F.2d at 392–93, 396 *with McRaney*, 966 F.3d at 349–51. *See also supra* p. 18.
- *Bole* and *Tubra* involved equivalent statements (accusing pastors of misappropriating church funds) made in equivalent settings (internal church disputes relating to the pastors' employment). *Bole* held that the First Amendment barred the resulting defamation claim; *Tubra* held that it did not. *Compare Bole*, 103 So. 3d at 48, 51, 71–72 *with Tubra*, 225 P.3d at 871–73.

It is unsound for the First Amendment to produce different outcomes in equivalent cases brought in different jurisdictions. This Court should grant review to eliminate this disparity.

II. The decision below is incorrect.

This Court's review is also warranted to correct the decision below. The Court has not directly addressed the application of the Religion Clauses to defamation claims. It has, however, articulated a set of relevant principles in First Amendment cases on other types of civil claims in religious settings. The decision below conflicts with those principles.

1. This Court has repeatedly applied the Religion Clauses to common-law claims about ownership of church property. *See Jones*, 443 U.S. at 602. Those decisions establish a number of guiding principles.

To start, courts have "general authority" to resolve church property disputes. *Id.* Indeed, courts have an "obvious and legitimate" interest in providing a civil forum for peacefully and conclusively resolving those disputes. *Id.*

At the same time, the First Amendment bars courts "from resolving church property disputes on the basis of religious doctrine and practice." *Id.* Courts must not, in other words, decide ecclesiastical questions. *See id.* To avoid entanglement with spiritual matters and interference with religious exercise, courts must instead leave rulings on ecclesiastical questions to religious organizations. *See id.* at 602–03, 606.

Subject to that limitation, however, courts may exercise their general authority to resolve church property disputes. *Id.* at 602. It follows that courts may resolve these disputes if they can do so using neutral principles of law. *Id.* at 602, 604; *see also Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969).

If, for example, a property dispute turns on secular language in deeds, charters, and statutes, a court may resolve the dispute. *See Jones*, 443 U.S. at 603. If, in contrast, a dispute turns on religious language or concepts, the court must defer to the resolution of those matters "by the authoritative ecclesiastical body." *Id.* at 604.

As the Court explained in *Jones*, this neutral-principles approach strikes the proper balance between religious liberties and secular legal rights. It avoids entanglement with religion and interference with free exercise, while still providing a needed forum for the resolution of civil disputes. *See id*. at 602, 605–06.

2. These principles apply equally to common-law defamation actions. As with property claims, courts have general authority to resolve defamation claims. Courts also have compelling reasons to provide a peaceful forum for resolving disputes over reputational harm, rather than leaving the parties to settle these disputes through their own devices—as Alexander Hamilton learned the hard way.

Even so, courts would become entangled with religion and interfere with free exercise if they used defamation actions to rule on ecclesiastical questions. Thus, just as the Religion Clauses bar courts from ruling on ecclesiastical issues in property disputes, those clauses also bar courts from ruling on ecclesiastical issues in defamation cases. *See*, *e.g.*, *McRaney*, 966 F.3d at 348–49; *Banks*, 750 S.E.2d at 607–08.

To avoid these problems, the same touchstone that guides courts in church property disputes—whether the dispute can be resolved based on neutral principles of law—should also guide courts in defamation disputes. If courts can resolve a defamation claim by applying neutral legal principles, as opposed to deciding ecclesiastical questions, the Religion Clauses should not impose an obstacle. *See*, *e.g.*, *McRaney*, 966 F.3d at 349–50; *Banks*, 750 S.E.2d at 607–08.

To decide whether a defamation claim can be resolved based on neutral principles, a court should

consider whether the truth or falsity of the statement turns on an ecclesiastical matter. *See*, *e.g.*, *Banks*, 750 S.E.2d at 607; App. 67a–68a, 71a–81a. If so, the Religion Clauses bar the claim. Otherwise, they do not.

3. The panel majority in this case interpreted the Religion Clauses to bar defamation claims even when the claims can be resolved using neutral principles of law. As shown above, that decision departs from this Court's precedents. Although the panel majority identified several justifications for its approach, none is persuasive.

First, the court reasoned that this Court has expressed an "aversion for entanglement in ecclesiastical matters." App. 18a. In *Jones*, however, this Court held that applying neutral principles of law *avoids* entanglement in ecclesiastical matters. *See* 443 U.S. at 603. So too here.

Second, the court asserted that it "will be a rare occurrence when a religion's internal statements are purely secular." App. 19a. This case and the many others discussed above show, however, that communications within a church often *do* include secular statements. *See supra* pp. 13–20. In any event, even if secular statements in church settings are rare, the panel majority's approach mistakenly treats them as nonexistent.

Third, the court stated that resolving defamation claims arising from communications within a church might have a chilling effect. App. 19a. That begs the question. If, as argued here, some false statements made in ecclesiastical settings are actionable, then chilling those false statements is a good thing.

Fourth, the court stated that "we cannot favor religions with scripture and disfavor religions without

scripture." App. 19a. The neutral-principles approach does not, however, favor religions with scripture. It instead treats all religions equally by preventing courts from ruling on matters of religious doctrine, whether that doctrine is written or unwritten.

Finally, the court asserted that the Lippards' defamation claim would require a court to "decide the rightness or wrongness" of the statements at issue, App. 34a, or determine whether the statements are "proper," *id.* at 49a, or pass judgment on "how [the church] should react to what it considers improper conduct," *id.* at 50a. As Chief Judge McGee explained, however, the defamation claim would not require a court to do those things; it instead would require a court only to determine whether the statements are true or false. *See id.* at 78a, 80a.

For these reasons, the Court of Appeals failed to justify its categorical rule that the Religion Clauses bar defamation claims that arise from ecclesiastical settings, even when the claims can be resolved using neutral principles of law.

4. Nor do this Court's decisions in *Hosanna-Tabor* and *Morrissey-Berru* justify the Court of Appeals' approach. It is true that some courts have reasoned that those decisions support a categorical bar on defamation claims that arise from ecclesiastical settings. *See*, *e.g.*, *Pfeil*, 877 N.W.2d at 537, 541–42. Other courts have disagreed. *See*, *e.g.*, *McRaney*, 966 F.3d at 350 n.3 (mentioning *Hosanna-Tabor* and *Morrissey-Berru* but permitting defamation claim that arose from ecclesiastical setting to proceed); *Banks*, 750 S.E.2d at 607–08 (similarly permitting defamation claim that arose from ecclesiastical setting to proceed after *Hosanna-Tabor*); *see also id.* at 611 (Toal, C.J.,

dissenting) (discussing *Hosanna-Tabor*). At minimum, this disagreement over the meaning of the Court's precedents confirms the need for the Court's guidance. In any event, the latter courts have the correct view.

Hosanna-Tabor and *Morrissey-Berru* held that the Religion Clauses bar employment discrimination claims brought by ministers who challenge their terminations by religious employers. *See Hosanna-Tabor*, 565 U.S. at 196; *Morrissey-Berru*, 140 S. Ct. at 2060–61. That rule rests on special concerns raised by employment discrimination claims—concerns about "[r]equiring a church to accept or retain an unwanted minister" and giving courts the power "to determine which individuals will minister to the faithful." *Hosanna-Tabor*, 565 U.S. at 188–89.

Those concerns are not present here. Unlike employment discrimination claims, defamation claims do not require a church to accept or retain an unwanted minister. That is true even when the defamatory statements were made during a church proceeding to terminate a minister. In those circumstances, a successful defamation claim would give the minister redress for the false statements, but it would not overturn the church's decision to terminate her. Thus, even in cases arising from the termination of ministers' employment, the considerations that motivated *Hosanna-Tabor* and *Morrissey-Berru* do not justify a categorical prohibition on defamation claims.

In any event, even if *Hosanna-Tabor* and *Morrissey-Berru* did foreclose defamation claims arising from proceedings in which ministers are terminated, that still would not justify the sweeping rule adopted by the Court of Appeals here. Among other problems:

- The Court of Appeals' rule bars defamation claims even when the plaintiffs are church *members*, as opposed to ministers. *See* App. 2a; *see also*, *e.g.*, *Pfeil*, 877 N.W.2d at 530, 542. Here, Mr. Lippard was not a minister, yet the Court of Appeals barred his claim. App. 2a–3a.
- The Court of Appeals' rule bars defamation claims even when a minister was *not* terminated. Here, Mrs. Lippard was *retained* as the church pianist, yet the Court of Appeals barred her claim. App. 5a–6a.
- The Court of Appeals' rule also bars defamation claims even when the statements at issue were made *after* termination proceedings ended. Here, many of the statements at issue were made months after the church vote on Mrs. Lippard's dismissal, yet the Court of Appeals barred the Lippards' claims. App. 27a–28a, 30a–34a, 49a–50a.

In sum, the decision below interprets the Religion Clauses to permit religious officials to defame at will, so long as their statements have any connection to an ecclesiastical matter. This Court should grant review to clarify that its precedents do not support that overbroad reading of the First Amendment.

III. The question presented is recurring and important.

This Court's review is also warranted because the question presented arises often and has significant consequences.

The large number of appellate decisions that have addressed the question presented show that it arises

regularly. *See supra* pp. 12–20. Indeed, within the last five years alone, at least eight published appellate decisions have addressed this issue: *Alief*, *Dermody*, *Gallagher*, *McRaney*, *Orr*, *Pfeil*, *Sumner*, and the decision below in this case. Nothing suggests that pace will slow.

The question presented is also important. *See McRaney*, 980 F.3d at 1082 (Oldham, J., dissenting from denial of rehearing en banc) (recognizing that the application of the Religion Clauses to defamation claims is a question of exceptional importance). The answer to that question decides whether persons defamed in ecclesiastical settings may recover damages for reputational and pecuniary harm. It also decides whether religious organizations and officials must pay those damages. Because every state has religious organizations and a cause of action for defamation, these practical consequences have immense scope.

The question presented also implicates an important issue of constitutional law: how to balance religious freedoms and secular legal rights. The Court confirmed the significance of this issue vis-à-vis employment discrimination claims when it granted review in *Hosanna-Tabor* and *Morrissey-Berru*. The Court also acknowledged that, when the circumstances arose, the Court might need to address this issue for other types of claims, including tort claims. *Hosanna-Tabor*, 565 U.S. at 196.

Those circumstances have now arisen. Depending on the correct answer to the question presented, one of two things is true: Either persons in many jurisdictions are being wrongly deprived of redress for harm to their reputations, or persons and organizations in many other jurisdictions are being wrongly deprived of their religious freedoms. The balance struck by the

First Amendment between religious freedoms and secular legal rights should not vary from state to state in this manner.

Moreover, the conflict here exemplifies broader inconsistency among the lower courts on related issues. For example, courts have adopted conflicting approaches on how the Religion Clauses apply to claims for tortious interference,[8] negligent hiring and supervision,[9] publication of private facts,[10] hostile work environments,[11] and breaches of contract.[12]

All of these conflicts flow from an underlying disagreement over the legal principles that govern the application of the Religion Clauses to civil claims. Some courts follow *Jones* and ask whether a given civil claim can be resolved using neutral principles of law. Other courts limit the neutral-principles approach to property disputes and apply a categorical

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[8] *See McRaney* Pet. 24–26, 29–31.

[9] *See*, *e.g.*, *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 38–40 & nn. 2–3 (Iowa 2018); Lindvall, *supra*, at 28–29, 39–42.

[10] *See*, *e.g.*, Strasser, *supra*, at 326, 359, 371.

[11] *See*, *e.g.*, *Demkovich v. St. Andrew the Apostle Parish*, 973 F.3d 718, 720–21, 726–27 (7th Cir. 2020), *reh'g en banc granted*, *opinion vacated* (Dec. 9, 2020). In *Demkovich*, the panel identified a circuit split on the question whether ministers may bring hostile work environment claims that do not challenge tangible employment actions (such as hiring and firing). *See id*. The panel held that the Religion Clauses permit ministers to bring those claims. *See id*. at 720–21. The Seventh Circuit has since taken the case en banc, further demonstrating the significance of these issues.

[12] *See*, *e.g.*, Charles A. Sullivan, *Clergy Contracts*, 22 EMP. RTS. & EMP. POL'Y J. 371, 400–01 (2018).

prohibition on other types of claims that arise from ecclesiastical settings.[13]

The lower courts thus need this Court's guidance—not only on the Religion Clauses' application to defamation claims, but also on the legal principles that govern the Religion Clauses' application to civil claims as a general matter. By granting review in this case, this Court can provide guidance on both.

IV. This case is an excellent vehicle for resolving the question presented.

This case is an ideal vehicle. The question presented was fully litigated and resolved below. It is also outcome-determinative in this case. The Court of Appeals relied solely on the Religion Clauses to affirm summary judgment for Holleman and Hix; the court adopted no alternative grounds for its decision. App. 2a.[14]

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[13] *See*, *e.g.*, *Bilbrey v. Myers*, 91 So. 3d 887, 891 (Fla. Dist. Ct. App. 2012) (describing these conflicting approaches); *Bandstra*, 913 N.W.2d at 38–40 (similar). *Compare*, *e.g.*, *Hutchison*, 789 F.2d at 396 (holding that neutral-principles approach applies only in property cases) *with*, *e.g.*, *McRaney*, 966 F.3d at 349–50 (holding that neutral-principles approach applies in tort cases); *see also McRaney* Pet. 27–32.

[14] The Court of Appeals stated at the end of its opinion that it could not examine ecclesiastical matters "under the First Amendment or the North Carolina Constitution." App. 51a. The opinion referred to the North Carolina Constitution only this one time, and the remainder of the opinion makes clear that the court's decision rested on the First Amendment. *See*, *e.g.*, *id.* at 2a, 11a–12a. At minimum, the opinion's isolated reference to the North Carolina Constitution fails to satisfy the clear-statement requirement for identifying adequate and independent state-law grounds. *See Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

It is true that, in her separate opinion concurring in the judgment, Chief Judge McGee expressed the view that defendants were entitled to summary judgment on unrelated state-law grounds. *See* App. 81a–89a. The majority, however, declined to reach those issues, deciding the case instead under the First Amendment alone. *See id.* at 51a. Thus, any state-law issues in this case pose no obstacle to this Court's review. The Court can grant review, resolve the question presented, and remand for consideration of these state-law issues.

It is also true, as mentioned above, that the defendant in *McRaney* has recently sought this Court's review, and the first question presented in *McRaney* overlaps with the question presented in this case. *See McRaney* Pet. i. Some of the facts in this case differ from those in *McRaney*, however, in ways that make this case a particularly useful vehicle.

For example, in *McRaney*, the plaintiff is a minister. *Id.* at 3. Thus, *McRaney* does not afford the Court an opportunity to address how the Religion Clauses apply to defamation claims brought by non-ministers. *See id.* at 3 n.1.

This case, in contrast, affords an opportunity for the Court to address that issue. Here, Mr. Lippard, was a member of Diamond Hill; he was not a minister. *See* App. 3a. Mrs. Lippard, in turn, was both a Diamond Hill member and the church pianist. *Id.* The Lippards do not dispute that, as the church pianist, Mrs. Lippard was effectively a minister of Diamond Hill under the Court's decisions in *Hosanna-Tabor* and *Morrissey-Berru*. Thus, in this case, the Court can provide guidance on whether the Religion Clauses apply differently to defamation claims brought by ministers and by non-ministers.

Furthermore, the plaintiff in *McRaney* had his employment terminated. *McRaney* Pet. 3. Mrs. Lippard *did not* have her employment terminated. App. 5a–6a. This case therefore offers the opportunity to address whether that distinction matters to the First Amendment analysis of a defamation claim that arises from a termination proceeding.

Finally, the defamatory statements at issue in *McRaney* were made before the ecclesiastical decision at issue (the plaintiff's termination). *See McRaney* Pet. 6–7. Here, some of the defamatory statements at issue were made *after* the ecclesiastical decision at issue (the church vote to retain Mrs. Lippard as church pianist). *See* App. 6a. Thus, even if the Religion Clauses might sometimes bar defamation claims that arise from ecclesiastical proceedings, the Court could clarify in this case whether that bar extends to statements made after the ecclesiastical proceedings have ended.

For these reasons, the Court should grant review in this case, whether or not it also grants review in *McRaney*. At minimum, if the Court grants review in *McRaney*, it should hold this case for *McRaney*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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