NO. 21-164

IN THE
Supreme Court of the United States

TRUSTEES OF THE NEW LIFE IN CHRIST CHURCH,
Petitioners,

v.

CITY OF FREDERICKSBURG, VIRGINIA,
Respondent.

On Petition for Writ of Certiorari to the Circuit Court of the City of Fredericksburg, Virginia

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF OF THE ETHICS & RELIGIOUS LIBERTY COMMISSION OF THE SOUTHERN BAPTIST CONVENTION, CHRISTIAN LIFE AND PUBLIC AFFAIRS COMMITTEE OF THE SOUTH CAROLINA BAPTIST CONVENTION, SOUTHERN BAPTISTS OF TEXAS CONVENTION AND TENNESSEE BAPTIST MISSION BOARD IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

1. *Amici Curiae* The Ethics & Religious Liberty Commission of the Southern Baptist Convention, Christian Life and Public Affairs Committee of the South Carolina Baptist Convention, Southern Baptists of Texas Convention, and Tennessee Baptist Mission Board, pursuant to Supreme Court Rule 37(2)(a) and (b), respectfully moves this Court for leave to file the accompanying *amici curiae* brief in support of the petition for a writ of certiorari filed by the Trustees of the New Life In Christ Church, Case Number 21-164.

2. On August 31, 2021, counsel for *amici* requested consent from Respondent City of Fredericksburg, Virginia. The same day, counsel for Respondent answered that Respondent would *not* consent to the filing of the *amici* brief due to the timing of the notice. Counsel for *amici* explained that consent was an administrative convenience to the Court and that it had just recently secured the engagement. Counsel for Respondent did not respond to follow up requests for consent and preferred to compel the Court to formally address the motion.

3. Counsel for Petitioner Trustees of the New Life In Christ Church granted consent to this filing.

4. This case involves a Virginia court's decision to reject a church's determination concerning who qualifies as a "minister" in the Church based on the Church's good-faith interpretation of the Presbyterian Church in America's Book of Church Order. Instead of deferring to the Church's good-faith interpretation of its own doctrine, the court accepted the City's doctrinally-based arguments concerning

qualifications of a minister according to the Book of Church Order.

5. This unprecedented inquiry and ruling conflicts with over 100 years of this Court's precedents, all holding that church autonomy includes matters of religious government, faith, and doctrine.

6. The proposed *amici* make this motion for leave to file in support of Petitioners.

7. No party or party's counsel authored any part of the accompanying brief, nor did proposed *amici* or their counsel receive any money from a party to fund preparing or submitting the brief.

8. The contemporaneously filed brief addresses this Court's church-autonomy holdings and explicates their importance not only to the Presbyterian Church in America, but to other denominations and religious organizations.

For these reasons, the motion for leave to file the attached *amici* brief should be granted.

Respectfully submitted.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are religious organizations in the Southern Baptist denomination who share a fundamental interest in preserving the right of religious organizations to decide—free from state interference—matters of religious government, faith, and doctrine.

Requiring court-approved indicia of ministerial status—such as titles, training, or credentials—risks unconstitutional judicial entanglement and second-guessing of religious doctrine. It also disadvantages religious groups who do not share the government's view of church or other religious organizational structure. The specific interests of *amici* are detailed in the Appendix to this brief.

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[1] No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were notified of this brief as required by Supreme Court Rule 37.2.

INTRODUCTION AND SUMMARY OF ARGUMENT

Fundamental to the Religion Clauses is the prohibition against judicial countermanding of ecclesiastical determinations. Our nation's history, Constitution, and long-standing precedent all counsel against state interference into matters of religious government, faith, and doctrine. Chief among those decisions is who a religious organization deems to be a "minister." So, when civil courts wade into church doctrine to override a religious organization's good-faith determination of who qualifies as a minister in that local church or religious organization, the government extinguishes a religious liberty that the Religion Clauses are designed to protect.

"First Amendment values are plainly jeopardized when" litigation involving the church is "made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). So, "the First Amendment severely circumscribes the role that civil courts may play in resolving" such disputes. *Ibid.* And "defer[ring] to a religious organization's good-faith understanding of who qualifies as its minister" ensures courts do not encroach on religious autonomy. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2063 (2020) (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.*, 565 U.S. 171, 196 (2012) (Thomas, J., concurring)).

Here, the Virginia court's decision to override New Life In Christ Church's good-faith determination of who qualifies as a minister of the Church sets a dangerous precedent in violation of the First Amendment. According to the undisputed record, the Church hired Josh and Anacari Storms to serve as the Church's Directors of College Outreach and Youth Ministers the same year it bought the parsonage home the couple occupies. Pet. 5. It is also undisputed that the Stormses' duties in their role with the Church is "focused on ministering to students" at a nearby college. *Ibid.* The City does not challenge the good-faith nature of the Church's determination that the Stormses qualify as ministers, but rather conducted its own review of the Presbyterian Church in America's Book of Church Order and determined, in the government's view, that the Stormses did not qualify as ministers. In making this determination, the City fixated on an overly rigid set of supposed qualifications for a "minister"—including formal ordination status—and disregarded the "essential religious functions" that the Stormses perform. *Id.* at 6–7. Such an inquiry into church doctrine is precisely what the First Amendment forbids. See *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2062 (citing *Hosanna-Tabor*, 565 U.S. at 190–91).

The Virginia court's review of church law and implementation of rigid requirements—including formal ordination status—for one to qualify as a "minister" interferes with matters of church government, faith, and doctrine. See *Hosanna-Tabor*, 565 U.S. at 202 (observing that "most faiths do not employ the term 'minister,' and some eschew the concept of formal ordination") (Alito, J., concurring). It also improperly disadvantages religious groups who do not

share the government's imagined hierarchical organizational structure. See *Engel* v. *Vitale*, 370 U.S. 421, 430–31 (1962) (the Establishment Clause protects against "coercive pressure upon religious minorities to conform to the prevailing officially approved religion"). The decision is ripe for summary reversal or merits briefing on the limits of civil authorities' power to resolve questions of religious doctrine in a manner that second-guesses a church's good-faith ecclesiastical determination.

ARGUMENT

I. The Religion Clauses guarantee non-interference in religious groups' governance.

When the government overrides a religious organization's determination of who qualifies as a "minister" based on its own interpretations of ecclesiastical doctrine, the government uproots the chief cornerstone of religious liberty. And, where a religious organization's receipt of a statutory exemption turns on whether one qualifies as a "minister" in a particular religious order, courts ought to defer to the religious organization's good-faith determinations. Anything less impinges on religious organizations' fundamental right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

A. The non-interference principle is deeply rooted in our Nation's history.

The Founding Fathers understood that "[t]he power to appoint and remove ministers is the power to control the church." Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2138 (2003). When that generation disestablished state churches, it "adopted at the same time an express [constitutional] provision that all 'religious societies' have the 'exclusive' right to choose their own ministers." Michael W. McConnell, *Reflections on* Hosanna-Tabor, 35 Harv. J.L. & Pub. Pol'y 821, 829 (2012). That same spirit of non-interference informed the adoption of the First Amendment's Religion Clauses in the federal Constitution we enjoy today. See *Hosanna-Tabor*, 565 U.S. at 184.

James Madison, the leading architect of the Religion Clauses, once wrote that the selection of church "functionaries"—in common parlance, ministers—"was an 'entirely ecclesiastical' matter left to the Church's own judgment." *Ibid.* (citing Letter from Secretary of State James Madison to Bishop John Carroll (Nov. 20, 1806), *reprinted in* 20 *Records of the American Catholic Historical Society* 63 (1909) [hereinafter Madison Letter]). And, "[t]he 'scrupulous policy of the Constitution in guarding against a political interference with religious affairs,' Madison explained, prevented the Government from rendering an opinion on the 'selection of ecclesiastical individuals.'" *Ibid.* (quoting Madison Letter). As president, Thomas Jefferson similarly observed that the Constitution prevents the government "from intermeddling with religious institutions, their

doctrines, discipline, or exercises."[2] Letter from Thomas Jefferson to the Rev. Samuel Miller (Jan. 23, 1808), *reprinted in* 11 *The Works of Thomas Jefferson* 7, 7 (P. Ford ed., 1905).

This Court has used this historical backdrop to crystallize the longstanding "non-interference principle," first articulated over a century ago. See *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871) (instructing the government not to interfere in "questions of discipline, or of faith, or ecclesiastical rule, custom, or law"). That fundamental premise preserves the power of religious bodies "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116 (explicitly grounding the non-interference principle in the Religion Clauses); see also *Gonzalez* v. *Roman Cath. Archbishop of Manila*, 280 U.S. 1, 16 (1929) ("[I]t is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them.").

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[2] The historical record illuminates the Founding generation's understanding that the government is ill-suited to judge who qualifies as a "minister," let alone examine church doctrine to inform the government's opinion on such a question. Thomas C. Berg, et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U. L. Rev. Colloquy 175, 176 (2011) (considering the "foundational premise that there are some questions the civil courts do not have the power to answer").

Accordingly, when confronted with a religious organization's good-faith determination that a person qualifies as a "minister" under its own ecclesiastical doctrine, courts should defer to the religious organization's understanding, notwithstanding any contrary doctrinal interpretation by the government. See *Hosanna-Tabor*, 565 U.S. at 196 (Thomas, J., concurring); see also *Cannata* v. *Cath. Diocese of Austin*, 700 F.3d 169, 179–80 (5th Cir. 2012) ("[W]e may not second-guess whom the Catholic Church may consider a lay liturgical minister under canon law.").

B. Courts should defer to a religious organization's good-faith determination that a person qualifies as a "minister."

Deference to religious organizations' good-faith ecclesiastical determinations preserves free-exercise rights. Without a measure of deference, a religious organization's "right to choose its ministers would be hollow," because "secular courts could second-guess the organization's sincere determination" of whether one qualifies as a "'minister' under the organization's theological tenets." *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring). Deference prevents courts from "wading into doctrinal waters" or adjudicating claims that "turn on an ecclesiastical inquiry," a task for which civil courts are particularly ill-equipped. *Petruska* v. *Gannon Univ.*, 462 F.3d 294, 312 (3d Cir. 2006); see also *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2055 ("Judicial review of the way in which [religious organizations] discharge those responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate.").

Decisions from this Court and circuit courts across the country have deferred to a religious organization's good-faith ecclesiastical determinations to avoid judicial entanglement in the question of whether one qualifies as a "minister." *E.g.*, *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2069-70 (Thomas, J., concurring) ("[T]he Religion Clauses require civil courts to defer to religious organizations' good-faith claims that a certain employee's position is 'ministerial.'"); *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133 (1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment."); see also *Tomic* v. *Cath. Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006) (a court's interpretation of religious doctrine in a contract dispute would be tantamount to "secular courts taking on the additional role of religious courts"), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. at 195 n.4; *Bollard* v. *Cal. Province of the Soc'y of Jesus*, 196 F.3d 940, 949 (9th Cir. 1999) (The Establishment Clause guards against "a protracted legal process" which "inevitably" would result in discovery and other mechanisms that "probe the mind of the church in the selection of its ministers." (quotation marks omitted)).

"This deference is necessary because . . . judges lack the requisite understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2070 (Thomas, J., concurring) (internal quotation and citation omitted).

In the absence of a sham or subterfuge, the First Amendment requires courts to accept the decisions of a religious organization on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. *Serbian E. Orthodox Diocese for the U.S. & Canada* v. *Milivojevich*, 426 U.S. 696, 713 (1976) (the Establishment Clause prohibits governmental interference "in essentially religious controversies" (*id.* at 709)). Only by yielding to good-faith determinations of ministerial status can courts avoid inserting themselves squarely into what become ultimately religious considerations and determinations. See *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring).

Here, the Virginia court made several missteps. To begin, it refused to accept the Church's good-faith determination concerning the Stormses' status as ministers based on the Church's good-faith interpretation of the Book of Church Order and undisputed "essential religious functions" that the Stormses performed at the Church. Pet. 6. The Virginia court then compounded its mistake by elevating the government's own interpretation of the Book of Church Order, focusing on formal ordination status rather than the Church's determination regarding the Stormses' status and qualifications. Pet. 8–9. The Virginia court's approach flips the proper inquiry on its head by accepting the City's doctrinally based arguments, instead of deferring to the Church's good-faith determination concerning qualifications of a minister according to the Presbyterian Church in America's Book of Church Order.

Favoring the government's interpretation of religious doctrine over the church's interpretation is a shocking misapplication of the Religion Clauses. Yet, that is precisely what happened here. Instead, applying deference to a religious organization's good-faith determination of who qualifies as a "minister" in accordance with its ecclesiastical doctrine prevents future harm that would stem from civil courts' excessive entanglement in matters of applying religious doctrine.

II. The Virginia court's misapplication of the non-interference principle threatens the autonomy of religious groups.

Allowing the Virginia court's decision to stand presents an acute danger to the autonomy of religious groups, including those who eschew rigid, hierarchical models. "Judicial attempts to fashion a civil definition of 'minister' through a bright-line test or multifactor analysis risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the 'mainstream.'" *Hosanna-Tabor*, 565 U.S at 197 (Thomas, J., concurring). And such attempts might "cause a religious group to conform its beliefs and practices regarding 'ministers' to the prevailing secular understanding."[3] *Ibid.*

[3] "The term 'minister' is commonly used by many Protestant denominations to refer to members of their clergy," but this Court has recognized that "the term is rarely if ever used in this way by Catholics, Jews, Muslims, Hindus, or Buddhists." *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J., concurring).

The decision below threatens religious autonomy. If the government can dictate which qualifications make one a minister for the purposes of the exemption, including for example, that one must be ordained, then religious organizations will naturally feel pressure to hire as ministers only those who meet those qualifications—even if the organization believes such qualifications are unnecessary or that one lacking them is better suited for the role. See, *e.g.*, *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints* v. *Amos*, 483 U.S. 327, 336 (1987) ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission."); see also *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring) (criticizing rules that "may cause a religious group to conform its beliefs and practices regarding 'ministers' to the prevailing secular understanding").

Secular law should not be applied in a manner that pressures religious organizations to abandon their precepts in order to gain legal protection. See *Engel*, 370 U.S. at 430–31. Such governmental micromanagement of how religious organizations structure their own affairs contravenes the Religion Clauses, and replaces religious pluralism with a one-size-fits-all set of organizational rules at an intolerable spiritual price. See *Hosanna-Tabor*, 565 U.S at 199 ("[I]t is easy to forget that the autonomy of religious

groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws." (Alito, J., concurring)).

By requiring a religious organization to satisfy a rigid set of qualifications to receive the benefit of a statutory exemption, the Virginia court's holding impermissibly discriminates against less established faiths that lack formal titles and ordination requirements for its leaders. See *id.* at 198 (Alito, J. concurring). Many minority religious groups do not have seminaries where they can credential ministers. And others do not have the funds to fill critical, ministerial roles with professional, ordained clergy. *See id.* at 202 (Thomas, J., concurring). The First Amendment requires that the government provide the same benefits to these religious organizations as they do well-established churches. Indeed, such organizations are in the greatest need of protection. *Id.* at 197 (Thomas, J., concurring); see also *Larson* v. *Valente*, 456 U.S. 228, 246 n.23 (1982) (the First Amendment prohibits discrimination favoring "well-established churches" over "churches which are new and lacking in a constituency").

Deferring to the good-faith determinations of religious organizations prevents courts from unnecessarily wading into church doctrine when the "very process of inquiry" could "impinge on rights guaranteed by the Religion Clauses." *NLRB* v. *Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979). Further, rejecting the overly rigid approach that the Virginia court took avoids privileging religious organizations with more formal structures at the expense of the many groups that eschew such conventions—a form of religious discrimination expressly prohibited under the First Amendment. See, *e.g.*, *Church of the Lukumi*

Babalu Aye, Inc. v. *City of Hialeah*, 508 U.S. 520, 532 (1993). This Court should not abandon religious organizations to the choice of compromising their internal governance structures to qualify for statutory exemptions, or accepting the government's veto power over "who is qualified to serve as a voice for their faith." *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring). This Court's review is necessary to ensure that government officials show proper "respect for this Nation's pluralism, and the values of neutrality and inclusion that the First Amendment demands." *Am. Legion* v. *Am. Humanist Ass'n*, 139 S. Ct. 2067, 2094 (2019) (Kagan, J., concurring).

CONCLUSION

For the foregoing reasons, the Court should summarily reverse the Virginia court's decision below or, at a minimum, grant the petition and order full merits briefing on the issue of civil courts' authority to overrule the Church's good-faith determination of who qualifies as a minister pursuant to its own doctrine.

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APPENDIX

APPENDIX

Individual Statements of Interest

The **Ethics and Religious Liberty Commission of the Southern Baptist Convention** is the public policy arm of the nation's largest Protestant denomination—the Southern Baptist Convention—comprised of more than 46,000 autonomous churches and nearly 16 million members. The Ethics and Religious Liberty Commission is dedicated to engaging the culture and speaking to issues in the public square for the protection of religious liberty and human flourishing.

The **Christian Life and Public Affairs Committee of the South Carolina Baptist Convention** is a standing committee of the South Carolina Baptist Convention made up of pastors and laypeople. The committee's task is to represent the expressed views of South Carolina Baptist Convention churches regarding public policy and the common good.

The **Southern Baptists of Texas Convention** is a convention of Southern Baptist churches in Texas. It exists to facilitate, extend, and enlarge the Great Commission ministries of Southern Baptist churches and associations in Texas and the Southern Baptist Convention at-large.

The **Tennessee Baptist Mission Board** coordinates the cooperative ministries supported by the churches related to the Tennessee Baptist Convention.

Religious freedom is an indispensable, bedrock value for Baptists represented by each organization. The Constitution's guarantee of freedom from governmental interference in matters of religious government, faith, and doctrine is a crucial protection upon which Baptists and adherents of other faith traditions depend as they follow the dictates of religious precepts in the practice of their faith.