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

BRIEF OF *AMICI CURIAE* THE ASSEMBLY OF CANONICAL ORTHODOX BISHOPS OF THE UNITED STATES OF AMERICA, DIOCESE OF THE MID-ATLANTIC OF THE ANGLICAN CHURCH IN NORTH AMERICA, COLUMBIA UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS, EVANGELICAL COUNCIL FOR FINANCIAL ACCOUNTABILITY, THE FAMILY FOUNDATION, INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS, NATIONAL LEGAL FOUNDATION, AND PACIFIC JUSTICE INSTITUTE

in Support of Petitioners

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STATEMENTS OF INTEREST[1]

The Assembly of Canonical Orthodox Bishops of the United States of America (Assembly) is a not-for-profit corporation comprised of all active canonical Orthodox Christian bishops of Orthodox jurisdictions in the United States. Together, the Orthodox Christian jurisdictions are part of the universal Orthodox Christian Church, which traces its lineage directly to the biblical New Testament era. The Assembly preserves and contributes to the unity of the Orthodox Christian Church in the United States by furthering its spiritual, theological, ecclesiological, canonical, educational, missionary, and philanthropic aims. As hierarchical entities, the Orthodox Christian jurisdictions are particularly concerned about preserving their constitutional right to govern themselves and determine their own doctrines.

The **Diocese of the Mid-Atlantic** (Diocese) is a regional diocese of the Anglican Church in North America dedicated to reaching North America with the transforming love of Jesus Christ. It exists to equip clergy and congregations within the Diocese to fulfill the Great Commandment (Mark 12:29-31) and the Great Commission (Matthew 28:19-20) of Jesus Christ by leading people into a growing relationship with Jesus Christ through personal discipleship,

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[1] All parties received timely notice of *Amici's* intent to file this brief and consented to its filing. No party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund its preparation or submission, and no person other than *Amici Curiae*, their members, or their counsel contributed money that was intended to fund the preparation or submission of this brief.

evangelism, and the nurturing and planting of congregations. The Diocese consists of more than forty congregations, missions, mission fellowships, and church plants in Virginia, Maryland, District of Columbia, Delaware, eastern West Virginia, and northeastern North Carolina. Thirty-one of these are located in Virginia, as are the headquarters of the Diocese. Both the Diocese and all of its congregations have a significant interest in the outcome in this case.

The Columbia Union Conference of Seventh-day Adventists (Conference) coordinates the Seventh-day Adventist Church's work in the Mid-Atlantic United States, where 140,000 members worship in 843 congregations. Many of these congregations are in Virginia, and the Conference has a direct interest in the outcome of this case.

The **Evangelical Council for Financial Accountability** (ECFA) provides accreditation to leading, Christ-centered churches, associations of churches, and parachurch organizations that faithfully demonstrate compliance with established standards for financial accountability, stewardship, and governance. For over 40 years, one of ECFA's core principles has been the preservation of religious freedom through its standards of excellence and integrity, which help alleviate the need for burdensome government oversight of religious organizations. More than 2,500 churches, Christian ministries, denominations, educational institutions, and other tax-exempt 501(c)(3) organizations are currently accredited by ECFA, including many operating in Virginia. ECFA has been actively involved on behalf of its accredited religious organizations in cases involving ministerial housing allowances.

The Family Foundation (TFF) is a Virginia non-partisan, non-profit organization committed to promoting strong family values and defending the sanctity of human life in Virginia through its citizen advocacy and education. TFF serves as the largest pro-family advocacy organization in Virginia, and its interest in this case is derived directly from its members throughout Virginia who seek to advance a culture in which children are valued, religious liberty thrives, and marriage and families flourish.

The International Conference of Evangelical Chaplain Endorsers (ICECE) is a conference of evangelical organizations that endorse Christian clergy to be chaplains in the military and other limited access organizations where chaplains provide for the free exercise of religion. ICECE's most important issue is the protection and advancement of religious liberty for all chaplains and military personnel. ICECE supports challenges to government encroachments or restrictions on churches' autonomy and internal governance to preclude similar restrictions on military ministry.

The **National Legal Foundation** (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, including those in Virginia, seek to ensure that a historically accurate understanding of the Religion Clauses is presented to our country's judiciary.

The **Pacific Justice Institute** (PJI) is a non-profit legal organization established under section

501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented in court and administrative proceedings thousands of individuals, businesses, and religious institutions, particularly in the realm of First Amendment rights. As such, PJI has a strong interest in the development of the law in this area.

SUMMARY OF ARGUMENT

Virginia law, as definitively interpreted by its Supreme Court, allows a real estate tax exemption for more than one minister of a church and for ministers other than the lead minister of the congregation. Here, though, the city decided that the church's employees who are responsible for its ministry to local college students are not ministers of the church. Thus, this petition raises a federal issue of critical importance: may a government supplant a church's good-faith assertion that its employee is a minister by making its own, conflicting interpretation of the church's governing documents. Such meddling in church affairs not only is beyond governmental authority and competence, but it also disadvantages some religious bodies compared to others and encourages religious organizations to tailor religious decisions to governmental policies.

The decision below is both mischievous and directly contrary to this Court's precedent. This Court should grant the petition and reverse.

ARGUMENT

The city's second-guessing of the church's good-faith designation of its employees as ministers

violates a consistent line of this Court's decisions. *See, e.g.*, *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713 (1976); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); *Gonzalez v. Roman Cath. Archbishop of Manila*, 280 U.S. 1, 16 (1929); *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131 (1872); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1871). *Amici* write to demonstrate their concern about this development and to assure this Court that the federal issues presented are not clouded by issues of state law.

I. Established Virginia Law Provides That the Tax Exemption Is Available for Other Than the Lead Minister of a Church, Clearly Presenting the Federal Questions Posed by the Petition

Virginia law provides an exemption from property taxes for "[r]eal property and personal property owned by churches or religious bodies . . . and exclusively occupied or used . . . for the residence of the minister of any church or religious body." Va. Code § 58.1-3606(A)(2). By use of the term "*the* minister" (emphasis added), the statute creates two ambiguities: (1) whether only one minister may qualify for the exemption, and (2) whether the residence owned by the church must be inhabited by its lead minister.

Both of these ambiguities were resolved by the Virginia Supreme Court in *Cudlipp v. City of Richmond*, 180 S.E.2d 525 (Va. 1971). *Cudlipp* involved a church-owned residence inhabited by a non-lead minister who

was in charge of the missionary ventures of the church when the church had other residences for which it had claimed the exemption. The Virginia Supreme Court ruled that the statute did not limit the number of exemptions to one per church and, consequently, that church property inhabited by a non-lead minister qualified for the exemption. *See also* Opinions of the Attorney General and Report to the Gov. of Va. 276 (Aug. 23, 1976) (interpreting the statute to cover a church residence inhabited by its non-ordained music minister).

The federal issue is, thus, clearly presented. Virginia law establishes that (a) a church may qualify for more than one residence inhabited by its ministers; and (b) to qualify, the residence does not have to be inhabited by the church's lead minister. Moreover, it is undisputed here that New Life's residence for which it requested an exemption is used by leaders of a church ministry that involves religious instruction and evangelization by its resident employees. Finally, it is undisputed that the church in good faith considers its resident employees to be its ministers. As a result, the petition cleanly presents the federal question of whether the city violated the Constitution when it second-guessed the church's designation of its employees as ministers by making its own reading of the church's governing documents.

II. Allowing a Government to Second-Guess Good-Faith Church Determinations of Who Serves As Its Ministers Based on the Government's Reading of Church Documents Will Disadvantage Some Churches Compared to Others

Amici will not repeat the petition's demonstration that the city, by engaging in a perusal and interpretation of church documents to disagree with New Life Church that its employees responsible for its college ministry are ministers of the church, violated the Religion Clauses of the First Amendment. Only this Court can now correct this error.

Amici do wish to emphasize that allowing governments to engage in such behavior will necessarily have pernicious effects among churches. Allowing the city's conduct to go uncorrected will encourage similar behavior. This will often be to the detriment of more hierarchical churches, which, as a rule, have more written polity statements than less formal churches, giving government officials more church documents to parse and interpret. *See, e.g.*, *Milivojevich*, 426 U.S. at 715-20. The volume and formality of written statements vary from religion to religion and, within Christianity, from denomination to denomination and from church to church. This is well demonstrated by *Amici*, some of whom would be considered less hierarchical and some more so. Some are independent churches bound by no denominational polity; others are part of a denominational superstructure that is spelled out in multiple church documents, making them more vulnerable to governmental second-guessing. But the Religion Clauses prohibit advantages being given to one type of religion or one type of church

over another. *See, e.g.*, *Larson v. Valente*, 456 U.S. 228 (1982); *Fowler v. R.I.*, 345 U.S. 67 (1953); *United States v. Ballard*, 322 U.S. 78, 87 (1944) ("The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position.").

This Court has also recognized another evil that comes from permitting governments to second-guess whether churches qualify for an exemption. Permitting the type of activity that the city practiced here has the potential to cause churches to modify their policy and practice, not from religious considerations alone, but to conform to governmental dictates, interpretations, or predilections. In *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987), this Court noted that the broad exemption for religious organizations under the Civil Rights Act of 1964 served the salutary purpose of keeping the government from affecting church polity:

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

Id. at 336 (footnote omitted). These concerns come front and center when the issue is whom a church considers to be its minister, as Justice Thomas noted in

Hosanna-Tabor Evan. Lutheran Church & School v. EEOC, 565 U.S. 171 (2012):

> A religious organization's right to choose its ministers would be hollow, however, if secular courts could second-guess the organization's sincere determination that a given employee is a "minister" under the organization's theological tenets. Our country's religious landscape includes organizations with different leadership structures and doctrines that influence their conceptions of ministerial status. The question whether an employee is a minister is itself religious in nature, and the answer will vary widely. 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" or unpalatable to some. Moreover, uncertainty about whether its ministerial designation will be rejected, and a corresponding fear of liability, may cause a religious group to conform its beliefs and practices regarding "ministers" to the prevailing secular understanding. These are certainly dangers that the First Amendment was designed to guard against.

Id. at 197 (Thomas, J., concurring) (citation omitted).

These dangers have been realized in this case.

CONCLUSION

The Religion Clauses prohibit a government from second-guessing a church's good-faith designation of who serves as its minister. The city violated that principle here, and, if allowed to stand, it could have multiple, deleterious effects that the Religion Clauses are designed to protect. The petition should be granted.

Respectfully submitted
this 3rd day of September, 2021,

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