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 a Writ of Certiorari to the Circuit Court of the City of Fredericksburg, Virginia

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

The City's sole argument against certiorari is that the decision below is correct on the merits. But the City doesn't dispute that the First Amendment prohibits civil authorities from second-guessing religious organizations on matters of internal governance. Nor does it dispute that the courts below did precisely that when they rejected the Church's good-faith assertion that Josh and Anacari Storms are ministers of the Church based on the courts' own, independent interpretation of the Presbyterian Church in America's Book of Church Order. The City's arguments on the merits only underscore the need for this Court's review and reversal of the judgment below.

Indeed, the City goes so far as to argue (at 1, 4, 10, 11, 14) that the decision below doesn't even implicate the First Amendment because it doesn't prohibit the Church from recognizing the Stormses as ministers—it merely denies them that recognition under the law. It would be difficult to imagine a more anemic, atextual, ahistorical view of the First Amendment. The fact that the City even asserts this argument highlights the lengths to which it must go to defend the indefensible. The City even criticizes the *Church* (at 10) for misapplying its own doctrine in determining that the Stormses are its ministers. But that is exactly what the First Amendment forbids: civil authorities undertaking their own inquiries into religious doctrine to second-guess a church's determination about who can serve as its ministers.

The City is no more successful in distinguishing *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868 (2021). Although the City insists that generally applicable

taxes don't impose a burden on the Church's religious exercise, this begs the question. The Church's contention is that the Virginia tax statute is *not* generally applicable because it provides exemptions for church property occupied by some ministers (among many other exemptions), but doesn't extend such an exemption to ministers like the Stormses. If the Church is correct, it may be denied the exemption only if the City can show a compelling reason for doing so, which it has not yet even attempted to do.

The decision below is not just wrong, but dangerously wrong. If permitted to stand, it would be "a threat to First Amendment rights everywhere." Brief of Kentucky, *et al.*, as *Amici Curiae* in Support of Petitioners at 1. The Court should summarily reverse or grant certiorari and order merits briefing and argument. At the least, the Court should grant, vacate, and remand for further consideration under *Fulton*.

I. THE DECISION BELOW FLAGRANTLY VIOLATES THE COURT'S LONGSTANDING PROHIBITION ON CIVIL AUTHORITIES RESOLVING RELIGIOUS QUESTIONS.

This Court has long recognized that "it [i]s wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions." *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445–46 (1969) (citing *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 728–29 (1871)). Yet, when the City defended its decision to deny the exemption to the Church in court, it did so based *solely* on its independent interpretation of Church doctrine.

The City acknowledged that "[w]hether a non-ordained person can be 'the minister' for legal purposes in the context of different religious denominations or traditions depends on the organizational policies of the organization" in question. Pet. App. 20a. But it reasoned that, "in the context of a congregation affiliated with the Presbyterian Church in America, and specifically of the local congregation to which the plaintiffs belong, the organizational documents of the church and the local congregation define 'the minister' as an ordained person." *Ibid.* Because "[t]he Book of Church Order utilizes the term 'minister' in contexts that make it clear that the term refers to a duly ordained person with specific leadership duties," the City concluded that, "*by its own definitions* the Church has limited its pastoral leadership to specific individuals, none of which occupy the Property which the Church seeks to have exempted from taxation." *Id.* at 70a–71a (emphasis added).

There can be no doubt that this is precisely the type of inquiry into ecclesiastical questions that the First Amendment prohibits. The City nonetheless offers three arguments in defense of the judgment below that succeed only in underscoring the need for this Court's review and reversal of that judgment.

A. The City argues (at 10) that its denial of the property-tax exemption doesn't raise First Amendment concerns at all because it identifies only whom the *State* may recognize as the Church's minister, not whom *the Church* may recognize as its minister. If anything, this breathtaking argument only underscores why this Court's review (and reversal) is imperative in this case.

As an initial matter, the City's view of the First Amendment cannot be reconciled with this Court's landmark decision in *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952). There, the Court considered a New York law that recognized "the governing authorities of the Russian Church in America," rather than "the central governing hierarchy of the Russian Orthodox Church" in Moscow, as the trustee of church property in New York. *Id.* at 106–07 & n.10. Even though the law purported only to establish who within the church had legal authority to control the use of church property, the Court nevertheless held that it violated the church's "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 116.

This makes eminent sense. Although the government may claim only to identify who may speak for a religious organization on civil matters, such an exercise of authority still "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." Brief of the Assembly of Canonical Orthodox Bishops of the United States of America, et al., as *Amici Curiae* in Support of Petitioners at 8. The First Amendment prohibits such interference in internal church matters no matter the form it takes.

Moreover, the City's view of the First Amendment, if permitted to stand, would have drastic consequences far beyond this case—essentially rendering the church autonomy doctrine a dead letter. That doctrine is rooted in bedrock principles that can be traced

back to the Founding. As one group of *amici* explain, "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,'" thereby "'prevent[ing] the Government from rendering an opinion on the selection of ecclesiastical individuals.'" Brief of Ethics & Religious Liberty Commission of the Southern Baptist Convention, et al., as *Amici Curiae* in Support of Petitioners at 5.

The City, however, takes the view that the government has a free hand in selecting "ecclesiastical individuals" so long as it commands only civil authorities, and not those individuals' own purported congregations, to recognize their authority within the church. It is "hard to come up with a fact pattern that more starkly defies the long line of First Amendment precedent that governs this kind of dispute." Brief of Kentucky, *et al.*, as *Amici Curiae* at 11.

B. The City downplays the troubling ramifications of the decision below by insisting (at 4) that the courts merely interpreted the statutory term "the minister," which doesn't require delving into how any particular church may use that term. Not so fast. As the City itself acknowledged below, the statutory term "the minister" simply incorporates the meaning that each particular church ascribes to it: "Effectively the statute * * * says to churches or religious bodies 'you tell us who your leader is, and if they reside in church-owned property, we will exempt that specific property from taxation.'" Pet. App. 169a. Nonetheless, the courts below conducted an independent inquiry—using the Church's Book of Church Order—to override the Church's determination. *Id.* at 70a–71a, 73a; Pet.

12–13. That is not "statutory construction." It is a flagrant violation of this Court's longstanding prohibition on civil authorities resolving ecclesiastical questions.[1]

The City expresses great concern (at 10) about being unable to independently "verif[y]" a church's determination about who serves as the minister of that church. The whole point of the prohibition on civil authorities resolving ecclesiastical questions, however, is to prohibit second-guessing in the guise of "verifying"—which civil authorities are ill-equipped to do.

This is particularly true as the number of religious minorities in the United States grows. As one *amicus* highlights, "[m]any minority faiths do not mirror Christian entities in their doctrine, organization, or structure, so civil authorities are less likely to understand or identify who their faith leaders are." Brief for the Coalition for Jewish Values as *Amicus Curiae* in Support of Petitioners at 2. Indeed, "the religious concepts at issue in the instant case—who is and who is not a minister—have been the subject of profound

[1] The City appears to contradict itself when it asserts that, "[w]hile the Virginia legislature has not provided a definition of 'the minister' in the statute, the Supreme Court of Virginia has." Opp. at 12 (citing *Cudlipp* v. *City of Richmond*, 180 S.E.2d 525 (Va. 1971) (per curiam)). *Cudlipp* itself acknowledged that certain Virginia authorities "ha[ve] invariably extended the exemption to church-owned residences of assistant ministers of local churches," and concluded that a Bishop Coadjutor, although "subordinate to the Bishop * * * for certain purposes," nevertheless "may be considered 'the minister' of the Diocese." 180 S.E.2d at 527.

misunderstandings in the context of minority religions." *Id.* at 10; *see also id.* at 8–10 (collecting examples).

But it is not only religious minorities who will suffer under the rule adopted below. "The volume and formality of written statements vary from religion to religion and, within Christianity, from denomination to denomination and from church to church," such that the City's approach would often operate "to the detriment of more hierarchical churches, which, as a rule, have more written policy statements than less formal churches, giving government officials more church documents to parse and interpret." Brief of the Assembly of Canonical Orthodox Bishops of the United States of America, et al., as *Amici Curiae* at 7.

Importantly, the reasoning of the decision below reaches far beyond property tax exemptions like Virginia's. For example, parochial schools often receive accreditation from religious organizations based on, among other things, their adherence to the religious organization's doctrinal tenets. Brief for American Association of Christian Schools, et al., as *Amici Curiae* in Support of Petitioners at 4. Under the decision below, however, a state university could presumably "deny admission to a graduate of an accredited school based on a university administrator's *own* determination that the school's religious doctrines do not *actually* align with the statement of faith" required by the accrediting organization. *Id.* at 4–5. Other, similar scenarios are not difficult to imagine.

Because Virginia's property tax exemption statute defers to each religious organization's own understanding of who its ministers are, and because the

Church represented in good faith that the Stormses are its ministers, that should have been the end of the matter.[2]

C. Proving the Church's point, the City argues (at 10) that civil authorities may "recognize" and "give effect" to a church's own "rules." *See also* Pet. App. 170a–71a ("The Church cannot set its rules in the [Book of Church Order] and expect for a court to ignore their plain language when the Church tells the court, in an action that its Trustees filed, that the Church is governed by the rules therein."). But this is just another way of saying that civil authorities should be permitted to "verify"—i.e., second-guess—churches' resolution of ecclesiastical matters. This Court has repeatedly rejected that proposition as fundamentally inconsistent with the First Amendment. Pet. 10–11 (citing, e.g., *Kedroff*, 344 U.S. at 116; *Watson*, 80 U.S. (13 Wall.) at 727).

To be sure, the Court has long recognized that civil authorities need not defer to religious ones in exceptional cases involving "fraud, collusion, or arbitrariness." *Gonzalez* v. *Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929). But the City has never argued that the Church's position is fraudulent, collu-

[2] Whatever concerns may arise when courts construe statutes that expressly require church officials be ordained or authorized to perform specific sacerdotal functions to qualify for various exemptions, e.g., *Missionaries of Our Lady of La Salette* v. *Michalski*, 113 N.W.2d 427, 430 (Wis. 1962); *Int'l Missions, Inc.* v. *Borough of Lincoln Park*, 208 A.2d 431, 432–33 (N.J. Super. Ct. 1965), this case doesn't implicate them because Virginia—and the City—has interpreted the statute at issue here to defer to each individual church's understanding of who its ministers are.

sive, or arbitrary. Nor could it, as the Church provided a robust justification for its conclusion that the Stormses are ministers under Chapter 12 of the Book of Church Order, which "provides each church rather broad authority to govern its own affairs which would include the ability to hire ministers to cater to specialized groups, such as youth." Pet. App. 95a; *see also* Pet. 8–9. Rather, the City argues only that the Church is wrong. But this is precisely the type of good-faith dispute over questions of church doctrine that civil authorities may not resolve.[3]

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT, VACATE, AND REMAND FOR RECONSIDERATION IN LIGHT OF *FULTON*.

Three months after the Virginia Supreme Court disposed of this case, this Court held that a law is not "neutral" and "generally applicable," and thus triggers strict scrutiny under the First Amendment, when it confers on government authorities broad discretion to grant exemptions from a facially neutral state law. Because the courts below did not have the opportunity to consider *Fulton*'s impact on this case, at the very least the Court should grant certiorari, vacate the decision below, and remand for further consideration in light of *Fulton* (if the Court doesn't summarily reverse

[3] The City does not argue that there is an adequate and independent state ground for the decision below. See *Michigan* v. *Long*, 463 U.S. 1032, 1038 (1983). And for good reason. Whether government actors have intruded on church autonomy in violation of the First Amendment is a federal question, as are other constitutional questions implicated in cases involving the application of state statutes. *See, e.g.*, *Espinoza* v. *Mont. Dep't of Revenue*, 140 S. Ct. 2246 (2020); *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 137 S. Ct. 2012 (2017).

the decision below or order full merits briefing and argument).

The City argues (at 12) that *Fulton* doesn't apply because the Church "has not been put to the choice of abandoning or compromising its religious beliefs," but rather "is required to pay generally-applicable property taxes on real estate it owns—an obligation the Constitution permits and of which [the Church] rightfully does not complain." While it is true that this Court's Free Exercise Clause precedents don't require a state to grant a church an exemption from its generally applicable tax laws, the question here is whether Virginia's property tax regime is sufficiently neutral and generally applicable to evade scrutiny under those precedents, given the virtually unfettered discretion it grants taxing authorities in determining eligibility for the exemption.

The City insists that, unlike the regulation in *Fulton*, the Virginia statute doesn't have "a vague 'good cause' standard [that] permits the government to grant exemptions on a case by case basis[.]" Opp. at 12. But this is simply untrue. The City's interpretation of the statute gives the City the authority to assess the legitimacy of each religious organization's determination of who serves as its ministers without objective statutory standards to guide that inquiry. Such a statute necessarily requires application on a case-by-case basis.

Virginia taxing authorities have extended the exemption to a church whose property was occupied by an unordained music minister, *see Opinions of the Attorney General and Report to the Governor of Virginia* 276, 276–77 (Aug. 23, 1976), and to a number of

churches whose properties were occupied by assistant ministers, *see, e.g.*, *Cudlipp*, 180 S.E.2d at 527. None of these officials exercised the authority enjoyed by the Stormses. Pet. 5–6. Despite this inconsistent treatment, the City has never attempted to proffer a compelling reason for denying an exemption to the Church.

Accordingly, if the Court doesn't summarily reverse the decision below or order full merits briefing and argument, it should grant the petition, vacate the judgment, and remand for the courts below to resolve in the first instance whether the City's denial of the exemption here violates the First Amendment as interpreted in *Fulton*.

CONCLUSION

The Court should summarily reverse the decision below or, at a minimum, order merits briefing on the question whether civil authorities may engage in their own interpretation of church doctrine to overrule a church's determination that a particular individual is a minister. In the alternative, the Court should grant the petition, vacate the decision below, and remand in light of *Fulton*.

Respectfully submitted,

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