No. 22-741

In the Supreme Court of the United States

FAITH BIBLE CHAPEL INTERNATIONAL,

Petitioner,

v.

GREGORY TUCKER,

Respondent.

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

SUPPLEMENTAL BRIEF FOR PETITIONER

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RULE 29.6 STATEMENT

The Rule 29.6 corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to Supreme Court Rule 15.8, Petitioner Faith Bible Chapel submits this supplemental brief in support of its pending petition for a writ of certiorari.

After the petition was filed, the U.S. Court of Appeals for the Second Circuit denied en banc review in *Belya* v. *Kapral*, --- F.4th ---, 2023 WL 1807013 (2d Cir. Feb. 8, 2023), by a 6-6 vote. As Judge Cabranes explained in dissent, that evenly divided denial of en banc review "is a signal" that the issues presented in *Belya*—which are essentially the same as the core issues here—"can and should be reviewed by the Supreme Court." *Id.* at *2 (Cabranes, J., dissenting).

1. Plaintiff Alexander Belya was a priest in the Russian Orthodox Church Outside of Russia (ROCOR), a semi-autonomous part of the Russian Orthodox Church. According to the complaint, ROCOR's bishops elected Belya as Bishop of Miami before several clergy raised concerns about the election. *Belya* v. *Kapral*, 45 F.4th 621, 625-626 (2d Cir. 2022). In a letter to Metropolitan Hilarion, who was then the ruling bishop of ROCOR, those clergy raised serious complaints about Belya's performance as a priest and pointed out "irregular aspects" of the ecclesiastical documents from church hierarchs that purported to authenticate Belya's election. *Id.* at 626; see also C.A. App. 19-21 (copy of letter). Metropolitan Hilarion suspended Belya from his clerical duties pending a formal investigation. 45 F.4th at 627.

Belya left the church and filed suit against Metropolitan Hilarion, ROCOR's Synod of Bishops, and other senior church leadership. 45 F.4th at 627. He claimed the clergy letter's references to irregularities

in his election (but not those to priestly malfeasance) were defamatory, and he sought damages for reputational injury and diminished church attendance. The church sought to dismiss the complaint, arguing that Belya's claims center on an ecclesiastical dispute between a priest and his former church, and are thus barred by church autonomy principles. The district court denied the motion, holding that the suit may be resolved according to "neutral principles of law." *Id.* at 628. It later denied the church's motions to certify for interlocutory appeal and to bifurcate discovery.

As described in the petition, see Pet. 16-17, 26, the Second Circuit dismissed the church's appeal for lack of jurisdiction. Writing for the panel, Judge Chin held that church autonomy "provides religious associations neither an immunity from discovery nor * * * trial," but "serves more as an ordinary defense to liability." 45 F.4th at 633 (cleaned up). Citing the panel decision in this case, see *id.* at 632-633, he concluded that *Cohen* does not permit interlocutory appeal from the denial of a church autonomy defense, *id.* at 634.

2. The Second Circuit denied en banc review by a 6-6 vote. Judge Lohier, joined by Judges Lee, Robinson, Nathan, and Merriam, authored a concurrence in the denial of rehearing en banc, contending that the case involves a straightforward defamation claim that does "not implicate church autonomy." 2023 WL 1807013, at *1 (Lohier, J., concurring). Judge Chin, whose senior status made him ineligible to vote, issued a separate statement in support of denial, arguing that that the district court did not finally "reject[]" the church autonomy doctrine because it did not "preclude its future invocation." *Id.* at *11 (Chin, J., statement in support of denial).

Judge Park, joined by Chief Judge Livingston and Judges Sullivan, Nardini, and Menashi, dissented from the denial of rehearing en banc. He concluded that the panel erred in "categorically deny[ing] interlocutory appeals for church autonomy defenses and reduc[ing] the doctrine to a defense against liability only." 2023 WL 1807013, at *2 (Park, J., dissenting). And he warned that it "imperils the First Amendment rights of religious institutions" to leave churches "subject to litigation, including discovery and possibly trial, on matters relating to church governance." *Ibid.* Judge Park determined that this Court's reasoning in *Our Lady*, *Hosanna-Tabor*, *Catholic Bishop*, and *Milivojevich* all "leads to the same conclusion: that 'the very process of inquiry' into matters of faith and church governance offends the Religion Clauses." *Id.* at *5 & n.2 (quoting *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979)). And he further explained that church autonomy bears a "strong resemblance" to qualified immunity, as both are "rooted in foundational constitutional interests," are "protections against the burdens of litigation itself," and are "at bottom a question of law." *Id.* at *7.

As applied to the collateral-order doctrine, Judge Park explained that "[a] court order denying a church autonomy defense is 'conclusive'" under *Cohen* "because it decides the church's right not to face the other burdens of litigation, which is the critical part of this inquiry." 2023 WL 1807013, at *5 (cleaned up). Such an order is "effectively unreviewable" on appeal from final judgment because, by that point, the "harm from judicial interference in church governance will be complete." *Id.* at *6-7. Judge Park rejected the panel opinion's reliance on *Hosanna-Tabor*'s footnote 4, explaining that whether church autonomy is jurisdictional

does not determine if it is immediately appealable. *Id.* at *6 (comparing to qualified immunity). He concluded that "[o]ur Court's disagreement in this case reflects the growing number of courts struggling to define the contours of the church autonomy doctrine," and noted that the Second Circuit joins two other "closely divided" courts of appeals that have "narrowly denied" en banc petitions on these issues. See *id.* at *10 & n.10 (noting Judge Lohier's view that "there is no circuit split" while emphasizing that the Second Circuit joins other courts that are "closely divided" on the scope of the Religion Clauses).

Judge Cabranes separately dissented from the denial of rehearing en banc, writing to "underscore that the issues at hand are of 'exceptional importance' and surely deserve further appellate review." 2023 WL 1807013, at *2 (Cabranes, J., dissenting). He concluded that "[t]he denial of *en banc* review in this case is a signal that the matter can and should be reviewed by the Supreme Court." *Ibid.*

3. The fractured Second Circuit decision underscores the degree of confusion in the lower courts and the need for this Court's guidance. Like the Tenth Circuit, the Second Circuit is now deeply divided over the scope of the Religion Clauses' bar on judicial interference in church leadership disputes. At the time the petition was filed, there was still an opportunity for the Second Circuit to grant rehearing en banc and correct its opinion, thereby reducing the depth of the splits at issue. That opportunity is now gone, and the probability that further percolation will resolve this entrenched division of authority is virtually nil.

This Court's review is urgently needed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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