APPENDIX

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21-1498
Belya v. Kapral, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2021

(Argued: March 7, 2022 Decided: August 17, 2022
Amended: September 16, 2022)

Docket No. 21-1498

Alexander Belya,
Plaintiff-Appellee

v.

Hilarion Kapral, AKA Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, The Synod of Bishops of the Russian Orthodox Church Outside of Russia, Mark Mancuso,
*Defendants-Appellants.**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Before: Chin, Lohier, and Robinson, *Circuit Judges.*

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* The Clerk of Court is directed to amend the caption as set forth above.

Appeal from orders of the United States District Court for the Southern District of New York (Marrero, *J.*) denying motions of defendants-appellants church officials and organizations to dismiss plaintiff-appellee's defamation claims, for reconsideration of that ruling, and to bifurcate discovery or otherwise stay proceedings. Defendants-appellants argue that the church autonomy doctrine bars the defamation claims and seek to appeal the interlocutory orders on the basis of the collateral order doctrine. We conclude that we lack appellate jurisdiction over the orders.

DISMISSED. STAY VACATED.

DIANA VERM THOMSON (Daniel H. Blomberg, Lori H. Windham, Daniel D. Benson, on the brief), The Becket Fund for Religious Liberty, Washington, DC, and Donald J. Feerick, Jr., Feerick Nugent MacCartney, PLLC, South Nyack, NY, *for Defendants-Appellants*.

BRADLEY GIRARD (Richard B. Katskee, on the brief), Americans United for Separation of Church and State, Washington, DC, and Oleg Rivkin, Rivkin Law Group PLLC, New York, NY, for Plaintiff-Appellee.

Thomas G. Hungar, Andrew G.I. Kilberg, John Matthew Butler, Jason Manion, Macey L. Olave, Gibson, Dunn & Crutcher LLP, Washington, DC, *and* San Francisco, CA, *for Amici Curiae*

Professor Michael W. McConnell and Professor Douglas Laycock.

Gordon D. Todd, Daniel J. Hay, John L. Gibbons, Sidley Austin LLP, Washington, DC, *for Amici Curiae The Roman Catholic Archdiocese of New York, Assemblies of God (USA), Jurisdiction of the Armed Forces and Chaplaincy of the Anglican Church in North America, General Conference of Seventh-Day Adventists, The Lutheran Church-Missouri Synod, and The International Society for Krishna Consciousness, in support of Defendants-Appellants.*

Ryan Paulsen, Ryan N. Gardner, Haynes and Boone, LLP, Dallas, TX, *for Amicus Curiae Jewish Coalition for Religious Liberty, in support of Defendants-Appellants.*

Matthew T. Nelson, Warner Norcross + Judd LLP, Grand Rapids, MI, *for Amici Curiae Constitutional Law Scholars, in support of Defendants-Appellants.*

James A. Campbell, Solicitor General of Nebraska; Douglas J. Peterson, Attorney General of Nebraska; David T. Bydalek, Chief Deputy Attorney General of Nebraska; Steve Marshall, Attorney General of Alabama; Mark Brnovich, Attorney General of Arizona; Leslie Rutledge, Attorney

General of Arkansas; Chris Carr, Attorney General of Georgia; Derek Schmidt, Attorney General of Kansas; Daniel Cameron, Attorney General of Kentucky; Jeff Landry, Attorney General of Louisiana; Lynn Fitch, Attorney General of Mississippi; Eric S. Schmitt, Attorney General of Missouri; Austin Knudsen, Attorney General of Montana; John M. O'Connor, Attorney General of Oklahoma; Alan Wilson, Attorney General of South Carolina; *and* Sean D. Reyes, Attorney General of Utah, *for Amici Curiae States of Nebraska, Alabama, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, and Utah, in support of Defendants-Appellants.*

CHIN, *Circuit Judge:*

In this case, plaintiff-appellee Alexander Belya sued defendants-appellants -- individuals and entities affiliated with the Russian Orthodox Church Outside Russia ("ROCOR" and, collectively, "Defendants") -- for defamation, contending that they defamed him when they publicly accused him of forging a series of letters relating to his appointment as the Bishop of Miami.

Defendants moved to dismiss based on the "church autonomy doctrine," arguing that Belya's suit would

impermissibly involve the courts in matters of faith, doctrine, and internal church government. The district court denied the motion. Defendants then filed a motion for reconsideration and a motion to limit discovery to the issue of whether the church autonomy doctrine applied or otherwise to stay proceedings. The district court denied those motions as well. Defendants appeal from the three interlocutory rulings.

Appellate jurisdiction typically requires either a final judgment, 28 U.S.C. § 1291, or a certified interlocutory appeal, 28 U.S.C. § 1292(b). The district court denied Defendants' motions without entering a final judgment (the case is pending in the district court, although proceedings have been stayed) and declined to certify an interlocutory appeal. Defendants argue that we have appellate jurisdiction based on the collateral order doctrine, which allows for appellate review of an interlocutory order if the ruling (1) is conclusive; (2) resolves important questions separate from the merits; and (3) is effectively unreviewable on appeal after a final judgment is entered.

We hold that the collateral order doctrine does not apply in the circumstances here. We therefore dismiss this appeal.

BACKGROUND

A. The Facts

This case hinges on public accusations that Belya forged certain documents relating to his role within ROCOR. The facts as alleged in Belya's amended complaint (the "Complaint") are assumed to be true for purposes of this appeal.

1. Belya's Apparent Election as Bishop

Belya served as a ROCOR priest in the Czech Republic and Slovakia before moving to the United States eleven years ago. He served in the United States as a ROCOR priest until September 14, 2019, when he was suspended pending an investigation into the matters discussed below.

As set forth in the Complaint, Belya was elected by the Synod of Bishops of ROCOR (the "Synod") -- the executive arm of ROCOR -- to the position of Bishop of Miami. The election was held from December 6 through 10, 2018.

Defendant-appellant Hilarion Kapral, also known as Metropolitan Hilarion, was the "ruling bishop and First Hierarch" of ROCOR. Defs.-Appellants' Br. at 5.[1] Metropolitan Hilarion apparently wrote a letter dated December 10, 2018 (the "December 10 letter") to Patriarch Kirill, the Patriarch of Moscow and All Russia, which stated:

> I am happy to share the joyful news – by a majority vote two Vicar Bishops have been elected to the diocese entrusted to me. They are most worthy candidates.
>
> ….
>
> [Candidates include] Archimandrite Alexander (Belya) . . . elected as the Bishop of Miami.

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[1] Metropolitan" is a title within ROCOR. According to ROCOR, Metropolitan Hilarion passed away on May 16, 2022. *See* Press Release, The Russian Orthodox Church Outside of Russia, His Eminence Metropolitan Hilarion of Eastern America and New York, First Hierarch of the Russian Church Abroad, Reposes in the Lord (May 16, 2022), https://www.synod.com/synod/eng2022/20220516_print_enmhrepose.html.

Joint App'x at 92. According to the Complaint, the December 10 letter was signed by Metropolitan Hilarion and stamped with his official seal.

That same day, Metropolitan Hilarion also sent a letter to Belya, explaining that there were certain corrections that Belya needed to make to his practices. The Synod designated Archbishop Gavriil to report on Belya's implementation of these corrections. In early January 2019 (the "early January letter"), Archbishop Gavriil wrote to Metropolitan Hilarion, stating that:

> I do not see any obstacles to approv[ing] the date of consecration of [Belya], elected as the Vicar Bishop for Miami, of which I hereby inform Your Eminence.

Id. at 93. Soon thereafter, on January 11, 2019 (the "January 11 letter"), Metropolitan Hilarion wrote again to Patriarch Kirill, stating as follows:

> I hereby ask Your Holiness to approve [Belya's] candidacy at the next meeting of the Holy Synod of the Russian Orthodox Church.

Id. at 94. Like the December 10 letter, the January 11 letter apparently was signed by Metropolitan Hilarion and stamped with his official seal.

On July 16, 2019, Belya had an audience with Patriarch Kirill. Six weeks later, on August 30, 2019, the Moscow Patriarchate's official website posted the decision to approve Belya's appointment. On that same day, Metropolitan Hilarion congratulated Belya via phone call.

2. The Allegations of Forgery and Fraud

Four days later, on September 3, 2019, several ROCOR clergy members[2] wrote a letter about Belya to the Synod and Metropolitan Hilarion (the "September 3 letter"). The September 3 letter was disseminated to all thirteen members of the Synod and forwarded to other members of ROCOR, including parishes, churches, monasteries, and other institutions, as well as online media outlets. It raised concerns about purportedly irregular aspects of Belya's "confirmation by [ROCOR] . . . as Bishop of Miami." *Id.* at 95. The alleged irregularities related to the December 10, early January, and January 11 letters.

First, the September 3 letter asserted that even though the December 10 and January 11 letters appeared to have been signed and stamped with his seal, Metropolitan Hilarion "knew nothing about the written [letters] directed to Moscow." *Id.* (emphasis omitted). The September 3 letter further alleged that "as stated by His Eminence [Metropolitan Hilarion]," the letters "were drawn up in an irregular manner." *Id.* (emphasis omitted). It mentioned the absence of an "appropriate citation" from the Synod's decision and the lack of a biography of those elected. *Id.* at 95-96. Second, the September 3 letter stated that the early January letter "raises doubts as well," specifically because the early January letter was not printed on

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[2] All signees of the letter are defendants-appellants in this case. The signees were Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, George Temidis, and Mark Mancuso. Defendant-appellant Boris Dmitrieff also participated in drafting the letter.

Archbishop Gavriil's "official letterhead." *Id.* at 96 (emphasis omitted).

The September 3 letter requested that, considering the allegations, Belya be suspended from clerical functions and barred from election candidacy. That same day, Metropolitan Hilarion issued an order to Belya suspending him from his position and responsibilities. Soon after, on September 16, 2019, Metropolitan Hilarion issued a public decree suspending Belya pending a formal investigation recommended in the September 3 letter. The decree also prohibited members of Belya's parish from communicating with him.

On September 16, 2019, a clergy member[3] posted about the dispute over Belya's confirmation on the social media site of his church. The post read:

> Alleged ROCOR episcopal nominee Fr. Alexander Belya, already confirmed by the ROC Synod, had not been elected by the ROCOR Synod and a letter informing about [sic] his nomination sent to Moscow was a forgery. The priest in question was suspended, internal investigation was started.

Id. at 98. Various religious news outlets and publications also publicly circulated news of the controversy. *Orthodox News*, for example, reposted the statement. *Helleniscope*, another Orthodox Christian publication, wrote:

> This past summer, [Belya] also forged a letter from His Eminence Metropolitan Hilarion

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[3] The clergy member, Serafim Gan, is also a defendant-appellant in this case.

> (Kapral), the First Hierarch of ROCOR, attempting to get himself confirmed by the Holy Synod of the Moscow Patriarchate as a bishop-elect for ROCOR in America.

Id.

Following the controversy, Belya left ROCOR and now serves as a priest of the Greek Orthodox Church.

B. The Proceedings Below

On August 18, 2020, Belya commenced this lawsuit against Defendants, alleging claims for defamation, defamation per se, and defamation by innuendo. On December 8, 2020, Defendants filed a letter brief seeking permission to file a motion to dismiss for lack of jurisdiction, as well as for failure to state a claim, and requesting a conference. The district court denied Defendants' request for a conference but construed Defendants' letter brief as a motion to dismiss. It directed Belya to respond with a letter brief and proposed amended complaint. Belya did so on January 14, 2021.

On May 19, 2021, the district court denied Defendants' motion to dismiss and ordered Belya to file the amended complaint. The district court found jurisdiction because it concluded that the church autonomy principles cited by Defendants did not bar application of neutral principles of law, and Belya's case could be resolved by such neutral principles.

On May 20, 2021, Belya filed the Amended Complaint. On June 16, 2021, Defendants filed a Rule 59(e) motion for reconsideration. On June 25, 2021, Defendants moved for certification under 28 U.S.C. § 1292(b) for interlocutory appeal of the district court's

order denying their motion to dismiss. The district court denied both motions on July 6, 2021. First, the district court denied the motion for reconsideration as untimely under Local Rule 6.3. Second, it denied the motion for interlocutory certification because Defendants' arguments amounted to "disputes as to whether the factual situation presented fits into the [church autonomy doctrine]" rather than a question suitable for interlocutory appeal. *Belya v. Kapral*, No. 20-CV-6597, 2021 WL 2809604, at *2 (S.D.N.Y. July 6, 2021).

On July 21, 2021, Defendants filed a motion to limit initial discovery to whether the church autonomy doctrine applied in this case or, in the alternative, to stay proceedings. The district court denied that motion on July 27, 2021.

This appeal followed. Defendants appeal three of the district court's orders: the May 19, 2021, denial of their motion to dismiss; the July 6, 2021, denial of their motion for reconsideration; and the July 27, 2021, denial of their motion to limit discovery or stay proceedings. Also pending is a July 15, 2021, motion by Belya in this Court to dismiss this appeal. On September 2, 2021, we granted a temporary stay of the district court proceedings. The parties have briefed both the motion to dismiss and the merits.

DISCUSSION

The threshold issue is whether we have appellate jurisdiction, pursuant to the collateral order doctrine, over the district court's three interlocutory orders denying Defendants' motions to dismiss, for reconsideration, and to bifurcate discovery or otherwise stay proceedings. We hold that we do not.

Accordingly, we dismiss the appeal and do not reach the merits.

A. Applicable Law

Two doctrines are at issue in this case: the collateral order doctrine and the church autonomy doctrine.[4]

1. The Collateral Order Doctrine

Appellate jurisdiction typically arises either from a district court's final judgment, 28 U.S.C. § 1291, or the district court's certification of an issue for interlocutory appeal, 28 U.S.C. § 1292(b). A "narrow and selective" class of orders, however, are appealable because they meet the requirements of the collateral order doctrine. *Will v. Hallock*, 546 U.S. 345, 350 (2006). The collateral order doctrine is a "practical rather than a technical construction" of § 1291. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). It provides for:

> [A]ppellate jurisdiction over a small class of "collateral" rulings that do not terminate the litigation in the court below but are nonetheless sufficiently "final" and distinct from the merits

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[4] We use the term "church autonomy doctrine" to refer generally to the First Amendment's prohibition of civil court interference in religious disputes. Defendants also use the term "church autonomy doctrine," while Belya uses the term "ecclesiastical abstention" to refer to the same concept. Both parties also refer to the "ministerial exception." The ministerial exception, however, is one component of church autonomy. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020) ("[A] component of this [church] autonomy is the selection of individuals who play certain key roles. The 'ministerial exception' was based on this insight.").

> to be appealable without waiting for a final judgment to be entered.

Liberty Synergistics Inc. v. Microflo Ltd., 718 F.3d 138, 146 (2d Cir. 2013) (quoting *Cohen*, 337 U.S. at 546).

The collateral order doctrine is limited to rulings that (1) are "conclusive"; (2) "resolve important questions separate from the merits"; and (3) "are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995). These conditions are "stringent," as the narrow collateral appeal exception "should stay that way and never be allowed to swallow the general rule that a party is entitled to a single appeal" after "final judgment has been entered." *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (citation omitted). In fact, the Supreme Court has admonished that "the class of collaterally appealable orders must remain 'narrow and selective in its membership.'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113 (2009) (quoting *Will*, 546 U.S. at 350).[5] In recent

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[5] The Supreme Court has rarely extended the collateral order doctrine to cover new categories; the categories of orders falling under the collateral order doctrine require only two hands to count. Such orders imposed an attachment of a vessel in admiralty, *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684 (1950); imposed notice costs in a class action, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974); would have led to retrial, thus implicating double jeopardy, *Abney v. United States*, 431 U.S. 651 (1977); would have allowed a case implicating the Speech and Debate Clause to continue, *Helstoski v. Meanor*, 442 U.S. 500 (1979); found no absolute immunity, *Nixon v. Fitzgerald*, 457 U.S. 731 (1982); found no qualified

years, that call for caution has acquired special force because rulemaking,[6] rather than court decision, has become "the preferred means for determining whether and when prejudgment orders should be immediately appealable." *Id.*[7] That preference is in part due to how blunt of an instrument the collateral order doctrine is; whether an order is appealable is "determined for the entire category to which a claim belongs." *Digit. Equip. Corp.*, 511 U.S. at 868.

As to the first prong, a "conclusive determination" means that the appealed order must be a "complete, formal, and, in the trial court, final rejection of" the issue. *Abney v. United States*, 431 U.S. 651, 659

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immunity, *Mitchell v. Forsyth*, 472 U.S. 511 (1985); denied a state's claim to Eleventh Amendment immunity, *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139 (1993); and denied a right to avoid forced medication, *Sell v. United States*, 539 U.S. 166 (2003). In almost two decades, the Supreme Court has expanded the collateral order doctrine in only one instance, to address state sovereignty and the All Writs Act in *Shoop v. Twyford*, 596 U.S. ___, 142 S. Ct. 2037 (2022).

[6] Congress has authorized the Supreme Court to promulgate rules "defin[ing] when a ruling of a district court is final for the purposes of appeal under [28 U.S.C. § 1291]." 28 U.S.C. § 2072(c). Congress further specified that § 2072 allows the Supreme Court to prescribe rules "to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for" by statute. 28 U.S.C. § 1292(e). The Supreme Court has not promulgated any rules that would grant us appellate jurisdiction over the district court's orders in this case.

[7] There has even been discussion of ending expansion of the collateral order doctrine altogether. *See, e.g., Mohawk Indus.*, 558 U.S. at 115 (Thomas, *J.*, concurring in part) ("[A]ny avenue for immediate appeal beyond [§ 1292(b), mandamus, and appeals from contempt orders] must be left to the rulemaking process." (internal quotation marks omitted)).

(1977). As to the second prong, an order resolves important questions independent from the merits when the questions involve a "claim[] of right separable from . . . rights asserted in the action." *Cohen*, 337 U.S. at 546. As to the third prong, an order is "effectively unreviewable" where "the order at issue involves an asserted right[,] the legal and practical value of which would be destroyed if it were not vindicated before trial." *Lauro Lines, s.r.l. v. Chasser*, 490 U.S. 495, 498-99 (1989) (internal quotation marks omitted). In contrast, the fact that a ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment" is not sufficient. *Mohawk Indus.*, 558 U.S. at 107 (internal quotation marks omitted).

Here, Defendants essentially argue that the appealable category is cases where "church autonomy defenses [are] at issue." Defs.-Appellants' Br. at 20.

2. The Church Autonomy Doctrine

The church autonomy doctrine provides that religious associations have "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2061. To allow anyone "aggrieved by [a religious association's] decisions" to "appeal to the secular courts and have [those decisions] reversed" subverts the rights of religious associations to retain independence in matters of faith, doctrine, and internal government. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 114-15 (1952).

But secular components of a dispute involving religious parties are not insulated from judicial review; a court may use the "neutral principles of law"

approach. So long as the court relies "exclusively on objective, well-established [legal] concepts," it may permissibly resolve a dispute even when parties are religious bodies. *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979) (establishing the neutral principles of law approach in a dispute over church property).[8] This is a common-sense approach: When a case can be resolved by applying well-established law to secular components of a dispute, such resolution by a secular court presents no infringement upon a religious association's independence. Thus, simply having a religious association on one side of the "v" does not automatically mean a district court must dismiss the case or limit discovery.

Neither this Court nor the Supreme Court has found or even suggested that district court orders like the ones Defendants appeal from fall within the collateral order doctrine. Nor can Defendants find support for this principle in the decisions of our sister circuits.

B. Analysis

Here, Defendants appeal from the district court's denials of motions to dismiss, for reconsideration, and to bifurcate discovery or otherwise stay proceedings. We consider the three collateral order doctrine requirements in turn; that is, whether the categories of orders (1) are "conclusive"; (2) "resolve important

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[8] Most cases applying the "neutral principles of law" approach have resolved disputes over church property. The approach, however, goes beyond solely church property disputes. *See Moon v. Moon*, 833 F. App'x 876, 879 (2d Cir. 2020) (summary order) (applying the neutral principles of law approach when an individual sought to be recognized as the leader of a church organization).

questions separate from the merits"; and (3) "are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint*, 514 U.S. at 42.

We hold that the district court's orders do not fall within the collateral order doctrine.

1. Conclusiveness

None of the district court's three orders is "conclusive," as none constitutes a "final rejection" of Defendants' asserted church autonomy defenses. Not only is the case in a preliminary posture, but the district court also recognized in its denial of Defendants' motion to dismiss that there would be certain issues it "would not consider . . . under the doctrine of ecclesiastical abstention." *Belya v. Hilarion*, No. 20-CV-6597, 2021 WL 1997547, *4 (S.D.N.Y. May 19, 2021). At bottom, the orders are not conclusive because they do not bar any defenses, they did not rule on the merits of the church autonomy defense, and they permit Defendants to continue asserting the defense. It is possible that at some stage Defendants' church autonomy defenses will require limiting the scope of Belya's suit, or the extent of discovery, or even dismissal of the suit in its entirety. But we cannot and do not prematurely jump into the fray.

We see clear parallels to a Seventh Circuit case where our sister circuit also declined to find appellate jurisdiction under the collateral order doctrine. When the diocese in that case sought appellate review of the district court's order denying summary judgment for the diocese on a sex-discrimination claim, the Seventh Circuit dismissed the appeal for lack of jurisdiction.

Herx v. Diocese of Fort Wayne-South Bend, Inc., 772 F.3d 1085, 1091-92 (7th Cir. 2014). The Seventh Circuit reasoned it did not have appellate jurisdiction because the district court's order "ha[d] not ordered a religious question submitted to the jury for decision," and in fact the district court "promised to instruct the jury not to weigh or evaluate the Church's doctrine." *Id*. at 1091; *cf. McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (holding that an order was collaterally appealable because it sent the religious question of whether party was a nun to the jury). Here, there are also numerous steps before the finish line of the litigation. And the district court has shown that it is aware that religious questions may arise -- and could instruct a potential jury to not weigh or evaluate those issues should litigation progress to that stage. *See Hilarion*, 2021 WL 1997547, at *4 ("[T]he [district court] will not pass judgment on the internal policies and or determinations of [ROCOR], nor would it be able to under the doctrine of ecclesiastical abstention.").

Even though the Supreme Court has "generally denied review of pretrial discovery orders" under the collateral order doctrine, *Mohawk Indus.*, 558 U.S. at 108 (internal quotation marks omitted), Defendants argue that putting "the Church through the discovery that will be necessary to resolve [Belya's] claims will *itself* violate the [First Amendment]." Defs.-Appellants' Br. at 30 (emphasis added). At essence, their claim is that the district court's orders are the final decision on whether discovery can proceed; thus, Defendants contend, the orders constitute a "final rejection."

But this claim runs afoul of not only the Supreme Court's general disinclination but also our explicit precedent. We have said that "the finality requirement cannot be employed to obtain interlocutory review of discovery orders." *Chase Manhattan Bank, N.A. v. Turner & Newall, PLC*, 964 F.2d 159, 163 (2d Cir. 1992) (quoting *Xerox Corp. v. SCM Corp.*, 534 F.2d 1031, 1031-32 (2d Cir. 1976) (per curiam)). And beyond that general restriction, the church autonomy doctrine at most protects against discovery that would intrude into the protected area of the church -- it does not provide religious organizations with blanket protection from discovery. It therefore does not constitute a "final rejection" of Defendants' church autonomy rights for discovery to proceed into secular components of Belya's claims under neutral defamation laws. If a discovery request targets non-secular components, a religious association may continue to raise a church autonomy defense with the district court.

In their argument to the contrary, Defendants point primarily to a decision of the Fifth Circuit, *Whole Woman's Health v. Smith*, 896 F.3d 362 (5th Cir. 2018). They claim that "the Fifth Circuit accepted a collateral order appeal to prevent [a church] from having to turn over internal documents." Defs.-Appellants' Br. at 31. Defendants misunderstand the Fifth Circuit's law. *Whole Woman's Health* permitted collateral appeal of religious questions only when a party sought discovery from a third party and the appeal related "to the predicament of third parties." *Whole Woman's Health,* 896 F.3d at 367-68 (asserting that order falls within collateral order doctrine because, in part, third-party witness appealing "cannot benefit directly from" any post-final judgment

relief). Additionally, in a later case, the Fifth Circuit unequivocally pushed back against applying church autonomy defenses when the "conclusion was premature" and "many of the relevant facts have yet to be developed." *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 347, 349 (5th Cir. 2020) (reversing district court's order dismissing case because district court incorrectly "found that it would need to resolve ecclesiastical questions in order to resolve [plaintiff's] claims"), *cert. denied*, 141 S. Ct. 2852 (2021). Here, there is no third party who may be harmed by discovery, and there are many relevant facts that have yet to be developed.

In all, the district court's orders lack the conclusiveness required for appellate jurisdiction under the collateral order doctrine.

2. Questions Separate from the Merits

Likewise, we conclude that the district court's orders do not involve a claim of right separable from the merits of the action. While it is possible that, in some circumstances, the church autonomy doctrine can present questions separable from the merits of a defamation claim, at this pre-discovery juncture we cannot say that is the case here. *Cf. Tucker v. Faith Bible Chapel Int'l,* 36 F.4th 1021, 1036 (10th Cir. 2022) (holding that, for "decisions denying a religious employer s*ummary judgment* on the 'ministerial exception,'" the "issue is separate from the merits of an employee's discrimination claims." (emphasis added)). Indeed, one of Defendants' principal defenses to Belya's defamation claim is the church autonomy doctrine; they argue that Belya's claims interfere with, for example, church discipline and autonomy by impacting ROCOR's ability to select, supervise, and

discipline its ministers. For now, it appears that the case can be litigated with neutral principles of law. *See Jones*, 443 U.S. at 602-03. In the end, however, further proceedings may uncover that the merits do turn on the church autonomy doctrine. Again, it is too soon to say at this point.

3. Effectively Unreviewable on Appeal

Nor would the value of Defendants' rights be "destroyed if [they] were not vindicated before trial." *Lauro Lines, s.r.l.,* 490 U.S. at 498-99. The church autonomy doctrine provides religious associations neither an immunity from discovery nor an immunity from trial on secular matters. Instead, as the Seventh Circuit also recognized, the First Amendment serves more as "an ordinary defense to liability." *Herx,* 772 F.3d at 1090.

Other examples also suggest that the church autonomy doctrine is a defense and not a jurisdictional bar from suit. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195 n.4 (2012) ("[T]he [ministerial] exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar.");[9] *cf.* Tucker, 36 F.4th at 1025 ("The Supreme Court has made clear that the 'ministerial exception' is an affirmative defense to employment discrimination claims, rather than a jurisdictional limitation on the authority of courts to hear such

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[9] *Hosanna-Tabor* focused on the ministerial exception. As discussed previously, however, the ministerial exception is one component of church autonomy. *See Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060.

claims.").[10] A recent Supreme Court denial of certiorari permitted a case to go forward to discovery and trial, notwithstanding the defendant's invocation of the church autonomy doctrine. *See Gordon Coll. v. DeWeese-Boyd*, 142 S. Ct. 952 (2022) (denying certiorari); see also *Tucker*, 36 F.4th at 1036-47 (dismissing an interlocutory appeal for lack of jurisdiction and rejecting the argument that the ministerial exception "immunizes a religious employer from suit on employment discrimination claims"). In his concurrence to the denial of certiorari, Justice Samuel Alito emphasized that the "interlocutory posture" of the case would "complicate" the Court's review, and that nothing "would preclude [defendant] from . . . seeking review in [the] Court when the decision is actually final." *Gordon Coll.*, 142 S. Ct. at 955 (Alito, *J.*, concurring) (internal quotation marks omitted). Immediate appellate review is not the proper avenue for parties seeking to assert a church autonomy defense.[11]

Defendants argue that the parallels between qualified immunity and church autonomy mean

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[10] The Tenth Circuit in *Tucker* acknowledged that the ministerial exception was one part of the "broader church autonomy doctrine" and explained that its analysis was constrained to the "ministerial exception." 36 F.4th at 1028.

[11] One proper avenue is, as discussed, appealing from the final judgment of the district court. Another may be a writ of mandamus. *See* 28 U.S.C. § 1651(a). We have previously granted such a writ to a religious association that did not meet the requirements for a collateral appeal. *See In re Roman Cath. Diocese of Albany*, 745 F.3d 30, 35 (2d Cir. 2014) (per curiam). There, the religious association argued it would suffer harm if discovery proceeded even though personal jurisdiction remained unclear. *Id.*

church autonomy is also an "immunity from discovery and trial" and thus falls within the collateral order doctrine. Defs.-Appellants' Br. at 50. To that end, Defendants and amici offer a handful of cases comparing the church autonomy defense with qualified immunity in § 1983 cases.[12] But their analogy falls flat on a crucial point. It is true that a district court's order denying qualified immunity is an immediately appealable collateral order -- but only "to the extent that it turns on an issue of law." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). The presence of factual questions means we lack appellate jurisdiction to review a denial of qualified immunity. *See Franco v. Gunsalus*, 972 F.3d 170, 174 (2d Cir. 2020).

The orders appealed here involve the existence of many genuinely disputed fact questions. The Supreme Court has explained that:

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[12] Although the context in which the comparison was used varies between cases, each case does draw explicit parallels between qualified immunity and church autonomy. The Seventh Circuit drew the comparison between church autonomy and immunity when considering appellate jurisdiction. *See McCarthy*, 714 F.3d at 975 ("[T]he district judge's ruling challenged by the plaintiffs [is] closely akin to a denial of official immunity.") There are also some cases discussing motions to dismiss. In holding that the proper motion to dismiss for a church autonomy defense is under Federal Rule of Civil Procedure 12(b)(6), the Tenth Circuit wrote that "the ministerial exception, like the broader church autonomy doctrine, can be likened 'to a government official's defense of qualified immunity.'" *Skrzypczak v. Roman Cath. Diocese of Tulsa*, 611 F.3d 1238, 1242 (10th Cir. 2010) (quoting *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 652 (10th Cir. 2002)). In discussing the Tenth Circuit *Bryce* decision, the Third Circuit added that the church autonomy doctrine is "akin to a government official's defense of qualified immunity." *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006).

> [A]n interlocutory appeal concerning [triable issues of fact] in a sense makes unwise use of appellate courts' time, by forcing them to decide in the context of a less developed record, an issue very similar to one they may well decide anyway later, on a record that will permit a better decision.

Johnson v. Jones, 515 U.S. 304, 317 (1995). The defamation claims asserted here hinge on crucial questions of fact, and, as the district court recognized, there are numerous "disputes as to whether the factual situation presented fits into the [church autonomy doctrine]." *Belya*, 2021 WL 2809604, at *2. Decidedly non-ecclesiastical questions of fact remain. For example, did the purported signatories actually sign the letters? Were the December 10 and January 11 letters stamped with Metropolitan Hilarion's seal? If so, who stamped them? Was the early January letter on Archbishop Gavriil's letterhead? More broadly, did Belya forge the letters at issue? These are outstanding secular fact questions that are not properly before us -- and would not require a fact-finder to delve into matters of faith and doctrine.

Accordingly, we hold that the district court's orders are not reviewable on interlocutory appeal under the collateral order doctrine.

CONCLUSION

For the reasons set forth above, we lack jurisdiction to hear this appeal. Accordingly, we GRANT Belya's July 15, 2021, motion to dismiss. The appeal is DISMISSED, and the temporary stay granted September 2, 2021, is VACATED.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of September, two thousand twenty-one.

Before: Steven J. Menashi,
Circuit Judge.

Alexander Belya,

Plaintiff - Appellee,

v.

Hilarion Kapral, AKA Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, The Synod of Bishops of the Russian Orthodox Church Outside of Russia, Mark Mancuso,

Defendants - Appellants.

ORDER

Docket No. 21-1498

Appellants move for a stay of the district court proceedings during the pendency of this appeal. Appellee opposes the motion.

IT IS HEREBY ORDERED that a temporary stay is granted until the motion for a stay pending appeal is determined by a three-judge motions panel.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

S.D.N.Y.—N.Y.C.
20-cv-6597
Marrero, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of November, two thousand twenty-one.

Present:

Joseph F. Bianco,
Michael H. Park,
William J. Nardini,
Circuit Judges.

Alexander Belya, *Plaintiff - Appellee,* v. Hilarion Kapral, AKA Metropolitan Hilarion, et al., *Defendants - Appellants,* Pavel Loukianoff, et al., *Defendants.*	21-1498

Appellee moves to dismiss this appeal; Appellants move to stay district court proceedings pending appeal; and several non-parties seek leave to file amicus briefs. Upon due consideration, it is hereby ORDERED that Appellee's motion to dismiss is referred to the panel that will hear the merits of this

appeal, and Appellants' motion for a stay is GRANTED. *See Nken v. Holder*, 556 U.S. 418, 434-35 (2009). It is further ORDERED that the motions for leave to file amicus briefs are GRANTED. Finally, it is ORDERED that the appeal be expedited.

For the Court**:**
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherin O'Hagan Wolfe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA, Plaintiff, -against- METROPOLITAN HILARION, et al., Defendants.	**20 Civ. 6597 (VM)** **DECISION & ORDER**

VICTOR MARRERO, United States District Judge

Plaintiff Alexander Belya ("Belya"), brings this action against Hilarion Kapral a/k/a Metropolitan Hilarion ("Hilarion"), Nicholas Olkhovskiy ("Olkhovskiy"), Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Pavel Loukianoff, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia ("EAD"), the Synod of Bishops of the Russian Orthodox Church Outside of Russia, and John Does 1 through 100 (collectively, "Defendants"), alleging five causes of action stemming from alleged defamatory statements made by Defendants. (*See* "Complaint," Dkt. No. 1).

Now before the Court is Defendants' premotion letter for dismissal of the Complaint (*see* "Motion," Dkt. No. 40.), which the Court construes as a motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)")[1]. For the reasons discussed below, Defendants' Motion is DENIED.

I. BACKGROUND

A. FACTUAL BACKGROUND[2]

Belya is a leader of the Russian Orthodox Christian Church in the United States elected by the Synod of Bishops located in New York (the governing body of the Russian Christian Church Outside of Russia ("ROCOR")), to be the Church's Bishop of Miami. Defendants are a group of various leaders of ROCOR who oppose Belya's appointment and have allegedly engaged in a public disinformation campaign in an effort to strip Belya of his election.

In 2018, Belya held the position of the Dean of the Florida District of ROCOR after spending nine years

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[1] *See Kapitalforeningen Lægernes Invest. v. United Techs. Corp.*, 779 F. App'x 69, 70 (2d Cir. 2019) (affirming the district court ruling deeming an exchange of letters as a motion to dismiss).

[2] The factual background below, except as otherwise noted, derives from the Complaint and the facts pleaded therein, which the Court accepts as true for the purposes of ruling on a motion to dismiss. *See Spool v. World Child Int'l Adoption Agency*, 520 F.3d 178, 180 (2d Cir. 2008) (citing *GICC Capital Corp. v. Tech. Fin. Grp., Inc.*, 67 F.3d 463, 465 (2d Cir. 1995)); *see also Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). Except when specifically quoted, no further citation will be made to the Complaint or the documents referred to therein.

as a priest in the church. In August 2018, Belya was nominated for the position of Vicar of Florida, with the title of Bishop of Miami. Belya received news of his nomination from Hilarion, the leader of ROCOR, who informed him that while many bishops supported his nomination, some were still undecided and were withholding support pending further discussion.

Nonetheless, from December 6 through 10, 2018, the ROCOR Synod met in New York and officially elected Belya to the position of Bishop of Miami via a majority vote. By letter dated December 10, 2018 (the "December 10 Letter"), Hilarion communicated the news of Belya's election to the Church's leaders in Russia, specifically Patriarch Kirill, head of the Holy Synod of the Russian Orthodox Church in Moscow, who would be confirming the election per the Church's rules and procedures. Hilarion noted that as a condition of Belya's election, Belya would be required to resolve a few outstanding issues concerning his religious practices to ensure compliance with Church policies. Hilarion informed the Russian leadership that he would write again seeking official confirmation once these issues were resolved.

Hilarion also communicated the news of Belya's election to Belya himself. This letter also informed Belya of the various outstanding issues and changes of practice Belya was to implement at his congregations before his election would be confirmed. Hilarion appointed Archbishop Gavriil of Montreal to observe and report on Belya's progress in implementing the changes in question.

In early January 2019, Gavriil confirmed to Hilarion that Belya had instituted the required changes of practices and that he foresaw no issues in

moving forward with Belya's confirmation. Upon receiving Gavriil's report, Hilarion wrote to Patriarch Kirill in Moscow asking that the Moscow Synod officially confirm Belya's election. Hilarion's letter was signed and stamped with his official seal.

In July 2019, Patriarch Kirill contacted Belya directly and invited him to meet in person. At this meeting, Patriarch Kirill questioned Belya about the various outstanding issues identified by Hilarion in his December 10 Letter, and, after expressing satisfaction with Belya's responses, informed Belya that the Moscow Synod would be approving his appointment to Bishop of Miami. On August 30, 2019, the Moscow Synod did indeed confirm the appointment, news of which was published on the Synod's official website. Hilarion allegedly called Belya to congratulate him that day.

Belya asserts that throughout this nomination and election process, a group of detractors within ROCOR (the "Olkhovskiy Group") vehemently opposed Belya's nomination. This group, led by defendant Olkhovskiy, the Bishop of Manhattan and Vicar (or head) Bishop of the EAD, had substantial influence within ROCOR but was not numerous enough to block Belya's nomination. Belya further alleges that after the opponents' bid to oppose his nomination and election failed, they resorted to "falsehood, intimidation, and fraud" in an attempt to strip him of his new title. (Complaint ¶ 39.)

Of central importance to the present dispute, on September 3, 2019, the Olkhovskiy Group wrote a letter (the "September 3 Letter") to the ROCOR Synod and Hilarion leveling a number of charges against Belya regarding his nomination and election as Bishop

of Miami. Principally, the letter alleges that the election of Belya never actually occurred; that the results of Belya's election were fabricated; that the communications from Hilarion to Russia were falsified, either with Hilarion's knowledge or without; and that the letter from Archbishop Gavriil confirming that Belya had instituted the required changes of practice was likewise falsified. The Olkhovskiy Group requested, in light these allegations and additional unspecified complaints from persons in Florida, that Belya be suspended from clerical functions until the completion of a full investigation. This letter was disseminated among the members of the New York Synod, to parishes, churches, monasteries, and other institutions within ROCOR, as well as more broadly to online media outlets.

According to Belya, after the September 3 Letter was sent, he was denied all access to Hilarion and was suspended from performing his duties as spiritual leader of his parish. The accusations against Belya spread among the ROCOR community and were eventually published on the ROCOR social media accounts and online publications such as *Orthodox News* and *Helleniscope*. On September 14, 2019, Hilarion issued a public decree officially suspending Belya pending an investigation.

Following this sequence of events, on August 18, 2020, Belya filed the instant Complaint, bringing claims of defamation, defamation per se, false light,[3]

[3] Belya has since withdrawn his claim for false light, and accordingly, the Court does not consider this claim.

defamation by implication/innuendo, and vicarious liability.

Pursuant to the Court's Individual Rules, Defendants notified Belya by letter dated November 24, 2020 of their intention to move to dismiss the Complaint based on alleged deficiencies contained therein. (*See* Dkt. No. 38). Belya responded by letter dated December 1, 2020. (*See* Dkt. No. 39.) Defendants subsequently moved the Court for leave to file a motion to dismiss. (*See* Motion.)

The Court declined to allow full briefing but allowed both parties to submit further letters detailing their positions. (*See* Dkt. No. 41.) Belya filed an opposition to the motion, attaching a proposed Amended Complaint, on January 14, 2021. (*See* "Response," Dkt. No. 42.) Defendants replied on January 22, 2021. (*See* "Reply," Dkt. No. 43.) And finally, Belya filed a sur-reply as directed by the Court on February 2, 2021. (*See* "Sur-reply," Dkt. No. 45.) The Court considered each of these submissions in connection with this Decision and Order.

B. THE PARTIES' ARGUMENTS

Defendants argue that the Complaint should be dismissed because (1) the statements at issue are not defamatory statements, but rather are mere allegations or statements of opinion; (2) the statements, even if defamatory, are protected from liability pursuant to the qualified common- interest privilege; (3) the Court lacks subject-matter jurisdiction because the case concerns nonjusticiable ecclesiastical issues under the First Amendment; and (4) personal jurisdiction over the out-of-state

defendants does not exist under New York's long-arm statute.

Plaintiff responds that (1) the statements at issue are ones of fact reasonably susceptible to defamatory connotation in context, and therefore adequately pled; (2) the defense of qualified privilege is not available to Defendants because they acted with actual malice or beyond the scope of the privilege; (3) ecclesiastical abstention has no application to this case because it can be resolved by neutral principles of law; and (4) all Defendants are subject to personal jurisdiction because they engaged in New York-based activity with the intent to create the defamatory work.

II. LEGAL STANDARD

A. RULE 12(B)(1) MOTION TO DISMISS

"Determining the existence of subject matter jurisdiction is a threshold inquiry and a claim is properly dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008) (citation omitted). While the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff, "jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Id.* (citation omitted).

B. RULE 12 (B)(6) MOTION TO DISMISS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A complaint should be dismissed if the plaintiff has not offered factual allegations sufficient to render the claims facially plausible. *See id.* However, a court should not dismiss a complaint for failure to state a claim if the factual allegations sufficiently "raise a right to relief about the speculative level." *Twombly*, 550 U.S. at 555.

In resolving a motion to dismiss, the Court's task is "to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *In re Initial Pub. Offering Sec. Litig.*, 383 F. Supp. 2d 566, 574 (S.D.N.Y. 2005) (internal quotation marks omitted), *aff'd sub nom. Tenney v. Credit Suisse First Bos. Corp.*, No. 05 Civ. 3430, 2006 WL 1423785 (2d Cir. May 19, 2006). In this context, the Court must draw reasonable inferences in favor of the nonmoving party. *See Chambers v. TimeWarner, Inc.*, 282 F.3d 147, 152 (2d Cir. 2002). However, the requirement that a court accept the factual allegations in the complaint as true does not extend to legal conclusions. *See Iqbal*, 556 U.S. at 678.

III. DISCUSSION

After reviewing the parties' submissions, the Court denies the Motion. The Court is persuaded that subject-matter jurisdiction does exist, the defamation claims are adequately pled, and personal jurisdiction exists over the out-of-state Defendants.

A. SUBJECT-MATTER JURISDICTION

Defendants argue that the doctrine of ecclesiastical abstention prevents the Court from exercising jurisdiction over this dispute. The First Amendment's Establishment Clause forbids civil courts from interfering in or determining religious disputes. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195 (2012). But ecclesiastical abstention does not bar claims if they may be resolved by appealing to neutral principles of law. *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449, 451 (1969); *Hyung Jin Moon v. Hak Ha Han Moon*, 431 F. Supp. 3d 394, 407-08 (S.D.N.Y. 2019). Thus, if "inquiry into religious law and polity is not required" to resolve issues "that arise with respect to a religious entity," the Court may properly exercise jurisdiction. *Kavanagh v. Zwilling*, 997 F. Supp. 2d 241, 249-50 (S.D.N.Y. 2014).

Here, the Court is persuaded Belya brings a suit that may be resolved by appealing to neutral principles of law. Plaintiff's claim centers on Defendants' allegations that he forged the various letters at issue that led to the confirmation of his election as Bishop of Miami. (*See, e.g.*, Complaint ¶ 60.) Belya does not ask this Court to determine whether his election was proper or whether he should be reinstated to his role as Bishop of Miami, and the Court would not consider such a request under the doctrine of ecclesiastical abstention. *See Laguerre v. Maurice*, No. 2018–11567, 2020 WL 7636435, at *2 (N.Y. App. Div. Dec. 23, 2020). Instead, the issues that

the Complaint requires the Court address include whether, under New York law, Defendants made the alleged statements, the truth of the alleged statements, Defendants' knowledge of the alleged statements' falsity at the time they were made, whether the alleged statements are subject to defamation laws, if any harm was caused by the alleged defamation, and whether any privilege applies. These elements raise secular inquiries that the ultimate finder of fact may make without weighing matters of ecclesiastical concern. *See Sieger v. Union of Orthodox Rabbis of U.S & Canada*, 767 N.Y.S.2d 78 (N.Y. App. Div. 2003) ("To the extent plaintiff has alleged defamatory statements which can be evaluated solely by the application of neutral principles of law and do not implicate matters of religious doctrine and practice, such as whether plaintiff is sane or is a fit mother, they are not barred by the Establishment Clause."). Accordingly, because the allegedly defamatory statements can be reviewed by appealing to and applying neutral principles of law, the Court is persuaded that subject matter jurisdiction exists here.

B. DEFAMATION

Having found that subject-matter jurisdiction exists, the Court now turns to Defendants' arguments that the statements were not in fact defamatory or, if they were, that they were made subject to a privilege. Under New York law, a defamatory statement is one that exposes an individual "to public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation, or disgrace, or . . . induce[s] an evil opinion of one in the minds of right- thinking persons, and . . . deprives one

of . . . confidence and friendly intercourse in society." *Kimmerle v. N.Y. Evening Journal*, 186 N.E. 217, 218 (N.Y. 1933); *see also Golub v. Enquirer/Star Grp., Inc.*, 681 N.E.2d 1282, 1283 (N.Y. 1997). "Whether particular words are defamatory presents a legal question to be resolved by the court[s] in the first instance." *Aronson v. Wiersma*, 483 N.E.2d 1138, 1139 (N.Y. 1985).

In assessing the alleged defamatory statements, the Court "must give the disputed language a fair reading in the context of the publication as a whole." *Armstrong v. Simon & Schuster, Inc.*, 649 N.E.2d 825, 829 (N.Y. 1995). Courts should not "strain to interpret such writings in their mildest and most inoffensive sense to hold them nonlibelous." *November v. Time Inc.*, 194 N.E.2d 126, 128 (N.Y. 1963). And "the words are to be construed not with the close precision expected from lawyers and judges but as they would be read and understood by the public to which they are addressed." *Id.* Finally, neither opinions nor mere allegations are actionable under New York defamation law. *See Flamm v. Am. Ass'n of Univ. Women*, 201 F.3d 144, 147-48 (2d Cir. 2000); *Brian v. Richardson*, 87 N.Y.2d 46, 53-54, 660 N.E.2d 1126 (N.Y. 1995).

Defendants principally argue that the statements identified in the Complaint cannot be defamatory because they are allegations or opinions. (*See* Motion at 2.) But the Court is persuaded that the September 3 Letter makes at least one statement that may adequately form the basis of a defamation claim.

Specifically, according to the Complaint,[4] the September 3 Letter stated: "It turns out that Metropolitan Hilarion of Eastern America & New York knew nothing about the written appeals directed to Moscow containing a request for confirmation of the 'episcopal election' of the Archimandrite by the Synod of Bishops (which never took place)." (Complaint ¶ 42.) Whether the election did indeed take place, and whether Hilarion knew of its results and transmitted letters to Moscow, are all factual matters. And the September 3 Letter states its conclusions on those points as matters of fact—not allegations of potential wrongdoing or opinions on the matter. Therefore, the Court is persuaded that statements (a)-(f) in paragraph 60 of the Complaint are plausibly actionable statements. In coming to this conclusion, the Court considers the fundamental principle governing evaluation of Rule 12(b)(6) motions to dismiss that any ambiguities or doubts and reasonable inferences must be resolved in the plaintiff's favor.

Having found that at least one of the alleged defamatory statements is adequately pled at this stage, the Complaint survives a Rule 12(b)(6) motion as to the sufficiency of the allegations, and the Court need not address each additional statement in dispute.

Next, Defendants argue that even if statements in the September 3 Letter are found to be defamatory, they were made in the discharge of Defendants' private duty and in furtherance of the common interest of ROCOR and therefore subject to qualified

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[4] The September 3 Letter is not attached to the Complaint, so the Court accepts the Complaint's allegations as to its contents as true at this stage.

privilege. (*See* Motion at 2.) "A statement is generally subject to a qualified privilege when it is fairly made by a person in the discharge of some public or private duty, legal or moral." *Chandok v. Klessig*, 632 F.3d 803, 814 (2d Cir. 2011).

Belya counters that any privilege is overcome here because Defendants acted with actual malice or beyond the scope of the privilege. "A qualified privilege may be overcome by a showing . . . actual malice (i.e., knowledge of the statement's falsity or reckless disregard as to whether it was false)." *Id.* at 815. In New York, actual malice must be proved by a preponderance of the evidence. *Id.* at 816. At this early stage, the Court is persuaded that the allegations in the Complaint are sufficient to establish that Defendants plausibly acted with actual malice. As discussed above, the September 3 Letter makes at least one factual statement that may have been false and made by Defendants with the full knowledge of its falsity. (*See* Complaint ¶ 42.) The Court is therefore persuaded that it is at least plausible that the qualified privilege may be overcome. In reaching this conclusion, the Court again takes into account the principle that at this stage it must resolve doubts and ambiguities and draw reasonable inferences in the plaintiff's favor.

As a result, the Court need not address Belya's additional argument that Defendants acted outside the scope of the privilege. Because at least one alleged statement is actionable as a matter of law, and it is plausible that the qualified privilege may be overcome, Belya's defamation claim has been adequately pled.

C. PERSONAL JURISDICTION OVER OUT-OF-STATE DEFENDANTS

Defendants argue that the Court lacks personal jurisdiction over the out-of-state Defendants, specifically EAD and five individual defendants. (*See* Motion at 3.) The Court is not persuaded.

First, the Court finds that it has jurisdiction over EAD under New York Civil Practice Laws and Rules § 301 because EAD operates in New York for all purposes. A party is subject to a New York court's general jurisdiction under Section 301 when its contacts occur "not occasionally or casually, but with a fair measure of permanence and continuity." *Landoil Res. Corp. v. Alexander & Alexander Servs., Inc.*, 565 N.E.2d 488, 490 (N.Y. 1990). EAD fits this bill. EAD's principal place of operation is New York. (Dkt. No. 42-1, ¶ 19.) EAD operates over thirty churches and monasteries in New York and has done so since its founding in 1934. (*Id.*) EAD's "ruling bishop" is Hilarion who is based in New York. (*Id.*) Given these types of "continuous and systematic" contacts with New York, the Court is persuaded that EAD is present in New York "for all purposes." *See Fischer v. Stiglitz*, No. 15 Civ. 6266, 2016 WL 3223627, at *3 (S.D.N.Y. June 8, 2016).

However, even if EAD were not present in New York for all purposes, the Court would still have jurisdiction over both EAD and the five out-of-state individual defendants pursuant to New York Civil Practice Laws and Rules § 302(a)(1). Under Section 302(a)(1), a New York court has jurisdiction over a defendant if the defendant (1) "transacts any business within the state," and (2) the cause of action arises from that transaction. Specific to defamation, "a

defendant must engage in the relevant New York-based activity with the intent to create the allegedly defamatory work." *Fischer*, 2016 WL 3223627, at *7; *Biro v. Conde Nast*, No. 11 Civ. 4442, 2012 WL 3262770, at *10 (S.D.N.Y. Aug. 10, 2012). The out-of-state defendants' conduct, as alleged in the Complaint, satisfies this standard.

Belya alleges that the September 3 Letter was formulated and drafted by Olkhovskiy in New York. (Dkt. No. 42-1, ¶¶ 61-62.) This process included applying pressure to Hilarion at his offices in New York, coming up with the scheme, drafting the letter, and ultimately sending the letter to Hilarion at his New York address. (*Id.* ¶ 60.) The out-of-state defendants are alleged to have participated in numerous phone calls in effectuating the scheme that resulted in the defamatory work, including giving final approval via sending their signatures to New York. (*Id.* ¶ 63-63.) This type of participation in creating the defamatory work gives rise to personal jurisdiction over the out-of-state Defendants. *See Sovik v. Healing Network*, 665 N.Y.S.2d 997 (N.Y. App. Div. 1997); *see also Biro*, 2012 WL 3262770, at *10.

IV. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion so deemed by the Court as filed by defendants Hilarion Kapral a/k/a Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Pavel Loukianoff, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, the Synod of Bishops of the Russian

Orthodox Church Outside of Russia, and John Does 1 through 100 pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (*see* Dkt. No. 40) is **DENIED**, and it is further

ORDERED that plaintiff Alexander Belya file the amended complaint (Dkt. No. 42-1) within twenty (21) days of the date of this Order. Defendants are directed to answer or otherwise respond to the amended complaint within twenty (21) days of its filing.

SO ORDERED.

Dated: New York, New York
19 May 2021

/s/ Victor Marrero
Victor Marrero
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA, Plaintiff, -against- HILARION KAPRAL, et al., Defendants.	**20 Civ. 6597 (VM)** **DECISION & ORDER**

VICTOR MARRERO, U.S.D.J.:

Before the Court are two pending filings by defendants Hilarion Kapral a/k/a Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, the Synod of Bishops of the Russian Orthodox Church Outside of Russia, and John Does 1 through 100 ("Defendants") concerning the Court's May 19, 2021 Decision and Order denying Defendants' motion to dismiss so-deemed by the Court.

First, on June 16, 2021, Defendants filed a motion to alter a final judgment (the "Reconsideration Motion") pursuant to Federal Rule of Civil Procedure ("Rule") 59(e). (*See* Dkt. No. 51.) On June 24, 2021,

Plaintiff opposed the Reconsideration Motion. (*See* Dkt. No. 53.) On July 1, 2021, Defendants filed a reply brief in support of their Reconsideration Motion. (*See* Dkt. No. 56.)

The Court hereby denies the Reconsideration Motion because it is untimely. Defendants bring their motion under Rule 59(e), which sets a 28-day window by which a party may seek to "alter or amend a judgment." But, no judgment has been entered in this matter and therefore Rule 59(e)'s limitations do not apply. Rather, Defendants' motion should have been brought under Local Rule 6.3, which governs the procedures for "Motions for Reconsideration or Reargument." Local Rule 6.3 states, however, that motions for reconsideration are due "within fourteen days after the entry of the Court's determination of the original motion." Given that the Motion was filed 28 days after the Court's Decision and Order, under Local Rule 6.3 the Motion was untimely.[1]

Second, on June 25, 2021, Defendants moved the Court to certify for interlocutory appeal under 28 U.S.C. § 1292(b) the Court's May 19, 2021 Decision and Order denying Defendants' motion to dismiss. (*See* "Certification Motion," Dkt. No. 54.) On June 27, 2021,

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[1] Although the Court need not reach the merits, upon review of the Reconsideration Motion the Court is persuaded that the motion is meritless. The Reconsideration Motion does not "set[] forth concisely the matters or controlling decisions which counsel believes the Court has overlooked," as Local Rule 6.3 requires. Rather, the Reconsideration Motion attempts to inappropriately "relitigate[e] old issues, present[] the case under new theories, secur[e] a rehearing on the merits, or otherwise tak[e] a second bite at the apple . . . ." *See Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012)

Plaintiff opposed Defendants' motion. (*See* Dkt. No. 55.)

Section 1292(b) states that a district court may certify an interlocutory appeal only when the order (1) involves "a controlling question of law" (2) where "there is substantial ground for difference of opinion" and (3) where "an immediate appeal from the order may materially advance the ultimate termination of the litigation." *See* 18 U.S.C. § 1292(b). "The moving party has the burden of establishing all three elements." *Youngers v. Virtus Inv. Partners Inc.*, 228 F. Supp. 3d 295, 298 (S.D.N.Y. 2017). But "even when the elements of section 1292(b) are satisfied, the district court retains 'unfettered discretion' to deny certification." *Garber v. Office of the Comm'r of Baseball*, 120 F.Supp.3d 334, 337 (S.D.N.Y. 2014) (quoting *National Asbestos Workers Med. Fund v. Philip Morris, Inc.*, 71 F. Supp. 2d 139, 162-63 (E.D.N.Y. 1999)).

"Interlocutory appeals are strongly disfavored in federal practice." *In re Ambac Fin. Grp., Inc. Sec. Litig.*, 693 F. Supp. 2d 241, 282 (S.D.N.Y. 2010). Certification of an interlocutory appeal, "is not intended as a vehicle to provide early review of difficult rulings in hard cases." *In re Levine*, No. 94 Civ. 44257, 2004 WL 764709, at *2 (S.D.N.Y. Apr. 9, 2004). Instead, "only exceptional circumstances [will] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 986 F. Supp. 2d 524, 529-30 (S.D.N.Y. 2014) (quoting *McNeil v. Aguilos*, 820 F. Supp. 77, 79 (S.D.N.Y. 1993)) (alteration in original).

The Court denies the Certification Motion as the Court concludes certification is not appropriate here. Upon reviewing the precedents cited by Defendants, the Court is not persuaded that "there is substantial ground for difference of opinion" as to "a controlling question of law." *See* 18 U.S.C. § 1292(b). Rather, the controlling legal doctrines at issue, the ministerial exception and the doctrine of ecclesiastical abstention, are well established. Instead of presenting disagreement regarding the legal standards being applied, Defendants' arguments amount to disputes as to whether the factual situation presented fits into the ministerial exception or ecclesiastical abstention. The Court is not persuaded that those factual disputes merit certification for interlocutory appeal. Accordingly, the Court denies the Certification Motion.

I. ORDER

For the reasons stated above, it is hereby

ORDERED that the motion to alter or amend the Court's May 19, 2021 Decision and Order (Dkt. No. 51) filed by defendants Hilarion Kapral a/k/a Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, the Synod of Bishops of the Russian Orthodox Church Outside of Russia, and John Does 1 through 100 ("Defendants") is **DENIED**, and it is further

ORDERED that Defendants' motion to certify the Court's May 19, 2021 Decision and Order for

interlocutory appeal (Dkt. No. 54) is **DENIED**, and it further

ORDERED that Defendants are directed to file their Answer to the Amended Complaint within seven days of the date of this Order.

SO ORDERED:

Dated: New York, New York
6 July 2021

/s/ Victor Marrero
Victor Marrero
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA, Plaintiff, -against- HILARION KAPRAL, et al., Defendants.	**ORDER** **20 Civ. 6597 (VM)**

VICTOR MARRERO, United States District Judge.

The parties are directed to submit a joint letter no later than August 13, 2021 addressing the following in separate paragraphs: (1) a brief description of the case, including the factual and legal bases for the claim(s) and defense(s); (2) any contemplated motions; (3) the prospect for settlement; and (4) whether the parties consent to proceed for all purposes before the Magistrate Judge designated for this action. The parties are also directed to submit a completed Case Management Plan. The Case Management Plan must provide that discovery is to be completed within four months unless otherwise permitted by the Court. A model Case Management Plan is available on the Court's website: https://nysd.uscourts.gov/hon-victor-marrero.

Submissions must be made in accordance with Judge Marrero's Emergency Individual Rules and Practices in Light of COVID-19, available at the Court's website. The Court will assess the need for an Initial Case Management Conference after reviewing the submission.

Dated: July 14, 2021
New York, New York

/s/ Victor Marrero
Victor Marrero
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA, Plaintiff, -against- HILARION KAPRAL, et al., Defendants.	**20 Civ. 6597 (VM)** **DECISION & ORDER**

VICTOR MARRERO, U.S.D.J.:

Before the Court is a pending letter request filed by defendants Hilarion Kapral a/k/a Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, the Synod of Bishops of the Russian Orthodox Church Outside of Russia, and John Does 1 through 100 ("Defendants") requesting a premotion conference to move the Court to bifurcate discovery or otherwise stay the action pending resolution of their appeal. (*See* "Motion," Dkt. No. 62.) Plaintiff Alexander Belya ("Belya") opposed the request. (*See* Dkt. No. 63.) The Court hereby

denies the request for a conference and will address Defendants' Motion on the merits.[1]

On May 19, 2021, the Court denied Defendants' so-deemed motion to dismiss the complaint, holding, in relevant part, that Belya's claims raised purely secular issues that could be resolved by appeal to neutral principles of law. (*See* Dkt. No. 46 at 11-12). On July 6, 2021, the Court denied Defendants' request to alter that decision and order as untimely, and likewise denied Defendants' request to certify questions related to the application of the ministerial exception and ecclesiastical abstention for interlocutory appeal. (*See* Dkt. No. 57.)

Upon review of Defendants' Motion, Belya's opposition, the Court's previous rulings noted above, and other materials in the record the Court is persuaded Defendants' Motion warrants denial. The Court notes that this matter is limited to an inquiry into whether the relevant statements made concerning Belya were defamatory statements. This is a fact-based inquiry as to what occurred, and the Court will not pass judgment on the internal policies and or determinations of the Russian Orthodox Church Outside Russia, nor would it be able to under the doctrine of ecclesiastical abstention. The Court therefore finds bifurcation of discovery to be unwarranted and a stay to be unnecessary.

I. ORDER

For the reasons stated above, it is hereby

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[1] *See Kapitalforeningen Lægernes Invest. v. United Techs. Corp.*, 779 F. App'x 69, 70 (2d Cir. 2019) (affirming the district court's ruling deeming an exchange of letters as a fully submitted motion).

ORDERED that the motion to bifurcate discovery or otherwise stay the action (Dkt. No. 62) filed by defendants Hilarion Kapral a/k/a Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, Mark Mancuso, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, the Synod of Bishops of the Russian Orthodox Church Outside of Russia, and John Does 1 through 100 is **DENIED**, and it is further

ORDERED that the parties comply with the Court's July 14, 2021 Order (Dkt. No. 59) regarding the submission of a joint-letter and proposed case management plan.

SO ORDERED:

Dated: New York, New York
27 July 2021

/s/ Victor Marrero
Victor Marrero
U.S.D.J.

21-1498
Belya v. Kapral, et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of February, two thousand twenty-three.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
RICHARD J. SULLIVAN,
MICHAEL H. PARK,
WILLIAM J. NARDINI,
STEVEN J. MENASHI,
EUNICE C. LEE,
BETH ROBINSON,
MYRNA PÉREZ,
ALISON J. NATHAN,
SARAH A. L. MERRIAM,
Circuit Judges.

ALEXANDER BELYA,

Plaintiff-Appellee,

v. 21-1498

HILARION KAPRAL, AKA
METROPOLITAN HILARION,
NICHOLAS OLKHOVSKIY, VICTOR
POTAPOV, SERGE LUKIANOV, DAVID

STRAUT, ALEXANDRE ANTCHOUTINE, GEORGE TEMIDIS, SERAFIM GAN, BORIS DMITRIEFF, EASTERN AMERICAN DIOCESE OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, MARK MANCUSO,
Defendants-Appellants.

For Defendants-Appellants:	Diana Verm Thomson (Daniel H. Blomberg, Lori H. Windham, Daniel D. Benson, on the brief), The Becket Fund for Religious Liberty, Washington, DC, and Donald J. Feerick, Jr. (Alak Shah, on the brief), Feerick Nugent MacCartney, PLLC, South Nyack, NY.
For Plaintiff-Appellee:	Bradley Girard (Richard B. Katskee, on the brief), Americans United for Separation of Church and State, Washington, DC, and Oleg Rivkin, Rivkin Law Group PLLC, New York, NY.
For Amici Curiae Roman Catholic Archdiocese of	Gordon D. Todd, Daniel

New York, Jurisdiction of the Armed Forces and Chaplaincy of the Anglican Church in North America, General Conference of Seventh-day Adventists, Lutheran Church–Missouri Synod, International Society for Krishna Consciousness (ISKCON), Serbian Orthodox Diocese of New Gracanica–Midwestern America, in support of Defendants-Appellants:	J. Hay, John L. Gibbons, Sidley Austin LLP, Washington, DC.
For Amicus Curiae Jewish Coalition for Religious Liberty, in support of Defendants-Appellants:	Ryan Paulsen, Haynes and Boone, LLP, Dallas, TX.
For Amici Curiae Constitutional Law Scholars, in support of Defendants-Appellants:	Matthew T. Nelson, Warner Norcross + Judd LLP, Grand Rapids, MI.
Amici Curiae States of Nebraska, Alabama, Alaska, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, Texas, and Utah, in support of Defendants-	James A. Campbell, Solicitor General of Nebraska; Douglas J. Peterson, Attorney General of Nebraska; David T. Bydalek, Chief Deputy Attorney General of Nebraska; Steve Marshall, Attorney General

Appellants: of Alabama; Treg R. Taylor, Attorney General of Alaska; Mark Brnovich, Attorney General of Arizona; Leslie Rutledge, Attorney General of Arkansas; Chris Carr, Attorney General of Georgia; Derek Schmidt, Attorney General of Kansas; Daniel Cameron, Attorney General of Kentucky; Jeff Landry, Attorney General of Louisiana; Lynn Fitch, Attorney General of Mississippi; Austin Knudsen, Attorney General of Montana; John M. O'Connor, Attorney General of Oklahoma; Alan Wilson, Attorney General of South Carolina; Ken Paxton, Attorney General of Texas; and Sean D. Reyes, Attorney General of Utah.

Following disposition of this appeal on August 17, 2022, Defendants-Appellants filed a petition for rehearing *en banc*. The opinion was amended September 16, 2022, and an active judge of the Court thereafter requested a poll on whether to rehear the case *en banc*. A poll having been conducted and there being no ma-

jority favoring *en banc* review, the petition for rehearing *en banc* is hereby **DENIED**.

Raymond J. Lohier, Jr., *Circuit Judge*, joined by Eunice C. Lee, Beth Robinson, Alison J. Nathan, and Sarah A. L. Merriam, *Circuit Judges*, concurs by opinion in the denial of rehearing *en banc*.

José A. Cabranes, *Circuit Judge*, dissents by opinion from the denial of rehearing *en banc*.

Michael H. Park, *Circuit Judge*, joined by Debra Ann Livingston, *Chief Judge*, and Richard J. Sullivan, William J. Nardini, and Steven J. Menashi, *Circuit Judges*, dissents by opinion from the denial of rehearing *en banc*.

Denny Chin, *Circuit Judge*, filed a statement with respect to the denial of rehearing *en banc*.

Joseph F. Bianco, *Circuit Judge*, took no part in the consideration or decision of the petition.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

RAYMOND J. LOHIER, JR., *Circuit Judge*, joined by EUNICE C. LEE, BETH ROBINSON, ALISON J. NATHAN, and SARAH A. L. MERRIAM, *Circuit Judges*, concurring in the order denying rehearing *en banc:*

I concur fully in the decision to deny in banc rehearing in this case for the reasons stated in the panel opinion, *see Belya v. Kapral*, 45 F.4th 621 (2d. Cir. 2022), as well as for the reasons contained in the excellent statement of my colleague, Senior Judge Chin, in support of denial. I add only a few observations.

First, there is no circuit split on the extremely narrow procedural issue presented in this case. The panel opinion avoids generating one, and the dissents from the denial of rehearing in banc identify none. Judge Park's dissent, by contrast, proposes a significant judicial expansion of the collateral order doctrine and the circumstances under which application of the doctrine is warranted under *Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541, 545-46 (1949), and it does so without offering any limiting principle. Nothing in the dissent's approach would prevent a further expansion of the collateral order doctrine to include virtually every other "liberty"-based right. And the approach runs head-long into the Supreme Court's admonition that "the class of collaterally appealable orders must remain 'narrow and selective in its membership,'" *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 113 (2009) (quoting *Will v. Hallock*, 546 U.S. 345, 350 (2006)), even if that means litigants are "require[d] . . . to wait until after final judgment to vindicate valuable rights," id. at 108-09. "This admonition has acquired special force in recent years with the enactment of legislation designating rulemaking, not expansion by court decision, as the preferred means for

determining whether and when prejudgment orders should be immediately appealable." *Id.* at 113 (quotation marks omitted).

Second, even a casual reader will notice the total mismatch between the dissent's description of Belya's lawsuit and the lawsuit itself. It bears repeating Judge Chin's observation that there is no basis *whatsoever* to second-guess the nature of Belya's defamation claim or to suspect that his lawsuit is not what it purports to be. The dissent insinuates that it is merely "styl[ed]" as a defamation claim to avoid the church autonomy doctrine and "questions of religious doctrine." Dissent at 21-22. But at this stage, Belya's claim *is* a genuine defamation claim that, as the dissent's refusal to take it at face value suggests, would not implicate church autonomy.

Third, by comparing the "[d]enial of a church autonomy defense . . . to qualified immunity," the dissent unfortunately distorts the panel opinion's holding that the defense is premature rather than unavailable. Dissent at 15; *see Belya*, 45 F.4th at 631 ("It is possible that at some stage Defendants' church autonomy defenses will require limiting the scope of Belya's suit, or the extent of discovery, or even dismissal of the suit in its entirety. But we cannot and do not prematurely jump into the fray."). And even if the comparison were meaningful, the panel opinion employs essentially the same order of analysis that applies in appeals from denials of qualified immunity. A defendant who claims qualified immunity must fully stipulate to the plaintiff's recitation of facts and show her entitlement to qualified immunity as a matter of law before a court of appeals can have jurisdiction over the claim. *See*

Mitchell v. Forsyth, 472 U.S. 511, 530 (1985). Any dispute of fact, no jurisdiction. Here, of course, the church disputes the facts relevant to Belya's defamation claim. *See Belya*, 45 F.4th at 634 ("The[r]e are outstanding secular fact questions that are not properly before us – and would not require a fact-finder to delve into matters of faith and doctrine.").

Finally, the panel's decision regarding appellate jurisdiction at this stage in the case poses no threat to the church autonomy doctrine, which has thrived without help from the expansion of the collateral order doctrine that the dissent proposes. We can agree on the narrow procedural issue before us without disagreeing about the vital importance of church autonomy and governance.

JOSÉ A. CABRANES, *Circuit Judge*, dissenting from the order denying rehearing *en banc*:

I write separately simply to underscore that the issues at hand are of "exceptional importance" and surely deserve further appellate review. Fed. R. App. P. 35(a)(2). The denial of *en banc* review in this case is a signal that the matter can and should be reviewed by the Supreme Court.

MICHAEL H. PARK, *Circuit Judge*, joined by DEBRA ANN LIVINGSTON, *Chief Judge*, and RICHARD J. SULLIVAN, WILLIAM J. NARDINI, and STEVEN J. MENASHI, *Circuit Judges*, dissenting from the order denying rehearing *en banc*:

This case arises from a minister's suspension by his church. The church autonomy doctrine, which is rooted in the Religion Clauses of the First Amendment, generally requires courts to stay out of such matters. But the panel decision leaves the church defendants subject to litigation, including discovery and possibly trial, on matters relating to church governance. This imperils the First Amendment rights of religious institutions. Denials of church autonomy defenses should be included in the narrow class of collateral orders that are immediately appealable.

The panel decision adopts a "neutral principles of law" limitation on the church autonomy doctrine that would allow courts to resolve "secular components of a dispute involving religious parties." *Belya v. Kapral*, 45 F.4th 621, 630 (2d Cir. 2022). Here, that means that a minister's lawsuit against his former church—because it is styled as a defamation claim—must proceed to final judgment before the church can appeal the denial of its religious autonomy defense. The panel's extension of this "neutral principles" test from an entirely different line of cases involving church property disputes will invite courts to wade into the details of ecclesiastical matters. And although the panel attempts to cabin its decision to these defendants on the facts available at this stage of their case, its holding will categorically deny interlocutory appeals for church autonomy defenses and reduce the doctrine to a defense against liability only.

In my view, the First Amendment provides more protection to religious institutions than that, so I would have granted the petition for rehearing *en banc*.

I. BACKGROUND

A. Factual Allegations

Plaintiff Alexander Belya was a priest in the Russian Orthodox Church Outside of Russia ("ROCOR"), which is a "semi-autonomous" part of the Russian Orthodox Church. J. App'x at 88. Church rules govern the relationship between ROCOR and the Russian Orthodox Church, including elections of ROCOR bishops, which must be approved by the Russian Orthodox Church.

In December 2018, ROCOR's bishops elected Belya as Bishop of Miami. Defendant Hilarion Kapral—then the leader of ROCOR—sent a letter to the Russian Orthodox Church seeking approval of Belya's election. But a group of church leaders opposed to Belya urged Hilarion to "undo" the appointment. *Id*. at 95. These church leaders sent a letter to Hilarion and ROCOR leaders questioning the authenticity of the letters announcing Belya's election. Hilarion suspended Belya from his "priestly duties," pending an investigation. Belya then left ROCOR for the Greek Orthodox Church.

B. Procedural History

In August 2020, Belya sued ROCOR and its leadership, including the church leaders who opposed his elevation. Belya alleged defamation and sought damages for reputational injury and losses from the decline in his church membership.

Defendants sought to file a motion to dismiss in a three-page pre-motion letter as required by the district court's individual practices. This letter previewed Defendants' argument that the district court lacked subject-matter jurisdiction under the church autonomy doctrine. The district court *sua sponte* construed the letter as a Rule 12(b)(6) motion to dismiss and denied it.[1] *Belya v. Hilarion*, No. 20-CIV-6597, 2021 WL 1997547, at *1 (S.D.N.Y. May 19, 2021). The court was "persuaded Belya brings a suit that may be resolved by appealing to neutral principles of law." *Id.* at *4.

Defendants moved to certify an interlocutory appeal, arguing that the application of the church autonomy doctrine is a "controlling question of law as to which there is substantial ground for difference of opinion." District Ct. Doc. No. 54 at 1 (quoting 28 U.S.C. § 1292(b)). The district court summarily denied the motion, concluding that "the controlling legal doctrines . . . are well established" and "Defendants' arguments amount to . . . factual disputes." *Belya v. Kapral*, No. 20-CIV-6597, 2021 WL 2809604, at *2 (S.D.N.Y. July 6, 2021).

Finally, Defendants submitted another pre-motion letter seeking leave to file a motion to bifurcate discovery in order to protect against disclosures that might infringe on church autonomy. In the alternative, Defendants sought a stay pending appeal. The district court again *sua sponte* construed the letter as a fully briefed motion and summarily denied it, stating that

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[1] We have repeatedly urged district courts against using this practice to dispose of complex matters. *See Int'l Code Council, Inc. v. UpCodes Inc.*, 43 F.4th 46, 53–56 (2d Cir. 2022) (collecting cases and noting that "the district court's course of action did nothing to conserve judicial resources").

bifurcation was "unwarranted" and that it "w[ould] not pass judgment on the internal policies and or determinations of the Russian Orthodox Church Outside Russia." J. App'x at 147. The district court also denied a stay as "unnecessary" without explanation. *Id*.

II. LEGAL PRINCIPLES

This case involves a conflict between two legal doctrines. On one hand, the church autonomy doctrine protects religious institutions from court interference in matters of faith and church governance. On the other hand, the collateral order doctrine permits appellate review of only a narrow set of non-final decisions.

A. The Church Autonomy Doctrine

The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Religion Clauses together establish the "independence" of churches "in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020). That independence includes "autonomy with respect to internal management decisions that are essential to the institution's central mission," including "the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities." *Id*. at 2060.

The church autonomy doctrine has a "rich historical pedigree" that "informed the meaning of the Constitution and its Religion Clauses at the Founding." *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1075-76 (5th Cir. 2020) (Oldham, *J.*, dissenting from denial of rehearing *en banc*).

"[T]he jurisdictional line prohibiting civil courts from intruding on ecclesiastical matters is an ancient one." *Id*. at 1077, 1076-78 (tracing the jurisdictional boundaries between civil and ecclesiastical courts from the Middle Ages and English law). The Founders incorporated this jurisdictional understanding of religious institutional autonomy into the First Amendment. *See id*. at 1078-80. This meant that the state had no role in church governance, including the selection of ministers, rulemaking, and organization. Indeed, James Madison, "the leading architect of the religion clauses," vetoed a bill that established "rules and proceedings relative purely to the organization and polity of the church." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 184-85 (2012) (quoting *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 141 (2011), and 22 Annals of Cong. 982-983 (1811)).

The Supreme Court first explicitly articulated a form of the church autonomy doctrine in *Watson v. Jones*, 80 U.S. 679 (1871). *Watson* explained that the First Amendment gives churches independence in matters of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Id.* at 733. Subsequent cases clarified the reach of the doctrine. In *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), the Supreme Court held unconstitutional a New York law that recognized the Russian Orthodox Church in the United States as the true owner of church property instead of the Russian Orthodox Church in Russia. *See id*. at 107-08. The Court reasoned that "[*Watson*] radiates . . . a spirit of freedom for religious organizations, an independence

from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id*. at 116.

The Supreme Court later held that the Illinois Supreme Court should not have intervened in a dispute involving a church's suspension of a minister. *See Serb. E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 718-20 (1976). The Court also interpreted the National Labor Relations Act to deny the National Labor Relations Board jurisdiction over religious schools because there was a significant risk of excessive entanglement with religion. *See NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 502 (1979). More recently, the Supreme Court has held that the ministerial exception "precludes application of [employment discrimination laws] to claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor*, 565 U.S. at 188.

In sum, the church autonomy doctrine has long prohibited court interference with "matters of church government as well as those of faith and doctrine." *Our Lady*, 140 S. Ct. at 2055 (quoting *Kedroff*, 344 U.S. at 116).

B. The Collateral Order Doctrine

The courts of appeals have jurisdiction over appeals from "final decisions of the district courts." 28 U.S.C. § 1291. "Although 'final decisions' typically are ones that trigger the entry of judgment, they also include a small set of prejudgment orders that are 'collateral to' the merits of an action and 'too important' to be denied immediate review." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 103 (2009) (quoting *Cohen*

v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949)).

The collateral order doctrine is "best understood not as an exception to the 'final decision' rule . . . but as a 'practical construction' of it." *Will v. Hallock*, 546 U.S. 345, 349 (2006) (citation omitted). Under the collateral order doctrine, the courts of appeals have jurisdiction over certain non-final decisions involving claims that are "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen*, 337 U.S. at 546. Appeals are thus permitted from collateral orders "[1] that are conclusive, [2] that resolve important questions separate from the merits, and [3] that are effectively unreviewable on appeal from the final judgment in the underlying action." *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995).

In deciding whether a collateral order is appealable, "we do not engage in an individualized jurisdictional inquiry"—"[r]ather, our focus is on the entire category to which a claim belongs." *Mohawk*, 558 U.S. at 107 (cleaned up). The Supreme Court has emphasized that the scope of the doctrine is modest and membership in the "small class" of collaterally appealable orders is "narrow and selective." *Will*, 546 U.S. at 350. "[T]he decisive consideration is whether delaying review until the entry of final judgment 'would imperil a substantial public interest' or 'some particular value of a high order.'" *Mohawk*, 558 U.S. at 107 (quoting *Will*, 546 U.S. at 352-53).

III. DISCUSSION

The panel dismissed Defendants' appeal, holding that it lacked appellate jurisdiction to review the district court's denials of Defendants' church autonomy defenses. The panel concluded that the district court's orders (1) were not a "final rejection" of Defendants' church autonomy defenses, (2) did not deny "a claim of right separable from the merits," and (3) were not "effectively unreviewable on appeal" because the case turned on "outstanding secular fact questions" that "would not require a fact-finder to delve into matters of faith and doctrine." *Belya*, 45 F.4th at 631-34.

The panel erred in two ways. First, it misapplied the collateral order doctrine. Rejections of church autonomy defenses should be immediately appealable, in the same way that denials of qualified immunity are appealable. Second, the panel's novel extension of the "neutral principles" approach is inconsistent with precedent and will substantially limit the church autonomy doctrine.

A. Denials of Church Autonomy as Appealable Collateral Orders

1. *The Panel's Misapplication of the Collateral Order Doctrine*

The panel misapplied each prong of the collateral order doctrine. First, the district court's decision is "conclusive" because it subjects Defendants to litigation over religious matters. The church autonomy doctrine protects religious institutions from the litigation process itself where the dispute concerns "matters of church government as well as those of faith and doctrine." *Our Lady*, 140 S. Ct.at 2055 (citation omitted); *see also Cath. Bishop of Chi.*, 440 U.S. at 502 ("It is not

only the conclusions that . . . may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."); *Milivojevich*, 426 U.S. at 718 (describing the Illinois Supreme Court's "detailed review" of "internal church procedures" as "impermissible under the First and Fourteenth Amendments"); *Hosanna-Tabor*, 565 U.S. at 205-06 (Alito, *J.*, concurring) ("[T]he mere adjudication of such questions would pose grave problems for religious autonomy.").[2] A court order denying a church autonomy defense is "conclusive" because it decides the church's "right not to face the other burdens of litigation," which is the "critical part of this inquiry." *Liberty Synergistics Inc. v. Microflo Ltd.*, 718 F.3d 138, 147 (2d Cir. 2013) (cleaned up).

The panel decided that the district court's orders were not "conclusive because they d[id] not bar any defenses, they did not rule on the merits of the church autonomy defense, and they permit Defendants to continue asserting the defense." *Belya*, 45 F.4th at 631; *see also* Statement of Judge Chin ("Statement") at 5 (noting that "at a later point," "the scope of Belya's claims and discovery might have to be limited and dis-

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[2] To be sure, none of these cases arose at the motion to dismiss stage, so none explicitly held that the church autonomy doctrine shields churches from the litigation process altogether. *See Our Lady*, 140 S. Ct. at 2058–59 (appeal from summary judgment); *Hosanna-Tabor*, 565 U.S. at 180–81 (same); *Cath. Bishop of Chi.*, 440 U.S. at 495 (petition for review of agency proceeding); *Milivojevich*, 426 U.S. at 707 (appeal from judgment after trial). But the reasoning of these cases leads to the same conclusion: that "the very process of inquiry" into matters of faith and church governance offends the Religion Clauses. *Cath. Bishop of Chi.*, 440 U.S. at 502.

missal . . . might even be warranted"). But here, "conclusiveness" does not turn on whether the church autonomy defense may be raised again later because subjecting Defendants to further litigation would itself burden their First Amendment rights. *See Liberty Synergistics*, 718 F.3d at 151 ("[W]hen the essence of a right is to shield certain defendants from the burdens of litigation, collateral review is not defeated by the opportunity for post-judgment review of the same legal question that arose when considering the earlier order.").

Second, the church autonomy doctrine involves a "claim[] of right separable from, and collateral to, rights asserted in the action" that is "too important to be denied review." *Cohen*, 337 U.S. at 546. A church autonomy defense is distinct from the merits of a defamation claim. *Cf. Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021, 1036 (10th Cir. 2022) (agreeing that the applicability of the ministerial exception is "clearly . . . separate from the merits," even while ruling against the defendant on other grounds).

The panel decision does not seriously contest this point. Indeed, the panel itself emphasized that Belya's defamation claim raised "secular fact questions" that "would not require a fact-finder to delve into matters of faith and doctrine." *Belya*, 45 F.4th at 634. And the panel acknowledged that "it is possible that, in some circumstances, the church autonomy doctrine can present questions separable from the merits of a defamation claim," but it ultimately concluded that it was "too soon to say at this point." *Id*. at 632. The panel's effort to cabin its holding to the specific procedural posture and the facts available to it at the time, however, is inconsistent with the Supreme Court's repeated

"warn[ing] that . . . appealability under § 1291 is to be determined for the entire category to which a claim belongs," and is *not* "a case-by-case . . . determination." *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994) (cleaned up). Whether the church autonomy defense applies is a separate—and important—question from the merits of a defamation claim.

Third, the district court's order is not "effectively reviewable" on appeal from final judgment. *Mohawk*, 558 U.S. at 107. As noted above, the First Amendment "prohibits" the very "inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow." *Milivojevich*, 426 U.S. at 713; *see supra* at 10-11. "[A] civil court must accept the ecclesiastical decisions of church tribunals as it finds them," and no more. *Milivojevich*, 426 U.S. at 713; *accord Our Lady*, 140 S. Ct. at 2069 (warning against "judicial entanglement in religious issues"); *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 975 (7th Cir. 2021) (*en banc*) ("[A]voidance, rather than intervention, should be a court's proper role when adjudicating disputes involving religious governance."). Thus, after final judgment, the harm from judicial interference in church governance will be complete.

The panel relied on the Supreme Court's statement in footnote four of *Hosanna-Tabor* that the ministerial exception "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar." 565 U.S. at 195 n.4. But that does not resolve the issue because affirmative defenses, such as qualified immunity, may still be immediately appealable. *See, e.g.,*

Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982) ("Qualified . . . immunity is an affirmative defense."); *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (holding that denials of qualified immunity are appealable under the collateral order doctrine).

The panel thus misapplied the collateral order doctrine. The denial of a church autonomy defense is conclusive, separate from the merits, and effectively unreviewable on appeal after final judgment.

2. *Comparison to Qualified Immunity*

Denial of a church autonomy defense should be an appealable collateral order in light of its strong resemblance to qualified immunity. First, both are rooted in foundational constitutional interests. In the case of qualified immunity, "subjecting officials to the risks of trial" may "implicate separation-of-powers concerns." *Harlow*, 457 U.S. at 816, 817 n.28. Similarly, the church autonomy doctrine is "a structural [constitutional protection] that categorically prohibits federal and state governments from becoming involved in religious leadership disputes." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015); *see supra* at 5-6.

And second, both are protections against the burdens of litigation itself. Qualified immunity recognizes "an entitlement not to stand trial or face the other burdens of litigation, conditioned on the resolution of the essentially legal question" whether the doctrine applies. *Mitchell*, 472 U.S. at 526 ("The entitlement is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." (emphasis omitted)). Similarly, subjecting churches to

litigation and trial over matters of church government itself infringes their First Amendment rights. *See supra* at 11 (citing *Cath. Bishop of Chi.*, 440 U.S. at 502; *Milivojevich*, 426 U.S. at 718).

Several courts have acknowledged the similarities between church autonomy and qualified immunity. *See, e.g., McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013) (justifying collateral review of the denial of church autonomy because it is "closely akin to a denial of official immunity"); *Skrzypczak v. Roman Cath. Diocese of Tulsa*, 611 F.3d 1238, 1242 (10th Cir. 2010) ("[T]he ministerial exception, like the broader church autonomy doctrine, can be likened 'to a government official's defense of qualified immunity.'" (citation omitted)); *Petruska v. Gannon Univ.*, 462 F.3d 294, 302-03 (3d Cir. 2006) (agreeing that the church autonomy doctrine is similar to a defense of qualified immunity because "[t]he exception may serve as a barrier to the success of a plaintiff's claims, but it does not affect the court's authority to consider them").

The panel's rejection of the analogy is unpersuasive. It stated that a denial of qualified immunity is immediately appealable only "to the extent that it turns on an issue of law." *Belya*, 45 F.4th at 634 (citation omitted). And in this case, the panel concluded that "[d]ecidedly non-ecclesiastical questions of fact remain." *Id*. But the applicability of the church autonomy doctrine, like qualified immunity, is at bottom a question of law. Both inquiries require applying law to facts—here, assessing whether the dispute involves "matters of church government" or "of faith and doctrine," *Our Lady*, 140 S. Ct. at 2055—but that does not change the nature of the inquiry. Answering the question whether the church autonomy defense applies is

not somehow prohibitively more fact-bound than determining whether a defendant is entitled to qualified immunity.[3] In light of these doctrinal similarities, denial of a church autonomy defense, like denial of qualified immunity, should be an appealable collateral order.[4]

B. The "Neutral Principles" Approach

Finally, the panel's novel extension of the "neutral principles" approach is inconsistent with precedent and threatens to eviscerate the church autonomy doctrine. The panel held that "[w]hen a case can be resolved by applying well established law to secular components of a dispute, such resolution by a secular court presents no infringement upon a religious association's independence." *Belya*, 45 F.4th at 630; *see also* Statement at 11 ("Using neutral principles of law to resolve secular components of a dispute involving religious parties does not infringe on religious parties' independence."). There are several problems with this.

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[3] Both the Statement and Concurrence correctly note that denials of qualified immunity cannot be appealed when they turn on facts. *See* Statement at 8-9; Concurrence at 2-3. But this is of little relevance here. First, when the district court denied the church autonomy defense, Defendants did not dispute the sufficiency of the evidence. *Franco v. Gunsalus*, 972 F.3d 170, 174 (2d Cir. 2020); J. App'x at 16-18. Second, the panel decision categorically denies immediate appealability of any church autonomy defense, no matter what the facts might be. *See supra* at 13.

[4] Sovereign immunity provides another helpful comparator for immediately appealable orders. Like qualified immunity and church autonomy, sovereign immunity is "implicit in the constitutional design," *Alden v. Maine*, 527 U.S. 706, 730 (1999), and protects states from the burdens of litigation, *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993).

First, the Supreme Court has already rejected this approach in the context of church employment disputes. Even "valid and neutral" employment discrimination laws cannot apply to "an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. The same principle applies here.

Second, the panel's extension of the "neutral principles" approach from a different context involving church property disputes is unfounded. *See Jones v. Wolf*, 443 U.S. 595, 604 (1979) ("[A] State is constitutionally entitled to adopt neutral principles of law *as a means of adjudicating a church property dispute*." (emphasis added)). Courts have generally declined to extend this approach to other areas. *See, e.g., Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986) ("The 'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be."); *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493-94 (5th Cir. 1974) (rejecting a dismissed minister's claim that "neutral principles" could apply to his civil rights and constitutional claims for being evicted from the church parsonage). *But see McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 350 (5th Cir. 2020) (relying on "neutral principles" to reverse a district court's dismissal of a church official's tort claims against a church).

Finally, the "neutral principles" approach does not make sense for disputes about church governance. The panel decision appears at times to limit the scope of the church autonomy defense to "matters of faith and doctrine" only. *See, e.g., Belya*, 45 F.4th at 634; *see also* Statement at 7 (describing the defense as applying to

"matters of 'religious doctrine[]' or 'religious belief'"). But Supreme Court precedent is clear that the defense is broader and covers "matters of church government" as well. *Our Lady*, 140 S. Ct. at 2055.

In *Jones*, the "true" owner of church property was disputed, so there was not a church government to which the court could defer.[5] *See* 443 U.S. at 597-98 (describing the split between two church factions). Giving courts a license to apply "neutral principles" to matters of church government, faith, or doctrine would swallow the church autonomy doctrine altogether. Almost any cause of action has secular components that can be resolved using some facially neutral principles. In *Milivojevich*, the Supreme Court of Illinois concluded that the church "had not followed its own laws and procedures" in suspending a minister.[6] 426 U.S.

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[5] The "neutral principles" approach makes sense only when churches themselves invite judicial scrutiny. *See McRaney*, 980 F.3d at 1071 (Ho, *J.*, dissenting from denial of rehearing *en banc*) (explaining that *Jones*'s "neutral principles" approach will "*protect* religious autonomy . . . by assuring that secular courts would intervene in religious affairs *only* when the religious community itself had expressly stated in terms accessible to a secular court how a particular controversy should be resolved" (quoting W. COLE DURHAM & ROBERT SMITH, 1 RELIGIOUS ORGANIZATIONS & THE LAW § 5:16 (2017))).

[6] There were neutral principles in *Milivojevich*. The Supreme Court of Illinois decided that the minister's suspension was not valid because, under church procedures, the minister "was not validly tried within one year of his indictment" by the church tribunals, among other issues. 426 U.S. at 708. The Supreme Court rejected this foray into church governance. Here, the panel assures us that neutral principles govern "non-ecclesiastical questions of fact" raised by Belya, including whether the "bishop's official letterhead" and the "bishop's official seal" were used and whether "the purported signatories actually sign[ed] the letters."

at 713. The Supreme Court held that this approach was wrong because "inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow . . . is exactly the inquiry that the First Amendment prohibits." *Id.* "[R]ecognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry." *Id.*[7]

Here, Belya brought a defamation claim, alleging a false campaign by church leaders to remove him. But it is difficult to see how a court could assess that claim without considering the reasons for the church's decisions, including whether Defendants correctly determined that Belya was never elected Bishop of Miami and whether they acted in good faith—all matters of "internal church procedures." *Milivojevich*, 426 U.S. at 718.[8]

Belya, 45 F.4th at 634; Statement at 2–3. But these are the same types of factual questions the Court rejected in *Milivojevich*.

[7] *See also* Robert Joseph Renaud & Lael Daniel Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67, 89, 92 (2008) ("There is no way to resolve an issue of church discipline by 'neutral principles.'").

[8] State courts have come to similar conclusions in defamation cases involving church governance and discipline. *See, e.g., Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 541 (Minn. 2016) ("[W]e simply recognize that adjudicating a defamation claim based on statements made during the course of a church disciplinary proceeding and published exclusively to members of the religious organization and its hierarchy necessarily fosters an excessive entanglement with religion . . . ."); *Purdum v. Purdum*, 301 P.3d 718, 727 (Kan. 2013) ("[Plaintiff's] defamation action involves an ecclesiastical subject matter, and adjudication of it

The panel's focus on whether there are "secular components of a dispute" that can be resolved using "neutral principles of law" is thus misplaced.[9] Simply accepting Belya's styling of the case as a defamation claim, and reasoning that such a claim can be decided with neutral principles of law, elevates form over substance—almost any ministerial dispute could be pled to avoid questions of religious doctrine. Taken to its logical endpoint, this approach would eviscerate the church autonomy doctrine.

IV. CONCLUSION

Our Court's disagreement in this case reflects the growing number of courts struggling to define the contours of the church autonomy doctrine in the wake of *Hosanna-Tabor*.[10] But under the panel's "neutral principles" approach, this confusion will quickly dissipate

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would entangle the civil courts in a church matter."); *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 400 (Tex. 2007) (holding that plaintiff's tort claims against her church, including defamation, could not be adjudicated by neutral principles without "imping[ing] upon [the church's] ability to manage its internal affairs").

[9] The panel decision states that "simply having a religious association on one side of the 'v' does not automatically mean a district court must dismiss the case or limit discovery." *Belya*, 45 F.4th at 630. But this is not a fair characterization of the church autonomy defense. *See Our Lady*, 140 S. Ct. at 2061. The charge that "the Dissent's view is that churches are generally immune from the litigation process" is also wrong. Statement at 6.

[10] The Concurrence notes that there is no circuit split on the questions raised in this case. Concurrence at 1. That may be true, but our closely divided Court today joins two other closely divided courts of appeals that have narrowly denied petitions for rehearing *en banc*, *see* Tucker, 36 F.4th 1021, *reh'g en banc denied*, 53 F.4th 620 (10th Cir. 2022); *McRaney*, 966 F.3d 346, *reh'g en banc*

as the church autonomy doctrine is reduced to a defense against liability only, eroding the First Amendment's protections for religious institutions. I respectfully dissent from the denial of rehearing *en banc*.

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denied, 980 F.3d 1066 (5th Cir. 2020); and another with internal tension in its own decisions, compare *Herx v. Diocese of Fort Wayne-S. Bend, Inc.*, 772 F.3d 1085, 1086, 1090 (7th Cir. 2014), *with McCarthy*, 714 F.3d at 975.

DENNY CHIN, *Circuit Judge*, statement in support of denial of rehearing *en banc*:[1]

In this case, defendants-appellants are individuals and entities affiliated with the Russian Orthodox Church Outside Russia ("ROCOR" and, collectively, "Defendants"). They appealed from three interlocutory orders of the district court: orders denying motions to dismiss, for reconsideration, and to bifurcate discovery or otherwise stay proceedings. Defendants argued that we had appellate jurisdiction over the interlocutory orders based on the collateral order doctrine, which allows for appellate review of an interlocutory order in certain limited circumstances. We disagreed, and held that the collateral order doctrine does not apply in the circumstances here. Accordingly, we dismissed the appeal. *See Belya v. Kapral*, 45 F.4th 621, 625 (2d Cir. 2022). A petition for rehearing *en banc* followed, and the Court now denies the petition.

For the reasons set forth in the panel decision and in Judge Lohier's concurrence in the denial of the petition (the "Concurrence"), I believe the Court has correctly denied the petition. I write to address certain arguments raised in Judge Park's dissent to the denial of rehearing *en banc* (the "Dissent").

First, the Dissent writes that "[t]his case arises from a minister's suspension by his church," and that the lawsuit "is styled as a defamation claim." Dissent

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[1] As a senior judge, I have no vote on whether to rehear a case *en banc*. See 28 U.S.C. 46(c); Fed. R. App. P. 35(a). As a member of the panel that decided the case that is the subject of the *en banc* order, however, I may file a statement expressing my views in the circumstances here, where an active judge has filed an opinion addressing that order.

at 1. The suggestion is that this case is not really a defamation case, but instead seeks to intrude on a church's autonomy by subjecting Defendants "to litigation over religious matters." *Id*. at 10. In fact, this is a defamation case and not a case over religious matters. If Belya's allegations are true -- and we must assume they are for now -- this is, as the first amended complaint (the "Complaint") declares, "a case of egregious defamation." J. App'x at 87. If the allegations are true, Defendants made public accusations that Belya forged and fabricated certain documents, including accusations that Belya forged the signature of the "ruling bishop" of ROCOR onto two letters, that he fabricated or otherwise improperly obtained official letterhead, and that he falsely affixed to the letters what appeared to be the ruling bishop's official seal. *See id*. at 95-97. The allegation that Belya committed forgery was posted on the church's social media site by one or more of the Defendants and was re-posted and circulated by religious news outlets and publications. *Id*. at 98.

Simple, non-ecclesiastical factual questions are presented: Did Belya forge the letters in question? Or did the ruling bishop actually sign the letters? Were the letters on the ruling bishop's official letterhead? Were the letters stamped with the purported signatory's official seal? Or were the purported letterhead and stamps a fabrication? These are factual questions that a fact-finder could answer without delving into matters of faith and doctrine.

Significantly, the Complaint seeks only damages (and attorney's fees and costs) and not injunctive or declaratory relief. The Complaint does not seek an order declaring that Belya was in fact elected to the position of Bishop of Miami or an injunction requiring

Defendants to install him into that or any other position; nor does it seek to vacate Belya's suspension from the church. *See Belya v. Hilarion*, No. 20-CV-6597, 2021 WL 1997547, at *4 (S.D.N.Y. May 19, 2021) (district court noting that "Belya does not ask this Court to determine whether his election was proper or whether he should be reinstated to his role as Bishop of Miami"). Rather, the Complaint asserts only three defamation claims and a fourth claim for vicarious liability related to the defamation claims, and it seeks only damages. This is, indeed, a defamation case.

Second, the Dissent refers to "the district court's denials of Defendants' church autonomy defenses." Dissent at 9-10. The district court has not, however, denied Defendants' religious autonomy defenses and it has not rejected the application of the church autonomy doctrine. To the contrary, the district court specifically recognized that issues could arise that it "would not consider" under the doctrine. *Belya*, 2021 WL 1997547, at *4. Indeed, the district court explicitly stated that under the doctrine of ecclesiastical abstention it would not consider a request to install Belya as the Bishop of Miami. *Id.*

In other words, the Dissent's assertion that "the panel decision categorically denies immediate appealability of any church autonomy defense, no matter what the facts might be," Dissent at 17 n. 3, is simply not correct. Where a district court in fact rejects the church autonomy defense and injects itself into matters of church governance, such an order might indeed be immediately appealable. But that is not the situation before us. Rather, as we recognized, the district court here did not rule on the merits of the church autonomy defense or preclude its future invocation. *See*

Belya, 45 F.4th at 631; *see also* Concurrence at 2-3. Instead, as further explained in the district court's order entered July 27, 2021, denying Defendants' request to bifurcate discovery or otherwise stay proceedings, the district court ruled that it would "not pass judgment on the internal policies and or determinations of [ROCOR]," and recognized that it would not "be able to under the doctrine of ecclesiastical abstention." J. App'x at 147. As the district court's orders make clear, Defendants may indeed invoke the defense at a later point in the litigation if it becomes apparent that further inquiry and litigation will implicate church autonomy. At that point, the scope of Belya's claims and discovery might have to be limited and dismissal of the lawsuit might even be warranted. The rulings do not bar or decide the merits of the church autonomy defense, and they are not a final rejection of the defense because Defendants may assert it during discovery or later in the course of the lawsuit. *Cf. Abney v. United States*, 431 U.S. 651, 659 (1977) (holding that an order denying a motion to dismiss an indictment on double jeopardy grounds could be appealed under the collateral order doctrine because such an order constitutes "a complete, formal, and, in the trial court, final rejection of a criminal defendant's double jeopardy claim").[2]

In similar circumstances, the Seventh Circuit also declined to find appellate jurisdiction under the collateral order doctrine. When the diocese in that case

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[2] For example, if, as the litigation proceeds, Belya is unable to prove the falsity of the accusations, the Complaint will be dismissed without any inquiry into church doctrine or governance. If he does prove the falsity of the accusations, the district court at that point will determine whether Belya's claims can be further litigated without intrusion into the church's autonomy.

sought appellate review of the district court's order denying summary judgment for the diocese on a sex-discrimination claim, the Seventh Circuit dismissed the appeal for lack of jurisdiction. *See Herx v. Diocese of Fort Wayne-South Bend, Inc.*, 772 F.3d 1085, 1091-92 (7th Cir. 2014). The Seventh Circuit reasoned that it did not have appellate jurisdiction because the district court "ha[d] not ordered a religious question submitted to the jury for decision," and in fact the district court "promised to instruct the jury not to weigh or evaluate the Church's doctrine." *Id.* at 1091; *cf. McCarthy v. Fuller*, 714 F.3d 971, 975-76 (7th Cir. 2013) (holding that an order was collaterally appealable because it sent the religious question of whether party was a nun to the jury). Here, the district court has made clear that it will not pass judgment on religious questions or submit them to the jury should the case get that far. *See Belya*, 2021 WL 1997547, at *4.

Third, it is apparent that the Dissent's view is that churches are generally immune from the litigation process. But the church autonomy doctrine does not go that far. While the church autonomy doctrine provides religious associations with "independence in matters of faith and doctrine and in closely linked matters of internal government," *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020), it does not provide them with "a general immunity from secular laws," *id.* at 2060. To the contrary, "[t]he church autonomy doctrine is not without limits . . . and does not apply to purely secular decisions, even when made by churches." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657 (10th Cir. 2002). Rather, the church autonomy doctrine relates to matters of "religious doctrine," *McCarthy*, 714 F.3d at 975, or "religious belief," *Bryce*, 289 F.3d at 657 ("Before the

church autonomy doctrine is implicated, a threshold inquiry is whether the alleged misconduct is 'rooted in religious belief.'" (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972))).

The church autonomy doctrine is a defense and it does not provide a general immunity that serves as a jurisdictional bar to suit. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 195 n.4 (2012) ("[T]he [ministerial] exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar."); *cf. Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021, 1036-47 (10th Cir. 2022) (dismissing an interlocutory appeal for lack of jurisdiction and rejecting the argument that the ministerial exception "immunizes a religious employer *from suit* on employment discrimination claims"). The church autonomy doctrine surely does not give church officials free rein to falsely accuse someone of forgery and fraud. The district court's rulings allow discovery to proceed into secular components of Belya's claims of defamation, and they allow the litigation to proceed with respect to non-ecclesiastical factual questions that would not require a fact-finder to consider matters of faith or internal church government. *See generally Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108 (2009) (noting that "we have generally denied review of pretrial discovery orders," and holding that the collateral order doctrine did not permit appeal of disclosure orders adverse to attorney-client privilege) (internal quotation marks omitted). And, although the "interlocutory posture" of this appeal "complicate[s] our review, nothing "would preclude [ROCOR] from . . . seeking review in this Court when the decision is actually final." *Gordon Coll. v. DeWeese-Boyd*,

142 S. Ct. 952, 955 (2022) (Alito, J., concurring in denial of certiorari) (denying certiorari and permitting a case to go forward to discovery and trial, notwithstanding defendant's invocation of the church autonomy doctrine).

Fourth, the Dissent likens the church autonomy doctrine to the qualified immunity defense applicable to § 1983 claims. We agree, as the Dissent observes, that "both are rooted in foundational constitutional interests," and that "both are protections against the burdens of litigation itself." Dissent at 15. But qualified immunity is not a general immunity, and it does not insulate government officials from discovery and trial in every instance. Qualified immunity is an immediately appealable collateral order only "to the extent that it turns on an issue of law." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). Where there is a factual dispute, "an appellate court lacks jurisdiction to review a denial of qualified immunity," *Franco v. Gunsalus*, 972 F.3d 170, 174 (2d Cir. 2020), and, as happens every day of the week, government officials in many § 1983 cases are subject to discovery and even trial.

This case does not yet present any factual questions that implicate church doctrine, and thus this interlocutory appeal is not properly before this Court. *See McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 347, 349 (5th Cir. 2020) (reversing district court's order dismissing case under the ecclesiastical abstention doctrine because the district court's finding that "it would need to resolve ecclesiastical questions in order to resolve [plaintiff's] claims . . . was premature," as "it is not clear that any of [the anticipated factual] determinations will require

the court to address purely ecclesiastical questions"), *cert. denied*, 141 S. Ct. 2852 (2021). Defendants have not stipulated, even for purposes of appellate review, to the facts alleged by Belya; they have not admitted, for example, that Belya was falsely accused of forgery. Hence, we do not have appellate jurisdiction.

Finally, the Dissent argues that the panel's decision results in a "novel extension of the 'neutral principles' approach [that] is inconsistent with precedent and threatens to eviscerate the church autonomy doctrine." Dissent at 17. Under the "neutral principles" approach, so long as a court relies "exclusively on objective, well-established [legal] concepts," it may resolve a dispute even when parties are religious bodies. *Jones v. Wolf*, 443 U.S. 595, 602-03 (1979). The panel decision does not extend the law or deviate from precedent. Although the neutral principles of law approach was established in a church property case, *see id.*, we (and other courts) have applied it in other types of disputes. Indeed, in a copyright case involving dissemination of "a prayerbook widely used within the Lubavitch movement of Hasidic Judaism," we rejected the argument that the courts lacked jurisdiction over the dispute because of the church autonomy doctrine and held that:

> Courts may decide disputes that implicate religious interests as long as they can do so based on 'neutral principles' of secular law without undue entanglement in issues of religious doctrine.

Merkos L'Inyonei Chinuch, Inc. v. Otsar Sifrei Lubavitch, Inc., 312 F.3d 94, 99 (2d Cir. 2002) (citing *Jones*, 443 U.S. at 604); *see also, e.g., Moon v. Moon*, 833 F. App'x 876, 880 (2d Cir. 2020) (summary order)

(applying the neutral principles of law approach to plaintiff's defamation claim against a religious organization), *cert. denied*, 141 S. Ct. 2757 (2021); *McRaney*, 966 F.3d at 349 (holding that plaintiff's defamation claim against a church organization allows the court to "apply neutral principles of tort law" and is thus not barred by the ecclesiastical abstention doctrine).

Using neutral principles of law to resolve secular components of a dispute involving religious parties does not infringe on religious parties' independence. Indeed, the Supreme Court stated in *Jones* that it could not agree "that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority . . . even where no issue of doctrinal controversy is involved." 443 U.S. at 605.

* * *

The collateral order doctrine allows for appellate review of interlocutory orders if the ruling (1) is conclusive; (2) resolves important questions separate from the merits; and (3) is effectively unreviewable on appeal from the final judgment in the underlying action. *See Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 42 (1995); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). The Supreme Court has admonished that the class of collaterally appealable orders must remain "narrow and selective." *Will v. Hallock*, 546 U.S. 345, 350 (2006). Here, as we explained in the panel opinion, the district court's rulings are not conclusive, do not involve claims of right separate from the merits of the case, and would not be unreviewable on appeal after final judgment.

Therefore, the panel correctly held that this Court lacks jurisdiction to hear the appeal.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of September, two thousand twenty-two,

Before: Denny Chin,
Raymond J. Lohier, Jr.,
Beth Robinson,
Circuit Judges.

Alexander Belya,

Plaintiff - Appellee,

v.

Hilarion Kapral, AKA Metropolitan Hilarion, Nicholas Olkhovskiy, Victor Potapov, Serge Lukianov, David Straut, Alexandre Antchoutine, George Temidis, Serafim Gan, Boris Dmitrieff, Eastern American Diocese of the Russian Orthodox Church Outside of Russia, The Synod of Bishops of the Russian Orthodox Church Outside of Russia, Mark Mancuso,

Defendants - Appellants.

AMENDED JUDGMENT

Docket No. 21-1498

The appeal in the above captioned case from orders of the United States District Court for the Southern District of New York was argued on the district court's

record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Belya's July 15, 2021, motion to dismiss is GRANTED. The appeal is DISMISSED, and the temporary stay granted September 2, 2021, is VACATED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

28 U.S.C. 1291 provides:

§ 1291. Final decisions of district court

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Sept. 3, 2019, Clergy Letter
Belya v. Kapral
No. 20-cv-6597, Dkt. 38

ВОСТОЧНО-АМЕРИКАНСКАЯ ЕПАРХІЯ
Русская Православная Церковь Заграницей

EASTERN AMERICAN DIOCESE
Russian Orthodox Church Outside of Russia
210 Alexander Avenue · Howell, NJ 07731 USA
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No: 09.72.19
August 21/September 3, 2019
Holy Apostle Thaddeus of the Seventy

To His Eminence, the Very Most Reverend
HILARION
Metropolitan of Eastern America & New York
& the Members of the Synod of Bishops
of the Russian Orthodox Church Outside of Russia

Your Eminences, Your Graces!

The confirmation by the Holy Synod of the Russian Orthodox Church of "the election of Archimandrite Alexander (Belya) as Bishop of Miami, vicar of the Eastern American diocese" and the preliminary study of the latest complaints received from Florida concerning him, resulted in serious discussion at the meeting of the Diocesan Council of the Eastern American Diocese, which was held on Tuesday, September 3rd of this year. With a sense of responsibility for our Church life, we feel we must respectfully and deferentially bring forward this concern and report the following to the Synod of Bishops.

1) It turns out that Metropolitan Hilarion of Eastern America & New York knew nothing about the written appeals directed to Moscow containing a request for confirmation of the "episcopal election" of the Archimandrite by the Synod of Bishops (which never took place). The Diocesan Council members have examined the content of these letters, which, as stated by His Eminence, were drawn up in an irregular manner. For example, the "request" does not contain the appropriate citation from the decision of the Synod of Bishops, nor does it contain a biography of the cleric "elected."

2) The letter submitted with the signature of Archbishop Gabriel of Montreal & Canada raises doubts, as well, as it was not issued numbered or dated. In addition, it was not printed on the official letterhead of the Most Reverend Gabriel. Nevertheless, we understand that the Holy Synod, having received the appeal supposedly from our First Hierarch, had no reason to doubt the authenticity of the written request of His Eminence.

3) Unfortunately, in the course of the initial examination of the complaints against Archimandrite Alexander (Belya), facts were confirmed about his breaking of the seal of Confession, and of his use of information obtained during Confession and confidential discussions for the purpose of denigrating parishioners and of controlling them.

4) To date, the members of the Diocesan Council do not have any information regarding the ownership of the property of the Cathedral of

Blessed Matrona of Moscow in Miami and St. Nicholas Monastery, both headed by Archimandrite Alexander. Are they organized according to the norms of the Russian Church Abroad and the legal requirements applicable to "non-profit" organizations? Do the cathedral parish and the monastery conform to ROCOR's "Normal Parish Bylaws" and the "Statutes for Monasteries" respectively? We are disturbed by the total lack of financial (and other) accountability. It is known that the commercial activity of the rector of the Cathedral of Blessed Matrona of Moscow in Miami and of its church warden, Fr. Alexander's brother Ivan, has for many years caused many questions to be asked among benefactors and parishioners.

5) Preliminary study of all of the complaints has shown a whole range of unseemly behavior of both the rector and church warden, public criticism of the Hierarchy, and widespread violation of legal norms, regulatory and criminal, requiring specific investigation of their activity.

From all this, it is clear that not only are the above-mentioned petition letters invalid, but the candidacy of Archimandrite Alexander (Belya) for the episcopacy cannot possibly be given serious consideration, due to the current situation in the Florida Deanery and the submission of so many serious complaints against him. Thereby, we humbly appeal to our ruling hierarch to suspend Archimandrite Alexander (Belya) from performing any clerical functions, to temporarily remove him and the warden of the Cathedral of the Blessed Matrona of Moscow in Miami and St. Nicholas

Monastery from all duties and church obediences until the completion of the investigation, and, to formally open such an investigation. We ask the eminent members of the Synod of Bishops to remove the candidacy of Archimandrite Alexander (Belya) permanently and to never consider it again in the future. We also ask that the Synod to ascertain the circumstances of the confirmation of the non-existent "election."

We ask for your holy prayers and blessing of our efforts for the glory of God and for the benefit of our Church life. We remain the unworthy and prayerful servants of Your Eminences and Graces,

/s/ +Nicholas Olhovsky
Bishop of Manhattan
Vicar of the Eastern American Diocese

/s/ Rev. Victor Potapov
Archpriest Victor Potapov
Dean of the Capital Region

/s/ Archpriest David Straut
Archpriest David Straut
Rector of St. Elizabeth the New-Martyr Church

/s/ Archpriest Mark Mancuso
Archpriest Mark Mancuso
Dean of the Carolinas & Tennessee

/s/ Fr. Serge Lukianov
Archpriest Serge Lukianov
Dean of New Jersey

/s/ V. Rev. Alexandre Antchoutine
Archpriest Alexandre Antchoutine
Dean of Long Island & the Hudson Valley

/s/ Fr. George Temidis
Priest George Temidis
Recording Secretary

Oleg Rivkin, Esq. (OR 1331)
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA,

Plaintiff,

-against-

HILARION KAPRAL, a/k/a METROPOLITAN HILARION; NICHOLAS OLKHOVSKIY; VICTOR POTAPOV; SERGE LUKIANOV; DAVID STRAUT; ALEXANDRE ANTCHOUTINE; MARK MANCUSO; GEORGE TEMIDIS; SERAFIM GAN; PAVEL LOUKIANOFF; BORIS DMITRIEFF; EASTERN AMERICAN DIOCESE OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA; THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, and JOHN DOES 1 through 100,

Defendants.

INDEX NO: 20 Civ. 6597 (VM)

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff ALEXANDER BELYA by and though his attorneys, Rivkin Law Group pllc, 800 Third Avenue, New York, New York 10022, as and for his First Amended Complaint against Defendants, HILARION KAPRAL a/k/a METROPOLITAN HILARION, NICHOLAS OLKHOVSKIY, VICTOR POTAPOV, SERGE LUKIANOV, DAVID STRAUT, ALEXANDRE ANTCHOUTINE, MARK MANCUSO, GEORGE TEMIDIS, SERAFIM GAN, PAVEL LOUKIANOFF, BORIS DMITRIEFF, EASTERN AMERICAN DIOCESE OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, and JOHN DOES 1 through 100, states as follows:

INTRODUCTION

This is a case of egregious defamation. The Plaintiff, Alexander Belya, an Orthodox Christian archimandrite, was elected by the Synod of Bishops in New York to the position of Bishop of Miami. After his appointment was confirmed by the Synod in Moscow, Plaintiff was publicly and falsely accused by a group of dissenters of forging documents which evidenced his appointment to the position of Bishop of Miami, including the signature of the head of the Synod in New York. The charge of forgery was then widely and deliberately disseminated within the Christian Orthodox community, forever destroying Plaintiff's good name and reputation.

Few things are as damaging to the reputation of a religious leader – particularly one who, like Plaintiff, has devoted his entire life to the Church – than the charge that he is a forger and a swindler. That is precisely what the Defendants had done, publicly, and

in the most calculated and deliberate manner imaginable.

Although this case involves religious institutions and persons of the cloth, this is a straightforward defamation action, the resolution of which entails no involvement whatever in religious dogma or practice. The threshold issue in this action is whether the documents Plaintiff is alleged to have forged are in fact genuine, as has already been confirmed by a forensic expert. Other issues are Defendants' knowledge of the falsity of their charge of forgery, the wide-spread dissemination of the defamatory statements and Plaintiff's damages.

PARTIES AND JURISDICTION

1. Plaintiff Alexander Belya (also, Oleksandr Belya) ("Alexander") is an Archimandrite of the Greek Orthodox Church of America and is the spiritual head of the Cathedral of St. Matrona of Moscow, located in Dania Beach, Florida, as well as of St. Nicholas Monastery, located in Fort Myers, Florida. Plaintiff resides in Dania Beach, Florida.

2. Defendant Eastern American Diocese of the Russian Orthodox Church Outside of Russia ("EAD") is a diocese within The Russian Orthodox Church Outside of Russia ("ROCOR") encompassing the eastern part of the United States, including New York. ROCOR is a semi- autonomous part of the Russian Orthodox Church, headquartered in New York City, with jurisdiction over approximately 400 parishes and an estimated membership of more than 400,000 parishioners. Defendant EAD is a 501(c)(3) non-profit organization.

3. Defendant The Synod of Bishops of the Russian Orthodox Church Outside of Russia ("ROCOR Synod") is a 501(c)(3) non-profit organization that functions as the executive arm of ROCOR, headquartered in New York, New York. According to ROCOR Synod's website, ROCOR Synod has thirteen (13) members and is headed by Defendant Hilarion.

4. Defendant Hilarion Kapral (also, Igor Kapral) a/k/a Metropolitan Hilarion ("Hilarion"), is the head of ROCOR, EAD and ROCOR Synod, having the title of Metropolitan Hilarion of Eastern America and New York, and First Hierarch of the Russian Orthodox Church Outside of Russia. Hilarion resides in New York. According to EAD's website, Hilarion is the "Ruling Bishop" of Defendant EAD.

5. Defendant Nicholas Olkhovskiy ("Olkhovskiy") is the Secretary of Defendant EAD and a member of the EAD's Diocesan Council, which oversees all of the operation of the diocese. Olkhovskiy is a bishop of ROCOR, having the title of Bishop of Manhattan and Vicar Bishop of the Eastern American Diocese and New York. Olkhovskiy resides in New York.

6. Defendant Victor Potapov ("Potapov") is an archpriest within the EAD, having the title of the Dean of the Capital Region. Potapov is also a member of the EAD's Diocesan Council. Potapov resides in Tacoma Park, Maryland.

7. Defendant Serge Lukianov ("Lukianov") is an archpriest within the EAD, having the title of the Dean of New Jersey. Lukianov is also a member of the EAD's Diocesan Council. Lukianov resides in New Jersey.

8. Defendant David Straut ("Straut") is an archpriest within the EAD, having the title of Rector of St. Elizabeth the New-Martyr Church. Straut is also a member of the EAD's Diocesan Council. Straut resides in Sommerville, New Jersey.

9. Defendant Alexandre Antchoutine ("Antchoutine") is an archpriest within the EAD, having the title of the Dean of Long Island & the Hudson Valley. Antchoutine is also a member of the EAD's Diocesan Council. On information and belief, Antchoutine resides in Glen Cove, New York.

10. Defendant Mark Mancuso ("Mancuso") is an archpriest within the EAD, having the title of the Dean of the Carolinas and Tennessee. Mancuso is also a member of the EAD's Diocesan Council. Mancuso resides in North Carolina.

11. Defendant George Temidis ("Temidis") is a priest within the EAD, and is a member of the EAD's Diocesan Council. Temidis resides in Wallkill, New York.

12. Defendant Serafim Gan ("Gan") is an archpriest within the EAD and the rector of St. Seraphim of Sarov Memorial Church in Sea Cliff, New York. Gan is also the Chancellor of the ROCOR Synod, in charge of all of its administrative functions. Gan resides in New York, New York.

13. Defendant Pavel Loukianoff (also known as Peter) ("Loukianoff") is a member of ROCOR Synod, and the head of the Diocese of Chicago and Mid-America, having the title of Archbishop Peter of Chicago and Mid-America. On information and belief, Loukianoff resides in Illinois.

14. Defendant Boris Dmitrieff (also known as "Kyrill") ("Dmitrieff") is a member of ROCOR Synod, having the title of the Second Deputy of the President of the Synod of Bishops, as well as the Secretary of the Synod of Bishop. Dmitrieff resides in California.

15. Defendants John Does 1 through 100 are persons whose names are unknown at the present time who committed wrongful and actionable acts against Plaintiff complained of herein.

16. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction). The action is between citizens of different states and the matter in controversy exceeds $75,000.

17. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b)(2) and (3). A substantial part of the events giving rise to Plaintiff's claims occurred in this District. Each of the Defendants is subject to the Court's personal jurisdiction under C.P.L.R. 301 and/or 302.

18. Plaintiff is a citizen and resident of the State of Florida.

19. Defendant EAD is an 501(c)(3) non-profit organization with its principal place of operations in New York, New York. EAD operates over thirty Russian Orthodox churches and monasteries in New York, and has done so since its founding in 1934. EAD's "ruling bishop" is Defendant Hilarion, whose seat ("see") is in New York. Personal jurisdiction over Defendant EAD is proper under C.P.L.R. 301, as EAD has engaged in a continuous and systematic course of doing business in New York so that a finding of its presence in this jurisdiction for all purposes is warranted.

20. Defendant ROCOR Synod is a 501(c)(3) non-profit organization with its principal place of operations in New York, New York.

21. Personal jurisdiction over each of the non-domiciliary individual Defendants is proper under C.P.L.R 302(1), as each such Defendant transacts business within the State of New York and provides services within the State of New York, and the causes of action asserted herein arise out of such business and services.

FACTS

22. Plaintiff Alexander is an Archimandrite of the Greek Orthodox Church of America.

23. During the timeframe encompassing the events relevant to this Amended Complaint, Alexander was an archimandrite of the Russian Orthodox Church. He held the position of the Dean of the Florida District of ROCOR and had for nine years served as a priest within the Russian Orthodox Church. Alexander's work as both a missionary and an administrator had earned him a number of awards and accolades from ROCOR and other local Orthodox churches.

24. Prion to his arrival to the United States, Alexander served as an archimandrite of the Russian Orthodox Church in the Czech Republic and Slovakia. He came to this country following Hilarion's request to the Archbishop of Prague in September 2011 to permit Alexander *"to join the clergy of Eastern American and New York Dioceses . . and allow him canonical excardination."*

25. In August 2018, Alexander was nominated by the ROCOR Synod for the position of the Vicar of

Florida. On August 15, 2018, Alexander was informed by Hilarion, in his capacity as the head of ROCOR, that *"[a]t the last meeting of the Synod of Bishops we proposed your candidacy for the position of the Vicar of Florida."* The letter praised Alexander for the *fact that "[during the seven years of [his] service … the largest church in the region – the Cathedral of St Matrona of Moscow in Miami – has been shining magnificently…"* Hilarion further wrote that while *"[m]any Bishops have supported [the nomination] some are still undecided and want to learn more about you in personal communication."*

26. On December 6-10, 2018, the ROCOR Synod held a meeting in New York. During that meeting, Alexander was elected by a majority of the Bishops to the position of Bishop of Miami.

27. Hilarion personally congratulated Alexander on his election as the Bishop of Miami.

28. By letter dated December 10, 2018 ("December 10 Letter"), Hilarion informed Kirill, the Patriarch of Moscow and All Russia of Alexander's election as the Bishop of Miami, as follows:

> On December 6-10, the meeting of the Synod of Bishops of the Orthodox Church Outside of Russia in expanded format took place in New York. I am happy to share the joyful news – by a majority vote two Vicar Bishops have been elected to the diocese entrusted to me. They are most worthy candidates.
>
> …
>
> Archimandrite Alexander (Belya) – the hegumen of Stavropegic Monastery of St.

> Nicholas in Fort Myers, the Archpriest of the Cathedral of St. Matrona of Moscow in Miami, the head of the Diocese of Florida, elected as the Bishop of Miami.

29. The December 10 Letter was signed by Hilarion and stamped with his official seal.

30. Under the rules governing the relationship between the Russian Orthodox Church in Russia and ROCOR (who, during the Soviet era, functioned as separate entities), elections of ROCOR Bishops must be approved by the Holy Synod of the Russian Orthodox Church, located in Moscow ("Moscow Synod"), the head of which is Patriarch Kirill. Thus, Hilarion's December 10 Letter to Kirill concluded as follows: ***"In the nearest future Your Holiness will be sent requests for the confirmation of the candidates at the next meeting of the Holy Synod of the Russian Orthodox Church."***

31. Also on December 10, 2018, Hilarion informed Alexander of the election results at the ROCOR Synod meeting. Hilarion wrote to Alexander as follows:

> I hereby inform you that at the meeting of the Synod of Bishops of the Russian Orthodox Church Outside of Russia on December 6 this year, your candidacy has been considered and by a majority vote you have been elected the Vicar Bishop of the Eastern American diocese for the state of Florida. The members of the Synod pointed out the need to preserve the traditions of the Russian Church Outside of Russia, namely:
>
> 1. The calendar published by the Cathedral the Julian Calendar dates should be included.

> 2. To discontinue the practice of general confession at the Cathedral of St. Matrona of Moscow in Miami.
>
> 3. The Cathedral of St. Matrona of Moscow should be registered according to the Statute of the Russian Orthodox Church Outside of Russia.
>
> 4. The Easter service should be performed in white vestments.
>
> After your correction of all the comments, the date of episcopal consecration will be set.

32. The ROCOR Synod appointed Archbishop Gavriil of Montreal and Canada ("Gavriil") to report on the implementation of the "corrections" noted in Hilarion's December 10 letter to Alexander.

33. In early January 2019, Gavriil reported to Hilarion, as follows:

> I have had the opportunity to check the comments indicated at the Synod and hereby confirm that all of them have been corrected within the shortest possible time. In this regard, I do not see any obstacles to approve the date of consecration of Archimandrite Alexander (Belya), elected as the Vicar Bishop for Miami, of which I hereby inform Your Eminence.

34. Having obtained a confirmation from Gavriil that all "corrections" have been implemented, Hilarion, on January 11, 2019, wrote to Patriarch Kirill in Moscow as follows ("January 11 Letter"):

> I hereby respectfully inform Your Holiness that at the latest expanded meeting of the

> Archbishop Synod of the Russian Orthodox Church Outside of Russia (December 6-10, 2018) Archimandrite Alexander (Belya) – hegumen of Stavropegic Monastery of St. Nicholas in Fort Myers, the Archpriest of the Cathedral of St. Matrona of Moscow in Miami, the head of Diocese of Florida district – was elected as Bishop of Miami, Vicar of the Eastern American Diocese.
>
> At the same meeting, the member of the Synod recommended Archimandrite Alexander correct several comments. Since Father Alexander has corrected everything within the shortest time possible, I hereby ask Your Holiness to approve this candidacy at the next meeting of the Holy Synod of the Russian Orthodox Church.

35. The January 11 Letter was signed by Hilarion and stamped with his official seal.

36. In July 2019, Alexander was contacted by the Moscow Patriarchate and invited to an audience with Patriarch Kirill. The audience took place on July 16, 2019. During the audience, Alexander responded to Kirill's questions, including those that concerned matters raised in Hilarion's letter of December 10, 2018. At the conclusion of the audience, Kirill indicated that the Moscow Synod would approve Alexander's appointment as Bishop of Miami.

37. On August 30, 2019, the decision of the Moscow Synod confirming its approval of the decision of the ROCOR Synod appointing Alexander as Bishop of Miami was published in the official website of the Moscow Patriarchate (patriarchia.ru).

38. On the same day, August 30, 2019, Hilarion, in a telephone conversation with Alexander, congratulated him on the confirmation by the Moscow Synod of his election as Bishop of Miami.

39. Throughout the entire nomination-election-confirmation period, there existed a group of detractors within ROCOR who vehemently opposed Alexander's appointment as the Bishop of Miami (the "Olkhovskiy Group"). The Olkhovskiy Group was led by Defendant Olkhovskiy, whose position as the Bishop of Manhattan and Vicar Bishop [*i.e.,* the head] of the Eastern American Diocese and New York – the Defendant EAD – is one of substantial prominence and influence within ROCOR. The Olkhovskiy Group was not numerous enough to successfully block Alexander's nomination and election at the ROCOR Synod level. So they resorted to falsehood, intimidation, and fraud.

40. The first indication that persons within ROCOR were attempting to thwart Alexander's appointment was that, on August 31, 2019, in reporting the results of the Moscow Synod's meeting, ROCOR's official online publication (synod.com) omitted any reference to the confirmation of Alexander as Bishop of Miami.

41. As events unfolded, it became clear that, within days of the August 30 publication of the Moscow Synod confirmation of Alexander's appointment, the Olkhovskiy Group – which included Defendants Olkhovskiy, Potapov, Lukianov, Straut, Antchoutine, Mancuso, Temidis, Gan, Loukianoff and Dmitrieff – put pressure on Hilarion to undo Alexander's appointment. Hilarion succumbed to the pressure.

42. On September 3, 2019, Defendants Olkhovskiy, Potapov, Lukianov, Straut, Antchoutine, Mancuso and Temidis, all members of the EAD's Diocesan Council and writing under the letterhead of Defendant EAD, wrote a letter to the ROCOR Synod and Hilarion ("September 3 Letter"). The September 3 Letter stated in part as follows:

> The confirmation by the Holy Synod of the Russian Orthodox Church of "the election of Archimandrite Alexander (Belya) as Bishop of Miami, vicar of the Eastern American diocese" and the preliminary study of the latest complaints received from Florida concerning him, resulted in serious discussion at the meeting of the Diocesan Council of the Eastern American Diocese, which was held on Tuesday, September 3rd of this year. With a sense of responsibility for our Church, we feel we must respectfully and deferentially bring forward this concern and report the following to the Synod of Bishops.
>
> 1) It turns out that Metropolitan Hilarion of Eastern America & New York **knew nothing about the written appeals directed to Moscow** containing a request for confirmation of the "episcopal election" of the Archimandrite by the Synod of Bishops (**which never took place**). The Diocesan Council members have examined the content of these letters, which, **as stated by His Eminence**, were drawn up in an irregular manner. For example, the "request" does not contain the appropriate citation from the decision of the Synod of Bishops, nor does it contain a biography of the cleric "elected."

> 2) The letter submitted with the signature of Archbishop Gabriel of Montreal & Canada **raises doubts as well**, as it was not issued numbered or dated. In addition, it was not printed on the official letterhead of the Most Reverend Gabriel. Nevertheless, we understand that the Holy Synod, having received the appeal supposedly from our First Hierarch, had no reason to **doubt the authenticity** of the written request of His Eminence.
>
> …
>
> From all this is it clear that not only are the above-mentioned petition letters invalid, but the candidacy of Archimandrite Alexander (Belya) for the episcopacy cannot possibly be given serious consideration, due to the current situation in the Florida Deanery and the submission so many serious complaints against him. Thereby, we humbly appeal to our ruling hierarch to suspend Archimandrite Alexander (Belya) from performing any clerical functions, to temporarily remove him and the warden of the Cathedral of the Blessed Matrona of Moscow in Miami and St. Nicholas Monastery from all duties and church obediences until the completion of the investigation, and, to formally open such investigation. We ask the eminent members of the Synod of Bishops to remove the candidacy of Archimandrite Alexander (Belya) permanently and to never consider it against in the future. We also ask that the Synod to ascertain the circumstances of the confirmation of the **non-existent "election."**

(Emphasis added).

43. The September 3 Letter thus accused Alexander of falsifying Hilarion's signature on Hilarion's December 10 Letter to Patriarch Kirill, in which Hilarion informed Kirill of Alexander's election by the ROCOR Synod to the position of Bishop of Miami.

44. The September 3 Letter also accused Alexander of falsifying the January 11 Letter, in which Hilarion again informed Patriarch Kirill of Alexander's election by the ROCOR Synod to the position of Bishop of Miami, and requested that the Moscow Synod "approve this candidacy at the next meeting of the Holy Synod of the Russian Orthodox Church."

45. The September 3 Letter also accused Alexander of fabricating the results of the ROCOR Synod's election on December 6-10, 2018, by describing the election as "non-existent," and saying that it "never took place."

46. The September 3 Letter also accused Alexander of falsifying the letter from Archbishop Gavriil of Montreal and Canada to Hilarion, in which he confirmed that all of the questions posed to Alexander have been "corrected" and stated that he saw "no obstacles to approve the date of consecration."

47. In sum, the September 3 Letter labeled Alexander a forger and a swindler of the most egregious kind.

48. The September 3 Letter also made clear that Hilarion, the author and signer of the December 10 and January 11 Letters, went along, consented to, authorized and participated in the scheme to deny his authorship of and signatures on the December 10 and January 11 Letters, and thereby publicly falsely denounce Alexander as a forger and swindler.

49. The September 3 Letter was sent to the ROCOR Synod in New York City. On information and belief, every member of the ROCOR Synod (which, according to its website, numbers thirteen) received a copy of the letter.

50. On information and belief, the September 3 Letter was also forwarded by members of the Olkhovskiy Group and by members of the ROCOR Synod to other members of ROCOR, including parishes, churches, monasteries and other institutions within ROCOR, as well as to online media outlets.

51. After the issuance of the September 3 Letter, Alexander was denied all access to Hilarion, which was controlled by Defendants Olkhovskiy and Gan. Numerous requests by Alexander and members of his congregation to meet with Hilarion were summarily denied by Hilarion's office.

52. By letter dated the same day, September 3, 2019, Defendant Hilarion issued an order to Alexander suspending him from performing his duties and functions as the spiritual leader of his parish.

53. As was intended by Olkhovskiy and his cohort, it didn't take long for the false accusations to spread to the Internet. Indeed, Defendant Gan, the Chancellor of the ROCOR Synod, and one of the drafters of the September 3 Letter, himself posted on his church's social media site on September 16, 2019, as follows:

> Alleged ROCOR episcopal nominee Fr. Alexander Belya, already confirmed by the ROC Synod, had not been elected by the ROCOR Synod and a letter informing about his nomination sent to Moscow was a forgery. The

> priest in question was suspended, internal investigation was started.

54. *Orthodox News*, a major aggregator of news in Eastern Orthodox Christianity, with thousands of followers in the Orthodox Christian world, posted online:

> Alleged #ROCOR episcopal nominee Fr. Alexander Belya, already confirmed by the #ROC # Synod, had not been elected by the ROCOR Synod and a letter informing about his nomination sent to #Moscow was a forgery. The #priest in question was suspended, internal investigation was started.

55. *Helleniscope*, another major Orthodox Christian publication, wrote on its website:

> This past summer, Alexander also forged a letter from His Eminence Metropolitan Hilarion (Kapral), the First Hierarch of ROCOR, attempting to get himself confirmed by the Holy Synod of the Moscow Patriarchate as a bishop-elect for ROCOR in America.

56. Numerous Internet posts and articles followed, many quoting unnamed "sources" at ROCOR. Soon the charge that Alexander was a forger – and a forger of the signature of the head of ROCOR himself, no less! – spread like wildfire on the Internet. Every Orthodox Christian publication reported it. These spilled into social media platforms, like Facebook and Twitter, of churches, religious organizations and parishioners.

57. On September 14, 2019, Defendant Hilarion issued a public decree suspending Alexander from his priestly duties, pending an "investigation," and

prohibiting all members of Alexander's parish from writing letters and appeals to Alexander, and threatening with "sanction" those who did not obey.

58. Alexander's reputation and good name – which he had spent a lifetime building – was thus ruined. Having no future within ROCOR and, more importantly, being unable to serve his parish as a ROCOR priest, Alexander left ROCOR and joined the Greek Orthodox Church, ultimately becoming an Archimandrite of the Greek Orthodox Church of America.

FACTS RELEVANT TO PERSONAL JURISDICTION OVER NON-DOMICILIARY DEFENDANTS

59. New York City was the epicenter of the Olkhovskiy Group's scheme set forth in the Amended Complaint.

60. The scheme began by pressuring Defendant Hilarion to disavow his authorship of, and his own signature on, the December 10 and January 11 letters and to acquiesce to the schemers' plan to charge Alexander with forging the letters.

61. This pressure campaign, in which all Olkhovskiy Group members participated in person and by phone, was applied to Defendant Hilarion at his offices and residence in New York City between August 30 and September 3. During this three-day period, numerous phone calls were exchanged between Defendant Olkhovskiy, who spearheaded the scheme, and out- of-state Defendants, formulating and coordinating the scheme. During this period, Olkhovskiy and Gan drafted what became the September 3 Letter.

62. On information and belief, the drafting of the September 3 Letter took place in New York. From there it was disseminated to other Defendants.

63. On information and belief, out-of-state Defendants communicated their approval and their willingness to go along with the scheme to Olkhovskiy (and others) in New York.

64. The meeting of the Diocesan Council in which the September 3 Letter was discussed, finalized and adopted, took place in New York, with Defendant Hilarion, in his capacity as the Council's president, in attendance. The out-of-state Defendants participated in the meeting either in person or telephonically. The signatures of the Defendants on the September 3 Letter were affixed either in New York or forwarded to New York by the Defendants. The September 3 Letter was directed to the ROCOR Synod, located in New York, with the intent that it be disseminated from there, including in New York.

FIRST CLAIM FOR RELIEF
(Defamation Against All Defendants)

65. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

66. The defamatory statements which are the predicate for the claim of defamation that are contained in the September 3 Letter ("the Defamatory Statements") are the following:

a) That Plaintiff falsified and forged Defendant Hilarion's signature on Hilarion's December 10, Letter to Patriarch Kirill;

b) That Plaintiff fabricated the content of the December 10 Letter from Defendant Hilarion to

Patriarch Kirill, specifically, that Plaintiff had been elected by the ROCOR Synod to the position of Bishop of Miami;

c) That Plaintiff transmitted the purportedly fabricated and forged December 10 Letter to Patriarch Kirill;

d) That Plaintiff falsified and forged Defendant Hilarion's signature on the January 11 Letter to Patriarch Kirill;

e) That Plaintiff fabricated the content of the January 11 Letter to Patriarch Kirill, specifically, that ROCOR Synod had elected Plaintiff to the position of Bishop of Miami, and that Hilarion was requesting that the Moscow Synod "approve this candidacy at the next meeting of the Holy Synod of the Russian Orthodox Church;"

f) That Plaintiff transmitted the purportedly fabricated and forged January 11 Letter to Patriarch Kirill;

g) That Plaintiff falsified and forged the letter from Archbishop Gavriil of Montreal and Canada to Hilarion, which confirmed that all of the questions posed to Plaintiff had been "corrected," and stated that there were "no obstacles to approve the date of consecration."

h) That Plaintiff duped Patriarch Kirill and the Moscow Synod into confirming his election to the position of Bishop of Miami.

67. Each of the Defamatory Statements is false.

68. Each of the Defendants knew of the falsity of the Defamatory Statements at the time of their drafting and publication, or acted with reckless

disregard for the truth, and each Defendant intended that the Defamatory Statements be published and disseminated.

69. The September 3 Letter containing the Defamatory Statements was signed by Defendants Olkhovskiy, Potapov, Lukianov, Straut, Antchoutine, Mancuso, Temidis, each of whom knowingly and deliberately participated in, encouraged and approved the drafting and publication of the Defamatory Statements.

70. Defendant Hilarion participated in the drafting and publication of the September 3 Letter containing the Defamatory Statements. Indeed, the key and necessary predicate for the publication and dissemination of the September 3 Letter was Hilarion's willingness to falsely deny that he had authored and signed both the December 10 Letter and the January 11 Letter to Patriarch Kirill. The Olkhovskiy Group's scheme to undo Plaintiff's appointment as Bishop of Miami by means of the September 3 Letter would not have gotten off the ground but for Hilarion's willingness to lie about the authenticity his own letters. Hilarion was thus the key and willing participant in the drafting and publication of the Defamatory Statements.

71. Defendant Loukianoff participated in the drafting of the September 3 Letter containing the Defamatory Statements and encouraged and approved its publication. By taking part in the composition and publication of the Defamatory Statements, Defendant Loukianoff is liable for defamation complained of herein.

72. Defendant Dmitrieff participated in the drafting of the September 3 Letter containing the Defamatory Statements and encouraged and approved its publication. By taking part in the composition and publication of the Defamatory Statements, Defendant Dmitrieff is liable for defamation complained of herein.

73. Defendant Gan participated in the drafting of the September 3 Letter containing the Defamatory Statements and encouraged and approved its publication. By taking part in the composition and publication of the Defamatory Statements, Defendant Gan is liable for defamation herein.

74. Further, Defendant Gan knowingly published and disseminated the Defamatory Statements on the social media site of his church, St. Seraphim Russian Orthodox Church.

75. The publication of the Defamatory Statements was multi-fold, including the following:

a) The delivery of the September 3 Letter containing Defamatory Statement to ROCOR Synod;

b) The dissemination by members of the Olkhovskiy Group and members of ROCOR Synod of Defamatory Statement to other members of ROCOR, including parishes, churches, monasteries and other institutions within ROCOR;

c) The dissemination of the Defamatory Statements by the Olkhovskiy Group and members of ROCOR Synod to online publications with the knowledge and intent that the Defamatory Statements would be spread through online media

to hundreds of thousands of parishioners in the Orthodox Christian community nationwide and worldwide; and

d) The publication of the Defamatory Statements by Defendant Gan on his church's social media site, from which it spread through the internet, as was Gan's intent.

76. Defendants ROCOR Synod and EAD are vicariously liable for the actions of the individual Defendants for the publication of the Defamatory Statements. Each individual Defendant held a high level managerial position with the one or more of ROCOR Synod or EAD, as follows:

a) Defendant Hilarion is the head of ROCOR Synod and the head (Ruling Bishop) of EAD;

b) Defendant Olkhovskiy is a bishop of ROCOR, having the title of Bishop of Manhattan and Vicar Bishop of the Eastern American Diocese and New York, and is also the Secretary of EAD and a member of the EAD's Diocesan Council;

c) Defendant Potapov is an archpriest within the EAD and a member of the EAD's Diocesan Council;

d) Defendant Lukianov is an archpriest within the EAD and a member of the EAD's Diocesan Council;

e) Defendant Straut is an archpriest within the EAD and a member of the EAD's Diocesan Council;

f) Defendant Antchoutine is an archpriest within the EAD and member of the EAD's Diocesan Council;

g) Defendant Mancuso is an archpriest within the EAD and a member of the EAD's Diocesan Council;

h) Defendant Temidis is a priest of within the EAD and a member of the EAD's Diocesan Council;

i) Defendant Gan is an archpriest within the EAD and the Chancellor of ROCOR Synod;

j) Defendant Loukianoff is an archbishop of ROCOR and a member of ROCOR Synod;

k) Defendant Dmitrieff is an archbishop of ROCOR and a member of ROCOR Synod.

77. On information and belief each of the individual Defendants is also an employee of one or more of ROCOR Synod and EAD, holding a "managerial" position within one or more of these organizations. Each individual Defendant acted within the scope of his employment by one or more of ROCOR Synod and EAD, thus rendering ROCOR Synod and EAD vicariously liable for the wrongful actions of the individual Defendants complained of herein.

78. In drafting and publishing the Defamatory Statements, each individual Defendant acted knowingly and with intent and malice or reckless disregard of the truth, thus rendering their employers, ROCOR Synod and EAD vicariously liable for the wrongful actions complained of herein.

79. Defendant Hilarion, the highest ranking authority of ROCOR Synod and EAD, authorized, participated in, consented to and ratified the intentional and malicious conduct of the members of the Olkhovskiy Group complained of herein, thus rendering Hilarion and the organizations of which he is in charge – Defendants ROCOR Synod and EAD – liable for compensatory and punitive damages herein.

80. As a direct and proximate result of Defendants' wrongful and malicious conduct set forth herein, Plaintiff has been damaged.

81. Plaintiff's general damages include, but are not limited to, those resulting from his severely impaired reputation and standing in the community, humiliation, mental anguish and suffering. Plaintiff's general damages further include out-of-pocket loss to Plaintiff which includes legal fees, including those incurred in the prosecution of this action.

82. Plaintiff's damages further include special damages in the form of loss of income, resulting from the drastic decrease of the membership in his church which was the direct and proximate result of the publication of the Defamatory Statements. Plaintiff's loss of income as of the filing of this Amended Complaint is in the amount of $250,000.

83. The actions of each of the Defendant complained of herein were done with malice or reckless disregard of the truth.

84. Each of the Defendants is liable for punitive damages in an amount to be determined by the jury.

85. By reason of the foregoing, Plaintiff is entitled to recover from Defendants, and each of them, (a) general damages in an amount to be determined by the jury but not less than $5,000,000; (b) special damages in the amount of $250,000, and (c) punitive damages in an amount to be determined by the jury.

SECOND CLAIM FOR RELIEF
(Defamation Per Se)

86. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

87. Under Florida law, which applies here, written defamatory statement rises to the level of defamation per se if it (a) charges that a person has committed an infamous crime; (b) tends to subject one to hatred, distrust, ridicule, contempt, or disgrace; or (c) tends to injure one in his trade or profession.

88. By making and publishing the Defamatory Statements, specifically, that Plaintiff had committed forgery, Defendants have charged that Plaintiff has committed an infamous crime. Florida law expressly defines forgery as an infamous crime for the purposes of defamation per se.

89. By making and publishing the Defamatory Statements, Defendants have subjected Plaintiff to hatred, distrust, ridicule, contempt and disgrace.

90. By making and publishing the Defamatory Statements, Defendants have injured Plaintiff in his trade and profession.

91. Defendants' wrongful conduct complained of herein was done with actual malice or with reckless disregard of the truth.

92. As a result of the wrongful and malicious conduct of the Defendants complained of herein, Plaintiff has been damaged.

93. Plaintiff's general damages include, but are not limited to, those resulting from his severely impaired reputation and standing in the community, humiliation, mental anguish and suffering. Plaintiff's general damages further include out-of-pocket loss to Plaintiff which includes legal fees, including those incurred in the prosecution of this action.

94. Plaintiff's damages further include special damages in the form of loss of income, resulting from the drastic decrease of the membership in his church which was the direct and proximate result of the publication of the Defamatory Statements. Plaintiff's loss of income as of the filing of this Amended Complaint is in the amount of $250,000.

95. Each of the Defendants is liable for punitive damages in an amount to be determined by the jury.

96. By reason of the foregoing, Plaintiff is entitled to recover from Defendants, and each of them, (a) general damages in an amount to be determined by the jury but not less than $5,000,000; (b) special damages in the amount of $250,000; and (c) punitive damages in an amount to be determined by the jury.

THIRD CLAIM FOR RELIEF
(Defamation by Inuendo/Implication)

97. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

98. Florida law, which applies to this action, recognizes the tort of defamation by inuendo.

99. The Defamatory Statements falsely implied the following:

a) That Plaintiff falsified Defendant Hilarion's signature on Hilarion's December 10, Letter to Patriarch Kirill;

b) That Plaintiff fabricated the content of the December 10 Letter from Defendant Hilarion to Patriarch Kirill, specifically, that Plaintiff had been elected by the ROCOR Synod to the position of Bishop of Miami;

c) That Plaintiff transmitted the purportedly fabricated and forged December 10 Letter to Patriarch Kirill;

d) That Plaintiff falsified Defendant Hilarion's signature on the January 11 Letter to Patriarch Kirill;

e) That Plaintiff fabricated the content of the January 11 Letter to Patriarch Kirill, specifically, that ROCOR Synod had elected Plaintiff to the position of Bishop of Miami, and that Hilarion was requesting that the Moscow Synod "approve this candidacy at the next meeting of the Holy Synod of the Russian Orthodox Church;"

f) That Plaintiff transmitted the purportedly fabricated and forged January 11 Letter to Patriarch Kirill;

g) That Plaintiff falsified and forged the letter from Archbishop Gavriil of Montreal and Canada to Hilarion, which confirmed that all of the questions posed to Plaintiff had been "corrected" and stated that there were "no obstacles to approve the date of consecration."

h) That Plaintiff duped Patriarch Kirill and the Moscow Synod into confirming his election to the position of Bishop of Miami.

100. Defendants acted with actual malice or with reckless disregard for the truth.

101. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained actual damages..

102. Plaintiff's damages include, but are not limited to, those resulting from his severely impaired

reputation and standing in the community, humiliation, mental anguish and suffering. Plaintiff's general damages further include out-of-pocket loss to Plaintiff which includes legal fees, including those incurred in the prosecution of this action.

103. By reason of the foregoing, Plaintiff is entitled to recover from Defendants, and each of them, (a) general compensatory damages in an amount to be determined by the jury but not less than $5,000,000; and (b) punitive damages in an amount to be determined by the jury.

FOURTH CLAIM FOR RELIEF
(Vicarious Liability Against Defendants ROCOR Synod and EAD under Florida Law)

104. Plaintiff repeats and realleges all prior allegations as if fully set forth herein.

105. Under Florida law, which applies to this case, claims for vicarious liability for defamation are pleaded as a separate cause of action.

106. Defendants ROCOR Synod and EAD are vicariously liable for the actions of the individual Defendants for the publication of the Defamatory Statements.

107. Each individual Defendant held a high level managerial position with the one or more of ROCOR Synod or EAD, as follows:

a) Defendant Hilarion is the head of ROCOR Synod and the Ruling Bishop of the EAD;

b) Defendant Olkhovskiy is a bishop of ROCOR, having the title of Bishop of Manhattan and Vicar Bishop of the Eastern American Diocese and New

York, and is also the Secretary of the EAD and a member of the EAD's Diocesan Council;

c) Defendant Potapov is an archpriest within the EAD and a member of the EAD's Diocesan Council;

d) Defendant Lukianov is an archpriest within the EAD and a member of the EAD's Diocesan Council;

e) Defendant Straut is an archpriest within the EAD and a member of the EAD's Diocesan Council;

f) Defendant Antchoutine is an archpriest within the EAD and member of the EAD's Diocesan Council;

g) Defendant Mancuso is an archpriest within the EAD and a member of the EAD's Diocesan Council;

h) Defendant Temidis is a priest of within the EAD and a member of the EAD's Diocesan Council;

i) Defendant Gan is an archpriest within the EAD and the Chancellor of the ROCOR Synod;

j) Defendant Loukianoff is an archbishop of ROCOR and a member of the ROCOR Synod;

k) Defendant Dmitrieff is an archbishop of ROCOR and a member of the ROCOR Synod.

108. On information and belief each of the individual Defendants is also an employee of one or more of ROCOR Synod or EAD, holding a "managerial" position within one or more of these organizations. Each individual Defendant acted within the scope of his employment by one or more of ROCOR Synod and EAD, thus rendering ROCOR Synod and EAD vicariously liable for the wrongful actions of the individual Defendants complained of herein.

109. By reason of foregoing Plaintiff is entitled to recover from Defendants ROCOR Synod and EAD the same damages he is entitled to recover from the individual Defendants under Claims One through Three herein, including, but not limited to (a) general damages in an amount to be determined by the jury but not less than $5,000,000; (b) special damages in the amount of $250,000, and (c) punitive damages in an amount to be determined by the jury.

WHEREFORE, Plaintiff demands judgment as follows:

A. On the First Claim for Relief, a judgment against all Defendants, jointly and severally, for (1) general damages in an amount to be determined by the jury but not less than $5,000,000; (2) special damages in the amount of $250,000; and (3) punitive damages in an amount to be determined by the jury;

B. On the Second Claim for Relief, a judgment against all Defendants, jointly and severally, for (1) general damages in an amount to be determined by the jury but not less than $5,000,000; (2) special damages in the amount of $250,000; and (3) punitive damages in an amount to be determined by the jury;

C. On the Third Claim for Relief, a judgment against all Defendants, jointly and severally, for (1) general compensatory damages in an amount to be determined by the jury but not less than $5,000,000; and (b) punitive damages in an amount to be determined by the jury;

D. On the Fourth Claims for Relief, a judgment against Defendants ROCOR Synod and EAD in

an amount equivalent to the amount of the judgment against individual Defendants under Claims One through Four, including, but not limited to (a) general damages in an amount to be determined by the jury but not less than $5,000,000; (b) special damages in the amount of $250,000, and (c) punitive damages in an amount to be determined by the jury;

E. For costs and disbursements of this actions, including reasonable attorneys' fee;

F. For interest as may be permitted by applicable law;

G. For such other and further relief as this Court may deem just and proper.

Dated: May 19, 2021
New York, New York

RIVKIN LAW GROUP pllc

/s/ Oleg Rivkin
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Attorneys for Plaintiff
Alexander Belya

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALEXANDER BELYA, Plaintiff, -against- HILARION KAPRAL, a/k/a METROPOLITAN HILARION; NICHOLAS OLKHOVSKIY; VICTOR POTAPOV; SERGE LUKIANOV; DAVID STRAUT; ALEXANDRE ANTCHOUTINE; MARK MANCUSO; GEORGE TEMIDIS; SERAFIM GAN; PAVEL LOUKIANOFF; BORIS DMITRIEFF; EASTERN AMERICAN DIOCESE OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA; THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, and JOHN DOES 1 through 100, Defendants.	**DOCKET NO.: 20-cv-6597-VM** **ANSWER TO FIRST AMENDED COMPLAINT WITH AFFIRMATIVE DEFENSES AND JURY DEMAND**

Defendants HILARION KAPRAL a/k/a METROPOLITAN HILARION, NICHOLAS OLKHOVSKIY, VICTOR POTAPOV, SERGE LUKIANOV, DAVID STRAUT, ALEXANDRE

ANTCHOUTINE, MARK MANCUSO, GEORGE TEMIDIS, SERAFIM GAN, BORIS DMITRIEFF, EASTERN AMERICAN DIOCESE OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, and THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA (collectively, hereinafter "the Church," or "ROCOR Defendants") in the above-captioned action, by and through their attorneys, Feerick Nugent MacCartney, PLLC, as and for their Answer to Plaintiff Father Alexander Belya's First Amended Complaint, filed May 20, 2021 (ECF No. 48), set forth the following:

ANSWERING THE ALLEGATIONS DENOMINATED "INTRODUCTION"

The ROCOR Defendants deny the allegations set forth in the unnumbered paragraphs denominated "Introduction." There is no cognizable cause of action known to the law as "egregious defamation." Any public accusation made by anyone other than the Church has no place in this litigation nor this pleading. Here, no Defendant accused Plaintiff of forging documents or swindling in any public forum. The First Amendment's Free Exercise and Establishment Clauses—which bar claims against Churches by their clergy and forbid "state interference" in "matters of church government as well as of those of faith and doctrine"—prevent courts from intervening in matters of discipline and procedure inside a governing ecclesiastical body and the entertaining of concerns by that body. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Entertaining the proof and arguments regarding Plaintiff's claims to resolve

this ecclesiastical dispute is within the exclusive jurisdiction of the Church, its governing ecclesiastical body, and its hierarchy.

ANSWERING THE ALLEGATIONS DENOMINATED "PARTIES AND JURISDICTION"

1. Answering paragraph "1" of the First Amended Complaint, the ROCOR Defendants deny that Plaintiff was an Archimandrite of the Greek Orthodox Church of America or the spiritual head of the Cathedral of St. Matrona of Moscow or the St. Nicholas Monastery, each located in Florida, at the time of any of the relevant events alleged herein, but rather was within the hierarchical structure of the ecclesiastical canonical authority of the Eastern American Diocese of the Russian Orthodox Church Outside Russia. Following the events alleged in the complaint, Plaintiff took the Cathedral and Monastery to the Greek Orthodox Archdiocese of the Patriarchate of Constantinople to continue his control of the Parish and priesthood without permission or consent of the Church.

* * *

19. Answering paragraph "19" of the First Amended Complaint, the ROCOR Defendants state that paragraph "19" contains legal conclusions to which no response is required. To the extent a response is required, the ROCOR Defendants deny the allegations and deny that this Court has subject-matter jurisdiction over Plaintiffs' claims, except admit that Defendant EAD is a 501(c)(3) non-profit organization with its principal place of operations in New York, New York and that EAD operates over

thirty Russian Orthodox churches and monasteries in New York, and has done so since its founding in 1934. EAD's "ruling bishop" is Defendant Hilarion, whose seat ("see") is in New York.

* * *

23. Answering paragraph "23" of the First Amended Complaint, the ROCOR Defendants deny the allegations therein, except admit that Plaintiff, during the time of any of the relevant events alleged herein, was a priest within the hierarchical structure of the ecclesiastical canonical authority of the Eastern American Diocese of the Russian Orthodox Church Outside Russia, and Plaintiff took the Cathedral and Monastery to the Greek Orthodox Archdiocese of the Patriarchate of Constantinople to continue his control of the Parish and priesthood without permission or consent after the events complained of.

* * *

30. Answering paragraph "30" of the First Amended Complaint, the ROCOR Defendants deny the allegations therein, except admit that all ROCOR Bishop must be approved by a majority of the Defendant Synod, as well as a 2/3 majority of the SOBOR (all ROCOR Bishops), before the election is required to be sent to the Moscow Patriarch for confirmation. The letter referenced speaks for itself.

* * *

52. Answering paragraph "52" of the First Amended Complaint, the ROCOR Defendants deny the allegations therein, except admit that Defendant

Metropolitan suspended Plaintiff from his priestly duties pending an investigation into the concerns raised regarding his Bishop candidacy. The letter referenced speaks for itself.

* * *

69. Answering paragraph "69" of the First Amended Complaint, the ROCOR Defendants deny the allegations set forth therein, except admit the September 3, 2019 Letter was signed by Defendants Olkhovskiy, Potapov, Lukianov, Straut, Antchoutine, Mancuso, and Temidis, all in their capacity as members of Defendant EAD.

* * *

76. Answering paragraph "76" of the First Amended Complaint, the ROCOR Defendants state that paragraph "76" contains legal conclusions to which no response is required. To the extent a response is required, the ROCOR Defendants deny the allegations set forth therein, except admit that Defendants Olkhovskiy, Potapov, Lukianov, Straut, Antchoutine, Mancuso, and Temidis, are all members of Defendant EAD, that Defendants Gan, Loukianoff, and Dmitrieff are members of the Defendant Synod, that Defendant Metropolitan is the head of Defendants ROCOR, Synod, and EAD, and that at all relevant times alleged herein, the individually named Defendants all acted within the scope and capacity of their affiliation with Defendants EAD, Synod, and/or ROCOR.

* * *

FIRST AFFIRMATIVE DEFENSE

110. The First Amended Complaint fails to state a claim upon which relief may be granted.

* * *

FIFTH AFFIRMATIVE DEFENSE

114. Plaintiff's claims are all barred, including with relation to subject-matter jurisdiction, by the First Amendment to the United States Constitution. The First Amendment's church autonomy (or ecclesiastical abstention) doctrine forbids "state interference" in "matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116.

SIXTH AFFIRMATIVE DEFENSE

115. Plaintiff's claims are barred by the First Amendment's prohibition on government entanglement in religion or religious questions. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 441, 452 (1969).

SEVENTH AFFIRMATIVE DEFENSE

116. Plaintiff's claims are barred by the First Amendment's ministerial exception, which bars claims "between a religious institution and its ministers" in light of religious organizations' interest "in choosing who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188, 196 (2012).

* * *