No. 22-824

IN THE

Supreme Court of the United States

THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, *et al.*,

Petitioners,

v.

ALEXANDER BELYA,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* JEWISH COALITION FOR RELIGIOUS LIBERTY IN SUPPORT OF PETITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

INTEREST OF AMICUS CURIAE

The Jewish Coalition for Religious Liberty is an association of American Jews concerned with the current state of religious liberty jurisprudence.[1] It aims to protect the ability of all Americans to freely practice their faith and foster cooperation between Jews and other faith communities. Over several years, its founders have worked on amicus briefs in the Supreme Court of the United States as well as in state supreme courts and lower federal courts, submitted op-eds to prominent news outlets, and established an extensive volunteer network to spur public statements and action on religious liberty issues by Jewish communal leadership.

SUMMARY OF ARGUMENT

The church immunity doctrine protects religious institutions' fundamental right "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).[2] This Court

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[1] Jewish Coalition for Religious Liberty states, pursuant to Supreme Court Rule 37.6, that no counsel for a party authored this brief in whole or in part and no person or entity other than amicus curiae and counsel contributed money to fund the preparation or submission of the brief.

Pursuant to Supreme Court Rule 37.2, counsel for all parties were notified at least ten days prior to the due date of the intent of the Jewish Coalition for Religious Liberty to file this brief.

[2] The church immunity doctrine is also referred to as the "ecclesiastical abstention" doctrine. *See Hyung Jin Moon v. Hak Ja Han Moon*, 431 F. Supp. 3d 394, 405 (S.D.N.Y. 2019). It applies to all

has long recognized that it "would lead to the total subversion of . . . religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts" to undermine those decisions. *Watson v. Jones*, 80 U.S. 679, 729 (1871). Accordingly, established precedent bars civil courts from exercising jurisdiction in matters which concern "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 (emphasis added).

This ironclad protection of religious institutions has allowed religions of all creeds to flourish. Indeed, this careful approach is especially beneficial to minority religions such as Judaism because it protects leadership decisions by and religious communications between and among rabbis and synagogues from government intrusion. The lower courts' refusal to dismiss Respondent's claims contravened this longstanding doctrine and permits plaintiffs to evade First Amendment protections through creative pleading. This ruling, if upheld, threatens to undermine the foundations of the church immunity doctrine.

The Petition should be granted because the Second Circuit panel's holding opens the door to court interference in internal religious controversies—a result the Establishment Clause was intended to prevent. Such determinations are especially perilous for Juda-

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"religious controversies" regardless of whether a particular religion has a "church" or not. *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976) (stating "the general rule that religious controversies are not the proper subject of civil court inquiry").

ism given its status as a minority religion, the complexity of its religious laws, and the existence of ongoing intrareligious debates. Because of this complexity and indeterminacy, there is a very real risk that the erroneous rulings below would lead secular courts into matters in which they will misunderstand and misapply Jewish law, even though the government must not involve itself in doctrinal disputes, regardless of the outcome.

Because of the far-reaching implications of the underlying decision, this Court should grant the Petition to restore the ecclesiastical immunity doctrine to its appropriate scope.

ARGUMENT

I. THE ECCLESIASTICAL IMMUNITY DOCTRINE PRECLUDES CIVIL ADJUDICATION OF RELIGIOUS DISPUTES

The First Amendment protects the right of religious institutions—and religious practitioners—to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). It was recognized at the founding, and has long been recognized by this Court, that the civil courts cannot, and should not, serve as arbiters of religious controversies. *See, e.g.*, *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 713 (1976) ("religious controversies are not the proper subject of civil court inquiry"). Such interference with religious practice would both infringe on the free exercise of religion and risk a de facto establishment of religion through judicial endorsement of one side of a religious controversy.

Civil courts are also poorly equipped to discern matters of religious doctrine and practice in the myriad religious traditions and practices of a free society. *Watson*, 80 U.S. at 729 ("[i]t is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all [religions] as the ablest men in each are in reference to their own."); *see also* J. Madison, *Memorial and Remonstrance Against Religious Assessments*, in 2 The Writings of James Madison 183, 187 (G. Hunt ed. 1901) ("[T]hat the Civil Magistrate is a competent Judge of Religious truth . . . is an arrogant pretension."); *Fratello v. Archdiocese of New York*, 863 F.3d 190, 199-201 (2d Cir. 2017) (describing the historical underpinnings of the ministerial exception).

Exacting enforcement of the boundary between civil and ecclesiastical matters is of particular importance to minority faiths such as Judaism. Civil courts are likely to be less familiar with the forms, roles, and diversities of practice among minority faiths. (*See* Part II, *infra*.) The Second Circuit panel's unwarranted narrowing of the church immunity doctrine risks submitting fundamental questions of religious doctrine and practice to civil adjudication.

1. In contravention of longstanding principles of ecclesiastical immunity, the decisions below unduly narrowed the doctrine in at least two meaningful respects. The courts below myopically focused on the fact that Respondent seeks money damages rather than appointment as Bishop of Miami (*Belya v. Hilarion*, No. 20 CIV. 6597 (VM), 2021 WL 1997547 at *4 (S.D.N.Y. May 19, 2021); Complaint ¶60; *see Belya v. Kapral*, 59 F.4th 570, 583 (2d Cir. 2023) (Statement of Chin, J.)), and, relatedly, concluded that secular courts may decide any "secular component[] of a dispute involving

religious parties" as long as the court relies on "neutral principles of law." *Belya v. Kapral,* 45 F.4th 621, 630 (2d Cir. 2022).

The rule articulated below erroneously—and dangerously—limits the church immunity doctrine only to preclude courts from determining express questions of "faith and doctrine." In doing so, the court ignored the fact that there may be questions so intertwined with such matters that they cannot be neatly separated out as purely secular questions. That constricted approach led the District Court to conclude that "whether . . . Defendants made the alleged statements, the truth of the alleged statements [and] if any harm was caused by the alleged defamation" were "secular inquiries that the ultimate finder of fact may make without weighing matters of ecclesiastical concern." *Belya*, 2021 WL 1997547 at *4.

Likewise, the Panel decision referred to these questions as "outstanding secular fact questions" that "would not require a fact finder to delve into matters of faith and doctrine." *Belya*, 45 F.4th at 634.

The first major error of this approach is that it subjects religious organizations and practitioners to discovery and litigation over supposed "secular fact questions," regarding supposedly "secular" relief, such as money damages, even though adjudication of the ***cause of action*** at issue will necessarily require fact finders to apply so-called "secular fact" questions to potentially disputed matters of faith and doctrine. Consider Respondent's Complaint: Respondent seeks to recover damages flowing from the alleged "drastic decrease of the membership of his church." Complaint ¶ 76. Adjudicating Respondent's claims thus would ap-

pear to require the District Court to use "neutral principles" to discern whether Respondent suffered any compensable injury for loss of church membership, and whether the alleged defamation proximately caused former members of his church to end their membership. There can be little question that civil courts are not well suited to lead an inquisition into how, when, and for what reasons a person ceases attending a particular church, and that they cannot conduct such an inquisition without "delving" into the very "matters of faith and doctrine" that the Second Circuit panel concluded were not implicated by this suit. *Belya,* 45 F.3d at 634.

The consequence of the myopic focus on "secular inquiries" of disputed fact, and on applying the church immunity doctrine as a defense, rather than an immunity from suit, is to lead secular courts to adjudicate disputes that would necessarily require breaching the boundary between civil courts and matters of religious practice. As Petitioners explain at length, almost any religious dispute could be reframed as a dispute about "secular fact questions." But courts of the United States have jurisdiction to decide "cases or controversies," not to engage in factfinding divorced from adjudication of a cause of action. The church immunity doctrine must be applied as an immunity from suit, rather than a merits defense, to avoid leading courts to conduct factfinding conducted under "neutral principles" that would inevitably require the court or a jury to apply such facts to religious practice or doctrine. Courts must appropriately dismiss at the outset cases that ultimately involve religious disputes.

2. The courts below also failed to recognize the importance of protecting religious ***communications***, as distinct from preventing lawsuits relating to the ultimate outcome of those communications. It is not merely the ultimate decision of whether or not to elevate the Respondent that is shielded from judicial scrutiny, it is any religious communications by or between religious bodies and adherents. This error led the courts below to focus on the disputes of fact that could be answered through neutral adjudication, rather than the fact that the communications were all made in connection with an ultimate decision of "faith and doctrine" protected by the core of the ecclesiastical immunity doctrine. Properly construed, the doctrine should protect religious communications between and among religious congregations and communities, their leaders, and their members to avoid entangling civil courts into religious matters.

In so limiting the scope of the church immunity doctrine, the courts below departed from the holdings of sister Circuits and the highest courts of several States that appropriately dismiss cases that cannot be adjudicated without ultimately entangling courts in matters of religious doctrine and practice. As the Petitioners note in their petition for certiorari, the Sixth and Seventh Circuits recently adopted a broader interpretation of the church immunity doctrine than the court below. Cert. Pet. at 18-19.[3]

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[3] A number of other decisions are in accord in the specific context of defamation claims advanced by "ministers"; *e.g.*, *Hutchison v. Thomas*, 789 F.3d 392, 396 (6th Cir. 1986); *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

II. THE DECISIONS BELOW ARE LIKELY TO BE ESPECIALLY HARMFUL TO JEWISH PRACTICE AND ORGANIZATIONS

Historically, decisions regarding the church immunity doctrine have "radiate[d] . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation." *Kedroff*, 344 U.S. at 116. Courts have recognized that any exceptions to the church immunity doctrine must be narrowly drawn to avoid the hazards of "inhibiting the free development

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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 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 "neutral principles" could not be applied to plaintiff's defamation claim without "imping[ing] upon [the church's] ability to manage its internal affairs"); *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577–78 (1st Cir. 1989) (courts cannot "probe into a religious body's selection and retention of clergymen."); *In re Diocese of Lubbock*, 624 S.W.3d at 516 (finding that "neutral principles" inapplicable to defamation claims); *El-Farra v. Sayyed*, 226 S.W.3d 792, 795–96 (Ark. 2006) (dismissing defamation claims and rejecting "neutral principles" regarding statements "made in the context of a dispute over [plaintiff's] suitability to remain as Imam"); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 935–37 (Mass. 2002) (rejecting the adjudication of defamation claims under "the established rules of common law," since churches are "entitled to absolute protection" from such claims "aris[ing] out of the church-minister relationship in the religious discipline context"); *Heard v. Johnson,* 810 A.2d 871, 880–82 (D.C. 2002) (finding "neutral principles" approach inapplicable to minister's defamation claim, holding that "selection and termination of clergy is a core matter of ecclesiastical self-governance").

of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Milivojevich*, 426 U.S. at 710.

The Second Circuit's narrowing of the church immunity doctrine is particularly salient to Jews, who have a long history of enduring attempts by government to interfere with matters of faith. *See, e.g.*, *Watson*, 80 U.S. at 728 (noting that English laws prior to the founding "hamper[ed] the free exercise of religion and worship in many most oppressive forms" and that Jews were more burdened by these laws than Protestants); *see also Everson v. Bd. of Ed. of Ewing Tp.*, 330 U.S. 1, 8–9 (1947) (noting that Jews faced persecutions from governments that favored either Protestants or Catholics in the centuries before America's colonization).

A. Many Aspects of Jewish Religious Practice Link "Secular Facts" to Fundamental Matters of Faith and Doctrine

The dichotomy that the Second Circuit panel created between "secular facts" and "matters of faith and doctrine" is a particularly false one for Jewish practice. Many aspects of Jewish practice of profound importance to Jews turn on questions of what could be described as mundane "secular facts" but for their importance to matters of Jewish law. For example, the Jewish dietary laws, known as the laws of *kashrut,* cannot be followed without knowing, among other things, what a particular food is and how it was produced. Under the framework of the lower courts, the religious significance of such questions would be disregarded. After all, there is no reason why "neutral principles" could not be used to determine the "secular

facts" of what a particular food is and how it was produced. But a court would gravely blunder if it attempted to determine, based on such factfinding, whether a religious leader of a community properly determined that a particular restaurant or caterer adhered to the laws of kosher because, that determination turns on one's understanding of Jewish law.

Unfortunately, the rule adopted by the lower courts invites exactly this kind of intrusion into matters of Jewish religious practice. Perhaps most directly, the ruling below limits the ability of courts to properly eschew entanglement in disputes regarding religious leadership. Those voicing their views in an intermural dispute over the suitability of a candidate for a role as rabbi, head of a religious school, or other religious leader are now exposed to a risk of liability—as is a synagogue or Jewish organization. When a synagogue is looking to hire a rabbi there can often be a period of discussion and debate in which the members discuss the candidates in frank or even heated terms. So long as the dispute can be framed as one over "secular facts," participants may be exposed to monetary liability for expressing their views in an essentially religious dispute. Debates over the merits of a particular rabbinical candidate's views on religious law or philosophy could open congregants to defamation lawsuits. In addition, the Second Circuit's view of the ecclesiastical immunity doctrine as a merits defense, rather than as an immunity, will serve to discourage frank expression of views, for fear of having to bear the burdens and costs of litigation even if they would ultimately prevail on the merits.

The possibility for litigation and liability extends far beyond disagreements over religious leadership. Many

aspects of Jewish communal life entail religious communities and leaders issuing religious guidance that may have a profound impact on others' "secular" interests—just as Respondent seeks money damages based on the size of his flock.

To return to the example of *kashrut*: the laws of *kashrut* are quite complex in themselves, and their application in the context of commercially prepared or packaged foods is often out of the expertise of most kosher consumers. Further complicating the issue are claims by restaurants or food producers that their menus or products are kosher (meaning they satisfy the laws of *kashrut*) when a particular restaurant or food producer may or may not actually meet communal religious standards. To assist Jews in navigating these complex doctrinal waters, a variety of agencies inspect and certify foods or restaurants as kosher, and rabbis, synagogues, and communities identify restaurants, producers, or certification agencies that they assess to be reliable based on their judgment of Jewish law.

Relatedly, many Jews interpret Jewish law to prohibit them from purchasing certain food, for a certain period of time, from a Jewish-owned business that owned leavened grain products over Passover. *See A Guide to Purchasing Chometz After Pesach*, Star-K (Spring 2015).[4] To assist their communities in complying with this precept, some synagogues and Jewish organizations have a practice of issuing a list of local establishments that they determine to be Jewish owned and in violation of the prohibition of owning forbidden products during Passover, and clearly stating that

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[4] *Available at* https://www.star-k.org/articles/kashrus-kurrents/2138/a-guide-to-purchasing-chometz-after-pesach/.

those establishments should not be patronized for a limited time after Passover. *Id.*; *see also Bulletin of the Vaad Harabanim of Greater Washington: Pesach 2019*, Vaad Harabanim of Greater Washington (2019) (listing stores in the greater Washington D.C. area);[5] *Chometz after Pesach*, Young Israel Shomrai Emunah of Greater Washington (April 29, 2011) (same).[6]

As another example, some synagogues assist their congregants in carrying out the religious mandate to give charity to worthy causes and individuals through a practice of certifying poor individuals in their community who are in need of charity and are authorized to request charity in or around the synagogue after daily services. *See* Rabbi Yair Hoffman, *Fraud in Tzedakah and What to do About it*, Yeshiva World (Sept. 22, 2016) (discussing potential solutions to prevent charitable fraud);[7] *see also* Agudath Israel of Cleveland, *New Vaad Hatzedakos Cleveland*, Local Jewish News (July 22, 2017) (describing the establishment to assist Jews in Cleveland with evaluating fundraisers).[8] Other synagogues may give poor community members certificates indicating that they are trustworthy and are proper recipients of charity. *Id.*

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[5] *Available at* https://www.kashrut.com/Passover/pdf/AfterPassoverCapitolK.pdf.

[6] *Available at* https://wp.yise.org/chometz-after-pesach/.

[7] *Available at* https://www.theyeshivaworld.com/news/headlines-breaking-stories/465555/fraud-in-tzedakah-and-what-to-do-about-it.html.

[8] *Available at* https://www.localjewishnews.com/2017/07/22/vaad-hatzedakos-cleveland/.

In each of these cases, the judgment of a religious leader or community may cause measurable financial, commercial, or reputational detriment to an individual or business, and extend beyond the confines of the synagogue or religious organization. A ruling that a particular restaurant is not properly adhering to the laws of keeping kosher may lead to the restaurant's failure. Indeed, businesses that claim to be kosher while violating *kashrut* standards have shut down based upon rabbis issuing these types of warnings. *See, e.g.*, Richard Greenberg, *Treif Meat Found At Washington DC JCC Cafe; Vaad Shuts Down Store*, Yeshiva World (Sept. 2, 2009);[9] Shayna M. Sigman, *Kosher Without Law: The Role of Nonlegal Sanctions in Overcoming Fraud Within the Kosher Food Industry*, 31 Fla. St. U.L. Rev. 509, 547–48 (2004) (recounting restaurant's failure after kosher fraud was discovered). A store's sales may be, for a time, reduced if members of a Jewish community are warned not to patronize it temporarily because it is Jewish owned and violated the prohibition of owning forbidden products during Passover. And the decision not to certify an individual as a proper recipient of charity may frustrate that individual's ability to raise funds.

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[9]*Available at* https://www.theyeshivaworld.com/news/general/38931/treif-meat-found-at-washington-dc-jcc-cafe-vaad-shuts-down-store.html.

B. The Ruling of the Second Circuit Panel Subjects Religious Leaders and Communities to Litigation Over Religious Practice

This Court should grant certiorari because the rulings of the courts below would subject religious leaders and communities to tort liability, or at a minimum the burdens of litigation, for issuing religious direction. Guided by the opinions below, potential plaintiffs, like Respondent, could cast their disagreements about matters of religious doctrine as disputes of fact that can and should be adjudicated through "neutral principles." A store on one of the lists discussed above could allege that the particular items it owned over Passover were not actually of the prohibited variety, inviting litigation and discovery over those facts. And, just as Respondent seeks damages for loss of parishioners, a plaintiff could seek damages from lost sales it attributes to members of the Jewish community deciding not to patronize that store for a time out of their views of the requirements of Jewish law.

What's worse, "neutral" tort doctrines such as the doctrine of defamation by implication might be used to transmute what is plainly a religious ruling into a supposed question of "secular fact." In this case, Respondent alleges that certain statements regarding practices in the Russian Orthodox Church Outside of Russia—that certain letters were "drawn up in an irregular manner," for example—implied that Respondent forged those letters. Complaint ¶ 103. A party aggrieved by a religious ruling could thus easily suggest that the ruling "implied" a certain assertion of fact, and thus raises questions of "secular fact" that can be adjudicated without addressing religious doctrine. A

rabbi who determines a certain restaurant is not kosher, therefore, could be dragged into court and subjected to discovery over every factual assertion that underlies his decision. Such questions could include complicated issues such as whether a cook adequately inspected lettuce or other vegetables for tiny insects, the presence of which render food non-kosher. In this way, even communications expressed in terms of "faith and doctrine" are not safe from litigation and discovery limited to supposedly "secular facts."

The harms posed by this rule are manifest. No rabbi should be held civilly liable for informing a congregation as to which restaurants are theologically permissible to frequent, even if doing so negatively affects restaurants who believe that a different standard of *kashrut* should prevail. Nor should a congregation or organization be embroiled in civil adjudication of whether it "correctly" determined that a store violated the laws of Passover or whether it was permissible to later purchase bread from such a store. The rule set forth below would subject determinations of Jewish law to the scrutiny of civil courts, in derogation of basic and long-established First Amendment principles.

C. The Erroneous Ruling Below Presents Particular Risks to Jewish Communities and Organizations

The risks posed by unwarranted intrusion into matters of religious law are particularly acute for Jewish organizations because Judaism is a minority religion and American courts may misunderstand and misinterpret Jewish law if called upon to parse its requirements. This is not a hypothetical concern. In *Ben-Levi v. Brown*, both a federal district court and the Fourth Circuit upheld a prison's denial of a Jewish prisoner's

request to engage in a group study of the Torah. 136 S. Ct. 930, 931–32 (2016) (Alito, J., dissenting from the denial of certiorari). To support their holdings, the courts relied on the prison's interpretation of Jewish law that 10 men must be present to study the Torah. *Id.* No such requirement exists under Jewish law. *Cf. id.* at 934 (questioning whether Jewish law imposed the requirement stated by the prison). It is unclear exactly what law the prison mistakenly relied upon to make this rule, but it is possible the prison was confused by the Jewish requirement that 10 Jewish men are needed to publicly read from a Torah scroll as a part of a prayer service. Joseph Karo, *Shulchan Aruch, Orach Chayim* 143:1;[10] *see also* Aryeh Citron, *Minyan: The Prayer Quorum*, Chabad.org (discussing when a *minyan* (quorum) is required to perform certain prayers and rituals under Jewish law).[11] The courts' misunderstanding of Jewish law resulted in a prisoner being denied the fundamental right to practice his religion.

Another example of the potential for a court to misunderstand Jewish law was demonstrated during an oral argument at the Fifth Circuit when one of the panel judges suggested that turning "on a light switch every day" was a prime example of an activity unlikely to constitute a substantial burden on a person's religious exercise. *See* Oral Argument at 1:00:40, *East*

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[10] A partial "community translation" into English is available at https://www.sefaria.org/Shulchan_Arukh%2C_Orach_Chayim.143.2?lang=en.

[11] *Available at* https://www.chabad.org/library/article_cdo/aid/1176648/jewish/Minyan-The-Prayer-Quorum.htm#footnote21a1176648.

Texas Baptist Univ. v. Burwell, 793 F.3d 449 (5th Cir. April 7, 2015).[12] But to an Orthodox Jew, turning on a light bulb on the Sabbath could constitute a violation of Exodus 35:3, which explains that lighting a flame violates the injunction in the Ten Commandments to keep the Sabbath holy. Certainly, this judge did not intend to demean Orthodox Jews or belittle Jewish practices. He simply, and understandably, was unaware of how some Jews understand the Commandment to guard the Sabbath.

The potential for courts to misinterpret Jewish law is compounded by the fact that Judaism does not have a central hierarchy, organization, or individual who can issue rulings of Jewish law that are generally accepted as authoritative. In the absence of such a hierarchy or central authority, there is no authoritative view on any number of issues under Jewish law. Courts faced with questions of Jewish law may thus fail to appreciate the multiplicity of views on Jewish law, or misunderstand the significance in Jewish law of a ruling by a seemingly central body by mistaken analogy to the central authorities of some Christian religions. The existence of a hierarchy or central authority within a religion has no bearing on its First Amendment protections, but any attempt to determine the "correct" interpretation of a religious matter in a religion organized like Judaism is futile.

Courts may also be unaware of the numerous unresolved internal religious disagreements that exist within Judaism across communities, traditions, and approaches to Jewish practice. For example, there is a debate between Middle Eastern and Mediterranean

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[12] *Available at* goo.gl/L50Gt1.

Jewish communities, on the one hand, and Northern and Eastern European Jewish communities, on the other, regarding whether corn and corn products may be eaten on Passover. Jeffrey Spitzer, *Kitniyot: Not Quite Hametz*, My Jewish Learning (discussing the Jewish Passover debate surrounding rice, millet, corn and legumes).[13] The Orthodox and non-Orthodox movements of Judaism disagree on various issues: Orthodox Jews forbid driving to synagogue on the Sabbath, and non-Orthodox Jews may permit it, and Orthodox and non-Orthodox Jews may rely upon different standards and certifying authorities to determine if particular products are kosher. Calling on secular courts to take a side in these types of theological disputes violates the Establishment Clause, which "prohibits government involvement in . . . ecclesiastical decisions." *See Hosanna-Tabor*, 565 U.S. at 189.

By holding that secular courts may review internal ecclesiastical governance decisions, the Second Circuit created a new standard that will significantly diminish the ability of Jewish institutions to manage their own affairs and to "decide for themselves" how to navigate questions of faith and doctrine, including the foundational question of which individuals should serve in leadership roles within a synagogue. *See Kedroff*, 344 U.S. at 116. Instead of focusing solely on the "lofty aims" of complying with their own belief systems, synagogue leaders and members will be forced to weigh how a court might interpret certain statements or certain acts under Jewish law. *Cf. McCollum v. Bd. of Ed.*, 333 U.S. 203, 212 (1948). The Establish-

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[13] *Available at* https://www.myjewishlearning.com/article/kitniyot-not-quite-hametz/.

ment Clause was enacted to prevent this type of intrusion by the state into matters of faith. *See id.* To avoid the possibility of the judiciary resolving these types of religious disputes, the Court should reaffirm the longstanding commitment embedded in the First Amendment of allowing religions to flourish independent from government interference or sanction.

CONCLUSION

Since this nation's founding, religious institutions, including religious minorities, have enjoyed a fundamental right to decide for themselves matters of faith and doctrine free from government interference. Courts have therefore consistently abstained from exercising jurisdiction over such matters. But the holdings of the lower courts undermine this well-established doctrine and threaten both religious conduct and the process by which various religions select their leaders. Such an intrusion by courts violates the Establishment Clause by empowering courts to take sides in religious controversies. The consequences of this case are far reaching, extending beyond the Petitioners to all religions. In fact, the stakes are highest for minority religions such as Judaism.

For these reasons, and for those set forth in the Petition, the ROCOR's petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 31, 2023

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