No. 23-1030

In the
Supreme Court of the United States

MISSISSIPPI DISTRICT COUNCIL ASSEMBLIES OF GOD,
Petitioner,

v.

KEVIN BEACHY, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Mississippi Supreme Court

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Respondents do not seriously dispute that the issue presented by this case warrants certiorari. They do not deny that the lower courts are "all over the map on whether, and in what way," the ecclesiastical abstention doctrine is jurisdictional. Lael Weinberger, *Is Church Autonomy Jurisdictional?*, 54 Loyola U. Chi. L.J. 471, 476 (2022). They do not dispute that the question presented is exceptionally important, or that the court below refused to defer to Petitioner as the highest religious authority on an ecclesiastical matter. And Respondents cannot square that outcome with more than 150 years of this Court's precedents holding that "legal tribunals *must* accept" the ecclesiastical decisions of religious authorities "as final, and as binding on them, in their application to the case before them." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1871) (emphasis added); *see Jones v. Wolf*, 443 U.S. 595, 604 (1979); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976); *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 120-21 (1952).

Instead, Respondents try to fabricate a vehicle issue in order to evade this Court's review. First, they insist that the decision below is not final for purposes of 28 U.S.C. § 1257. But that is wrong. There is no question that the "federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975). For that reason, as well as others described below, this Court has jurisdiction.

Respondents next proceed to misrepresent the decision below. They say that the Mississippi Supreme Court did not *really* mean to hold that the trial court lacked jurisdiction to enforce Petitioner's ecclesiastical decisions. Instead, the court supposedly held only that it *could* decline to do so as a matter of state law. But that is not what the court said. And it "cannot be doubted" that, contrary to the decision below, Petitioner had a "right to have this question decided" peaceably by the courts. *Watson*, 80 U.S. (13 Wall.) at 714. Religious organizations "are equally under the protection of the law," as with any secular litigant. *Id.* To restrict their access to judicial redress "solely on account of religious identity" would "impose[] a penalty on the free exercise of religion" that the First Amendment does not tolerate. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017). Yet, that is precisely what the decision below did here.

By distorting that decision, Respondents then argue that no split exists on a *different* question that the lower court did not reach—whether courts may choose, as a matter of state law, to ignore a religious authority's ecclesiastical decisions. BIO.10. That is not the issue in this case. Instead, the Mississippi Supreme Court held that federal law prohibited it from giving effect to the ecclesiastical decisions of higher church authorities. That is fundamentally wrong and expands an openly acknowledged split.

Finally, Respondents confusedly seek refuge in this Court's decision in *Wolf*. But, far from supporting Respondents' view, *Wolf* reaffirmed that the First Amendment "requires that civil courts defer to the

resolution of issues of religious doctrine or polity" by superior church authorities. 443 U.S. at 602.

The decision below flouted that basic guarantee and deepened a gaping split of authority. The Court should grant certiorari and reverse.

ARGUMENT

I. This Court Has Jurisdiction.

Respondents lead by suggesting this Court lacks jurisdiction. They note that the Mississippi Supreme Court dismissed some claims but reversed the final grant of summary judgment to Petitioner on another claim and remanded to the trial court. BIO.11-16. On that basis, they submit that the decision below does not satisfy 28 U.S.C. § 1257's "final judgment rule." BIO.12.

That is incorrect. Instead, this case comfortably fits within three of the "four circumstances in which the adjudication of a federal issue in a case by the highest available state court" may, under § 1257, be "reviewed in this Court notwithstanding the prospect of some further state-court proceedings." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 306 (1989).

First, this case satisfies § 1257 because "the federal issue is conclusive." *Cox*, 420 U.S. at 479. All but one of Petitioner's claims has been finally dismissed by the court's First Amendment ruling. Pet.App.21. The Mississippi Supreme Court's ruling is "final and binding on the lower state courts." *Kansas v. Marsh*, 548 U.S. 163, 168 (2006). And, as Petitioner explained, that final ruling on this federal issue infects the trial court's ability to adjudicate the sole remaining claim on remand because, as a result of the

Mississippi Supreme Court's flawed view of the First Amendment, "no court can decide who controls the Worship Center in the first place." Pet.10 n.1; *see* Pet.32.

Second, this case satisfies § 1257 because "the federal issue, finally decided by the highest court in [Mississippi], will survive and require decision regardless of the outcome of future state-court proceedings." *Cox*, 420 U.S. at 480. The lone "federal question[] that could come here" is the question presented—whether the First Amendment strips courts of jurisdiction to enforce the ecclesiastical decisions of religious authorities in intra-church disputes. *See id.* (citation omitted). That question "ha[s] been adjudicated by the State court, and the remaining issues . . . will not give rise to any further federal question." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 612 (1989) (citation omitted). The question presented is thus ripe for review.

Respondents are wrong to suggest that further proceedings could moot this ripe federal issue should Petitioner gain control over the physical property. BIO.13. The Petition implicates more than a building and real property. The parties are contesting who has the authority to act as, and bind, a religious institution. Petitioners assert not only a right to the physical property, but also the right to "install[] an interim pastor," override Respondents' actions, and retain control over the local church's affairs. Pet.App.276-77. They also seek to foreclose Beachy and his dissident faction from "claiming any position of authority" over, or "preventing District supervision" of, the local church that Petitioner rightfully oversees.

Pet.App.276-77. Respondents never explain how Petitioner could obtain these forms of relief on remand.

Finally, this Court has jurisdiction because the court below "finally disposed of the federal" issue, and "reversal here would terminate the state court action"—just as when the trial court terminated the action by correctly applying the law. *Belknap, Inc. v. Hale*, 463 U.S. 491, 497 n.5 (1983). Moreover, "refusal immediately to review the state-court decision might seriously erode federal policy." *Cox*, 420 U.S. at 483. "Adjudicating the proper scope of First Amendment protections" is a "federal policy" that warrants immediate review. *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55 (1989) (citation omitted). Here, Petitioner's First Amendment freedoms are both continuously denied and irreparably harmed every day that Beachy remains defiantly in the pulpit. *See, e.g.*, *Ramirez v. Collier*, 595 U.S. 411, 433 (2022) (holding that the denial of free-exercise rights creates irreparable harm). This case therefore "fits within the fourth category of cases" as well. *Fort Wayne Books*, 489 U.S. at 55. The "important" religious-liberty issues at stake "should not remain in doubt" any longer. *Id.* at 56.

Respondents counter that the Mississippi Supreme Court "would still need to adjudicate the ecclesiastical governance questions" that it refused to entertain on remand if this Court were to grant review. BIO.15. That argument merely betrays their fundamental misunderstanding of ecclesiastical abstention. The Assemblies of God structure provides Petitioner authority over the local church in matters of doctrine

and polity. Pet.App.71-75, 166, 229. So, as the Petition explained, "over 150 years of this Court's precedent required [the court below] to defer to and enforce Petitioner's ecclesiastical decision" as the higher body in the Assemblies of God Fellowship. Pet.28. That undisputedly "ecclesiastical determination . . . is not subject to judicial abrogation." *Milivojevich*, 426 U.S. at 720.

This Court thus plainly has jurisdiction. And, stripped of that jurisdictional red herring, the brief in opposition provides no valid reason to deny review.

II. Respondents Cannot Deny The Split.

As the Petition explained, nearly a dozen state courts and federal Courts of Appeals recognize that "the ecclesiastical abstention doctrine informs *how* civil courts must adjudicate claims involving ecclesiastical questions; it does not deprive those courts of subject matter jurisdiction over such claims." *Winkler v. Marist Fathers of Detroit, Inc.*, 901 N.W.2d 566, 572-73 (Mich. 2017) (emphasis added); *see* Pet.12-16. By contrast, Mississippi has joined ten other States, the District of Columbia, and three federal Courts of Appeals by incorrectly holding that the ecclesiastical abstention doctrine "functions as a subject matter jurisdictional bar." *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 159 (Tenn. 2017); *see* Pet.16-19. That intractable split warrants review.

A. Respondents Distort The Decision Below.

Unable to deny the existing split, Respondents attempt to obscure the lower court's flawed view of federal law. They argue that the Mississippi Supreme

Court never decided "that the ecclesiastical abstention doctrine deprives courts of subject-matter jurisdiction" and that it "elected not to reach" the dispositive ecclesiastical matters in this case "as part of its own long history" of refusing to do so under state law. BIO.18-19. But that is wrong. The Mississippi Supreme Court expressly rooted its decision in "[t]he First Amendment of the United States Constitution." Pet.App.12 (citation omitted). And it construed ecclesiastical abstention as a federal "constitutional imperative" that entirely "precludes judicial review" of ecclesiastical matters, such that—in its view—the trial court was "without jurisdiction." Pet.App.12-13 (citation omitted). Thus, far from an adequate and independent state-law ground being "clear from the face of the opinion," the decision explicitly invokes and relies on federal law. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). The Mississippi Supreme Court "decided the case the way it did because it believed that federal law required it to do so." *Id.* at 1041. And that is clear from that court's repeated reliance on the First Amendment and this Court's precedent. Pet.App.12-13 (citing *Watson*, *Kedroff*, and *Milivojevich*).

Respondents also attempt to dodge the widely recognized split by characterizing the issue as whether "courts *must* reach the ecclesiastical questions presented in intra-church disputes." BIO.24. But that is not the question the lower court decided. And, even if it were, the split undoubtedly extends to that question too. Courts that regard ecclesiastical abstention as "jurisdictional"—like the decision below—hold that they *cannot* give effect to the ecclesiastical decisions of church authorities in any case. *See, e.g.*, *Wipf v. Hutterville Hutterian*

Brethren, Inc., 808 N.W.2d 678, 685 (S.D. 2012).[1] On the other side of the split, Respondents fail to identify a single case that deemed the doctrine "non-jurisdictional," yet deprived a religious authority of access to the courts by refusing to honor its ecclesiastical decisions. That approach, too, would contravene "the First and Fourteenth Amendments," which "mandate that civil courts . . . must accept" a religious authority's ecclesiastical decisions and treat them as "binding" in disputes before them. *Milivojevich*, 426 U.S. at 709.

B. Respondents Misread This Court's Decision In *Jones v. Wolf*.

Respondents also suggest that no split exists because *Wolf* provides States with a "choice" to "defer" or apply "neutral principles of law" when adjudicating an intra-church property dispute. BIO.25. But Respondents' argument conflates ecclesiastical matters with those that are "completely secular." *Wolf*, 443 U.S. at 603. *Wolf* gave States a choice only for the latter type of dispute, "where no issue of doctrinal controversy is involved." *Id.* at 605. Here, the dispute is a "doctrinal controversy." It concerns the core ecclesiastical question of who possesses authority to direct the church. On these matters, *Wolf* is clear that "the [First] Amendment requires that civil courts defer to the resolution of issues of religious

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[1] Respondents never explain why courts might treat ecclesiastical abstention as jurisdictional when "individual plaintiffs" from the church sue, but not when groups or factions within the church do the same. BIO.21-23, 26. Nor do Respondents offer any example of courts adopting that strange approach.

doctrine or polity" by higher religious authorities. *Id.* at 602 (citation omitted). And, "[e]ven in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls." *Kedroff*, 344 U.S. at 120-21.

Contrary to Respondents' suggestion, *see* BIO.27-28, courts within the split recognize this fundamental distinction. In *Church of God in Christ, Inc. v. Graham*, for example, the Eighth Circuit resolved *one* part of a dispute that did "not implicate ecclesiastical affairs" using neutral principles but resolved *another* part that did touch on such matters by "defer[ring] to the highest ecclesiastical determination." 54 F.3d 522, 527 (8th Cir. 1995). The Fifth Circuit has taken the same approach. *Compare Church of God in Christ, Inc. v. Cawthon*, 507 F.2d 599, 601-02 (5th Cir. 1975) (deferring on ecclesiastical matter to "enjoin[] the dissident faction from attempting to exercise acts of possessory control" or otherwise interfering with "the local faction loyal to the national church"), *with McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 350 (5th Cir. 2020) (recognizing that courts "need not defer to an ecclesiastical tribunal on secular questions" (citation omitted)). Thus, as noted in the Petition, cases within Mississippi will come out differently based solely on whether they are filed in state or federal court. Pet.30.

Many other courts have similarly recognized that *Wolf* requires deference to the judgments of religious authorities on ecclesiastical matters—as opposed to "purely secular" ones. *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657 (10th Cir. 2002)

("The issue in the present case, then, is whether the dispute is ecclesiastical or secular[.]"); *see also, e.g.*, *Episcopal Church Cases*, 198 P.3d 66, 79 (Cal. 2009) (adopting the neutral-principles approach, while cautioning that "if resolution of a property dispute involves a point of doctrine, the court must defer to the position of the highest ecclesiastical authority that has decided the point"); *Winkler*, 901 N.W.2d at 574 ("[T]he doctrine calls for deference to the decisions of the authorized tribunals of a religious entity in ecclesiastical matters" (cleaned up)); *St. Joseph Catholic Orphan Soc'y v. Edwards*, 449 S.W.3d 727, 739 (Ky. 2014) ("[T]he neutral principles doctrine should not be extended to religious controversies in the area of church government" (cleaned up)); *Tea v. Protestant Episcopal Church*, 610 P.2d 182, 184 (Nev. 1980) (deferring "to the ecclesiastical authority's decision as to [the] identity" of a local church).

* * *

In the end, Respondents cannot deny that a widespread and openly acknowledged split exists on the jurisdictional nature of ecclesiastical abstention. And their attempts to evade that split by distorting both the decision below and this Court's precedent confirm that there is no way to close the divide.

III. The Decision Below Is Wrong.

Respondents fare no better in defending the decision below on the merits. BIO.28-33.

Respondents begin by parroting the Mississippi Supreme Court's position that the First Amendment "precludes judicial review of claims that require resolution of strictly and purely ecclesiastical

matters." BIO.29 (quoting Pet.App.13). As the Petition demonstrated, however, "[t]hat approach squarely conflicts with this Court's decision in *Watson*." Pet.20. While the Petition explained at length why this case is on all fours with *Watson*, Pet.20-23, Respondents say virtually nothing to distinguish it. The closest they come is to repeat many lower courts' error by invoking *Watson*'s outmoded use of jurisdictional language. BIO.19.

As the Petition explained, *Watson*'s holding and reasoning make clear that its reference to "jurisdiction" could not have been "in the sense of the judicial authority." Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc'y Rev. 244, 266 (2021); *see* Pet.22-23. Instead, *Watson* and its progeny provide a rule of decision forbidding courts from second-guessing the ecclesiastical decisions of higher religious entities. The civil courts "must accept such decisions as final, and as binding on them, in their application to the case before them." *Watson*, 80 U.S. (13 Wall.) at 727. But the Mississippi Supreme Court refused to do so.

Respondents also contend that *Wolf* permits courts to refrain from deferring to "an ecclesiastical authority on *all* related ecclesiastical issues." BIO.30-32. That once again misstates the decision. *Wolf* gave States latitude to decide "purely secular" matters without deference, while emphasizing that courts still "must defer" to the church religious authorities on all ecclesiastical issues. 443 U.S. at 604.

The Mississippi Supreme Court did the opposite here. Respondents do not dispute that the Petitioner held a superior position to the Respondents within the

organizational structure of the Assemblies of God on matters of doctrine and polity. Pet.24-25. They do not dispute that Petitioner's decision to place the Worship Center under District supervision for the purpose of installing a new pastor was ecclesiastical in nature. Pet.25. Nor can Respondents deny that "[r]esolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration" of the church. *Milivojevich*, 426 U.S. at 709. Thus, there was no basis for the court below to nullify Petitioner's ecclesiastical decisions. "[N]o civil court could reverse, modify, or impair its action" in this matter of "ecclesiastical concern." *Watson*, 80 U.S. (13 Wall.) at 732; *see Wolf*, 443 U.S. at 602; *Milivojevich*, 426 U.S. at 709; *Kedroff*, 344 U.S. at 115-16.

This Court should grant review to protect Petitioner's religious liberty, to correct the lower court's mistaken conception of ecclesiastical abstention, and to provide desperately needed clarity to this critical and divided area of the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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