No. 24-530

In the
Supreme Court of the United States

BETHESDA UNIVERSITY, ET AL.,
Petitioners,

v.

SEUNGJE CHO, ET AL.,
Respondents.

On Petition For Writ of Certiorari
To The Court of Appeal of the State of California
Fourth Appellate District, Division Three

BRIEF OF COUNCIL ON AMERICAN-ISLAMIC RELATIONS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Council on American-Islamic Relations (CAIR) is a grassroots civil rights and advocacy group whose mission is to enhance understanding of Islam, protect civil rights, promote justice, and empower American Muslims. It is the largest Muslim civil liberties organization in the United States. CAIR puts forth an Islamic perspective to ensure the Muslim voice is represented. CAIR is dedicated to protecting Muslims' freedom to worship by advocating for the religious liberties of all Americans, regardless of faith.

Amicus is concerned that increased involvement by courts and government officials in matters of religious belief and in the internal governance of religious organizations poses a particular danger to minority religions such as Islam. Amicus submits this brief to highlight the danger that decisions like the one below pose to incarcerated people of faith, who are the country's most vulnerable religious adherents, and to explain why such decisions conflict with this country's longstanding protections of religious exercise.

[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, amicus certifies that counsel of record for all parties received notice of the intent to file this brief at least ten days before it was due.

SUMMARY OF ARGUMENT

The Free Exercise Clause erects solid protections around the right of individuals to define their own religious beliefs. Secular courts may not decide such questions for them. That is why this Court has long recognized that secular courts, which are "singularly ill equipped" to resolve matters of faith, must steer clear of theological questions. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715 (1981).

But here, the California courts instead dived right in. By holding that Bethesda University's stated Pentecostal theological positions permit Presbyterians to serve on its board, the courts told Bethesda what Pentecostal doctrine requires. The result was the imposition of unwanted leadership on a religious institution.

CAIR is concerned that the decision below, and others like it from both state and federal courts, threaten the free exercise rights of adherents of minority religions such as Islam. In particular, allowing government officials in prisons to dictate answers to theological questions would violate the religious rights of Muslims and other incarcerees. The same goes for secular courts.

The decision below conflicts with Supreme Court precedent. It joins the wrong side of a widening split in authority among state and federal courts. And its logic threatens the fundamental rights of this country's most vulnerable religious believers. This Court therefore should grant the petition and the decision should be overturned.

ARGUMENT

I. The Decision Below Improperly Invites Secular Courts to Decide for Religious Adherents What Their Beliefs Are

American courts have long recognized that they are ill equipped to adjudicate disputes involving questions of religious doctrine. And what experience teaches, the Constitution confirms. That is why this Court has made sure to emphasize, in all of its Free Exercise jurisprudence, that secular courts may not impose their interpretation of religious beliefs upon those who actually hold them. "Courts are not arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716. Where questions of theology and belief begin, the role of secular courts ends.

This Constitutional lodestar has long guided the interpretation of the Free Exercise Clause and applies with equal force to faith-based qualifications for membership of a religious organization's governing board. But the California courts below disagreed. By refusing to acknowledge Bethesda University's faith-based qualifications for leadership positions, the decision below flouts this Court's longstanding deference to religious adherents' characterization of their own beliefs.

The Free Exercise Clause protects all religious beliefs, including those of minority sects, paying no regard to theological "correctness." Further, an adherent's claim "that his belief is an essential part of a religious faith must be given great weight." *United States v. Seeger*, 380 U.S. 163, 184 (1965).

Thomas comprehensively explains this principle. In that case, a Jehovah's Witness was denied unemployment compensation benefits after quitting a job that required him to fabricate turrets for military tanks, in violation of his religious beliefs. 450 U.S. at 710. In the end, the state court classified Thomas's religious beliefs as a "personal philosophical choice" because the court concluded he was not required to take that position under his religion. *Id.* at 714 (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 391 N.E.2d 1127, 1131 (Ind. 1979), *rev'd*, 450 U.S. 707 (1981)). The denial of benefits, it held, therefore did not violate the Free Exercise Clause.

This Court reversed. Confirming that "[c]ourts are not arbiters of scriptural interpretation," *id.* at 716, it dispensed with the notion that any "[i]ntrafaith differences" between Thomas and other Jehovah's Witnesses mattered, *id.* at 715. It explained that "the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. . . . [I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith." *Id.* at 715–16; *see also Serbian E. Orthodox Diocese For the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 709 (1976) (stating that where "rival church factions" seek judicial resolution of their dispute, "there is substantial danger that the State will . . . intervene on behalf of groups espousing particular doctrinal beliefs.").

The Court also admonished the state court for "dissect[ing]" the bounds of Thomas's religious beliefs to conclude that they were merely "philosophical."

Thomas, 450 U.S. at 714–15. The "narrow function of a reviewing court" was to determine whether Thomas's beliefs stemmed from an "honest conviction." *Id.* at 716.

Other decisions from this Court reaffirm this principle. "It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."[2] *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *see also Holt v. Hobbs*, 574 U.S. 352, 362 (2015) ("[T]he guarantee of the Free Exercise Clause[] is 'not limited to beliefs which are shared by all of the members of a religious sect.'" (quoting *Thomas*, 450 U.S. at 715–16)); *Frazee v. Ill. Dep't of Emp. Sec.*, 489 U.S. 829, 834 (1989) ("reject[ing] the notion" that the Free Exercise Clause covers only the beliefs of "particular [religious] sect[s]").

A second guiding principle is that a belief that is both secular *and* religious still enjoys First Amendment protection. A court may not denigrate genuine religious beliefs as secular to circumvent the First Amendment's strictures. Nor may a court wade into a "religious thicket," *Milivojevich*, 426 U.S. at 719, merely because it spots some secular shrubs.

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[2] The judiciary is not the only branch of government to recognize the importance of this principle. Congress codified it into law in the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc. That act "bars inquiry into whether a particular belief or practice is 'central' to a prisoner's religion." *Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005) (quoting 42 U.S.C. § 2000cc-5(7)(A)).

Thomas is again instructive. There are, of course, myriad secular reasons why one might object to participating in the manufacture of weapons of war. But where such beliefs are religiously inflected, the Free Exercise Clause protects them. While "[t]he determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task, . . . the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question." *Thomas*, 450 U.S. at 714; *accord Sturgill v. Am. Red Cross*, 114 F.4th 803, 810 (6th Cir. 2024) ("[T]hat there may be both religious and secular reasons for an act does not elevate the latter over the former . . . ."); *Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir. 1985) ("[A] belief can be both secular and religious."); *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981) ("[A] coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one.").

These cases channel one of the Free Exercise Clause's fundamental tenets: once a belief is religious in nature, it is not the province of courts to determine whether or not is correct. *Thomas*, 450 U.S. at 716 (stating that "it is not within the judicial function . . . to inquire whether" an adherent "correctly perceived the commands" of his faith).

But that is exactly what the California courts did below. In holding that Bethesda's bylaws and statement of faith "supported" the conclusion that adherence to Presbyterianism rather than Pentecostalism did not matter for board membership, the California Court of Appeal determined that Bethesda's interpretation of its own religious creed

was incorrect. *Bethesda Univ. v. Cho*, G062514, 2024 WL 1328330, at *6 (Cal. Ct. App. Mar. 28, 2024), *review denied*, (Cal. July 10, 2024). Further, in finding that Bethesda's constitution and bylaws "are no different than other board member requirements commonly found in corporate documents," the California Court of Appeal treated Bethesda's faith-based requirements as entirely secular. *Id.* at *5.

In the end, by interpreting Bethesda's bylaws and statement of faith, the California Court of Appeal concluded that nothing in Bethesda's stated theological positions precludes Presbyterians from serving on the governing board of a Pentecostal institution. *See id.* at *6. Presumably, although the California courts did not explicitly so state, they would conclude that a commitment to Bethesda's statement of faith at least would require board members to be *Christian*. *See id.* at *5 (highlighting use of the term "Christian" in Bethesda's governing documents). But even that tacit acknowledgment cannot untangle this theological knot. Would any Christian denomination, from Catholicism to Mormonism, be sufficiently "consistent" with Pentecostalism to satisfy the California courts? Regardless of the answer, that question requires a court to evaluate the compatibility of religious beliefs across faiths. It is hard to imagine a more quintessentially theological question than that.

II. Incarcerated Muslims Are Made Especially Vulnerable When Civil Authorities Presume to Decide What Their Beliefs Are

That the decision below offends the central teachings of the Free Exercise Clause is reason

enough to reject any argument that this case presents a mere corporate governance dispute. But it is also important to highlight that the costs of this arrogation of power by secular courts will not fall on all believers equally. Instead, they are likely to be borne disproportionately by this country's most vulnerable religious adherents—those belonging to minority religions such as Islam, and those who are incarcerated.

Muslim prisoners are therefore doubly vulnerable to state regulation of their religious practices. And when civil authorities and secular courts take it upon themselves to decide for adherents what their beliefs are, those civil authorities are bound to make mistakes to the detriment of such incarcerees' rights.

This Court itself has already expressed its awareness of the general dangers that members of minority religions face when the state attempts to interpret their theology. As it recognized in its ministerial exception cases, "[i]n a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation" of the doctrine of every religious tradition. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 757 (2020). As Justice Thomas has pointed out, judicial attempts to form bright-line tests for the ministerial exception doctrine "risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the 'mainstream.'" *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 197 (2012) (Thomas, J., concurring). Relatedly, courts might not discern doctrinal nuances among sects and might

improperly ascribe similar views to starkly different religious groups. And "[f]orcing a group to accept certain members may impair [its ability] to express those views, and only those views, that it intends to express." *Id.* at 200 (Alito, J., concurring) (alterations in original) (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000)).

These dangers come to the fore when the religious practices of incarcerees are regulated by prison and jail officials. CAIR is intimately familiar with the barriers that incarcerated Muslims face to freely practicing Islam while incarcerated, having litigated many cases in defense of Muslims' right to worship in prisons. While prisons and jails are frequently unfriendly to constitutional rights in general, they often violate the rights of incarcerated Muslims in particular because of a simple lack of familiarity with Islam. *See A Correctional Institution's Guide to Islamic Religious Practices*, Council on American-Islamic Relations (2005), https://tinyurl.com/cairguide.

Take one recent case that CAIR litigated before the Eighth Circuit. In that case, incarcerated Muslims were forced to hold Jumu'ah prayers with members of the Nation of Islam because, in the eyes of the Arkansas Department of Corrections, the Nation of Islam was just another form of Islam. *Holt v. Payne*, 85 F.4th 873, 877 (8th Cir. 2023). But praying with Nation of Islam members offended the Muslims' religious beliefs because Nation of Islam members believe, among other things, that God came to earth in the form of Wallace Fard Muhammad. And one of the Five Pillars of Islam is the Shahada's declaration that

there is no God but Allah and that Muhammad (to be clear, not Wallace Fard Muhammad) is his messenger. In dismissing the Muslims' Religious Land Use and Institutionalized Persons Act claim, the district court held that there was no evidence that the Muslims' beliefs were sincerely held, nor that such beliefs would be substantially burdened by forced participation with Nation of Islam members. *Holt v. Payne*, No. 19-CV-00081, 2022 WL 21309325, at *1–2 (E.D. Ark. Mar. 21, 2022), *vacated and remanded*, 85 F.4th 873 (8th Cir. 2023).

The Eighth Circuit correctly vacated this decision. The Eighth Circuit held that the district court's decision had been based on a "misreading of Plaintiffs' religious beliefs," and that these beliefs were, in fact, sincere. *Holt*, 85 F.4th at 879. The district court's surprising conclusion, which would have forced together two religious groups with wildly divergent views, underscores the particular vulnerability of minority religions in the face of good faith but mistaken judicial pronouncements about religious belief. *See also Fox v. Washington*, 949 F.3d 270, 274 (6th Cir. 2020) (finding it improper for prison to force "Christian Identity" plaintiffs together with Christians whom they believed "did not comply with what the Bible teaches" (citation omitted)).

In a second case that CAIR has litigated, an incarcerated Muslim sued the Nevada Department of Corrections for requiring Muslims to perform Friday Jumu'ah early in the morning rather than during midday. *Elmajzoub v. Davis*, No. 19-CV-00196, 2022 WL 1537346, at *3 (D. Nev. May 13, 2022), *report and recommendation adopted*, No. 19-cv-00196, 2022 WL

2132278 (D. Nev. June 14, 2022). The defendant prison officials attempted to second-guess these religious beliefs by arguing that in Islamic religious practice "there is considerable flexibility associated with the times for acceptable prayer services." *Id.* But under traditional Muslim doctrine, Friday Jumu'ah must start during a prescribed time, which begins after the sun has passed the meridian. Although the magistrate judge and district court correctly rejected the defendants' argument, *id.* at *6, this dispute again highlights the danger of state officials imposing their own interpretations of religious belief upon incarcerated adherents of minority religions.

Finally, CAIR is currently litigating a case in the Eastern District of Arkansas where the Arkansas Department of Corrections, in a reversal of longstanding policy, has refused to provide incarcerated Muslims—whose faith requires them to fast from sunrise to sunset during Ramadan—with double portions of dinner during a post-sunset mealtime. *See* Plaintiff's Brief in Support of Motion for Partial Summary Judgment at 2–3, *Holt v. Payne*, No. 24-cv-00074 (E.D. Ark. filed Dec. 3, 2024). Incarcerated Muslims are therefore unable to make up missed calories under the new policy. Notably, this policy reversal took place after the Department's Muslim Coordinator and a prison chaplain advised that the correct interpretation of Islamic doctrine required "discipline" and modest eating during Ramadan. *Id.* In other words, the state took it upon itself to interpret the religious beliefs and duties of incarcerated Muslims to support its decision to deprive them of a full day's nutrition.

The government is ill suited to determining the contours of religious belief, as CAIR's experience representing incarcerated Muslims has shown. Unfortunately, the American public's understanding of Islam and of Muslims remains wanting. *How the U.S. General Public Views Muslims and Islam*, Pew Rsch. Ctr. (July 26, 2017), https://tinyurl.com/general-public-views-muslims (finding that only around half of Americans know someone who is Muslim, and forty-four percent say that there is a "conflict between Islam and democracy"). CAIR is therefore concerned about the ability of the government in general, and of courts in particular, to correctly understand Islamic doctrine. And when courts rely on their own understanding of Muslims' beliefs to resolve cases, they are necessarily embarking upon a theological inquiry. This they cannot do under the First Amendment.

III. The Decision Below Threatens the Independence of Religious Organizations by Impinging On Their Ability to Govern Themselves

Finally, a brief word on this case's implications for the internal governance of Muslim organizations. In order for these organizations—including CAIR—to be able to carry out their missions, they must have protection from government interference. Independence is a prerequisite for everything that CAIR does.

As this Court has recognized, "matter[s] of internal church government" lie "at the core of ecclesiastical affairs . . . ." *Milivojevich*, 426 U.S. at 721. "Autonomy" over questions of internal government are often "essential to [a religious]

institution's central mission." *Our Lady of Guadalupe*, 591 U.S. at 746; *see also* Michael Stokes Paulsen, *Freedom for Religion*, 133 Yale L.J. Forum 403, 413–14 (2023) (arguing that "religious liberty has an inescapable institutional-autonomy aspect" that "parallels and builds upon the right of individuals" to worship freely). That is why the First Amendment guards against state actions that would "undermine the independence of religious institutions." *Our Lady of Guadalupe*, 591 U.S. at 738. And so just as a court cannot "impose[] an unwanted minister," *Hosanna-Tabor*, 565 U.S. at 188, it cannot impose an unwanted governing board.

The importance of organizational independence is the same no matter how a given religious organization is structured. To the extent that this case implicates a perceived distinction between "hierarchical" and "congregational" religious organizations, differential treatment based on such a distinction threatens decreased protection for minority religions that do not fit neatly into the hierarchical framework of certain established Christian churches. *Cf. id.* at 198 (Alito, J., concurring) (noting application of ministerial exception should not turn on the title "minister," as many religions lack analogous positions).

Islam is a prime example. Islam, like many organized religions, lacks many characteristics of certain centralized Christian denominations. Ihsan Bagby, *The American Mosque 2020: Growing and Evolving; Report 1 of the US Mosque Survey 2020: Basic Characteristics of the American Mosque* 20, Inst. for Soc. Pol'y & Understanding (June 2, 2020), https://tinyurl.com/mosque-survey (noting that

American mosques have "no governing model to be inherited from overseas and that there is no centralized body in America to dictate mosque policy").

Terms like "mother church" and "church judicatories," *Milivojevich*, 426 U.S. at 722, have no obvious analogs in Islam. Yet Muslims have just as much interest in the internal governance of their institutions as do adherents of any other faith. Indeed, many American mosques are governed by boards of directors, boards of trustees, or executive committees. Bagby, *supra*, at 20. And these types of bodies are filling leadership roles in more and more American mosques. *Id.* at 22 (reporting that only thirty percent of mosques in 2020 considered the imam as the mosque's leader, down from fifty-four percent in 2010). If control of such decentralized bodies is subject to heightened adjudication by secular courts under the guise of "neutral principles," the religious freedom of Muslims will necessarily become threatened. Muslim institutions would have fewer protections from state interference than would other religious institutions. The First Amendment does not permit such a result.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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