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 A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

BRIEF OF THE COALITION FOR JEWISH VALUES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Coalition for Jewish Values ("CJV") is recognized as the largest rabbinic public policy organization in the United States, representing over 2,500 traditional rabbinic leaders. CJV articulates and advocates for public policy positions through education, mobilization, and advocacy based on traditional Jewish thought and is led by a board of traditional Orthodox Rabbis. This includes submitting amicus curiae briefing in the defense of equality and freedom for religious institutions and individuals. As a minority religious organization, CJV has a direct interest in protecting religious liberty and religious practice against instances, like this one, where there has been unwarranted and unconstitutional interference by the government through the courts. Additionally, this case presents the opportunity to resolve a split among the United States Circuit Courts of Appeals and state supreme courts. A minority of these courts have exceeded the

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund the preparing or submitting of this brief. Further, no person, other than *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparing or submitting of this brief.

bounds established by this Court's precedent and overreached in deciding religion-based issues impacting religious organization governance. The fact that this is accepted anywhere in the United States not only threatens unconstitutional interference with the internal decision-making of religious organizations, but creates an environment where the minority view of the courts may expand, thus necessitating guidance from this court to prevent the development of a patchwork of ad hoc decision-making by the courts.

SUMMARY OF ARGUMENT

The Court should grant certiorari and clarify that the neutral-principles exception to the ecclesiastical abstention doctrine must be construed narrowly and limited to secular property disputes. Absent the Court granting certiorari, the courts will not have the needed guidance to avoid exceeding the bounds of the ecclesiastical abstention doctrine and continue to meddle into constitutionally protected religious freedoms where they do not have the necessary education about the religious or cultural doctrine. It is this absence of guidance that led the California Court of Appeal to intrude upon the constitutional rights of the parties, and has also led to a split in the United States Circuit Courts of Appeals and state courts on this same issue. The threat of potential impact from such unconstitutional intervention by the courts is particularly acute for

religious minorities, whose beliefs and practices are less widely known and understood—making them that much more prone to be misinterpreted even by well-meaning courts. Instead, any neutral-principles exception should remain limited to property disputes. This would not only eliminate the risk of rogue judicial decision-making in violation of the First Amendment, but it would also affirm the rights of litigants to seek and obtain relief in civil courts when disputes are actually secular in nature.

ARGUMENT

I. THIS COURT SHOULD GRANT CERTIORARI CLARIFYING THE NARROW CONSTRUCTION OF THE NEUTRAL-PRINCIPLES EXCEPTION TO THE ECCLESIASTICAL ABSTENTION DOCTRINE.

The ecclesiastical-abstention doctrine (the "Doctrine") ensures protected First Amendment religious freedoms by limiting court involvement in religious issues where the courts have limited expertise. For those rare circumstances involving a religious organization that is ensconced in a property dispute, this Court has created the narrowly drawn neutral-principles exception (the "Exception") to the Doctrine allowing courts to constitutionally decide the dispute. In particular, many lawsuits have been brought over issues of Jewish law. In these suits,

judges have typically recognized that they lack the training and prerogative to decide such issues. However, if this Court denies certiorari and allows federal and state courts to apply the Exception without guidance or limitation and beyond property disputes, courts will be free to decide these cases as long as they believe they have found neutral principles on which to do so, leading to a patchwork of potentially inconsistent neutral-principles rules throughout the country. Therefore, to prevent courts from ruling on issues where they likely lack the requisite education, training, and knowledge of cultural distinctions of minority religions, and to ensure a consistent approach to religious rights throughout the country, this Court should grant certiorari to affirm that the Exception is limited to property disputes.

Under the Doctrine, the First Amendment forbids courts from "resolving . . . controversies over religious doctrine." *Presbyterian Church in U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). While there is no "general immunity from secular laws . . . [the First Amendment] does protect [religious institutions'] autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 591 U.S. 732, 746 (2020). Courts have limited authority to settle some non-doctrinal disputes among religious groups, but this Court has permitted that

authority only in property disputes. *E.g., Jones* v. *Wolf*, 443 U.S. 595, 597 (1979); see also Dan Knudsen, *Wrestling with the Ecclesiastical Abstention Doctrine: How Puskar* v. *Krco Further Complicated the Heavily Litigated History of the Serbian Orthodox Church in America*, 36 N. ILL. U. L. REV. 139, 143–48 (2015) (outlining this Court's ecclesiastical-abstention cases). And even then, courts may settle the disputes only when "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." *Presbyterian Church*, 393 U.S. at 449. Absent that, courts must defer to the decisions of a religious group.

This Court first approved of a neutral-principles exception in 1969 in *Presbyterian Church*, where it held that although "there are neutral principles of law" that allow civil courts to decide certain property disputes, "the [First] Amendment . . . commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." *Id.* Thus, even in this first instance, this Court cautioned that courts must not wade into religious questions when deciding such disputes, for civil courts lack the requisite education, training, and knowledge of cultural distinctions inherent in a given religion to make such decisions.

The Court first applied the Exception, however, ten years later in *Jones* v. *Wolf*, which involved a dispute over ownership of church property that arose following a church schism. 443 U.S. at 597. The dispute reached this Court after the lower courts ruled in favor of one side of the post-schism church. *Id.* at 599. This Court held that the state court would be "entitled" to resolve the dispute so long as it found religiously neutral principles on which to do so, and remanded to the state court. *Id.* at 602–04, 609–10. On remand, the Supreme Court of Georgia found that there were no neutral principles on which to decide the dispute, so they let the decision of the church majority stand. *Jones* v. *Wolf*, 244 Ga. 388, 85 (1979).

To date, this Court has never applied the Exception outside of property disputes. *See* Knudsen, *supra*, at 146–47 (outlining Supreme Court jurisprudence on the Exception). This limitation ensures that courts apply the exception uniformly and do not venture into areas where they may not have the requisite expertise. On one hand, the Exception permits parties to obtain relief through civil courts when disputes are solely secular in nature but on the other, deters civil courts from ruling on religious issues where they have insufficient formal education, training, and cultural knowledge to address religious doctrine.

Yet because there was not a clear bright line, the Court of Appeal of the State of California in this

case, along with some other United States Circuit Courts of Appeal and state supreme courts have expanded the Exception to include matters beyond property disputes. For example, the United States Court of Appeals for the Ninth Circuit has held that although "[p]roperty disputes have proved especially amenable to application of the neutral-principles approach," there is no "authority or reason precluding courts from deciding other types of church disputes by application of purely secular legal rules, so long as the dispute does not fall within the ministerial exception and can be decided 'without resolving underlying controversies over religious doctrine.'" *Puri* v. *Khalsa*, 844 F.3d 1152, 1165 (9th Cir. 2017) (quoting *Presbyterian Church*, 393 U.S. at 449). See also *Smith* v. *Raleigh Dist. of N. Carolina Conf. of United Methodist Church*, 63 F. Supp. 2d 694, 714–15 (E.D.N.C. 1999) (citing District of Columbia Circuit cases for the same position).

The majority of Circuit Courts and state supreme courts that have addressed this question, however, have constitutionally interpreted the Exception within the confines this Court established, applying it only to property disputes. For example, the United States Court of Appeals for the Eighth Circuit in *Hutterville Hutterian Brethren, Inc.* v. *Sveen*, in a dispute comparable in many ways to the instant case, declined to answer which of two rival church factions had rightful control of the church's nonprofit corporation. 776 F.3d 547 (8th Cir. 2015). Instead, the

court said that this "governance issue is deeply intertwined with the religious dispute of who is properly a member of the true church and therefore also a member of the colony and a voting member of Hutterville"—much like how the governance issue for Bethesda University is deeply intertwined with the religious dispute of what religious qualifications one must have to be on its Board of Directors. *Id.* at 556 (internal quotation marks omitted). In an analogous governance dispute, the United States Court of Appeals for the Eleventh Circuit in *Crowder* v. *Southern Baptist Convention* said expressly that one of the two reasons it could not resolve the dispute was because "the controversy bears only a tangential relationship to property rights." 828 F.2d 718, 726–27 (11th Cir. 1987) ("[T]he denial of these alleged rights is unrelated to any question of ownership of property that would give rise to a state interest in assuring prompt resolution of the controversy by a civil court forum."). For a thorough overview of the split that has evolved, see Pet. Br. 19–28.

The present case offers the Court an opportunity to draw some bright lines and clarify the Doctrine, limiting the Exception only to property rights cases. The courts need this clarification and doing so will protect the rights of religious groups, including minorities and the CJV. Defining the Exception to this Court's clear demarcation of property disputes maintains a workable line that prevents courts from knowingly or unknowingly

stepping into the realm of religious doctrine in deciding what are essentially religious disputes.

The courts face indisputable challenges when attempting to answer religious questions, which are most evident when faced with issues involving minority religions, such as Orthodox Judaism, where judges may be especially unfamiliar with the religion—its teachings, history, culture, and governance.

Consider, for example, *Klagsbrun* v. *Va'ad Harabonim of Greater Monsey*, a typifying instance of a case that appears to have a secular resolution but nonetheless hinges on a religious question. 53 F. Supp. 2d 732 (D.N.J. 1999). The plaintiff, a Jewish man, obtained a civil divorce from his wife and remarried another woman, but the rabbinical authorities claimed that he failed to obtain a Jewish divorce decree (a "get"). *Id.* at 734–36. After the rabbinical authorities publicly declared that he had engaged in bigamy, the man sued for defamation. *Id.* at 736. To a layman, this may look like a case for a civil court to decide—defamation—as its outcome rested largely on one factual dispute: namely, as the court identified, "the question of whether Seymour Klagsbrun actually engaged in bigamy." *Id.* at 742.

The court, however, recognized that no matter how straightforward a resolution of the dispute may seem, it lacked jurisdiction because it was not

competent to address questions of religious interpretation:

> The important point here is that resolution of the factual disputes would require this court to inquire into religious doctrine and practice. Simply because, for example, the question of whether Seymour Klagsbrun actually engaged in bigamy is factual in nature in no way diminishes the need for this court to delve into religious doctrine. As noted above, the issue, using just one example, is whether Seymour Klagsbrun engaged in bigamy *within the meaning of the Orthodox Jewish faith,* which by its very nature necessitates an inquiry into religious doctrine.

Id. at 742 (emphasis in original). Allowing courts to expand the Exception to areas where a court believes it sees neutral principles for deciding a case would unconstitutionally open the door for courts to decide cases like *Klagsbrun*, which may look secular on their face but require religious expertise to decide.

Litigation over Jewish law is rife with examples of courts or agencies believing they are making secular decisions while actually violating Jewish doctrines. This mistake has occurred across topics ranging from synagogue leadership to the attendance of Jewish ceremonies to the finer points of Sabbath

law. For example, Hazzanim (cantors) who lead synagogue worship have sued to enforce their rights as religious ministers after government authorities refused to recognize them as such. *E.g., Silverman* v. *Commissioner*, No. 72-1336, 1973 WL 2493, at *1 (8th Cir. July 11, 1973) (affirming judgment of Tax Court which overturned decision of the Commissioner of Internal Revenue that a Hazzan did not qualify for the "minister of the gospel" tax exemption because, according to ostensibly religiously neutral criteria, he was not "duly ordained, commissioned, or licensed"). A Jewish salesman appealed to the Ninth Circuit for wrongful termination after the Oregon Employment Division determined that attending his wife's conversion ceremony was "willful misconduct," concluding that the ceremony was not mandated by Judaism. *Heller* v. *EBB Auto Co.*, No. CIV. 86-1163, 1987 WL 54454, at *1 (D. Or. Jan. 13, 1987); *Heller* v. *EBB Auto Co.*, 8 F.3d 1433 (9th Cir. 1993). Determining whether a ceremony is mandated by a religion is a question outside the purview of secular bodies. Some courts have expressed an understanding that what might be perceived as a neutral approach to Sabbath rules is anything but: In a 2015 oral argument, a Fifth Circuit judge used the act of turning on a light switch as an example of an activity unlikely to substantially burden the religious practice of Orthodox Jews. See Oral Argument at 1:00:40, *East Texas Baptist Univ.* v. *Burwell*, 2015 WL 3852811 (5th Cir. Apr. 7, 2015), goo.gl/L50Gt1. But in fact, that

exact act can constitute work that violates the Sabbath prohibition in Exodus 35:3.

Nor is this problem unique to Judaism. Like the Hazzan in *Silverman*, many elders in the Church of Jesus Christ of Latter-Day Saints, another religious minority, have sued to receive the ministerial tax exemption after government agencies refused to recognize their qualification for the exemption. See *Kupau* v. *Richards*, 6 Haw. 245, 245 (1879). Ministers of the Jehovah's Witness faith also experienced an analogous problem when seeking exemptions from the military drafts. Those ministers often work in secular occupations in addition to their religious work, a practice that differs from the clergy of many other faiths. In *Pate* v. *United States*, a Jehovah's Witness minister's request for a draft exemption was denied on the grounds that his workload did not fit the "artificial and orthodox standards" that the draft board used to determine what constitutes a "minister of religion." 243 F.2d 99, 101 (5th Cir. 1957). The draft board's apparently neutral principles nonetheless produced an incorrect result when applied to the Jehovah's Witness faith.

If the courts do not have the requisite guidance and are permitted to expand the Exception beyond property disputes, it will open the door for courts to reach inconsistent results as they attempt to resolve similar disputes. If so, the courts would be free to infringe on Constitutional rights by merely declaring

that there were neutral principles upon which to do so. This outcome could lead to patchwork, ad hoc decision-making by the courts and make it virtually impossible for religious organizations to protect their First Amendment rights uniformly.

By contrast, keeping the Exception limited to property disputes eliminates that risk while maintaining the rights of litigants to obtain relief from civil courts when disputes are solely secular in nature. Therefore, to ensure uniform application of the Exception and protect religious rights, this Court should keep the Exception to property disputes.

II. THIS COURT SHOULD GRANT CERTIORARI TO PROTECT MINORITY FAITH ORGANIZATIONS, WHICH ARE MOST AT RISK OF HARM BY COURTS' ATTEMPTS TO INTERPRET RELIGIOUS PRINCIPLES AND DECIDE DISPUTES.

This Court should grant the petition so that courts do not inconsistently apply the neutral principles exception. Denial could result in an erosion of constitutionally protected religious freedoms, with a disproportionate impact on vulnerable, minority religions. Indeed, no court has the requisite context—developed through years of practice, education, and training—to interpret issues of faith underlying

otherwise "neutral" disputes within or among religious organizations. This is especially true in the context of minority religions, whose doctrines and practices are less likely to be familiar to non-religious, civil courts, and thus, more likely to be misapplied in a way that affronts the First Amendment.

In this case, the Court of Appeal of the State of California was confronted with interpreting religious qualification criteria for membership on a Pentecostal-Christian university's board provided in corporate Bylaws and related documents. The court framed its interpretation of the governing documents as "neutral," reasoning that "[i]t does not intrude upon religious or doctrinal matters to read the documents involved and determine what the plain language of those documents states." App.14a.

If CJV's board, made up exclusively of Orthodox Rabbis, was substituted for the board of Bethesda University, and its bylaws stated that potential board members "must demonstrate a commitment," or remain "observant" of Judaism, under the guidance of the California Court of Appeal, a secular court could place a Jew of a different denomination, such as a Reform Jew, on the board of CJV. Not only would this override CJV's freedom to manage its own religious leadership, but it would put the organization's very mission—to "counteract the influence of progressive Jewish movements"—in the hands of those very people. Rabbi Yaakov Menken, *A*

Clear Torah Voice, Mishpacha Magazine (July 18, 2023).

To a secular court, being "observant" of Judaism reads the same way the word "commitment" reads in the Bylaws of Bethesda University. In the secular context, anyone would seemingly be able to observe the principles of Judaism. However, the word "observant" has a special meaning in Judaism that is different in the Jewish community than it would be to a secular court. Any person who has studied, practiced, or otherwise immersed themselves in the Jewish faith would recognize that the term "observant" refers very specifically to the traditional, Orthodox Jewish community, which does not accept the changes to Jewish practice made by other Jewish denominations. Being "observant" does not simply mean anyone who "observes" Judaism, but actually identifies a specific denomination of the religion that is based on traditional, classical teachings.

As recognized by this Court in *Board of Education of Kiryas Joel Village School District* v. *Grumet*, observant Jews "interpret the Torah strictly." 512 U.S. 687, 691 (1994). They "segregate sexes outside the home; [many] speak Yiddish as their primary language; [they] eschew television, radio, and English-language publications; and [they] dress in distinctive ways that include headcoverings," to name a few. *Id.* The Orthodox community interprets the Torah strictly as the Word of God, and "defend[s the]

ancestral religious practice against innovation and dissension." Baruch Litvin, THE SANCTITY OF THE SYNAGOGUE (New York, 1959). Reform Jews, conversely, have changed, melded, modernized Judaism, "revers[ing] more than seven decades of Israel's religious status quo," in a way that Orthodox Jews explicitly reject. See, *e.g.*, Rabbi Professor Dov Fischer, *A Young Israel Rabbi Weighs In: On Reform Judaism and Jewish Unity*, Israel National News (June 18, 2020). Therefore, an "observant" Jew, and a Jew who "observes" the Jewish religion, will more than likely have strikingly different appearances, beliefs, perspectives, interests, and religious missions than a Reform or secular Jew.

Even the term "Orthodox" has connotations within the religion that a secular court would have difficulty understanding without the requisite context. Indeed, if CJV's bylaws required board members be Orthodox Rabbis, a court may apply "neutral principles" to interpret that requirement as allowing Rabbis of the "Open Orthodox" denomination to serve in that role, which would similarly serve to undermine CJV and the Orthodox community it serves. The Open Orthodox movement originated in the 1990s, and, "by self-definition, exist[s] as a group outside normative authentic Orthodoxy." Rabbi Dov Fischer, *What the letter "B" tells us about phony Woke "Compassion" and "Open Orthodoxy,"* Israel National News (October 2, 2022). They support same-sex marriages; allow women to serve as Rabbis; and

actively participate in social justice causes. Traditionally Orthodox Jews denounce these very ideals. Indeed, the views of Open Orthodox Jews are generally the direct opposite of traditionally Orthodox Jews, but that might not be apparent to judges who are aiming to read the religion out of otherwise secular documents.

This Court should grant the petition so lower courts cannot continue neutralizing religiously impactful language in governing documents of institutions of faith. Organizations such as CJV will potentially be exposed to the dangerous misunderstandings of secular courts, with the potential to subvert the mission of the CJV in ways these tribunals are entirely unable to contemplate. While the court here relied on *Jones* v. *Wolf* as a basis for applying the neutral principles doctrine, explaining "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters," see App.13a (emphasis in original) (quoting 443 U.S. at 602), that legal foundation is feeble. Any interpretation of Bethesda University's bylaws, because they were framed by and referenced faith-based principles, necessarily involves the consideration of Pentecostal doctrine. It is not for a court to decide, as a matter of law, what a "commitment" to the Pentecostal Statement of Faith means, the same way it is not for a court to decide what it means to be "observant" of Judaism. Those

doctrines are simultaneously rooted in centuries of history, and courts lack the "understanding and appreciation" for all that constitutes a religious identity, which simply cannot be resolved through legal analysis. *Our Lady of Guadalupe*, 591 U.S. at 757.

Under the guise of neutral principles, the California Court of Appeal substituted its own judgment for the judgment of Bethesda University's in determining a matter of religious leadership. But it is impossible for a court to interpret the governing documents of a religious institution, which include faith-based prerequisites, and avoid a complete erosion of the Doctrine in place to protect constitutional religious liberties. In order to protect minority religions, whose doctrines and traditions are subject to a heightened misunderstanding because of their lesser known role in American culture, this Court should grant the petition and keep the neutral principles exception limited to property disputes to eliminate the risk of rogue judicial decision-making in violation of the First Amendment. Religious freedom from government interference is a core tenant of American constitutionalism that must be respected.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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