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 California Court of Appeal

BRIEF OF AMICI CURIAE RELIGIOUS LEADERS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Does the church autonomy doctrine bar courts from adjudicating the religious qualifications of the leaders of a religious institution?

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INTEREST OF AMICI CURIAE

Amici curiae are Pentecostal and non-Pentecostal religious leaders committed to maintaining the freedom of religious institutions "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*, 591 U.S. 732, 737 (2020) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952)).

Amici include: (1) Rev. Sunju Choi Chong, Pastor at Palm Tree Wesleyan Church; (2) Rev. John Chung, Pastor at Dunamis Mission Church; (3) Rev. Indon Paul Joo, Vicar at One in Christ Episcopal Church; (4) Rev. Leo Barbee, Senior Pastor at Victory Bible Church; and (5) Rev. David Kim, Pastor at New Life Oasis Church. Amici represent a cross-section of religious traditions that are united in their view that freedom from governmental interference in ecclesiastical matters is essential to protecting the freedom of religious institutions to shape their own faith and mission.[1]

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amici state that no counsel for a party authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution to this brief's preparation or submission. All parties have received timely notice of the filing of this brief.

SUMMARY OF ARGUMENT

The church autonomy doctrine is deeply rooted in the text of the Religion Clauses of the First Amendment and in our nation's history, and it is fundamental to the proper relationship between civil courts and religious institutions. *See*, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012) (tracing the history); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 748–49 (2020) (same). The doctrine "protect[s] the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady*, 591 U.S. at 737 (cleaned up). Churches—not civil courts—settle questions of church government, faith, and doctrine.

The California Court of Appeal departed from these fundamental principles here. It decided a religious question for a religious body, adjudicating the religious qualifications of the leaders of a religious institution. Bethesda University—which embraces a "Pentecostal Evangelical perspective" (Pet. App. 16a, 102a)—requires that its leaders espouse an "Evangelical and Charismatic understanding and style of life," and agree with a twelve-point "Statement of Faith" (Pet. App. 7a, 45a, 104a, 141a). Faced with a dispute over control of Bethesda University's Board of Directors, the Court of Appeal decided for the University what counts as an "Evangelical and Charismatic understanding and style of life" and who gets to lead the institution on that basis. This transgressed the church autonomy boundary.

The reason that the Court of Appeal cited for injecting itself into this religious question was a narrow

exception this Court has recognized in church property disputes—namely, that a civil court may apply "neutral principles" of law to resolve a property dispute where the dispute turns on the meaning of formal title documents and does not require the construction of religious texts or doctrine. The court below thus explained it was not intruding on church autonomy because it was applying "completely secular legal rules" with "'no consideration of doctrinal matters.'" Pet. App. 13a (quoting *Jones v. Wolf*, 443 U.S. 595, 602 (1979)).

But application of "neutral principles" in a case such as this dramatically weakens the protections of the church autonomy doctrine. Nearly any dispute involving a religious organization can be framed in a way that seems to strip it of its religious character and allows adjudication by purportedly neutral principles. For instance, a court could apply "neutral principles" to a trespass claim if it ignores the doctrinal dispute animating the claim. *But see Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449–50 (1969) (adjudicating trespass claim between church denominations violated church autonomy doctrine). An employment discrimination claim could be adjudicated using neutral, employment law principles if the court ignores the religious doctrine that gave rise to the employee's discharge. *But see Our Lady*, 591 U.S. at 762 (First Amendment forbids adjudicating employment dispute between teacher and religious school). And a corporate dispute could be resolved on neutral principles if the court ignores that the corporation at issue is a church. *But see Kedroff*, 344 U.S. at 119–21 (applying secular legal principles to church corporate governance violated church autonomy). Whether a court can apply "neu-

tral principles" to a dispute involving a religious organization is *not* the test for whether the church autonomy doctrine forbids the court from interfering in what are, at bottom, religious matters.

The Court of Appeal's decision here is emblematic of a broader misunderstanding in the lower courts regarding the set of cases where "neutral principles" may be applied to adjudicate a dispute internal to a religious organization. Several courts have improperly extended the "neutral principles" exception to encompass matters of church government, faith, and doctrine. Pet. 20–26 (collecting cases). But the prevailing rationale offered for such extension—that church autonomy is not implicated anytime courts can apply "neutral principles" of law—is overbroad and mistaken. It is inconsistent with precedent: *Hosanna-Tabor* and *Our Lady* already rejected the idea that neutral laws of general applicability necessarily trump church autonomy. *See Hosanna-Tabor*, 565 U.S. at 190; *Our Lady*, 591 U.S. at 738; *see also McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1072 (5th Cir. 2020) (Ho, J., dissental). It is also wrong—if an appeal to "neutral principles" were "all it took to sue a religious institution, it would be the exception that swallowed the rule." *Id.*; *see also Belya v. Kapral*, 59 F.4th 570, 580 (2d Cir. 2023) (Park, J., dissental) (cataloguing similar problems). It is not the law that church autonomy falls aside any time "neutral principles" could be invoked. But the lower courts remain confused—and in need of guidance—on this score.

Safeguarding the autonomy of religious organizations—including in cases where a matter can seemingly be resolved using neutral legal standards (but actually involves theological judgments)—is of vital

importance to religious leaders like amici. The Court of Appeal's decision undermines the freedom of religious institutions to decide on the religious qualifications of their leaders, and correcting this error is of great import to every religious organization in the country. Religious adherents must be free to manage the internal, ecclesiastical affairs of their organizations without fear of judicial second-guessing, and that must extend to setting qualifications for their leaders.

ARGUMENT

I. The Church Autonomy Doctrine Is Fundamental To Our Constitutional Structure.

The church autonomy doctrine is deeply grounded in the Constitution, protecting "the right of religious institutions to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady*, 591 U.S. at 737. Over matters "strictly and purely ecclesiastical in [their] character"—such as matters of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them"—the civil courts historically "exercise[d] no jurisdiction." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871).

Such limitations on civil authority over church decisions are fundamental in our constitutional tradition, and necessary to protect religious decisionmaking. *See*, *e.g.*, Douglas Laycock, *Towards a General Theory of the Religion Clauses,* 81 Colum. L. Rev. 1373, 1391 (1981); Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception,* 106 Nw. U. L. Rev. Colloquy 175, 177 (2011); Paul Horwitz, *Churches as First Amendment*

Institutions: Of Sovereignty and Spheres, 44 Harv. C.R.-C.L. L. Rev. 79, 117 (2009); Branton Nestor, *Judicial Power and Church Autonomy,* 100 Notre Dame L. Rev. (forthcoming 2025), available at https://tinyurl.com/5n9yr9rx; Lael Weinberger, *The Limits of Church Autonomy,* 98 Notre Dame L. Rev. 1253, 1259 (2023); Lael Weinberger, *Is Church Autonomy Jurisdictional?,* 54 Loy. U. Chi. L.J. 471, 502 (2022); Lael Weinberger, *The Origins of Church Autonomy: Religious Liberty After Disestablishment* (2024), available at https://tinyurl.com/4ts7c72s.

A. Church Autonomy Is Deeply Rooted In Our Constitutional History.

The church autonomy doctrine—and the "line prohibiting civil courts from intruding on ecclesiastical matters"—is "ancient." *McRaney*, 980 F.3d at 1077 (Oldham, J., dissental); Nestor, *supra*, at 7–51; Weinberger, *Origins of Church Autonomy*, *supra*, at 12–39. This ancient line separating church and state provided a structural protection for religious bodies to make religious decisions—free from state interference.

1. Church autonomy emerged as a legal principle in antiquity and the Middle Ages. In their fifth-century letters to the Emperor, Pope Felix III and Pope Gelasius I emphasized the independence of the bishops in religious matters. *See* Felix III, *Decretum*, *in* Jacques Paul Migne, 58 *Patrologia Latina* at 977; Gelasius I, Epistle 8 (*Famuli vestrae pietatis*), *in* Migne 59 *Patrologia Latina* at 42–47. This teaching passed into formal canon law, incorporated into Gratian's twelfth-century compilation of legal authorities. *See Concordance of Discordant Canons*, dist. 10, c. 3. During that century, the *libertas Ecclesiae*—the freedom of the Church—became a rallying cry of religious

leaders like Thomas Becket, who sought to maintain the Church's liberty to select its own leaders, free from secular political influence. *See* R.H. Helmholz, *Magna Carta and the Ius Commune*, 66 U. Chi. L. Rev. 297, 313–14 (1999). Canon law declared that statutes in violation of this liberty were void. *See id.* at 313.

2. The Magna Carta of 1215 "enacted this part of the canon law." Helmholz, *supra*, at 314. There, the Crown agreed that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired," and recognized "the freedom of the Church's elections—a right reckoned to be of the greatest necessity and importance." J.C. Holt, Magna Carta App. IV, p. 317, cl. 1 (1965); *see also* Helmholz, *supra*, at 314 (Magna Carta enshrined "the freedom of the clergy to elect their leaders"). The guarantee was also used as a remedy against "those who had invoked the aid of secular courts to prevent what the clergy considered the rightful exercise of canonical jurisdiction." Helmholz, *The Church and Magna Carta*, 25 Wm. & Mary Bill of Rights J. 425, 433 (2016).

While "[t]hat freedom in many cases may have been more theoretical than real" (*Hosanna-Tabor*, 565 U.S. at 182), and the "precise contours" of the church-state boundary "changed over time," the "jurisdictional line prohibiting civil courts from intruding on ecclesiastical matters" remained significant in the English common law tradition. *McRaney*, 980 F.3d at 1077 (Oldham, J., dissental) (relying on, *inter alia*, Felix Makower, The Constitutional History and Constitution of the Church of England 384–94 (London, 1895)).

3. "Established religion came to these shores with the earliest colonists." Michael W. McConnell, *Establishment and Disestablishment at the Founding*, 44

Wm. & Mary L. Rev. 2105, 2115 (2003). One common feature of colonial and state religious establishments was "governmental control over the doctrines, structure, and personnel of the state church." *Id.* at 2131. State intermeddling in religious affairs generated strife and discontent—with "continual conflicts between clergymen, royal governors, local gentry, towns, and congregants over the qualifications and discipline of ministers." *Id.* at 2137.

4. "It was against this background that the First Amendment was adopted." *Hosanna-Tabor*, 565 U.S. at 183. "Familiar with life under the established Church of England" and other establishments in early America, the "founding generation sought to foreclose the possibility of a national church." *Id.* In the Anglican Church, the King appointed clergy. Act in Restraint of Annates, 25 Hen. 8, c. 20 (1534), *reprinted in* 3 The Statutes of the Realm 739 (1819). "In the established Congregational churches in New England," the voters directly elected clergy. Douglas Laycock, *Church Autonomy Revisited*, 7 Geo. J. L. & Pub. Pol. 253, 262 (2009). "So government-appointed clergy were a symptom of the established church, and judicial orders reinstating clergy are a form of government-appointed clergy." *Id.*

"By forbidding the 'establishment of religion' and guaranteeing the 'free exercise thereof,' the Religion Clauses ensured that the new Federal Government—unlike the English Crown—would have no role in filling ecclesiastical offices." *Hosanna-Tabor*, 565 U.S. at 184. "The Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own." *Id.*

The ancient concept of the liberty of the church from government interference in internal matters flourished in the philosophical debate that influenced the Founders. Thinkers such as John Locke reiterated the importance of church autonomy. McConnell, *Establishment and Disestablishment*, *supra*, at 2127, 2191. In Locke's view, it was necessary "to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other." John Locke, *First Letter Concerning Toleration* 22–23 (William Popple trans., 1689). It was "the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life." *Id.* But the "jurisdiction of the magistrate reaches only to these civil concernments ... it neither can nor ought in any manner to be extended to the salvation of souls." *Id.*

Americans made "almost verbatim Lockean arguments," opining that "'[t]he rights of conscience should always be considered inalienable—religious opinions a[re] not the objects of civil government, nor any way under its jurisdiction.'" *McRaney*, 980 F.3d at 1078 (Oldham, J., dissental) (quoting John Leland, *The Yankee Spy* (1794)). Locke's views on church autonomy were "foundational to the original public understanding of church autonomy in America." *Id.* (tracing the intellectual origins of American church autonomy and noting that Americans even went further than Locke in protecting religious freedom).

Early American political practice and thought confirmed that civil authorities generally lacked power over matters of church government, faith, and

doctrine—as reflected by several founding-era "episode[s]." *Hosanna-Tabor*, 565 U.S. at 184; *see also* Berg et al., *supra*, at 181.

First, President Madison refused to answer Bishop Carroll's inquiry regarding who should direct the Catholic Church's affairs in the Louisiana territory because the "'scrupulous policy of the Constitution in guarding against a political interference in religious affairs'" prevented the government from even opining on the "'selection of ecclesiastical individuals.'" Berg et al., *supra*, at 181 (quoting Letter from James Madison to Bishop John Carroll (Nov. 20, 1806), *in* 20 *Records of the American Catholic Historical Society of Philadelphia* 63–64 (1909)); *see also Hosanna-Tabor*, 565 U.S. at 184.

Second, President Madison vetoed a bill incorporating the Protestant Episcopal Church in the District of Columbia because it "exceeds the rightful authority to which Governments are limited, by the essential distinction between civil and religious functions, and violates, in particular, the … Constitution of the United States." *Hosanna-Tabor*, 565 U.S. at 184–85 (quoting 22 Annals of Cong. 982–83 (1811)).

Third, President Jefferson provided assurance to the Ursuline Sisters of New Orleans that the "principles of the Constitution and government of the United States are a sure guarantee … [that their] institution will be permitted to govern itself according to it's [sic] own voluntary rules, without interference from the civil authority." Athanasius G. Sirilla, *The "Nonministerial" Exception*, 99 Notre Dame L. Rev. 393, 397–98 (2023) (quoting Letter from Thomas Jefferson to the Ursuline Nuns of New Orleans (July 13, 1804), *in* 44 *The Papers of Thomas Jefferson* 78, 78–79 (James P. McClure ed., 2019)).

These events confirmed the principle that it was not "permissible for the government to contradict a church's determination of who can act as its ministers." *Hosanna-Tabor*, 565 U.S. at 185. They also confirmed, more broadly, that civil government generally lacked power over "internal church decision[s] that affect[] the faith and mission of the church." *Id.* at 190.

B. Church Autonomy Limits Civil Court Power Over Church Matters.

The church autonomy doctrine has long been understood as a *structural* barrier to judicial intervention in church leadership disputes.

1. The church autonomy doctrine ensures that internal church matters are resolved by competent authorities, since civil courts lack the requisite power and competence over such ecclesiastical matters. In doing so, the doctrine preserves an important sphere for religious decisionmaking. *See* Laycock, *Towards a General Theory of the Religion Clauses*, *supra*, at 1391, 1403 (1981); Berg et al., *supra*, at 176; Horwitz, *supra*, at 118; Nestor, *supra*, at 55; Weinberger, *Is Church Autonomy Jurisdictional?*, *supra*, at 489.

The doctrine preserves church autonomy—while also respecting secular interests. For instance, the church autonomy doctrine does not preclude resolution of issues like abuse or violence toward members. Laycock, *Towards a General Theory of the Religion Clauses*, *supra*, at 1391, 1406; Horwitz, *supra*, at 122. Church-state relations are a "two-way street"—and church autonomy's limitations seek to protect legitimate church interests while also preserving sufficiently weighty civil interests. Nestor, *supra*, at 37–

48, 83–87; Weinberger, *The Limits of Church Autonomy*, *supra*, at 1253 (church autonomy doctrine "provide[s] accountability and limit[s] church autonomy").

2. Like the contemporary doctrine, the historical church autonomy doctrine safeguarded the freedom of ecclesiastical authorities to decide ecclesiastical matters without improper interference by civil authorities. Such ecclesiastical matters included, *inter alia*, questions of (1) religious faith and doctrine (e.g., what is the religious mission of the church?), and (2) church governance, discipline, and leadership (e.g., who should lead the church?). *See*, *e.g.*, *Hosanna-Tabor*, 565 U.S. at 181–85; *Watson*, 80 U.S. (13 Wall.) at 727–35 (collecting early cases).

Civil courts historically "maintained that the church autonomy doctrine limited their power to exercise jurisdiction over or to inquire into protected ecclesiastical decisions." Nestor, *supra*, at 55; *id.* at 15–55; *McRaney*, 980 F.3d at 1081 (Oldham, J., dissental). Although "jurisdiction is a word of many, too many, meanings," and "profligate use of the term has caused much confusion," the key point—for present purposes—is that early American courts recognized that secular, civil courts lacked power to decide religious issues reserved to religious authorities. *McRaney*, 980 F.3d at 1080 (Oldham, J., dissental).

The leading historical example is *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). This case involved a property dispute over the Walnut Street Presbyterian Church. The Court held that churches, rather than civil courts, must have the final say over matters of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required." *Id.* at 732–33. Under *Watson*, "whenever the questions of

discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them"—and over disputes that are "strictly and purely ecclesiastical in [their] character," "civil courts exercise no jurisdiction." *Id.* at 727, 733; *see also McRaney*, 980 F.3d at 1080 (Oldham, J., dissental) (analyzing *Watson*).

Other civil courts, following *Watson*, routinely maintained that they generally lacked power over ecclesiastical decisions committed to ecclesiastical authorities.

One example is *Chase v. Cheney*, 58 Ill. 509 (1871). There, the Illinois Supreme Court refused to enjoin an ecclesiastical court from adjudicating a minister's alleged ecclesiastical offenses (e.g., deviating from the Book of Common Prayer). It explained that it had no desire "to become [the] *de facto* head[] of the church," and that it had "no right ... to dictate ecclesiastical law" (or "jurisdiction" to do so). *Id.* at 535. Because "'[c]auses spiritual must be judged by judges of the spirituality, and causes temporal by temporal judges,'" the court refused to "inquire whether the alleged [conduct] is any offense" because the alleged offense was a "question of ecclesiastical cognizance," and a civil court was "no forum for such adjudication." *Id.* at 535, 538. The "[f]reedom of religious profession and worship can not be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials." *Id.* at 537. The "church should guard its own fold; enact and construe its own laws; enforce its own discipline; and thus will be maintained the

boundary between the temporal and spiritual power." *Id.* at 535.

Another example is *Shannon v. Frost*, 42 Ky. 253 (1842). This case involved a property dispute between the Frankfurt Baptist Church and expelled church members. The Kentucky Court of Appeals declined to question the church's decision to expel the church members, and held that such expulsion extinguished the expelled members' right to use the church property. It explained that the court, "having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline or excision," and the court "cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly ... cut off from the body of the church," or otherwise exercise "supervision or control" or offer "redress" regarding such ecclesiastical disputes. *Id.* at 258. The "judicial eye of the civil authority of this land of religious liberty, cannot penetrate the veil of the Church, nor can the arm of this Court either rend or touch that veil for the forbidden purpose of vindicating the alleged right of the excinded members. When they became members … they voluntarily subjected themselves to the ecclesiastical power, and cannot invoke the supervision or control of that jurisdiction by this or any other civil tribunal." *Id.* at 259. If their "sentence be unjust, the only appeal is to the omniscient Judge of all"—and "they can obtain no redress in this [civil] forum," which lacks "ecclesiastical jurisdiction" over such disputes. *Id.* at 261.

These civil courts were not alone. Early courts explained that church autonomy limited judicial power in important ways, such that civil courts generally lacked power to decide religious matters committed to

religious authorities. Nestor, *supra*, at 15–51. The church autonomy doctrine was, to be sure, complicated—civil courts debated where to draw the line between church matters and civil authority, and they wrestled with a variety of substantive and procedural exceptions to the general church autonomy rule. *Id.* But over a matter "strictly and purely ecclesiastical in its character"—a "matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them"—the "civil courts exercise no jurisdiction." *Watson*, 80 U.S. (13 Wall.) at 733.

3. Civil courts consistently explained that such limitations on their power were designed "to protect religious-freedom interests (i.e., the freedom of church associations over church matters), and to respect nonestablishment principles (i.e., the limitations on civil governmental power over protected church matters)." Nestor, *supra*, at 55.

First, civil courts grounded church autonomy in free-exercise principles. They traditionally maintained that civil court adjudication of ecclesiastical decisions (e.g., whether to remove a church leader) would undermine the freedom of religious institutions over religious matters. *See*, *e.g.*, *Watson*, 80 U.S. (13 Wall.) at 727–28 (religious "freedom"); *Watson v. Garvin*, 54 Mo. 353, 378 (1873) ("religious liberty"); *Chase*, 58 Ill. at 537 (same). In the context of the present controversy, such free-exercise considerations are implicated when a civil court second-guesses a religious body's determination of religious doctrine (e.g., is Bethesda Pentecostal?) and religious leadership (e.g., who should lead Bethesda?). "[T]here would be

serious free exercise costs in imposing ministers on religious organizations who don't want them. Judges have explained the ministerial exception in lots of different ways, but the near unanimity of results reflects a judicial reaction that it is just not the courts' job to choose the clergy." Laycock, *Church Autonomy Revisited*, *supra*, at 261.

Second, civil courts also grounded church autonomy in non-establishment principles. They traditionally held that civil court adjudication of ecclesiastical questions (e.g., whether church authorities had correctly interpreted religious doctrine) would raise non-establishment concerns by entangling civil courts in religious matters over which they lacked competency or authority. *See, e.g.*, *Watson*, 80 U.S. (13 Wall.) at 733 ("jurisdiction"); *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282, 291 (1846) ("[]competen[cy]"); *Chase*, 58 Ill. at 535 ("boundary between the temporal and spiritual power"—civil courts not "*de facto* heads of the church"). As applied to the present controversy, such non-establishment considerations are likewise implicated when a civil court steps in to resolve questions of religious doctrine, such as whether Presbyterianism is an "Evangelical and Charismatic" faith. Or questions of religious leadership, such as whether an individual exhibits a "theology consistent with" the "position of" Bethesda. Pet. App. 7a. These principles—free-exercise protections for churches and non-establishment limitations on civil courts—combine to create a powerful protection for ecclesiastical authorities to decide ecclesiastical questions without improper interference by civil authorities.

C. Courts Are Not Free To Apply "Neutral Principles" To Inherently Religious Matters.

Contrary to this guarantee, the Court of Appeal reached out to decide for itself an ecclesiastical question: Who is religiously qualified to lead Bethesda? In doing so, the Court of Appeal purported to apply "neutral principles" of corporate governance. But this was error twice over.

This Court has only ever applied "neutral principles" in the narrow context of disputes about religious property ownership where the dispute can be resolved based on formal title documents. And it is important to remember what the Court meant by "neutral principles." These were to be principles that in no way implicated any ecclesiastical question.

This Court's cases forbid the application of neutral, secular legal principles to disputes about qualification for religious leadership because such principles cannot exist. The question of who qualifies as a religious leader is fundamentally and irrevocably a religious question. The opinion below illustrates the dangers of courts misunderstanding and applying the "neutral principles" approach too broadly. This Court should grant certiorari to clarify the narrow scope of the "neutral principles" doctrine.

1. The Court of Appeal rightly recognized that this case presented a church autonomy issue. Bethesda's governing documents require that Board members possess an "Evangelical and Charismatic understanding" or "theology consistent with the theological position of [Bethesda]." Pet. App. 7a. Resolving the meaning of these provisions requires a determination of "religious doctrine and practice." *Jones*,

443 U.S. at 602.

But the Court of Appeal concluded that it could decide the merits using "neutral principles of law." Pet. App. 13a. The "neutral principles" exception allows courts to resolve property disputes without addressing ecclesiastical matters. In a property dispute, courts can often decide who owns property by simply looking to deed and title documents, without ever coming close to religious questions. *See Jones*, 443 U.S. at 603; *see also Presbyterian Church*, 393 U.S. at 449.

The Court of Appeal's extension of that approach to this very different context—a dispute over the leadership of a religious body—contradicts this Court's church autonomy precedent. *See Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721 (1976) (rejecting the extension of "neutral principles" to disputes about religious institutional governance).

Unlike a property dispute, internal governance disputes cannot be resolved by the plain language of a title and often involve determining theological questions, especially where, as here, they involve qualifications for religious leadership. Deciding disputes imbued with religious significance and rooted in religious doctrine entangles the court with religion (a non-establishment concern) and undermines religious autonomy (a free-exercise concern).

Expanding the "neutral principles" exception as the Court of Appeal did here risks unraveling the church autonomy doctrine. In both *Our Lady* and *Hosanna-Tabor*, this Court said that the First Amendment's Religion Clauses provided religious institutions with a defense to a putatively neutral rule of em-

ployment law. That the laws were being enforced neutrally did not remove the First Amendment concern. *See Hosanna-Tabor*, 565 U.S. at 190 (rejecting rule that a "valid and neutral law of general applicability" necessarily permitted "government interference with an internal church decision").

While the government may, under current doctrine, have a freer hand in regulating "only outward physical acts," the church autonomy doctrine, "in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. When the government interferes with such church affairs, this Court has made clear that courts do *not* apply neutral laws of general applicability. *Id.* (rejecting application of such law); *Our Lady*, 591 U.S. at 732 (same). Regrettably, many lower courts are not following this Court's command. *See, e.g.*, *McRaney*, 980 F.3d at 1070-73 (Ho, J., dissental).

2. Resolving the dispute of who would lead Bethesda required "resol[ution] [of] a religious controversy." *Jones*, 443 U.S. at 604. Bethesda's governing documents clearly state that Board members must have an "Evangelical and Charismatic understanding" or "theology consistent with the theological position of [Bethesda]." Pet. App. 7a. There are no secular "neutral principles" that allow a civil court to determine what it means to be "Evangelical and Charismatic" or to hold a theology consistent with Bethesda's. The Court of Appeal should have "defer[red] to the resolution" of that doctrinal issue "by the authoritative ecclesiastical body"—the Bethesda Board. *Jones*, 443 U.S. at 604. By applying supposedly "neutral principles" to an ecclesiastical dispute such as religious qualifications for church leadership, the Court

of Appeal turned the motivation for neutral principles on its head.

Even on its own terms, the Court of Appeal's opinion does not rest on neutral principles. As the decision acknowledges, "neutral principles" are appropriate only when a court is applying "completely secular legal rules" with "'no consideration of doctrinal matters.'" Pet. App. 13a (quoting *Jones,* 443 U.S. at 602). But the disputed qualifications in this case are decidedly theological:

- "A high level of spiritual development and integrity *defined in terms of Evangelical and Charismatic understanding and style of life*." Pet. App. 7a (emphasis added).
- "[A] *theology consistent with the theological position of* [*Bethesda*]." *Id.* (emphasis added).

American courts are not in the business of determining whether all Pentecostals are Evangelical or whether some Presbyterians are Charismatic. There simply *are no* secular, neutral principles to apply those standards to denominations in general or individual ministers in particular.

This Court should grant the writ of certiorari to clarify that the neutral principles approach cannot apply to internal religious disputes about church leadership. In disagreements like this one, civil courts cannot invoke "neutral principles" of law to settle what are essentially religious questions.

II. It Is Vital That Religious Organizations Are Able To Determine Qualifications For Their Leaders Without Judicial Intervention.

The Court of Appeal's decision to adjudicate the religious qualifications of religious leaders within a

religious institution implicates an issue of exceptional constitutional importance—with significant effects for millions of religious Americans. The reach of the "neutral principles" exception to such internal religious disputes has, as Petitioners explain, generated substantial confusion and uncertainty. Pet. 19–35. This has significant ramifications for both the law and the practical, day-to-day lives of religious institutions and their ministers.

Without a conclusive resolution of the legal issues presented here, religious institutions throughout the country will face substantial uncertainty. The increased risk of expensive and intrusive litigation will warp church decisionmaking at every level and undermine the ability of churches to order their affairs.

Our system of laws often uses tort, antidiscrimination, and other laws to change the behavior of institutions. That is appropriate for business and industry in certain contexts. It is a constitutional imperative for government institutions. But it is almost never appropriate for religious organizations. The text of the Religion Clauses and the related "historical practices and understandings" suggest that when government engages in activity that causes religious organizations to alter their behavior, there is a high probability a constitutional violation has occurred. *Kennedy v. Sch. Dis.*, 597 U.S. 507, 535 (2022); *see generally* Douglas Laycock, *Substantive Neutrality Revisited*, 110 W. Virg. L. Rev. 51 (2007).

Allowing courts to delve into the affairs of a religious organization under an overly broad formulation of the "neutral principles" exception to church autonomy would leave believers constantly looking over their shoulders. Rather than leading their congregations in the way they believe God wants, they would

have to constantly inquire how a judge might interpret their actions. Legal advice would replace theological principle. The resulting decisions by religious actors and their voluntary organizations will be distorted to homogenize around existing secular laws. The Religion Clauses forbid such an outcome. This is true even if it is likely churches will win many of the disputes. Institutions are burdened not just by *losing* a case brought against them, but also by the time and expense of litigation. The fear of the cost of discovery and lengthy, years-long disputes is enough to cause entities to change their behavior. The church autonomy doctrine is designed to avoid those ends by avoiding litigation in the first place.

CONCLUSION

The Court should grant the petition for certiorari and correct the California Court of Appeal's mistake.

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