No. 18-1441

In The
Supreme Court of the United States

PRESBYTERIAN CHURCH (U.S.A.),
A Corporation,

Petitioner,

v.

BRIAN EDWARDS, JUDGE,
JEFFERSON CIRCUIT COURT, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Kentucky

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REPLY BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether the First Amendment requires a court to dismiss a claim without discovery or further proceedings when the claim, as expressly pleaded, contests a church's termination of a minister's employment on grounds that necessarily require judicial inquiry into church doctrine, policy, discipline or governance.

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REPLY BRIEF[1]

The decision below hollows out a basic protection for religious freedom. The Kentucky Supreme Court has refused to dismiss a defamation claim by a minister who seeks damages because a church notified its members of the ecclesiastical reason for his termination. Instead, the court remanded for discovery to begin. That decision contradicts this Court's bedrock decisions under the First Amendment and creates multiple lower-court conflicts. The brief in opposition brushes aside these reasons for review, but they are compelling.

The pertinent facts are undisputed. Reverend Hoey is a Presbyterian minister who occupied a position in the Church's national hierarchy. The Presbyterian Church (U.S.A.), A Corporation, fired him after learning that he transferred money and created a new corporation contrary to ecclesiastical policies. The Church informed Hoey's home congregation and the Presbyterian community of his termination "for ethical violations" under Church policy. Hoey sued for defamation.

Reverend Hoey's claim is facially barred by the First Amendment's church autonomy doctrine, which safeguards a church's religious decisions from judicial scrutiny. See *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 717 (1976). But the court below refused to dismiss the case. It held that the

[1] This reply is submitted by new counsel whom petitioner retained after filing the petition.

First Amendment has no bearing yet because Hoey's claim does not appear to raise a question of religious doctrine. See App. 8 n.1. So the court remanded for the trial court to oversee discovery and "determine whether Hoey's actions * * * raised an issue of ecclesiastical doctrine" or "amounted to a mere failure to follow organizational procedures." *Ibid.*

The decision below conflicts with this Court's precedents holding that "civil courts exercise no jurisdiction" over 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.' " *Milivojevich*, 426 U.S. at 714 (quoting *Watson* v. *Jones*, 80 U.S. 679, 733–34 (1871)). Contrary to the decision below, this church autonomy doctrine (sometimes called the ecclesiastical abstention doctrine) unmistakably encompasses a church's doctrine *and* its "organizational procedures." App. 8 n.1. Conducting discovery into petitioner's communications with the faithful about Hoey's termination is a "process of inquiry" that "impinge[s] on rights guaranteed by the Religion Clauses." *NLRB* v. *Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Unless this Court intervenes, the Church will suffer irreparable injuries by being compelled to submit to an invasive inquiry into its constitutionally protected religious decisions.

Review is thus imperative. The decision below flouts this Court's decisions by limiting the church autonomy doctrine to disputes over religious doctrine and by permitting discovery into a church's religious decision-making. It also conflicts with numerous lower

courts on the same grounds. The Court should grant certiorari to resolve these conflicts and restore the Church's fundamental rights.

ARGUMENT

I. The Decision Below Deprives a Church of Its First Amendment Right to Conduct Its Internal Affairs Free of Judicial Interference.

A. The decision below squarely conflicts with this Court's decisions affirming the church autonomy doctrine.

The petition (at 11-12) explains that the decision below contradicts the church autonomy doctrine. See *Watson*, 80 U.S. at 733–34; *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 119 (1952). A subsidiary principle, the ministerial exception, applies when a church disciplines or removes a minister. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 185 (2012).[2]

The decision below defies these basic principles. It refused to dismiss Reverend Hoey's defamation claim, which rests on the allegation that Church officials

[2] *Hosanna-Tabor* reserved the issue "whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers." 565 U.S. at 196. Although petitioner welcomes review on any ground, the question presented does not require the Court to resolve that undecided question.

announced his termination in "a newsletter distributed to the Presbyterian community" along with the spare explanation that Hoey had been terminated "because he 'had committed ethical violations and/or engaged in unethical conduct.' " App. 12 (quoting Compl.). He complains that, as a professional minister, this statement was defamatory. *Id.* at 12–13. Yet the majority below declined to apply the church autonomy doctrine because Hoey's claim "does not require the interpretation of actual church doctrine." App. 8 n.1 (citation omitted). Similarly, Hoey insists that his claim against the Church lies "beyond * * * the ministerial exception" because it "falls outside of church doctrine" and is not based on "strictly religious grounds." Br. in Opp. 5, 7.

Reducing the church autonomy doctrine to a ban on the adjudication of "actual church doctrine," App. 8 n.1 (citation omitted), is shockingly out-of-step with this Court's precedents. They unitedly affirm "the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Milivojevich*, 426 U.S. at 713.

The court below was wrong to demean Hoey's violations of Church policies as "a mere failure to follow organizational procedures." App. 8 n.1. The First Amendment guarantees the Church "power to decide for [itself], free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116. Even if a matter of

church government is framed in terms of "organizational procedures," App. 8 n.1, "civil courts" undertaking "inquiry into the procedures that canon or ecclesiastical law supposedly requires * * * is exactly the inquiry that the First Amendment prohibits." *Milivojevich*, 426 U.S. at 713.[3] Judicial inquiry is especially objectionable because Hoey belonged to the Church's hierarchy. See *Kedroff*, 344 U.S. at 119 (Free Exercise Clause protects "the Church's choice of its hierarchy").

Turning a blind eye to the church autonomy doctrine unless a claim involves a question of religious doctrine allows Hoey to evade the First Amendment's constraints. His defamation claim necessarily entails an inquiry into petitioner's church governance, as the court below conceded. See App. 8 n.1. As the dissent explained, "It is absurd to hold that the Church could not be sued for *firing* Hoey because it falsely found him in violation of Presbyterian ethical policy, while inconsistently holding that the Church can be sued for falsely *saying* he was fired for violating Presbyterian ethical policy." *Id.* at 18 (emphasis added). Adjudicating Hoey's defamation claim would "circumvent" the First Amendment. *Ibid.* The decision below is thus "wholly inconsistent with the American concept of the relationship between church and state" because it "permit[s] civil courts to determine ecclesiastical

[3] Besides, the categories of "religious doctrine" and "organizational procedures" are hardly airtight, since ecclesiastical policies are infused with elements of religious doctrine. In this case, the Church's determination that Hoey did not comply with Church policy is inseparable from issues of religious doctrine.

questions." *Presbyterian Church in U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445–46 (1969).

It is irrelevant that Hoey contests his termination by seeking damages for the Church's communication of the reasons for his dismissal, rather than seeking reinstatement. See *Hosanna-Tabor*, 565 U.S. at 194 (awarding damages unconstitutionally "operate[s] as a penalty on the Church for terminating an unwanted minister"). Communicating Hoey's removal to the faithful was intrinsic to the Church's removal process.

To be clear, a minister may have a defamation claim against his church—but only where the claim does not involve church government or ecclesiastical standards or the selection and removal of the minister himself. Hoey's defamation claim entails all these forbidden elements. It will entangle courts in the interpretation and application of Presbyterian ethical standards and how the Church communicated his discipline and removal to the faithful. These are exactly the kinds of internal religious matters that the First Amendment safeguards against judicial intrusion. See *Am. Legion* v. *Am. Humanist Ass'n*, Nos. 17-1717 & 18-18, 2019 WL 2527471, at *12 n.16 (June 20, 2019) (citations omitted) (Establishment Clause decisions include those involving "state interference with internal church affairs").

B. Court-ordered discovery violates the First Amendment.

As the petition explains (at 14), the decision below sanctions discovery into matters guarded by the church autonomy doctrine. That is unsurprising since the lower court's radical contraction of that doctrine leaves sensitive religious matters exposed to judicial inquiry. See *Watson*, 80 U.S. at 734 (rejecting "an elaborate examination of the principles of Presbyterian church government"). And the court below neglected the principle that liability does not have to be assessed for a First Amendment violation. "It is not only the conclusions that may be reached * * * which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB*, 440 U.S. at 502.

Permitting discovery infringes on the Church's rights. When the pleadings leave no doubt that a claim intrudes into areas protected by the church autonomy doctrine, "the First Amendment requires dismissal." *Hosanna-Tabor*, 565 U.S. at 194; see also *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) (application of the church autonomy doctrine "requires dismissal of the complaint"). As the dissenting justices below discerned, the unconstitutional intrusion into matters protected by the church autonomy doctrine is "apparent from the face of Hoey's complaint." App. 13. It shows that Hoey is a minister who is suing his former Church employer for the part of the termination process that entailed announcing to the Church community that he had been removed for

violating Church ethical standards. With those facts in the pleadings, there is nothing more to discover before dismissing the case. See App. 14.

Reverend Hoey contends that the Church must submit to discovery. In his view, "this is a defamation case that falls outside of church doctrine" and so "discovery is appropriate." Br. in Opp. 4–5. In a like vein, the court below ordered discovery into the false dichotomy of "whether Hoey's actions * * * raised an issue of ecclesiastical doctrine (thus giving rise to immunity) or if they amounted to a mere failure to follow organizational procedures." Pet. App. 8 n.1. Hoey understands this order as a license to seek "information and documents relative to the publication of the defamatory documents and documents and evidence relative to the truth of those matters." Br. in Opp. 7.

Unless reversed, the decision below sanctions an intrusive examination of the Church's internal decision-making. The dissent below correctly explained that "the trial court can adjudicate Hoey's claim of defamation *only* by evaluating [Church] policies and determining if the Church officials' statements are true." App. 13. Reverend Hoey will probe internal Church communications and deliberations about whether his actions violated the Ethics Policy. And that Policy is unmistakably religious. It dictates that donations to the Presbyterian Mission Agency "are entrusted to the organization by God through the faithful financial support of PCUSA members" and thus the "highest degree of stewardship and fiduciary responsibility is expected of all employees." Pet. 4.

Hoey assures that if discovery entangles the court in issues of religious doctrine, the trial court may "grant summary judgment or dismiss the action," with "an immediate right of appeal." Br. in Opp. 4, 10. But an appeal does not cure the loss of constitutional rights. Exposing the Church to discovery and ongoing litigation regarding matters protected by the First Amendment inflicts irreparable injury. See *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). The dissent below rightly objected that the Church should not have to endure the "intrusion allowed" by discovery or "bear the additional expense and burden of this additional litigation when its immunity from same is self-evident." App. 19.

II. The Decision Below Conflicts with Multiple Federal Circuits and State Supreme Courts.

The decision below conflicts with other lower courts by (1) limiting the church autonomy doctrine to cases requiring judicial inquiry into religious doctrine and (2) declining to dismiss a claim when the church autonomy doctrine is facially applicable.

1. Contrary to the decision below, numerous federal circuits and state supreme courts have refused to limit the church autonomy doctrine to disputes over religious doctrine.

In *Bryce* v. *Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (2002), the Tenth Circuit held that "constitutional protection extends beyond the selection

of clergy to other internal church matters," with "the church autonomy doctrine * * * protect[ing] the fundamental right of churches to decide for themselves matters of *church government, faith*, and doctrine." *Id.* at 656 (emphasis added). From this, the court concluded that "statements made at the church meetings, in [a minister's] letters, and in materials [a minister] attached to his letters," while perhaps "offensive" and "incorrect," were "not actionable" because they "fall squarely within the areas of church governance and doctrine protected by the First Amendment." *Id.* at 658.

Other circuits have similarly concluded. See, *e.g.*, *Simpson* v. *Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir. 1974) (refusing to "narrowly limit ecclesiastical disputes to differences in church doctrine" and holding that "civil courts are barred by the First Amendment from determining ecclesiastical questions"); *Church of Scientology Flag Serv. Org., Inc.* v. *City of Clearwater*, 2 F.3d 1514, 1537 (11th Cir. 1993) ("[C]ivil authorities must abstain from interposing themselves in matters of church organization and governance"); *Natal* v. *Christian & Missionary All.*, 878 F.2d 1575, 1576 (1st Cir. 1989) ("[C]ivil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice."); *Petruska* v. *Gannon Univ.*, 462 F.3d 294, 307 (3d Cir. 2006) (dismissing tort claims against a religious university because the First Amendment protects its "right to decide matters of governance and internal organization"); see also *Universidad Cent. de Bayamon* v. *NLRB*, 793 F.2d 383,

401–02 (1st Cir. 1985) (Breyer, J.) (the "intrusive process" of "counsel question[ing] church officials about liturgies and about confidential communications among church officials" offended the First Amendment).

Multiple state supreme courts likewise decline to limit the church autonomy doctrine to issues of religious doctrine. See, *e.g.*, *Harris* v. *Matthews*, 643 S.E.2d 566, 568, 571 (N.C. 2007) (rejecting tort claims because they would require the court to "interpose its judgment as to both the proper role of these church officials and whether each expenditure was proper in light of [the church's] religious doctrine and practice"); *Brazauskas* v. *Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 294 (Ind. 2003) (rejecting lawsuit seeking to "penalize communication and coordination among church officials"); *O'Connor* v. *Diocese of Honolulu*, 885 P.2d 361, 371 (Haw. 1994) (refusing to adjudicate defamation claim against diocese because it would require inquiry into "church doctrine, church law, or church governance").

2. The decision below also conflicts with other lower courts holding that the First Amendment requires immediate dismissal when the church autonomy doctrine applies.

In *Petruska*, the Third Circuit held that tort claims must be dismissed without further proceedings: "[B]ecause the First Amendment protects [the religious organization's] right to restructure—regardless of its reason for doing so—we cannot consider whether the act was unlawful or tortious." 462 F.3d at 309.

Similarly, the Eleventh Circuit affirmed dismissal because a claim regarding retirement benefits depended on whether the retired pastor remained a church member in good standing. *Myhre* v. *Seventh-Day Adventist Church Reform Movement Am. Int'l Missionary Soc'y*, 719 F. App'x 926 (2018). The court held that it "had no power to entertain" the claims because they "required an examination of doctrinal beliefs and internal church procedures." *Id.* at 929; see also *Bryce*, 289 F.3d at 654 n.1 ("[R]esolving the question of the [church autonomy] doctrine's applicability early in litigation * * * avoid[s] excessive entanglement in church matters.").

State supreme courts have also required immediate dismissal of claims involving church autonomy—including defamation claims. See, *e.g.*, *Hiles* v. *Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936–38 (Mass. 2002) (affirming dismissal of plaintiff's defamation claim on "jurisdictional grounds" because it "arose from the church-minister relationship"); *Heard* v. *Johnson*, 810 A.2d 871, 883–87 (D.C. 2002) (dismissing pastor's tort claims against his former church because "[u]nder most circumstances, defamation is one of those common law claims that is not compelling enough to overcome First Amendment protection surrounding a church's choice of pastoral leader"); *Cha* v. *Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 516 (Va. 2001) (dismissing pastor's defamation claim because it could not be "considered in isolation, separate and apart from the church's decision to terminate his employment).

III. Review Is Merited.

Reverend Hoey downplays the significance of this case by characterizing it as "a state court discovery dispute that falls well below the importance of the United States Supreme Court." Br. in Opp. 9. Not so. The question presented is undoubtedly an important question of federal constitutional law. Without this Court's review, the decision below denies much of the First Amendment's protection against judicial intrusion for every religious organization in Kentucky. Beyond that, it threatens to encourage other state and federal courts to defy the church autonomy doctrine.

This case offers an ideal vehicle to resolve the question presented. It is a pure question of law with no material factual dispute. The decision below contradicts this Court's foundational decisions under the First Amendment. And it conflicts with multiple lower courts.

Finally, if the Court is disinclined to grant plenary review, it should hold this case until it disposes of the petition in *Roman Catholic Archdiocese of San Juan, Puerto Rico* v. *Feliciano*, No. 18-921 (raising an important question under the church autonomy doctrine where a CVSG has been issued). A GVR order in light of a decision in that case would assist the court below in properly applying the First Amendment. Or the Court may conclude that the decision below so plainly departs from this Court's precedents that it merits summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

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