

**In The  
Supreme Court of the United States**

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ROMAN CATHOLIC ARCHDIOCESE  
OF SAN JUAN, PUERTO RICO, et al.,

*Petitioners,*

v.

YALÍ ACEVEDO FELICIANO, SONIA ARROYO  
VELÁZQUEZ, ELSIE ALVARADO RIVERA, et al.,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The Supreme Court Of Puerto Rico**

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**RESPONSE IN SUPPORT OF PETITION**

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**QUESTION PRESENTED**

Respondents Academia del Perpetuo Socorro and Academia San José agree with the petition's presentation of the question presented:

Whether the First Amendment empowers courts to override the chosen legal structure of a religious organization and declare all of its constituent parts a single legal entity subject to joint and several liability.

## **PARTIES TO THE PROCEEDING**

The petition correctly identifies the parties to this matter. Academia del Perpetuo Socorro and Academia San José were defendant-appellants below and are respondents here.

## **CORPORATE DISCLOSURE STATEMENT**

Academia del Perpetuo Socorro is a nonprofit corporation incorporated in 1968 under Puerto Rico law. It has no parent corporation, no shareholders, and issues no stock. Academia San José is a parochial school formed and organized in Guaynabo, Puerto Rico by San José Parish, a separate and distinct part of the hierarchical Catholic Church formed and organized pursuant to Catholic canon law.

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## STATEMENT OF THE CASE

### A. **Academia del Perpetuo Socorro and Academia San José**

Academia del Perpetuo Socorro is a private Catholic school located in San Juan, Puerto Rico. “Rooted in the Gospel,” its college preparatory model educates students ranging from pre-kindergarten to high school “with the firm conviction that the world can be changed through the transformation of the person.”<sup>1</sup> Through its “multidisciplinary, humanistic and pragmatic” pedagogical approach, it empowers its students to “reach their ultimate potential as individuals . . . and to help them to channel their God-given gifts toward the edification of the world.”<sup>2</sup> Founded in 1921 by the Redemptorist Fathers and the School Sisters of Notre Dame, Academia del Perpetuo Socorro originated as a parochial school associated with the Nuestra Señora del Perpetuo Socorro Parish, but since its incorporation in 1968 it has operated as a juridically independent institution.<sup>3</sup> Academia del Perpetuo Socorro is accredited by the Middle States Association of Colleges and Schools.<sup>4</sup>

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<sup>1</sup> ACADEMIA DEL PERPETUO SOCORRO: ABOUT US, PHILOSOPHY, <https://www.aps-pr.org/about-us> (last visited Feb. 9, 2019).

<sup>2</sup> *Id.*

<sup>3</sup> *See id.*; ACADEMIA DEL PERPETUO SOCORRO: ABOUT US, HISTORY, <https://www.aps-pr.org/history> (last visited Feb. 9, 2019).

<sup>4</sup> ACADEMIA DEL PERPETUO SOCORRO: ABOUT US, ACCREDITATION, <https://www.aps-pr.org/accreditation> (last visited Feb. 9, 2019).

Academia San José is a Catholic parochial school founded over sixty years ago by San José Parish in Guaynabo, Puerto Rico.<sup>5</sup> Offering both elementary and high school educational programs, it is “deeply committed to providing an education of academic excellence and catholic values.”<sup>6</sup> It strives to provide its over two hundred students with “the right tools to develop their academic achievement and spiritual belief in a safe and learning environment conducive to academic excellence.”<sup>7</sup> Academia San José is also accredited by the Middle States Association of Colleges and Schools.<sup>8</sup>

## **B. Catholic Church Polity**

The Roman Catholic Church establishes its ecclesiastical governance structure in the Code of Canon Law.<sup>9</sup> Under its auspices, the hierarchical Catholic Church is comprised of both physical and juridic persons organized under the governing authority of the Holy See, which is headquartered at the Vatican. *See* 1983 Code c.113, § 2; c.331; c.333; c.360–61. Juridic persons are distinct, perpetual entities created for particular purposes that “transcend[] the purpose of the individuals.” *Id.* c.114, § 1 (defining juridic persons as “aggregates of persons . . . or of things . . . ordered for

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<sup>5</sup> ABOUT ACADEMIA SAN JOSÉ, <http://academiasanjosepr.com> (last visited Feb. 9, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Available at [http://www.vatican.va/archive/ENG1104/\\_INDEX.HTM](http://www.vatican.va/archive/ENG1104/_INDEX.HTM).

a purpose which is in keeping with the mission of the Church. . . .”); *see id.* c.120, § 1 (regarding perpetual existence). Particular churches within the Roman Catholic polity are created as public juridic persons—distinct entities “constituted by competent ecclesiastical authority so that, within the purposes set out for them, they fulfill in the name of the Church, according to the norm of the precepts of the law, the proper function entrusted to them in view of the public good.” *Id.* c.116, § 1, c.373, c.515, § 3. These particular church entities take the form of dioceses and parishes. *See id.* c.368, c. 369, c.374, c.515.

A diocese “constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.” *Id.* c.369. The Holy See appoints a diocesan bishop to govern and administer each diocese, which exists in a particular, defined territory. *See id.* c.372, § 1, c.375, c.376, c.377, § 1. The diocesan bishop has authority to govern his diocese—administering its property, establishing its budget, ministering to its constituent congregations, and representing it “in all its juridic affairs.” *Id.* c.391, § 1, c.393; *see, e.g., id.* c.369, c.381, c.492–94, c.1263, c.1292. Diocesan bishops do not exercise authority over other dioceses. *See, e.g., id.* c.390. While dioceses are grouped together in ecclesiastical provinces for certain cooperative and ceremonial purposes, the archbishop who presides over the province does not possess governing authority over the other dioceses in the province. *See id.* c.431, § 1, c.434, c.435, c.436, § 3.

Each diocese's territory is subdivided into parishes, which are themselves public juridic persons encompassing particular territories and are governed by a pastor whom the diocesan bishop appoints. *Id.* c.374, § 1, c.515, §§ 1, 3, c.518; *see also id.* c.519, c.552. Although Catholic schools generally operate under the guidelines provided by the relevant conference of bishops, the entities that create and direct Catholic schools vary. *See id.* c.803, § 1, c.804, c.806. In the present case, both Academia del Perpetuo Socorro and Academia San José originated as parochial schools associated with their respective parishes, although Academia del Perpetuo Socorro later incorporated independently.

Crucially, the term “Roman Catholic and Apostolic Church” is “an abstract concept of universal character” describing the worldwide community of those who belong to the Catholic faith. *See Pet’rs App.* at 90 (Colón Pérez, J., dissenting). That religious community manifests and operates as a hierarchical network of distinct entities, each with specifically delegated authority and obligations. The Roman Catholic Church does not exist apart from this structure, and it is incapable of acting outside of this structure.

### **C. Proceedings Below<sup>10</sup>**

Both Academia del Perpetuo Socorro and Academia San José voluntarily participated in the Catholic

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<sup>10</sup> Respondents Academia del Perpetuo Socorro and Academia San José fully agree with Petitioners’ statement of the case. Therefore, the following procedural history is related in brief.

Schools Employee Pension Plan (“Plan”) by agreeing to contribute a certain percentage of their respective payrolls every year. *See* Pet. at 7. The Superintendent of Catholic Schools in the Archdiocese of San Juan sponsored the Plan in 1979, and the Catholic Schools Employee Pension Plan Trust Fund (the “Trust”) administered it. Pet. at 7. The Plan initially consisted of eighty-three schools, but over the years that number eventually dropped to forty-three. Pet. at 8. Due to financial hardship, the Plan ceased distributing pension payments in 2016. Pet. at 8; Pet’rs App. at 101.

On June 6, 2016, former employees of various Catholic schools brought suit in the Puerto Rico Court of First Instance against a number of parties, including the Trust, Academia Perpetuo Socorro, Academia San José, the Archdiocese of San Juan, and an entity styled “The Roman Catholic and Apostolic Church in Puerto Rico.”<sup>11</sup> *See* Pet. at 8–9; Pet’rs App. at 101. The plaintiffs requested both a preliminary injunction ordering that pension payments continue and a seizure of assets to secure the judgment. *See* Pet’rs App. at 102. In the case’s first appeal, the Puerto Rico Supreme Court ordered that this preliminary relief be granted and that the Court of First Instance conduct a hearing to determine who among the defendants had legal personality and, thus, would be responsible for fulfilling

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<sup>11</sup> The plaintiffs originally sued The Holy Catholic and Apostolic Church on the Island of Puerto Rico, Inc., which is the Orthodox Church. The complaint was later amended to correct this error. Pet. at 9.

the ordered preliminary relief. *See* Pet’rs App. at 102–03. On remand, the Court of First Instance held 1) that the only defendant with legal personality was the “Roman Catholic and Apostolic Church in Puerto Rico,” and 2) that as its dependencies, the other defendants (including Academia del Perpetuo Socorro and Academia San José) lacked legal personalities of their own. *See* Pet’rs App. at 10, 239–40. As a result, the order deemed the “Roman Catholic and Apostolic Church in Puerto Rico” responsible for fulfilling the ordered preliminary relief. *See* Pet’rs App. at 239–40. On appeal, the Puerto Rico Supreme Court ultimately upheld the Court of First Instance’s determination, finding that individual Catholic churches, schools, and other “dependencies” were “merely indivisible fragments of the legal personality that the Catholic church has,” and thus did not possess legal personalities of their own. Pet’rs App. at 12, 14. Accordingly, it deemed all Catholic entities in Puerto Rico jointly and severally liable for claims against the “Roman Catholic and Apostolic Church in Puerto Rico.” *See* Pet’rs App. at 14, 195; *see also* Resp. in Opp’n at 16–17. The Petition appeals from that determination.



### **REASONS FOR GRANTING THE PETITION**

Respondents Academia del Perpetuo Socorro and Academia San José support the petition submitted by the Archdiocese of San Juan and the dioceses of Caguas, Fajardo-Humacao, Mayagüez, and Ponce. The Puerto Rico Supreme Court’s decision brazenly contravenes

over a century of well-established Supreme Court precedent, upending the Establishment Clause and destroying the carefully crafted hierarchical structure that governs Catholic churches. If this unconstitutional upheaval of church polity is allowed to stand, these two respondent schools—one of which is incorporated in its own right—will find themselves without legal existence and unable to defend their own distinct interests.<sup>12</sup> Therefore, for the following reasons, Academia del Perpetuo Socorro and Academia San José respectfully urge the Court to grant the petition.

**I. PUERTO RICO COURTS ARE NOT ENTITLED TO REORGANIZE CATHOLIC CHURCH POLITY.**

The historically revolutionary principle that government has no proper role in deciding who leads a church is an indispensable component of the fundamental religious liberty the Free Exercise and Establishment Clauses Protect. Accordingly, for nearly a century and a half, the Supreme Court has applied the First Amendment to protect religious congregations' ability to maintain their governing structures free from state interference. The Puerto Rico Supreme Court's finding that Catholic churches and affiliated

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<sup>12</sup> The plaintiff-respondents' Response in Opposition erroneously purports to represent all respondents to the petition. This error apparently derives from plaintiff-respondents' understanding that the Puerto Rico Supreme Court's decision denies Academia del Perpetuo Socorro and Academia San José the ability to participate in the appeal of that decision. That the decision below causes such confusion highlights the urgent need for this Court's review.



entities lack legal personalities of their own because they are “merely indivisible fragments,” Pet’rs App. at 14, of the Catholic Church at-large devastates the Catholic faith’s ability to determine its ecclesiastical government and defies the longstanding constitutional directive that courts leave church leadership to churches.

**A. The longstanding church autonomy doctrine protects churches’ right to determine their polity.**

Over twenty years before Puerto Rico became part of the United States, this Court recognized that the First Amendment “right to organize voluntary religious associations” and provide “for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.” *Watson v. Jones*, 80 U.S. 679, 728–29 (1871). The principle *Watson* recognized, often called the church autonomy doctrine, guarantees churches “an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116 (1952). Through this doctrine, the Free Exercise Clause and the Establishment Clause work in tandem: By ensuring religious congregations remain independent from government interference, it both protects religious congregations’ ability to freely exercise their religion and prevents the government

from becoming a church administrator. For this reason, “the First Amendment severely circumscribes the role the civil courts may play in resolving church property disputes,” *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 449 (1969), because it “would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed,” *Watson*, 80 U.S. at 729; *see also Kreshik v. St. Nicholas Cathedral of the Russian Orthodox Church*, 363 U.S. 190, 191 (1960) (per curiam) (holding that this principle binds both courts and legislatures).

Often, cases employing the church autonomy doctrine concern instances of intra-church schism, *see, e.g., Presbyterian Church*, 393 U.S. at 442–44, 450. In that context, the church autonomy doctrine means that courts cannot resolve a dispute over who owns church property by independently reviewing a church’s leadership decision, *see, e.g., Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708–09 (1976), or by determining which of two factions within a church congregation are properly following their religion’s tenets, *see Presbyterian Church*, 393 U.S. at 444, 450. However, the church autonomy doctrine is not limited to instances of congregational schism. Rather, this principle applies to any instance in which church structure is relevant to adjudicating a claim. *See Milivojevich*, 426 U.S. at 709 (“[P]ermit[ting] civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide . . . religious law

[governing church polity] . . . would violate the First Amendment in much the same manner as a civil determination of religious doctrine.”) (quoting *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring)) (internal quotation marks omitted) (alterations in original).

As a result, when a court encounters a dispute to which church governance is relevant, the court is obligated to accept the church’s determination or description of its structure, then proceed to adjudicate the civil claim accordingly. As the Court explained in *Watson*, “When a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them.” 80 U.S. at 731; *see also id.* at 733 (defining “ecclesiastical government” as an ecclesiastical matter). Thus, “[e]ven in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion.” *Kedroff*, 344 U.S. at 120–21; *see also Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972) (“The values underlying these two [First Amendment] provisions relating to religion have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance.”). Consequently, a court cannot undertake to determine the church’s structure by “substitut[ing] its own inquiry into church polity.” *Milivojevich*, 426 U.S. at 708.

This is no less true in cases like this one, in which plaintiffs wish to alter church structure in order to prosecute their civil claims more conveniently, than it is where congregational factions seek to alter church structure to obtain control of a church building, *see, e.g., Watson*, 80 U.S. at 714, 726; *Presbyterian Church*, 393 U.S. at 442, 449, or where contenders to a church office wish the court to intervene in their selection, *see, e.g., Milivojevich*, 426 U.S. at 698, 708. Allowing courts to do otherwise “would lead to the total subversion of such religious bodies” by eliminating their ability to govern themselves. *See Watson*, 80 U.S. at 729.

**B. The opinion below disastrously re-structured the polity governing Catholic churches in Puerto Rico.**

By assigning legal personality to an entity that does not exist within the Catholic Church’s polity while dissolving the legal personalities of entities that do exist within that structure, the decision below destroys the hierarchical polity governing Catholic churches and other Catholic entities throughout Puerto Rico. As the Petitioners correctly explained, *see Pet.* at 9, the only entity that possesses overarching authority over all Catholic organizations in Puerto Rico is the Holy See. *See generally, e.g.,* 1983 Code c.331, c.373, c.377. That the Foreign Sovereign Immunities Act prevents the plaintiffs from hauling the Holy See into court does not entitle them or the courts below to invent a

convenient defendant to take its place.<sup>13</sup> Yet, this is exactly what the Puerto Rico Supreme Court did—it invented a defendant styled as the “Roman Catholic and Apostolic Church in Puerto Rico” to fill the space that the Catholic Church’s structure assigns to the Holy See. *See* Pet’rs App. at 13–14 (deeming the distinct entities comprising the Catholic Church as “merely fragments of the legal personality that the Catholic Church has”). Next, the court below assigned the responsibility of representing this newfound quasi-Vatican in court to the Archdiocese of San Juan, excluding the other Catholic dioceses. *See* Pet’rs App. at 5 n.3. Finally, the court proceeded to adjudicate the legal interests of all Catholic entities in Puerto Rico in this new entity’s name. *See, e.g.,* Pet’rs App. at 18–21; *see also* Resp. in Opp’n at 16–17 (“[Plaintiff-]Respondents recognize that, under the terms of the order, [the other dioceses’] assets could also have been attached as belonging to the Catholic Church.”).

The havoc such an action wreaks in the Catholic Church’s core operational structure cannot be understated. In effect, it seizes the authority delegated to each co-equal diocese and vests it in the Archdiocese of San Juan. As explained above, each diocesan bishop is responsible to the Holy See—not the Archbishop of San Juan—for representing and administering his diocese.

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<sup>13</sup> *See* 90 Stat. 2891 (1976), 28 U.S.C. §§ 1330, 1602–11; *see, e.g., O’Bryan v. Holy See*, 556 F.3d 361, 373–74 (6th Cir. 2009) (collecting cases) (“[W]e reject plaintiffs’ contention that they are not suing the Holy See that has been recognized by the United States government, but a parallel non-sovereign entity conjured up by the plaintiffs.”).

*See* 1983 Code c.377, c.381, c.390, c.391. By the same token, the Archbishop of San Juan does not have authority to govern the other dioceses. *See id.* c.390. Yet, the decision below treats the Archdiocese as the de facto head of all Catholic constituencies in Puerto Rico, requiring each independent constituency to defend its interests through the Archdiocese’s auspices. *See* Pet’rs App. at 5 n.3. This leaves the Archdiocese with a Hobson’s choice—accept legal responsibility for operations beyond its control or exceed the scope of its authority within the Catholic hierarchy by managing those actions it will be called upon to defend in court. In the same way, the other Catholic entities, including Academia del Perpetuo Socorro and Academia San José, must shoulder the responsibility the Catholic hierarchy has entrusted to them without retaining the legal authority necessary to fulfill those responsibilities. The plaintiff-respondents illustrate this problem aptly when they concede that the order below would authorize seizure of the other dioceses’ assets even though those dioceses were not allowed to defend themselves in court.<sup>14</sup> *See* Resp. in Opp’n at 16–17; *see also* Pet’rs App. at 37 n.6 (Rodríguez Rodríguez, J., dissenting) (“The practical effect of . . . the majority opinion creates an undue interference, not only in the organization of

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<sup>14</sup> Plaintiff-respondents’ contention that the Catholic Church may send the appropriate constituency to represent it when it is sued is cold comfort where all Catholic constituencies in Puerto Rico may be held jointly and severally liable for the outcome. *See* Resp. in Opp’n at 16–17, 29. As a result, the problems described above will persist no matter which constituent entity is called upon to appear in the name of the Catholic Church.

the Church, but also in the purchasing power and ownership over real property of different entities that have been stripped of their own legal personality by this Court and that appear as co-defendants in this lawsuit.”); Pet’rs App. at 93–94 (Colón Pérez, J., dissenting) (arguing that the majority’s opinion creates “clear and gross violations of the due process of law”).

As explained above, the church autonomy doctrine constitutionally obligated the court below to accept the church’s structure, then move on to adjudicate the underlying claim accordingly. *See Watson*, 80 U.S. at 731; *Kedroff*, 344 U.S. at 120–21. In this context, the Puerto Rico Supreme Court was not asked, as it concluded, *see, e.g.*, Pet’rs App. at 8, to use the church autonomy doctrine to dissolve the legal personality of the Catholic Church in order to bestow new legal personalities on its constituent entities. Rather, it required the court to acknowledge that these entities’ legal personalities *are* the legal personality of the Catholic Church—it does not and cannot exist outside its ecclesiastical structure. However, the Puerto Rico Supreme Court disregarded the church autonomy doctrine’s mandate, thereby destroying the hierarchical polity linking Catholic churches and affiliated entities across Puerto Rico. *See* Pet’rs App. at 84, 90 (Colón Pérez, J., dissenting) (explaining that the majority intervenes in how the Catholic Church “is organized for decision making” in order to recognize “the legal personality of an abstract concept of universal character as is the term Roman Catholic and Apostolic Church”). In so doing, the decision below takes Puerto Rico courts woefully out of

step with over a century of Supreme Court precedent and significantly threatens the religious liberty that precedent protects.

**II. THE OPINION BELOW FUNDAMENTALLY SUBVERTS THE CONSTITUTIONALLY GUARANTEED ECCLESIASTICAL INDEPENDENCE INTEGRAL TO RELIGIOUS LIBERTY.**

The question presented is incredibly important because the means the Puerto Rico Supreme Court employed to restructure Catholic Church polity entail broad, deleterious consequences that fundamentally subvert constitutionally guaranteed religious liberty protections for religious congregations of any faith. First, purporting to apply “neutral principles of law,” the decision below traps the Catholic Church in a polity of the court’s idiosyncratic creation. Second, the decision below carved a ruinous exception to the church autonomy doctrine that, if left uncorrected, will confine churches within their doors if they wish to have a prayer of defining their own organizational structure.

**A. The decision below traps the Catholic Church in the polity of the court’s creation.**

Turning the Establishment Clause on its head, the Puerto Rico Supreme Court reasoned that respecting Catholic Church polity would vest the Holy See with the power of civil incorporation. *See* Pet’rs App. at 14. To arrive at this conclusion, it purported to apply



“neutral principles of law,” *see* Pet’rs App. at 9 (citing *Jones v. Wolf*, 443 U.S. 595, 602–03 (1979)), arguing that if the Catholic Church wished the courts to respect its structure, it should have incorporated its constituent entities under Puerto Rico’s corporation law, *see* Pet’rs App. at 13–14. However, by first misinterpreting the treaty provisions designed to protect Catholic churches upon Puerto Rico’s transfer to American possession, then by disregarding the legal personality of the Catholic defendant that did incorporate civilly, the decision below effectively disqualifies Catholic entities from incorporating under civil law. As a result, the decision below traps the Catholic Church in a new polity of the court’s imagination.

The legal personality in Puerto Rico of public juridic persons created under Catholic canon law derives from the Concordat of 1851, a treaty contracted between Queen Isabella II of Spain and Pope Pius IX. *See* Concordat Concluded Between His Holiness and Her Catholic Majesty, Spain-Vatican, Mar. 16, 1851, 1221 U.N.T.S. 301 [hereinafter Concordat of 1851]. That agreement provided that the “Roman Catholic religion . . . shall be preserved always in the dominions of Her Catholic Majesty, with all the rights and prerogatives which it should enjoy according to the law of God and the provisions of the sacred canons.” *Id.* Art. 1. The Concordat of 1851 not only incorporated canon law by this general reference, but it also incorporated by reference the canon law respecting juridic persons in particular. *See id.* Art. 43 (“Everything pertaining to ecclesiastical persons or things concerning which no

provision is made in the foregoing articles shall be governed and administered in accordance with the discipline of the Church canonically in force.”)<sup>15</sup> *see also id.* Art. 4 (respecting the canonically established authority of diocesan bishops). The treaty ceding Puerto Rico from Spain to the United States ensured that the legal personality the Catholic Church received under Spanish rule would continue to exist under American governance. *See* Treaty of Peace, Spain-U.S., art. VIII, Dec. 10, 1898, 1898 U.S.T. 29 [hereinafter Treaty of Paris] (“And it is hereby declared that the relinquishment or cession . . . cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, *ecclesiastical or civic bodies*, or any other associations having legal capacity to acquire and possess property. . . .”) (emphasis added); *see also id.* art. X (“The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion.”).

Accordingly, when the question arose a decade later, the Supreme Court rejected out of hand the notion that the Catholic Church was required to organize itself under Puerto Rico corporation law; rather, it retained the same legal existence initially conferred

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<sup>15</sup> *Cf.* 1983 Code c.114, § 1 (defining juridic persons as “aggregates of persons . . . or of things. . .”). Notably, canon law itself contemplates that entities organized as public juridic persons would from time to time be called upon to defend themselves in civil court under their own names. *See* 1983 Code c.1288.

under Spanish rule. *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296, 318–20 (1908). Under the Concordat of 1851, that existence was by virtue of canon law, not in spite of it.<sup>16</sup> See Concordat of 1851 art. 1.<sup>17</sup> However, the Puerto Rico Supreme Court woefully misconstrued the Treaty of Paris and its interpretation in *Ponce* to accomplish the opposite goal—the elimination of the identity of Catholic churches.<sup>18</sup>

Moreover, the Puerto Rico Supreme Court’s holding with respect to Academia del Perpetuo Socorro effectively ensures that the Church cannot repair the damage done to its polity by incorporating its constituent entities under civil law. Academia del Perpetuo Socorro properly registered, fulfilled all legal requirements, and obtained a certificate of incorporation under Puerto Rico law in 1968.<sup>19</sup> Its certificate of incorporation

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<sup>16</sup> At the time *Ponce* was decided, a single diocese encompassed Puerto Rico in its entirety. See Pet’rs App. at 144–45. Thus, *Ponce*’s apparent reference to a single Catholic authority in Puerto Rico was consistent with Catholic Church polity and cannot reasonably be taken to countermand that polity.

<sup>17</sup> See Treaty of Paris art. III (ceding the Philippines to the United States). Notably, in citing *Santos v. Holy Roman Catholic & Apostolic Church, Parish of Tambobong*, 212 U.S. 463 (1909), plaintiff-respondents omitted the portion of the party name indicating that the individual parish, not an overarching Catholic entity in the Philippines, brought the claim. See Resp. in Opp’n at 2.

<sup>18</sup> At bottom, the lower court’s argument begs the question—saying that the Treaty of Paris gave the Catholic Church legal personality as an inseverable whole *presumes* that the Church actually operated in this fashion; it does not *prove* that the Church operated in this fashion.

<sup>19</sup> See P.R. Laws Ann. tit. 14, § 3505 (2009).

was revoked for failure to file annual reports in 2014 and was restored in 2017.<sup>20</sup> However, Puerto Rico law provides that dissolved corporations “shall continue for a three (3)-year term . . . for the purpose of prosecuting and defending suits . . . by or against them. . . .” P.R. Laws Ann. tit. 14, § 3708 (2009). Upon restoration, a corporation is treated “as if its certificate of incorporation had at all times remained in full force and effect.” *Id.* § 3762(d).<sup>21</sup> Accordingly, at all times during this suit’s pendency, Academia del Perpetuo Socorro was legally considered a Puerto Rico corporation entitled to exercise all ordinary corporate powers, including the right to sue and be sued in its own name. *See id.* § 3522(b). Yet, the Puerto Rico Supreme Court defied these clear statutes establishing Academia del Perpetuo Socorro’s legal personality in order to effect the reorganization of Catholic polity. *See Pet’rs App.* at 16. The decision below cannot declare that it would respect the Catholic Church’s polity if its juridic persons were incorporated under Puerto Rico law, then proceed directly thereafter to reject the legal personality of a duly incorporated Catholic constituency.

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<sup>20</sup> *See* P.R. Laws Ann. tit. 14, § 3852 (2009).

<sup>21</sup> This provision does not exempt causes of action that arise during the period in which the corporate certificate was revoked but where the corporate certificate is later restored. To the contrary, “[t]he corporation after its revival and restoration shall be as exclusively liable for all contracts, acts, matters and things made, done or performed on its behalf by its officers and agents prior to its revival, as if its certificate of incorporation had at all times remained in full force and effect.” P.R. Laws Ann. tit. 14, § 3762(d).

Indeed, under the Puerto Rico Supreme Court's decision, the corporate certificate recognizing the Archdiocese of San Juan's legal personality as a constituency of the Catholic church, *see* Resp. in Opp'n at 3–4, no longer operates to respect its legal status but instead operates to disqualify it or any other Catholic juridic person in Puerto Rico from incorporating, because they are now deemed "indivisible fragments of the legal personality that the Catholic Church has." *See* Pet'rs App. at 14. In this way, the decision below not only shatters Academia del Perpetuo Socorro's ability to operate independently, but it also ensures that neither it nor any other Catholic juridic person affected by the decision can remedy the situation via incorporation. As a result, the decision below creates a no-win situation. By dissolving the corporate recognition Catholic churches enjoyed under the Treaty of Paris while simultaneously refusing to honor an incorporated Catholic entity's legal personality, the decision below traps Catholic entities in Puerto Rico into the new polity the court fabricated. Therefore, if the decision below stands, Catholic churches throughout Puerto Rico cannot reasonably hope to salvage their operational structure's tattered strands.<sup>22</sup>

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<sup>22</sup> Cf. DANTE ALIGHIERI, *INFERNO* Canto IV lines 37–39 ("[W]e are lost; Only so far afflicted, that we live Desiring without hope.") (describing Limbo).

**B. The decision below’s “secular contract” exception revokes a church’s autonomy if it dares to step outside its doors.**

The consequences of such reckless disregard for well-established First Amendment protections are dire enough for the parties at hand, but the decision below also bodes gravely ill for other churches and church-affiliated organizations of any faith who may find themselves before a Puerto Rico court in the future. To sidestep the church autonomy doctrine, the Puerto Rico Supreme Court carved out an exception that exacts isolation as the cost of autonomy. That is, under the rule the decision below establishes, a church that interacts with the world around it risks sacrificing to the courts its solemn authority to govern itself. Without retaining that authority, a church is helpless to determine for itself what it believes and to act in accordance with those beliefs. Accordingly, the decision below effectively renders the Free Exercise Clause meaningless for religious congregations, because they cannot hope to operate as part of society at-large without losing the independence that makes their religious exercise possible.

In deciding to disregard the church autonomy doctrine and delve into an independent, free-wheeling examination of church structure, the Puerto Rico Supreme Court emphasized that the case concerned “civil obligations voluntarily contracted, not imposed by the State.” Pet’rs App. at 10. In such circumstances, where the underlying claim concerns “a purely contractual dispute,” the decision below deemed courts free to

restructure church polity at their leisure. *See* Pet’rs App. at 8, 11, 12–13. Thus, it held that “[w]hen the courts face secular disputes such as this one, [they] cannot award complete deference to [a church’s] internal decisions.” Pet’rs App. at 11; *see id.* at 8 (“Given the contractual nature of the dispute before us, [it is] not correct” that “the internal determinations of the Catholic Church, as to how to administer its institutions must be respected.”). Thus, the Puerto Rico Supreme Court considered cases involving a church’s “external” relationships exempt from the church autonomy doctrine, thereby relegating that essential constitutional principle to the mere context of disputes among church members. *See* Pet’rs App. at 11, 13 (“[We] merely clarify the legal personality of the Catholic church of Puerto Rico with its civil responsibilities in relation to persons outside of it.”). By creating this exception to church autonomy, the Puerto Rico Supreme Court opens the floodgates for litigious assaults upon church polity, authorizing courts to disregard a church’s structure if the claim at issue arises from something that might be charitably characterized as a secular, voluntary contract.

Moreover, church relationships are not so easily bifurcated into “secular” and “religious” categories. To illustrate, the Puerto Rico Supreme Court considered the employer-employee relationship between a Catholic school and its teachers as secular in nature, *see* Pet’rs App. at 11, but this Court has considered the employer-employee relationship between a religious school and its teachers as quintessentially religious

in nature. See, e.g., *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 187–90 (2012). In the same way, the broader distinction between secular contracts and religious activity is far murkier than the opinion below would care to acknowledge. Indeed, the “[d]etermination of whose voice speaks for the church”—the very determination the court below conducted—“is *per se* a religious matter.” *Alicea-Hernandez v. Catholic Bishop*, 320 F.3d 698, 704 (7th Cir. 2003) (quoting *Minker v. Balt. Annual Conference of the United Methodist Church*, 894 F.2d 1354, 1356 (D.C. Cir. 1990) (quotation marks omitted)).

Furthermore, the logic of the decision below boils down to an argument this Court has repeatedly rejected—that religious freedom ends where the marketplace begins. See, e.g., *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1723–24 (2018); *Sherbert v. Verner*, 374 U.S. 398, 409–10 (1963); see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2769–70 (2014) (“[T]he exercise of religion involves not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reasons. Business practices that are compelled or limited by the tenets of a religious doctrine fall comfortably within that definition.”) (citation and internal quotation marks omitted). To the contrary, the First Amendment ensures that churches need not cloister themselves within their own doors in order to preserve their freedom. Thus, the Puerto Rico Supreme Court’s “secular affairs” exception to the



church autonomy doctrine “would lead to the total subversion of . . . religious bodies.” *See Watson*, 80 U.S. at 729. Nothing could be further from a “neutral principle.” *See generally Jones*, 443 U.S. at 599.

Ultimately, the Supreme Court’s church autonomy decisions leave courts ample room to resolve civil claims without destroying church polity. *See, e.g., Watson*, 80 U.S. at 731 (explaining that “[w]hen a civil right depends upon an ecclesiastical matter,” including church polity, the “civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them”). The Puerto Rico Supreme Court need not have restructured Catholic church polity in order to adjudicate the underlying claims. In so doing, the decision below not only stripped Academia del Perpetuo Socorro and Academia San José of the ability to carry on their own affairs and defend themselves in court, but the rule it created threatens to destroy the constitutional independence of all religious congregations in Puerto Rico if left to run its course.



**CONCLUSION**

For the foregoing reasons, Respondents Academia del Perpetuo Socorro and Academia San José respectfully request the Court grant the petition for certiorari.

Respectfully submitted,

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