No. 18-921

In the

Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Puerto Rico

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

In the decision below, the Puerto Rico Supreme Court held that it was bound by the Establishment Clause to ignore church doctrine in determining how a church is structured. The court then held that all of the hundreds of distinct Catholic entities on the island are really just constituent parts of one overarching monolithic entity dubbed the "Roman Catholic and Apostolic Church in Puerto Rico," and therefore all those distinct entities are jointly and severally liable for each other's debts. In the *coup de grace*, the court then empowered a sheriff to open doors, break locks, or force entry night or day into Catholic churches throughout Puerto Rico and seize and sell off artwork, furniture, and anything else of value to secure the $4.7 million necessary to pay the pension obligations of three Catholic schools.

Plaintiffs do not and cannot deny any of that. Nor do they make any serious effort to reconcile that extraordinary course of events with this Court's First Amendment precedent. Indeed, in the entirety of their brief in opposition, they do not cite a single one of the religious autonomy cases that the petition discussed at length. Instead, plaintiffs wholeheartedly embrace both the Puerto Rico Supreme Court's rewriting of the Establishment Clause and the chaos it has wrought. In their view, courts *are* constitutionally bound to ignore church doctrine when determining church structure. And even if courts were not, plaintiffs make the remarkable claim that all of the many Catholic officials and entities that have attested to the issue in these proceedings—including the United States Conference of Catholic Bishops ("USCCB"), which has

filed an amicus brief supporting petitioners—are simply wrong about their own canon law. As the court of appeals correctly recognized, that reasoning defies this Court's precedent, flips the Establishment Clause on its head, and engenders precisely the entanglement that the religious autonomy doctrine is supposed to guard against.

The decision below not only is profoundly wrong, but has had predictably catastrophic results. The Archdiocese has been forced into bankruptcy. Making matters worse, because the Puerto Rico Supreme Court has declared all of the dioceses on the island one and the same, objections have been raised in the bankruptcy proceedings that the Archdiocese should not even be able file for bankruptcy unless it can secure the inclusion of all assets of every other diocese, including the three that have declined to participate in those proceedings. That puts the Archdiocese in an impossible position—because the dioceses are, in reality, distinct legal entities, the Archdiocese does not actually have the power to control all the other dioceses. The dioceses (along with every other Catholic entity on the island) thus find themselves both financially crippled and legally paralyzed, with nowhere left to turn but this Court. The Court should grant certiorari and restore to Catholic entities in Puerto Rico the rights and respect to which the First Amendment entitles them.

I. The Decision Below Eviscerates The Religious Autonomy Doctrine.

As detailed in the petition, Pet.19-27, the decision below is irreconcilable with 150 years of this Court's precedent holding that "civil courts exercise no

jurisdiction" over matters of "ecclesiastical government." *Watson v. Jones*, 80 U.S. 679, 733-34 (1871). As that unbroken chain of cases confirms, "the []organization of [a church] involves a matter of internal church government, an issue at the core of ecclesiastical affairs." *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 721 (1976). The First Amendment precludes courts from declaring a church's internal structure to be something other than what the church itself declares it to be. The Puerto Rico Supreme Court thus flatly and egregiously erred when it concluded that it was bound by the Establishment Clause to ignore church doctrine in determining the legal relationships among the myriad entities that comprise the Catholic Church.

Remarkably, plaintiffs' brief proceeds as if the religious autonomy doctrine does not exist. Indeed, they never even mention *Watson* or any of the other church autonomy cases discussed at length in the petition. Instead, they offer only a passing citation to *Jones v. Wolf*, 443 U.S. 595 (1979), which they seem to think orders courts to resolve matters of church structure pursuant to "neutral legal principles" alone, with no regard for church doctrine. BIO.21-22. In fact, *Wolf* held only that courts may resort to neutral legal principles to resolve such disputes if "no issue of doctrinal controversy is involved," 443 U.S. at 605, not that neutral legal principles may be invoked to *override* religious doctrine. To the contrary, *Milivojevich* squarely holds that a court may not "substitute[]" its views on "a matter of internal church

government" under the guise of applying "neutral legal principles." 426 U.S. at 721.[1]

Moreover, plaintiffs themselves are not relying on "neutral legal principles," like alter-ego or veil-piercing. *See* USCCB Br.12-13. They seek to impose all-encompassing liability on every Catholic entity in Puerto Rico—indeed, apparently in the world—on the theory that the Catholic Church is *inherently* not just a single faith, but a single corporate entity. That is a question of canon law, not secular law. And canon law provides a clear answer, squarely foreclosing any suggestion that there is one overarching Catholic entity in Puerto Rico that bears responsibility for everything that every Catholic entity on the island may do. *Id.* at 9-11. To substitute the Puerto Rico Supreme Court's views on that question for those of the Catholic Church is exactly what the Constitution "forbid[s]." *Milivojevich*, 426 U.S. at 721.

Instead of trying to reconcile the decision below with *Watson* and its progeny, plaintiffs insist that this Court itself already collapsed all of the Catholic entities in Puerto Rico into a single "Roman Catholic Church of P[ue]rto Rico" 110 years ago in *Ponce v. Roman Catholic Apostolic Church*, 210 U.S. 296 (1908). Plaintiffs are mistaken. *Ponce* involved a lawsuit against the municipality of Ponce brought by the bishop of what was, at the time, the only Catholic

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[1] That is so regardless of whether a dispute involves "secular law" or "obligations arising out of a contract." BIO.21. No one disputes that a religious entity may be held liable for breaching a contract. The question here is whether, when such liability exists, someone other than the entity that entered into the contract may be held liable.

diocese in Puerto Rico. *Id.* at 297. The suit sought to establish that the diocese owned a Catholic church that the municipality tried to declare its own property. *Id.* at 298. After the diocese succeeded, Ponce appealed to this Court, arguing that the diocese lacked capacity to sue because it was not a judicial person and was not incorporated under Puerto Rico law. *Id.* at 309. This Court disagreed, concluding that the law has always recognized "the juristic personality and legal status of the church." *Id.* at 310.

From there, plaintiffs make the extraordinary leap that because *Ponce* declared the Catholic Church a distinct legal entity, it also established that there is and always shall be one—and only one—"Roman Catholic Church of Puerto Rico" that encompasses every Catholic entity on the island. Indeed, plaintiffs insist that this overarching entity shall forever encompass even entities that, like Respondent/Defendant Academia del Perpetuo Socorro, have long been separately incorporated. *See* Academies' Resp.4-7. *Ponce*, of course, said no such thing. In reality, *Ponce* used the label "Roman Catholic Church in Porto Rico" to describe the diocese that brought the case for the simple reason that, in 1908, there was only one Catholic diocese in Puerto Rico. *See* Pet.App.144-45. *Ponce* thus neither precludes Catholic entities in Puerto Rico from establishing distinct legal capacities, nor precludes courts in Puerto Rico from deferring to canon law when determining whether Catholic entities have such capacity. If it did, *Ponce* itself would inflict the ultimate constitutional injury of singling out one religion for discriminatory treatment. *See, e.g.*, *Larson v. Valente*, 456 U.S. 228, 244-46 (1982). That

this Court's decision in *Ponce* contributed to the egregious errors below is all the more reason for this Court to grant review and correct them.

To the extent this Court did not resolve the issue favorably for them back in *Ponce*, plaintiffs alternatively ask this Court to hold for the first time that all of the Catholic dioceses and churches in Puerto Rico are one and the same as a matter of *canon* law. BIO.23-24. Indeed, plaintiffs seem to be of the view that this Court should collapse the entire Catholic Church into a single entity worldwide. Setting aside the fact that plaintiffs themselves concede that "Canon Law precepts … show[] that the Catholic Church considers all dioceses and parishes to have legal personality of their own, BIO.14; *accord* USCCB Br.9-11, there is a simple answer to that request: "It [i]s wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445-46 (1969). That plaintiffs would even suggest that this Court should conduct that inquiry is proof positive of how radically they have departed from the teachings of the First Amendment and this Court.

II. There Are No Obstacles To This Court's Review.

Plaintiffs next suggest that, even if the decision below is wrong, it is too late for petitioners to complain, and/or too soon for this Court to intervene. They are wrong on both counts.

Plaintiffs note in passing that this case is interlocutory. *See* BIO.14-15, 25. But as petitioners explained in the petition, *see* Pet.3-4, 30 n.6, and plaintiffs completely ignore, this is a classic collateral order case. The collateral order doctrine permits this Court to review orders that are conclusive, resolve an important issue unrelated to the merits, and are effectively unreviewable on appeal. *See, e.g.*, *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949). The Puerto Rico Supreme Court's ruling that every Catholic entity in Puerto Rico may be held immediately responsible for the potential liabilities of the three Catholic schools against whom this litigation was brought readily satisfies that test. The court's decision conclusively resolves that issue; the issue is both exceedingly important and unrelated to the merits of the underlying pension dispute; and the issue is effectively unreviewable on appeal because it resolves the rights of entities that are not even parties to the underlying proceedings. *Cf. Perlman v. United States*, 247 U.S. 7 (1918). Moreover, if the decision is left standing, any review may well come too late, for there will be no way to unwind the dire consequences of having already forced the Archdiocese into bankruptcy.

For similar reasons, the decision is reviewable under this Court's decision in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). No matter how the underlying proceedings are resolved, "the federal issue … will survive and require decision." *Id.* at 480. The remaining proceedings will have absolutely no impact on that question, for the Puerto Rico Supreme Court has already conclusively decided the church structure issue; the remaining proceedings concern

only the pension liability issue. And "[w]hichever [this Court] were to decide on the merits" of the question presented here, "it would be intolerable to leave unanswered, under these circumstances, an important question of freedom of [religion] under the First Amendment." *Id.* at 484-85. It is thus little surprise that plaintiffs do not even bother to respond to petitioners' collateral order and *Cox* arguments.

Instead, petitioners devote most of their efforts to trying to argue that petitioners somehow waived their right to challenge that ruling. That argument is entirely circular. According to plaintiffs, because the Archdiocese of San Juan—*a named party* to the case—appeared in the litigation below on behalf of itself, "the Catholic Church was an active participant throughout the Puerto Rico litigation." BIO.7 n.5. Of course, that assumes the answer to the question of whether the Archdiocese and "the Catholic Church" are one and the same. Indeed, plaintiffs are so adamant that their answer to that question must be correct that they refuse to acknowledge that the three Catholic schools *that they sued* are proper respondents *to this petition*, insisting that the schools do not even have the "legal capacity" to obtain their own counsel and file their own briefs. Far from establishing a vehicle problem, plaintiffs' adamancy underscores the need for this Court's review.

Plaintiffs alternatively suggest that this petition is an impermissible "collateral attack" on the 2017 decision in which the Puerto Rico Supreme Court said that *someone* must pay the pension obligations, but then remanded for the court of first instance to determine who that should be. BIO.9, 18. The obvious

rejoinder to that is there was no constitutional violation until the court of first instance saddled every Catholic entity on the island with that liability by declaring them all one and the same. As plaintiffs concede, BIO.13, that is precisely (and understandably) the point at which the other dioceses sought to intervene and join the Archdiocese in appealing that egregiously incorrect decision.

Finally, petitioners suggest that the actual parties to underlying litigation—the Archdiocese and the schools—did not dispute or put on any evidence to refute the proposition that there is only one "Catholic Church" in Puerto Rico. BIO.10. In fact, the Archdiocese has resisted that proposition from day one; indeed, there would have been no need for a remand to resolve that issue if it were not in dispute. And the Archdiocese presented and relied on the only evidence that should have mattered: namely, canon law, to which the secular courts should have deferred. In all events, plaintiffs' waiver arguments are beside the point, as the courts below did not hold that anyone waived the right to contest plaintiffs' one-and-only-one-church position. To the contrary, every single court below resolved that issue on the merits, with the court of last resort squarely rejecting petitioners' position as a matter of law. *See* Pet.App.11-14, 115-17. Plaintiffs' efforts to preclude petitioners from seeking this Court's intervention are therefore entirely misplaced.

III. This Case Is Exceptionally Important.

The decision below is profoundly important, not just for the Catholic faith and its faithful in Puerto Rico, but for all manner of religious groups. At the

outset, its immediate practical impact cannot be overstated. The reinstatement of the trial court's order empowering a sheriff to open doors, break locks, or force entry night or day into Catholic churches throughout Puerto Rico and seize and sell off artwork, furniture, and anything else of value to secure $4.7 million left the Archdiocese with no choice but to file for bankruptcy. Since then, petitioners have been forced to begin systematically selling off cherished property and treasured artifacts.

Making matters worse, the decision below is threatening to thwart their ability to seek the protections of bankruptcy. The plaintiffs moved to dismiss the bankruptcy proceedings unless all dioceses participate as one monolithic entity. *See, e.g.*, Mot. to Dismiss, *In re Arquidiocesis de San Juan de Puerto Rico*, No. 18-04911 (Bankr. D.P.R. Aug. 30, 2018). While the bankruptcy court has not yet decided that issue, the fact that the court did not reject it out of hand vividly illustrates the problem. Neither the Archdiocese nor any other Catholic entity in Puerto Rico has the power to force the other dioceses or Catholic entities to file for bankruptcy, or to represent them in those or any other legal proceedings. *See* USCCB Br.9-11. That puts the Archdiocese in an impossible position, as the bankruptcy court may—solely on account of the egregiously wrong decision below—force it to do something that canon law does not permit. By making the Archdiocese responsible for everything every Catholic entity in Puerto Rico does, the decision below thus effectively "forces [the Church] to violate its own hierarchical structure," USCCB Br.13, and reconstitute itself in a manner that

is inconsistent with what the Church believes best furthers its faith.

The negative repercussions of that decision are not limited to the parties to this case. As the amicus brief filed on behalf of the Ethics and Religious Liberty Commission of the Southern Baptist Convention explains (at 2-3), the decision below has no limiting principle. The same reasoning could just as easily be applied to systematically dismantle any religious organization, or even to extend liability beyond the bounds of Puerto Rico. And to the extent the decision below singles out the Catholic Church alone for disregard of its church doctrine, then that only makes the Establishment Clause problems that much worse. *See, e.g.*, *Larson*, 456 U.S. at 244-46. There is simply no excuse for such blatant disregard for this Court's doctrine and the First Amendment principles it protects.

To be clear, petitioners certainly do not mean to diminish any of the hardships that plaintiffs may have faced as a result of the pension plan's inability to continue distributing funds. That said, plaintiffs conspicuously fail to mention that the court of appeals issued an order that would have kept pension payments flowing *without* obliterating the Church's structure—an order that the Archdiocese not only did not appeal, but *agreed* to ensure compliance with. *See* Pet.32. Yet plaintiffs inexplicably still insisted on appealing and demanding that the Puerto Rico Supreme Court declare *every* Catholic entity in Puerto Rico liable to fund those obligations. If plaintiffs truly "do not much care whether their pensions are paid by the Catholic Church or by a particular diocese,"

BIO.26, then they should be perfectly content for this Court to reverse the untenable decision below and restore the court of appeals' eminently correct determination that it is "not up to the [court], as a State body, to define, much less intervene, in the Church's internal structure, nor in its functioning or organization." Pet.App.145.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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