

In the  
Supreme Court of the United States

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THE NORTH AMERICAN MISSION  
BOARD OF THE SOUTHERN  
BAPTIST CONVENTION, INC.,

*Petitioner,*

v.

WILL McRANEY,

*Respondent.*

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*On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Fifth Circuit*

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**BRIEF OF *AMICI CURIAE* NATIONAL LEGAL  
FOUNDATION AND INTERNATIONAL  
CONFERENCE OF EVANGELICAL CHAPLAIN  
ENDORSERS**

*in Support of Petitioner*

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## STATEMENTS OF INTERESTS<sup>1</sup>

The **National Legal Foundation** (“NLF”) is a public interest law firm dedicated to the defense of First Amendment liberties and the restoration of the moral and religious foundation on which America was built. The NLF and its donors and supporters, including those in Maryland and Delaware, seek to ensure that the free exercise of religion and the autonomy of religious organizations is protected.

The **International Conference of Evangelical Chaplain Endorsers** (“ICECE”) has as its main function to endorse chaplains to the military and other organizations requiring chaplains that do not have a denominational structure to do so, avoiding the entanglement with religion that the government would otherwise have if it determined chaplain endorsements. ICECE safeguards religious liberty for chaplains and all military personnel.

## SUMMARY OF ARGUMENT

This case presents an important aspect of the contours of the church autonomy doctrine: to trigger the doctrine and its ministerial exception, does a religious organization have to come forward with evidence that its dealings with an organizational partner were motivated by a “valid” religious purpose

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<sup>1</sup> The parties were given timely notice and have consented to the filing of this brief in writing. No counsel for any party authored this brief in whole or in part. No person or entity other than *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

when those dealings allegedly led to the partner's firing of a minister. The Fifth Circuit held that it does, but that is inconsistent with the doctrine's purpose and with this Court's precedent.

The wisdom of this Court's rule that the judiciary must dismiss cases related to ministerial employment by religious organizations—without the need for evidence of religious purpose related to the employment action—is shown by this Court's analogous precedent regarding qualified immunity for government officials. That immunity protects officials from having to defend by presenting evidence of their subjective intent, and the same reasons for that rule support the protections afforded religious officials by the church autonomy doctrine and its ministerial exception.

## ARGUMENT

The petition ably presents reasons for the granting of the writ to resolve issues related to the church autonomy doctrine. As Justices Thomas and Alito warned in their concurring opinions in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), application of the doctrine and its ministerial exception cannot properly be dependent on the organizational structure of the particular religious denomination or organization. *Id.* at 197 (Thomas, J., concurring); *id.* at 198 (Alito, J., concurring). Yet, Rev. McRaney argued it was the less hierarchical structure of Southern Baptists that distinguished his case from *Hosanna-Tabor*, and it was that argument that prevailed in the circuit court.

Your *Amici* emphasize here that a central benefit of the church autonomy doctrine is to allow all religious organizations, of whatever overall structure, to avoid the fiscal and ministry cost necessarily incurred by litigation of the organization's rationale. These benefits for religious organizations are remarkably similar to those identified by this Court in its cases granting qualified immunity, on objective grounds, for public servants. For all these reasons, the petition is well taken.

**I. This Court Should Grant the Writ to Confirm That a Religious Organization Does Not Have to Put on Evidence of Its Subjective, Religious Intent to Avail Itself of Its First Amendment Protections**

Some may believe the Fifth Circuit's decision in this case to be Solomonic by ruling against the mission board but holding out the possibility that the mission board may ultimately prevail in a remand to the district court. There, per the circuit court, the board must present evidence that its alleged actions that led to the discharge of Respondent were, at least in part, motivated by religion, with the trial court to determine whether those reasons were "valid." *McRaney v. N. Am. Mission Bd. of the S. Bapt. Conv.*, 966 F.3d 346, 351 (5th Cir. 2020). But in crafting this resolution, the Fifth Circuit undercut a basic principle of the church autonomy doctrine and violated this Court's precedent.

The church autonomy doctrine recognizes, quite simply, that the judiciary has no business meddling in a religious organization's internal affairs, which

are inextricably linked with the organization's and its members' free exercise of religion. Moreover, judges are constitutionally incapacitated from adjudicating religious doctrine and belief. This was all explained by this Court in *Hosanna-Tabor*, leading to the conclusion that the church autonomy doctrine does not “safeguard a church’s decision to fire a minister only when it is made for a religious reason.” 565 U.S. at 194; *see also Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

Moreover, this Court has frequently noted that the very exercise of putting on evidence of religious motivation has a chilling effect on the free exercise of religion, with the natural result of affecting how personnel decisions will be made. For example, when this Court approved the religious organization exception of Title VII in *Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987), it explained that, if a religious organization were required, “on pain of substantial liability, to predict which of its activities a secular court will consider religious . . . , an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carries out what it understands to be its religious mission.” *Id.* at 336. Justice Alito in *Hosanna-Tabor* reiterated these concerns: “[T]he mere adjudication of . . . questions [regarding the “real reason” for the dismissal of a religious employee] would pose grave problems for religious autonomy: It would require calling witnesses to testify about the importance and priority of [a] religious doctrine . . . , with a civil

factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church's overall mission." 565 U.S. at 205–06 (Alito, J., concurring). The Fifth Circuit's ruling cannot be squared with this precedent.

## **II. This Court's Qualified Immunity Cases Demonstrate Why Religious Organizations Cannot Be Required to Make Evidentiary Showings of Their Subjective Motivations**

While this Court's church autonomy precedent is more firmly rooted in the Constitution than its precedent regarding qualified immunity for officials accused of violating federal civil rights, qualified immunity precedent does demonstrate the wisdom of the rule that religious organizations should not be required to make a showing of "valid religious reasons" for their actions. The reasons for rejecting a subjective test for qualified immunity apply in spades to the ministerial exception.

In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), this Court scuttled its subjective test for qualified immunity. The reasons it gave included (a) a subjective test often defeats summary judgment and opens the door to proof that requires jury resolution, *id.* at 815-16; (b) a subjective test involves substantial costs in addition to the general costs of litigation, including "distraction of officials" from their normal duties and (c) "inhibition of discretionary action" by those accused of wrongdoing, *id.* at 816; and (d) "questions of subjective intent" provide "no clear end to the relevant evidence" and "broad-ranging discovery and the deposing of

numerous persons,” *id.* at 816-17. The *Harlow* Court summed up, “Inquiries of this kind can be peculiarly disruptive of effective government.” *Id.* at 817.

The parallels to what would happen if, as the Fifth Circuit has required in this case, trial courts were to require religious organizations to put forward evidence of their subjective motivations for an employment action in order to prove that they were sufficiently religious to invoke the church autonomy doctrine are obvious. It would open the church doors to exactly what the doctrine is designed to avoid: general litigation expense, distraction of ministers from their duties, inhibition of their exercise of their offices, and overall disruption of the religious mission of the organization.

## CONCLUSION

The Fifth Circuit’s decision highlights that this Court needs to provide further guidance to the lower courts, reinforcing that the church autonomy doctrine and its ministerial exception do not permit courts to inquire into the subjective intent of religious officials or adjudicate whether their motivations are sufficiently or validly religious when they deal with internal governance and employment decisions. The wound the Fifth Circuit has made in the doctrine, requiring religious organizations to present evidence of their subjective intentions, should be stanch immediately.

The petition for review should be granted.

Respectfully submitted

on this 25th day of March 2021,

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