No. 20-1158

IN THE

Supreme Court of the United States

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

v.

WILL MCRANEY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Reverend McRaney provides no sound basis to deny certiorari; indeed, his opposition (Opp.) is predicated largely on misstatements concerning the record, mischaracterizations of the relevant precedents, and manufactured vehicle problems.

Reverend McRaney's state law tort claims against the North American Mission Board of the Southern Baptist Convention (SBC Mission Board) allege tortious interference with his ministerial employment and defamation that resulted in his termination. The Fifth Circuit ruled that these claims can proceed under "neutral principles of tort law." App. 5a. Reverend McRaney does not dispute that there is a square, deep, and intractable circuit split on the issue of whether neutral principles of law can be applied to a minister's employment-related state law tort claims—the frequently recurring issue left open by this Court in *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, 565 U.S. 171 (2012). *See* Pet. 19-21, 24-32. This alone is reason to grant the petition.

Reverend McRaney attempts to avoid certiorari by emphasizing that, though he was employed by one Southern Baptist entity, he was never employed by the particular Southern Baptist entity that he sued, namely the SBC Mission Board. *See, e.g.*, Opp. 1. But the church autonomy doctrine cannot be avoided based on Reverend McRaney's choice to sue the SBC Mission Board instead of his direct employer; the SBC Mission Board is a religious organization with which Reverend McRaney partnered, through his direct employer, in Southern Baptist ministry. As such, the Board may freely choose the ministers with whom it associates in

pursuit of its religious mission. *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring).

Reverend McRaney finally contends that the petition should be denied to allow for further factual development of the record. But it is that very factual development that would work the unconstitutional intrusion into religious autonomy. The Fifth Circuit directed the district court to evaluate whether, as a factual matter, the SBC Mission Board had "valid religious reasons" for the actions it took. App. 8a. Courts are not constitutionally competent to pass on the validity of religious reasoning. *Watson* v. *Jones*, 80 U.S. 679, 729 (1871). What is more, in areas of ministerial employment, a religious entity's reasons are irrelevant. Courts are categorically barred from resolving such disputes because the employment decisions are "the church's alone." *Hosanna-Tabor*, 565 U.S. at 195.

In any event, Reverend McRaney identifies no further factual development that is needed to resolve the church autonomy claim. Virtually all of the salient facts set forth in the petition are drawn from Reverend McRaney's pleadings and filings in the court below, which the SBC Mission Board has treated as true for purposes of this petition. Reverend McRaney does not identify any factual claim in the petition that he disputes, nor does he identify any additional factual issue on which further discovery is needed. The only remaining factual determination for the district court to make—the validity of the SBC Mission Board's religious reasoning—is itself the constitutional violation.

This Court's intervention is warranted.

ARGUMENT

I. THE CIRCUIT CONFLICT IS UNDENIABLE

Reverend McRaney does not, and cannot, dispute that there is a deeply entrenched division among lower courts on the SBC Mission Board's first question presented—whether, consistent with the First Amendment's Religion Clauses, a minister's employment-related state law tort claims against a religious organization may be resolved by secular courts under "neutral principles of tort law." *See* Pet. 27-32 (collecting cases). Despite the square circuit split laid out by the SBC Mission Board in its petition, Reverend McRaney's opposition does not once mention neutral principles of tort law. And his only response to the lower court division on the SBC Mission Board's second question presented—whether the First Amendment precludes the adjudication of a minister's employment-related state law tort claims only when brought against the legal entity that was the minister's employer—is to invent a new test to paper over conflicting rulings in the lower courts. Opp. 10.

A. Reverend McRaney Does Not Dispute The Circuit Split On The Application Of Neutral Principles Of Tort Law

By failing even to address it, Reverend McRaney effectively concedes the circuit split on the question of whether secular courts can apply "neutral principles of tort law" to a minister's employment-related state law tort claims. Over the last few decades, a deep circuit split has emerged on this issue between the lower court here, the Eighth Circuit, and the supreme courts of Alaska and South Carolina on the one side, and the Third, Fourth, and Sixth Circuits and the appellate

courts of last resort in Arkansas, Colorado, the District of Columbia, Indiana, Massachusetts, Virginia, and Washington on the other. *See* Pet. 27-32. This uncontested split of authority alone is reason to grant the petition.

Indeed, as Reverend McRaney admits (*see* Opp. 9), this case squarely presents the question expressly left open in *Hosanna-Tabor*, 565 U.S. at 196—namely, whether the church autonomy doctrine likewise precludes adjudication of a minister's state law tort claims arising from the church-minister employment relationship. This frequently recurring question[1] is ripe for this Court's review.

B. The Factual Scenario In *Bell* v. *Presbyterian Church* Is Indistinguishable From That Here

As laid out in the petition (at 24-27), the Fourth Circuit's decision in *Bell* v. *Presbyterian Church (U.S.A.)*, 126 F.3d 328, 329 (4th Cir. 1997), stands in stark contrast to the lower court's decision here, despite factually indistinguishable scenarios. Reverend McRaney contends, however, that the *Bell* decision does not conflict with the Fifth Circuit's decision because Bell sued an entity that Reverend McRaney characterizes, without citation, as "effectively" Bell's employer. Opp. 11. Not only is this an inaccurate characterization of *Bell* (and other similar

[1] Since the SBC Mission Board filed its petition in February, the Supreme Judicial Court of Massachusetts ruled on a case in which a religious organization had claimed First Amendment protection against, *inter alia*, a claim for tortious interference with contractual or advantageous relationships brought by an individual the organization believed was a minister. *See DeWeese-Boyd* v. *Gordon Coll.*, 163 N.E.3d 1000, 1003 (Mass. 2021).

cases),[2] but it would also be a problematic standard if ever adopted by a court.

In actuality, the factual scenario presented in *Bell* is indistinguishable from that here. Reverend Bell brought a tort suit against denominational entities that partnered in ministry with the legal entity with which he had been employed.[3] 126 F.3d at 329. The Fourth Circuit held, in direct conflict with the Fifth Circuit's decision here, that the church autonomy doctrine of the Religion Clauses precluded that lawsuit. *Id.* at 331-333. Reverend McRaney likewise brought a tort suit against a denominational entity that partnered in ministry with the legal entity with which he had been employed. If Reverend McRaney's argument that the religious organizations in *Bell* "effectively" employed the plaintiff were correct, then he too would be "effectively" employed by the SBC Mission Board for purposes of the present constitutional analysis, which would undermine the arguments he raised in Part I.A of his Opposition.

More importantly, a test in which courts analyze whether ministers are "effectively" employees of particular organizations would be constitutionally problematic. The organization of a church's structure "involves a matter of internal church government, an issue at the core of ecclesiastical affairs," *Serbian Eastern Orthodox Diocese for United States and Canada* v. *Milivojevich*, 426 U.S. 696, 721 (1976), that is "an ecclesias-

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[2] For example, in *Brazaukas* v. *Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286 (Ind. 2003), an individual who had been—but no longer was—an employee at a church sued the diocese for tortious interference with a completely different job opportunity. *Id.* at 289.

[3] As the *Bell* court noted, Bell brought a separate lawsuit against the entity that legally employed him. 126 F.3d at 330 n.2.

tical right" left to the church—not the courts, *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 119 (1952). It is for this very reason that Justices Alito and Thomas recently noted that "the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities" is a "difficult question[]" which "may well merit our review." *Roman Catholic Archdiocese of San Juan, P.R.* v. *Acevedo Feliciano*, 140 S. Ct. 696, 702 (2020) (Alito, J., concurring).

II. REVEREND MCRANEY CANNOT SIDESTEP THE CHURCH AUTONOMY DOCTRINE

Reverend McRaney attempts to avoid the import of the church autonomy doctrine by highlighting that he sued a Southern Baptist entity that was not the legal entity by which he was employed—even though he, by his own admission, partnered in ministry with that entity. *See, e.g.*, Opp. 8-9. But the church autonomy doctrine does not recognize such fine distinctions. Pet. 21-24. Instead, the doctrine protects a religious organization's right to "control … the selection of those who will personify its beliefs" and "minister to the faithful." *Hosanna-Tabor*, 565 U.S. at 188, 195. The "independence" that churches enjoy in this and other "matters of internal government," *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020), does not turn on how those churches choose to structure their internal governments.

The relevant "internal government" here is that of the Southern Baptist Convention, a faith tradition that chooses to organize itself through non-hierarchical cooperative ministry between autonomous churches and other entities. Pet. 5-6 & nn.2-4; Opp. 6 n.2. As Reverend

McRaney himself stated, albeit somewhat inartfully, all of the events here "occurred within the confines of the Southern Baptist Church." Dkt. 13 at 2. The SBC Mission Board's choice to partner in gospel work with a Baptist Convention of Maryland/Delaware (BCMD) organization headed by Reverend McRaney, rather than employ Reverend McRaney directly as its minister, is entitled to full constitutional protection. So too is its choice to end that partnership so long as Reverend McRaney was the BCMD's executive director, which is the conduct Reverend McRaney's Complaint challenges.

Indeed, Reverend McRaney himself described his dispute with the SBC Mission Board as one concerning "control and power and retaliation against any who oppose" the SBC Mission Board. Resp. C.A. Br. 23. In Reverend McRaney's own words: "Let the termination [of] Dr. McRaney stand as an example for any other autonomous Southern Baptist Church and Convention who dares to stand up to the power and might of the North American Mission Board." *Id.*

The church autonomy doctrine shields these core ecclesiastical disputes from judicial review and state sanction. The lower court's apparent belief otherwise—as well as its fundamentally mistaken view that Reverend McRaney was "not challenging the termination of his employment," App. 5a—is a basis for this Court to conclude that the decision below is incorrect and should be reversed. The First Amendment bars judicial review of ecclesiastical controversies from the same faith community regardless of how those matters arise and regardless of how the faith community is organized. *Kedroff*, 344 U.S. at 115 (acknowledging that the dispute between Russian- and American-led factions of the Russian Orthodox Church was "strictly a matter of ecclesiastical government").

As the petition explains (at 19-21), this Court's recent church autonomy cases require secular courts to "stay out of employment disputes involving" those holding ministerial positions "with[in] churches and other religious organizations." *Our Lady of Guadalupe*, 140 S. Ct. at 2060. The decision of whether to "fire a minister" is "safeguard[ed]" from judicial scrutiny—and punishment under state law—by the First Amendment regardless of whether "it is made for a religious reason" or not. *Hosanna-Tabor*, 565 U.S. at 194. Reverend McRaney's attempt to severely restrict the import of this Court's church autonomy precedents (Opp. 8-10) is unavailing.

III. THIS CASE IS AN EXCELLENT VEHICLE

Reverend McRaney identifies five reasons that he believes make this case unsuitable for the Court's review. *See* Opp. 13-16. None withstand scrutiny.

First, Reverend McRaney contends that further discovery is necessary to build a record upon which to determine whether dismissal is proper. Opp. 13. That argument ignores the case's procedural posture, in which the SBC Mission Board accepted Reverend McRaney's description of the facts as true.[4] And while Reverend McRaney warns that this Court "should not wade into this dispute with a partial record[] featuring disagreement over key facts," Opp. 14, he has not iden-

[4] The fact that this case comes to this Court at the motion to dismiss stage is irrelevant. This Court frequently handles appeals of motion-to-dismiss rulings, including in some of this Court's most significant Religion Clause precedents of the last decade. *See Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 137 S. Ct. 2012, 2018 (2017); *Ariz. Christian Sch. Tuition Org.* v. *Winn*, 563 U.S. 125, 132 (2011).

tified *any* material facts in dispute. If the "key facts" Reverend McRaney believes are in dispute are whether the SBC Mission Board had "valid religious reasons" for its actions, App. 8a, that is precisely the factual showing that it would be unconstitutional to require the SBC Mission Board to make. *See NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (warning that "the very process of inquiry" into the "good faith" of a religious position "may impinge on the rights guaranteed by the Religion Clauses").[5]

Second, Reverend McRaney argues that this case involves several different claims, only some of which are "employment related." Opp. 14-15. Even if that were true, the constitutional issue here—whether a secular court can adjudicate a minister's employment-related state law tort claims—would not be any less present in this case. And it is not true; instead, it reflects an overly narrow view of what church autonomy is meant to protect. Reverend McRaney alleges that one Southern Baptist entity tortiously interfered with his employment with another Southern Baptist entity and defamed him in a way that resulted in the termination of his employment with that Southern Baptist entity. This dispute is squarely within the church autonomy doctrine, which immunizes "certain discrete subject matters that go to a religious organization's control

[5] Reverend McRaney's multiple citations to COVID-19 cases seeking preliminary injunctions are inapt. *See, e.g.*, Opp. 13 (citing *Calvary Chapel Dayton Valley* v. *Sisolak*, 140 S. Ct. 2603, 2310 (2020) (Kavanaugh, J., dissenting)); *id.* at 14 (citing *South Bay United Pentecostal Church* v. *Newsom*, 141 S. Ct. 716, 717 (2021) (Barrett, J., concurring in partial grant of application for a preliminary injunction)). Motions for preliminary injunctions, by their very nature, require courts to make detailed factual findings that are unnecessary in the context of a motion to dismiss.

over the doctrine, polity, and personnel that execute its present vision or determine its future destiny." Esbeck, *After* Espinoza, *What's Left of the Establishment Clause?*, 21 Federalist Soc'y Rev. 186, 202 (2020). All of Reverend McRaney's claims—to include causing a related religious entity to terminate a minister, attempting to prevent the same minister from speaking at a religious conference, and making an expression about the minister's trustworthiness—fall squarely within the borders of the religious organization's internal governance and are protected by the church autonomy doctrine as properly understood. App. 36a-39a.

Third, Reverend McRaney contends that the SBC Mission Board should now be estopped from asserting a church-autonomy defense because of arguments it made after the district court denied its initial motion to dismiss. Opp. 15. At the case's outset, the SBC Mission Board moved to dismiss Reverend McRaney's claims under both the ministerial exception and the church autonomy doctrine. App. 19a-27a. The district court's denial of that motion forced the SBC Mission Board to defend itself without the protections typically afforded to religious organizations. When the district court later reversed course and correctly concluded that it lacked jurisdiction over the dispute under the church autonomy doctrine, App. 36a-39a, and Reverend McRaney appealed the decision, the SBC Mission Board once again made the church autonomy arguments it had been advancing since the outset of the case.[6] The SBC Mission

[6] Reverend McRaney criticizes the SBC Mission Board for discussing the ministerial exception in its petition when it did not argue the ministerial exception on appeal. *See* Opp. 8 n.6. But the Board's case is about more than the ministerial exception; indeed, the exception is simply "a subset of the church autonomy doctrine." Esbeck, 21 Federalist Soc'y Rev. at 201 n.187.

Board has thus consistently asserted since the case began that Reverend McRaney's claims are unsuited for resolution by secular courts.[7]

Fourth, Reverend McRaney speculates that the Fifth Circuit judges who dissented from the denial of rehearing en banc *may* have relied on an amicus brief allegedly containing factual errors. Opp. 15-16. There is no evidence that the dissenting opinions relied upon that brief, as no opinion cited it. Rather, it is clear that the dissent understood that the SBC Mission Board and the BCMD were cooperative partners and not in a hierarchical relationship. *See* App. 46a-47a. Moreover, it is unclear how the amicus brief could have prejudiced Reverend McRaney, as the Fifth Circuit ultimately denied rehearing.

Finally, Reverend McRaney invents out of whole cloth a potential federalism concern that he admits has not been raised by any of the dozens of courts that have ruled on this issue. Opp. 16. To be clear, any constitutional holding by this Court would bind both federal and state courts, so Reverend McRaney's concerns regarding abstention are misplaced.

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[7] Moreover, Reverend McRaney did not argue waiver or estoppel in the Fifth Circuit.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2021