No. 21-164

IN THE

Supreme Court of the United States

TRUSTEES OF THE NEW LIFE IN CHRIST CHURCH,
Petitioner,

v.

CITY OF FREDERICKSBURG, VIRGINIA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE CITY OF FREDERICKSBURG, VIRGINIA

BRIEF FOR AMICUS CURIAE THE COALITION FOR JEWISH VALUES IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The Coalition for Jewish Values (CJV) is the largest Rabbinic Public Policy organization in America. CJV articulates and advances public policy positions based upon traditional Jewish thought, and does so though education, mobilization, and advocacy, including participating in amicus curiae briefs in defense of equality and freedom for religious institutions and individuals. Representing over 1,500 traditional Orthodox rabbis, CJV has an interest in protecting religious liberty and religious practice against government attempts to restrict them.

SUMMARY OF ARGUMENT

The Constitution's "Religion Clauses protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). A central "component of this autonomy is the selection of the individuals who play certain key roles" such as ministers, *id.*, and this Court has consistently made clear that any government action that interferes with this autonomy or risks judicial entanglement with a church's conclusions regarding its own rules, customs, or laws is prohibited by the First Amendment, *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 532 (1993).

Nevertheless, the Circuit Court of the City of Fredericksburg, Virginia (the "Circuit Court") ignored this

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[1] The parties have consented to the filing of this brief. Counsel of record for both parties received notice at least 10 days prior to the due date of amicus curiae's intention to file this brief. No counsel for a party authored this brief in whole or in part, and no person, other than amicus or their counsel, made any monetary contribution to the preparation or submission of this brief.

Court's commands and rejected Petitioner New Life in Christ Church's (the "Church") sincere determination that, under its doctrine, the church property at issue was occupied by ministers who performed essential religious functions. Pet. App. 93a-95a. Instead, the Circuit Court relied on the City of Fredericksburg's independent (and incorrect) reading of the Presbyterian Book of Order to reach its own conclusion that the Stormses were not ministers because they are not ordained. Pet. App. 1a-2a, 70a-74a. "The First Amendment outlaws such intrusion" into a religious organization's determination of its leadership, and the Circuit Court's flagrant disregard of the law cannot stand. *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2060.

The Circuit Court's errant decision is especially problematic for religious minorities. Many minority faiths do not mirror Christian entities in their doctrine, organization, or structure, so civil authorities are less likely to understand or identify who their faith leaders are. That is why this Court recently recognized that judicial inquiry into ministerial status, focused on concepts such as ordination, disadvantages minority religions and poses a threat to their autonomy. *See Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2064 ("Requiring the use of the title would constitute impermissible discrimination[.]").

If left unchecked, the Circuit Court's decision will not only entangle that court in a core religious issue, but also place it and other courts across the country in a position to determine as a matter of law what a religious organization's doctrine says and means. Civil authorities, not religious authorities, will become the final arbiter of who is and who is not a minister. This Court's intervention is needed.

ARGUMENT

I. THE FIRST AMENDMENT FORBIDS THE GOVERNMENT FROM EXAMINING RELIGIOUS DOCTRINE TO DETERMINE WHO IS AND WHO IS NOT A MINISTER

The Religion Clauses forbid the government from examining religious doctrine to determine who is a minister and who is not. Here, the Church determined that the Stormses are ministers within the meaning of its doctrine, and its sincerely held religious belief is not challenged. Pet. App. 93a-95a. Because the Circuit Court's decision permits a local government to overrule the Church's determination through its secular interpretation of religious doctrine, it is contrary to all precedent and constitutional history and should be summarily reversed.

The First Amendment restricts the government from denying religious groups the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff* v. *Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Specifically, the Free Exercise Clause protects a religious body's "right to shape its own faith and mission through its appointments," and the Establishment Clause "prohibits government involvement in such ecclesiastical decisions." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 188-189 (2012). This protection includes the "[f]reedom to select the clergy," *Kedroff*, 344 U.S. at 116, since state interference with a church's selection or definition of its ministers "depriv[es] the church of control over the selection of those who will personify its beliefs," *Hosanna-Tabor*, 565 U.S. at 188; *see also id.* at 197 (Thomas, J., concurring) ("Judicial attempts to fashion a civil definition of

'minister' … risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the 'mainstream' or unpalatable to some."); *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 336, 341 (1987) (Brennan, J., concurring) (stating that churches must be free to "'select their own leaders'"—"[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission").

The Constitutional prohibition on civil authorities entangling themselves in ecclesiastical decisions is rooted in America's founding as a place where religious minorities and dissidents would be free to select their clergy and practice their faith without state interference. Many of the first British settlers were religious dissidents who came to the colonies to select independent religious leaders outside of the reach of the state-run clerical leadership of the Church of England. *See Hosanna-Tabor*, 565 U.S. at 182 ("Seeking to escape the control of the national church, the Puritans fled to New England, where they hoped to elect their own ministers and establish their own modes of worship."). This background of resistance to state entanglement in doctrinal questions informed the development of the Religion Clauses. James Madison and Thomas Jefferson each wrote extensively that the state should not play a role in ministerial selection. *See* Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U. L. Rev. Colloquy 175, 181-182 (2011) (describing Jefferson's and Madison's resolve against "'political interference in religious affairs'" with regard to selecting church "functionaries" and describing Jefferson's position that religious institutions should be able to self-govern "'without interference from the civil authority'" (emphasis omitted)); *see also Hosanna-*

Tabor, 565 U.S. at 184-185 (citing instances of Madison's and Jefferson's refusal to involve the government in ecclesiastical decision-making).

The Circuit Court's independent inquiry and emphasis on the fact that the Stormses are not ordained is particularly problematic. A church's right to define and select its ministers covers all manner of persons who have "an important responsibility in elucidating or teaching the tenets of the faith." *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2064. Christian ordination is not a requirement. *See id.* (holding that Religion Clauses extend protection to religious groups' selection of teachers, priests, nuns, imams, and rabbis, among others). And where a church has resolved the question of a person's status as a minister, that determination is binding on secular courts. *See Serbian E. Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 708 (1976) (holding a state court committed a "fallacy fatal to the judgment" where it "impermissibly substitute[d] its own inquiry" into a church's dismissal of a bishop); *Watson* v. *Jones*, 80 U.S. 679, 729 (1871) ("It is of the essence of these religious unions … that those decisions should be binding in all cases of ecclesiastical cognizance.").

But instead of following this Court's clear precedent, as the majority of lower courts have,[2] the state court

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[2] *See, e.g.*, *Grussgott* v. *Milwaukee Jewish Day Sch., Inc.*, 882 F.3d 655, 661 (7th Cir. 2018) (affirming school's characterization of teacher as a minister, despite lack of a ministerial title, because teacher took "on a religious role"); *Alcazar* v. *Corp. of Catholic Archbishop of Seattle*, 627 F.3d 1288, 1290 (9th Cir. 2010) (en banc) (affirming church's characterization of an unordained seminarian "in a ministerial placement" as a minister); *Starkman* v. *Evans*, 198 F.3d 173, 177 (5th Cir. 1999) (affirming church's characterization of unordained choirmaster as a minister); *EEOC* v. *Catholic Univ. of Am.*, 83 F.3d 455, 463 (D.C. Cir. 1996) (affirming church's

here committed the very error the Framers feared: it permitted the state to examine and rewrite religious doctrine to overrule the Church's appointment of the Stormses as its ministers. This intrusion on the Church's religious autonomy violates the First Amendment and creates irreconcilable tension with this Court's precedent.

II. THE CIRCUIT COURT'S ERROR WILL DISPROPORTIONATELY HARM RELIGIOUS MINORITIES

The lower court's decision to rely on the City of Fredericksburg's independent interpretation of the Church's religion, instead of deferring to the Church, not only violates the First Amendment, but threatens to disproportionately harm religious minorities whose faiths are less likely to be understood by civil authorities.

A. Civil Authorities' Unconstitutional Interpretation Of Religious Doctrine Threatens The Autonomy Of Minority Religions

The First Amendment does not permit secular courts "to determine ecclesiastical questions" in part because courts are not equipped to be authorities on religion. *Presbyterian Church in U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445-446 (1969). Doctrinal interpretation requires significant training—religious, philosophical, and even linguistic—which courts and local governments lack. And any intrusion by civil authorities into ecclesiastical

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characterization of unordained nun as a minister); *Temple Emanuel of Newton* v. *Massachusetts Comm'n Against Discrimination*, 975 N.E.2d 433, 443-444 (Mass. 2012) (prohibiting state intrusion into religious school's employment decision "regardless whether a religious teacher is called a minister or holds any title of clergy").

decisions is all the more concerning for minority religions, which are less likely to be familiar to judges and other officials.

Here, the City and Circuit Court's formalistic analysis focused on the title of "minister," which led the court to find that the Stormses were not ministers under its reading of the Presbyterian Book of Church Order. Specifically, the Circuit Court determined that Church could only confer the designation of being a minister on ordained church officials with specific leadership roles. Pet. App. 1a-2a, 70a-74a. But this examination of church doctrine flies in the face of this Court's recent recognition of the threat that such title-focused applications of the law to ministerial determinations pose to religious minorities' autonomy. *See Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2063-2064 ("since many religious traditions do not use the title 'minister,' it cannot be a necessary requirement" for the ministerial exception to apply). As Justice Thomas wrote in his *Our Lady of Guadalupe School* concurrence, "[t]o 'a religious group's right to shape its own faith and mission,' courts should defer to a religious organization's sincere determination that a position is 'ministerial.'" *Id.* at 2070 (Thomas, J., concurring) (citation omitted). That is because "judges lack the requisite 'understanding and appreciation of the role played by every person who performs a particular role in every religious tradition" so "[w]hat qualifies as 'ministerial' is an inherently theological question, and thus one that cannot be resolved by civil courts through legal analysis." *Id.*

Justices Alito and Kagan have similarly noted that the concept of ordination "has no clear counterpart in some Christian denominations and some other religions." *Hosana-Tabor*, 565 U.S. at 198 (Alito, J. and Kagan, J., concurring). And since "virtually every religion

in the world is represented in the population of the United States, it would be a mistake if the term 'minister' or the concept of ordination were viewed as central to the important issue of religious autonomy." *Id.*

As here, interpretations of church doctrine by civil authorities can lead to improper and unconstitutional results for mainstream religions like the Presbyterian Church in America, which have fairly widely understood doctrines. But this improper practice compounds the risk to minority religions with different terminology and doctrinal understandings, potentially subjecting these minorities to detriments not suffered by majority religions.

B. Minority Religions Have Long Struggled For Equality In The Eyes Of The Law

Members of minority faiths in the United States have long struggled throughout American history to claim the equal protection of religious autonomy due to their differences with Christian models of ministry and religious organization. For example, before the 1840s, most synagogues in America were led by *hazzan* (cantors) as opposed to rabbis. *See* Slobin, *Chosen Voices: The Story of the American Cantorate* 30-31 (2002). These *hazzan* generally lacked rabbinical education and were not ordained.[3] So, Colonial Jews attempted to approximate majority faith practices to obtain the protection of the law by emphasizing to civil authorities that "'*hazzan* equals minister.'" *Id.* at 103.

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[3] Indeed, the *hazzan* ultimately were displaced by later waves of immigration of an educated and ordained rabbinate whose congregations appeared to have viewed them as more appropriately clerical. Slobin, *Chosen Voices* at 40.

Not all religious minorities adopted such analogies though, often to their detriment. The Society of Friends, often referred to as Quakers, rejects clericalism and affirms a "priesthood of all believers." Individual Quakers may exercise an office of ministry and even possess the title of "minister," but never undergo any special education or ordination. *See* Abbott et al., *Historical Dictionary of The Friends (Quakers)* 225-226 (2d ed. 2012). This led non-Quaker local governments to dispute whether Quaker ministers were in fact "ministers." In Massachusetts prior to 1786, for example, a marriage before a Quaker minister was void for failure to be before a "justice or minister." *See Inhabitants of Town of Milford* v. *Inhabitants of Town of Worcester*, 7 Mass. 48, 56 (1810).

The Church of Jesus Christ of Latter-day Saints (LDS) is another example. In a case before the Supreme Court of the pre-annexation Kingdom of Hawaii, an LDS leader (known as an "elder") had claimed a tax-exemption that applied to "[a]ll clergymen of any Christian denomination regularly engaged in their vocation." *Kupau* v. *Richards*, 6 Haw. 245, 245 (1879). The court wrestled with whether, as an "elder," the claimant sufficiently resembled a Christian clergyman. In ruling for him, the court explained that "[i]t does not appear why the use of the term 'Rev.' should be the test of the class of persons intended by the statute. It is the custom of some other denominations to style their ministers 'Elder.' The Baptists and Methodists do this to a considerable extent." *Id* at 248. Far more important in the court's view was the fact that "elder" was "the designation of a minister or clergyman in his denomination, and that he is a clergyman or minister." *Id.*

Similar issues have arisen for religious faiths in more recent times. During the era of the military draft, for example, courts were required to determine when a

Jehovah's Witness qualified for a ministerial draft exemption. *E.g.*, *Fitts* v. *United States*, 334 F.2d 416 (5th Cir. 1964). Because ministers of that faith generally work in secular occupations to support themselves, courts sometimes admonished local draft boards not to "fit and mold an ordained pioneer minister of Jehovah's Witnesses into the orthodox straight-jacket of ministers of an orthodox church," or establish "a requirement that a minister earn his livelihood from the ministry or from a particular congregation, or that he have a pulpit before he can claim and receive classification as a minister." *Pate* v. *United States*, 243 F.2d 99, 103 (5th Cir. 1957).

These examples demonstrate that members of minority religions face inherent difficulties when making claims for protections or benefits for their religious leaders. They also demonstrate that the religious concepts at issue in the instant case—who is and who is not a minister—have been the subject of profound misunderstandings in the context of minority religions. "In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady of Guadalupe*, 140 S. Ct. at 2066. This is why courts must avoid interpretive analysis of religious doctrine and texts and defer to a religious organization's good faith belief if they are to be responsive to the diversity of American religious practice.

CONCLUSION

This Court should summarily reverse the decision below.

Respectfully submitted.

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SEPTEMBER 2021