No. 22-824

IN THE
Supreme Court of the United States

THE SYNOD OF BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, ET AL.,
Petitioners,

v.

ALEXANDER BELYA,
Respondent.

On Petition for a Writ of Certiorari to the United States Courts of Appeals for the Second Circuit

BRIEF OF ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK, ANTIOCHIAN ORTHODOX CHRISTIAN ARCHDIOCESE OF NORTH AMERICA, DIOCESES OF NEW GRACANICA-MIDWESTERN AMERICA AND OF EASTERN AMERICA OF THE SERBIAN ORTHODOX CHURCH, ROMANIAN ORTHODOX METROPOLIA OF THE AMERICAS, BULGARIAN EASTERN ORTHODOX DIOCESE OF THE USA, CANADA, AND AUSTRALIA, ORTHODOX CHURCH IN AMERICA, LUTHERAN CHURCH—MISSOURI SYNOD, AND CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are a diverse coalition of denominational organizations. *Amici* and their members include churches of multiple denominations and faith traditions that are entrusted by their members to declare church doctrine, to discipline leaders who violate church teaching, and to protect the faithful from false teachers and unworthy leaders. As detailed further below, *amici* are protected by, and rely upon, the constitutional rights of faith communities to govern their own ecclesiastical matters. *Amici* submit this brief out of concern that, without immediate review and reversal, the decision below will unconstitutionally chill, and open the door to attacks on, the freedom of faith communities to govern their religious affairs.

The **Roman Catholic Archdiocese of New York** is the second-largest Catholic diocese in the United States, with more than 2.8 million Catholics and nearly 300 parishes within the Archdiocese's ten counties. Erected in 1808, the Archdiocese is led by His Eminence Timothy Cardinal Dolan, the auxiliary bishops of the Archdiocese, and nearly 1,000 priests.

The **Antiochian Orthodox Christian Archdiocese of North America** is part of the Greek Orthodox Patriarchate of Antioch and All the East. The Archdiocese has nearly 300 parishes and 600 clergy in the United States and Canada. The Archdiocese was established in 1923 and is led by His Eminence Metropolitan Saba Isper.

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity aside from *amici* and their counsel funded its preparation or submission. Pursuant to Supreme Court Rule 37.2, counsel for all parties were notified at least ten days prior to the due date of *amici*'s intent to file this brief.

The **Dioceses of New Gracanica-Midwestern America and of Eastern America of the Serbian Orthodox Church** have nearly 100 parishes in 38 states and the District of Columbia. The Dioceses minister to the more than 750,000 persons of Serbian descent who live in those states, as well as to those other Orthodox Christians who have chosen to accept the jurisdiction of the Serbian Orthodox Church. The Dioceses are led by Right Reverend Bishop Longin Krco and Right Reverend Bishop Irinej Dobrijevic, respectively.

The **Romanian Orthodox Metropolia of the Americas** is part of the Patriarchate of Romania. It has some 70 parishes, missions, and monasteries in the United States, Canada, and Central and South America, served by more than 80 clergymen. The Metropolia, composed of the Romanian Orthodox Archdiocese of the United States of America and the Romanian Orthodox Diocese of Canada, is led by His Eminence Metropolitan Nicolae Condrea.

The **Bulgarian Eastern Orthodox Diocese of the USA, Canada, and Australia** is one of fifteen dioceses of the Patriarchate of Bulgaria. It consists of 37 parishes and monasteries in the United States, Canada, and Australia, with most parishes and all monasteries located in the United States. The Diocese is led by His Eminence Metropolitan Joseph, a bishop and member of the Holy Synod of Bishops of the Patriarchate of Bulgaria.

The **Orthodox Church in America** traces its historical origins to the arrival in Kodiak, Alaska, of a small number of Russian Orthodox missionaries who were dispatched to this mission field in North America in 1794. Today, the Orthodox Church in America counts some 700 parishes, missions, communities, monasteries, and institutions throughout the United

States, Canada, and Mexico. The Orthodox Church in America is one of the autocephalous, self-governing, Orthodox Churches throughout the world.

The **Lutheran Church—Missouri Synod**, a Missouri nonprofit religious corporation, has some 6,000 member congregations, 22,000 ordained and commissioned ministers, and nearly two-million baptized members throughout the United States. The Presidents of the 35 Districts of the Synod in the United States exercise ecclesiastical supervision over ministers and member congregations within their Districts. The Synod treasures religious freedom and fully supports the preservation of all First Amendment protections, including the right of churches to select, supervise, discipline and terminate their ministers without intrusion by the government.

The **Church of Jesus Christ of Latter-Day Saints** is a Christian denomination with nearly 17 million members worldwide. Religious freedom is an essential element of its faith. The Church joins this brief out of a profound commitment to the principle that the First Amendment guarantees a faith community the autonomy to exercise religion according to the community's doctrine, policies, and standards.

SUMMARY OF ARGUMENT

This Court's precedent, reflecting centuries of tradition, confirms that the civil legal system has no authority to second-guess a religious group's core ecclesiastical decisions to hire (or not) a person as a minister, to promote (or not) a minister to a leadership position, or to retain (or not) the services of a minister who, in word or deed, has violated the religious group's teachings or governance policies. Quite the opposite, the First Amendment guarantees religious groups the sole authority to set, enforce, and declare their doctrine—

including and especially as to personnel matters—based solely on the teachings of their faith and not under the threat of civil litigation.

The Second Circuit's decision to allow Father Alexander Belya's claims to go forward, and to permit discovery in this case, "imperils" Petitioners' First Amendment rights—and, by extension, *amici*'s reliance on these same rights. Pet. App. 64a (Park, J., dissent from denial of rehearing en banc). If erroneous applications of the ministerial exception doctrine are categorically excluded from review until after invasive discovery and a costly trial, there will be a chilling effect on the rights of religious groups to hire, dismiss, and discipline their own ministers. Declaring and enforcing church doctrine, policy, and governance are necessary components of religious liberty; the church-autonomy and ministerial exception doctrines exist precisely to protect these critical prerogatives. Interfering with a religious group's selection of its own ministers—whether under the framework of Title VII, state defamation law, or any other civil legal regime—unconstitutionally trespasses on the internal affairs of religious groups.

This case illustrates the threat churches face if core decisions pertaining to the selection, promotion, and discipline of ministers could be challenged in civil courts. Here, Respondent Belya is disappointed that senior leadership in the Russian Orthodox Church Outside of Russia ("ROCOR") did not bestow on him the honor of being ordained a bishop. Unable to challenge that decision under the framework of employment law, due to the protection afforded by the ministerial exception, Belya has dressed up a human resources grievance as a defamation claim against ROCOR and its senior leadership in the United States. To do this, Belya points to statements made by church

officials in the process of evaluating the appropriateness and process of appointing a minister, arguing that these internal church statements can give rise to liability for defamation. Because he transformed a church disciplinary matter, stemming from his actions related to ROCOR's internal appointment process, into a putative defamation claim, the court below allowed Belya to conduct far-reaching discovery into church decision making, including by the most senior members of the Russian Orthodox Church's leadership in the United States. The practical effect of the Second Circuit's ruling is to subject religious groups—like ROCOR—to invasive discovery into sensitive internal religious matters and to force them to expend hundreds of thousands of dollars in litigation resources and countless hours in the crucible of civil litigation.

The Second Circuit's discounting of core First Amendment church-autonomy rights is inconsistent with this Court's long-settled precedent on qualified immunity, in which this Court has repeatedly emphasized that "even such pretrial matters as discovery are to be avoided if possible." *Mitchell* v. *Forsyth*, 472 U.S. 511, 526 (1985); see also *Bryce* v. *Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 (10th Cir. 2002) ("[T]he assertion that the First Amendment precludes [a lawsuit challenging church decision-making] is similar to a government official's defense of qualified immunity.").

ROCOR has stood by its principles and incurred the burden of litigation in this case to defend its internal church procedures. But many churches—in particular, smaller churches and churches of minority faiths—may be deterred from exercising their right to make important and necessary decisions about the employment of ministers if they fear doing so will subject them to drawn-out and expensive civil litigation. The

risk of chilling core First Amendment autonomy rights is evident.

While houses of worship face tough questions every day about how to live out their faith and uphold their doctrine through their personnel decisions, this Court does not face a tough question. When the issue concerns qualified immunity to ensure officers are not chilled in the exercise of their official duties, every law student knows the rule and every judge applies it as early as possible in the case, and when the rule is misapplied, this Court does not hesitate to summarily reverse.[2] The protections afforded to churches in the selection and discipline of ministers should be equally clear and equally amenable to interlocutory review. The Court should grant certiorari and clarify that "[d]enials of church autonomy defenses should be included in the narrow class of collateral orders that are immediately appealable." Pet. App. 64a (Park, J., dissenting from denial of rehearing en banc); see also Pet. App. 63a (Cabranes, J., dissenting from denial of rehearing en banc) ("The denial of *en banc* review in this case is a signal that the matter can and should be reviewed by the Supreme Court.").

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[2] *See, e.g.*, *City of Tahlequah* v. *Bond*, 142 S. Ct. 9 (2021) (per curiam); *Rivas-Villegas* v. *Cortesluna*, 142 S. Ct. 4 (2021) (per curiam); *City of Escondido* v. *Emmons*, 139 S. Ct. 500 (2019) (per curiam); *Kisela* v. *Hughes*, 138 S. Ct. 1148 (2018) (per curiam); *Taylor* v. *Barkes*, 575 U.S. 822 (2015) (per curiam); *Mullenix* v. *Luna*, 577 U.S. 7 (2015) (per curiam); *Carroll* v. *Carman*, 574 U.S. 13 (2014) (per curiam); *Stanton* v. *Sims*, 571 U.S. 3 (2013) (per curiam); *Ryburn* v. *Huff*, 565 U.S. 469 (2012) (per curiam).

ARGUMENT

I. DECLARING AND ENFORCING CHURCH DOCTRINE, POLICY, AND ORGANIZATION ARE INDISPENSABLE ELEMENTS OF RELIGIOUS LIBERTY.

From the earliest days of American colonial history, institutional religious liberty—the freedom of each sect and congregation to independently determine its own doctrine, organization, and policy—has been central to our conception of religious freedom. See *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 182–85 (2012). That tradition is reflected in the twin guarantees of the Religion Clauses of the First Amendment. The Free Exercise Clause protects the rights of individuals to organize and operate institutional churches that declare and practice what they believe is correct doctrine and "to shape its own faith and mission through its appointments" of ministers. The Establishment Clause likewise protects those choices by prohibiting the government from interfering with a church's selection, retention, and discipline of the ministers entrusted to "personify its beliefs." *Id.* at 188. The law recognizes that a church's selection of its own ministers is "a 'core matter of ecclesiastical self-governance' at the 'heart' of the church's religious mission," and represents "the most spiritually intimate grounds of a religious community's existence." *Hankins* v. *Lyght*, 441 F.3d 96, 117 (2d Cir. 2006) (Sotomayor, J., dissenting) (citation omitted). And thus, to safeguard this heartland of religious liberty from secular intrusion, this Court has long and consistently instructed civil courts to stay out of matters involving "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of

morals required of them." *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 733 (1871).

Operating under and relying on these established principles, churches create and enforce procedures, rules, and regulations for pastoral appointment, discipline, and succession. As Petitioners explain, Pet. 6, ROCOR grants authority over "the election, nomination, transfer, retirement and rewarding of bishops" to the Sobor of Bishops, "the highest law-making administrative, judicial and controlling body" in its church. ROCOR, *Regulations of the Russian Orthodox Church Outside of Russia* ¶¶ 7, 11(g), https://bit.ly/3z0zGv4 (last visited Mar. 22, 2022). Other churches structure themselves differently, as is their prerogative.[3]

Because ministers uphold religious doctrine, houses of worship occasionally, but inevitably, need to dismiss or remove a minister. This Court has instructed that a church's decision to "remove a minister" must be free from "interference by secular authorities." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). "Without that power, a wayward minis-

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[3] The Orthodox Presbyterian Church provides, for example, that pastors be selected by local congregations (acting through special committees) with the approval of the regional governing authority (presbytery). *See The Book of Church Order of the Orthodox Presbyterian Church*, chs. XIV, XXII (2020 ed.), https://opc.org/BCO/BCO_2020.pdf. In The Church of Jesus Christ of Latter-day Saints, bishops of local congregations must be recommended for service by area leadership and approved by the First Presidency—the Church's leading decision-making council. *See* Church of Jesus Christ of Latter-day Saints, *General Handbook: Serving in the Church of Jesus Christ of Latter-day Saints* § 30.8.1 (2021), https://bit.ly/3mN2Av8. There are strict requirements for who may serve as a bishop, *id.* § 30.7, and the Church has established codes of conduct and specific responsibilities for bishops once ordained, *e.g.*, *id.* § 7.1.

ter's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith." *Id.* Religious organizations therefore can, and often do, set out detailed procedures for determining whether to remove ordained ministers, and for removing ministers found to be lacking. Those policies draw their inspiration from the religion's doctrines and core beliefs, not from civil law codes and corporate human resources manuals.[4]

When religious institutions make the choice to expel a leader, it is not merely a decision about personnel. Rather, it is an ecclesiastical determination regarding who is fit to lead the faithful and a means of protecting other congregations from future wrongdoing. See *Hosanna-Tabor*, 565 U.S. at 188 ("Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision."). For example, some churches have removed ministers found to have misused or embezzled church funds.[5] Other ministers

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[4] The United Methodist Church's Book of Discipline, for instance, has detailed procedures for trying leaders accused of religious offenses, including "dissemination of doctrines contrary to the established standards of doctrine." *The Book of Discipline of the United Methodist Church* ¶ 2702.1*e* (2016). Roman Catholic canon law permits removal of an ordained minister under similar circumstances. *Code of Canon Law*, ¶¶192–94 (1983). Similarly, both the Central Conference of American Rabbis and Rabbinical Council of America have extensive procedures and standards for investigating and disciplining Jewish rabbis. *See Cent. Conf. of Am. Rabbis, CCAR Ethics*, https://bit.ly/3suK0ZN (last visited Aug. 31, 2021); Rabbinical Council of Am., *Constitution* art. III, § 4 (as amended Nov. 2014), https://bit.ly/3iXm7XH ("RCA Constitution").

[5] *See, e.g.*, Corey G. Johnson & John Romano, *The Rev. Henry Lyons Forced Out as Pastor of Tampa Church Amid Accusations*

(*continued on next page*)

have been expelled for non-criminal offenses such as alcohol abuse and marital infidelity that violate church teaching.[6] Such actions reflect not merely judgments about the organization's personnel, but fundamental choices about a minister's fitness to set a good example and lead a congregation. See *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring) ("[T]here can be no doubt that the messenger matters. Religious teachings cover the gamut from moral conduct to metaphysical truth, and both the content and credibility of a religion's message depend vitally on the character and conduct of its teachers.").

Religious groups also use various forms of discipline, including removal, to police doctrinal teachings and supervise rites or ordinances. For example, in 2013, an Australian priest was excommunicated for publicly advocating ordination of women to the priesthood, in defiance of Catholic canon law, even though many other denominations and religions allow women clergy.[7] There are similar examples from a wide variety of religious orders on a wide array of issues.

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of Theft, Misconduct, Tampa Bay Times (Apr. 2, 2018), https://bit.ly/3ydkLMX; Adelle M. Banks, *Prominent Bishop of Zion Church Suspended, Faces Financial Accusations*, Religion News Serv. (Jan. 8, 2021), https://bit.ly/3sUs0IF.

[6] *See, e.g.*, Leanne Italie, *Megachurch Pastor Carl Lentz Fired, Admits Cheating on Wife*, Assoc. Press (Nov. 5, 2020), https://bit.ly/3sJ462z; Leonardo Blair, *Perry Noble Fired for Alcoholism, Strained Marriage; Is Under Psychiatric Care, NewSpring Church Confirms* (July 10, 2016), https://bit.ly/3my7pIL.

[7] Abby Ohlheiser, *Pope Francis Excommunicated a Priest Who Supports Women's Ordination*, The Atlantic (Sept. 24, 2013), https://bit.ly/3kiYxnD; *see also* RCA Constitution, *supra*, art. II, § 1(4) (stating that one purpose of the RCA is "[t]o be ever on guard against any distortion or misinterpretation of Torah-true

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Since "[t]he minister is the chief instrument by which the church seeks to fulfill its purpose," *McClure* v. *Salvation Army*, 460 F.2d 553, 559 (5th Cir. 1972) (per curiam), it is essential that all religious groups are able to ensure fidelity to their religious message by choosing the identity of their leadership and the doctrine taught in their groups. This concept is not new. Many epistles in the Christian New Testament, for example, memorialize efforts by early Christian leaders to correct doctrinal deviations and wayward practices in local churches. See, *e.g.*, 1 *Corinthians* 11:18 (KJV) ("I hear that there be divisions among you . . . ."); *Colossians* 4:16 (KJV) ("And when this epistle is read among you, cause that it be read also in the church of the Laodiceans . . . ."). The internet has only accelerated the need for churches to warn publicly of individuals and organizations that distort doctrine or circumvent church governance.

And of course, religious institutions must of necessity deal with divisions among believers, which may culminate in organizational and physical schism. See, *e.g.*, Council of Bishops of the United Methodist Church, Press Release, *United Methodist Traditionalists, Centrists, Progressives & Bishops Sign Agreement Aimed at Separation* (Jan. 3, 2020), https://bit.ly/37Rwwh8. Schisms are hardly new, but some observers say they have become increasingly common as religious traditions grapple with shifting cultural mores. See, *e.g.*, Daniel Burke, *The Methodist Church Will Probably Split in Two over Homosexuality, and That's Bad for All of Us*, CNN (Jan. 17, 2020), https://cnn.it/37QDvqK ("Religious historians say we

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Judaism by individuals or groups within and without the House of Israel and to clarify through the written and spoken word the true teachings of the Torah").

haven't seen so many church schisms since 19th-century debates over slavery."). Selecting and retaining the right ministers may well determine whether congregations and even denominations remain united or fly apart—a matter of supreme religious importance.

In sum, selecting, promoting, and removing church leaders—as well as regulating what those leaders do and preach, and warning of those who stray from church doctrine—are matters of fundamental importance for religious groups. Indeed, courts have recognized that "the right to choose ministers without government restriction underlies the well-being of religious communities," *Rweyemamu* v. *Cote*, 520 F.3d 198, 205 (2d Cir. 2008) (cleaned up), and thus, "questions of church discipline and the composition of the church hierarchy are at the *core of ecclesiastical concern*," *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 717 (1976) (emphasis added); see also *McClure*, 460 F.2d at 558 ("The relationship between an organized church and its ministers is its *life-blood*." (emphasis added)).

The matters at issue in this case are thus neither peripheral nor incidental questions of religious freedom; rather, Belya's defamation lawsuit implicates the core of religious autonomy.

II. APPLYING THE MINISTERIAL EXCEPTION EARLY AND CORRECTLY IS NECESSARY TO PROTECT RELIGIOUS AUTONOMY.

The church-autonomy doctrine and ministerial exception unambiguously protect a religious group's ability to govern itself, including to hire, promote, censure, or fire clergy, as well to alert other members of the religious group when a minister departs from doctrine or other requirements of the religious organization. Any

federal or state claim, regardless of how it is labeled, that intrudes into that "private sphere" cannot proceed. *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring).

A. Absent Interlocutory Review, the Ministerial Exception Will Be an Ineffective Bulwark of Church Autonomy.

The Second Circuit made a grave error when it concluded that interlocutory appeal was unwarranted because "the value of Defendants' rights" would not be "destroyed if they were not vindicated before trial." Pet. App. 21a (cleaned up). It asserted that "[t]he church autonomy doctrine provides religious associations neither an immunity from discovery nor an immunity from trial on secular matters." *Id.* In doing so, it misapplied *dicta* from this Court, namely, that the ministerial exception "operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar." *Id.* (quoting *Hosanna-Tabor*, 565 U.S. at 195 n.4).[8]

The Second Circuit is wrong. Permitting such claims against ecclesiastical leaders "who are merely discharging the duty which has been entrusted to them by their church could have a potentially chilling effect on the performance of these duties." *McManus* v. *Taylor*, 521 So. 2d 449, 451 (La. Ct. App. 1988). Shielding religious groups not only from liability, but from the

[8] Compounding its doctrinal error, the Second Circuit based its reasoning in part on "[a] recent Supreme Court denial of certiorari" that "permitted a case to go forward to discovery and trial, notwithstanding the defendant's invocation of the church autonomy doctrine." Pet. App. 22a. (citing *Gordon Coll.* v. *DeWeese-Boyd*, 142 S. Ct. 952 (2022)). But "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." *United States* v. *Carver*, 260 U.S. 482, 490 (1923) (Holmes, J.).

burden, expense, and disruption of civil litigation, including invasive discovery, is an essential component of both the ministerial exception and the church-autonomy doctrine more broadly.

Indeed, absent this Court's intervention, the litigation of these claims will itself harm ROCOR's interest in self-governance free of state interference, because the litigation process will inevitably inquire into church doctrine, policy, and decisions on purely ecclesiastical matters. In *NLRB* v. *Catholic Bishop of Chicago*, for example, this Court held that the National Labor Relations Act did not apply to church schools because the church's rights would be violated both by the NLRB's ultimate conclusions and remedial actions as well as by "the very process of inquiry leading to findings and conclusions." 440 U.S. 490, 502 (1979). On the basis of those serious constitutional concerns, the Court interpreted federal law to not grant the NLRB jurisdiction to investigate religious schools. *Id.* at 507; see also *Duquesne Univ. of the Holy Spirit* v. *NLRB*, 947 F.3d 824, 834–35 (D.C. Cir. 2020). Likewise, the Fourth Circuit has warned that permitting minister-termination claims to proceed creates constitutional issues because "[c]hurch personnel and records would inevitably become subject to subpoena, discovery, cross-examination, the full panoply of legal process designed to probe the mind of the church in the selection of its ministers." *Rayburn* v. *Gen. Conf. of Seventh Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). The First Amendment therefore disfavors such claims, because "[a] church is not truly free to manage its affairs, practice its faith, and publicly proclaim its doctrine if lawyers and judges lie in wait to pass human judgment on whether the church should have chosen its words more carefully." *In re Diocese of Lubbock*, 624 S.W.3d 506, 521 (Tex. 2021) (Blacklock, J., concurring).

The process, in other words, is part of the very injury the First Amendment protects against. Churches would in no sense be "autonomous" if their right to self-governance could be vindicated only after a lengthy, intrusive, and expensive litigation. Just as this Court has ruled that an officer might not act with sufficient dispatch or certainty without the shield of qualified immunity, houses of worship—which are not indemnified against liability judgment and operate on limited budgets—would be sorely tempted to consider the cost and community upheaval of protracted civil litigation into their decisions involving religious ministers.

Even where the threat of a lawsuit does not ultimately prevent a religious group from ending its fellowship with a wayward minister, the risk of litigation without the protection of the ministerial exception would have the pernicious effect of encouraging leaders of religious groups to resolve matters behind closed doors without disclosing the basis of the decision to the religious community.

Religious groups should be free to alert other congregations when dismissed ministers have misused church funds, mistreated church staff, or otherwise failed to live up to a religion's standards and expectations of its ministers.[9] Such disclosure is beneficial because it provides notice that may avoid the repetition of the conduct in other congregations.

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[9] *See, e.g.*, Kate Shellnutt, *Former Mars Hill Elders: Mark Driscoll Is Still 'Unrepentant,' Unfit to Pastor*, Christianity Today (July 26, 2021), https://bit.ly/3sFO61e (reporting on investigation that concluded a pastor was "quick-tempered, arrogant, and domineering"); Hannah Frishberg, *Hillsong Shutters Dallas Church After Reports of Pastors' Lavish Lifestyle*, N.Y. Post (Apr. 14, 2021), https://bit.ly/384yD1p; Christine Condon, *Baltimore Megachurch Empowerment Temple Removes Senior Pastor over Filing*

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The Second Circuit's decision also is inconsistent with this Court's precedent on qualified immunity. In that context, this Court has ruled that the protection of qualified immunity is effectively lost if a case is erroneously permitted to go through discovery and trial. Without immediate appeal, this Court has explained, public officers (who, unlike religious leaders, are almost always indemnified) will make decisions based on the threat of liability. See *Harlow* v. *Fitzgerald*, 457 U.S. 800, 814 (1982). The same is true in the ministerial context: religious leaders will be pressured to consider (and perhaps act upon) the threat of litigation exposure when deciding matters of church governance and doctrine—or even to retain a minister not exemplifying or effectively imparting the faith's teachings because the risk of getting sued is too great.

Worse still, many congregations (especially smaller groups and minority religions without national organizations) may lack the resources to defend against frivolous or malicious lawsuits, and so victory following trial, judgment, and appeal would be Pyrrhic at best. Some may be forced to settle or dissolve; others will decide the risk is too great and make core religious decisions "with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments." *Ray-*

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of Financial Audits, Boards Says, Balt. Sun (Aug. 9, 2021), https://bit.ly/3jmtuI9; Kate Shellnutt, *Too Soon for Perry Noble's Second Chance at Church?*, Christianity Today (Aug. 9, 2017), https://bit.ly/3mVWpoY (statement attributed to church leader: "We cannot speak for other churches and how they make decisions. For us, Perry currently does not meet the biblical qualifications of a pastor, teacher, shepherd."); Diocese of Sacramento, *Letter to the Faithful*, *supra* ("Both clergy and faithful are instructed to refrain from any further attempt by Fr. Leatherby to offer the Mass or other sacraments.").

burn, 772 F.2d at 1171. And those who choose to litigate will have to devote resources collected from their congregations to finance the cost of pre-trial discovery that might otherwise go towards fulfilling their religious mission. So too here, the process of evaluating the letter from several clergy members raising concerns about Belya would require probing ROCOR's internal records, including complaints from congregants and internal discussions about Belya's candidacy.

B. The Second Circuit's Ruling Will Allow Disaffected Ministers to Circumvent First Amendment Protections Through Artful Pleading.

Permitting plaintiffs to avoid the protections secured by the First Amendment by manufacturing peripheral factual disputes poses "the danger that churches, wary of . . . judicial review of their decisions, might make them with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments of who would best serve the pastoral needs of their members." *Rayburn*, 772 F.2d at 1171. The Second Circuit's standard enhances that risk. The opinion asserted that "[t]he defamation claims . . . hinge on crucial questions of fact," and that there were "numerous disputes as to whether the factual situation presented fits into the church autonomy doctrine." Pet. App. 24a (cleaned up). The Second Circuit even characterized those fact disputes as "[d]ecidedly non-ecclesiastical":

> [D]id the purported signatories actually sign the letters? Were the December 10 and January 11 letters stamped with Metropolitan Hilarion's seal? If so, who stamped them? Was the early January letter on Archbishop Gavriil's letterhead? More broadly, did [Father] Belya forge the letters at issue?

Pet. App. 24a. The critical issue is whether the gravamen of the dispute is a request for secular courts to review church decision-making regarding the selection, release, or discipline of a minister. If so, then any peripheral disputes about the nature of the disciplinary action cannot circumvent the ministerial exception or church-autonomy doctrine. That is the case here.

In his own words, "the heart" of Belya's defamation claim is a 2019 letter written by several ROCOR clergy to senior ROCOR leaders disputing Belya's claim that he was elected to the post of Bishop of Miami, Vicar of the Eastern Archdiocese of Florida. Pl.-Appellee's Br. Supp. Mot. to Dismiss App. at 2 (2d Cir.), ECF No. 22-2. This letter pointed out "irregular[ities]" in the documents evidencing Belya's election as bishop, and described complaints about his ministerial conduct, including (i) "breaking of the seal of Confession," (ii) using "information obtained during Confession . . . for the purpose of denigrating parishioners and of controlling them," and (iii) failing to care for church property and finances. Pet. App. 96a. As a result of the letter, senior ROCOR leaders "suspended [Belya] from his priestly duties pending an investigation." Pet. App. 136a.

It is impossible to disentangle an evaluation of these statements from the underlying ecclesiastical judgments. A civil court, for example, could not determine whether Belya breached the seal of confession or failed to care for church property without assessing the obligations of priests within ROCOR as to confession and church property. Whether ROCOR's actions with respect to Belya are justified falls squarely within the core protections of the church-autonomy doctrine and ministerial exception. The letter was an internal communication from Belya's fellow ministers to ROCOR's

highest religious authority and governing body, expressing concerns over two matters that lie entirely within the church's exclusive authority.

First, the letter asserted that Belya's bishopric was improper as a matter of church government. As this Court has recognized, "it is the function of the church authorities," not a federal court, "to determine what the essential qualifications of a chaplain are and whether the candidate possesses them." *Milivojevich*, 426 U.S. at 711–12 (quoting *Gonzalez* v. *Roman Cath. Archbishop of Manila*, 280 U.S. 1, 16 (1929)). For this reason, church hierarchy has "sole discretion" to determine the validity of a minister's claim to office. *Id.* at 717–18. Adjudicating Belya's claim to be a bishop would thus "plunge an inquisitor into a maelstrom of Church policy, administration, and governance." *Rweyemamu*, 520 F.3d at 209 (quoting *Natal* v. *Christian & Missionary All.*, 878 F.2d 1575, 1576 (1st Cir. 1989) (alterations omitted)); see also *Lubbock*, 624 S.W.3d at 513 (similar).

Second, the letter asserted that Belya's actions warranted removing him from the ministry entirely. Evaluating the allegations against Belya would likewise "risk 'government involvement in . . . ecclesiastical decisions,'" *Penn* v. *N.Y. Methodist Hosp.*, 884 F.3d 416, 428 (2d Cir. 2018), and "meddl[e] in church government," *Lubbock*, 624 S.W.3d at 513. Indeed, more than 150 years ago, this Court ruled that it was beyond the judicial role to "inquire . . . whether [the minister's] conduct was or was not in accordance with the duty he owed to the synod or to his denomination." *Watson*, 80 U.S. (13 Wall.) at 730–31 (quoting *Harmon* v. *Dreher*, 17 S.C. Eq. (Speers Eq.) 87, 120 (1843)). A court could not determine whether Belya "br[oke] . . . the seal of Confession" without having to resolve contested matters of church doctrine. Pet. App. 96a; see also *Watson*,

80 U.S. (13 Wall.) at 732 ("Any other than [ecclesiastical authorities] must be incompetent judges of matters of faith, discipline, and doctrine . . . ."); *Penn*, 884 F.3d at 428 ("Any jury hearing Mr. Penn's . . . claims therefore would have to determine how a minister should conduct religious services or provide spiritual support."). The church-autonomy doctrine reserves these issues to ROCOR alone.

At its heart, Belya's claim is that he was harmed by internal church statements challenging the validity of his appointment, and so he seeks to "punish[]" ROCOR "for failing" to "accept . . . an unwanted minister." *Hosanna-Tabor*, 565 U.S. at 188. He asserts "an enforceable right to be considered or accepted by the church hierarchy as a minister," which "[n]o member of a church may claim" in a civil proceeding. *Rayburn* 772 F.2d at 1168 n.5.

Subjecting ROCOR and its leaders to expensive and time-consuming merits discovery in this case violates the First Amendment. A secular court cannot evaluate a plaintiff's fitness to be a religious leader without depriving the church of its right "to determine for itself who is qualified to serve as a teacher or messenger of its faith." *Hosanna-Tabor*, 565 U.S. at 202 (Alito, J., concurring). The First Amendment shields both the hiring and firing of ministers as well as the internal church deliberations that underlie those decisions. For this reason, *Hosanna-Tabor* held that the court could not decide a terminated pastor's claim that the "asserted religious reason . . . was pretextual," because judges have no business second-guessing a religious group's internal workings. *Id.* at 194; see also *Rayburn*, 772 F.2d at 1169 ("[T]he state may no more require a minimum basis in doctrinal reasoning than it may supervise doctrinal content.").

CONCLUSION

For these reasons, and those stated by Petitioners, the Petition should be granted.

Respectfully submitted,

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