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 Court of Appeals for the Second Circuit

BRIEF OF BELMONT ABBEY COLLEGE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

I. Whether the First Amendment's church autonomy doctrine and its "ministerial exception" should be understood as an immunity from judicial interference in internal religious leadership disputes covered by the doctrine, or instead as a mere defense against liability. This overarching question controls the answer to two sub-questions:

A. Whether the church autonomy doctrine protects churches against merits discovery and trial; and

B. Whether denial of a dispositive motion to invoke the church autonomy doctrine is appealable on an interlocutory basis.

II. Whether a minister's defamation claims against his church arising from internal church disciplinary proceedings are barred by the church autonomy doctrine or may instead proceed under the "neutral principles" approach developed for church property disputes.

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INTERESTS OF *AMICUS CURIAE*[1]

Founded in 1876, Belmont Abbey College is a private Catholic liberal arts college in Belmont, North Carolina. Its first bricks were laid by Benedictine monks seeking to advance their 1,500-year-old monastic tradition of prayer and learning. Today, Belmont Abbey College builds on that tradition by educating students "in the liberal arts and sciences so that in all things God may be glorified." Because the College is foundationally Catholic in its mission, it strives to adhere to the Catholic Church's teachings in all aspects of its pedagogy and governance. Since the time of Belmont Abbey College's founding, the church autonomy doctrine has protected its religious decisions from intrusion by secular courts.

Belmont Abbey College submits this brief to explain how the Constitution, longstanding legal tradition, and modern case law alike instruct that church autonomy functions as a legal immunity that should be determined at a case's outset. Waiting to consider church autonomy at any later point risks subjecting *amicus* and other religious institutions to lengthy and invasive legal process that would divert their time, attention, and resources away from their religious educational mission to the detriment of students—only for that process to prove fruitless if church autonomy is later found to bar suit.

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person aside from *amicus curiae* and its counsel made a monetary contribution toward the brief's preparation. All parties were given 10 days' notice of this filing.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an important question of constitutional law that goes to the heart of our country's longstanding protection of churches and other religious institutions from interference by the state. As the petition for writ of certiorari shows, lower courts are deeply divided over whether the First Amendment's church autonomy doctrine operates as an immunity from suit that courts should decide at a case's outset or as a mere defense against liability that can be punted to a later time—potentially forcing religious groups to endure years of merits discovery, trial, and appeals delving into ecclesiastical questions the state has no business deciding.

Amicus submits this brief to highlight that this question is far from new. Long before "church autonomy" had a name, our Founders, their colonial forebears, and early American state courts all recognized that state authorities—including courts—must avoid taking even the first step "into [the] religious thicket." *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 719 (1976).

Deeply rooted in the American legal tradition, church autonomy not only is enshrined in the Constitution but long predates it. English settlers came to America to escape the Crown's religious meddling. And as soon as they arrived, they insisted on separate spheres for church and state. As noted colonial founder Roger Williams put it, civil magistrates in the New World were to have "no power" to dictate church government or elect church officers. Roger Williams, *The Bloudy Tenent of Persecution* 213–14 (Edward B.

Underhill ed., Hanserd Knollys Society 1848) (1644). The Founders shared this view and preserved the principle of church autonomy. So did early American courts, which consistently refused to decide cases involving ecclesiastical matters because doing so would impermissibly subject religious institutions to intrusive legal process and enmesh the courts in religious affairs. Whether a defrocked minister was suing for backpay or an excommunicated member was challenging church discipline, courts denied merits discovery or dismissed such suits to avoid the "mischiefs" that would follow from permitting "public investigations [of church affairs] in civil courts." *Reformed Protestant Albany Dutch Church of Albany* v. *Bradford*, 8 Cow. 457, 504–05 (N.Y. 1826) (opinion of Jones, Chancellor).

That rich historical tradition is instructive in cases like this one. Father Alexander's claims turn on purely ecclesiastical issues—the propriety of his selection as bishop by the Russian Orthodox Church Outside of Russia and the church's communication of that decision to its members. As a long string of historical precedents bears out, church autonomy requires courts to defer to ROCOR's decision to remove Father Alexander, as well as its stated rationale for doing so.

In short, history confirms that church autonomy protects against not only liability but "the very process of inquiry" into matters of church government, doctrine, and faith. *NLRB* v. *Cath. Bishop*, 440 U.S. 490, 502 (1979). This Court should grant review, hold that church autonomy is a form of legal immunity that can be immediately appealed when denied, and reject the Second Circuit's approach of putting off the church autonomy question to some unspecified future point in litigation.

ARGUMENT

I. The principle of religious autonomy from government or court interference in ecclesiastical matters has deep historical roots.

The church autonomy doctrine has a long and rich history. See generally *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 182–83 (2012) (discussing church autonomy's ascendance in the Magna Carta before it was curtailed with the Act of Supremacy); *McRaney* v. *N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1075–80 (5th Cir. 2020) (Oldham, J., dissenting) (tracing church autonomy back to the Middle Ages). Early colonists, Founders, and American courts in later centuries have all recognized the need to keep government—including civil courts—entirely out of ecclesiastical matters.

A. Early colonists and the American Founders shared a commitment to protecting churches from state interference.

1. The principle of church autonomy took root in America well before the Constitutional Convention. In fact, the Crown's interference in church affairs—on everything from appointing church leaders and archbishops to determining doctrinal tenets—was a key reason many fled England for the colonies. See *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2061–62 (2020) (recounting 16th-, 17th-, and 18th-century British statutes that exerted control over ministers and religious practice); *Hosanna-Tabor*, 565 U.S. at 182–83 (describing how the Crown's involvement in church affairs spurred religiously motivated immigration to America).

From the start, colonists insisted on separating civil and ecclesiastical authority—even in colonies with established religions. In Puritan Massachusetts, for example, colonists declared in 1641 that "[e]very Church hath free libertie of Election and ordination of all their officers" as well as "free libertie of Admission, Recommendation, Dismission, and Expulsion, or desposall of their officers, and members." *Massachusetts Body of Liberties* (1641), reprinted in *Church and State: Documents Decoded* 20 (David K. Ryden & Jeffrey J. Polet eds., 2018). Even more pointedly, they ensured that civil authorities could put "[n]o Injunctions * * * upon any Church, Church officers or member in point of Doctrine, worship or Discipline." *Ibid.*

Likewise, in Rhode Island, colonial founder and minister Roger Williams explained that secular "magistrates * * * [would] have no power of setting up the form of church government, electing church officers, [or] punishing with church censures." Roger Williams, *The Bloudy Tenent of Persecution* 213–14 (Edward B. Underhill ed., Hanserd Knollys Society 1848) (1644). Those powers belonged to the church.

For the colonists, "giving the Spiritual Power * * * into the hand of the Civil Magistrate" was unthinkable. John Cotton, *A Discourse about Civil Government* (1637–39), reprinted in *The Sacred Rights of Conscience* 135 (Daniel L. Dreisbach & Mark David Hall eds., 2009). As preeminent minister John Cotton put it, that was an "extreme" that "must be avoided." *Ibid.* (cleaned up).

2. Informed by the colonial experience, the drafters of the Constitution recognized the need to keep the spheres of church and state separate for the sake of both. See Michael W. McConnell, *The Origins and*

Historical Understanding of Free Exercise of Religion, 103 Harv. L. Rev. 1409, 1496–97 (1990); *Korte* v. *Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013) (church autonomy "mark[s] a boundary between two separate polities, the secular and the religious, and acknowledg[es] the prerogatives of each in its own sphere"). If those separate spheres were to collapse, the Founders feared a return to what Americans had long been trying to escape: a government that interfered in religious bodies' affairs. They thus adopted the First Amendment's Religion Clauses with the Crown's religious entanglements in mind. See Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U. L. Rev. Colloquy 175, 180–82 (2011).

In James Madison's view, it was "settled opinion" that "religion is essentially distinct from Civil Govt. and exempt from its cognizance." Ellis Sandoz, *Religious Liberty and Religion in the American Founding Revisited* 274, in *Religious Liberty in Western Thought* (Noel B. Reynolds & W. Cole Durham, Jr. eds., William B. Eerdmans Publishing Co. 2003). So, when asked in 1806 by Bishop John Carroll to provide his thoughts on whom the Catholic Church should appoint to govern its affairs in the new Louisiana territory, Madison demurred. He couldn't offer an opinion, he explained, because "the selection of ecclesiastical individuals" is an "entirely ecclesiastical" matter over which the civil authorities have no power. *Letter from James Madison to Bishop Carroll* (1806), in 20 *Records of the American Catholic Historical Society* 63–64 (1909); see *Hosanna-Tabor*, 565 U.S. at 184 (recounting the incident).

Other Founders took the same tack. When the French papal nuncio asked Benjamin Franklin (as

minister to France) in 1783 whether the Confederation Congress would approve the pope's appointing a French bishop to oversee American Catholicism, Franklin told the nuncio it would be "absolutely useless" to ask Congress to weigh in, since "according to its powers and its constitutions, [Congress] can not, and should not * * * intervene in the ecclesiastical affairs of any sect." Derek H. Davis, *Religion and the Continental Congress, 1774–1789: Contributions to Original Intent* 122 (2000). For its part, the Confederation Congress in turn resolved that the pope's choice of a leader for American Catholics was "without the jurisdiction and powers of Congress, who have no authority to permit or refuse it." *Id.* at 124.

President Washington held a similar view. In a 1789 letter to the General Committee of the United Baptist Churches, he wrote that if he "could have entertained the slightest apprehension that the Constitution framed in the Convention * * * might possibly endanger the religious rights of any ecclesiastical society, certainly [he] would never have placed [his] signature to it." *Letter from George Washington to the United Baptist Churches in Virginia* (1789), in Timothy L. Hall, *Religion in America* 369 (2007).

Similarly, when the Ursuline Sisters of New Orleans (a Catholic order running a school for orphans) asked President Jefferson in 1804 whether their legal rights would remain unchanged after the Louisiana Purchase, he reassured them that the "principles of the Constitution and government of the United States are a sure guarantee to you that * * * your institution will be permitted to govern itself according to its own voluntary rules, *without interference from the civil authority*." *Letter from Thomas Jefferson to the Nuns of*

the Order of St. Ursula at New Orleans (1804), in *Documents of American Catholic History* 184–85 (John Tracy Ellis ed. 1962) (emphasis added). For Jefferson, church autonomy was a solid guarantee that extended to religious schools.

In sum, the founding generation enacted and supported a constitution that ensured religious bodies would have the freedom to conduct their affairs without government interference or inquiry.

B. In line with founding principles, American courts have long refrained from adjudicating or permitting discovery in ecclesiastical matters.

After the Founding, early American courts continued to treat ecclesiastical and civil powers as having been "wisely separated." *Commonwealth* v. *Green*, 4 Whart. 531, 561 (Pa. 1839). Foreseeing that taking up cases to "explore the whole range of the doctrine and discipline of [a] given church" would be "utter impolicy," *State* v. *Farris*, 45 Mo. 183, 197–98 (1869), many courts recognized the need to shield churches from intrusive discovery into their internal affairs and to dismiss such suits at the outset.

Take the 1826 case, *Reformed Protestant Albany Dutch Church of Albany* v. *Bradford*, 8 Cow. 457 (N.Y. 1826). Bradford was a minister convicted of drunkenness in his church's court. *Id.* at 459. He first appealed within his church, but when the church upheld his conviction, he sued in New York state court, claiming the church owed him his salary for the period between his suspension and dissolution. *Id.* at 463–64, 472. After the New York trial court sided with Bradford, the Court for the Correction of Errors reversed. *Id.* at 542.

As Senator Crary observed in his seriatim opinion in the church's favor, "toleration" of "every religious denomination" implies "the protection of that denomination in the government of its church." *Id.* at 533 (opinion of Crary, Senator). Even members of the court who would have affirmed the trial court emphatically agreed that the courts lack power to disturb church decisions on ecclesiastical matters. As Chancellor Jones noted, "public investigations in the civil courts" inquiring into "the infidelity and immorality of a minister of the gospel, on a public trial before a court and jury" or questioning "the soundness of his faith and religious opinions before a court of justice" would unavoidably lead to "mischiefs." *Id.* at 505 (opinion of Jones, Chancellor). At bottom, such questions must be resolved by "ecclesiastical assemblies, and not * * * made the subjects of judicial inquiry in the courts of justice." *Id.* at 507.

A Massachusetts court echoed similar concerns in *Proprietors of Hollis Street Meetinghouse* v. *Proprietors of Pierpont*, 48 Mass. (7 Met.) 495 (1844). There, an ecclesiastical council reinstated a parish minister after his parish had voted to dismiss him for alleged dishonesty. After resuming his duties, the minister sued in court to recover backpay. *Id.* at 496. The parishioners filed a bill of discovery (essentially, interrogatories) against the minister, claiming they needed discovery into his alleged immorality to mount their defense. *Id.* at 495. The Supreme Judicial Court of Massachusetts rejected their request, explaining that the parishioners were "not entitled to the discovery sought" because the minister's "answers to the interrogatories * * * could not be given in evidence in the

action at law" because both sides were bound by the church council's decision. *Id.* at 499.

Early Pennsylvania courts held the same. In *German Reformed Church* v. *Commonwealth*, 3 Pa. 282 (1846), the Pennsylvania Supreme Court held that an excommunicated church member was "without remedy" in civil court. *Id.* at 291. The German Reformed Church had expelled one of its members, Jacob Seibert, after he "disregarded [church] admonitions." *Id.* at 288. But when Seibert challenged his excommunication in a court of law, the state supreme court was clear: his only remedy was to "appeal to a higher ecclesiastical court." *Id.* at 291. Because reviewing a church member's excommunication would mean delving into "matters of faith, discipline and doctrine," the court stayed out of the dispute. *Ibid.*

Similarly, in *Chase* v. *Cheney*, 58 Ill. 509 (1871), the Illinois Supreme Court declined to decide whether an episcopal minister had deviated from the Book of Common Prayer when performing church rituals. *Id.* at 511, 541. Noting that it had no wish "to become [the] *de facto* head[ ] of the church," the court explained that secular judges have "no right * * * to dictate ecclesiastical law." *Id.* at 535. And without the authority or competence to interpret church doctrine, civil courts must allow ecclesiastical courts to "enforce [their] own discipline." *Ibid.* To hold otherwise, the court explained, would threaten basic religious freedom by allowing "civil courts [to] trench upon the domain of the church, construe its canons and rules, [and] dictate its discipline." *Id.* at 537.

In another excommunication case, the Iowa Supreme Court recognized that it couldn't resolve ecclesiastical matters related to church discipline. *Sale* v.

First Regular Baptist Church, 17 N.W. 143, 145 (Iowa 1883). The court held that it "could not and would not" determine whether a Baptist church was wrong to excommunicate a member for her "'insufferable offenses' against the church." *Id.* at 144–45. That issue was a "purely ecclesiastical question, into which [the court] cannot inquire." *Id.* at 145. The court thus held that the lower court should have dismissed the plaintiff's petition seeking reinstatement. *Ibid.*

Consider also *Travers* v. *Abbey*, 58 S.W. 247 (Tenn. 1900). There, a pastor of an African Methodist Episcopal Church brought a claim in state court against the presiding elder of his church who had deposed and transferred him, allegedly without the congregation's consent. *Id.* at 247. The Supreme Court of Tennessee held that while the pastor's disciplinary proceedings may well have been "arbitrary" or "irregularly conducted," he needed to bring those questions to "the members of the church" and "the ecclesiastical or church revising authority," not civil courts. *Id.* at 248. Because the controversy was "purely disciplinary, and relate[d] to the ecclesiastical constitution and government of the church, and the exercise of its internal affairs, and the administration of discipline," there was nothing for the court to review. *Id.* at 247. The court affirmed the dismissal of the case. *Id.* at 248.

State courts continued to enforce the separation between ecclesiastical and civil powers well into the twentieth century. In one case, the Iowa Supreme Court dismissed a claim involving two Baptist ministers. *Brown* v. *Mt. Olive Baptist Church*, 124 N.W.2d 445 (Iowa 1963). Although the case turned on clear ecclesiastical issues—the congregation's decision to remove the ministers from office—the lower court waded

into internal church governance, declaring the church's decision "null and void" because its internal procedures were like "mob rule" and "contrary to fundamental principles of just[ice] and equity." *Id.* at 446. On review, the state supreme court reversed, explaining that civil courts "have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies, including membership in a church organization." *Ibid.* In fact, the court was reluctant to even recite "the facts and circumstances surrounding the expulsion" because it had "considerable doubt as to the materiality" of those issues in a court of law. *Id.* at 445. To the state supreme court, because church discipline decisions are ecclesiastical, state courts have no business "subver[ting] * * * religious bodies" by second-guessing those decisions. *Id.* at 447 (citation omitted).

Courts also applied these principles to bar defamation claims against churches. In one early case, the Supreme Court of Missouri held that a church was immune from a defamation claim challenging its membership decisions. *Landis* v. *Campbell*, 79 Mo. 433, 439–40 (1883). The plaintiff had sued the Presbyterian church for libel after the church published a statement that the plaintiff was "by [unanimous] vote excommunicated." *Id.* at 434–35. Because the trial court failed to dismiss the case at the outset, "a mass of evidence [was] read to the jury, consisting of extracts from the constitution of the church and digests of its laws, * * * which the court left it to the jury to expound for themselves." *Id.* at 436. The Missouri Supreme Court reversed, explaining that members of churches voluntarily submit themselves "to the tribunals established by [their churches] to pass upon such questions," and that if they are "aggrieved by a decision against them," they

"must seek their redress within the [church]." *Id.* at 439. Because courts "cannot decide whether the excommunicated have been justly or unjustly, regularly or irregularly, cut off from the body of the church," the court explained, such questions are "not subject to be reviewed by the civil courts" and the courts thus "will not examine" them. *Id.* at 438–39 (citation omitted).

All told, early American courts understood that they lacked the authority and the competence to question ecclesiastical decisions. Time and again, they declined to review church decisions on matters of church governance, discipline, membership, doctrine, and leadership. And when stray state trial courts waded into these ecclesiastical questions, higher courts admonished them for failing to dismiss such controversies in the first instance.

II. The historical record confirms that ROCOR's church autonomy defense to Father Alexander's defamation claims should be determined at the outset.

As petitioners point out (at 14–29), lower courts divide sharply over whether the church autonomy doctrine is an immunity from suit that should be decided as a threshold issue before the case's merits. The historical record provides a straightforward answer: It should.

As recounted above, courts have long understood that they must avoid the "mischiefs" of entertaining "public investigations" and "public trial before a court and jury" on issues involving a church's determination of "the infidelity and immorality of a minister of the gospel." *Bradford*, 8 Cow. at 504–05 (opinion of Jones, Chancellor); see *German Reformed Church*, 3 Pa. at

291 (recognizing that passing on "matters of faith, discipline, and doctrine" would embroil courts in "a sea of uncertainty and doubt"). To avoid judicial entangling in "matter[s] 'strictly ecclesiastical,'" *Hosanna-Tabor*, 565 U.S. at 195 (citation omitted), history teaches that such cases should be dismissed at the outset due to the legal immunity that church autonomy affords. See, *e.g.*, *Sale*, 17 N.W. at 145; *Brown*, 124 N.W.2d at 446. And when a trial court denies religious groups such protection, history likewise teaches that church autonomy is so fundamental that it should be immediately appealable as a collateral order.

To begin with, church autonomy protects churches like ROCOR from "the very process of inquiry" into matters of church government, faith, and doctrine. *NLRB*, 440 U.S. at 502; see *Our Lady*, 140 S. Ct. at 2055; see also *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) (church autonomy applies whether the interference comes from a legislature or the courts). So when, as here, a dispute turns on those issues, courts should refuse to allow intrusive merits discovery and should dismiss the case outright. See, *e.g.*, *Proprietors of Hollis Street Meetinghouse*, 48 Mass. at 499 (rejecting discovery request aimed at undermining a church council's ministerial decision); *Brown*, 124 N.W.2d at 446 (instructing lower court to dismiss plaintiff's claim because civil courts "have no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies"). To hold otherwise would make secular judges the "*de facto* heads of the church," *Chase*, 58 Ill. at 535, deciding church matters that the government has no business deciding.

This longstanding commitment to church autonomy is engrained in the First Amendment's Religion

Clauses. See, *e.g.*, *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116, 121 (1952). In the first place, "[s]tate interference" in "matters of 'faith and doctrine'" and "'matters of church government'" "would obviously violate the free exercise of religion." *Our Lady*, 140 S. Ct. at 2060. That guarantee would be meaningless if religious institutions lacked the power to select their own religious leaders, resolve membership disputes, and decide other matters of faith, doctrine, and governance. At the same time, "any attempt by government to dictate or even to influence such matters would [also] constitute one of the central attributes of an establishment of religion." *Ibid.* By preventing the government from entangling itself in internal religious affairs, the Establishment Clause "preserve[s] the autonomy and freedom of religious bodies." *Walz* v. *Tax Comm'n*, 397 U.S. 664, 672 (1970).

Even more than that, church autonomy is a foundational principle of American law that long predates the First Amendment. As the historical record shows, the principle was embedded in colonial charters, applied by the Confederation Congress, and espoused by our Founders both before and after the Bill of Rights' adoption. See *supra* part I.A. And long before the incorporation of the Religion Clauses, this Court recognized that courts must stay out of internal church decisions on "questions of discipline, or of faith, or ecclesiastical rule, custom, or law * * * as binding on them." *Watson* v. *Jones*, 80 U.S. 679, 727 (1871); see also *Gonzalez* v. *Roman Cath. Archbishop*, 280 U.S. 1, 16 (1929).

Here, the Second Circuit would allow a drawn-out legal inquiry into church affairs before determining—perhaps after years of litigation—whether church

autonomy protects ROCOR. See *Belya* v. *Kapral*, 45 F.4th 621, 632–33 (2d Cir. 2022). The Second Circuit based its reasoning in part on this Court's language in a footnote that the ministerial exception isn't jurisdictional. *Id.* at 633 (citing *Hosanna-Tabor*, 565 U.S. at 195 n.4). Yet in the same footnote, this Court explained that courts should decide "whether the claim can *proceed* or is instead *barred* by the ministerial exception." *Hosanna-Tabor*, 565 U.S. at 195 n.4 (emphasis added). *Hosanna-Tabor* itself thus suggests that the church autonomy question should be resolved at an early stage, after which a case may either "proceed" if church autonomy does not apply or be "barred" if it does. *Ibid.* That common-sense approach aligns with centuries of case law recognizing that civil courts have no authority to rule on purely ecclesiastical questions. See *supra* at 8–13 (discussing cases).[2]

The Second Circuit also suggested that the district court could avoid religious entanglement by sticking to neutral principles of law. *Belya*, 45 F.4th at 630. But

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[2] When this Court ruled in *Hosanna-Tabor* that the ministerial exception isn't jurisdictional, it used the word "jurisdiction" in its narrow, procedural sense—the "'power to hear [the] case.'" *Hosanna-Tabor*, 565 U.S. at 195 n.4 (quoting *Morrison* v. *Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010)). That sense of jurisdiction shouldn't be conflated with jurisdiction's broader sense—"the right to speak authoritatively" on an issue. Lael Daniel Weinberger, *Is Church Autonomy Jurisdictional?*, Loy. U. Chi. L.J. (forthcoming 2023) (manuscript at 12), https://perma.cc/Z9GB-A47G. The broader sense of "jurisdiction" characterizes this Court's approach in certain areas of the law, such as state sovereign immunity. See, *e.g.*, *Idaho* v. *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267 (1997) (describing the Eleventh Amendment as "a sovereign immunity from suit, rather than a nonwaivable limit on the Federal Judiciary's subject-matter jurisdiction").

this Court has never applied the neutral-principles approach aside from schismatic church property disputes—and for good reason. In such cases, when it's unclear even who the "church" is, courts have no choice but to get involved. Otherwise, fights over the keys to a house of worship could be resolved only by resort to physical force, and religious institutions themselves would be left without a neutral forum to vindicate their property rights. But even when courts decide such cases, they still must defer to the church's decision on any ecclesiastical question. See *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 713–14 (1976).[3] By contrast, when there is no property dispute, and the suit simply challenges a religious body's decision or acts on matters of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them," courts have no business injecting themselves into the controversy. *Watson*, 80 U.S. at 733; accord *Landis*, 79 Mo. at 438 ("[I]n matters purely ecclesiastical, not affecting property rights, the decisions of the proper church judicatory are conclusive" and civil courts "will neither inquire into their correctness, nor question their accuracy." (citation omitted)).

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[3] Early state court cases involving church property disputes held the same. Warning against court entanglement in ecclesiastical matters, they recognized that secular courts may resolve church property disputes only when those disputes are *purely* property based. See, *e.g.*, *Shannon* v. *Frost*, 42 Ky. (3 B. Mon.) 253, 259 (1842); *Harmon* v. *Dreher*, 17 S.C. Eq. (Speers Eq.) 87, 120–21 (S.C. Ct. App. Eq. 1843); *Gibson* v. *Armstrong*, 46 Ky. (7 B. Mon.) 481, 495 (1847); *Robertson* v. *Bullions*, 9 Barb. 64, 134 (N.Y. App. Div. 1850); *Gartin* v. *Penick*, 68 Ky. (5 Bush) 110, 116 (1868); *Nance* v. *Busby*, 18 S.W. 874, 876 (Tenn. 1892).

More to the point, it is impossible for any court to neutrally determine Father Alexander's defamation claims: Any inquiry would devolve into a collateral attack on ROCOR's process and rationale for investigating and removing him—a "purely ecclesiastical question, into which [a court] cannot inquire." *Sale*, 17 N.W. at 145. Given this Court's instruction that lower courts should look to substance and function over form when deciding church autonomy issues, see, *e.g.*, *Our Lady*, 140 S. Ct. at 2060, it shouldn't matter how a claim is styled. If, at bottom, a claim concerns a religious body's determination of core ecclesiastical matters—as Father Alexander's defamation claims do—the church autonomy doctrine applies. See *Natal* v. *Christian & Missionary All.*, 878 F.2d 1575, 1577–78 (1st Cir. 1989); cf. *Demkovich* v. *St. Andrew the Apostle Par.*, 3 F.4th 968, 973, 977–78 (7th Cir. 2021) (en banc) (applying the ministerial exception to a minister's hostile work environment claim because resolving the "allegations of minister-on-minister harassment would * * * undercut a religious organization's constitutionally protected relationship with its ministers"). If the mere styling of a claim could evade the church autonomy doctrine, the courthouse doors would be thrown open "to the complaint of every man expelled from a church," and "[a]ctions [against religious bodies] for libel and slander would crowd the docket of the civil courts." *Landis*, 79 Mo. at 439.

This Court addressed a similar question in *Milivojevich*, 426 U.S. 696. Like the Second Circuit here, the lower court there thought it could second-guess a church's reorganization of a diocese by applying "purported 'neutral principles,'" such as church law requiring trial on ecclesiastical charges to be brought within

a year. *Milivojevich*, 426 U.S. at 719, 721. This Court rejected that approach. However neutral the one-year rule might seem, there was no way around the fact that the lower court was meddling with a church's reorganization of a diocese—"a matter of internal church government * * * at the core of ecclesiastical affairs." *Id.* at 721. Put simply, the lower court couldn't decide an ecclesiastical question by applying "neutral" principles of law.

The same is true of the defamation claims here. Because those claims challenge a church's choice of whom to promote to bishop—an issue at the core of ecclesiastical affairs—there is no neutral way to resolve them. Indeed, the central dispute here is one based on and determined by ROCOR's faith: the spiritual and ecclesiastical qualifications to be recognized as a bishop. ROCOR wants to determine its internal leadership and communicate aspects of its reasoning to its members, as it and thousands of other churches regularly do without government interference or inquiry. But for Father Alexander to prove the elements of defamation, a court would have to judge statements made by clergy throughout the Church's disciplinary process and decide whether an episcopal election occurred in accordance with church law, all but guaranteeing such interference. See Pet. 22–23.

Worse still, those inquiries would require an intrusive discovery process into the Church's internal disciplinary proceedings, a review of church communications regarding the election of bishops, an analysis of church law, and even depositions of senior hierarchs. *Id.* at 23. Were cases like this allowed to proceed, church autonomy would be rendered meaningless and religious bodies would be dragged through intrusive

and protracted court battles—merely for handling their affairs in accordance with their own faith and doctrines.

To allow such litigation to proceed is to allow the government to hinder the Church's free exercise of religion and to violate the Establishment Clause by entangling secular courts in a religious dispute. The basic principle that churches' inherent autonomy protects them from invasive discovery and litigation has been understood since before the country's founding, *supra* at 4–5, and courts have long recognized that religious bodies have the right to decide whether their members, be they minsters or laymen, should be "admonished, reproved and finally ejected from the society." *Riddle* v. *Stevens*, 2 Serg. & Rawle 537, 543 (Pa. 1816). These longstanding principles applies whether or not a religious dispute is clothed in secular language.

CONCLUSION

The Court should grant certiorari and reverse the decision below.

Respectfully submitted,

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