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No. 20-1158

IN THE

Supreme Court of the United States

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

v.

WILL MCRANEY,
Respondent.

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

BRIEF OF *AMICUS CURIAE* PROFESSORS ELIZABETH A. CLARK, ROBERT F. COCHRAN, JR., CARL H. ESBECK, DAVID F. FORTE, RICHARD W. GARNETT, CHRISTOPHER C. LUND, MICHAEL W. MCCONNELL, MICHAEL P. MORELAND, ROBERT J. PUSHAW, AND DAVID A. SKEEL SUPPORTING PETITIONERS

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STATEMENT OF INTEREST[1]

Amici curiae (listed in the Appendix) are professors who research and write on the First Amendment and religious liberty. They have a strong interest in the proper application of the Religion Clauses and the church autonomy doctrine.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"The First Amendment protects the right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020). This principle—known as the church autonomy doctrine—is rooted in the American constitutional tradition of religious freedom. Seeking to escape government intrusion in their churches, the Puritans, Quakers, and other religious dissenters left England in search of a land where they could "elect their own ministers and establish their own modes of worship." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 182 (2012). "It was against this

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[1] Pursuant to this Court's Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amici curiae* or their counsel have made a monetary contribution to the preparation or submission of this brief. The parties have received timely notice and have consented to the filing of this brief.

background that the First Amendment was adopted." *Id.* at 183.

Rooted in both the Establishment and Free Exercise Clauses, the church autonomy doctrine is a defense that "operates like an immunity from suit as to certain discrete subject matters that go to a religious organization's control over the doctrine, polity, and personnel that execute its present vision or determine its future destiny." Carl H. Esbeck, *After* Espinoza, *What's Left of the Establishment Clause?*, 21 Federalist Soc'y Rev. 186, 202 (2020). Far from offering religious institutions "a general immunity from secular laws," *Our Lady*, 140 S. Ct. at 2060, however, the doctrine simply "protect[s] their autonomy with respect to internal management decisions that are essential to the institution's central mission." *Id.* It "let[s] the church be the church." Carl H. Esbeck, *The 60th Anniversary of the* Everson *Decision and America's Church-State Proposition*, 23 J.L. & Religion 15, 41 (2008).

This case involves a minister protesting his dismissal from church leadership after having "conflicting visions about the growth of the church." Pet.App.45a (Ho, J., dissenting from denial of rehearing en banc). That is precisely the kind of intrachurch power struggle that implicates the church autonomy doctrine. Yet the Fifth Circuit determined that the district court prematurely dismissed the suit, because it is "not certain that resolution of McRaney's claims will require the court to interfere" with "purely ecclesiastical questions." Pet.App.48a (Ho, J.). That decision is mistaken.

Unlike church property disputes, which may be decided by "neutral principles" of law, personnel decisions—by their nature—cannot be decided simply by "neutral principles." "As the saying goes, personnel *is* policy." Pet.App.45a (Ho, J.).

That the minister's claims are framed under state tort law is of no moment. The scope of the church autonomy doctrine encompasses torts that arise from the minister-church employment relationship. While immunity may not attach to all tort claims against a religious organization, it undoubtably attaches when the claim involves the hiring, promotion, or firing of a ministerial employee. Indeed, such claims are substantially similar to federal nondiscrimination claims, which this Court has previously decided fall under the church autonomy doctrine. After all, the purpose of the doctrine is to prevent the government from "interfer[ing] with the internal governance of the church." *Hosanna-Tabor*, 565 U.S. at 188. Because the tort claims here involve internal church governance, "[t]his case falls right in the heartland of the church autonomy doctrine." Pet.App.45a (Ho, J.). This Court should grant the petition and reverse the decision below.

ARGUMENT

I. The United States has long recognized the importance of church autonomy.

"[T]he right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and

doctrine'" is central to the fabric of American society and constitutional heritage. *Our Lady*, 140 S. Ct. at 2055 (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952)). "[T]he Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring). This principle—that "religious communities and institutions enjoy meaningful autonomy and independence with respect to their governance, teachings, and doctrines"—dictates that government may not interfere in internal church affairs. Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U.L. Rev. Colloquy 175, 175 (2011).

A. Church autonomy in England.

The church autonomy doctrine is rooted in the American constitutional tradition of religious freedom. In adopting the First Amendment and honoring the right of churches to govern without interference, the Founders attempted to "prevent a repetition of [British] practices" of government-controlled decision making in the church. *Our Lady*, 140 S. Ct. at 2061. Indeed, those very practices drove the Puritans, Quakers, and other religious dissenters out of England.

Magna Carta recognized church autonomy in its very first clause. J. Holt, Magna Carta App. IV, P. 317, cl. 1 (1965). It decreed that the English church "shall have its rights undiminished and its liberties

unimpaired," including "freedom of elections"—"the greatest necessity and importance to the English church." *Id.*; *Hosanna-Tabor*, 565 U.S. at 182.

Yet in 1215, actual freedom from government interference "may have been more theoretical than real." *Hosanna-Tabor*, 565 U.S. at 182; *id.* at 182 (noting that Henry II ordered the electors of a bishopric to "hold a free election" but forbade them from electing "anyone but Richard my clerk"); Richard W. Garnett, *Religion and Group Rights: Are Churches (Just) Like the Boy Scouts?*, 22 St. John's J. Legal Comment. 515, 524 (2007) (identifying "constraint[s] to which King John agreed []but did not always respect").

The English church faced constant interference from the Crown in religious decisionmaking. By 1535, the English monarch reigned as supreme head of the English church, with full authority to appoint church officials. *See* The Act of Supremacy of 1534, 26 Hen. 8, ch. 1; The Act in Restraint of Annates, 25 Hen. 8, ch. 20. Subsequent laws continued to stifle both religious exercise and church autonomy. James I proclaimed it "the chiefest of all kingly duties ... to settle the affairs of religion." Documents Illustrative of English Church History 513 (Henry Gee & William John Hardy eds., 1896). Charles I followed suit by requiring all clergy to swear an oath of allegiance, "bind[ing] themselves never to consent 'to alter the government of th[e] church by archbishops, bishops, deans and archdeacons, etcetera, as it stands now established.'" Felix Makower, The Constitutional History and Constitution of the

Church of England 76 (1895). Though Charles I lost his head, Charles II persisted in interfering with the church: after restoring the monarchy in 1660, he immediately ordered all ministers to pledge their allegiance or face being labeled seditious and removed from their positions. *See* Act of Uniformity, 1662, 14 Car. 2, ch. 4.

John Locke strongly opposed this government interference, arguing that it was "utterly necessary" to "draw a precise boundary-line between (1) the affairs of civil government and (2) the affairs of religion." John Locke, *A Letter Concerning Toleration* 3 (1690) (Bennett ed. 2010). Failure to recognize this distinction, he warned, would result in endless "controversies arising between those who have ... a concern for men's souls and those who have ... a care for the commonwealth." *Id.* Because government is "constituted only for the purpose of preserving and promoting" life, liberty, and property, while the church "care[s] for the salvation of men's souls," *id.*, they need different laws. And since members of a church "joined it freely without coercion ... it follows that the right of making its laws must belong to the [church] itself." *Id.* at 5.

Yet the promise of church autonomy remained hollow. England continued to "suffer[] from chronic religious strife and intolerance." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1421 (1990). "Seeking to escape the control of the national church," the Puritans crossed the Atlantic, searching for a land where they

could "elect their own minsters and establish their own modes of worship." *Hosanna-Tabor*, 565 U.S. at 182. Other religious dissenters followed. *See id.* at 183. Even those who adhered to the Church of England still "chafed at the control exercised by the Crown." *Id.*

B. Church autonomy in the United States.

"It was against this background that the First Amendment was adopted." *Hosanna-Tabor*, 565 U.S. at 183. The centuries-old struggle to free religion from government meddling spurred the American commitment "to preserv[ing] a church's independent authority" in "matters of faith and doctrine and in closely linked matters of internal government." *Our Lady*, 140 S. Ct. at 2061. The founding generation both "sought to foreclose the possibility of a national church" and ensure that the new federal government "would have no role in filling ecclesiastical offices." *Hosanna-Tabor*, 565 U.S. at 184. Instead, America would honor the "distinctions between [civil and religious] spheres, the independence of institution, and the 'freedom of the church.'" Garnett, *Religion and Group Rights, supra*, 523. It would ensure "a constitutional order in which the institutions of religion—not 'faith,' 'religion,' or 'spirituality,' but the 'church'—are distinct from, other than, and meaningfully independent of, the institutions of government." *Id.*

Such an order required "rejecting a national establishment of religion." Berg et al., *supra*, 181. In doing so, "Americans necessarily rejected a role for the federal government to choose church leaders." *Id.*

"The First Amendment confirms this rejection, as do early practices and policies." *Id.* For example, shortly after independence, the Vatican asked Barbe Marbois, the French Minister to the United States "to petition Congress for approval to appoint a Catholic bishop in the United States." Carl H. Esbeck, *Religion During the American Revolution and the Early Republic*, in 1 Law and Religion, An Overview 57, 72-73 (Silvio Ferrari & Rinaldo Cristofori, eds. 2013). Congress responded by directing Benjamin Franklin, the U.S. Minister to France, to inform the Vatican and the French Minister that "the subject of [their] application ... being purely spiritual[] ... is without the jurisdiction and powers of Congress, who ha[s] no authority to permit or refuse it." *Id.*

Similarly, in 1806, John Carroll, the United States' first Catholic bishop, sought then-Secretary of State James Madison's view about whom to appoint as bishop in the newly acquired Louisiana Territory. Berg et al., *supra*, 181. "After conferring with President Jefferson, Madison responded that 'the selection of ecclesiastical individuals'—of church 'functionaries'—was an 'entirely ecclesiastical' matter for the Catholic Church to decide, and that he would adhere to 'the scrupulous policy of the Constitution in guarding against a political interference in religious affairs.'" *Id.* (quoting Letter from James Madison to Bishop Carroll (Nov. 20, 1806), reprinted in 20 Records of the American Catholic Historical Society 63-64 (1909)); *Hosanna-Tabor*, 565 U.S. at 184.

Jefferson took a similar view when Madison, as Secretary of State, informed him in 1804 that local authorities had shut the doors of a Catholic parish in the Orleans Territory "in response to a conflict between two priests concerning who was the rightful leader of the congregation." Kevin Pybas, *Disestablishment in the Louisiana and Missouri Territories*, in Disestablishment and Religious Dissent: Church-State Relations in the New American States, 1776–1833 273, 281-82 (Esbeck & Hartog eds., 2019). Displeased, Jefferson wrote back: "[I]t was an error in our officer to shut the doors of the church. ... The priests must settle their differences in their own way, provided they commit no breach of the peace. ... On our principles all church-discipline is voluntary; and never to be enforced by the public authority." *Id.*

Jefferson reiterated the point just eight days later in a letter to the Ursuline Sisters of New Orleans. "The order's prioress had written to Jefferson asking for assurance that the Louisiana Purchase would not undermine their legal rights." Berg et al., *supra*, 182. Jefferson answered, stating that "the principles of the Constitution 'are a sure guaranty to you that [your property] will be preserved to you sacred and inviolate, and that your Institution will be permitted to govern itself according to its own voluntary rules without interference from the civil authority.'" *Id.* (citation omitted). Jefferson emphasized that the Sisters had a "broad right of self-governance and religious liberty." Pybas, *supra*, 281.

Madison maintained this principle of non-interference after becoming president. In 1811, he vetoed a bill incorporating the Protestant Episcopal Church in Alexandria (which "was then the District of Columbia"), *Hosanna-Tabor*, 565 U.S. at 184-85. In doing so, Madison stated that such a law "exceeds the rightful authority to which Governments are limited, by the essential distinction between civil and religious functions, and violates, in particular, the article of the Constitution of the United States, which declares, that 'Congress shall make no law respecting a religious establishment.'" *Id.* (quoting 22 Annals of Cong. 982-983 (1811)). Not only would such a bill improperly "comprehend[] ... the election and removal of the Minister" but it would also "establish[] by law, sundry rules and proceedings relative purely to the organization and polity of the church incorporated." *Id.*

At bottom, "[w]hat these and other events confirm is that many early American leaders embraced the idea of a constitutionalized distinction between civil and religious authorities." Richard W. Garnett & John M. Robinson, Hosanna-Tabor, *Religious Freedom, and the Constitutional Structure*, 2011-2012 Cato Sup. Ct. Rev. 307, 313. And such a distinction "implied, and enabled, a zone of autonomy" over church affairs. *Id.*

C. Church autonomy is a defense in the nature of an immunity.

By erecting a barrier between civil authorities and religious institutions on matters involving internal church governance, the church autonomy

doctrine creates a defense in the nature of an immunity. *See Hosanna-Tabor*, 565 U.S. at 195 n.4 ("[T]he exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar."); Esbeck, *After* Espinoza, *supra*, 202. Once a court determines the doctrine applies, the inquiry ends. *See Hosanna-Tabor*, 565 U.S. at 194-95; Esbeck, *After* Espinoza, *supra*, 200.

The church autonomy doctrine "does not mean that religious institutions enjoy a general immunity from secular laws." *Our Lady*, 140 S. Ct. at 2060. "[B]ut it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission." *Id.* It gives churches "an independence from secular control or manipulation—in short, power to decide for themselves" how to govern their affairs. *Kedroff*, 344 U.S. at 116. Simply put, it "let[s] the church be the church." Esbeck, *America's Church-State Proposition*, *supra*, 41.

Importantly, applying the doctrine does not require a showing of religious harm or a religious burden if the immunity is not honored. Rather, a loss of control over internal governance—a loss of autonomy—is itself the harm. That is why, for example, this Court rejected the EEOC's argument in *Hosanna-Tabor* that the school's proffered religious reason (insubordination) for firing the petitioner "was pretextual." Esbeck, *After* Espinoza, *supra*, 200. The Court explained that such a "suggestion missed the point," because the ministerial exception does not exist "to safeguard a

church's decision to fire a minister only when it is made for a religious reason.... [t]he exception instead ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical,' ... is the church's alone." *Hosanna-Tabor*, 565 U.S. at 194-95.

Accordingly, rather than employ a balancing test to determine whether the government's interest justifies interfering in the church's internal governance, a categorical immunity applies. *See Hosanna-Tabor*, 565 U.S. at 195-96. Once a church determines whether to hire or fire church personnel, then, "there is no follow-on judicial balancing" of that decision. Esbeck, *After* Espinoza, *supra*, 200. "There is no balancing because there can be no legally sufficient governmental interest to justify interfering" in a church's decision not to retain unwanted personnel. *Id.* In such a case, "the First Amendment has struck the balance for us." *Hosanna-Tabor*, 565 U.S. at 196.

To be sure, the Court in *Hosanna-Tabor* applied the ministerial exception as a defense by a religious employer that had been sued by an employee, whereas in this case the North American Mission Board did not directly employ Dr. McRaney. Pet.8-10. But the employer-employee relationship does not define the bounds of the church autonomy doctrine. The ministerial exception is "a subset of the church autonomy doctrine," which more broadly shields all matters of internal church governance from judicial intrusion. Esbeck, *After* Espinoza, *supra*, 201. The doctrine includes, for example, the prohibition on

courts taking up questions of religious doctrine or determining who may be admitted or expelled from membership. Those determinations are left to a religious entity itself to adjudicate. *See infra* Section II.A. These are not unique free-standing areas of law; they all fall under the heading of church autonomy doctrine.

At bottom, church autonomy is a freedom of a religious organization to govern its internal affairs without interference by government. It is a defense that "operates like an immunity from suit as to certain discrete subject matters that go to a religious organization's control over the doctrine, polity, and personnel that execute its present vision or determine its future destiny." Esbeck, *After* Espinoza, *supra*, 202; *see also* Victor E. Schwartz & Christopher E. Appel, *The Church Immunity Doctrine: Where Tort Law Should Step Aside*, 80 U. Cin. L. Rev. 431, 453 (2011).

D. This Court has properly treated church autonomy as a unique area of law.

Although the church autonomy doctrine is "rooted in the Religion Clauses," *Hosanna-Tabor*, 565 U.S. at 190, those clauses "each have their own line of cases." Esbeck, *After* Espinoza, *supra*, 196. So under the First Amendment, there are Establishment Clause cases, Free Exercise Clause cases, and a separate line of church autonomy cases. *Id.* This "distinct, third line of cases … tracks the development of church autonomy." *Id.*

This Court first articulated the church autonomy doctrine in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871). Declining to rule in a doctrinal dispute between factions of the Presbyterian Church, the Court held that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them." *Id.* at 727. It emphasized the "unquestioned" right of "voluntary religious associations" to decide for themselves "controverted questions of faith" and matters of "ecclesiastical government." *Id.* at 728-29.

In *Kedroff v. St. Nicholas Cathedral*, the Court grounded the doctrine in the First Amendment. It held that a statute transferring authority and property in the Russian Orthodox Church violated the First Amendment because "[l]egislation that regulates church administration, the operation of the churches, [or] the appointment of clergy … prohibits the free exercise of religion" and "violates our rule of separation between church and state." 344 U.S. at 107-08, 110. The Court further explained that America offers "a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 116.

In *Presbyterian Church v. Mary Elizabeth Blue Hull Church*, 393 U.S. 440 (1969), this Court "held

that the rule of church autonomy from *Watson* was now a First Amendment principle." Esbeck, *After* Espinoza, *supra*, 197. In declining to decide "a church property dispute which arose when two local churches withdrew from a hierarchical general church organization," a unanimous Court concluded that the "American concept of the relationship between church and state ... leaves the civil court *no* role in determining ecclesiastical questions in the process of resolving property disputes." *Presbyterian Church*, 393 U.S. at 441, 445, 447.[2]

Seven years later, in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), the Court

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[2] The Court has held that courts may employ "neutral principles of law as a means of adjudicating a church property dispute." *Jones v. Wolf*, 443 U.S. 595, 602-04 (1979). In such cases, courts have the option to "examine certain religious documents, such as a church constitution, for language of trust in favor of the general church." *Id.* at 604. "Because churches could freely structure their property arrangements as they wanted, courts could use general principles of property law to discern where the church would have wanted the property to go in the event of a split." Christopher C. Lund, *Free Exercise Reconceived: The Logic and Limits of* Hosanna-Tabor, 108 N.w. Univ. L. Rev. 1183, 1201 (2014). But neutral principles do not allow courts to cast away religious autonomy concerns "whenever an ostensibly neutral or secular principle or policy seems relevant." W. Cole Durham & Robert Smith, 1 Rel. Organization & the Law § 5:16 (2017). In particular, in *Hosanna-Tabor*, this Court "clearly thought Jones[' neutral principle rule] irrelevant" because it was an employment, not a property, case. Lund, *supra*, 1201.

"rejected an Illinois bishop's lawsuit challenging a top-down reorganization of the American-Canadian Diocese of the Serbian Eastern Orthodox Church and his removal from office." Esbeck, *After* Espinoza, *supra*, 197. The Court determined that accepting jurisdiction over such a subject matter, would be "[in]consistent with the constitutional mandate that the civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Milivojevich*, 426 U.S. at 713. The Court deemed any "detailed review" of internal church governance decisions "impermissible under the First and Fourteenth Amendments." *Id.* at 718.

More than three decades later, in *Hosanna-Tabor*, this Court unanimously rejected a teacher's challenge to her dismissal from a religious school under the Americans with Disabilities Act. Applying the ministerial exception, the Court held that the church autonomy doctrine barred the teacher's claim because "[r]equiring 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. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs." *Hosanna-Tabor*, 565 U.S. at 188.

In doing so, the Court affirmed that these previous church autonomy decisions are distinct from the Free Exercise or Establishment Clause line of

cases. This is why, for example, this Court has rejected the argument that *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), "precludes recognition of a ministerial exception." *Hosanna-Tabor*, 565 U.S. at 189. The Court "dismissed this argument as having 'no merit'" and noted that "*Smith* does not govern 'internal church decision[s] that affect[] the faith and mission of the church itself.'" Pet.App.55a (Ho, J.).

Finally, just last term, this Court again held that the ministerial exception—"a subpart of the more encompassing 'general principle of church autonomy,'" Esbeck, *After* Espinoza, *supra*, 201 (quoting 140 S. Ct. at 2061)—barred federal employment discrimination claims by two teachers at Catholic schools. The Court reaffirmed that "[t]he independence of religious institutions in matters of 'faith and doctrine' is linked to independence in ... 'matters of church government.'" 140 S. Ct. at 2060. And the First Amendment protects "autonomy with respect to internal management decisions that are essential to [a religious] institution's central mission." *Id.*

II. The church autonomy doctrine encompasses torts arising from the minister-church employment relationship.

A. The scope of the church autonomy doctrine.

The purpose of the church autonomy doctrine is to prevent the government from "interfer[ing] with the internal governance of the church." *Hosanna-*

Tabor, 565 U.S. at 188. Precedent teaches that "internal governance" generally includes five subject areas where "civil officials have been barred categorically from exercising [authority]." *See* Esbeck, *After* Espinoza, *supra*, 200 & nn. 174-77

First, civil courts cannot decide "questions of discipline, or of faith, or ecclesiastical rule, custom, or law," which are left to a religious entity itself to adjudicate. *Watson*, 80 U.S. (13 Wall.) at 727. Although "[i]ntrafaith differences … are not uncommon among followers of a particular creed, … the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715 (1981). This Court has never wavered in its admonition that "civil courts [have] *no* role in determining ecclesiastical questions." *Presbyterian Church*, 393 U.S. at 447 (emphasis added). "Courts are not arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716. Nor may they "resolv[e] underlying controversies over religious doctrine." *Presbyterian Church*, 393 U.S. at 449.

Second, courts generally cannot interfere with the polity of a religious organization. *See Hosanna-Tabor*, 565 U.S. at 187. "To permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide … religious law governing church polity … would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Milivojevich*, 426 U.S. at 709 (citation omitted). Here,

"Baptist ecclesiology is non-hierarchical [and] spiritual authority rests with individual congregations that then partner with one another to advance gospel work on a broader scale." Pet.5. But the church-autonomy doctrine does not protect only hierarchical churches. Courts may not "privilege[] religious traditions with formal organizational structures over those that are less formal." *Our Lady*, 140 S. Ct. at 2064. Indeed, there is no reason why a church's right "'to establish their own rules and regulations for internal discipline and government,'" to "control … the selection of those who will personify its beliefs," or to decide "who will minister to the faithful" should extend only to those churches with a hierarchical structure. *See Hosanna-Tabor*, 565 U.S. at 187-88, 195. No matter a church's structure, courts cannot "engage in the forbidden process of interpreting and weighing church doctrine." *See Presbyterian Church*, 393 U.S. at 451. Nor can they "impermissibly substitute [their] own inquiry into church polity," *Milivojevich*, 426 U.S. at 708, or "[b]y fiat … displace[] one church administrator with another," *Kedroff*, 344 U.S. at 119. Such an action "intrudes … the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." *Id.*

Third, the church autonomy doctrine prohibits courts from "depriving the church of control over the selection of those who will personify its beliefs," precluding judicial interference with ministerial employment relationships, including the appointment, promotion, and termination decisions

of the religious entity. *Hosanna-Tabor*, 565 U.S. at 188. Simply put, "the '[f]reedom to select the clergy, where no improper methods of choice are proven,' is 'part of the free exercise of religion' protected by the First Amendment against government interference." *Hosanna-Tabor*, 565 U.S. at 186. So too are decisions to remove a clergy member. *See Milivojevich*, 426 U.S. at 708-20. These principles formed the foundation for the Court's holding that "the First Amendment … precludes application of [employment discrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor*, 565 U.S. at 188. As the Court recently summarized, "a church's independence on matters 'of faith and doctrine' requires the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities." *Our Lady*, 140 S. Ct. at 2060.

Fourth, the church autonomy doctrine covers church membership decisions, including admission, discipline, and expulsion. A church's "very existence is dedicated to the collective expression and propagation of shared religious ideals." *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). Therefore, "[f]orcing a [church] to accept certain members may impair [its ability] to express those views, and only those views, that it intends to express." *Id.* (quoting *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000)); *see also Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139-40 (1872) ("[W]e have no power to revise or question ordinary acts of church discipline, or of excision from membership. … [W]e

cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off."); *Watson*, 80 U.S. (13 Wall.) at 733 (recognizing that matters "concern[ing] theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them" are those "over which the civil courts exercise no jurisdiction").

Fifth, internal communications regarding the subject areas described above—faith and doctrine, church polity, employment decisions, and membership decisions—cannot give rise to liability. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002). In *Bryce*, the Tenth Circuit upheld the dismissal of two civil rights suits predicated on statements that allegedly constituted sexual harassment. *Id.* at 653, 659. The case involved the termination of a youth minister after she entered a same-sex civil union against church doctrine. *Id.* at 651-52. Specifically, the minister and her partner alleged that communications within the church amounted to a civil rights conspiracy violation against the partner, an individual not employed by the church. *See id.* at 657-58. But because the "letters to other church leaders discussed an internal church personnel matter and the doctrinal reasons for [the] personnel decision" and were "part of an internal ecclesiastical dispute," the court found that "[t]he defendants' alleged statements f[ell] squarely within the areas of church governance and doctrine protected by the First Amendment." *Id.* at 658-59.

B. The tort claims here fall squarely within the church autonomy doctrine.

Several of these subject areas are implicated here. At issue are three tort claims that arise from an employment-related ministerial dispute. Dr. Will McRaney is a former Southern Baptist minister and leader of the Baptist Convention of Maryland/Delaware (BCMD), one of denomination's "state conventions." In that position he "guided the direction of the ministry and organization," "screen[ed] and manag[ed] all staff," and represented BCMD in negotiations with the North American Mission Board. Pet.App.47a (Ho, J.). In 2014, he sued the North American Mission Board, a subdivision of the Southern Baptist Convention, after the Convention fired him from church leadership because of his "conflicting visions" with the Mission Board "about the growth of the church." *See* Pet.App.45a (Ho, J.). Because such issues involve internal church governance, "[t]his case falls right in the heartland of the church autonomy doctrine." *Id.*

The essential facts are undisputed. Dr. McRaney, an ordained minister, disagreed with the North American Mission Board about a strategic partnership agreement (SPA) between them. Pet.6. In 2014, the "Mission Board proposed changes to the SPA that, in Reverend McRaney's view, gave the SBC Mission Board more control over state conventions" like the one he helped lead. *Id.* By his own admission, McRaney "consistently declined to accept" the new SPA, which addressed several church policies. *Id.* Because of this refusal, the

Mission Board notified the BCMD that it would cancel the existing SPA. *Id.* The BCMD, in turn, dismissed McRaney from his church leadership position. Pet.6-7. Following his termination, the hosts of a large symposium also disinvited McRaney as a speaker for an event at which he expected to sell a book he authored. Pet.7. He contended that this was a direct "result of 'interference' by employees of the SBC Mission Board." *Id.* McRaney then sued the Mission Board for defamation, intentional interference with business relationships, and intentional infliction of emotional distress. *Id.* He claimed that the Mission Board made "false and libelous accusation[s] against him," "threatened to withhold funding from the BCMD unless [he] was terminated," and lobbied to have him "disinvited as a speaker" at the mission symposium. Pet.6-7.

The district court dismissed the suit, concluding that McRaney's claims would require the court to determine whether the Mission Board had "valid religious reason[s]" for its actions. Pet.App.38a, 41a. But the Fifth Circuit reversed, reasoning that McRaney had "ask[ed] the court to apply neutral principles of tort law to a case that, on the face of the complaint, involves a civil rather than religious dispute." Pet.App.5a. The court ultimately concluded that "[t]he district court's dismissal was premature" because it is "not certain that resolution of McRaney's claims will require the court to interfere" with "purely ecclesiastical questions." Pet.App.5a, 8a. That decision is mistaken.

By concluding that the tort claims might be adjudicated based on "neutral principles of tort law," the Fifth Circuit misinterpreted this Court's church autonomy jurisprudence generally and the "neutral principles" rule specifically. *See, e.g., supra* n.4 (noting that "neutral principles" does not allow courts to cast away religious autonomy concerns "whenever an ostensibly neutral or secular principle or policy seems relevant"); *see also* Lund, *supra,* 1201 (explaining that in *Hosanna-Tabor*, the Court "clearly thought *Jones*['s neutral principle rule] irrelevant" since it was an employment, not a property case). A loss of control over internal governance—a loss of sovereignty within the protected sphere—is itself the harm the church autonomy doctrine protects.

This Court's recent cases are instructive. Although *Hosanna-Tabor* and *Our Lady* addressed the church autonomy doctrine's application in federal employment discrimination laws, their reasoning applies with equal force here. First, as a constitutional doctrine "grounded in the Religion Clauses," *Hosanna-Tabor*, 565 U.S. at 190, and incorporated against the states, *Everson v. Bd. of Educ.*, 330 U.S. 1, 5 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), the church autonomy doctrine applies equally to federal and state claims. Moreover, the state tort law claims here present precisely the same constitutional concerns as employment discrimination claims. "Allowing secular courts to punish religious organizations with damages awards for tortiously interfering with a minister's church employment infringes on 'a

religious group's right to shape its own faith and mission through its appointments,' in violation of the Free Exercise Clause." Pet.20 (quoting *Hosanna-Tabor*, 565 U.S. at 188-89). And "[t]ort damages awards to clergy contesting ministerial employment decisions, in effect, accord 'the state the power to determine which individuals will minister to the faithful,' in violation of the Establishment Clause." *Id.*

At bottom, "[a] former Southern Baptist minister brought this suit to protest his dismissal from church leadership." Pet.App.45a (Ho, J.). "That fact alone should be enough to bar this suit." *Id.* The church autonomy doctrine does not immunize all conduct arising from church operations from state tort liability. "[R]egular tort rules," for example, "apply to someone hit by the church bus or by a falling gargoyle." Lund, *supra*, 1204. It does, however, categorically immunize actions concerning who should be in leadership and what actions they should take on behalf of the church. That is precisely the situation here.

In his complaint, McRaney acknowledges that he "was dismissed because he 'consistently declined to accept' church policy regarding 'the specific area of starting new churches, including the selection, assessing and training of church planters.'" Pet.App.45a (Ho, J.). He even admitted that his "cause of action had its roots in Church policy." *Id.* Indeed, in his view, it was "a battle of power and authority between two religious organizations"—the Mission Board and the BCMD. Pet.8. Moreover,

McRaney alleged that the actions that gave rise to his claims were "a direct result of [his] refusal to accept the new SPA"—an agreement that directly concerned various church policies. Pet.App.47a (Ho, J.). These are precisely the kind of intrachurch power struggles that implicate the church autonomy doctrine.

Because the alleged misconduct fits squarely within the categories of conduct shielded by the church autonomy doctrine, the judicial entanglement must end there. The Fifth Circuit's wait-and-see approach invites judicial scrutiny into ecclesiastical matters. But "[t]he First Amendment outlaws such intrusion." *Our Lady*, 140 S. Ct. at 2060.

CONCLUSION

For these reasons, *amici* respectfully request that this Court grant the petition for a writ of certiorari and reverse the decision below.

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[1] The affiliated academic institutions are named for identification purposes only; these institutions take no position concerning this matter.

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