No. 20-

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a secular court can, consistent with the First Amendment's Religion Clauses, adjudicate a minister's employment-related state law tort claims against a religious organization using neutral principles of tort law.

2. Whether the First Amendment precludes the adjudication of a minister's employment-related state law tort claims only when brought against the legal entity that was the minister's employer.

PARTIES TO THE PROCEEDING

Petitioner is The North American Mission Board of the Southern Baptist Convention, Inc., which was the defendant in the district court and appellee in the court of appeals.

Respondent, who is an ordained minister and was formerly the Executive Director of the Baptist Convention of Maryland/Delaware, Inc., was the plaintiff in the district court and appellant in the court of appeals.

The Baptist Convention of Maryland/Delaware, Inc. is a state convention comprised of 560 Baptist churches that works in cooperation with the Southern Baptist Convention. It was a third-party respondent below that received a subpoena *duces tecum* from Petitioner and successfully moved to quash the same.

CORPORATE DISCLOSURE STATEMENT

Petitioner is a non-profit corporation organized under the laws of the state of Georgia that has only one member—the Southern Baptist Convention. It has no parent corporation and no stock.

RELATED PROCEEDINGS

United States District Court (N.D. Miss):

McRaney v. *North American Mission Board of the Southern Baptist Convention, Inc.*, No. 1:17-cv-00080-GHD-DAS (Apr. 24, 2019)

United States Court of Appeals (5th Cir.):

McRaney v. *North American Mission Board of the Southern Baptist Convention, Inc.*, No. 19-60293 (July 16, 2020), *petition for reh'g denied* (Nov. 25, 2020)

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PETITION FOR A WRIT OF CERTIORARI

The North American Mission Board of the Southern Baptist Convention, Inc. (SBC Mission Board) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

INTRODUCTION

Among the most fundamental questions for a religious organization is who should serve as its spiritual leader—a question far beyond the reach of secular courts. This Court has recognized as much for at least one hundred and fifty years. *See Watson* v. *Jones*, 80 U.S. 679, 727 (1871) ("[W]henever the questions of …

ecclesiastical rule … 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."). Accordingly, in *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC*, 565 U.S. 171 (2012), this Court affirmed what lower courts had long recognized, namely that the First Amendment's guarantee of church autonomy requires a "ministerial exception" to federal employment discrimination laws.

Expressly left open in *Hosanna-Tabor* was whether a similar exception is constitutionally-mandated with regard to a minister's employment-related state law tort claims. In this case, the court of appeals deepened a split of appellate authority on that question, holding that a ministerial employment dispute may be adjudicated by a secular court so long as only "neutral principles of tort law" are applied to the controversy. The court of appeals' decision conflicts with the decisions of numerous other federal courts of appeals and state appellate courts of last resort holding that state law tort claims arising from ministerial employment disputes, like the federal employment discrimination claims at issue in *Hosanna-Tabor*, cannot be adjudicated by secular courts. And the court of appeals' decision is wrong, as eight judges on the Fifth Circuit recognized in dissenting from the denial of rehearing en banc, for it conflicts with this Court's decisions and with fundamental principles of the First Amendment's Religion Clauses.

Particularly troubling is the court of appeals' holding that a religious organization can avoid a minister's legally neutral tort claim only if it offers "evidence" of a "valid religious reason" for its actions, App. 8a—an invitation to the district court to assess the validity of religious reasoning in contravention of this Court's

precedents. This Court has long made clear that a secular court's interrogation of the validity of religious tenets in this manner is impermissible. *See NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (warning that "the very process of inquiry" into the "good faith" of a religious position "may impinge on the rights guaranteed by the Religion Clauses"); *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) ("[I]t is not for us to say" whether a party's religious beliefs "are mistaken or insubstantial.").

This case presents an ideal vehicle for the Court to resolve the split of authority over the application of the First Amendment's church autonomy doctrine to a minister's employment-related state law tort claims against a religious organization.[1] It is undisputed that Reverend McRaney is a "minister" and that the SBC Mission Board is a religious organization, and Reverend McRaney alleged a causal connection between the allegedly tortious conduct and the termination of his ministerial employment. The applicability of the church autonomy doctrine to state law tort claims in these circumstances is a frequently recurring question of enormous significance to churches and other religious organizations, and the erroneous decision below endorses a state law evasion of this Court's holding in *Hosanna-Tabor*. To prevent such constitutionally impermissible intrusion into church affairs by secular courts, this Court should grant review and reverse.

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[1] The Court need not resolve here the distinct question of the applicability of the church autonomy doctrine to a congregant's tort claims against the church or a minister.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-8a) is reported at 966 F.3d 346. The denial of rehearing en banc (App. 43a-77a) is reported at 980 F.3d 1066. The district court's opinion denying defendant's motion to dismiss (App. 15a-32a) is reported at 304 F. Supp. 3d 514. The district court's opinion dismissing plaintiff's case for lack of subject matter jurisdiction (App. 33a-42a) is unpublished but is available at 2019 WL 1810991.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 2020. A timely petition by the SBC Mission Board for rehearing en banc was denied on November 25, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution provides in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

A. Reverend McRaney's Dispute With The SBC

Baptist ecclesiology[2] is non-hierarchical; spiritual authority rests with individual congregations that then partner with one another to advance gospel work on a broader scale. The Southern Baptist Convention (SBC) consists of "messengers" who are members of Baptist churches in cooperation with the Convention.[3] Petitioner SBC Mission Board is one of 12 boards and agencies of the SBC.[4] Dkt. 5-4 ("Compl.") at 2.[5] The SBC Mission Board's trustees are elected for multiple year terms at the annual meeting of the SBC. *Id.*

The Baptist Convention of Maryland/Delaware (BCMD) is a state convention comprised of 560 Baptist

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[2] Ecclesiology is the theology of the nature and structure of the Christian church. *See* Lexico, https://www.lexico.com/en/definition/ecclesiology (last visited Feb. 16, 2021).

[3] *About the SBC: Constitution*, https://www.sbc.net/about/what-we-do/legal-documentation/constitution/ (last visited Feb. 16, 2021).

[4] The other boards and agencies of the SBC include its six seminaries. *SBC Entities*, www.sbc.net/about/what-we-do/sbc-entities/ (last visited Feb. 16, 2021).

[5] All references to "Dkt." are to the district court docket in this case, *McRaney* v. *The North American Mission Board of the Southern Baptist Convention, Inc.*, No. 1:17-cv-080 (N.D. Miss.). Given the procedural posture of this case, the SBC Mission Board has accepted, for purposes of this petition, the truth of the allegations in Reverend McRaney's complaint. Indeed, the allegations of Reverend McRaney's complaint are binding on him. *See Amgen Inc.* v. *Connecticut Ret. Plans & Trust Funds*, 568 U.S. 455, 470 n.6 (2013) ("Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them.").

churches that works in cooperation with the SBC. Compl. 2. Until June 2015, Reverend McRaney was the Executive Director of the BCMD responsible for the "ministry direction and priorities of the organization." Compl. 2, 4. The BCMD and the SBC Mission Board have historically partnered together under a written operating agreement known as a "Strategic Partnership Agreement" (SPA). Compl. 3. As the preamble to the SPA explains, the SBC Mission Board "exists to work with churches, associations and state conventions in mobilizing Southern Baptists as a missional force to impact North America with the gospel of Jesus Christ through evangelism and church planting." Dkt. 3-1 at 1.

In 2014, the SBC Mission Board proposed changes to the SPA that, in Reverend McRaney's view, gave the SBC Mission Board more control over state conventions. Compl. 3. Reverend McRaney asked to meet with the president of the SBC Mission Board to discuss these changes, but, according to Reverend McRaney, the president informed various leaders of the BCMD that it was Reverend McRaney who refused to meet. Compl. 4. In any event, Reverend McRaney, by his own admission, "consistently declined to accept the newly written SPA," viewing it as "weakening the autonomy" of the BCMD and relinquishing control to the SBC Mission Board with respect to the "starting [of] new churches" and "the selection … of church planters." *Id.*

According to Reverend McRaney, his refusal to accept the proposed revisions to the SPA caused the SBC Mission Board to give notice that it was cancelling the existing SPA. Compl. 4-5. The SBC Mission Board's letter to the BCMD communicating this decision contained, according to Reverend McRaney, "false and

libelous accusation[s]" against him. Compl. 4. In addition, Reverend McRaney contends that the SBC Mission Board threatened to withhold funding from the BCMD unless Reverend McRaney was terminated and the new SPA was executed. Compl. 5. Thereafter, Reverend McRaney was terminated from his employment with the BCMD. Compl. 4.

Following Reverend McRaney's termination, he was scheduled to speak at a large mission symposium in Louisville, Mississippi where he would have had the opportunity to sell his books on "mission strategy." Compl. 5. Reverend McRaney contends that he was disinvited as a speaker at the symposium as a result of "interference" by employees of the SBC Mission Board. *Id.* Reverend McRaney likewise contends that the SBC Mission Board (unsuccessfully) sought to have him disinvited as a speaker at a pastor's conference hosted by the Florida Baptist Convention. *Id.* Finally, Reverend McRaney alleges that his photo was posted at the SBC Mission Board headquarters Welcome Desk, implying that he was untrustworthy and an enemy of the Board. Compl. 6.

Based on these allegations, Reverend McRaney filed suit against the SBC Mission Board, alleging (a) intentional interference with his "business relationships" (*i.e.*, his employment) with the BCMD, (b) defamation that "result[ed]" in the termination of his employment with the BCMD, (c) intentional interference with his "business relationships" as a speaker at the Mission Symposium in Louisville, Mississippi, (d) intentional interference with his "business relationships" as a speaker at the Florida Baptist Convention's pastors conference, and (e) intentional infliction of emotional distress by posting his photograph. Compl. 6-7.

B. Proceedings Below

1. District Court Proceedings

a. Motion to Dismiss

Reverend McRaney filed his complaint in Mississippi state court, but the SBC Mission Board removed the case to federal district court based on diversity of citizenship. The SBC Mission Board then moved to dismiss, arguing that Reverend McRaney's claims were barred by the First Amendment's "ministerial exception"[6] because the dispute was "an ecclesiastical matter and not one for the courts." Dkt. 9 at 2.

In response, Reverend McRaney conceded that his "cause of action had its roots in Church policy" and was, in his view, "a battle of power and authority between two religious organizations," namely the SBC Mission Board and the BCMD. Dkt. 13 at 3. And though he acknowledged that "all relevant facts occurred within the confines of the Southern Baptist Church," he argued that a secular court could nonetheless resolve the dispute because, unlike "the hierarchical nature of … the Catholic Church governed from Rome," the SBC Mission Board is "merely a supporting organization of the [SBC]." Dkt. 13 at 2.

The district court largely[7] denied the motion to dismiss, noting that, while Reverend McRaney "quali-

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[6] The SBC Mission Board noted in its motion that the "ministerial exception" has also been described as the "church-minister exception," the "church autonomy doctrine," and the "ecclesiastical abstention doctrine." Dkt. 9 at 6.

[7] The district court granted the SBC Mission Board's motion to dismiss Reverend McRaney's claim that the Board interfered with his speaking engagement at the Florida pastor's conference

fies as a 'minister' to whom the exception applies," the ministerial exception did not require dismissal here because "every case the Court has reviewed in which the ministerial exception was applied involved a plaintiff who had been previously employed by the defendant religious organization *itself* (and not just employed by a related or affiliated organization)." Dkt. 19 at 5.

Treating the ecclesiastical abstention doctrine as distinct from the ministerial exception, the district court interpreted the former as granting to churches the "'power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" Dkt. 19 at 6 (quoting *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). According to the district court, it was permitted to resolve "church disputes over church polity and church administration" so long as it could do so "without resolving underlying controversies over religious doctrine." Dkt. 19 at 6-7 (quoting *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milvojevich*, 426 U.S. 696, 710 (1976)). The district court ruled that, "[w]hile this is a dispute between members of the same religious denomination, it is not one which, on the face of the complaint, involves a review of *internal* policies, *internal* procedures, or *internal* decisions of the church." Dkt. 19 at 7 (internal quotation marks omitted). In the district court's view, the complaint related to the SBC Mission Board's "*external* actions toward separate autonomous organizations, rather than internal decisions within the hierarchy of a single organization." *Id.*

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because he was not ultimately disinvited from speaking at the conference and thus suffered no cognizable interference with any business relationship. Dkt. 19 at 12.

Finally, with regard to Reverend McRaney's defamation claim, the district court reasoned that it too could be adjudicated because its resolution required only that the district court determine "whether the statements about McRaney were false and whether they caused his termination [as the leader of the BCMD], neither of which will require the Court to delve into any religious practices or matters of internal church governance." Dkt. 19 at 10.

The SBC Mission Board sought to certify an interlocutory appeal on (a) whether the ministerial exception applies only to the minister's legal employer and not to affiliated religious organizations that allegedly caused the termination of the minister's employment, and (b) whether Reverend McRaney's claims presented a religious controversy to which the ecclesiastical abstention doctrine applied. Dkt. 23 at 1. The district court denied the motion. Dkt. 23 at 4.

b. Motion to Quash Subpoena

In order to defend itself against the allegation that statements by the SBC Mission Board to the BCMD "result[ed]" in the termination of Reverend McRaney's employment with the latter, the Board served a subpoena duces tecum on the BCMD seeking, *inter alia*, minutes of meetings of its trustees during which either of the following was discussed: (a) collaboration with the SBC Mission Board "in missionary hiring, missionary funding and/or church planting," or (b) Reverend McRaney's ministry performance. Dkt. 30-1 at 1. The subpoena also sought Reverend McRaney's personnel file and any communications concerning the SBC Mission Board, the SPA, the "ministry budget," or "ministry personnel or program[s]." Dkt. 30-1 at 3.

The BCMD moved to quash the subpoena, citing *Hosanna-Tabor* and arguing that the subpoena "would directly implicate its employment decisions, namely, its reasons for terminating [Reverend McRaney's] employment." Dkt. 38 at 7. The SBC Mission Board opposed the motion to quash, arguing that either the case should be dismissed or the motion to quash should be denied so the Board could "defend itself," which it "cannot do … without having the opportunity to discover the documents and facts that are central to [Reverend McRaney's] claims." Dkt. 46 at 4. The district court granted the motion to quash, reasoning that the ministerial exception applied to the subpoena because it sought "information directly related to employment decisions made by McRaney's former employer, BCMD." Dkt. 50 at 2.

c. *Motion for Partial Summary Judgment*

The SBC Mission Board moved for partial summary judgment on the ground that the district court's quashing of the Board's subpoena to BCMD evidenced that "this suit poses an unconstitutional intrusion into BCMD's 'choice of minister' and its internal governance and policy." Dkt. 49 at 6. Rather than rule on the summary judgment motion, the district court issued an order to show cause why the matter should not be remanded to state court for lack of subject matter jurisdiction given the ecclesiastical abstention doctrine. *See* Dkt. 60. The SBC Mission Board opposed remand, arguing that the state court would likewise lack jurisdiction pursuant to the ecclesiastical abstention doctrine. *See* Dkt. 61.

The district court converted the motion for partial summary judgment to a motion to dismiss for lack of

jurisdiction and granted the motion. The district court reasoned that, given the ecclesiastical abstention doctrine, it lacked subject matter jurisdiction because "this case would delve into church matters." Dkt. 63 at 4. As the district court explained, "[r]eview of these claims will require the Court to determine why the BCMD fired McRaney—whether it was for a secular or religious purpose." Dkt. 63 at 4-5. Similarly, with regard to Reverend McRaney's claim concerning his disinvitation from speaking at the mission symposium, the district court observed that resolution of the claim would "require the Court to determine if the event canceled McRaney's speech for a valid religious reason." Dkt. 63 at 5. With regard to Reverend McRaney's claim that the posting of his photograph at the SBC Mission Board's headquarters conveyed that he was untrustworthy and an enemy of the Board, the district court explained that resolution of this claim would require the court "to make determinations about why the [SBC Mission Board] held these opinions of McRaney, and because the [Board] is a religious institution, the question will touch on matters of religious belief." *Id.* The district court concluded that dismissal, rather than remand, was the proper remedy as a state court would likewise be without jurisdiction to consider such religious questions. Dkt. 63 at 7.[8]

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[8] The lower court noted that it is "somewhat unclear" whether the church autonomy doctrine "serves as a jurisdictional bar requiring dismissal under Fed. R. Civ. P. 12(b)(1) or an affirmative defense requiring dismissal under Fed. R. Civ. P. 12(b)(6)." App. 2a n.1. This Court need not resolve that issue in this case. *Cf.* App. 75a (noting that this Court "did not have occasion to consider whether the [church autonomy] doctrine retains jurisdictional consequences" in *Our Lady of Guadalupe School* v. *Morrissey*, 140 S. Ct. 2049, 2060 (2020)).

2. Proceedings On Appeal

On appeal, Reverend McRaney argued that dismissal was inappropriate because his case could be adjudicated in a civil court. Central to Reverend McRaney's argument was the organizational structure of the SBC. Reverend McRaney stressed that, as a technical matter, his lawsuit was brought against a legal entity of the SBC other than the "autonomous" one by which he was employed. *See*, *e.g.*, Resp. C.A. Br. 17 (arguing that "the court can certainly resolve whether a tort has been committed by one separate and independent religious organization versus a former employee of a completely separate and autonomous religious organization as exists in the Southern Baptist Convention"). His reply brief was even more explicit in this regard. Resp. C.A. Reply 1-2.

Invoking his lifelong affiliation with the SBC, Reverend McRaney urged the court of appeals to allow him to explore, through litigation in a civil court, "[f]or what reason was he now being banned by the independent churches in two various states? Had he preached false doctrine or had he run afoul of the Southern Baptist Convention that wanted to control all of the various state organizations?" Resp. C.A. Br. 25. In Reverend McRaney's view, the actions taken against him "were done for [a] purely non-religious reason … that is control and power and retaliation against any who oppose. Let the termination [of] Dr. McRaney stand as an example for any other autonomous Southern Baptist Church and [state] Convention who dares to stand up to the power and might of the [SBC] Mission Board." Resp. C.A. Br. 23. The secular courts, in Reverend McRaney's view, must be open to resolve such denominational power struggles.

a. Panel Opinion

The court of appeals reversed, holding that the district court's dismissal pursuant to the ecclesiastical abstention doctrine was "premature." App. 2a. Although the panel acknowledged that, under this Court's precedents, "matters of church government … constitute purely ecclesiastical questions" beyond the review of civil courts, App. 3a, the panel concluded that it would be permissible for a civil court "to apply neutral principles of tort law" to this dispute because Reverend McRaney was "not challenging the termination of his employment" and was "not asking the court to weigh in on issues of faith or doctrine," App. 4a. In response to the SBC Mission Board's assertion of "valid religious reasons" for its actions, the appellate panel noted that if the Board "presents evidence of these reasons" there may be cause to dismiss. App. 8a. But, in the appellate court's view, "it is not certain that resolution of McRaney's claims will require the court to interfere with matters of church government, matters of faith, or matters of doctrine." *Id.*

b. Petition for Rehearing

The SBC Mission Board petitioned the court of appeals for rehearing en banc. Reverend McRaney opposed the petition, arguing that the church autonomy doctrine recognized in *Hosanna-Tabor* was irrelevant because he was never employed by the SBC Mission Board, which he argued was "an independent, non-profit organization, supported by the [SBC]" while the BCMD "is a totally separate religious organization." Resp. C.A. Reh'g Opp. 2.

By a vote of 9-8, the full court denied rehearing en banc. Judge Ho, joined by five judges, observed in

dissent that the panel opinion was "troubling because it invite[d] future challenges to internal church decisions based on 'neutral principles of tort law.'" App. 62a. In the view of these six judges, the denial of rehearing en banc was "an 'ominous sign' and 'grave cause for concern' for 'those who value religious freedom.'" *Id.* (quoting *Stormans, Inc.* v. *Wiesman*, 136 S. Ct. 2433, 2433 (2016) (Alito, J., dissenting from denial of certiorari)). Similarly, Judge Oldham, joined by four judges, noted in dissent that "this case is rich with questions of exceptional importance," including the application of the church autonomy doctrine "to certain torts, like defamation." App. 77a.

REASONS FOR GRANTING THE PETITION

In *Hosanna-Tabor*, this Court held that the First Amendment's church autonomy doctrine precluded adjudication of a minister's federal employment discrimination claim against a religious organization. This case presents the frequently recurring question expressly left open in *Hosanna-Tabor*, 565 U.S. at 196, namely whether the church autonomy doctrine likewise precludes adjudication of a minister's state law tort claims arising from the church-minister employment relationship. Reverend McRaney's tort claims—tortious interference, intentional infliction of emotional distress, and defamation—are those regularly advanced by ministers in religious employment disputes.

The court of appeals' decision deviates from the reasoning of this Court's decisions concerning the justiciability of ecclesiastical disputes in secular courts. What is more, the court of appeals' holding that a secular court is permitted to adjudicate such disputes so long as it can do so by applying "neutral principles of tort law" conflicts with decisions of numerous other

federal courts of appeals and state appellate courts of last resort. Indeed, the court of appeals erroneously adopted what is by far the minority rule on this question.

The court of appeals' decision here—which the en banc court declined to correct—threatens a particularly egregious intrusion into church affairs, as the court of appeals directed the district court on remand to determine whether the SBC Mission Board has "evidence" of "valid religious reason[s]" for its response to Reverend McRaney's opposition to the revised SPA. App. 8a. The legal framework the court of appeals fashioned for evaluating disputes of this sort in effect renders a secular court an arbiter of the validity of religious reasoning. If a secular court has before undertaken such an intrusive review of church affairs, we are unaware of it. This Court's review is necessary to ensure that this improper interrogation does not take place.

I. THE FIFTH CIRCUIT'S DECISION DEPARTS FROM THIS COURT'S CHURCH AUTONOMY DECISIONS

The court of appeals' decision permits secular courts to resolve an intra-denominational dispute concerning church policy and control—framed as a state law tort suit by a minister against a religious organization—so long as the courts can do so by reference to "neutral principles of tort law." This narrowing of the church autonomy doctrine conflicts with the reasoning of this Court's decisions dating back more than a century, which recognize that ecclesiastical disputes are categorically exempt from adjudication by secular courts.

The First Amendment's Religion Clauses together afford religious organizations the "power to decide for themselves, free from state interference, matters of

church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116. A "component" of this "general principle of church autonomy" is the autonomy of religious institutions in "the selection of the individuals who play certain key roles." *Our Lady of Guadalupe Sch.* v. *Morrissey*, 140 S. Ct. 2049, 2060-2061 (2020).

Applying these general principles of church autonomy, this Court first recognized in *Hosanna-Tabor* a so-called "'ministerial exception,' grounded in the First Amendment, that precludes application of [federal employment discrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers." 565 U.S. at 188. As this Court explained, "[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." *Id.* Thus, under the First Amendment, "courts are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Our Lady of Guadalupe*, 140 S. Ct. at 2060.

Of particular import here, the *Hosanna-Tabor* decision explained that the autonomy of religious institutions with regard to ministerial employment "is not to safeguard a church's decision to fire a minster only when it is made for a religious reason." 565 U.S. at 194. Rather, this Court explained, the church autonomy doctrine "ensures that the authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone." *Id.* at 194-195 (quoting *Kedroff*, 344 U.S. at 119). This holding was

sound, as questions of church hierarchy and control are not easily separated from questions of doctrine. *See, e.g.*, 2 González, *The Story of Christianity* 19-23 (1985) (discussing relationship between doctrine of justification, sale of indulgences, and papal authority leading to Protestant Reformation).

Reverend McRaney claims that this case concerns the SBC Mission Board's attempted exercise of control over the church-planting activities of the BCMD through an amended SPA. Accepting Reverend McRaney's allegations as true, the state is without authority to punish the SBC Mission Board with a tort law damages verdict for its decision about whether it would partner with him in gospel ministry. The particular ecclesiastical structure of the SBC is irrelevant to the analysis. The state can no more punish the SBC Mission Board for its refusal to partner in ministry with a state Baptist convention led by Reverend McRaney than it could punish the Board for refusing to employ Reverend McRaney directly. The First Amendment's church autonomy doctrine demands that this case be dismissed.

The court of appeals nonetheless concluded that, for two reasons, the church autonomy doctrine did not require dismissal of Reverend McRaney's lawsuit. First, the court of appeals believed that "neutral principles of tort law" could be applied to resolve this dispute without the need to assess doctrinal issues or religious reasons for the conduct at issue. App. 5a. Second, the court of appeals noted that Reverend McRaney was "not challenging the termination of his employment," *id.*, presumably because he was suing a legal entity other than the one by which he had been employed. *See also* App. 4a (noting that the SBC Mission Board "has never been McRaney's employer").

Neither of these reasons is persuasive, and each conflicts with this Court's precedents.

A. The First Amendment's Church Autonomy Doctrine Precludes Secular Courts From Adjudicating A Minister's Employment-Related State Law Tort Claims Under "Neutral Principles Of Tort Law"

Although *Hosanna-Tabor* addressed the application of the First Amendment's church autonomy doctrine only to federal employment discrimination laws, the reasoning in this Court's precedents suggests that the doctrine applies with equal force to state law tort claims.

1. The "ministerial exception" acknowledged in *Hosanna-Tabor* was not derived from the text of the federal employment discrimination statutes at issue there, but rather was "grounded" in the First Amendment's imperative of church autonomy. *Hosanna-Tabor*, 565 U.S. at 188. And while the remedies permitted by the discrimination statutes at issue in *Hosanna-Tabor* included both reinstatement and damages, *id.* at 176, this Court made clear that church autonomy would be offended if a church was *either* "[r]equir[ed] … to accept or retain an unwanted minister, or punish[ed] … for failing to do so," *id.* at 188. Reverend McRaney's state law tort claims, like the federal discrimination claims in *Hosanna-Tabor*, seek to punish the SBC Mission Board through a damages judgment for its alleged statements and beliefs about partnering with him in ministry.

2. The church autonomy doctrine applies with equal force to federal and state law claims. The First Amendment's Religion Clauses—in which the church

autonomy doctrine is "grounded," *Hosanna-Tabor*, 565 U.S. at 188—have been made applicable to the states, and thus to state tort law, through the Fourteenth Amendment. *See Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940); *cf. Hustler Magazine, Inc.* v. *Falwell*, 485 U.S. 46 (1988) (interpreting First Amendment's free speech clause to limit state law tort claim for intentional infliction of emotional distress). Accordingly, this Court's precedents applying the church autonomy doctrine have done so with regard to both state statutes, *see Kedroff*, 344 U.S. at 107-108 (holding that New York state "[l]egislation that regulates church administration … [or] the appointment of clergy … prohibits the free exercise of religion"), and state common law, *Presbyterian Church in United States.* v. *Hull Church*, 393 U.S. 440 (1969) (holding that claim under Georgia common law was barred by First Amendment).

3. The constitutional concerns arising from the application of federal employment discrimination laws to ministerial employment are present in equal, if not greater, measure with regard to state law tort 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. *Hosanna-Tabor*, 565 U.S. at 188-189. Tort 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.* The potential for this interference in church affairs by means of state law is vast given the general police power of the states. *See, e.g.*, *United States* v. *Morrison*, 529 U.S. 598, 618 (2000) (discussing the police

power "which the Founders denied the National Government and reposed in the States").

4. The court of appeals' holding that a ministerial employment dispute could be adjudicated so long as only "neutral principles of tort law" are applied is inconsistent with this Court's reasoning in *Hosanna-Tabor* and *Our Lady of Guadalupe*, which categorically excluded such disputes from the jurisdiction of secular courts. *See Our Lady of Guadalupe*, 140 S. Ct. at 2060 (courts must "stay out of employment disputes involving those holding certain important positions within churches and other religious institutions"). In *Hosanna-Tabor*, the minister argued that the "asserted religious reason" for her firing "was pretextual." 565 U.S. at 194. As this Court explained, that argument "misses the point." *Id.* Religious organizations need not offer a religious reason for their ministerial employment decisions because the ministerial exception "is not to safeguard a church's decision to fire a minster only when it is made for a religious reason." *Id.* Rather, a ministerial employment decision is the church's "alone." *Id.* at 195. The court of appeals here held that a secular court could review a ministerial employment decision in the absence of a "valid religious reason" for the decision. App. 8a. That holding, like the minister's argument in *Hosanna-Tabor*, misses the point of the church autonomy doctrine, which is to reserve for religious organizations complete autonomy in their ministerial employment decisions.

B. The First Amendment's Church Autonomy Doctrine Does Not Depend On Denominational Corporate Structure

Particularly troubling is the court of appeals' seeming view that the non-hierarchical organization of the

SBC renders the SBC Mission Board worthy of less constitutional protection. The court of appeals asserted that Reverend McRaney—despite explicitly alleging that the SBC Mission Board's conduct "result[ed]" in his termination by the BCMD, Compl. 6—was "not challenging the termination of his employment." App. 5a. Given Reverend McRaney's complaint, it is hard to see how the court of appeals' statement is correct. While Reverend McRaney has not sued the legal entity by which he was employed, he explicitly alleged that his termination was *caused* by tortious interference and defamation from the SBC Mission Board.

To the extent the court of appeals' decision accorded constitutional significance to the organizational arrangement of the SBC, as compared to more hierarchical denominations, it erred as a matter of law. If Reverend McRaney's complaint is to be believed, the SBC Mission Board refused to partner with and finance the BCMD if led by Reverend McRaney. There is no reason why the SBC Mission Board's constitutional right to "control … the selection of those who will personify its beliefs," *Hosanna-Tabor*, 565 U.S. at 188, and "who will minister to the faithful," *id.* at 195, should extend only to those ministers with whom the Board directly contracts for employment and not to those with whom the Board indirectly partners through a SPA. An ecclesiastical dispute is no less so simply because it involves multiple incorporated religious agencies interacting with regard to a staffing issue that implicates how the two, in partnership, advance gospel work. Quite simply, church autonomy to select religious leaders free from legal interference cannot turn on ecclesiastical structure or technicalities of state incorporation law. Were it otherwise, the implications would be breathtaking, and not simply for Southern Baptists.

From the founding, religious denominations have been free "to define their own doctrine, membership, organization, and internal requirements without state interference." McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1464-1465 (1990). Accordingly, the Court has recognized that denominational structure may take multiple forms, *Jones* v. *Wolf*, 443 U.S. 595, 597 (1979), and this choice is "an ecclesiastical right" left to the church, *Kedroff*, 344 U.S. at 119. Because the organization of a church's structure "involves a matter of internal church government, an issue at the core of ecclesiastical affairs," *Milivojevich*, 426 U.S. at 721, the SBC, which utilizes a congregational model, cannot be treated differently under the law than the Roman Catholic Church or Lutheran Church Missouri Synod—the faith traditions at issue in *Our Lady of Guadalupe* and *Hosanna-Tabor*—simply because those denominations utilize a hierarchical model. *See, e.g.*, *Our Lady of Guadalupe*, 140 S. Ct. at 2064 (criticizing a lower court for "privileging religious traditions with formal organizational structures over those that are less formal").

Because each religion organizes itself according to its own faith and traditions, the relevant actors in church autonomy cases will vary from religion to religion. Not only may diverse religious denominations structure their constituent entities differently, the legal structure of a single faith tradition may also vary internally. To take one example, the legal structure of the Roman Catholic church differs by state. In the Diocese of Madison, Wisconsin, each parish is a separate legal entity.[9] In the Diocese of Los Angeles, California, the

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[9] Catholic Diocese of Madison, *Parish Corporations* (last visited Feb. 16, 2021), https://madisondiocese.org/parish-corporations.

only legal entity is the diocese.[10] It cannot be that the church autonomy doctrine allows a defrocked priest in Madison to bring an employment-related suit against the diocese (a separate legal entity from his parish), while a defrocked priest in Los Angeles cannot bring suit because there is only one legal entity (i.e., the diocese). Yet that was precisely the argument Reverend McRaney made with regard to the SBC's organizational structure, Resp. C.A. Reh'g Opp. 2, and seems to be the erroneous implication of the court of appeals' statement that this litigation can go forward because Reverend McRaney is supposedly "not challenging the termination of his employment," App. 5a.

II. THE FIFTH CIRCUIT'S DECISION CONFLICTS WITH DECISIONS OF OTHER FEDERAL COURTS OF APPEALS AND STATE APPELLATE COURTS OF LAST RESORT

The court of appeals' decision here stands in stark contrast to *Bell* v. *Presbyterian Church (U.S.A.)*, 126 F.3d 328 (4th Cir. 1997), a case presenting remarkably similar facts. James Bell was an ordained minister who served as the executive director of Interfaith Impact, a Christian outreach program that was funded by several national religious denominations. *Id.* at 329. One of the supporting denominations threatened to withhold its financial support unless Reverend Bell's employment as executive director of Interfaith Impact was terminated. *Id.* at 330. In response, Interfaith Impact terminated Reverend Bell. *Id.* Thereafter, Reverend Bell sued the denomination, alleging state law tort claims

[10] Archdiocese of Los Angeles, *Administrative Handbook* § 2.2.2 (last visited Feb. 16, 2021), https://handbook.la-archdiocese.org/chapter-2/section-2-2/topic-2-2-2.

for, inter alia, tortious interference and intentional infliction of emotional distress. *Id.*

The district court dismissed Reverend Bell's suit for lack of subject matter jurisdiction, and the Fourth Circuit affirmed. Invoking this Court's decision in *Watson* v. *Jones*, the Fourth Circuit concluded that the dispute was an ecclesiastical one, not a "purely secular disput[e]." *Bell*, 126 F.3d at 331. As the Fourth Circuit explained, Reverend Bell's complaint "center[ed] on" one supporting denomination's "withholding of funding" from Interfaith Impact and the resulting termination of Reverend Bell's employment. *Id.* Noting Reverend Bell's argument that the withholding of funds was an attempt by the denomination to "tak[e] over the Interfaith Impact ministry," *id.*, the Fourth Circuit concluded that, "[a]t bottom," Reverend Bell's lawsuit "focuses on how the constituent churches spend their religious outreach funds," and resolution of the dispute "would interpose the judiciary into the" decisions of the supporting denominations "relating to how and by whom they spread their message and specifically their decision to select their outreach ministry through the granting or withholding of funds," *id.* at 332.

Reverend Bell argued that he was "not challenging the internal decisions of the national churches but their external conduct in interfering with his relationship with Interfaith Impact." *Bell*, 126 F.3d at 332. The Fourth Circuit rejected this argument, explaining that it "overlooks Interfaith Impact's role as the joint ministry of its constituent churches and [Reverend] Bell's role as executive director." *Id.* As the Fourth Circuit went on to explain, "Interfaith Impact is not a secular organization with which the national constituent churches had a secular relationship," but rather "a ministry of [the] constituent churches" and the means by

which "they were engaging in ministry as directed by scripture." *Id.*

The Fifth Circuit's decision here is irreconcilable with the Fourth Circuit's decision in *Bell*. Like Reverend Bell, Reverend McRaney alleged that he was terminated from his employment as a result of a threat by a separate denominational organization to withhold funding if he was not terminated. And like Reverend Bell, Reverend McRaney argued that his state law tort claims against the funding organization were cognizable in federal court because the legal entity that he sued was not the entity by which he had been employed. The Fourth Circuit rejected this argument, reasoning that a denominational decision to withhold funding from Reverend Bell's employer, thereby resulting in his termination, was "a decision about the nature, extent, administration and termination of a religious ministry [that] falls within the ecclesiastical sphere that the First Amendment protects from civil court intervention." *Bell*, 126 F.3d at 332-333. The Fifth Circuit, by contrast, allowed Reverend McRaney's state law tort claims to proceed, noting that, because he was "not challenging the termination of his employment," his claims centering on a dispute over ministry control and his resulting termination could proceed in a secular court. App. 5a.

Even before this Court's decision in *Hosanna-Tabor*, most appellate courts had followed the approach in *Bell* and declined to adjudicate state law tort claims against religious organizations concerning ministerial employment decisions. And as in *Bell*, appellate courts had consistently extended the church autonomy doctrine to individuals and entities other than a minister's immediate employer. The Fifth Circuit's adoption of

the minority rule on both of these points deepens a conflict that warrants this Court's review.

A. The Lower Courts Are Divided Over Whether A Minister's Employment-Related State Law Tort Claims Against A Religious Organization May Be Resolved By Secular Courts Under "Neutral Principles of Tort Law"

The Fifth Circuit's holding that ministerial employment disputes can be adjudicated in secular courts pursuant to "neutral principles of tort law" joins a minority of courts (specifically, the Eighth Circuit and the supreme courts of Alaska and South Carolina) in conflict with the decisions of the Third, Fourth, and Sixth Circuits and the appellate courts of last resort in Arkansas, Colorado, the District of Columbia, Indiana, Massachusetts, Virginia, and Washington.

In *Hutchison* v. *Thomas*, 789 F.2d 392 (6th Cir. 1986), the court expressly considered and rejected a "neutral principles of law" exception to the church autonomy doctrine as applied to state law tort claims. There, the court was presented with a minister's tort claims (including defamation and intentional infliction of emotional distress) against the United Methodist Church challenging his forced retirement. *Id.* at 392-393. The minister argued that his claims were cognizable in a secular court if resolved pursuant to "neutral principles of law." *Id.* at 396. The Sixth Circuit disagreed, explaining that "the 'neutral principles' exception to the usual rule of deference applies only to cases involving disputes over church property" and "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Id.* Because the minister's claim "relate[d] to [his] status and employment as a minister of the

church," the Sixth Circuit concluded that "[t]he neutral principles doctrine relating to church property is simply not applicable." *Id.*

Reverend McRaney's suit here is similar in all relevant respects. Like the discharged minister in *Hutchison*, Reverend McRaney brought defamation and intentional infliction of emotional distress claims against a religious organization concerning the termination of his ministerial employment. But unlike the Sixth Circuit, which explicitly rejected the argument that it could adjudicate the ministerial employment dispute pursuant to "neutral principles of [tort] law," 789 F.2d at 396, the Fifth Circuit allowed Reverend McRaney's claims to proceed under that very rationale. The Third and Fourth Circuits have also sided with the Sixth Circuit against the position adopted by the Fifth Circuit here. *See Petruska* v. *Gannon Univ.*, 462 F.3d 294, 309 (3d Cir. 2006); *Bell*, 126 F.3d at 331-332.

The court of appeals' decision here likewise conflicts with decisions of several state supreme courts. In *Erdman* v. *Chapel Hill Presbyterian Church*, 286 P.3d 357 (Wash. 2012) (en banc), the Washington Supreme Court explicitly rejected the "neutral principles of law" exception to the church autonomy doctrine as applied to state law tort claims touching on ministerial employment. In *Erdman*, the church terminated the employment of one of its ministers after concluding that, in her interactions with the church's senior minister, she had "failed to follow the scriptural teaching concerning our relationships within the body of Christ." *Id.* at 664. Thereafter, the terminated minister sued both the church and its senior minister, alleging discrimination in violation of Title VII and state law tort claims. *Id.* at 665. The Washington Supreme Court dismissed the tort claims, holding that "there is no

room for the 'neutral principles of law' approach in the case of civil tort claims brought against a church involving its authority to hire and control its ministers." *Id.* at 677. Mirroring the reasoning of *Hosanna-Tabor*, the Washington Supreme Court further explained that a civil court was categorically barred from adjudicating such tort claims regardless of "[w]hether the situation involves religious reasons or interpretation of religious scripture or doctrine." *Id.*

Similarly, in *Brazaukas* v. *Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286 (Ind. 2003), the pastor of Sacred Heart Parish dismissed the church's Director of Religious Education and Liturgy, who then sued the parish pastor and the diocese, on a variety of grounds. *Id.* at 289. The former Religious Education Director thereafter applied for a position at the University of Notre Dame, for which she was rejected because of her pending lawsuit. *Id.* The former Religious Education Director then amended her lawsuit against the parish pastor and diocese to add a claim for tortious interference. *Id.* The trial court dismissed the tortious interference claim, and the court of appeals affirmed. *Id.* On further appeal, the Indiana Supreme Court affirmed the dismissal, holding that the First Amendment's church autonomy doctrine precluded the use of "tort law to penalize communication and coordination among church officials (all answerable to higher church authority that has directed them to work cooperatively) on a matter of internal church policy and administration." *Id.* at 294.

In *Hiles* v. *Episcopal Diocese of Massachusetts*, 773 N.E.2d 929 (Mass. 2002), the Massachusetts intermediate appellate court held—in language reminiscent of the Fifth Circuit's "neutral principles of tort law" formulation—that a minister's state law tort claim

against his employing church was "a secular dispute that may be adjudicated according to the established rules of common law" without running afoul of the First Amendment's Religion Clauses. *Id.* at 935. The Massachusetts Supreme Judicial Court reversed, holding that defamation claims "arising out of the church-minister relationship … are entitled to absolute protection" from judicial review. *Id.* at 936.

Other state appellate courts of last resort have similarly declined, on First Amendment church autonomy grounds, to adjudicate ministers' state law tort claims against a religious organization and arising out of ministerial employment decisions. *See Ex parte Bole*, 103 So.3d 40, 72 (Ala. 2012) (holding that minister's employment-related intentional infliction of emotional distress and defamation claims were barred by First Amendment); *El-Farra* v. *Sayyed*, 226 S.W.3d 792, 795-797 (Ark. 2006) (rejecting "neutral principles of law" doctrine as basis to permit secular court to adjudicate imam's tortious interference and defamation claims against Islamic center); *Callahan* v. *First Congregational Church of Haverhill*, 808 N.E.2d 301, 312 (Mass. 2004) (dismissing minister's claims against church for tortious interference and intentional infliction of emotional distress); *Heard* v. *Johnson*, 810 A.2d 871, 880 & n.5 (D.C. 2002) (dismissing minister's intentional infliction of emotional distress and defamation claims against church trustees, holding that "neutral principles of law" exception to church autonomy doctrine was inapplicable); *Cha* v. *Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 515-516 (Va. 2001) (dismissing minister's tortious interference claim and noting that "most courts that have considered the question whether the Free Exercise Clause divests a civil court of subject matter jurisdiction to consider a pastor's defamation claims

against a church and its officials have answered the question in the affirmative" (collecting cases)); *Van Osdol* v. *Vogt*, 908 P.2d 1122, 1134 (Colo. 1996) (dismissing minister's tortious interference claim, holding that "a church's choice of who shall serve as its minister is inextricably related to religious belief and therefore invokes the protection of the First Amendment").[11]

Admittedly, the court of appeals' decision here does not stand alone. A few courts have erroneously permitted the adjudication of ministers' employment-related state tort claims. For example, the South Carolina Supreme Court held that church trustees who had been dismissed from their position in a dispute with the church's pastor could litigate a defamation claim against the pastor, notwithstanding the First Amendment, because the court was called upon only to apply "neutral principles of law." *Banks* v. *St. Matthew Baptist Church*, 750 S.E.2d 605, 606 (S.C. 2013). Similarly, the Alaska Supreme Court held that a minister's suit against the Executive Presbyter alleging tortious interference and defamation that resulted in his termination was justiciable because "the court need only decide based upon the secular common law of torts." *Marshall* v. *Munro*, 845 P.2d 424, 427-428 (Alaska 1993). Finally, the Eighth Circuit held that a minister's employment-related tortious interference and libel claims were justiciable notwithstanding the First Amendment because "[t]he Synod has not offered any religious explanation

[11] *See also St. Joseph Catholic Orphan Soc'y* v. *Edwards*, 449 S.W.3d 727, 739 (Ky. 2014) (holding that "the neutral-principles doctrine does not extend to issues of ecclesiastical governance"); *Miller* v. *Catholic Diocese of Great Falls*, 728 P.2d 794, 797 (Mont. 1986) (holding that Catholic school teacher whose employment was terminated could not, consistent with the First Amendment, bring state law tort claim of bad faith).

for its actions." *Drevlow* v. *Lutheran Church, Mo. Synod*, 991 F.2d 468, 471-472 (8th Cir. 1993).

But these decisions represent a decidedly minority view, and most courts have declined on First Amendment grounds to adjudicate a ministerial employment dispute fashioned as a state law tort claim, with several of those courts expressly considering and rejecting the "neutral principles" doctrine. Had Reverend McRaney's claims arisen in any of those jurisdictions, binding precedent would have mandated dismissal pursuant to the First Amendment's church autonomy doctrine. This Court should grant review to resolve this conflict—an issue this Court expressly left open in *Hosanna-Tabor* for future resolution, 565 U.S. at 196—and hold that constitutional church autonomy principles preclude judicial resolution of state law tort claims concerning ministerial employment. *See also*, *e.g.*, App. 77a (observing that how the church autonomy doctrine applies "to certain torts, like defamation" is a question of "exceptional importance").

B. The Lower Courts Are Divided Over Whether The Church Autonomy Doctrine Applies Only To Preclude Actions Against The Legal Entity That Was The Minister's Employer

The court of appeals premised its holding on the fact that Reverend McRaney was "not challenging the termination of his employment"—which is true, if at all, only because of the organizational structure of the SBC and its affiliated entities. To be sure, Reverend McRaney was not employed by the legal entity he sued. But he argued that the SBC Mission Board tortiously interfered with his employment by engaging in actions that "result[ed]" in his termination, which necessarily implies that his termination was wrongfully caused by

the Board. Thus, Reverend McRaney is most certainly challenging the propriety of his termination. To the extent the court of appeals' reasoning was meant to limit the application of the church autonomy doctrine to those suits by a minister against the legal entity that is his or her direct employer, that holding conflicts with the Fourth Circuit's contrary holding in *Bell* v. *Presbyterian Church (U.S.A.)*, *supra*.

As Justices Alito and Thomas discussed in a recent case before the Court, "the degree to which the First Amendment permits civil authorities to question a religious body's own understanding of its structure and the relationship between associated entities" is a "difficult question[]" which "may well merit our review." *Roman Catholic Archdiocese of San Juan, P.R.* v. *Acevedo Feliciano*, 140 S. Ct. 696, 702 (2020) (Alito, J., concurring). The Fifth Circuit's errant understanding of church autonomy, and the havoc its opinion may wreak on the long-held freedom of a church to structure its own body, provides such an opportunity for review.

III. THE QUESTIONS PRESENTED ARE IMPORTANT

Hosanna-Tabor left unresolved whether state law torts arising out of the church-minister employment relationship were exempt under the same principles as inform the ministerial exception. Predictably, lower courts have been wrestling with the question ever since. In addition to the cases cited above, state intermediate appellate courts and federal district courts have addressed the question over 60 times since *Hosanna-Tabor* was decided in 2012.[12] *See, e.g.*, Chopko &

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[12] For instance, just days before filing this petition, the Supreme Court of Illinois affirmed the judgment of an intermediate appellate court that had dismissed a state law tort claim on eccle-

Parker, *Still a Threshold Question: Refining the Ministerial Exception Post-*Hosanna-Tabor, 10 First Amend. L. Rev. 233, 298-299 (2012) ("Because the Supreme Court left open certain kinds of employment-related actions sounding in contract or tort, one can reasonably predict that soon all terminations of 'ministerial' employees will invoke those characteristics of claims permitted by the Court, leading to more, not less, litigation.").

These church-minister employment cases form an integral part of maintaining the protections the court acknowledged in *Hosanna-Tabor* and reinforced in *Our Lady of Guadalupe*. Without further guidance from the Court, the current state of the law means that a national religious organization could be protected from intrusion in one jurisdiction and subject to inquiry on "valid religious reasons" for termination in another. Likewise, a hierarchical denomination might be shielded from liability while a non-hierarchical denomination might be scrutinized for statements made while hiring or firing a minister. The questions presented here are vitally important to maintaining the integrity of the ministerial exception and ensuring consistent protection for churches of varying organizational structures.

Finally, this case warrants this Court's review because it denies religious groups the special solicitude afforded to them by the First Amendment. The court of appeals' unduly narrow application of the church autonomy doctrine was apparently influenced by its view that the First Amendment "does not categorically insulate religious relationships from judicial scrutiny" because doing so "would impermissibly place a religious

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siastical abstention grounds. *Rehfield* v. *Diocese of Joliet*, __ N.E.3d __, 2021 WL 382458 (Ill. Feb. 4, 2021).

leader in a preferred position in our society." App. 3a (first internal quotation marks omitted). Contrary to the court of appeals' assertion, however, religious organizations *do* enjoy a preferred position in our society given the importance of keeping church and state independent from one another. As this Court unanimously recognized in *Hosanna-Tabor*, "the text of the First Amendment itself … gives special solicitude to the rights of religious organizations." 565 U.S. at 189. If left unchecked, the court of appeals' opinion will disadvantage religious institutions in the Fifth Circuit in contravention of the First Amendment and this Court's precedents.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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