No. 25-50130

In the United States Court of Appeals for the Fifth Circuit

THE LUTHERAN CHURCH—MISSOURI SYNOD, A MISSOURI NONPROFIT CORPORATION,

Plaintiff-Appellant,

v.

DONALD CHRISTIAN; CHRISTOPHER BANNWOLF; JOHN DOES 1-12; CONCORDIA UNIVERSITY TEXAS INCORPORATED,

Defendants-Appellees.

On Appeal from the United States District Court
for the Western District of Texas (Austin)
No. 1:23-cv-01042, Hon. David A. Ezra

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INTRODUCTION

Instead of defending the Rule 17 and Rule 19 arguments it made below and (largely) persuaded the district court to accept, Concordia abandons them. But, as shown below, Concordia's new reliance on a "real-party-to-the-controversy" theory of diversity jurisdiction faces even greater obstacles than its prior "real-party-in-interest" theory under Rule 17. And, as also shown below, its new theory still requires disregarding the 130-year-old church polity of the Lutheran Church—Missouri Synod, and thus causes the same constitutional and statutory violations as before.

Concordia compounds these problems by making sweeping claims about religious governance and the First Amendment that, if accepted, would undermine long-settled principles of church-state relations. That's why the Supreme Court, this Court, and others have consistently rejected such claims. Indeed, the Supreme Court's touchstone church autonomy case arose in a diversity-jurisdiction context nearly identical to this one. If Concordia is right, then the Supreme Court was wrong.

And Concordia's conduct during the pendency of this appeal confirms that its arguments were merely a vehicle to escape federal court. Here, Concordia asserts that the Synod alone is "the real party" in this case and that "LCMS is a nominal party that must be ignored." But in state court, just days *before* making that assertion, Concordia withdrew all of its discovery requests to the Synod and sought discovery only from LCMS. And just days *after* making the assertion, Concordia informed Texas courts

that it sued LCMS not merely as a titular "representative of [the] Synod," but because LCMS "makes its own claims to C[oncordia]'s property." Concordia's actions show that LCMS is the indispensable party to this case—and that the Synod is not.

As LCMS and amici have shown, ruling otherwise would sharply diminish church autonomy, violate structural constitutional constraints on judicial power, and ignore basic principles of state law. That is too steep a price to pay merely to enable Concordia's procedural maneuvering.

STANDARD OF REVIEW

Concordia's new theory does not change the standard of review. When a trial court dismisses for lack of jurisdiction without an evidentiary hearing, legal issues are reviewed de novo, uncontroverted allegations are accepted as true, and factual conflicts are resolved in the plaintiff's favor. *Halliburton Energy Servs. v. Ironshore Specialty Ins.*, 921 F.3d 522, 539 (5th Cir. 2019). Only the amended pleadings count at this stage; the "original pleading no longer performs any function in the case." *Royal Canin v. Wullschleger*, 604 U.S. 22, 35-36 (2025).

Concordia's cases advocating a more deferential clear error standard arise from a later post-answer and discovery stage of proceedings. And de novo review is necessary "where a conclusion of law as to a Federal right and a finding of fact are so intermingled" that an appellate court must consider the facts "in order to pass upon the Federal question." *Fiske v. Kansas*, 274 U.S. 380, 385-86 (1927).

ARGUMENT

I. LCMS is the real party in interest and the proper party to vindicate the Church's rights under Rule 17 or otherwise.

The magistrate judge and the district court ruled on Rule 17 grounds. ROA.3087-88, 3320. Concordia now abandons those grounds to focus instead on a "real-party-to-the-controversy" theory of diversity jurisdiction. But because this pivot relies on virtually identical arguments for disregarding the Church's 130-year-old polity and applicable law, it arrives in the same place. If anything, the new jurisdictional argument gets there even faster.

A. LCMS is the proper party for purposes of diversity jurisdiction.

Concordia leaves the district court's flawed Rule 17 analysis undefended. Instead, it puts all its eggs in the basket of arguing that the Synod is the "real party to the controversy." Resp.30 n.15, 54. But that fails three times over.

First, its new theory only applies when "a party already before the court is found to be a non-stake holder/agent suing only on behalf of another" simply "to create diversity." *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 863, 865 n.10 (5th Cir. 2003). LCMS has shown that's not true here. Br.8. Even *Concordia's own policies* identified the University as "an educational institution" of LCMS and LCMS as the school's "legal owner" until the start of this dispute, which Concordia does not contest. Br.10; Resp.13.

Confirming the point, Concordia conceded in its state-court action—which it calls the "mirror-image" of this one, Resp.19—that LCMS has independent rights at stake. Concordia Br.31, *In re LCMS*, No. 03-25-425-CV (Tex. App.—Austin June 30, 2025), http://perma.cc/93ZS-9WB3. Concordia admitted that it did not sue LCMS merely "as a representative of Synod" but "because it makes its own claims to C[oncordia]'s property." *Id.* Further, Concordia withdrew its discovery requests to the Synod, leaving only those aimed at LCMS. *Id.* at 15-16 n.17. These actions confirm that LCMS is not here merely to "create diversity." *Corfield*, 355 F.3d at 863; *accord Bynane v. Bank of N.Y. Mellon*, 866 F.3d 351, 359 (5th Cir. 2017) (a party sued based on its asserted right to disputed property wasn't named "only on behalf of another").[1]

Second, citing *Navarro Savings Association v. Lee,* 446 U.S. 458, 461 (1980), Concordia argues that "LCMS is a nominal party" and thus "must be ignored" for diversity purposes. Resp.25, 29. But *Navarro* confirms that "real parties to the controversy" include those who "have legal title[,] manage the assets[, and] control the litigation." *Navarro*, 446 U.S. at 465. LCMS does all those things; the Synod does none of them. *See* Br.26

[1] Concordia's actions also put in sharp relief the deficiencies of the remand of the state-court action below. Not only did Concordia never have a "possibility of recover[ing]" against the Synod, *see Advanced Indicator & Mfg. v. Acadia Ins.*, 50 F.4th 469, 473 (5th Cir. 2022) *and* Br.20-36, it brought the Synod into the case for "one purpose only"—to avoid federal jurisdiction, *Hoyt v. Lane Constr. Corp.*, 927 F.3d 287, 292-93 (5th Cir. 2019); 28 U.S.C. § 1446(b), (c)(1) (providing that a defendant may re-remove an action "more than 1 year after commencement of the action" when "plaintiff has acted in bad faith" to prevent removal).

(LCMS is responsible for Church bank accounts, staff, contracts, litigation, and formal title). Further, LCMS has confirmed that while Synod cannot sue or be sued, Concordia can obtain any relief to which it may be entitled directly from LCMS. A named party "who admits involvement in the controversy and would be liable to pay a resulting judgment" is "not 'nominal' in any sense." *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 93 (2005).

Finally, Concordia argues that LCMS's corporate status should be disregarded because Concordia views the Church's governance documents as creating an unincorporated association. *See*, *e.g.*, Resp.24. But courts have repeatedly refused to deny diversity jurisdiction on the theory that a corporation's "articles of organization explain that it is an unincorporated association." *Tewari De-Ox Sys. v. Mountain States*, 757 F.3d 481, 483-84 (5th Cir. 2014). "[R]egardless" of whether litigants saw an entity's "individual structure" as being best understood as an "unincorporated association," courts have emphasized that "for purposes of diversity jurisdiction, a corporation is a corporation is a corporation." *Kuntz v. Lamar Corp.*, 385 F.3d 1177, 1181-83 (9th Cir. 2004). And for "all corporations," "including … religious corporations," citizenship is determined by the state of incorporation and "principal place of business." *Tewari*, 757 F.3d at 484 (finding *Kuntz* "persuasive"). That "jurisdictional rule" is "unambiguous," and "surely" does not permit finding that "a corporation, for diversity-of-citizenship purposes, shall be deemed to have acquired the citizenship of all or any of its affiliates." *Lincoln Prop.*, 546 U.S. at 94.

Thus, even if the Synod had some "equitable interest," that is jurisdictionally irrelevant. *Id.* at 93. Rather, "[c]orporations suing in diversity"—like LCMS here—"have long been deemed to be the real parties in interest." *Kuntz*, 385 F.3d at 1183 (citing *Navarro*). And that is true for reasons applicable here: "[j]urisdictional rules should be as simple as possible, so that the time of litigants and judges is not wasted deciding where a case should be brought." *Id.*

B. The First Amendment's church autonomy doctrine confirms that LCMS is the proper party.

The church autonomy doctrine protects the Church's authority to independently control matters of faith, doctrine, and church governance. Br.21-23. A church's polity—how it shapes its own ecclesiastical identity—is a quintessential matter of both doctrine *and* governance. Br.26; Scholars Br.3-6. On such matters, civil courts respect a church's own determinations, as articulated by the highest religious authority to whom the matter has been taken, accepting those determinations as a given for resolving civil disputes. Br.32-33; Denominations Br.6. Here, that means accepting that LCMS represents the Church's civil interests and that the Synod does not. The district court erred by second-guessing the Church's articulation of Lutheran polity and judicially imposing its own.

Concordia offers four arguments to defend the decision below. First, Concordia argues the Constitution's provision of diversity jurisdiction

and church autonomy are mutually contradictory. Second, Concordia asserts that a church loses its constitutional autonomy whenever it sues to vindicate its rights in civil court. Third, Concordia argues that civil courts may disregard a denomination's sincere articulation of its polity so long as they avoid "ecclesiastical disputes." And fourth, Concordia claims that its novel and self-serving view of the Church's polity should be imposed on the Church by civil courts. All four arguments are wrong.

1. Respecting church autonomy does not conflict with federal diversity jurisdiction.

The church autonomy doctrine does not prevent federal courts from determining their own jurisdiction. But in making that determination, the Constitution requires courts to accept a religious body's sincere articulation of its polity. Br.23-24. "[F]ailing to defer to the [Church's] religious view" of its internal governance "violate[s] the church autonomy doctrine." *Catholic Charities Bureau, Inc. v. Wisconsin*, 145 S.Ct. 1583, 1602 (2025) (Thomas, J., concurring). Concordia's alternative theory would close the federal judiciary's doors to most denominations, second-guess their internal governance, and recast all churches as de facto unincorporated associations for diversity purposes.

Unsurprisingly, that theory contradicts binding precedent. Br.23. One of the most famous early church autonomy cases, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), illustrates the point. There, diversity jurisdic-

tion existed because the plaintiffs "alleged that they were citizens of Indiana" and that the defendant "church corporation was a corporation created by Kentucky and doing business in that State." *Id.* at 694. These Indiana plaintiffs also alleged that they were members in good standing of the Kentucky church. *Id.* What is more, the Supreme Court recognized that the Kentucky church corporation was merely the formal "title-holder[] and custodian[] of the church property" at issue, *id.* at 720, and "that corporation … was not itself the church, but merely an entity 'under the control of the church session,' an ecclesiastical 'governing body.'" *Catholic Charities*, 145 S.Ct. at 1598 (Thomas, J., concurring). Yet the Supreme Court exercised jurisdiction and enforced the rulings of the larger ecclesiastical denomination. *Watson*, 80 U.S. at 735.

Watson refutes Concordia's theory twice over. First, it puts to rest Concordia's argument that churches are unincorporated associations as a matter of law for diversity purposes. Resp.26. The Court necessarily relied on the citizenship of the Kentucky church corporate entity, and not an unincorporated church with citizenship wherever its members reside, which would have included the Indiana plaintiffs. Second, *Watson* shows that a church corporation holding title for the benefit of the larger denomination did not transform that denomination into (or displace the church corporation as) the real party to the controversy. *See* Denominations Br.29-30.

This religious corporate and ecclesiastical structure is common. "[C]ourts and commentators have long recognized that 'while a legal entity may represent the church or other body of believers, the entity alone is not the church; it is only a part of the entire religious organization.'" *Catholic Charities*, 145 S.Ct. at 1598 (Thomas, J., concurring). Courts have repeatedly acknowledged churches often possess this "dual personality." *Id.* (collecting cases). Allowing churches to incorporate is thus a "way to empower religious institutions, not to define them or alter their polity." *Id.* at 1599; *accord* Denominations Br.22-23.

Far from compelling judicial passivity, Resp.31, respecting a church's definition of its polity promotes judicial accuracy. In "a country with the religious diversity of the United States," *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 757 (2020), "[i]t is not to be supposed" that civil courts can be "competent in the ecclesiastical law and religious faith of all these bodies," *Watson*, 80 U.S. at 729. Courts thus have long deferred to a church's own authorities on such matters. *Id.* But Concordia demands this Court sideline them. However, beyond complaining that the Church's chosen voice, Reverend John Sias, is "a non-lawyer," Resp.10, Concordia cannot dispute that his declarations are the authorized articulation of the Church's polity, which civil courts must respect.[2]

[2] Concordia suggests that Synod *has* sued before by pointing to an amicus brief which it claims was filed by the Synod. Resp.10. But, among other things, undisputed testimony confirms LCMS filed that brief. ROA.2229.

This respect does not mean that the Church is claiming "general immunity from secular laws," as Concordia repeatedly frets. Resp.25, 32, 38, 39 (partially quoting *Our Lady*, 591 U.S. at 746). There is no such *general* immunity, and LCMS was incorporated precisely to enable proper interaction with secular law and civil authority. *See* ROA.1281 (Bylaws at 1.2.1(f)(2)). But there is, as the rest of the sentence in *Our Lady* confirms, a robust "autonomy with respect to internal management decisions that are essential to the [religious] institution's central mission." 591 U.S. at 746. And a denomination's choice of its polity is among the first of such internal management decisions. It thus plainly falls within the "sphere" of autonomy, immune from "any attempt by government to dictate or even to even to influence such matters." *Id.*

2. Raising the church autonomy doctrine to defend against Concordia's arguments does not destroy its protection.

Concordia argues that a plaintiff church can't raise the church autonomy doctrine, even to rebut arguments raised by the defendant and erroneously adopted by a lower court, because a plaintiff has waived the doctrine's protections by suing in the first place. Concordia further claims that the only remedy the doctrine provides is dismissal of any lawsuit. Both arguments misunderstand the nature of the doctrine as a structural guide to the use of judicial power. *See* Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc'y Rev. 244, 266-68 (2021) ("Esbeck").

Church autonomy is not amenable to waiver because it is a matter of constitutional structure, not just a personal right. The Constitution's "structural protection afforded religious organizations," *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018), is deeply rooted in "[c]onstitutional text, history and tradition, and precedent," *Huntsman v. Corp. of the President*, 127 F.4th 784, 811 (9th Cir. 2025) (Bumatay, J., concurring). Among other things, this protection "categorically prohibits" the government from gainsaying a church's internal governance decisions, a prohibition that churches cannot merely waive. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015). That's because the prohibition does not "protect the church alone," but "also confines the state and its civil courts to their proper roles." *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024).

Thus, the circumscribed "relations of church and state under our system of laws," *Watson*, 80 U.S. at 727, gives courts "an interest independent of party preference" for refusing to answer questions they have neither competence nor authority to address, *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006). *Accord Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018).

Concordia's analogy to waiver in the Eleventh Amendment context doesn't map onto church autonomy. Resp.35. Concordia's only cited case takes pains to limit its reasoning to the Eleventh Amendment's "specific text with a history that focuses upon the State's sovereignty." *Lapides v.*

Bd. of Regents, 535 U.S. 613, 623 (2002). The Supreme Court has also distinguished Eleventh Amendment cases from "suits between private parties" for diversity-jurisdiction purposes. *Lincoln Prop.*, 546 U.S. at 92.

Concordia also argues that the only remedy for a church autonomy violation is dismissal, Resp.36-37, treating the right as "a drop of arsenic" that poisons justiciability, *S. Methodist Univ. v. S. Cent. Jurisdictional Conf. of the United Methodist Church*, No. 23-0703, 2025 WL 1797692, at *19 (Tex. June 27, 2025) (Young, J., concurring). But if autonomy rights "automatically defeated subject-matter jurisdiction, religious organizations would have *fewer* rights than everyone else." *Id.* That's the polar opposite of the "special solicitude" that the Religious Clauses guarantee, *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 189 (2012).

Rather, as in the separation-of-powers context, "the courts do not *themselves* answer the underlying issue, but they can identify the correct entity to do so and enforce whatever decision that entity makes." *S. Methodist Univ.*, 2025 WL 1797692, at *20 (Young, J., concurring); *Hosanna-Tabor*, 565 U.S. at 187 (civil courts "accept" protected decisions "as binding"). Courts have thus long deferred to a church on internal matters of faith, doctrine, and internal governance while still acting to enforce the church's protected decisions. *See, e.g.*, *Watson*, 80 U.S. at 730-32; *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721 (1976) (exercising jurisdiction to order deference to church's internal decisions).

That's true even when the church is the original plaintiff invoking jurisdiction of the civil courts. *Milivojevich*, 426 U.S. at 725 (Rehnquist. J., dissenting) (noting that jurisdiction was initially invoked by petitioners); *see also Northside Bible Church v. Goodson*, 387 F.2d 534 (5th Cir. 1967) (affirming judgment for religious plaintiff as courts must uphold church rules against dissenting factions); *Dixon v. Edwards*, 290 F.3d 699, 718 (4th Cir. 2002) (enforcing deference to religious plaintiff). Church autonomy is not "siloed to use as an affirmative defense." *IVCF v. Wayne State Univ.*, 534 F. Supp. 3d 785, 806 (E.D. Mich. 2021).[3]

Concordia responds that there's nothing "internal" about the decision here because it has "external" impacts. Resp.38. But the rule that protected internal decisions may "incidentally affect" external "civil rights" was "initially fashioned in *Watson v. Jones*" itself and has been repeatedly followed since. *Milivojevich*, 426 U.S. at 710 (property); *accord Hosanna-Tabor*, 565 U.S. at 189-90 (employment decisions); *Our Lady*, 591 U.S. at 762 (same). And few decisions are more internal than how a denomination organizes its polity. Br.26; Denominations Br.19-20.

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[3] Courts regularly employ other case-specific remedies to protect church autonomy beyond bare dismissal. They prioritize early resolution of church autonomy defenses, *Bryce v. Episcopal Church*, 289 F.3d 648, 654 n.1 (10th Cir. 2002), "generally prohibit[] merits discovery and trial" before final resolution of church autonomy rights, *Markel v. Union of Orthodox Jewish Congregations*, 124 F.4th 796, 809 n.5 (9th Cir. 2024), and permit interlocutory appeal to protect church autonomy interests, *Whole Woman's Health*, 896 F.3d at 373; *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 973, 985 (7th Cir. 2021). Concordia itself has asserted church autonomy in this very case to oppose certain discovery requests. ROA.2555-56.

3. The church autonomy doctrine does not permit use of the "neutral principles" approach here.

As explained in LCMS's opening brief, the "neutral principles" approach developed for disputes over church *property* has no application in this appeal over church *polity*. Br.29-32. Concordia disagrees.

First, it claims that this appeal *is* a dispute over church property. Resp.34. But while the merits of the underlying case will eventually implicate questions of property, the key question in this appeal is Lutheran polity: must the Synod represent the Church in federal court? Resolving that question will not resolve title to Concordia's campus.

And resolving title is what the "neutral principles" approach is fundamentally about. Originally labeled the "'formal title' doctrine," *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring), the Supreme Court has exclusively employed the framework when "the only matter that remains for civil resolution … is who gets legal title to the church property." Esbeck at 249; Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 317 (2016) ("'Formal title' seems a more precise description of the approach, because everyone claims their approach is neutral in some sense."). But title is not at issue here; polity is. Br.33; ACSI Br.16.

Nor, *contra* Concordia, is the neutral-principles/formal-title approach applicable to all cases except those "requiring interpretation of ecclesiastical doctrine." Resp.38. Courts have expressly refused to so "narrow[ly]" construe church autonomy. Br.31 (quoting *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir. 1974)). And Concordia shows why. Its argument that Rev. Sias's doctrinally rooted explanation of church polity merely "infuse[s] unambiguous secular terms … with religious concepts," Resp.40 n.17, illustrates how it is "all too easy" to "misclassify" church decisions as secular, Denominations Br.26. Where "religious institution's decisions" on matters of church governance are at issue, they cannot "be delineated between 'religious' and 'secular'" by civil courts without "excessive entanglement" and "unconstitutional judicial action." *Markel*, 124 F.4th at 808-10. Such fine-grained judicial delineation would impose a "significant burden" on churches to predict "on pain of substantial liability" which aspects of their polity "a secular court will consider religious." *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987); *see also In re Diocese of Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021) (rejecting request to second-guess Catholic definition of the term of "minor" in the context of church discipline).

Regardless, "the polity of a religious organization is often itself a matter of faith." *Catholic Charities*, 145 S.Ct. at 1596 (Thomas, J., concurring). That's true, for instance, of Catholic polity. *Id.* It's equally true for the Lutheran Church. Br.32 (citing ROA.3224); Scholars Br.3-6, 17-19.

4. Even absent church autonomy's protections, Concordia distorts the Church's governance documents.

The Church should not be required to prove in civil court that its sincere, longstanding articulation of its polity is "correct." But Concordia persuaded the district court to reject that articulation, and on appeal reurges its incorrect views. LCMS thus responds again here.

Several of Concordia's misinterpretations pervade its analysis. Concordia repeatedly asserts that the bylaws "unambiguously" and "expressly acknowledge that the Synod is 'subject to civil authority.'" Resp.8, 24, 40 (citing Bylaws 1.2.1(f)(2)). But the quoted excerpt of the bylaws comes *from the definition of LCMS* and discusses becoming subject to civil authority *through LCMS's incorporation*. *See* ROA.1281 (Bylaws 1.2.1(f)(2)) ("in the Synod's Articles of Incorporation, intends to acknowledge its responsibility to be subject to civil authority"). Claiming this definition of LCMS is the Church "unambiguously" admitting that the ecclesiastical Synod is subject to civil authority lacks candor.

Similarly, Concordia declares repeatedly that the Synod (not LCMS) is the legal representative and custodian of property. *See, e.g.*, Resp.7. That rests on the premise that the Church's internal use of "Board of Directors of the Synod" refers to a separate entity distinct from the incorporated LCMS Board of Directors. *Id.* That premise is not true. ROA.2229.

Each of the governance documents that Concordia cites makes plain that the "Board of Directors" in question is the LCMS Board. For example, the reference in the Bylaws to the "Board of Directors of the Synod" as the legal representative and custodian of property says that this "Board of Directors shall have the powers and duties that have been accorded to it by the *Articles of Incorporation* … ." ROA.1375 (Bylaws at 3.3.4.2). This only applies to the LCMS Board. ROA.1463 (Articles of Incorporation); *see also* ROA.1276 (Const. XI.E.2: defining board "includes both the Synod formed by this Constitution and the Missouri Corporation"); ROA.2067 (Policy Manual 4.14.1.1: referenced board "retains all its authority under the Synod's Constitution, Bylaws, and Articles of Incorporation"). Concordia's distinction between the LCMS Board and the Synod Board is flatly rejected by the documents it cites.

Concordia next complains that LCMS did not "help discern when the board is the Synod's board and when it is LCMS's[.]" Resp.8 n.2. That is also false. LCMS provided sworn testimony from the Church's designated authority on that very point, twice. *See* ROA.2229 at ¶9; ROA.3225 at ¶10. Concordia's problem isn't *discerning* church polity, it's accepting it.

Similarly, Concordia dismisses the unequivocal provision that the Synod is not a civil law entity as "just one, among many, descriptions" of the Synod. Resp.15. But both the Church's testimony and century-plus practice are clear on this score, "rooted" in promoting "ecclesiastical governance through religiously informed conscience." ROA.3224-25.

C. Texas law governing unincorporated non-profit associations confirms that LCMS is the proper party.

The Texas Uniform Unincorporated Nonprofit Association Act (the "Act") confirms that the Synod is not an unincorporated association whose citizenship should be evaluated separately from LCMS. The Act's text, express purpose, advisory comments, and legislative background all confirm that LCMS is the Church's incorporated civil representative, and no unincorporated association remains after LCMS's incorporation. Br.36-39. The district court erred in concluding otherwise based on a misreading of the Act, the Church's governance documents, and the relevant case law. Br.37-40.

1. Under Texas law, churches are not automatically unincorporated associations.

In its attempt to rebut the Act's plain terms, Concordia makes the sweeping claim that *all* "church[es] with members in Texas [are] unincorporated association[s] with Texas citizenship for diversity purposes," regardless of the church's polity. Resp.43. That categorical rule is unsupported by either precedent or statute. Worse, it would effectively impose a one-size-fits-all civil identity on virtually any denomination with a single member congregation in Texas—or in any other state that has adopted the Uniform Unincorporated Non-profit Association Act (UUNAA). *See* Denominations Br.28-33.

Concordia misconstrues the cases it cites for this broad proclamation. *Hummel v. Townsend* does not hold that all churches are unincorporated associations for diversity purposes. 883 F.2d 367 (5th Cir. 1989). Rather, it was "undisputed" that the church there was "an unincorporated association." *Id.* at 369. Likewise, in *Elliott v. Tilton* it was undisputed that the church at issue had previously dissolved as a non-profit corporation, and the founders had "continued their ministry through … an unincorporated religious association." 62 F.3d 725, 726-27 (5th Cir. 1995), *withdrawn and superseded on reh'g*, 69 F.3d 35, 36 (5th Cir. 1995). In *Diocese of Fort Worth v. Episcopal Church,* it was again undisputed that the church was "an unincorporated association formed and operating in Texas." 602 S.W.3d 417, 430 (Tex. 2020). All of these cases are examples of courts *respecting* a church's chosen polity. None of them supports Concordia's leap—that *all* churches are *automatically* unincorporated associations, regardless of the church's contrary governance structure.

Similarly, nothing in the Act itself requires Concordia's far-reaching rule. To the contrary, Concordia's proposition that a church is always an unincorporated association directly conflicts with provisions of Texas law that expressly allow churches to incorporate. *See* Tex. Bus. Orgs. § 22.101. And it would exclude numerous denominations from federal diversity jurisdiction in Texas, a problem significant enough that several national denominations have urged this Court to correct the district court's holding. Denominations Br.31-32; *see also* Missouri Br.4-5, 8-10.

This Court should not adopt such a disruptive rule solely to aid Concordia's forum-shopping.[4]

2. Neither Texas law nor federal law treats the Synod as a separate jural entity covered by the Act.

Concordia contends that the Act covers the Synod purely because the Church's governing documents describe the Synod as an "association of self-governing congregations." Resp.45. But, as noted above, courts have consistently rejected cherry-picking amongst governance documents for diversity-jurisdiction purposes. *See Tewari*, 757 F.3d at 483-84; *Kuntz*, 385 F.3d at 1181-83; Br.41. For such purposes, the Church "is to be treated as a corporation simply because it has been incorporated under [Missouri] law, regardless of" Concordia's attempt to twist words out of context. *See Kuntz*, 385 F.3d at 1183; ROA.1281.

Concordia provides no support for its argument that the Act supplants the Church's choice to incorporate LCMS as its civil representative while preserving the Synod as a purely ecclesiastical body. To the contrary, the model UUNAA expressly disclaims that result, explaining that unincorporated associations are "not intended to be a substitute for organizing … a nonprofit corporation under state law." Revised UUNAA (2008), Prefatory Note at 2, https://perma.cc/T7HL-JARN; *see also* Br.38-39.

[4] Concordia counters that *LCMS* was forum-shopping because it makes only state-law claims. Resp.23. But providing a neutral forum for an out-of-state plaintiff to adjudicate state-law claims is the "basic purpose" of diversity jurisdiction. 6A Wright & Miller, *Federal Practice & Procedure* § 1556 (3d ed. 2016).

This is especially true where the Church's governing documents, and 130 years of Church tradition, make clear that the Synod is *not* a separate jural entity. Br.48-49; ROA.1281-82; ROA.2227, 3150-51. Concordia simply dismisses the Church's governance documents explaining as much. *See* ROA.1282 (Bylaws at 1.2.1.v). "Regardless" of the Church's chosen structure, Concordia asserts, the Act "plainly" requires "that the Synod is a separate entity … and that the form of that separate entity is as an unincorporated association." Resp.46. But courts would not disregard secular corporations' explicit structure in the manner Concordia proposes. *See* Missouri Br.14. Concordia "no more can proceed against" the Synod "than it could against the accounting department of a corporation." *Darby v. Pasadena Police Dept.*, 939 F.2d 311, 313 (5th Cir. 1991).

Concordia also distorts LCMS's position, claiming that LCMS "stubborn[ly] assert[s]" that LCMS and the Synod "are really one entity" despite the Church's governing documents referring to the entities separately. Resp.46-47. But these separate references are consistent with the explanation that LCMS has always maintained: LCMS represents the Church's *civil law* interests, while the Synod remains as a purely *ecclesiastical* body. *See* Br.6-7. To conclude that the Synod itself is a "mere creature of law" (via the Act) rather than "a parallel authority to the State" "would be in effect to decide that our religious liberties [are] dependent on the will of the legislature, and not guaranteed by the constitution." *Catholic Charities,* 145 S.Ct. at 1597-98 (Thomas, J., concurring).

That reality undermines Concordia's resort to Missouri cases concerning charitable bequests—religious bodies can of course *elect* to function with both a corporation and an unincorporated association. Resp.47-48. And that election made some sense under now-defunct schemes that discriminatorily limited the power of a religious corporation. *Evangelical Lutheran Synod of Mo., Ohio & Other States v. Hoehn*, 196 S.W.2d 134, 141 (Mo. 1946). But the relevant point here is that the Church has *not* made that election, and has instead chosen to have LCMS as its incorporated civil representative and not to give the Synod a civil-law role. ROA.2228; *Hoehn*, 196 S.W.3d 140-41 (confirming the Church's corporate status). And, even more to the point for purposes of this appeal over federal diversity jurisdiction, the choice to incorporate as LCMS means LCMS's citizenship controls. *Lincoln Prop.*, 546 U.S. at 94.[5]

D. The canon of constitutional avoidance confirms that LCMS is the proper party.

Concordia's interpretation of the Act also runs afoul of the constitutional avoidance canon. Courts must "shun an interpretation that raises serious constitutional doubts" and instead "adopt an alternative that

[5] Concordia's arguments illustrate yet another problem with its approach—subjecting churches to a patchwork of organizational principles casts deep uncertainty over not only citizenship, but also ownership of church assets. *See* Kellen Funk, *Church Corporations and the Conflict of Laws in Antebellum America*, 32 J.L. & Religion 263, 267 (2017) (states made the corporate form available to solve "inequalities of … unincorporated churches, which faced the uncertainty about who ultimately owned church properties."); Missouri Br.4 (unincorporated associations in Missouri still cannot hold property).

avoids those problems." *Inhance Techs v. EPA*, 96 F.4th 888, 893 (5th Cir. 2024). This includes construing the Texas Business Organizations Code to "avoid[] any tension with … substantive legal protections for religious exercise." *S. Methodist Univ.*, 2025 WL 1797692, at *8. At a minimum, Concordia's interpretation raises serious constitutional doubts, *see* Br.21-28, so this Court must reject its reading of the Act.

Concordia's response is a passing claim that LCMS hasn't advanced a permissible alternative interpretation. Resp.49. Not so. LCMS's interpretation adheres to the text, purpose, and structure of the Act. It also tracks the model UUNAA's express guidance and how other UUNAA jurisdictions have applied their law. Br.36-39, 41-42; *supra* § I.B. And it does all that without any of the Concordia construction's constitutional baggage.

E. Texas RFRA confirms that LCMS is the proper party.

The Texas Religious Freedom Restoration Act also compels reversal. Disregarding the Church's polity substantially burdens the Church's religious exercise without advancing any legitimate interest. *See* ROA.3148; Br.46-47. Thus, the district court's error creates irreconcilable conflict with Texas RFRA.

Concordia's three contrary arguments are wrong. First, it claims that Texas RFRA applies only to actions by a "government agency," and that "[a] court" is not a "government agency." Resp.50-51. But the *legislature* is covered by Texas RFRA and its use of legislative power is an "exercise of governmental authority" under Texas RFRA. Tex. Civ. Prac. & Rem.

§ 110.002(a). Thus, Texas RFRA requires construing the legislature's enactment of the unincorporated associations act to avoid violating Texas RFRA. *Voice of Cornerstone Church v. Pizza Prop. Partners*, 160 S.W.3d 657, 672 n.10 (Tex. App.—Austin 2005) (emphasizing Texas RFRA applies broadly to "exercise[s of] governmental authority").

So Concordia next argues that Texas RFRA cannot serve as a rule of construction for interpreting the Act. Resp.50. But that contradicts principles of statutory interpretation, which "look at other statutory provisions" to "harmonize provisions and avoid conflicts." *See Johnson v. State*, No. 14-23-00638-CR, 2025 WL 1161391, at *5 (Tex. App.—Houston Apr. 22, 2025); *accord Langbecker v. Elec. Data Sys. Corp.*, 476 F.3d 299, 309-10 (5th Cir. 2007). These principles are required here because Texas RFRA governs "each law" of the state. Tex. Civ. Prac. & Rem. § 110.002(c). Similar provisions in the federal RFRA have led courts to recognize it as a rule of construction. *See Little Sisters of the Poor v. Pennsylvania*, 591 U.S. 657, 680 (2020). And Texas courts find such decisions helpful "in applying the Texas statute." *Barr v. City of Sinton*, 295 S.W.3d 287, 296 (Tex. 2009).

Finally, Concordia argues that LCMS cannot invoke Texas RFRA because LCMS is a plaintiff, not a defendant. Resp.50-51. But Texas RFRA can be asserted as "a claim or defense." Tex. Civ. Prac. & Rem. § 110.005. And LCMS isn't raising RFRA as a claim, but as "a defense in a judicial … proceeding" against the misuse of Texas law. *Id.* at § 110.004.

F. The Full Faith and Credit Clause's internal affairs doctrine confirms that LCMS is the proper party.

The Full Faith and Credit Clause's internal affairs doctrine also requires respecting LCMS's incorporation under Missouri law. Br.47-50.

The doctrine "is a conflict of laws principle" recognizing "that only one State should have the authority to regulate a corporation's internal affairs." *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982). Texas codified this principle: the law of the state in which any entity is formed governs the entity's formation. Tex. Bus. Orgs. §§ 1.102, 1.103. Concordia doesn't dispute that Missouri is the state where LCMS was formed. *See* Resp.51-53. That means Missouri law governs LCMS's formation, as well as any non-corporate Church entities. And Missouri law requires honoring Church governance provisions forming its polity, recognizing the Synod as "not a civil law entity," and entrusting LCMS to manage the Church's civil affairs. ROA.1282; *see* Br.47-50. Again, Concordia does not question that application of Missouri law, effectively conceding that if Missouri law *does* govern the formation of LCMS and the Synod, the Church's governance provisions must be given effect.

Rather, Concordia claims that questions of "formation" are not at issue. Resp.52. But the entire basis for Concordia's diversity argument turns on the formation of LCMS and the Synod, specifically whether the Synod was formed as a jural entity separate from LCMS. That is a formation question. Thus, Missouri law applies to that question.

Next, Concordia claims that the Synod is "not subject to the internal affairs doctrine" because it's "not a corporation." Resp.52 n.21. But, again, Texas law requires looking to the law of the State of an organization's formation "to determine [an entity's] existence," *D&T Partners v. Baymark Partners*, No. 21-1171, 2022 WL 1778393, at *3 (N.D. Tex. June 1, 2022), regardless of whether the organization is a corporation, Tex. Bus. Orgs. § 1.103. Thus, Missouri law applies, which confirms that the Synod is not a separate jural entity.

II. There is no indispensable party that must be joined alongside LCMS under Rule 19 or otherwise.

Even if the Synod were *a* real party in interest, its absence cannot have required dismissal because it was not necessary for a just adjudication here. *See* Br.50-54. And because LCMS *is* a real party in interest, the district court could not dismiss the suit without conducting the proper analysis finding that the Synod was "indispensable" under Rule 19.

As Concordia now concedes, neither the magistrate judge nor the district court conducted any Rule 19 analysis to support their conclusion that "the Synod is an indispensable party that must be joined." ROA.3320; ROA.3315. And while LCMS repeatedly objected to the characterization that the Synod was even a *proper* party, much less an indispensable one, ROA.3192-93, 3201-02, 3211, 3215, 3218-20, Concordia never objected to the absence of Rule 19 analysis below nor did it raise the issue on cross-appeal, *see Peterson v. Wilson*, 141 F.3d 573, 579 n.21

(5th Cir. 1998) ("fail[ure] to cross appeal" a required ground for judgment "forfeit[s]" that ground). Thus, Rule 19 is off the table for Concordia.

Realizing that this is fatal to the dismissal order, *see PHH Mortg. Corp. v. Old Republic Nat'l Title*, 80 F.4th 555, 563 (5th Cir. 2023) (failure to address Rule 19 is abuse of discretion), Concordia argues that as a matter of diversity jurisdiction, distinct from Rule 19, the Synod was still indispensable as the only party with "substantive rights," Resp.54-55.

Yet indispensability is assessed on the same basic grounds for either theory. *See Newman-Green v. Alfonzo-Larrain*, 490 U.S. 826, 835 (1989) ("[T]he question always is … when objection is taken to the jurisdiction of the court by reason of the citizenship of some of the parties, whether … they are indispensable parties."); *KeyBank Nat'l Ass'n v. Perkins Rowe Assocs.*, 539 F. App'x 414, 417 (5th Cir. 2013) (if "there is no showing that [the non-diverse party] is a mere nominal party used to manufacture federal jurisdiction," standard Rule 19 analysis applies). Concordia loses on those grounds. Br.51-54. LCMS has "a vital interest in this case," "admits involvement in the controversy," and would be responsible for a "resulting judgment." *Lincoln Prop.*, 546 U.S. at 92-93. Thus, the Synod isn't "formally or practically" needed for a "just adjudication" here. *Id.* at 90-91.

CONCLUSION

The Court should reverse the judgment.

Respectfully submitted,

Dated: July 18, 2025

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CERTIFICATE OF SERVICE

I certify that on July 18, 2025, I electronically filed the foregoing with the Clerk of Court for the U.S. Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. All counsel of record are registered CM/ECF users and will be served by the court's electronic filing system.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fifth Circuit Rule 32.3, the undersigned certifies that this motion complies with:

(1) the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7) because it contains 6,449 words; and

(2) the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word 2016 (the same program used to calculate the word count).

/s/ Daniel H. Blomberg
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