No. E2024-00100-SC-R11-CV

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

Preston Garner, et al.,
Plaintiffs and Appellees,

v.

Southern Baptist Convention, et al.,
Defendants and Appellants

BRIEF OF APPELLANTS EXECUTIVE COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION, CHRISTY PETERS, SOUTHERN BAPTIST CONVENTION, AND CREDENTIALS COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION

On Application for Permission to Appeal from the Judgment of the Court of Appeals, No. E2024–00100–COA–R3–CV
Blount County Circuit Court, No. L-21220
The Honorable David R. Duggan

R. BRANDON BUNDREN
BPR #30985
COLE S. MANION
BPR #41292
BRADLEY ARANT BOULT CUMMINGS LLP
1221 Broadway
Suite 2400
Nashville, TN 37203
(615) 252-4647
bbundren@bradley.com

DANIEL H. BLOMBERG*
DIANA VERM THOMSON*
JORDAN T. VARBERG*
AMANDA G. DIXON*
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006
(202) 955-0095
dblomberg@becketfund.org

(Additional Counsel Listed on Inside Cover)

ORAL ARGUMENT REQUESTED

THOMAS J. HURNEY, JR.*
JACKSON KELLY PLLC
500 Lee Street E
Suite 1600
P.O. Box 553
Charleston, WV 25322
(304) 340-1000
thurney@jacksonkelly.com

SCARLETT S. NOKES
BPR # 028994
SHEPPARD, MULLIN, RICHTER &
HAMPTON, LLP
2099 Pennsylvania Ave. NW
Suite 100
Washington, DC 20006
(202) 747-1901
snokes@sheppardmullin.com

**Admitted pro hac vice*

Counsel for Appellants Executive Committee of the Southern Baptist Convention and Christy Peters

MATTHEW C. PIETSCH
BPR #24659
GORDON REES SCULLY
MANSUKHANI, LLP
4020 Aspen Grove Drive
Suite 500
Franklin, TN 37067
(615) 772-9000
mpietsch@grsm.com

Counsel for Appellants Southern Baptist Convention and Credentials Committee of the Southern Baptist Convention

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STATEMENT OF THE ISSUES

I. Whether the First Amendment bars civil courts from exercising jurisdiction to adjudicate tort claims over a religious association's internal communications about a sensitive matter of church governance regarding ecclesiastical affiliation and church leadership.

II. Whether the Tennessee Public Participation Act sets an enhanced evidentiary standard at the prima facie stage.

STATEMENT OF THE CASE

This case is about the autonomy of religious institutions in overseeing their internal religious governance. An ordained Baptist pastor is asking civil courts to hold the Southern Baptist Convention liable for naming him in an internal inquiry regarding an affiliated church's compliance with Southern Baptist beliefs. Until the decision below, Tennessee and most other jurisdictions had held that courts cannot adjudicate that type of lawsuit because it interferes with an ecclesiastical body as it communicates internally about matters of religious governance. But, breaking with precedent, the Court of Appeals held such claims must proceed. It concluded that neither the First Amendment's protections for the independence of the church nor the Tennessee Public Participation Act's protections for freedom of speech and association barred the claims.

On the First Amendment, the Court of Appeals erred in three ways. *First*, it misconstrued the scope of constitutional protection for the rights of religious bodies, finding it limited to matters of faith and doctrine. That radically narrows the protection, chopping off the structural limitation on the power of government to interfere in "the internal governance of the church." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). Courts—including Tennessee courts—have regularly rejected "such a strict" and "narrow[]" view of the First Amendment. *Simpson v. Wells Lamont Corp.*, 494 F.2d 490, 493 (5th Cir. 1974). They have instead emphasized the U.S. Constitution protects "matters of church government *as well as* those of faith and doctrine." *Id.* (emphasis added).

Second, the Court of Appeals held that disputes about internal religious governance communications are analyzed under the "neutral legal principles" approach developed for church property cases, a fundamentally different type of dispute. Slip Op. at 13-15. But as numerous courts have recognized, applying the "neutral principles" approach in cases like this one would destroy the First Amendment's protections for the autonomy of the church. The U.S. Court of Appeals for the Sixth Circuit, for example, has emphasized that the "neutral principles" approach "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986).

That is particularly true here. As in *Hutchison*, this case concerns religious speech about a religious body's supervision of religious leadership, an area of core ecclesiastical concern. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020). But this is an even clearer case, because the speech and ministerial supervision at issue are about an ecclesiastical association's inquiry into a church's compliance with religious standards for affiliation. And courts have long held that they simply have "no power" to entertain lawsuits over affiliation with religious bodies. *See, e.g.*, *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139 (1872).

Third, the Court of Appeals felt compelled to narrow the "scope" of church autonomy protections to avoid "Establishment Clause" concerns with "placing religious institutions in a preferred position." Slip Op. at 13, 14 (quoting *Redwing v. Catholic Bishop*, 363 S.W.3d 436, 451 (Tenn.

2012)). But in 2022, the U.S. Supreme Court rejected the use of concerns over "phantom constitutional violations" to justify restricting First Amendment rights. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). And the law is now clear that the U.S. Constitution in fact provides "special protection for the autonomy of religious institutions." *Catholic Charities Bureau v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 256–60 (2025) (Thomas, J., concurring) (collecting cases).

On the TPPA, the Court of Appeals' ruling also narrowed the statute's protections for freedom of speech and association. As this Court explained in *Charles v. McQueen*, the TPPA sets an enhanced standard of proof for claims like these that burden expression. 693 S.W.3d 262 (Tenn. 2024). But the court below treated that standard as identical to the deferential one for a motion to dismiss, watering down the TPPA's protections and contradicting this Court's precedent.

The result of all these errors, constitutional and statutory, is to punish efforts by Southern Baptists to prevent sex abuse within their polity. Churches affiliated with the Southern Baptist Convention have made it an explicit condition of affiliation that churches must conduct themselves, and supervise their religious leaders, in accordance with their shared Baptist beliefs against sex abuse. And they empowered the SBC to inquire into affiliated churches to ensure they were remaining faithful to those beliefs. But when the SBC did just that and inquired into an affiliated Southern Baptist church's religious compliance, the pastor mentioned in the inquiry sued. The Court of Appeals' ruling allowing that suit to proceed sets an example that will chill not only Southern Baptists but other faith groups and religious associations in Tennessee.

That ruling harms church and state alike, depriving the church of its autonomy in internal governance and ensnaring this state's courts in a religious thicket. By contrast, both religious institutions and the public alike benefit when religious bodies have the freedom they need to protect their flocks from shepherds alleged to have preyed on them.

This Court should reverse.

STATEMENT OF RELEVANT FACTS

I. Baptist Polity and the Southern Baptist Convention

It is a fundamental tenet of Baptist polity that each local Baptist church is an autonomous, self-governed congregation which is ecclesiastically accountable to God alone. *See* The Baptist Faith & Message at VI (June 14, 2023), https://perma.cc/5GHC-U85X.[1] Baptist churches do not believe they are subject to either denominational hierarchies or the State in matters of religion. *Id.* at VI, XIV, XV, XVII. This core religious belief in the autonomy of the local church is one of the most cherished distinctives of Baptist ecclesiology. It reflects, among other things, hard experience. As a "reviled" religious minority in pre-Revolution America very different from hierarchical churches, Baptists were "met with violence" by established denominations and government officials and, by law, were "horsewhipped and jailed for their preaching." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1423 (1990).

Baptists also believe in cooperation among churches through voluntary associations to better spread their faith and serve God. *See* The Baptist Faith & Message at XIV; *see also* Morris H. Chapman, *Local Church Autonomy*, Baptist Faith & Message (Dec. 1, 1987), https://perma.cc/V34K-36ZS ("it is consistent for a church to remain autonomous, and yet remain bound in close fellowship with other

[1] Courts can take judicial notice of a religious institution's publicly available religious law. *See, e.g.*, *Our Lady*, 591 U.S. at 754 (relying on canon law and catechism).

autonomous churches"). The SBC itself is such a voluntary association of autonomous churches. Similarly, state-level associations—like the Tennessee Baptist Mission Board—constitute a voluntary network of local SBC churches within a particular state or geographic region. And while these associations have no authority over local churches, they can and do determine whether affiliated churches maintain their "loyalty to Christ and His Word as revealed in the New Testament." The Baptist Faith & Message at XIV.

The SBC was formed as an ecclesiastical association by thousands of independent Baptist churches nearly two hundred years ago, in 1845. T.R. Vol. I, 17 ¶ 2, 108. The SBC allows Baptists to cooperate together to share the Christian faith both domestically and internationally, provide advanced Christian education at Baptist seminaries, and demonstrate the love of Christ through services to at-risk children and families and in disaster relief efforts. T.R. Vol. I, 108. Today, nearly 47,000 churches with over 12 million adherents are affiliated with the SBC.

As a matter of faith, churches that associate with the SBC retain their full ecclesiastical autonomy, including the power to select and oversee their leaders. T.R. Vol. I, 109. To ensure that the SBC does not drift doctrinally and remains "loyal[] to Christ and His Word," *see* The Baptist Faith & Message at XIV, the SBC requires its member churches to meet an ecclesiastical standard for being in religious affiliation with the SBC known as "friendly cooperation." T.R. Vol. I, 109. For a church to be in friendly cooperation, it must formally approve affiliation with the SBC, support SBC ministry programs, have a faith and practice that closely follows the SBC's statement of faith, not approve ethnic

discrimination, and conduct itself in a manner consistent with the SBC's beliefs against sex abuse. T.R. Vol. I, 109–10; SBC Constitution Art. III.

As relevant to this appeal, the SBC believes that how a church responds to sexual abuse "is a gospel issue" implicating both "God's commitment to protect the vulnerable" and the church's "gospel witness[]." 2019 SBC Annual at 118, *President's Address* (June 11–12, 2019), https://perma.cc/BQ2J-H2FU. The SBC "believe[s] that it is both important and biblical (1 Corinthians 14:33) to develop a culture of transparency and mutual responsibility between churches." 2022 SBC Annual at 96, *Resolution 5: On Support for Consistent Laws Regarding Pastoral Sexual Abuse* (June 14–15, 2022), https://perma.cc/FJ2Y-K9SU ("Resolution 5"); *see also* 2002 SBC Annual at 75–76, *Resolution 3: On The Sexual Integrity of Ministers* (June 11–12, 2002), https://perma.cc/G7T6-6VBU. At the same time that the Convention amended the "friendly cooperation" standard to include a requirement that churches respond appropriately to sexual abuse, it also adopted a resolution to recommend to all affiliated churches the standard that "any person who has committed sexual abuse is permanently disqualified from holding the office of pastor." 2021 SBC Annual at 78, *Resolution 5: On Abuse and Pastoral Qualifications* (June 15–16, 2021), https://perma.cc/3V62-PMB2. This commitment reflects the belief that pastors must meet Scriptural qualifications of being "above reproach." *Id.* (citing *1 Timothy* 3:2 and *Titus* 1:6). Because "[s]exual abuse is an action repugnant to the teachings of Scripture," it is disqualifying. *Id.*

The responsibility to ensure that affiliated churches faithfully meet these religious standards resides with the Credentials Committee of the SBC, an Appellant here. T.R. Vol. I, 111–12, 114; SBC Bylaws § 8(c). The committee is charged with reviewing available information to determine friendly cooperation, including by "mak[ing] inquiries of a church." T.R. Vol. I, 111. Consistent with Baptist beliefs about the autonomy of affiliated churches, the Credentials Committee does not have the power to compel compliance with its inquiries. *See* SBC Constitution Art. IV; *accord* SBC Bylaws § 8(c)(5); T.R. Vol. II, 271–72. The committee can only submit the inquiry and, if the recipient church declines to answer, determine whether it can affirm that the church is in friendly cooperation based on the information available to it. T.R. Vol. II, 271–72. A determination of non-cooperation, if approved by Appellant Executive Committee of the SBC, can result in "disfellowshipp[ing]" the church, ending its affiliation with the SBC. T.R. Vol. I, 111.

The Credentials Committee takes this religious obligation seriously. Several churches have been disfellowshipped for failing to meet the standards required for friendly cooperation.[2]

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[2] *See*, *e.g.*, Michael Gryboski, *SBC disfellowships 7 churches over abuse hotline calls: report*, The Christian Post (February 20, 2025), https://perma.cc/D82W-NDHD (discussing disfellowshipping over handling of sexual abuse); *accord* Diana Chandler, *SBC Executive Committee disfellowships four churches*, Baptist Press (Feb. 23, 2021), https://perma.cc/8SSQ-YZTU (listing disfellowshipped churches).

II. Case Background

In 2021, the SBC's affiliated churches finalized the SBC's religious fellowship requirement against sexual abuse. T.R. Vol. I, 110–11. That same year, the Executive Committee engaged an independent firm, Guidepost Solutions LLC, to help with establishing a "reporting mechanism" to Guidepost that would "encourage all those with relevant information [concerning sexual abuse] to come forward." T.R. Vol. III, 370 § 3.9. To increase reporting, the SBC tasked Guidepost with handling the mechanism so that the identity of survivors is not reported to the SBC. T.R. Vol. III, 371 § 4.3.

Guidepost created the reporting mechanism and managed it. T.R. Vol. III, 370 § 3.9. When Guidepost received reports, it provided appropriate anonymous allegations to the SBC. T.R. Vol. III, 370–71 §§ 3.9, 4.3. The SBC, through its Credentials Committee, has used that information to inquire into whether member churches are in compliance with the SBC's religious beliefs against sex abuse.

In appropriate situations where a report has been submitted, the Credentials Committee asks affiliated churches if they are aware of the report and what processes they have in place to adequately investigate such sex-abuse allegations to protect members of Baptist churches and the public. T.R. Vol. II, 271–72. Ensuring adequate accountability is especially important when it comes to the religious leadership of local SBC-affiliated churches. The Baptist Faith & Message at VI; Resolution 5 at 95–97. Churches that decline to respond to the Credentials Committee's inquiries or that lack adequate processes in place to respect SBC religious beliefs against sex abuse risk being disfellowshipped. T.R.

Vol. I, 111; *supra* at n.2. This process is meant to both respect the role of the local church in church discipline under Baptist polity and protect the ecclesiastical standards of affiliation with the SBC. *See*, *e.g.*, Resolution 5 at 95, 96.

According to the Amended Complaint, Guidepost received an anonymous allegation through the reporting mechanism that Preston Garner, an ordained Baptist minister since 1999, engaged in the sexual assault of a minor in 2010 while he served at Englewood Baptist Church in Rocky Mount, North Carolina. T.R. Vol. I, 19 ¶ 10, 22 ¶¶ 20–22. Guidepost forwarded the report to the SBC. T.R. Vol. I, 22 ¶ 22, 26 ¶ 53.

The Credentials Committee then took steps to meet its religious duty to evaluate whether Garner's current church, Everett Hills Baptist Church in Maryville, was in friendly cooperation with the SBC. Appellant Christy Peters, in her role as a representative of the Credentials Committee, spoke with Everett Hills Baptist Church's senior pastor, Douglas Hayes, and informed him that the Credentials Committee would soon be sending his church a letter about an allegation of possible sexual misconduct by someone associated with the church. T.R. Vol. IV, 476–78. On January 7, 2023, the Credentials Committee sent the letter to Everett Hills Baptist Church. T.R. Vol. IV, 482–83; *see also* T.R. Vol. I, 21 ¶ 19, 111.

The letter explained that the SBC "ha[d] received a concern regarding the relationship between Everett Hills … and the [SBC]" because Everett Hills "may employ an individual with an alleged history of abuse." T.R. Vol. I, 21 ¶ 19. It further explained that the Credentials Committee "is tasked with determining whether a church has a faith and

practice which closely identifies with the [SBC's]," including "whether a church may be acting in a manner that is inconsistent with the [SBC's] beliefs regarding sexual abuse." *Id.* The Credentials Committee noted that the SBC has a "responsibility to determine for itself the churches with which it will cooperate." *Id.* And, "[f]or that reason, the [SBC] has tasked [the Credentials Committee] to assist in determining if a church should be deemed to be in friendly cooperation with the [SBC]." *Id.*

To help determine whether the church was in good standing, the letter inquired about: (1) the church's hiring practices; (2) the church's procedures for handling reports of abuse; (3) whether Garner was then employed by the church; (4) whether the church had previously "received any allegations of sexual misconduct involving" Garner; (5) whether the church was "aware of an allegation of sexual assault of a minor involving" Garner from his previous ministry at Englewood Baptist Church; and (6) whether church leaders would like a meeting with the Credentials Committee to discuss the inquiry. *Id.*

Also on January 7, Peters forwarded the Credentials Committee's letter to Randy Davis, Executive Director of the Tennessee Baptist Mission Board, the ecclesiastical body representing the Tennessee Baptist Convention and through which Everett Hills Baptist Church and many other SBC churches in Tennessee support and cooperate with the SBC. T.R. Vols. I, 22 ¶ 20; IV, 488 ¶ 3. Davis later sent the letter to Jeremy Sandefur, president of The King's Academy, a Christian school affiliated with the Tennessee Baptist Convention where Garner also worked part-time as music director. T.R. Vols. I, 20 ¶¶ 13–16, 22 ¶ 20, and 24 ¶¶ 34–35; IV, 488 ¶¶ 3–4. The King's Academy immediately

suspended Garner. T.R. Vol. I, 24 ¶ 36. Sandefur and Hayes also discussed the allegations with the executive pastor at Concord Baptist Church, which had recently extended Garner an offer of employment. T.R. Vol. IV, 489 ¶¶ 5–6. Concord Baptist Church subsequently withdrew the offer of employment it had made to Garner. T.R. Vol. IV, 489 ¶ 5. Neither the Executive Committee nor Peters ever discussed the letter or its contents with The King's Academy or Concord Baptist Church.[3]

III. Procedural History

Garner sued the SBC, the Executive Committee, the Credentials Committee, Guidepost, and Christy Peters for defamation, defamation by implication, and false light. T.R. Vol. I, 27–30. His wife, Kellie Garner, also brought a claim for loss of consortium. T.R. Vol. I, 30. The primary basis of these claims is the January 7, 2023 letter from the Credentials Committee to Everett Hills Baptist Church.

Appellants moved to dismiss for lack of subject matter jurisdiction pursuant to the church autonomy doctrine and under the Tennessee Public Participation Act. T.R. Vol. I, 44, 61, Vol. III, 410. Guidepost did not file a motion to dismiss. The trial court denied the motions, concluding that (1) the church autonomy doctrine did not apply apart from four numbered paragraphs in the Amended Complaint (which it

[3] On January 26, 2023, the leadership of Everett Hills Baptist Church responded to the inquiry letter by acknowledging that the church had not previously adopted formal policies for handling reports of abuse and stating that it was in the process of reviewing guidelines from the SBC and the Tennessee Baptist Convention to help develop policies and procedures for handling abuse reports in the future. T.R. Vol. IV, 484.

struck) and (2) the TPPA did not apply either, but even if it did, Plaintiffs carried their burden of establishing a prima facie case for their claims. T.R. Vol. IV, 498–99. The trial court did not address the third step of the TPPA analysis—whether Appellants had a valid defense.

On appeal, the Court of Appeals affirmed in part and reversed in part. Slip Op. at 1, 17. While the Court of Appeals disagreed with the trial court's conclusion that the TPPA did not apply, it found no other error. *Id.* at 1. Although the Court of Appeals agreed that Appellants could raise their church autonomy arguments on appeal, *id.* at 9, it concluded that the church autonomy doctrine did not apply to bar the claims, *id.* at 14–15. Civil courts, the Court of Appeals determined, could instead adjudicate Garner's claims based on neutral principles of law that did "not require the trial court to resolve any religious disputes or to rely on religious doctrine." *Id.* at 14. The Court of Appeals concluded that ruling otherwise would raise Establishment Clause concerns by "favoring religious institutions over secular" ones. *Id.* at 13.

Shifting to the TPPA, after concluding that the TPPA applies to this case, the Court of Appeals held that the trial court did not err when it stated that it was required to consider the facts in Plaintiffs' Amended Complaint as true when ruling on the TPPA petition. *Id.* at 18. Applying that principle, the Court of Appeals held that Plaintiffs met their prima facie burden under the TPPA. *Id.* at 18–23.

Appellants applied for permission to appeal, which this Court granted on June 20, 2025.

ARGUMENT

This Court reviews fundamental legal questions about the First Amendment and the TPPA *de novo*. *See Charles*, 693 S.W.3d at 273.

I. The First Amendment's protections for church autonomy bar Garner's suit.

Garner's claims violate the First Amendment's protection for the internal governance of religious bodies. The claims require civil courts to interfere with a quintessentially religious proceeding—an ecclesiastical inquiry probing whether an affiliated church has adhered to the religious standards for affiliation with the SBC. Upholding those claims would penalize the SBC for following its religious directive to inquire into a church's adherence to the SBC's religious beliefs about sexual abuse and religious leaders. That is unconstitutional.

The Court of Appeals' contrary result was wrong. The "neutral principles" approach developed for church-property disputes does not—and cannot—apply to a case about internal religious governance. And erroneous views of the Establishment Clause cannot allow courts to interfere in church governance. Instead, as numerous cases have found in a variety of contexts, civil courts are structurally barred by the First Amendment from entertaining this type of dispute—to do otherwise would be to intrude on core ecclesiastical independence.

A. Church autonomy protects the independence of religious institutions in their internal governance.

The Religion Clauses of the First Amendment provide that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]" U.S. Const. amend. I. These

paired provisions work together to protect religious liberty in "complementary" fashion: they prevent the government from both taking over religion (by establishing it) and interfering with it (by prohibiting its free exercise). *Kennedy*, 597 U.S. at 533. The Religion Clauses thus "radiate[]" a "spirit of freedom for religious organizations, an independence from secular control or manipulation." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952). In so doing, they demonstrate the Constitution's "special solicitude [for] the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189.

Core to those rights is what has come to be known as the "church autonomy" doctrine. *Our Lady*, 591 U.S. at 747; *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 156 (Tenn. 2017) ("*COGIC*").[4] The doctrine recognizes that religious groups must have the freedom to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady*, 591 U.S. at 737 (quoting *Kedroff*, 344 U.S. at 116); *see also, e.g.*, *COGIC*, 531 S.W.3d at 164. "State interference" to "dictate or even to influence such matters" would both "obviously violate the free exercise of religion" and "constitute one of the central attributes of an establishment of religion." *Our Lady*, 591 U.S. at 746.

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[4] While courts also use the term "ecclesiastical abstention doctrine" to describe these constitutional protections, the doctrine is "commonly known as the 'church autonomy doctrine.'" *COGIC*, 531 S.W.3d at 156. Appellants use the term "church autonomy" in this brief, consistent with the U.S. Supreme Court's recent usage. *See Our Lady*, 591 U.S. at 747; *Catholic Charities Bureau*, 605 U.S. at 246; *id.* at 255 (Thomas, J., concurring).

This Court has "strongly embraced" the doctrine of church autonomy. *COGIC*, 531 S.W.3d at 157. It is a "broad principle," *Our Lady*, 591 U.S. at 747, which "lies at the foundation of our political principles," *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1872), setting a "scrupulous policy" against "political interference with religious affairs," *Hosanna-Tabor*, 565 U.S. at 184, and properly "limit[ing] the role" of the government "in the resolution of religious controversies"—even those "that incidentally affect civil rights," *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976). The doctrine upholds the proper "relations of church and state under our system of laws," protecting religious groups from those who would use "secular courts" for leverage in religious disputes, and the state from entanglement in matters beyond its jurisdiction or competence. *Watson*, 80 U.S. (13 Wall.) at 727, 729.

Indeed, that dual protection is a core function of the church autonomy doctrine. It respects the "two spheres of sovereignty" held by Church and State, setting a "structural restraint on the constitutional power of civil courts to regulate matters of religion." *Westbrook v. Penley*, 231 S.W.3d 389, 395, 398 (Tex. 2007). "This constitutional protection is not only a personal" right of the church, but also a "structural" limit "that categorically prohibits federal and state governments from becoming involved in religious leadership disputes" or otherwise "interfer[ing] with the internal governance of the church." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836–37 (6th Cir. 2015); *Whole Woman's Health v. Smith*, 896 F.3d 362, 373–74 (5th Cir. 2018) ("structural protection" barring "intrusions against religious bodies' self-government").

Church autonomy accordingly has "deep roots in the history of Western civilization." *Catholic Charities Bureau*, 605 U.S. at 257 (Thomas, J., concurring); *see Hosanna-Tabor*, 565 U.S. at 182–85 (discussing, *inter alia*, the Magna Carta, colonial history, and early religious establishments). Historically, "the English courts" operated within the context of the established Church of England, which permitted judicial resolution of internal church disputes. *Watson*, 80 U.S. (13 Wall.) at 727. But the Founding generation understood that allowing judicial oversight over religious disputes would deprive churches of "the right of construing their own church laws" and "open the way to all the evils" of English establishmentarianism. *Id.* at 733. Thus, the First Amendment charted a different course.

Near the heart of the doctrine's protections are those for the "internal governance of religious organizations." *COGIC*, 531 S.W.3d at 156; *see also Redwing*, 363 S.W.3d at 446 ("internal governance of religious bodies"); *Our Lady*, 591 U.S. at 747 ("matters of internal government"). State interference in "church polity" would "violate the First Amendment in much the same manner as civil determination of religious doctrine." *Milivojevich*, 426 U.S. at 709. To that end, "civil courts exercise no jurisdiction" over "matter[s]" of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Id.* at 713–14 (quoting *Watson*, 80 U.S. (13 Wall.) at 733).

Church autonomy is thus implicated whenever "[g]overnment action," *In re Diocese of Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021), interferes with the sphere of activity that is "the church's alone," *Hosanna-Tabor*, 565 U.S. at 195. Government action that "interferes with this autonomy or risks judicial entanglement with a church's conclusions regarding its own rules, customs, or laws is therefore prohibited by the First Amendment." *Diocese of Lubbock*, 624 S.W.3d at 513; *see also Travers v. Abbey*, 58 S.W. 247, 247 (Tenn. 1900) (state cannot encroach on a religious institution's "exercise of its internal affairs").

B. Courts routinely apply church autonomy to bar tort claims over internal religious governance.

Courts across the country have repeatedly confronted tort claims that seek to penalize religious institutions for their religious dialogue, inquiries, and governance proceedings, often involving the membership and leadership of religious bodies. Invoking church autonomy's protections for church governance, they have correctly rejected those claims. Throughout, courts have held that defamation claims against religious bodies arising from matters of internal discipline, faith, and organization are barred by the First Amendment.

Among the leading authorities is *Hutchison v. Thomas*, in which the Sixth Circuit held that the First Amendment barred defamation claims by a religious leader against his church arising out of a dispute over his retirement. 789 F.2d at 396. The plaintiff in that case claimed that other members of the church's leadership had misled his denomination about his conduct, forcing him to retire under the church's disciplinary rules. *Id.* at 392–93. Applying "the First Amendment's

command that secular authorities may not interfere with the internal ecclesiastical workings and disciplines of religious bodies," the court rejected his claims. *Id.* at 393. Because the dispute "relate[d] to" the plaintiff's "status and employment as a minister of the church," it necessarily "concern[ed] internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law." *Id.* at 395–96.

In another seminal decision, the Texas Supreme Court rejected defamation claims against a Catholic diocese stemming from an internal investigation into sexual abuse. *Diocese of Lubbock*, 624 S.W.3d at 509. At the end of the investigation, the Diocese communicated the results of its church disciplinary proceedings to members by publishing on its website a list of names of clergy who had been credibly accused of sexually abusing a minor. *Id.* at 510. One of the listed deacons sued, claiming that the Diocese defamed him by implying his guilt. *Id.* at 509. The Texas Supreme Court, however, rejected the claims, observing that adjudicating them would have impermissibly penalized the Diocese for the way it carried out its "internal directive to investigate its clergy." *Id.* at 515–18. "It is a core tenet of the First Amendment," the court observed, "that in resolving civil claims courts must be careful not to intrude upon internal affairs of church governance and autonomy." *Id.* at 513. Thus, church autonomy barred the suit. *Id.* at 513–19.

Many other courts have agreed, barring tort claims that sought to penalize church governance and religious communications. For example:

- In *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 932–38 (Mass. 2002), the Massachusetts Supreme Court barred a

defamation claim over a letter alleging sexual misconduct that was used in a church's disciplinary process against its minister. The court held that claims "aris[ing] out of the church-minister relationship in the religious discipline context" are "barred absolutely." *Id.* at 937. And because the challenged "letter [was] inextricably part of the Church disciplinary process," a defamation claim over its contents could not proceed. *Id.* As the court explained, "[t]he Episcopal Church, like others, has a singular interest in protecting its faithful from clergy who will take advantage of them[,]" and "[t]he First Amendment's protection of internal religious disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." *Id.* at 936–37.

- In *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 530–32 (Minn. 2016), the Minnesota Supreme Court barred defamation claims stemming from statements made by pastors about a parishioner during church disciplinary proceedings. The court ruled that adjudicating the claims would "excessively entangle the court with religion and unduly interfere with the ability of religious organizations to make decisions regarding membership and internal discipline." *Id.* at 540.

- In *Natal v. Christian & Missionary Alliance*, 878 F.2d 1575, 1576–77 (1st Cir. 1989), the First Circuit, citing *Hutchison*, barred ministerial libel and slander claims that would have "require[d] judicial intrusion into[] rules, policies, and decisions which are unmistakably of ecclesiastical cognizance." The court "deem[ed] it beyond peradventure that civil courts cannot adjudicate disputes turning on church policy and administration[.]" *Id.* at 1576.

- In *El-Farra v. Sayyed*, 226 S.W.3d 792, 796–97 (Ark. 2006), the Arkansas Supreme Court barred a defamation claim stemming from "a dispute over appellant's suitability to remain as Imam." "It [was] difficult" for the court "to see how an inquiry [could] be made into" the challenged "statements

without an examination of religious doctrines, laws, procedures, and customs." *Id.*

- In *Brazauskas v. Fort Wayne-S. Bend Diocese*, 796 N.E.2d 286, 288–94 (Ind. 2003), the Indiana Supreme Court barred tort claims by a former church employee arising out of a letter sent to a Catholic university. The court concluded that the church autonomy doctrine forbade applying "tort law to penalize communication and coordination among church officials … on a matter of internal church policy and administration[,]" particularly where the communication at issue was sent "in accordance with ecclesiastical directive." *Id.* at 293–94; *see also Payne-Elliott v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 193 N.E.3d 1009, 1012–15 (Ind. 2022) (citing *Brazauskas* and rejecting tort claims arising from "communications between church officials and members" about "church policy and administration").

- In *Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 512–13, 516–17 (Va. 2001), the Virginia Supreme Court, citing *Hutchison*, barred defamation claims by a former pastor against church administrators. Because the challenged "remarks about the plaintiff" were made by "church officials" during "meetings of the church's governing bodies" and involved "the plaintiff's fitness" for ministry, the court held that adjudicating the claims would intrude on church autonomy. *Id.* at 516. The court noted that "most courts that have considered the question" have barred clergy defamation claims arising from internal church speech. *Id.*

Numerous other lower state and federal courts have reached similar conclusions.[5]

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[5] *See*, *e.g.*, *Episcopal Diocese of S. Va. v. Marshall*, 903 S.E.2d 534 (Va. Ct. App. 2024); *see also Belya v. Kapral*, 775 F. Supp. 3d 766 (S.D.N.Y. 2025); *Gui v. First Baptist Church*, No. 24-cv-971, 2024 WL 5198700 (C.D.

The Tennessee Court of Appeals has itself repeatedly applied these principles, rejecting defamation claims against religious bodies over internal communications concerning matters of church governance. The leading case is *Anderson v. Watchtower Bible & Tract Society of New York, Inc.*, where the court performed a comprehensive review of previous caselaw, relied heavily on *Hutchison*, and concluded that the First Amendment bars judicial "inquiry and review" of defamation claims "related to disciplinary or employment decisions" or "arising out of church disciplinary or expulsion proceedings." No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *26 (Tenn. Ct. App. Jan. 19, 2007). The defamation claims in that case stemmed from a church's decision to disfellowship two members, the plaintiffs. *Id.* at *1. But their suit could not proceed, the court held, because "the church-member relationship is a fundamentally ecclesiastical matter," and "statements made in the context of a religious disciplinary proceeding are not resolvable by the courts." *Id.* at *26.

Cal. Oct. 30, 2024); *Esses v. Rosen*, No. 24-cv-3605, 2024 WL 4494086 (E.D.N.Y. Oct. 15, 2024); *Byrd v. DeVeaux*, No. 17-cv-3251, 2019 WL 1017602 (D. Md. Mar. 4, 2019) (false light); *Hubbard v. J Message Grp.*, 325 F. Supp. 3d 1198, 1214 (D.N.M. 2018); *Kavanagh v. Zwilling*, 997 F. Supp. 2d 241, 250 (S.D.N.Y. 2014); *Klouda v. Sw. Baptist Theological Seminary*, 543 F. Supp. 2d 594 (N.D. Tex. 2008); *Kraft v. Rector, Churchwardens & Vestry of Grace Church*, No. 1-cv-7871, 2004 WL 540327 (S.D.N.Y. Mar. 17, 2004); *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d 200 (D. Conn. 2000); *Farley v. Wis. Evangelical Lutheran Synod*, 821 F. Supp. 1286, 1290 (D. Minn. 1993); *see also*, *e.g.*, *Ogle v. Church of God*, 153 F. App'x 371 (6th Cir. 2005) (following *Hutchison*); *Yaggie v. Ind.-Ky. Synod*, 64 F.3d 664 (6th Cir. 1995) (table) (same).

Later cases follow *Anderson* closely. In *Maize v. Friendship Community Church,* No. E2019-183-COA-R3-CV, 2020 WL 6130918, at *4–5 (Tenn. Ct. App. Oct. 19, 2020), the court, reciting *Anderson*'s rule that allegedly "defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts," dismissed claims by a pastor against his former church and its leaders. And in *Johnson v. Carnes*, No. M2008-2373-COA-R3-CV, 2009 WL 3518184, at *3–5 (Tenn. Ct. App. Oct. 29, 2009), the court, again citing *Anderson*, rejected defamation claims brought by an expelled parishioner against his former minister because they arose from a letter related to the decision to expel the parishioner and thus challenged "an intricate part of church governance." *Id.* at *3. Church autonomy, the court observed, "does not cloak only the disciplinary or expulsion decision itself, but also statements made attendant to the decision." *Id. See also Kersey v. Wilson*, No. M2005-2106-COA-R3-CV, 2006 WL 3952899, at *7–8 (Tenn. Ct. App. Dec. 29, 2006) (defamation claims arising from "the context of a religious disciplinary proceeding are not resolvable by the courts").

The rule is this: If a religious institution is sued for statements made "during the course of an ecclesiastical undertaking," then the suit interferes with church governance and cannot proceed. *Anderson*, 2007 WL 161035, at *26 (quoting *Ausley v. Shaw*, 193 S.W.3d 892, 895 (Tenn. Ct. App. 2005)). In particular, when a lawsuit "seeks to impose liability on [a religious group] for complying with" an ecclesiastical "directive to investigate," the First Amendment bars the suit. *Diocese of Lubbock*, 624 S.W.3d at 517; *see also Brazauskas*, 796 N.E.2d at 293 (church autonomy

protects statements made while "acting in accordance with ecclesiastical directive"). After all, claims like that "necessarily reach behind the ecclesiastical curtain" and "depriv[e]" religious groups of the "right" to "administer church laws." *Diocese of Lubbock*, 624 S.W.3d at 515, 519.

C. Garner's claims interfere with religious governance and thus violate the church autonomy doctrine.

1. Garner's claims violate the church autonomy doctrine.

Garner's claims violate the church autonomy doctrine. Garner seeks to impose civil liability on a religious institution for the way it carried out its religious obligation to inquire into an affiliated church's compliance with religious standards of religious affiliation. To make out his claims, Garner takes aim at internal religious speech touching on deeply ecclesiastical matters: alleged pastoral misconduct and a religious body's internal inquiry to an affiliated church in accordance with the terms of their ecclesiastical polity. Few matters could be more intimately connected to the internal governance of a religious institution. *See, e.g.*, *Diocese of Lubbock*, 624 S.W.3d at 517, 518 (cannot "impose liability" on church for "internal management decision to investigate"). Garner's claims unconstitutionally infringe church governance in two ways.

First, they target internal communications about the way in which a church was supervising its religious leadership, namely Garner. T.R. Vol. IV, 482–83. Yet as numerous courts have recognized, courts must "stay out" of disputes involving ministerial supervision, *Our Lady*, 591 U.S. at 746–47, since it is a matter of core "internal church discipline, faith, and organization," *Hutchison*, 789 F.2d at 396; *see Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 976–77 (7th Cir. 2021) (en banc).

While these principles have often been applied to employment-discrimination claims, they are regularly applied to tort claims as well. *See*, *e.g.*, *Starkey v. Archdiocese of Indianapolis*, 41 F.4th 931, 942 (7th Cir. 2022); *accord Hutchison*, 789 F.2d at 396; *Hiles*, 773 N.E.2d at 936–38. And they fully apply to claims brought by non-employees of a religious defendant who are suing over the defendant's protected religious leadership decisions. *See Starkey*, 41 F.4th at 945 (church autonomy protected both employer and non-employer religious body); *Bell v. Presbyterian Church (U.S.A.)*, 126 F.3d 328, 332–33 (4th Cir. 1997) (church autonomy barred tort claims of pastor who was not employed by religious defendants or even of the same denomination); *Hutchison*, 789 F.2d at 396 n.2 (church autonomy barred loss-of-consortium claim).

Second, the adequacy of the church's ministerial supervision was integral to *another* ecclesiastical concern: religious denominational affiliation. If Everett Hills Baptist Church could demonstrate to the SBC that it was conducting itself in a manner consistent with the SBC's beliefs against sex abuse, then it could remain religiously affiliated with the SBC under the ecclesiastical standard of "friendly cooperation." T.R. Vol. I, 109–11. But if the church was not in compliance with those beliefs, then the SBC might elect to disfellowship it. *Id.* The quality of the church's supervision of its minister, in other words, was directly relevant to its religious affiliation with the SBC. Even viewed independently, each of these "spheres of" religious "sovereignty" are entitled to constitutional protection. *Westbrook*, 231 S.W.3d at 395. Together, even more so.

Claims like Garner's strike at the heart of "[t]he church autonomy doctrine," which "is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely." *Bryce v. Episcopal Church*, 289 F.3d 648, 658 (10th Cir. 2002). Because of this, "courts will not dictate to a congregation or church officials that they may not freely speak their minds." *Kersey*, 2006 WL 3952899, at *7. But that is exactly what Garner would have this Court do. *Hutchison*, for its part, rejected tort claims predicated on statements made during internal ecclesiastical proceedings because of the church autonomy doctrine's robust protections for religious speech. 789 F.2d at 392–94. *Diocese of Lubbock* extended that reasoning even to *publicly* disseminated religious speech about sexual abuse and the clergy. 624 S.W.3d at 516. This is an *a fortiori* case.

2. Failing to apply church autonomy would discriminate against Southern Baptist polity.

Accepting Garner's arguments would be crippling for Southern Baptist polity. The way in which religious bodies structure their governance—that is, their church "polity"—is itself "a matter of faith." *Catholic Charities Bureau*, 605 U.S. at 257 (Thomas, J., concurring). Since the early days of our Nation, we have recognized that granting the government coercive power over "the organization and polity of the church" necessarily "exceeds the rightful authority to which Governments are limited, by the essential distinction between civil and religious functions." *Hosanna-Tabor*, 565 U.S. at 184–85 (quoting 22 Annals of Cong. 982–83 (1811)). And because polity choices are "inherently ecclesiastical," judicial efforts to probe them leave courts

"inextricably intertwined" with matters outside their proper control. *Diocese of Lubbock*, 624 S.W.3d at 518; *accord Milivojevich*, 426 U.S. at 722–23 (barring a "searching … inquiry into church polity").

Here, Garner seeks to enlist this State's judiciary in precisely that type of unconstitutional probe. For undisputedly theological reasons, the SBC has chosen to structure its polity in a specific way: While the SBC does not and cannot exercise control over the churches which choose to affiliate with it, the SBC does require that churches remain in ongoing compliance with religious standards to maintain their affiliation. *Supra* at 7-10. "In other words, allowing [Garner's] suit to move forward would threaten the [SBC] with civil tort liability for acting in accord with its directive to [make inquiries to local churches] or for not conducting that [inquiry] consistent with judicial standards, thereby depriving the [SBC] of its 'right to construe and administer church laws.'" *Diocese of Lubbock*, 624 S.W.3d at 519.

Garner argues that such a probe is permissible here, even if it wasn't for the Catholic diocese in *Diocese of Lubbock*, because Southern Baptist polity is not hierarchical. *See*, *e.g.*, Appellees' Memo. ISO Motion to Strike App. for Permission to Appeal at 8, 13. But that only compounds the constitutional injury by discriminating among religions based on their polity. *See Catholic Charities Bureau*, 605 U.S. at 247–49 (First Amendment forbids any "law that differentiates between religions along theological lines"). And it does nothing to respect the church autonomy interests at issue—namely, the right of Southern Baptist churches to affiliate together voluntarily as an ecclesiastical body and to set the religious terms of that affiliation.

If religious "proceedings" like these "are not shielded from the scrutiny of civil courts, there is a very real risk that those who participate will censor themselves in order to avoid liability or the threat of a lawsuit." *Pfeil*, 877 N.W.2d at 539. The risk is real here. Allowing Garner's claims to proceed would heavily burden Southern Baptists' efforts to determine whether affiliated churches are serious about protecting their flocks from wayward shepherds. *See*, *e.g.*, SBC Constitution Art. III.1.4. It would negate the SBC's "singular interest in protecting [the] faithful from clergy who will take advantage of them"—and from ensuring that local churches are taking abuse seriously. *Hiles*, 773 N.E.2d at 936–37.

3. Adjudicating the elements of Garner's defamation claim will require church-state entanglement.

The church autonomy doctrine bars entanglement between church and state. *See Milivojevich*, 426 U.S. at 709; *Carson v. Makin*, 596 U.S. 767, 787 (2022). And here, if this suit goes forward, entanglement is guaranteed. "Religious disputes restated in the elements of a [tort] claim" do not "lose their inevitably religious character, just as employment disputes involving persons with religious duties cannot be regarded as purely secular, either." *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 798 (9th Cir. 2025) (Bress, J., concurring). Here, Garner's claims inevitably insert civil courts into matters of internal church governance.

Take, for example, Garner's defamation claim. Garner must show Defendants' statements were defamatory, published, knowingly or negligently false, caused him damages, and aren't protected by privilege.

Sullivan v. Baptist Mem'l Hosp., 995 S.W.2d 569, 571 (Tenn. 1999). Litigating each element here will entangle courts in religious matters.

First, whether the statements Garner challenges are "capable of … defamatory meaning" is "judged within the context in which they are made" and "read as a person of ordinary intelligence would understand them in light of the surrounding circumstances." *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000). Here, the only people who received communications from Defendants were the lead pastor of a Southern Baptist-affiliated church and the head of a state Southern Baptist ecclesiastical body. T.R. Vol. I, 20–22 ¶¶ 18–20. To show that the statements are defamatory, Garner will need to prove that a reasonable Southern Baptist pastor receiving the Credentials Committee's letter as part of an internal religious inquiry would have understood the statements to imply that Garner was guilty of abuse. The trial court and a civil jury will be asked to probe the meaning of friendly-cooperation inquiries within Southern Baptist polity, how such an inquiry is carried out and understood, and the mind of a pastor affiliated with the Southern Baptist Convention within that context. That "would entail an extensive and forbidden inquiry into religious law and practice, [and] ecclesiastical administration and government." *See Anderson*, 2007 WL 161035, at *17.

Second, Garner will have to show publication. But there is no publication when allegedly defamatory statements are shared within a particular managerial structure involving different entities. *See Woods v. Helmi*, 758 S.W.2d 219, 223 (Tenn. Ct. App. 1988) (applying *Freeman v. Dayton Scale Co.*, 19 S.W.2d 255, 258 (1929)). So assessing publication

here will delve into details of Southern Baptist polity, including whether the communication between the SBC and an affiliate church is "internal communication." Such an assessment will entangle courts in sensitive religious polity questions regarding the Convention's relationship with—and its role as an instrument of—its affiliated churches. *Supra* at 7-10; *Catholic Charities Bureau*, 605 U.S. at 260–61 (Thomas, J, concurring). All that threatens to "probe deeply … into the allocation of power" with ecclesiastical bodies and decide matters of "church polity," which "would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Milivojevich*, 426 U.S. at 709.

Third, Garner will have to overcome the common interest privilege, which shields good faith communications on "any subject-matter" where the author and recipient share an interest or a duty of a "moral or social character." *Pate v. Serv. Merch. Co.*, 959 S.W.2d 569, 576 (Tenn. Ct. App. 1996) (quoting *Southern Ice Co. v. Black,* 189 S.W. 861, 863 (1916)). Here, that would put civil courts in the place of evaluating considerations such as the SBC's understanding of its moral obligations regarding allegations of sexual abuse. *See*, *e.g.*, *Certain v. Goodwin*, No. M2016–00889-COA-R3-CV, 2017 WL 5515863, at *7–8 (Tenn. Ct. App. Nov. 17, 2017) (sharing of anonymous report privileged based on mutual duty); *McGuffey v. Belmont Weekday Sch.*, No. M2019-01413-COA-R3-CV, 2020 WL 2754896, at *15–16 (Tenn. Ct. App. May 27, 2020). The SBC has determined that its obligations in this area are "a gospel issue" stemming from its beliefs about "God's commitment to protect the vulnerable." 2019 SBC Annual at 118, *President's Address* (June 11–12, 2019),

https://perma.cc/BQ2J-H2FU. And Southern Baptist churches are expected "to protect victims," in part to ensure "that reproach is not brought upon the name of Christ." Resolution 5 at 96. Jettisoning the privilege would thus require the court to gainsay the SBC's judgment about its ecclesiastical responsibilities to affiliated churches and their members on matters of "faith and doctrine." *Our Lady*, 591 U.S. at 747; *see Kyritsis v. Vieron*, 382 S.W.2d 553, 559 (Tenn. Ct. App. 1964) (privilege "must, in the last analysis, depend on the validity or correctness of decisions of the Greek Orthodox Church").

Fourth, Garner's defamation claim will require inquiry into intent and proof of damages. *See Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013). That will also entangle church and state. On intent, Garner will seek to impermissibly "probe the mind" of the SBC regarding internal leadership and church-affiliation inquiries. *Rayburn v. Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). And to prove damages, Garner will ask civil courts to assess whether the statements led to an unfairly diminished ministerial status, which will raise "intractable causation questions." *Marshall*, 903 S.E.2d at 544; *accord Belya*, 775 F. Supp. 3d at 779–80; *Cha*, 553 S.E.2d at 516.

Finally, the discovery process itself promises to probe the SBC's "internal deliberations and decision-making," despite "numerous" "Supreme Court decisions" protecting against such probes. *Whole Woman's Health*, 896 F.3d at 374. The "very process of inquiry" into such matters, *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502–04 (1979), "plunges an inquisitor into a maelstrom of Church policy, administration,

and governance" and thus violates the Religion Clauses, *Anderson*, 2007 WL 161035, at *11 (quoting *Natal*, 878 F.2d at 1578). "[G]iven the coercive nature" of discovery, the "process of judicial inquiry itself" into the religious matters at issue here creates impermissible entanglement. *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 808–10 (9th Cir. 2024).

D. The Court of Appeals erred.

In denying application of the church autonomy doctrine, the Court of Appeals committed three critical errors. First, the court narrowed the scope of church autonomy, ignoring its explicit protections for internal religious governance. Second, the court relied on an inapplicable approach called "neutral principles," which gave the court the false impression that it could adjudicate this case without violating the First Amendment. And third, the court relied on caselaw following the now-overruled decision in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to conclude that applying church autonomy would violate the Establishment Clause.

1. Church autonomy's scope is not limited just to faith and doctrine, but also protects church governance.

The Court of Appeals failed to recognize that the church autonomy doctrine protects not only faith and doctrine, but also internal church governance. *See* Slip Op. at 14 (focusing only on whether lawsuit required "resolv[ing] any religious disputes or … rely[ing] on religious doctrine"). As explained above, this Court and others have repeatedly held that the doctrine also protects the "internal governance of religious organizations." *COGIC*, 531 S.W.3d at 156; *see also Redwing*, 363 S.W.3d

at 446 ("internal governance of religious bodies"); *accord Our Lady*, 591 U.S. at 747 ("matters of internal government"); *supra* at 19-24. And courts have squarely rejected attempts to "narrow[]" church autonomy solely to matters of faith or doctrine. *Simpson*, 494 F.2d at 493.

This error below led to two related missteps. First, it is irrelevant whether there was a "religious explanation" for the statements Garner challenges. *See* Slip Op. at 12 (citing *Drevlow v. Lutheran Church*, 991 F.2d 468, 469–72 (8th Cir. 1993)).[6] Because the statements arose "during the course of an ecclesiastical undertaking" concerning religious leadership and affiliation, the SBC "need not proffer any religious justification." *Anderson*, 2007 WL 161035, at *15, 26; *Hosanna-Tabor*, 565 U.S. at 194–95. As the Court of Appeals held in *Anderson*, "regardless" of whether the "statement[s]" a plaintiff challenges were made "based on religious doctrine or practice," church autonomy applies when they arise in the context of a "church governance" matter, a core "ecclesiastical concern." *Id.* at *26–27.

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[6] *Drevlow*'s requirement that a church offer a "religious explanation" for its ministerial employment actions is now bad law. 991 F.2d at 472. The U.S. Supreme Court subsequently held that such a requirement "misses the point." *Hosanna-Tabor*, 565 U.S. at 194–95. "The purpose of the [ministerial] exception is not to safeguard a church's decision [about] a minister only when it is made for a religious reason" but instead to ensure ministerial decisions are "the church's alone." *Id.* And, regardless, there demonstrably was a religious motivation here: obeying an "internal church directive" to inquire into its affiliated churches' compliance with religious standards about pastoral misconduct. *Diocese of Lubbock*, 624 S.W.3d at 516; *see* T.R. Vol. I, 111–12, 114.

Second, church autonomy still applies even if this wasn't "a pastoral disciplinary process" but rather an inquiry into "how the SBC church responded to sexual abuse allegations." Slip Op. at 14; *see also* Appellees' Answer in Opp. to R. 11 App. ("Answer") at 12 (same). That distinction simply doesn't make a constitutional difference. True, there have been many cases bringing tort claims against church disciplinary proceedings, which courts have correctly rejected as interfering with church autonomy. But when courts do so, it is because of a broader principle, and one that applies in this case too: the Constitution's broad protections for church governance. *See, e.g.*, *Pfeil*, 877 N.W.2d at 534, 542; *Cha*, 553 S.E.2d at 515.

Disciplinary proceedings are one part of church governance. But there are others, such as the form of internal inquiry in this case. Indeed, this case involves a facet of church governance that, given the non-hierarchical nature of Southern Baptist polity, is closely related to judicial conceptions of church discipline: an internal religious inquiry designed to discern whether an affiliated church should be disfellowshipped for failing to hold its religious leaders to the "standard of morals required of them" within the Convention's "ecclesiastical government." *Milivojevich*, 426 U.S. at 714. "Imposing tort liability" here would "have the same effect as prohibiting the practice" of making these inquiries and thus "would compel the [Convention] to abandon part of its religious teachings." *Paul v. Watchtower Bible & Tract Soc'y of N.Y.*, 819

F.2d 875, 881–83 (9th Cir. 1987) (Free Exercise Clause required rejecting defamation claim).[7]

2. The "neutral principles" approach does not apply to questions of internal church governance like those here.

The Court of Appeals also erroneously determined that it could resolve this case without interfering with church autonomy by applying the "neutral legal principles" approach. Slip Op. at 13-15. Also known as the "'formal title' doctrine," this approach was recognized to *support* standard church autonomy principles when confronting the unique problem of "resolving litigation over religious property." *Md. & Va. Eldership of Churches of God v. Church of God*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring). These are "fundamentally different types of dispute[s]" because they involve situations where two religious factions both claim to be the sole "true" church, making it impossible to judicially defer to a single religious body. Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 316–19, 336 (2016). But the formal-title/neutral principles approach doesn't apply outside such a context—it was "an effort to accommodate church autonomy, not to eliminate it." Paul Horwitz, *Churches As First Amendment Institutions: Of Sovereignty and Spheres*, 44 Harv. C.R.-C.L. L. Rev. 79, 118 (2009).

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[7] Further, both Garner and the Court of Appeals concede that an identical inquiry by a *hierarchical* religion would be protected. Answer at 12; Slip Op. at 10, 14. But punishing Southern Baptists for their "theological choices" would, as noted above, unconstitutionally discriminate against non-hierarchical polities. *See Catholic Charities Bureau*, 605 U.S. at 248–50.

Thus, before the decision below, neither this Court nor the Tennessee Court of Appeals had ever used the approach to resolve a defamation claim against a religious body arising from internal church communications. To the contrary, courts—including the Court of Appeals—have routinely followed *Hutchison*, which dismissed a ministerial defamation claim and held that "[t]he 'neutral principles' doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Hutchison*, 789 F.2d at 396; *Anderson*, 2007 WL 161035, at *7 (same). They include the supreme courts in Arkansas, Massachusetts, Minnesota, and Texas.

- *El-Farra*, 226 S.W.3d at 795–96 (rejecting "neutral principles" approach to resolve defamation claims regarding statements "over [plaintiff's] suitability to remain as Imam");
- *Hiles*, 773 N.E.2d at 935–37 (rejecting adjudicating church-minister defamation disputes under "the established rules of common law," since churches are "entitled to absolute protection" from such claims);
- *Pfeil*, 877 N.W.2d at 541 (claims arising from internal church disciplinary statements are not amenable to "the application of neutral principles of law"); and
- *Diocese of Lubbock*, 624 S.W.3d at 516 ("neutral principles" inapplicable to defamation claim over statement from intrachurch proceedings "regulat[ing] the character and conduct of [church] leaders").

Some other courts have allowed the possibility that certain communications that are allegedly entirely unrelated to church governance *may* be able to be resolved under the "neutral principles" approach in some narrow circumstances. *See, e.g.*, *Belya v. Kapral*, 45 F.4th 621, 632–33 (2d Cir. 2022) (noting that allegedly knowingly false

accusations of forgery that were allegedly maliciously posted on the internet may be actionable); *but see Belya v. Kapral*, 59 F.4th 570, 582 (2d Cir. 2023) (Park, J., joined by Livingston, C.J., and Sullivan, Nardini, and Menashi, J.J., dissenting from denial of rehearing en banc) ("Taken to its logical endpoint," application of this approach "would eviscerate the church autonomy doctrine").[8] But those cases are tangential to the facts here, where the communications were entirely internal to the leadership of cooperating religious bodies affiliated with the SBC and concerned a substantial matter of internal church governance.

Indeed, the U.S. Supreme Court has repeatedly rejected requests to apply the "neutral principles" approach outside of church property disputes. Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc'y Rev. 244, 249 (2021) (noting the court has exclusively employed the framework when "the only matter that remains for civil resolution … is who gets legal title to the church property"). *Milivojevich* held that "reli[ance] on purported 'neutral principles'" was not appropriate to review "a matter of internal church government," as such

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[8] *See also Belya*, 775 F. Supp. 3d at 766 (ultimately dismissing defamation claims at summary judgment under church autonomy); *accord Diocese of Lubbock*, 624 S.W.3d at 516 (dismissing defamation claim predicated in part on statements made publicly); *Hartwig*, 93 F. Supp. 2d at 219 (similar); *Kyritsis*, 382 S.W.2d at 555 (denying defrocked priest's motion to enjoin allegedly libelous letter to "parisioners and friends, … the press, and other persons completely disassociated with the Greek community"); *Esses*, 2024 WL 4494086, at *1, 4 (similar). *See also Huntsman*, 127 F.4th at 797–98 (Bress, J., concurring in judgment) (rejecting the idea that the "neutral principles" approach can be used to resolve internal church conflicts).

matters were "obviously" beyond the "competence" of "[c]ivil judges." 426 U.S. at 714–15, 714 n.8, 717, 721. And *Hosanna-Tabor* similarly refused to apply "neutral" laws to a religious organization's decision to terminate a minister, because it is "more than a mere employment decision" but part of "the internal governance of the church." 565 U.S. at 188–90. This is because the church autonomy doctrine's purpose is to *prevent* "neutral" laws from "interfer[ing] with an internal church decision that affects the faith and mission of the church itself." *Id.* at 190.

That sensible boundary is applicable here. There is no neutral principle that can determine liability for internal church communications relating to the SBC's core religious function of determining whether churches have the leadership standards necessary for affiliation. And regardless, "court[s] may not rely on neutral principles when *application* of those principles would impose civil liability on a church that complies with its own internal governance." *Diocese of Lubbock*, 624 S.W.3d at 516. That is exactly what would happen here.

3. Applying church autonomy does not violate the Establishment Clause.

Finally, the Court of Appeals erroneously determined that applying church autonomy in this case would offend the Establishment Clause. Slip Op. at 12–13. The court's fear was that if it applied church autonomy to dismiss Garner's suit, it would effectively be "favoring religious institutions over secular institutions," who necessarily cannot raise a church autonomy defense. *Id.* at 13. And under this Court's decision in *Redwing*, the Court of Appeals suggested, that result violates the Establishment Clause. *Id.* at 12–13. That was error.

In *Redwing*, this Court explained in relevant part that it could not adopt "a more expansive application of the ecclesiastical abstention doctrine" because it "runs the risk of placing religious institutions in a preferred position, and favoring religious institutions over secular institutions could give rise to Establishment Clause concerns." *Redwing*, 363 S.W.3d at 451 (citation omitted). For this proposition, *Redwing* relied on older Establishment Clause cases such as *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 336 (5th Cir. 1998). *Sanders*, in turn, cited *County of Allegheny v. ACLU*, which applied the U.S. Supreme Court's so-called "*Lemon* test" for the Establishment Clause. 492 U.S. 573, 592–94 (1989) (referring to *Lemon v. Kurtzman*, 403 U.S. 602 (1971)). And "[u]nder the *Lemon* analysis," the government cannot "convey[] or attempt[] to convey a message that religion … is *favored* or *preferred*." *Id.* at 592–593.

But the U.S. Supreme Court has since explicitly repudiated *Lemon*'s "ahistorical approach to the Establishment Clause" and its "endorsement test offshoot." *Kennedy*, 597 U.S. at 534 (recognizing that *Allegheny* and *Lemon* were "long ago abandoned"). "In place of *Lemon* and the endorsement test, [the Supreme] Court has instructed that the Establishment Clause must be interpreted by 'reference to historical practices and understandings.'" *Id.* at 535 (quoting *Town of Greece, N.Y. v. Galloway*, 572 U.S. 565, 576 (2014)); *see also id.* at 537 & n.5 (providing guidance on terms of analysis); *Hilsenrath v. Sch. Dist. of Chathams*, 136 F.4th 484, 491 (3d Cir. 2025) (same).

Thus, there is no constitutional problem with recognizing and applying rights that are specific to religious organizations. To the contrary, the U.S. Constitution *requires* it in cases like this one. The text of the First Amendment, after all, "gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189; *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2351 (2025) (noting the "generous measure of [constitutional] protection" afforded to "all religious acts and practices").

In sum, there is now no support for "the proposition that shielding religious leaders and organizations from tort liability for their actions in the course of a church disciplinary proceeding would violate the Establishment Clause." *Pfeil*, 877 N.W.2d at 540 (citing *Hosanna-Tabor*). Instead, the Religion Clauses protect a "distinct sphere of authority" by ensuring that religious associations "enjoy a *greater* right to control their own affairs than that enjoyed by other groups." *Catholic Charities Bureau*, 605 U.S. at 257–58 (Thomas, J., concurring). Here, that sphere protects the SBC's exercise of internal church governance.

II. The TPPA sets an enhanced evidentiary standard at the prima facie stage.

Just as the Court of Appeals held that Garner could properly plead his way past church autonomy, it also determined that he could plead his way past Appellants' petitions under the Tennessee Public Participation Act. That was incorrect. The TPPA exists to reduce burdens that unmeritorious litigation places on speech and associated rights. Its protection comes in the form of an early merits adjudication under an enhanced summary-judgment-like standard. *Charles*, 693 S.W.3d at 267, 280–81. To meet his prima facie case under this standard, Garner needed

to look beyond his unsworn pleadings and rely exclusively on *admissible* evidence. But neither the trial court nor the Court of Appeals held him to this burden; instead, they accepted the allegations in his Amended Complaint and ruled for him. This Court should reverse that decision.

The TPPA, enacted in 2019, is an "anti-SLAPP statute," meaning it protects organizations and individuals facing "strategic lawsuits against public participation." *Charles*, 693 S.W.3d at 267. Recognizing that "[t]he primary aim" of some lawsuits "is not to prevail on the merits, but rather to chill the speech of the defendant by subjecting him or her to costly and otherwise burdensome litigation," "the TPPA establishes a procedure for swift dismissal of non-meritorious claims." *Id.*

TPPA analysis proceeds in three stages. *See* Tenn. Code § 20-17-105(a)–(c); *Charles*, 693 S.W.3d at 267–68. First, the court considers whether the petitioners—here, the SBC, the Credentials Committee, the Executive Committee, and Peters—have established "a prima facie case that a legal action against [it] is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenn. Code § 20-17-105(a); *Charles*, 693 S.W.3d at 267. Second, if petitioners meet their burden, the burden shifts to the respondent—here, Garner—to establish "a prima facie case for each essential element of the claim in the legal action." Tenn. Code § 20-17-105(b); *Charles*, 693 S.W.3d at 267–68. Third, if the respondent meets his burden, the burden returns to the petitioners to establish a valid defense to the legal claims in the case. Tenn. Code § 20-17-105(c); *Charles*, 693 S.W.3d at 267–68. If the respondent fails at the second stage, or the

petitioners succeed at the third, "the court must grant the petition and dismiss the suit with prejudice." *Id.* at 268.

This multi-stage inquiry is a product of the General Assembly's careful "balanc[ing]" of "competing interests." *Id.* at 267. "On the one hand," the TPPA "seeks to 'encourage and safeguard the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law.'" *Id.* (quoting Tenn. Code § 20-17-102). On the other hand, "it also seeks to 'protect the rights of persons to file meritorious lawsuits for demonstrable injury.'" *Id.* (quoting Tenn. Code § 20-17-102).

As part of that careful balancing, the TPPA sets a specific evidentiary standard for each side's prima facie case at stages one and two. "To establish a 'prima facie' case under the TPPA, a party must present enough evidence to allow the jury to rule in his favor on that issue." *Charles*, 693 S.W.3d at 281. And as is normally the case "on a motion for summary judgment or motion for directed verdict," *id.*, the party must go beyond the pleadings and provide "*admissible* evidence"—such as through "sworn affidavits stating admissible evidence." Tenn. Code § 20-17-105(d) (emphasis added); *see Charles*, 693 S.W.3d at 281; *see also Charles v. McQueen*, No. M2021-878-COA-R3-CV, 2022 WL 4490980, at *8 (Tenn. Ct. App. Sep. 28, 2022) ("[T]he TPPA clearly provides that, in consideration of a TPPA petition, the trial court is to rely upon 'admissible' evidence … ."), *overruled on other grounds by Charles*, 693 S.W.3d at 284.

Neither lower court got this standard right. When evaluating Garner's burden at stage two, the courts looked to the motion-to-dismiss standard from Rule 12.02, under which a court must accept the complaint's allegations as true. T.R. Vol. IV, 566–69; Slip Op. at 18. The trial court noted it was not "familiar with the Public Participation Act" T.R. Vol. IV, 566 before applying the Rule 12.02 standard. The Court of Appeals, for its part, saw no need to correct the error because in its estimation "[t]here is no meaningful difference between [the TPPA] standard and the Rule 12 standard, which requires the trial court to treat the allegations in the complaint as true." Slip Op. at 18.

That was error. The TPPA explicitly limits what a court may consider at stage two of the analysis. Specifically, a reviewing court can rely only on "sworn affidavits stating admissible evidence" or "other admissible evidence." Tenn. Code § 20-17-105(d); *Charles*, 693 S.W.3d at 281. A party cannot base his prima facie case on his own unsworn pleadings—after all, they are not a source of "evidence." *Charles*, 693 S.W.3d at 280 (quoting *Prima facie case*, Black's Law Dictionary 1441 (11th ed. 2019)); *see Hillhaven Corp. v. State ex rel. Manor Care, Inc.*, 565 S.W.2d 210, 212 (Tenn. 1978). The TPPA's prima facie standard is thus an *evidentiary* hurdle, one that requires the party to put forward *admissible* evidence—and *enough* of it to permit a jury to find in his favor. *Charles*, 693 S.W.3d at 280.

Rule 12.02 requires something else entirely. A motion to dismiss "challenges only the legal sufficiency of the complaint," not "the strength of the plaintiff's proof or evidence." *Ellithorpe v. Weismark*, 479 S.W.3d

818, 824 (Tenn. 2015); *Phillips v. Montgomery Cnty.*, 442 S.W.3d 233, 237 (Tenn. 2014). The question is whether "the plaintiff can prove [a] set of facts … that would entitle [him] to relief." *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). And in evaluating the question, the court "examin[es] the pleadings alone." *Ellithorpe*, 479 S.W.3d at 824. In fact, if the motion relies on evidence outside the pleadings, it must be treated as a different type of motion, namely one for summary judgment. *See* Tenn. R. Civ. P. 12.02; *Mann v. Alpha Tau Omega Fraternity*, 380 S.W.3d 42, 46 (Tenn. 2012).

Conflating the TPPA and Rule 12.02 standards makes no sense. The TPPA would provide little heightened protection if all it required the petitioner to do was support a prima facie case with his own, unsworn allegations. Indeed, the courts below ignored the important differences between a Rule 12.02 motion and the statutory framework of the TPPA. Because they failed to appreciate the required, enhanced evidentiary standard, the lower courts committed multiple consequential errors.

As an initial matter, the trial court wrongly considered the allegations in Plaintiffs' unsworn complaint, relying on them extensively in finding Plaintiffs' prima facie case satisfied. T.R. Vols. I, 1–36; IV, 566–73. Allegations in an unsworn complaint are neither a "sworn affidavit[] stating admissible evidence" nor "other admissible evidence." Tenn. Code § 20-17-105(d); *see Charles*, 693 S.W.3d at 281; *Hillhaven Corp.*, 565 S.W.2d at 212 ("Allegations in pleadings are not, of course, evidence of the facts averred."); *Tanner v. Whiteco, L.P.*, 337 S.W.3d 792, 799 (Tenn. Ct. App. 2010) ("[I]t is well settled that pleadings are not evidence.").

Further, the trial court erroneously accepted the allegations in the complaint as true. But by accepting them no matter their admissibility, T.R. Vol. IV, 543, 567–70, the court violated its statutory obligation to rely on admissible evidence. Tenn. Code § 20-17-105(d). To be sure, the trial court also considered Rule 72 declarations submitted by Plaintiffs in response to the TPPA petitions. T.R. Vol. IV 476–97, 571–72. But the bulk of its ruling was based on the allegations in the complaint, not any admissible evidence, and thus the court's acceptance of the complaint's allegations taints its entire decision. T.R. Vol. IV, 543, 566–71. Most notably, the trial court stated that it "must take as true today, the allegations in this Complaint that this anonymous report under the allegations of the Complaint was not investigated at all." T.R. Vol. IV, 568–69. And throughout its oral ruling, the trial court repeated that it was grounded in the complaint's allegations. T.R. Vol. IV, 543, 567–70.

The Court of Appeals, for its part, registered no material dissent with the trial court's analysis. *See* Slip Op. at 18. And its decision will have implications well beyond this case. Far from there being "*no* meaningful difference[s] between" the TPPA standard and the Rule 12.02 standard, *id.*, there are *highly* meaningful differences. Allegations in complaints are frequently supported only by inadmissible evidence. So if a court ruling on a TPPA petition must accept those allegations as true, it will make its determination based on inadmissible evidence, in flat contradiction of statutory command. This would permit respondents to avoid the rigorous process of presenting evidence, a process that exists to protect the important speech and associational interests that the TPPA was written to protect. The TPPA and *Charles* correctly reject that result.

In sum, the TPPA commands courts evaluating a prima facie case to base their decision exclusively on admissible evidence. In applying the Rule 12.02 standard, the lower courts erased that statutory imperative. The judgment of the Court of Appeals should be reversed and Garner's claims dismissed under the TPPA.

CONCLUSION

This Court should reverse and order dismissal of Garner's claims.

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Respectfully submitted,

/s/ *R. Brandon Bundren*
R. BRANDON BUNDREN
BPR #30985
COLE S. MANION
BPR #41292
BRADLEY ARANT BOULT CUMMINGS LLP
1221 Broadway
Suite 2400
Nashville, TN 37203
(615) 252-4647
bbundren@bradley.com

/s/ *Daniel H. Blomberg*
DANIEL H. BLOMBERG*
DIANA VERM THOMSON*
JORDAN T. VARBERG*
AMANDA G. DIXON*
THE BECKET FUND FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006
(202) 955-0095
dblomberg@becketfund.org

THOMAS J. HURNEY, JR.*
JACKSON KELLY PLLC
500 Lee Street E
Suite 1600
P.O. Box 553
Charleston, WV 25322
(304) 340-1000

SCARLETT S. NOKES
BPR # 028994
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
2099 Pennsylvania Ave. NW
Suite 100
Washington, DC 20006

thurney@jacksonkelly.com

(202) 747-1901
snokes@sheppardmullin.com

**Admitted pro hac vice*

Counsel for Appellants Executive Committee of the SBC and Christy Peters

/s/ *Matthew C. Pietsch*
MATTHEW C. PIETSCH
BPR #24659
GORDON REES SCULLY
MANSUKHANI, LLP
4020 Aspen Grove Drive
Suite 500
Franklin, TN 37067
(615) 772-9000
mpietsch@grsm.com

Counsel for Appellants Southern Baptist Convention and Credentials Committee of the Southern Baptist Convention

CERTIFICATE OF COMPLIANCE

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DATED: August 20, 2025 /s/ *R. Brandon Bundren*

CERTIFICATE OF SERVICE

I certify that on August 20, 2025, a true and correct copy of this brief was served on all registered users participating in this case, including the following by operation of the Court's e-filing system:

Joseph E. Costner (joecostner@costnergreene.com)
Costner Green PLLC

Bryan E. Delius (bryan@deliusmckenzie.com)
Delius & McKenzie, PLLC

Attorneys for Plaintiffs-Appellees

John R. Jacobson (jjacobson@rjfirm.com)
Katharine R. Klein (kklien@rjfirm.com)
Riley & Jacobson, PLC

Steven G. Mintz (mintz@mintzandgold.com)
Terence W. McCormick (mccormick@mintzandgold.com)
Mintz & Gold LLP

Attorneys for Defendant Guidepost Solutions, LLC

DATED: August 20, 2025 /s/ *R. Brandon Bundren*