IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

PRESTON GARNER, *et al.*,	)	
	)	
Plaintiffs-Appellees,	)	**No. E2024-00100-SC-R11-CV**
	)	
	)	
v.	)	**No. E2024-00100-COA-R11-CV**
	)	
	)	
SOUTHERN BAPTIST CONVENTION, *et al.*,	)	**Blount County Circuit Court No. L-21220**
	)	
Defendants-Appellants.	)	

ON APPEAL BY PERMISSION FROM
THE JUDGMENT OF THE COURT OF APPEALS

AMICUS BRIEF OF THE STATE OF TENNESSEE IN SUPPORT OF REVERSAL

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INTRODUCTION

Jesus declared the need to render "unto Caesar the things which are Caesar's; and unto God the things that are God's." *Matthew* 22:21. That oft-cited[1] sentiment acknowledges that church and state remain distinct—and that each maintains its own sphere of authority. Those distinct spheres lie at the heart of the ecclesiastical abstention doctrine, commonly referred to as the church autonomy doctrine. The idea is that the First Amendment allows religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020). At the same time, the Constitution allows States to enact laws that protect against harm. The church's rightful authority over ecclesiastical matters does not leave it immune from all legal restrictions. Religious liberty exists alongside accountability. And the church autonomy doctrine sets the boundaries for each sphere—secular and sacred.

The Court of Appeals misunderstood those boundaries. The church autonomy doctrine requires civil courts to determine whether allowing a claim to proceed would require (1) judicial resolution of a matter of faith and doctrine or (2) intrusion into a matter of internal church governance. Rather than engage in those inquiries, the court focused on whether the challenged conduct "resulted from the application or interpretation of

[1] *See, e.g., Cath. Charities Bureau v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 257-58 (2025) (Thomas, J., concurring); *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 803 (9th Cir. 2025) (en banc) (Bumatay, J., concurring).

any religious canon" and green-lit civil intrusion at the apex of internal governance—control over employees and church structure. Op. at 14. That was error. The defamation claims here run headlong into a well-established component of church autonomy: the ministerial exception.

While the church autonomy doctrine forecloses the claims asserted here, it does not deprive Tennessee courts of jurisdiction. Rather, it confers an immunity from suit, the denial of which requires immediate review. The Court should clarify both the doctrine's non-jurisdictional nature and the proper pathway for an interlocutory appeal.

STATEMENT OF CASE AND FACTS

A. The Southern Baptist Convention

More than 150 years before the Founding, Baptist churches began taking root in America. Roger Williams, an early settler, called for "absolute separation of church and state and for freedom of conscience." Jesse C. Fletcher, *The Southern Baptist Convention: A Sesquicentennial History* 16 (1994), https://perma.cc/H7NT-W8KS. Those beliefs put him at odds with Puritan leadership in Massachusetts, who banished Williams in 1635. *Id.* Williams fled to modern-day Rhode Island, where he established America's first Baptist church. *Id.* at 16-17.

Baptist churches quickly multiplied across the United States. *Id.* at 17, 31; Robert A. Baker, *The Southern Baptist Convention and Its People: 1607-1972*, at 23-27, 86-93 (1974), https://perma.cc/6DNQ-VZDM. As more Baptist churches formed, they began to associate and to organize conventions "for the purpose of winning others to Christ" and accomplishing shared benevolent purposes. Baker, *supra*, at 97. But

religious controversies in the antebellum period led to a "structural separation" between northern and southern Baptists. *Id.* at 148.

In May 1845, southern Baptists met to create a denominational body that would "unite independent churches into an effective denominational structure without overwhelming the autonomy of local congregations." *Id.* at 161. What emerged was a "Convention" that would elect "Boards of Managers" to "carry[] out [certain] benevolent objects." *Id.* at 167. Local members would make up each board, which would act for the Convention within their authorities. *Id.* With that, the Southern Baptist Convention was formed. *Id.* at 168.

Since then, the SBC has successfully "encourage[d] local, associational, and state cooperation … and set challenging goals for the constituency." *Id.* at 447. Today, there are more than 50,000 churches in "cooperation" with the SBC. *See SBC Churches Directory*, S. Baptist Convention, https://churches.sbc.net/. That "cooperation" designation is no empty label; it comes with benefits—and obligations.

Whether a Baptist church is "in cooperation with the Convention" determines whether it can participate in the SBC. S. BAPTIST CONVENTION CONST. art. III, https://perma.cc/QQ9H-GS9C; *see also id.* art. III, § 2; *id.* art. VIII. There are five requirements to obtain "cooperation" status. These include maintaining a faith and practice closely identified with the Convention's adopted statement of faith, formally approving an intention to cooperate, and acting consistent with the SBC's beliefs about sexual abuse. *Id.* art. III, § 1.

The Credentials Committee assesses cooperation with the SBC. If concern over a church's cooperation arises, the Committee considers the issue and recommends action to the Executive Committee or the Convention. *See SBC Bylaw* 8(C), S. Baptist Convention, https://perma.cc/4JBE-2A8A. The Executive Committee then determines whether the church remains in cooperation. *Id.*

B. Factual Background

Everett Hills is a Tennessee Baptist church that operates in cooperation with the SBC. In January 2023, the Credentials Committee sent Everett Hills a letter indicating that the Committee had "received" information that Everett Hills "may employ an individual with an alleged history of abuse." R.I, 21. The letter noted the Credentials Committee's "responsibility to determine" whether a Baptist church remains in cooperation with the SBC. *Id.* It then asked Everett Hills for information about its hiring and sexual abuse policies, Preston Garner's status in the church, and its knowledge of any allegations of abuse by Garner. *Id.* The letter concluded by thanking Everett Hills for its "partnership" with the SBC. *Id.* The Credentials Committee also "verbally communicated" "th[e] same information" in the letter. *Id.*; R.I, 27. It later forwarded the letter to Dr. Randy Davis, the President of the Tennessee Baptist Mission Board, a state-level convention affiliated with the SBC. R.I, 22; *State and Local Associations*, S. Baptist Convention, https://perma.cc/V6CK-3GEW.

By this time, Garner had stopped working at Everett Hills and accepted a pastor position at First Baptist Concord Church. R.I, 24. He also was working for "The King's Academy, a Baptist affiliated Christian

school." R.I, 20. After receiving the SBC letter, Davis forwarded it to King's, which suspended Garner "upon receipt of the communication of the Credentials Committee." R.I, 24. First Baptist Concord Church "terminated" Garner's position "on February 23, 2023, as a result of the" information in the SBC's correspondence. *Id.*

C. Procedural History

Garner and his wife sued the SBC, its Executive Committee, the Credentials Committee, Guidepost Solutions LLC, and Christy Peters, the SBC's Committee Relations Manager. R.I, 17-18. The complaint asserted claims for defamation, false light, and loss of consortium. R.I, 27-30. The SBC, the Committees, and Peters ("SBC Defendants") moved to dismiss, invoking the church autonomy doctrine. R.I, 44, 52-54; R.III, 410, 414. They also filed Tennessee Public Participation Act (TPPA) petitions. R.I., 54-150; R.II, 151-300; R.III, 301-377.

The trial court largely denied the motions to dismiss and denied the TPPA petitions in full. R.IV, 498-99. In the court's view, the SBC is "not given immunity" for "tortious conduct" because the claim asserted is "not something rooted in religious belief" but "can be resolved by applying neutral legal principles." R.IV, 544. The court also held the TPPA did not apply. R.IV, 566-71. SBC Defendants appealed. R.IV, 579, 583.

The Court of Appeals affirmed all but the trial court's conclusion that the TPPA did not apply. Op. at 1. It started by analyzing its jurisdiction to consider SBC Defendants' church autonomy defense. Though parties have a statutory right to appeal under the TPPA, the court concluded that the trial court's rejection of the church autonomy defense fell outside that right. *Id.* at 9. The court held, though, that the

"'doctrine … functions as a subject matter jurisdictional bar.'" *Id.* (quoting *Church of God in Christ v. L.M. Haley Ministries*, 531 S.W.3d 146, 159 (Tenn. 2017)). And because a jurisdictional challenge "may be raised at any time," the court determined that it could nonetheless consider SBC Defendants' church autonomy defense along with their interlocutory TPPA appeal. *Id.*

On the merits, the court declined to apply the church autonomy doctrine. "The conduct at issue is the [SBC]'s purported publication of written and oral statements" about Preston Garner's "'alleged history of abuse.'" *Id.* at 14. That conduct, the court found, did not "result[] from the application or interpretation of any religious canon." *Id.* The court stated that "whether Everett Hills was in friendly cooperation with the SBC has no bearing on the Garners' claims," so the "ecclesiastical abstention doctrine does not apply." *Id.* at 14-15. The court also held that Plaintiffs met their burden under the TPPA. *Id.* at 17-23.

ARGUMENT

I. The Church Autonomy Doctrine Bars the Garners' Claims.

The church autonomy doctrine—also known as the ecclesiastical abstention doctrine—protects matters of faith and doctrine as well as closely linked matters of internal government. That protection applies here. The Court of Appeals' contrary decision conflates differing components of the doctrine and intrudes into core issues of church polity.

A. The Church and the State are "two rightful authorities." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1496-97 (1990). The

Church maintains authority over "questions of [religious] discipline, or of faith, or of ecclesiastical rule, custom, or law." *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 710 (1976) (quoting *Watson v. Jones*, 80 U.S. 679, 727 (1871)). The State exercises authority over "all matters affecting the public health or the public morals." *Stone v. Mississippi*, 101 U.S. (11 Otto) 814, 818 (1879). This concept of "separate spheres of authority for church and state" traces from "Augustine's separation of the city of man and the city of God," to the Magna Carta, to "[t]he first settlers in America." Robert J. Renaud & Lael D. Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67, 68-84 (2008).

Against this backdrop, the Founders adopted the First Amendment's Religion Clauses. Those clauses state that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Since the Founding, this language has been used to "justif[y] protections for church autonomy" and "respect religious institutions' legitimate and distinct sphere of authority." *Cath. Charities*, 605 U.S. at 258 (Thomas, J., concurring) (compiling Founding Era statements and early 19th century decisions).

These protections—referred to as the "church autonomy doctrine"—allow religious institutions to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The doctrine ensures that

"[r]eligious questions are … answered by religious bodies." *McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013). Church autonomy thus provides a "structural limitation" separating the sacred from the secular. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015).[2]

The boundaries of the church autonomy doctrine's structural protections are critically important. Religious institutions must retain control over doctrinal decisions and matters of theology. At the same time, they cannot operate totally beyond the reach of the law. And "[w]hile courts have generally intuited the coexistence of church autonomy and accountability, they have had a harder time articulating how to put the two together." Lael Weinberger, *The Limits of Church Autonomy*, 98 NOTRE DAME L. REV. 1253, 1257 (2023) [hereinafter

[2] The U.S. Supreme Court has grounded the church autonomy doctrine in "[b]oth Religion Clauses." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). But it is hard to see how the Establishment Clause could justify restrictions on *state* laws. Founding-era States maintained established churches. *See* Philip Hamburger, *Separation of Church and State* 89-91 (2002). The Establishment Clause operated as "a federalism provision intended to prevent Congress from *interfering with state establishments*." *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 49 (2004) (Thomas, J., concurring in judgment) (emphasis added). Even so, "the Free Exercise Clause is an independently sufficient basis for the [church autonomy] doctrine." *Cath. Charities,* 605 U.S. at 256 n.1 (Thomas, J., concurring). Therefore, any "skepticism toward the incorporation of the Establishment Clause" should not cause "doubt [about] the correctness of … precedents" applying the church autonomy doctrine to state laws. *Id.*

Limits]. A careful application of the U.S. Supreme Court's dual-track framework offers a clean path to reconciling those competing interests.

B. The church autonomy doctrine provides religious institutions "independence [1] in matters of faith and doctrine and [2] in closely linked matters of internal government." *Our Lady*, 591 U.S. at 747. That means that if a legal claim *either* requires courts to resolve a question of "faith and doctrine" *or* involves an issue of "church government," *Kedroff*, 344 U.S. at 116, the church autonomy doctrine prohibits civil courts from adjudicating that claim, *Watson*, 80 U.S. at 728-29. These two distinct components of church autonomy provide independent paths to civil immunity.

1. *Faith and Doctrine.* Civil courts cannot resolve matters of "faith and doctrine." *Our Lady*, 591 U.S. at 747. That faith-and-doctrine component of church autonomy applies when "*resolution*" of a civil claim requires "extensive inquiry" into and resolution of an ecclesiastical issue. *Milivojevich*, 426 U.S. at 709 (emphasis added); *see also Wells ex rel. Glover v. Creighton Preparatory Sch.*, 82 F.4th 586, 594 n.4 (8th Cir. 2023). The key here is that the element of the legal claim asserted must not turn on the court's *resolution* of a religious question.

Not every action *motivated* by faith turns on *resolution* of matters of faith. A religious institution cannot ignore building occupation limits, Tenn. Code. Ann. § 68-120-101, because of its belief that the Lord "inviteth them all to come unto him and partake of his goodness," *2 Nephi* 26:33. Nor can ministers drive 100 miles per hour to reach as many people as possible, Tenn. Code Ann. § 55-8-152(c), just because they are

called to "[g]o into all the world and preach the gospel to all creation," *Mark* 16:15. While these actions may be motivated by religious beliefs, courts need not resolve "strictly and purely ecclesiastical" questions to find the elements of these offenses satisfied. *Watson*, 80 U.S. at 733.

Some legal claims do, though, require resolution of a matter of faith or doctrine. Consider the facts of *Molko v. Holy Spirit Association for the Unification of World Christianity*, 762 P.2d 46, 64 (Cal. 1988). There, the plaintiff alleged that her church falsely imprisoned her by compelling her to stay at various church facilities. *Id.* The plaintiff admitted that "she was theoretically free to depart at any time" and that she was never "physically restrained, subjected to threats of physical force, or subjectively afraid of physical force." *Id.* The alleged compulsion stemmed from the church's insistence that the plaintiff's family would be eternally damned if she left church confines. *Id.* That "theory implicate[d] the Church's beliefs: it plainly s[ought] to make the Church liable for threatening divine retribution." *Id.* In short, determining whether the church "wrongfully deprived" the plaintiff of her "freedom to leave a particular place" turned on a matter of faith and doctrine that the Court could not resolve. *Id.* at 63 (quotations omitted).

That is not to say that *all* false imprisonment cases—or all similar tort claims—require courts to resolve matters of faith and doctrine. If a church physically prevents a member from leaving church facilities, perhaps causing physical harm in the process, a civil court could resolve false imprisonment or battery claims without having to resolve any

matter of faith or doctrine. *Cf. Pleasant Glade Assembly of God v. Schubert*, 264 S.W.3d 1, 12 (Tex. 2008).

The faith-and-doctrine component of church autonomy thus requires a case-by-case analysis to determine whether the claim asserted requires the civil court to *resolve* an issue of faith or doctrine.

2. *Internal Church Governance.* Courts also cannot decide matters of internal church government. *Our Lady*, 591 U.S. at 747. This component of the church autonomy doctrine "protect[s] the[] autonomy" of "internal management decisions that are essential to [a religious] institution's central mission." *Id.* at 746.

Unlike the faith-and-doctrine component, the internal-governance component does *not* turn on whether a claim requires resolution of a religious matter. The First Amendment protects "a religious group's right to shape its own faith and mission." *Hosanna-Tabor*, 565 U.S. at 188. So "internal management decisions" of religious institutions are categorically beyond the reach of secular courts, whether the asserted legal claim requires resolution of a doctrinal dispute or not. *Our Lady*, 591 U.S. at 746. Indeed, religious institutions need not prove that certain governance decisions were "made for a religious reason" at all. *Hosanna-Tabor*, 565 U.S. at 194. For a "constrained set of governance decisions," the actions "of a religious institution" are so core to the practice of faith that they "are presumptively religious." Weinberger, *Limits*, at 1320.

But "[t]he list of subjects that should be considered religious without detailed demonstration should be narrow," lest the presumption overcome the rule's rationale and create blanket immunity. *Id.* at 1311.

A few categories of presumptively religious internal-governance decisions emerge from the caselaw: (1) "the selection, supervision, and retention of ministers," (2) "matters of membership," and (3) "matters of church discipline." *Id.* at 1311-12; *see also Cannon v. Hickman*, 4 Tenn. App. 588, 591 (Tenn. Ct. App. 1927) (recognizing similar categories).

Each of these categories of governance decisions involves matters so integral—or "closely linked," *Our Lady*, 591 U.S. at 747—to a religious institution's mission that courts presume their religious nature. The first category—the "ministerial exception"—is a classic example. "The members of a religious group put their faith in the hands of their ministers," and "control over the selection of those who will personify its beliefs" is core to a church's religious mission. *Hosanna-Tabor*, 565 U.S. at 188. The second category—membership—turns on the recognition that "the right of a church to decide for itself whom it may admit into fellowship or who shall be expelled or excluded from its fold cannot be questioned by the courts." *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 398 (Tex. 2007) (quotations omitted). The third category is "questions of church discipline"—an issue "at the core of ecclesiastical concern." *Milivojevich*, 426 U.S. at 717.

Beyond these discrete categories, the Court should be cautious in expanding immunity for internal church governance. "Church government is susceptible of being stretched to cover anything and everything" relating to a religious institution. Weinberger, *Limits*, *supra*, at 1310. Understandably, in recent years, parties *have* sought to stretch the doctrine to protect religious liberty in response to the void

created by *Employment Division v. Smith*, 494 U.S. 872 (1990). But this Court should not expand church autonomy just because "*Smith* was wrongly decided." *Fulton v. City of Philadelphia*, 593 U.S. 522, 614 (2021) (Alito, J., concurring in the judgment). The U.S. Supreme Court is on the path to correcting *Smith*. *Id.*; *see also Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361 (2025). But even if the U.S. Supreme Court fails to do so, this Court can protect religious liberty through the Tennessee Constitution's preservation of the "natural and indefeasible right to worship Almighty God." Tenn. Const. Art. I, § 3.[3] Expanding the concept of "governance" to cure *Smith* risks eroding the foundation (and long-term viability) of the church autonomy doctrine.

The upshot: Matters of internal church governance fall within the church autonomy doctrine's scope, whether a legal claim turns on a doctrinal question or not. "But the zone of protected matters of

[3] Before *Smith*, this Court essentially applied the burden-interest test of *Sherbert v. Verner*, 374 U.S. 398 (1963), when analyzing claims under Tenn. Const. Art. I, § 3. *See, e.g.*, *State ex rel. McLemore v. Clarksville Sch. of Theology*, 636 S.W.2d 706, 709 (Tenn. 1982); *State ex rel. Swann v. Pack*, 527 S.W.2d 99, 111 (Tenn. 1975). While the Court at times has suggested that the U.S. and Tennessee Constitutions provide "practically synonymous" protections, *Carden v. Bland*, 288 S.W.2d 718, 721 (Tenn. 1956), it has also emphasized that "Article 1, Section 3 of the Constitution of Tennessee contains a substantially stronger guaranty of religious freedoms" than the First Amendment, *Swann*, 527 S.W.2d at 107. The State is unaware of any Tennessee Supreme Court decision incorporating *Smith*'s neutral-and-generally-applicable test to the Tennessee Constitution—though numerous Courts of Appeals decisions have done so. *See, e.g.*, *Christ Church Pentecostal v. Tenn. State Bd. of Equalization*, 428 S.W.3d 800, 820 (Tenn. Ct. App. 2013).

institutional governance are not, and should not be, unlimited." Weinberger, *Limits*, at 1310. The scope of immunity surrounding church governance should be limited to the recognized categories of core internal management decisions—and other historically rooted matters of church polity.

3. *Criminal Accountability*. A final limiting principle: "[C]riminal conduct is not protected by the church-autonomy doctrine." *Payne-Elliott v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 193 N.E.3d 1009, 1014 (Ind. 2022). At the time of the First Amendment's ratification, "[n]ine of the states limited the free exercise right to actions that were 'peaceable' or that would not disturb the 'peace' or 'safety' of the state." McConnell, *Origins*, at 1461.[4] Those limitations inform the original meaning of the Religion Clauses, *id.* at 1462-64, and the scope of the church autonomy doctrine. The U.S. Supreme Court has recognized as much, consistently speaking in terms of what "civil courts" may adjudicate. *See Watson*, 80 U.S. at 710, 727; *Kedroff*, 344 U.S. at 120; *Our Lady*, 591 U.S. at 763 (Thomas, J., concurring).

C. Applying this framework to the facts here forecloses review.

The faith-and-doctrine portion of the church autonomy doctrine likely plays no role. None of the elements of the Garners' claims appear

[4] N.Y. CONST. OF 1777, art. XXXVIII; N.H. CONST. OF 1784, pt. I, art. V; GA. CONST. OF 1777, art. LVI; DEL. DECLARATION OF RIGHTS AND FUNDAMENTAL RULES OF 1776, §§ 2, 3; MD. CONST. of 1776, DECLARATION OF RIGHTS, art. XXXIII; MASS. CONST. OF 1780, pt. 1, art. II; N.J. CONST. OF 1776, art. XVIII; R.I. CHARTER OF 1663; S.C. CONST. of 1790, art. VIII, § 1.

to turn on the resolution of a doctrinal question. *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999) (defamation); *SmileDirectClub v. NBCUniversal Media, LLC*, 708 S.W.3d 556, 577 (Tenn. Ct. App. 2024) (defamation by implication); *Charles v. McQueen*, 693 S.W.3d 262, 280 (Tenn. 2024) (false light); *Hunley v. Silver Furniture Mfg. Co.*, 38 S.W.3d 555, 557 (Tenn. 2001) (loss of consortium). SBC Defendants do not appear to argue to the contrary. *See* Appellants' Br. 37-39; *cf. id.* at 44 (noting only that privilege disputes may implicate "faith and doctrine").

But the internal-governance component of the church autonomy doctrine squarely applies—specifically the ministerial exception. This suit challenges communications between religious entities about Preston Garner's suitability to serve in church leadership. R.I, 27-30. Those communications "intertwine[] with the underlying investigation by the Conference." *Ex parte Bole*, 103 So. 3d 40, 72 (Ala. 2012). More fundamentally, they go to the heart of "internal management decisions"—the "relationship between a religious institution and certain key employees." *Our Lady*, 591 U.S. at 737, 746.

Religious institutions cannot be punished for internal communications about their ministers. The protection of religious entities' control "in matters of ministerial employment" does not just cover a minister's "hiring" or "firing"; it "covers the entire employment relationship." *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 976-77 (7th Cir. 2021). Plaintiffs cannot avoid the church autonomy doctrine simply by styling their complaint to challenge the internal

communications that led to the ultimate firing, rather than challenging the firing itself. Without the power to investigate and communicate regarding an employee, a church could be forced to employ "a wayward minister[]" who "contradict[s] the church's tenets and lead[s] the congregation away from the faith." *Our Lady*, 591 U.S. at 747.

For that reason, "[w]hen a defamation claim arises entirely out of a church's relationship with its pastor, the claim is almost always deemed to be beyond the reach of civil courts." *Heard v. Johnson*, 810 A.2d 871, 883 (D.C. 2002) (compiling cases); *see also Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 515-16 (Va. 2001) (noting that "most courts" apply church autonomy doctrine when "consider[ing] a pastor's defamation claims against a church and its officials"). To allow the Garners' claims to proceed "against members of a religious board who are merely discharging the duty which has been entrusted to them by their church" will undoubtedly have an "effect on the performance of those duties" and interfere with the church's internal management. *Joiner v. Weeks*, 383 So. 2d 101, 106 (La. Ct. App. 1980). The church autonomy doctrine applies.

D. The Court of Appeals' contrary conclusion errs in three ways. *First*, the court stated that the defendants "have not raised any argument that their conduct resulted from the application or interpretation of any religious canon." Op. at 14. But a religious motivation—i.e., "conduct result[ing] from … [a] religious canon," *id.*—is neither sufficient nor necessary. It's not sufficient because the church autonomy doctrine does not protect all religiously motivated conduct—

for example, speeding. *See supra* at 20. Nor is it necessary because internal church governance is so inherently religious that the church need not provide a religious justification. So the Court of Appeals "misse[d] the point" in analyzing whether a "religious reason" underlies the challenged actions. *Hosanna-Tabor*, 565 U.S. at 194-195.

Second, the court concluded that the church autonomy doctrine doesn't apply because "the Garners' claims will not require the trial court to resolve any religious disputes or to rely on religious doctrine." Op. at 14. In other words, the court applied the "neutral legal principles" approach. That was error. While the faith-or-doctrine component of the church autonomy doctrine turns on whether religious questions must be answered to resolve the legal claim, *see supra* at 19-20, the internal-governance component does *not*. *See supra* at 21-23; *see also Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986) (noting that the "'neutral principles' doctrine has never been extended to religious controversies in the areas of church government"). The Court of Appeals made the same mistake that has plagued the U.S. Courts of Appeals recently. *See Belya v. Kapral*, 59 F.4th 570, 573 (2d Cir. 2023) (Park, J., dissenting from denial of en banc); *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1070 (5th Cir. 2020) (Ho, J., dissenting from denial of en banc); *O'Connell v. U.S. Conf. of Cath. Bishops*, 134 F.4th 1243, 1254 (D.C. Cir. 2025).

In fairness to the decision below, this Court's prior precedent suggests that the church-autonomy doctrine does not apply if "the court can resolve the dispute by applying neutral legal principles and is not

required to employ or rely on religious doctrine to adjudicate the matter." *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 450 (Tenn. 2012). But *Redwing* was briefed and argued to this Court *before* the decision in *Hosanna-Tabor*. *See id.* at 436. The U.S. Supreme Court has since clarified that, for matters of internal church governance, there need not even be a "religious reason" for the action, let alone a religious question for the Court to resolve. *Hosanna-Tabor*, 565 U.S. at 194-95; *see Our Lady*, 591 U.S. at 767 (Sotomayor, J., dissenting) (decrying the Court's rule that, for matters of internal governance, "an employer need not cite or possess a religious reason at all"). There is no way to reconcile an across-the-board "neutral principles" approach with *Our Lady* and *Hosanna-Tabor*. *McRaney*, 980 F.3d at 1072 (Ho, J., dissenting from the denial of en banc).

Nor does it make sense to apply such a rule. "If an appeal to 'neutral principles of tort law' were all it took to sue a religious institution, it would be the exception that swallowed the rule." *Id.* Claims going to the heart of church governance could simply be styled to raise no religious issue for court resolution. That's not the law. And while *Redwing's* "neutral principles" approach remains a proper framework for the faith-and-doctrine component of church autonomy, this Court should not let that test "invade a religious institution's autonomy with respect to internal management decisions." *In re Lubbock*, 624 S.W.3d 506, 518 (Tex. 2021) (quotations omitted).

Third, the decision below improperly "probe[d]" into "church polity." *Milivojevich*, 426 U.S. at 708-09. The court treated "any argument …

that the Letter was sent as part of a pastoral disciplinary process" as "undercut by the concession … that the Credentials Committee does not investigate what occurred or judge the culpability of an accused individual, but rather only reviews how the SBC church responded to sexual abuse allegations and makes recommendations as to whether those actions or inactions are consistent with the SBC's beliefs regarding sexual abuse." Op. at 14 (quotations and brackets omitted). So for purposes of the church autonomy analysis, the court separated Everett Hills Baptist Church from the denominational defendants—the SBC, the SBC Committees, and Peters. That approach cannot be squared with the church autonomy doctrine—or the Free Exercise Clause.

On the facts, the court's artificial separation simply does not hold up. Though the SBC and its Credentials Committee, the SBC Executive Committee, and Everett Hills are all separate corporate entities, they all operate in cooperation as Baptist "religious institutions" with a "central mission"—to promote Baptist missions. *Our Lady*, 591 U.S. at 746; S. Baptist Convention Const. art. II. Everett Hills operates as a part of—and *in cooperation* with—the SBC and its Committees, with all the responsibilities and privileges that entails. *See supra* at 14-15. That structure tracks a prominent Baptist doctrine, seeking to unify Baptists without undermining their autonomy. Baker, *supra*, at 161, 174. Treating the denominational defendants here as somehow distinct from the church itself simply defies reality.

It would also "favor one religion over another." *McCreary Cnty. v. ACLU*, 545 U.S. 844, 875 (2005). No one could dispute that a letter sent from the Vatican to a local Catholic parish inquiring about a priest's

actions would constitute correspondence that falls squarely within the internal-governance component of church autonomy. "The Catholic Church is a single worldwide religious institution … divided into dioceses." *Cath. Charities*, 605 U.S. at 264 (Thomas, J., concurring). It cannot be that the Vatican enjoys protection under the church autonomy doctrine but the SBC does not. "Such official differentiation on theological lines is fundamentally foreign to our constitutional order, for '[t]he law knows no heresy, and is committed to the support of no dogma.'" *Id.* at 249 (quoting *Watson*, 80 U.S. at 728). The church autonomy doctrine is not concerned about whether a given religious institution is sufficiently hierarchical to merit its protection, but whether "secular laws" will interfere with a "religious institution[']s … autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady*, 591 U.S. at 746. That is exactly what would occur if the Garners' claims are allowed to proceed.

This Court should apply the church autonomy doctrine to bar the Garners' claims. But in doing so, the Court should stress the doctrine's proper confines to prevent undue displacement of civil protections that serve the public interest.

II. This Court Should Authorize Interlocutory Review of the Denial of a Church Autonomy Defense.

The church autonomy doctrine is not a jurisdictional bar. Nonetheless, because the doctrine functions as an immunity from suit, its applicability should be decided as early as possible. And to ensure the immunity's efficacy, this Court should allow an immediate appeal from the denial of a church autonomy defense.

A. The church autonomy doctrine is not jurisdictional. To be sure, the Court previously adopted that view in *Church of God*. *See* 531 S.W.3d at 157-59. But as Justice Kirby suggested in her concurrence, the church autonomy doctrine is properly viewed as an "affirmative defense" and properly resolved as a "failure to state a claim upon which relief can be granted." *Id.* at 177 (Kirby, J., concurring). Recent precedent supports that approach and calls for course correction here.

The U.S. Supreme Court has refuted a jurisdictional approach to church autonomy. *Hosanna-Tabor* held that the ministerial exception "constitutes an affirmative defense … , not a subject matter jurisdictional bar." 565 U.S. at 195 n.4. In *Church of God*, this Court declined to apply that holding because, in its view, the ministerial exception remained distinct from the church autonomy doctrine. 531 S.W.3d at 157-59. But the U.S. Supreme Court rejected any such distinction in *Our Lady*. There, in a decision post-dating *Church of God*, the U.S. Supreme Court clarified that "[t]he constitutional foundation" for the court's ministerial exception holding in *Hosanna-Tabor* "was the general principle of church autonomy." *Our Lady*, 591 U.S. at 747; *see also Church of God*, 531 S.W.3d at 174 (Kirby, J., concurring). In other words, the ministerial exception falls *within* the internal-church-governance component of the church autonomy doctrine. And if the ministerial exception "operates as an affirmative defense to an otherwise cognizable claim," *Hosanna-Tabor*, 565 U.S. at 195 n.4, so too must the broader church autonomy doctrine.

That non-jurisdictional view of church autonomy makes sense. The power to adjudicate legal rights is "conferred upon [a] court[] by the authority, state or nation, creating [that court]." *Minneapolis & St. Louis R.R. v. Bombolis*, 241 U.S. 211, 221 (1916). Each State is its own "sovereign[]," *Alden v. Maine*, 527 U.S. 706, 748 (1999), with its own courts wielding its own state judicial power, *see, e.g.*, Tenn. Const. art. VI, § 1. The substantive protections of the U.S. Constitution's First Amendment do not divest state courts of that jurisdiction—even if the Supremacy Clause calls for dismissal of state claims that conflict with federal protections. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015).

This Court should recognize as much. *Church of God* stated "that, until and unless the United States Supreme Court declares otherwise, the ecclesiastical abstention doctrine, where it applies, functions as a subject matter jurisdictional bar[.]" 531 S.W.3d at 158-59. The Supreme Court has now "declare[d] otherwise." *Id.*; *see Our Lady*, 591 U.S. at 747. This Court should adhere to that intervening precedent. *See, e.g.*, *Parker v. Warren Cnty. Util. Dist.*, 2 S.W.3d 170, 176 (Tenn. 1999).

B. The Court should allow for immediate interlocutory appeal from the denial of a church autonomy defense. The church autonomy doctrine "is best conceived as an immunity from suit"—and its burdens. Lael Weinberger, *Is Church Autonomy Jurisdictional?*, 54 LOYOLA UNIV. CHI. L.J. 471, 502-03 (2022) [hereinafter *Jurisdiction*]. The doctrine operates as a shield against litigation, not just liability. *See Conlon*, 777 F.3d at

836. That's why the U.S. Supreme Court has said that when the doctrine applies, it "bars … suit"—full stop. *Hosanna-Tabor*, 565 U.S. at 196.

Federal courts' treatment of sovereign immunity provides a helpful analog. Federal courts recognize that sovereign immunity does "not merely constitute a defense to ... liability"; it "provides an immunity from suit." *Fed. Maritime Comm'n v. S.C. State Ports Auth.*, 535 U.S. 743, 766 (2002). And like other immunities from suit, one of its "central benefits" is in "avoiding the costs and general consequences of subjecting public officials to the risks of discovery and trial." *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 143-44 (1993) (applying qualified-immunity principles to sovereign immunity). The "very object and purpose" of sovereign immunity is "to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties." *Id.* at 146. (quotations omitted). Thus, "the value" of sovereign immunity is "for the most part lost as litigation proceeds past motion practice." *Id.* at 145.

The same goes for church autonomy. "It is not only the [legal] conclusions" in such cases that "may impinge on [First Amendment] rights … , but also the very process of inquiry leading to findings and conclusions." *N.L.R.B. v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). Discovery here, for example, would likely subject SBC Defendants' "personnel and records" "to subpoena, discovery, cross-examination," and "the full panoply of legal process designed to probe the mind of the church in the [oversight] of its ministers." *Rayburn v. Gen'l Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985).

And "detailed [judicial] review" of ecclesial decision-making is itself "impermissible under the First and Fourteenth Amendments." *Milivojevich*, 426 U.S. at 718.

To avoid that, courts should allow immediate interlocutory appeal. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 n.1 (10th Cir. 2002).[5] "[W]hen the jurisdictional issue is one of *immunity*, … appeal from final judgment cannot repair the damage that is caused by requiring the defendant to litigate." Weinberger, *Jurisdiction*, at 503 (quotations omitted) (collecting cases). Just as federal courts allow interlocutory appeal in the sovereign immunity context to "ensur[e] that the States' dignitary interests can be fully vindicated," *P.R. Aqueduct*, 506 U.S. at 146, this Court should allow interlocutory appeal in the church autonomy context to prevent the "judicial interference in church governance" that the church autonomy doctrine was designed to prevent, *Belya*, 59 F.4th at 578 (Park, J., dissenting from denial of en banc).

C. The procedural mechanism for an immediate appeal from the interlocutory denial of an immunity remains unsettled. This Court should provide clarity—or a remedy if current procedures are inadequate.

Generally, a party may appeal as of right only from a final judgment. Tenn. R. App. P. 3(a); *Bayberry Assocs. v. Jones*, 783 S.W.2d

[5] *See* Peter J. Smith & Robert W. Tuttle, *Civil Procedure and the Ministerial Exception*, 86 FORDHAM L. REV. 1847, 1878-81 (2018) (arguing the ministerial exception resembles qualified immunity, which is immediately appealable under the collateral order doctrine); *Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021, 1057-59 (10th Cir. 2022) (Bacharach, J., dissenting) (similar).

553, 559 (Tenn. 1990). Rules 9 and 10 provide "exceptions" to Rule 3's general finality rule. Tenn. R. App. P. 9(a); Tenn. R. App. P. 10(a); *Nandigam Neurology, PLC v. Beavers*, 639 S.W.3d 651, 661 (Tenn. Ct. App. 2021). But interlocutory review under those provisions has (to this point) generally been treated as permissive and subject to unfettered judicial "discretion." Tenn. R. App. P. 9(a); Tenn. R. App. P. 10(a).

Federal courts, by contrast, have adopted the collateral order doctrine "not as an exception" to the final-judgment rule but as a "'practical construction' of it." *Digit. Equip. Corp. v. Desktop Direct*, 511 U.S. 863, 867 (1994) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)). The rationale is that a "narrow class of decisions that do not terminate the litigation … must, in the interest of achieving a healthy legal system, nonetheless be treated as final." *Id.* (quotations omitted). Those cases include lower court orders that (1) are "conclusive," (2) "resolve important questions completely separate from the merits," and (3) would be "effectively unreviewable on appeal from final judgment." *Id.* This doctrine automatically covers orders denying qualified immunity and sovereign immunity defenses. *P.R. Aqueduct*, 506 U.S. at 143-44.

This Court has not adopted the collateral order doctrine, and it is not clear that Rule 3's language leaves the Court the "wiggle room" to do so. *See Buckner-Webb v. State*, 878 S.E.2d 481, 491 (Ga. 2022) (Pinson, J., concurring) (questioning whether Georgia's appellate-jurisdiction statute allowed adoption of the federal collateral order doctrine). Absent a similar Tennessee doctrine, parties whose immunity defense is denied

by a trial court depend on judicial discretion under Rule 9 or Rule 10 for immediate review. As a result, parties facing a violation of their "dignitary interests," *P.R. Aqueduct*, 506 U.S. at 146, or, as here, an intrusion on ecclesial affairs, *see supra* at 26-30, must often proceed through discovery and undergo other litigation burdens. *See, e.g.*, Order, *Moses v. Goins*, No. W2024-01326-COA-R10-CV (Sept. 25, 2024) (denying permission to appeal). Parties must do so, even though their defense (if meritorious) provides immunity from suit and will lose that much of its efficacy by the time final judgment rolls around. *See supra* at 33-35. That is an affront to the constitutional interests at issue.

A few viable solutions stand out.

Ideally, the Court would clarify that the denial of an immunity defense always supports interlocutory review under Rule 9 or Rule 10. It has done so previously with other categories of interlocutory orders. In *State v. Meeks*, for example, this Court held that "a suppression order that eliminates any reasonable probability of a successful [criminal] prosecution provides a basis for an interlocutory appeal under [Rule] 9(a)(1), (3), or an extraordinary appeal under [Rule] 10(a)." 262 S.W.3d 710, 720 (Tenn. 2008). That's because "the State could not obtain meaningful appellate review" of such an order if the accused were acquitted, resulting in "irreparable injury." *Id.* And in *State v. Drake*, this Court held that Rule 10 review "shall be available" to intervenors challenging an order closing criminal proceedings because an erroneous closure order will cause "the intervening party [to] lose a right or interest that may never be recaptured." 701 S.W.2d 604, 608-09 (Tenn. 1985).

Those categorical allowances of review flow from a few well-established principles. "[A] Rule 10 extraordinary appeal should be granted in cases where a [party] may otherwise lose a right or interest that may never be recaptured." *State v. McKim*, 215 S.W.3d 781, 791-92 (Tenn. 2007). Rule 10 properly ensures the procedural right to "a meaningful opportunity [for] appellate review." *Meeks*, 262 S.W.3d at 720 n.14. And a Rule 9 appeal "should be granted where" immediate review has the potential to "prevent needless, expensive, and protracted litigation," *McKim*, 215 S.W.3d at 790 (quoting Tenn. R. App. P. 9(a)), or where it would avoid "irreparable injury," Tenn. R. App. P. 9(a); *see Meeks*, 262 S.W.3d at 720.

The denial of a church autonomy defense ticks all those boxes. An erroneous church autonomy ruling strips a religious institution of the right to immunity from suit and allows the intrusion of civil litigation. *See supra* at 33-35. "[A]fter final judgment, the harm from judicial interference in church governance will be complete," making the loss of immunity's full protections irrecoverable, the injury to the church irreparable, and the order itself "not effectively reviewable." *Belya*, 59 F.4th at 578 (Park, J., dissenting from denial of en banc) (quotations omitted). And resolution of the issue is often case (or claim) dispositive. *See supra* at 22-25. The Court should hold that interlocutory review "shall" be available from the denial of a church autonomy defense under Rule 9 or 10. *See Drake*, 701 S.W.2d at 608-09; *see also Meeks*, 262 S.W.3d at 720-21.

Alternatively, the Court could propose amending the Tennessee Rules of Appellate Procedure through the "normal rule-making process" to create a specific mechanism for immediate appeal from the denial of a defense providing immunity from litigation. *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 436 (Tenn. 2011); *cf. Doe v. Doe*, 127 S.W.3d 728, 737 (Tenn. 2004). That could be done by a rule directly providing for appellate review. *See, e.g.*, Tenn. R. App. P. 3(b) (providing for criminal appeal right from "the denial of a motion to withdraw a guilty plea"). Or it could be accomplished through an alteration of Rule 3's definition of "final" to allow for adoption of a state collateral order doctrine. *See* Tenn. R. App. P. 3(a) (defining "final judgment" to exclude interlocutory orders, except as permitted in Rule 9 and Tenn. R. Civ. P. 54.02); *see also* Tenn. R. Civ. P. 54.02(2) (defining an order granting or denying a motion to intervene as a "final judgment").

Whatever the approach, the First Amendment dictates that discovery cannot proceed until the trial court has resolved any church autonomy defense and an appellate court has reviewed any denial.

D. Whether SBC Defendants' church autonomy defense is jurisdictional or not, *this Court*'s ability to review the Court of Appeals' decision remains secure, as it rests on Rule 11. Rule 11 jurisdiction does not depend on whether the Court of Appeals used the appropriate procedural mechanism for reviewing defendants' church autonomy defense. And this Court may review *all* aspects of the lower court's decision within the scope of its grant order—both those pertaining to

jurisdiction and those regarding the merits. *See* Tenn. R. App. P 13(a); *Chrisman v. Hill Home Dev.*, 978 S.W.2d 535, 537 n.3 (Tenn. 1998).

The Court should address the merits here. The parties fully briefed whether the church autonomy doctrine applies, and this Court granted permission to appeal that merits issue. Considering whether the doctrine applies now would "prevent needless litigation." Tenn. R. App. P. 13(b). And it would avoid an unfair "hardship" to SBC Defendants since they "justifiably relied" on *Church of God* to present their church autonomy defense as a jurisdictional bar. *Cf. Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 518 (Tenn. 2005). Any subsequent clarification of this Court's case law should not disadvantage SBC Defendants here.

CONCLUSION

The Court should reverse.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Tenn. Sup. Ct. R. 46 § 3.02, I certify that the total number of words in this application, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, Signature Block, and the Certificates of Compliance and Service, is 7487. This word count is based on the Microsoft Word system used to prepare this application.

s/ J. Matthew Rice
J. MATTHEW RICE (No. 040032)

CERTIFICATE OF SERVICE

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