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 THE JEWISH COALITION FOR RELIGIOUS LIBERTY AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS

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 Reed Duggan

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IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae, Jewish Coalition for Religious Liberty ("JCRL"), is an association of American Jews concerned with the current state of religious liberty jurisprudence. JCRL aims to protect the ability of all Americans to freely practice their faith and foster cooperation between Jews and other faith communities. Over several years, its founders have worked on amicus briefs in several state supreme courts, the Supreme Court of the United States, and lower federal courts; submitted op-eds to prominent news outlets; and established an extensive volunteer network to spur public statements and action on religious liberty issues by Jewish communal leadership.

JCRL has a vital interest in protecting the autonomy of faith communities from government interference. Courts imposing liability for statements made in the context of religious governance decisions force religious institutions to make the impossible choice between facing legal consequences for having open and frank discussions on matters of religious governance, or repressing speech in the name of self-preservation due to the increased risk of civil litigation and civil penalties. Either result leads to chilling restrictions on religious self-determination, particularly for minority faiths, which rely on their ability to uphold internal standards without government oversight and whose internal structures and governance are less familiar to courts. JCRL submits this brief to support the religious autonomy and First Amendment rights of religious institutions throughout Tennessee that will be significantly affected by this case.

INTRODUCTION & SUMMARY OF ARGUMENT

This case offers the Supreme Court an opportunity to honor the longstanding principle that civil courts lack jurisdiction over matters of internal religious governance and decision-making by overturning the decision below. At its core, the Court of Appeals' decision impermissibly extends state court jurisdiction into ecclesiastical disputes that Tennessee courts are constitutionally prohibited from adjudicating. Put another way, this case is barred by the church autonomy doctrine. Accordingly, the Supreme Court should reverse the Court of Appeals' decision and dismiss the suit for three reasons.

First, Tennessee Courts lack jurisdiction here, and this case is barred by the church autonomy doctrine. The First Amendment protects religious institutions from government interference into their internal governance, including interference into matters of organization and leadership. This protection stems from both the Free Exercise Clause, which allows religious groups to make decisions about their faith and leadership, and the Establishment Clause, which prevents government involvement in doctrinal matters. The United States Supreme Court has consistently and emphatically held that religious institutions have the constitutional right to self-governance, including making internal decisions without judicial interference. And Tennessee courts, as well as many other state and federal courts, have reached the same conclusion.

Second, the decision below risks intruding upon the autonomy of all religious groups, including Jewish congregations and institutions to select and supervise their rabbis. The freedom of Jewish communities to choose and oversee their rabbinic leaders lies at the center of their

religious mission. Decisions about a rabbi's fitness to teach and lead are inherently ecclesiastical because a congregation's mission is inseparable from the qualifications of its rabbi to guide the faith.

Third, the Court of Appeals' decision would be particularly dangerous to minority faiths, including Judaism, whose rules and practices are often unknown to civil judges. When courts attempt to parse those rules, they misread words, roles, and processes. They may treat a religious determination as a secular accusation. They may cast internal censure as public defamation. They may frame religious discipline as an ordinary job dispute. Prior cases demonstrate this point—courts are likely to misunderstand minority faiths like Judaism and allowing courts to exercise jurisdiction over certain claims arising out of a religious community's internal communications risks perpetuating these misunderstandings.

This Court should therefore reverse the Court of Appeals' error.

ARGUMENT

I. The First Amendment protects religious autonomy and prevents courts from intruding into matters of internal religious governance.

The First Amendment protects religious institutions against government action that "interferes with . . . internal governance." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). It does so through dual constitutional safeguards—the Free Exercise Clause and the Establishment Clause—which permit religious groups to maintain autonomy over matters of governance regarding ecclesiastical affiliation and leadership. The former "protects a religious group's right to shape its own faith and mission through its

appointments," while the latter "prohibits government involvement in . . . ecclesiastical decisions." *Id.* at 188–89.

The church autonomy doctrine (sometimes referred to as the ecclesiastical abstention doctrine) stems from and is guided by the principles that underlie the First Amendment and is deeply rooted in historical tradition. It reflects the founding generation's conviction—often shaped by their own flight from religious persecution—that every faith must be free to worship according to its own traditions and be shielded from marginalization and persecution. *See, e.g.*, Letter from George Washington, President of the U.S., to the United Baptist Churches of Virginia (May 1789), https://perma.cc/365D-CALA ("[N]o one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution[.] For you, doubtless, remember that I have often expressed my sentiment, that every man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshipping the Deity according to the dictates of his own conscience."); George Washington, Letter to the Hebrew Congregation in Newport, Rhode Island (Aug. 18, 1790) in 6 The Papers of George Washington 285, (Dorothy Twohig, ed., 1996) ("[E]very one shall sit in safety under his own vine and fig-tree, and there shall be none to make him afraid."); *Faith of Our Forefathers*, Libr. of Cong. (May 1998), https://perma.cc/2P33-HLQ6 (collecting sources in an exhibition focused on the creation of the American colonies as havens from European religious persecution).

The church autonomy doctrine broadly protects matters of internal religious governance, as the United States Supreme Court has

steadfastly held. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713–14 (1976); *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). Tennessee and federal courts have agreed and have applied the church autonomy doctrine to dismiss defamation claims like those at issue here. *See, e.g.*, *Maize v. Friendship Cmty. Church, Inc.*, No. E2019-00183-COA-R3-CV, 2020 WL 6130918, at *4–5 (Tenn. Ct. App. Oct. 19, 2020) (holding that the church autonomy doctrine barred judicial review of allegedly defamatory statements made during a religious disciplinary proceeding); *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986) (recognizing that courts cannot hear a minister's defamation claims against his church because they involve internal religious matters). This is precisely because secular courts are ill-equipped to determine which internal matters implicate questions of faith or doctrine. Religious adherents rather than judges are best positioned to determine which subjects are governed by questions of theology and which are not. Courts should therefore defer to sincere religious adherents and decline to adjudicate internal religious disputes without attempting to parse which issues are subject to determination under neutral legal principles.

The church autonomy doctrine also covers closely related communications necessary to effectuate those decisions, not just a religious institution's governance decisions themselves. As the Supreme Court has established, religious freedom encompasses the power of religious bodies to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116

(1952); *see also Milivojevich*, 426 U.S. at 713 ("[R]eligious controversies are not the proper subject of civil court inquiry."); *cf. Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 156 (Tenn. 2017) ("[C]ivil courts in this country [may not] adjudicate[e] 'questions of discipline, or of faith, or ecclesiastical rule, custom, or law' or church polity, or the internal governance of religious organizations." (citation omitted)). Rather than grant religious institutions "general immunity from secular laws," this doctrine "protect[s] their autonomy with respect to internal management decisions that are essential to the institution's central mission." *Our Lady of Guadalupe*, 591 U.S. at 746. And with regard to church leadership decisions, that protection extends beyond "a church's decision to fire a minister . . . when it is made for a religious reason"—indeed, "the authority to select and control who will minister to the faithful . . . is the church's alone." *Hosanna-Tabor*, 565 U.S. at 194–95.

Thus, the church autonomy doctrine acts as a jurisdictional bar preventing courts from hearing the subject matter of claims that involve the "conformity of the [ministers or] members of the church to the standard of morals required of them." *L.M. Haley Ministries*, 531 S.W.3d at 159 (quoting *Watson*, 80 U.S. (13 Wall.) at 733). As such, "courts of this State are without jurisdiction to inquire into or supervise the decisions of religious organizations." *Anderson v. Watchtower Bible & Tract Soc. of N.Y., Inc.*, No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *5 (Tenn. Ct. App. Jan. 19, 2007); *see also id.* at *5 n.5 ("[T]he Tennessee Constitution's freedom of religion provision has been interpreted as possibly providing greater protection than the First Amendment to the United States Constitution.").

Tennessee courts have repeatedly applied the church autonomy doctrine to dismiss defamation claims like those at issue here. *See, e.g.*, *Maize*, 2020 WL 6130918, at *4–5 (holding that the church autonomy doctrine barred judicial review of allegedly defamatory statements made during a religious disciplinary proceeding); *Johnson v. Carnes*, No. M2008-02373-COA-R3-CV, 2009 WL 3518184, at *5 (Tenn. Ct. App. Oct. 29, 2009) (trial court could not "entertain claims of defamation" arising from letter regarding "the disciplinary or expulsion decision of the church"); *Anderson*, 2007 WL 161035, at *26 (explaining 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"); *Kersey v. Wilson*, No. M2005-02106-COA-R3-CV, 2006 WL 3952899, at *7 (Tenn. Ct. App. Dec. 29, 2006) ("Generally, disputes based on otherwise defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts.").

In this case, the Court of Appeals broke with precedent and sidestepped the church autonomy doctrine, intruding into matters of internal religious governance by determining that the issues could be resolved by applying neutral legal principles. The internal communications at issue here relate to the Southern Baptist Convention's rules for determining that churches and pastors are aligned with the denomination's teachings and religiously qualified. Those communications are exactly what the church autonomy doctrine protects from judicial intrusion. And while the Court of Appeals seemed to treat the church autonomy doctrine as limited to protecting matters that it considered to touch religious faith or

doctrine, that understanding misapprehends the First Amendment and Tennessee and federal courts' precedents.

II. The decision below could allow for intrusion into Jewish communities' and institutions' autonomy to select and supervise rabbis.

The decision below threatens the freedom of Jewish communities to choose and oversee their rabbinic leaders. It sets an example of inviting courts to review religious governance decisions, a move that collides with the First Amendment protections for internal religious rule.

In Jewish communities and institutions, questions about a rabbi's alleged theological fitness go to the heart of a synagogue's religious mission. Choices about a rabbi's fitness to lead sit at the core of a synagogue's mission because "[m]atters touching th[e] relationship [between rabbis and their synagogues] must necessarily be recognized as of prime ecclesiastical concern." *McClure v. Salvation Army*, 460 F.2d 553, 559 (5th Cir. 1972); *see also Hosanna-Tabor*, 565 U.S. at 188 (noting that a minister "personif[ies]" the church's beliefs). A synagogue's mission is inseparable from the qualifications of its rabbi to teach, guide, and lead in the faith. Therefore, when the community or institution warns, inquires, or advises about a rabbi's fitness, it speaks on an ecclesiastical question. *See Hyman v. Rosenbaum Yeshiva of N. Jersey*, 317 A.3d 1260, 1265 (N.J.) (Patterson, J., concurring), *reconsideration denied*, 320 A.3d 58 (N.J. 2024) ("conclude[ing] that a court's determination of [the] elements of [a defamation] claim[] would mandate an inquiry into the religious tenets that govern" the religious institution).

If applied elsewhere, the Court of Appeals' decision would treat, for example, communications about a rabbi's fitness to serve as secular speech, threatening Jewish communities' control over the theological matters within their own synagogues. The decision chills candid review of leaders, and it invites discovery into religious doctrine and practice. This kind of civil intrusion into a minority religion, like the Jewish faith, will be particularly harmful.

III. The consequences of the Court of Appeals' decision are especially harmful to Jews and other minority religions.

The Court of Appeals' decision legalizing intrusion into religious autonomy will be harmful to all faith communities, and especially to Jewish congregations, which have long endured attempts by the government to interfere in matters of their Jewish faith. *See, e.g., Watson*, 80 U.S. (13 Wall.) at 728 (noting that English laws prior to the United States' founding "hamper[ed] the free exercise of religious belief and worship in many most oppressive forms" and that Jews were more burdened by these laws than Protestants); *see also Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 8–9 (1947) (noting that Jews faced persecutions from governments that favored either Protestants or Catholics in the centuries before America's colonization).

American courts have a demonstrated history of misunderstanding or misinterpreting Jewish law—errors that would be compounded if allowed to extend to matters of internal church governance. For example, in *Ben-Levi v. Brown*, the Fourth Circuit upheld a prison's denial of a Jewish prisoner's request to engage in a group study of the Torah. 577 U.S. 1169, 136 S. Ct. 930, 931–32 (2016) (Alito, J., dissenting from the

denial of certiorari). To support its holding, the court relied on *the prison's* interpretation of Jewish law that ten men must be present to study the Torah. *Id.* But no such requirement exists under Jewish law. *Cf. id.* at 934 (stating it was "not at all clear" whether Jewish law imposed the requirement stated by the prison). It is unclear exactly what religious law the prison relied upon when making this rule, but it is possible the prison was confused by the Jewish requirement that ten men are needed to fulfill the obligation to *publicly read* from a Torah scroll as a part of a prayer service, which is entirely unrelated to the more distinct question of whether a prisoner may engage in a group study of that text. Joseph Karo, Code of Jewish Law 143:1, available at https://perma.cc/2B9Q-KUPX; *see also* Aryeh Citron, Minyan: The Prayer Quorum, Chabad.org, https://perma.cc/G8RC-9C5A (discussing when a *minyan*, or quorum, is required to perform certain prayers and rituals under Jewish law). This misunderstanding of Jewish law had real consequences for the prisoner in *Ben-Levi*—namely, denying him the fundamental right to practice his religion.

Another example of the potential for a court to misunderstand Jewish law occurred during an oral argument at the Fifth Circuit in a case involving challenges by church-affiliated universities and other religious organizations to the Affordable Care Act's contraception mandate. There, one of the panel judges suggested that turning "on a light switch every day" was a prime example of an activity unlikely to constitute a substantial burden on a person's religious exercise. *See* Oral Argument at 1:00:40, *E. Tex. Baptist Univ. v. Burwell*, 793 F.3d 449 (5th Cir. April 7, 2015). But to an Orthodox Jew, turning on a light bulb on the Sabbath

could constitute a violation of Exodus 35:3, which explains that lighting a flame violates the Ten Commandments' instruction to keep the Sabbath holy. Certainly, that judge did not intend to demean Orthodox Jews or belittle Jewish practices. He simply, and understandably, was unaware of how some Jews understand the Commandment to guard the Sabbath.

These misunderstandings could translate into increased risk of civil liability for Jewish communities. For example, Jewish law prohibits Jews from purchasing food from a Jewish-owned store that stocked leavened grain products ("chometz") during Passover ("Pesach") for a set period afterward. *See A Guide to Purchasing Chometz After Pesach*, Star-K (Spring 2015), https://perma.cc/7LBL-A5BY. To enforce this prohibition, synagogues and Jewish organizations often warn their members not to buy food from certain grocery stores or other businesses after Passover and, alternatively, what stores are approved to shop from. *Id.*; *see also Bulletin of the Vaad Harabanim of Greater Washington: Pesach 2019* at 12, Vaad Harabanim: The Rabbinical Council of Greater Washington (2019), https://perma.cc/L7DJ-BHXQ ("Bulletin") (listing approved stores in the Washington, D.C., area). These warnings and approvals typically take the form of lists identifying local stores and advising congregants to avoid them for a limited time. *See* Bulletin. These lists and recommendations could be deemed discriminatory or defamatory, but courts should not address questions about whether a synagogue or Jewish leadership correctly determined whether a store was properly following Jewish law.

Two recent cases demonstrate how the Court of Appeals' opinion here could open the door to increased liability for Jewish communities and how it stands in contrast with other state and federal courts'

decisions. First, last year, the Supreme Court of New Jersey, in a split vote, affirmed a lower court ruling that dismissed a Rabbi's claim of defamation related to a Jewish religious school's explanation of why it dismissed him from the school, known as a Yeshiva. *See Hyman*, 317 A.3d at 1264. In his concurrence, Justice Patterson noted that to review plaintiff's defamation claim, the court would be required to review the Yeshiva's determination that plaintiff's conduct was unacceptable and inconsistent with the manner in which a rabbi in his position was expected to interact with students. *See id.* at 1278 (Patterson, J., concurring). Justice Patterson concluded that any such decision in the matter "would impermissibly interfere with the Yeshiva's prerogative to choose and manage its ministers." *Id.* Here, the Court of Appeals did just the opposite, and its holding would have secular courts wade into religious communications and decision-making.

Second, a federal district court recently addressed whether it could enjoin parties from disseminating a declaration from a rabbinical court and an accompanying instructional document based on a Jewish plaintiff's defamation and intentional infliction of emotional distress claims stemming from those documents. *See Esses v. Rosen*, No. 24-CV-3605, 2024 WL 4494086, at *1 (E.D.N.Y. Oct. 15, 2024). The court denied the motion for preliminary injunction and found that "the First Amendment . . . prevent[ed] [it] from second-guessing a religious court's view of impropriety." *See id.* at *4. Here, the Court of Appeals' decision stands in stark contrast with that finding and opens the door to secular courts second-guessing religious determinations.

Moreover, the potential for courts to misinterpret internal religious governance communications—like those at issue here—is compounded by the numerous unresolved internal religious disagreements within multiple Jewish denominations. And absent the protections afforded by the church autonomy doctrine, courts may inadvertently pick sides regarding those controversial ecclesiastical topics. Indeed, for the Jewish faith in particular, these topics are many and varied.

To illustrate, there is a debate between Ashkenazic and Sephardic Jewish communities who disagree over whether they may eat certain foods during Passover. Jeffrey Spitzer, *Kitniyot: Not Quite Hametz*, My Jewish Learning, https://perma.cc/8J7P-UJNM (discussing the Jewish Passover debate surrounding rice, millet, corn, and legumes).

Additionally, the Orthodox and non-Orthodox denominations of Judaism disagree on various issues:

- Orthodox Jews forbid driving to synagogue on the Sabbath, and non-Orthodox Jews permit it. *Compare Driving to Synagogue on Shabbat*, Aish, https://perma.cc/3ZN6-KSXQ (offering guidance on how to comply with a prohibition on driving on the Sabbath) *with Conservative Judaism*, BBC (July 24, 2009), https://perma.cc/JMD4-KSSA (describing various views on driving on the Sabbath).
- Orthodox and non-Orthodox Jews have different standards for determining whether the production of food is kosher and rely upon different companies, which apply each denomination's standard to determine whether particular products are kosher. *See,*

e.g., *Acceptable Kashrus Agencies*, Chi. Rabbinical Council, https://perma.cc/CLA2-Y2EP (listing kosher certifying agencies); Sue Fishkoff, *Conservatives taking kashrut challenge up a notch*, Jewish Telegraphic Agency (April 11, 2011), https://perma.cc/2P5E-8MGN (discussing the efforts of Conservative Jewish rabbis to create companies to issue kashrut certification for Conservative Jews); *see also Commack Self-Service Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 426 (2d Cir. 2002) (noting the New York State Department of Agriculture and Market's misguided argument that "no one disputes the meaning of the term 'kosher'"); *Ran-Dav's Cnty. Kosher, Inc. v. State*, 608 A.2d 1353, 1356 (N.J. 1992) (reversing the superior court's decision that New Jersey's kosher regulations did not violate the Establishment Clause and noting that the superior court erroneously believes that "there is universal agreement among the branches of Judaism" as to the meaning of Kosher).

- Jewish denominations are divided on whether men and women may sit together within a synagogue, with Orthodox synagogues remaining sex segregated and non-Orthodox synagogues allowing mixed seating. Menachem Posner, *The Mechitzah: Partition*, Chabad.org, https://perma.cc/QS2T-3NT5 (explaining the tradition of separating men and women in synagogues); *see also Katz v. Singerman*, 127 So. 2d 515, 532 (La. 1961) (observing that there is a dispute among Jews regarding the question of mixed seating).
- Finally, Orthodox Judaism does not recognize female rabbis, while other denominations may allow them. *See, e.g.*, 2015 Resolution:

RCA Policy Concerning Women Rabbis, Rabbinical Council of America (Oct. 31, 2015) (adopting a resolution affirming the Orthodox Jewish tradition of not recognizing female rabbis), https://perma.cc/KB5K-UDFJ.

Calling on courts to adjudicate tort claims, like the defamation claim here, could implicate these types of theological disputes, which, in turn, may affect how synagogues are managed or how religious leaders are disciplined. By holding that courts may review internal religious governance communications and decisions, the Court of Appeals opened the door to interference with religious autonomy. As a result, Jewish institutions may be significantly hampered in their ability to manage their own affairs and to "decide for themselves" how to navigate questions of faith and doctrine. *See Kedroff*, 344 U.S. at 116. This constitutes a clear violation of the First Amendment, which "prohibits government involvement in . . . ecclesiastical decisions." *See Hosanna-Tabor*, 565 U.S. at 189. The Supreme Court should therefore reaffirm our country's longstanding commitment to allowing religions to flourish independent from government interference or sanction by overruling the Court of Appeals' erroneous decision.

* * *

Religious organizations must be free to make decisions about doctrine and governance without the looming threat of civil liability. The Court of Appeals' decision invites judicial interference in religious disputes in direct violation of the First Amendment and Supreme Court precedent. *See, e.g.*, *Watson*, 80 U.S. (13 Wall.) at 727–28. If religious organizations are threatened with legal action over internal decisions

about religious doctrine and governance, they will very likely be deterred from exercising their religious convictions and properly overseeing their leadership. The consequences of this ruling will fall most heavily on religious minorities whose traditions are least understood, exposing them to the greatest risk of government intrusion. This Court should therefore correct the Court of Appeals' error.

CONCLUSION

The Court should reverse the Court of Appeals' decision and dismiss the suit as barred by the church autonomy doctrine.

Dated: August 27, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the requirements of Tennessee Supreme Court Rule 46 § 3.02 because it is typed in fourteen-point Century Schoolbook font and, according to Microsoft Word's word-count feature, contains 3878 words, exclusive of the elements exempted by Section 3.02(a)(1).

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CERTIFICATE OF SERVICE

I certify that on August 27, 2025, a true and correct copy of this Motion for Leave to File Brief as Amicus Curiae and Brief as Amicus Curiae was served on all registered users participating in this case, including the following by operation of the Court's e-filing system:

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