

25-1085

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ALEXANDER BELYA,

Plaintiff-Appellant,

v.

HILARION KAPRAL, AKA METROPOLITAN HILARION, NICHOLAS
OLKHOVSKIY, VICTOR POTAPOV, SERGE LUKIANOV, DAVID STRAUT,
ALEXANDRE ANTCHOUTINE, GEORGE TEMIDIS, SERAFIM GAN, BORIS
DMITRIEFF, JOHN DOES 1 THROUGH 10, EASTERN AMERICAN DIOCESE OF
THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA, THE SYNOD OF
BISHOPS OF THE RUSSIAN ORTHODOX CHURCH OUTSIDE OF RUSSIA,
MARK MANCUSO,

Defendants-Appellees,

PAVEL LOUKIANOFF,

Defendant.

Appeal from the United States District Court for the
Southern District of New York, No. 1:20-cv-6597

DEFENDANTS-APPELLEES' RESPONSE BRIEF

Donald J. Feerick, Jr.
FEERICK NUGENT
MACCARTNEY, PLLC
96 South Broadway
South Nyack, NY 10960

Diana Verm Thomson
Daniel H. Blomberg
Lori H. Windham
Daniel L. Chen
Amanda L. Salz
Amanda G. Dixon
THE BECKET FUND
FOR RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006
(202) 955-0095
dthomson@becketfund.org

RULE 26.1 STATEMENT

Defendants Eastern American Diocese of the Russian Orthodox Church Outside of Russia and The Synod of Bishops of the Russian Orthodox Church Outside of Russia state that they have no parent corporation and do not issue stock.

TABLE OF CONTENTS

	Page
RULE 26.1 STATEMENT	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
JURISDICTIONAL STATEMENT	4
STATEMENT OF THE ISSUES	4
STATEMENT OF THE CASE	5
A. The Russian Orthodox Church Outside of Russia	5
B. Father Alexander and his candidacy for bishop	6
C. The proclamation from Moscow	9
D. The allegedly defamatory communication	12
E. Father Alexander’s lawsuit	14
F. Procedural history	17
SUMMARY OF THE ARGUMENT	21
STANDARD OF REVIEW	22
ARGUMENT	23
I. Father Alexander’s claims are barred by the First Amendment’s protections for the autonomy of the church	23
A. The ministerial exception bars Father Alexander’s claims	24
1. The ministerial exception bars defamation claims that interfere with the selection and supervision of ministers.	25

2. Father Alexander’s claims interfere with the Church’s selection and supervision of its ministers.	29
3. Father Alexander’s counterarguments are wrong.	32
B. The broader church autonomy doctrine bars Father Alexander’s claims	34
1. Father Alexander’s claims require answering questions about Church faith and doctrine.	35
2. Father Alexander’s claims interfere with internal Church disciplinary communications.	39
3. Father Alexander’s damages remedies raise intractable entanglement problems.	42
C. The “neutral principles” approach does not apply here.	44
II. Father Alexander’s claims are independently barred by the Free Exercise Clause.	47
III. Father Alexander’s claims fail on the merits.	48
A. The Clergy Letter is a privileged communication.	49
B. Father Alexander cannot show publication.	52
C. Father Alexander cannot show damages.	56
D. The statement is not “of and concerning” Father Alexander.	58
E. The statement is true.	60
CONCLUSION	61
CERTIFICATE OF COMPLIANCE	63
CERTIFICATE OF SERVICE.....	64

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Albert v. Loksen</i> , 239 F.3d 256 (2d Cir. 2001)	52
<i>Aronson v. Wiersma</i> , 493 N.Y.S. 2d 1006 (N.Y. App. Div. 1985)	57
<i>Ava v. NYP Holdings, Inc.</i> , 64 A.D.3d 407 (N.Y. App. Div. 2009).....	59
<i>Bell v. Presbyterian Church (USA)</i> , 126 F.3d 328 (4th Cir. 1997).....	25
<i>Belya v. Kapral</i> , 45 F.4th 621 (2d Cir. 2022).....	<i>passim</i>
<i>Belya v. Kapral</i> , 59 F.4th 570 (2d Cir. 2023).....	17, 46
<i>Berger v. Temple Beth-El of Great Neck</i> , 41 A.D.3d 629 (N.Y. App. Div. 2007).....	49
<i>Billard v. Charlotte Catholic High Sch.</i> , 101 F.4th 316 (4th Cir. 2024)	25, 30, 33
<i>Brazauskas v. Fort Wayne-S. Bend Diocese</i> , 796 N.E.2d 286 (Ind. 2003).....	35, 46
<i>Brown v. Eli Lilly & Co.</i> , 654 F.3d 347 (2d Cir. 2011)	22
<i>Bryce v. Episcopal Church in the Diocese of Colorado</i> , 289 F.3d 648 (10th Cir. 2002).....	40
<i>Bustamante v. KIND</i> , 100 F.4th 419 (2d Cir. 2024).....	54

<i>Byrd v. DeVeaux</i> , No. 17-cv-3251, 2019 WL 1017602 (D. Md. Mar. 4, 2019).....	27
<i>Carroll v. Trump</i> , 151 F. 4th 50 (2d Cir. 2025).....	51
<i>Catholic Charities Bureau v. Wisc. Lab. & Indus. Rev. Comm’n</i> , 605 U.S. 238 (2025).....	23
<i>Cha v. Korean Presbyterian Church of Wash.</i> , 553 S.E.2d 511 (Va. 2001).....	27, 29
<i>Chamilia, LLC v. Pandora Jewelry, LLC</i> , No. 04-cv-6017, 2007 WL 2781246 (S.D.N.Y. Sep. 24, 2007)	56
<i>Chandok v. Klessig</i> , 632 F.3d 803 (2d Cir. 2011)	<i>passim</i>
<i>Conlon v. InterVarsity Christian Fellowship / USA</i> , 777 F.3d 829 (6th Cir. 2015).....	25
<i>Crowder v. S. Baptist Conv.</i> , 828 F.2d 718 (11th Cir. 1987).....	45
<i>Demkovich v. St. Andrew the Apostle Par.</i> , 3 F.4th 968 (7th Cir. 2021)	32
<i>Dillon v. City of New York</i> , 704 N.Y.S.2d 1 (N.Y. App. Div. 1999)	48
<i>In re Diocese of Lubbock</i> , 624 S.W.3d 506 (Tex. 2021)	27, 41, 46
<i>Drevlow v. Lutheran Church</i> , 991 F.2d 468 (8th Cir. 1993).....	34
<i>EEOC v. Catholic Univ. of Am.</i> , 83 F.3d 455 (D.C. Cir. 1996).....	28

<i>El-Farra v. Sayyed</i> , 226 S.W.3d 792 (Ark. 2006)	27, 46
<i>Elvig v. Calvin Presbyterian Church</i> , 375 F.3d 951 (9th Cir. 2004)	34
<i>Emp. Div. v. Smith</i> , 494 U.S. 872 (1990)	48
<i>Episcopal Diocese of S. Va. v. Marshall</i> , 903 S.E.2d 534 (Va. Ct. App. 2024)	28, 42
<i>Esses v. Rosen</i> , No. 24-cv-3605, 2024 WL 4494086 (E.D.N.Y. Oct. 15, 2024)	41
<i>Farley v. Wis. Evangelical Lutheran Synod</i> , 821 F. Supp. 1286 (D. Minn. 1993)	28
<i>Fowler v. Rhode Island</i> , 345 U.S. 67 (1953)	48
<i>Fratello v. Archdiocese of N.Y.</i> , 863 F.3d 190 (2017)	24, 25
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021)	47, 48
<i>Gaddy v. Corp. of the President of the Church</i> , 148 F.4th 1202 (10th Cir. 2025)	38, 46
<i>Goldberg v. Levine</i> , 97 A.D.3d 725 (N.Y. App. Div. 2012)	60-61
<i>Gui v. First Baptist Church</i> , No. 8:24-cv-971, 2024 WL 5198700 (C.D. Cal. Oct. 30, 2024)	27
<i>Hartwig v. Albertus Magnus Coll.</i> , 93 F. Supp. 2d 200 (D. Conn. 2000)	28

<i>Heard v. Johnson</i> , 810 A.2d 871 (D.C. 2002)	27
<i>Herbert v. Lando</i> , 781 F.2d 298 (2d Cir. 1986)	57
<i>Hiles v. Episcopal Diocese of Mass.</i> , 773 N.E.2d 929 (Mass. 2002)	27, 29, 46
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v.</i> <i>EEOC</i> , 565 U.S. 171 (2012)	<i>passim</i>
<i>Hubbard v. J Message Grp.</i> , 325 F. Supp. 3d 1198 (D.N.M. 2018)	27-28
<i>Huntsman v. Corp. of the President of the Church</i> , 127 F.4th 784 (9th Cir. 2025)	38, 46
<i>Hutchison v. Thomas</i> , 789 F.2d 392 (6th Cir. 1986)	27, 46
<i>Hyman v. Rosenbaum Yeshiva of N.J.</i> , 317 A.3d 1260 (N.J. 2024)	28
<i>James v. Gannett Co.</i> , 40 N.Y.2d 415 (N.Y. 1976)	30
<i>Jeffreys v. City of New York</i> , 426 F.3d 549 (2d Cir. 2005)	54
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979)	45, 46
<i>Kamerman v. Kolt</i> , 210 A.D.2d 454 (N.Y. App. Div. 1994)	50
<i>Kavanagh v. Zwilling</i> , 578 F. App'x 24 (2d Cir. 2014)	30
<i>Kavanagh v. Zwilling</i> , 997 F. Supp. 2d 241 (S.D.N.Y. 2014)	28, 34-35

<i>Kedroff v. St. Nicholas Cathedral</i> , 344 U.S. 94 (1952)	24
<i>Kirch v. Liberty Media</i> , 449 F.3d 388 (2d Cir. 2006)	58
<i>Klouda v. Sw. Baptist Theological Seminary</i> , 543 F. Supp. 2d 594 (N.D. Tex. 2008)	28
<i>Kraft v. Rector, Churchwardens & Vestry of Grace Church</i> , No. 01-cv-7871, 2004 WL 540327 (S.D.N.Y. Mar. 17, 2004)	28
<i>Lee v. Sixth Mount Zion Baptist Church</i> , 903 F.3d 113 (3d Cir. 2018)	25, 26, 44
<i>Lieberman v. Gelstein</i> , 605 N.E.2d 344 (N.Y. 1992)	56
<i>Lokhova v. Halper</i> , 995 F.3d 134 (4th Cir. 2021)	55
<i>Markel v. Union of Orthodox Jewish Congregations of America</i> , 124 F.4th 796 (9th Cir. 2024)	33
<i>Matter of Kantor v. Pavelchak</i> , 134 A.D.2d 352 (N.Y. App. Div. 1987)	49
<i>McMahon v. World Vision Inc.</i> , 147 F.4th 959 (9th Cir. 2025)	33
<i>McRaney v. N. Am. Mission Bd.</i> , —F.4th—, 2025 WL 2602899 (5th Cir. Sep. 9, 2025)	<i>passim</i>
<i>McRaney v. N. Am. Mission Bd.</i> , 966 F.3d 346 (5th Cir. 2020)	37
<i>Md. & Va. Eldership of Churches of God v. Church of God</i> , 396 U.S. 367 (1970)	44

<i>Mirage Ent., Inc., v. FEG Entretenimientos</i> , 326 F. Supp. 3d 26 (S.D.N.Y. 2018).....	55
<i>Natal v. Christian & Missionary All.</i> , 878 F.2d 1575 (1st Cir. 1989)	26, 27
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964)	47
<i>Ogle v. Hocker</i> , 279 F. App'x 391 (6th Cir. 2008)	34
<i>Our Lady of Guadalupe Sch. v.</i> <i>Morrissey-Berru</i> , 591 U.S. 732 (2020)	<i>passim</i>
<i>Palin v. New York Times Co.</i> , 940 F.3d 804 (2d Cir. 2019)	48, 56
<i>Paul v. Watchtower Bible & Tract Soc'y of N.Y.</i> , 819 F.2d 875 (9th Cir. 1987)	47-48
<i>Paul v. Zachariah</i> , No. 6509/99, 2001 WL 856405 (N.Y. Sup. Ct. May 21, 2001)	50
<i>Pendleton v. Hawkins</i> , 11 A.D. 602 (N.Y. App. Div. 1896)	49
<i>Penn v. N.Y. Methodist Hosp.</i> , 884 F.3d 416 (2d Cir. 2018)	22, 37, 39
<i>Pfeil v. St. Matthews Evangelical</i> <i>Lutheran Church</i> , 877 N.W.2d 528 (Minn. 2016)	35, 40-41, 46
<i>Rayburn v. Gen. Conf. of Seventh-day Adventists</i> , 772 F.2d 1164 (4th Cir. 1985)	28, 34
<i>Rosenfeld v. Basquiat</i> , 78 F.3d 84 (2d Cir. 1996)	37

<i>Rweyemamu v. Cote</i> , 520 F.3d 198 (2d Cir. 2008)	25, 26
<i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976)	<i>passim</i>
<i>Sharratt v. Hickey</i> , 799 N.Y.S.2d 299 (N.Y. App. Div. 2005)	57
<i>Sieger v. Union of Orthodox Rabbis</i> , 1 A.D.3d 180 (N.Y. App. Div. 2003).....	49
<i>Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.</i> , 41 F.4th 931 (7th Cir. 2022)	26
<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021).....	47
<i>Three Amigos SJJ Rest., Inc., v. CBS News Inc.</i> , 65 N.E.3d 35 (N.Y. 2016)	59
<i>United States v. Coonan</i> , 938 F.2d 1553 (2d Cir. 1991)	40, 52
<i>Werft v. Desert Sw. Ann. Conf.</i> , 377 F.3d 1099 (9th Cir. 2004).....	26
<i>Whole Woman’s Health v. Smith</i> , 896 F.3d 362 (5th Cir. 2018).....	39, 41

STATUTES

28 U.S.C. § 1291.....	4
28 U.S.C. § 1332.....	4

OTHER AUTHORITIES

Fed. R. App. P. 4	4
<i>Forgery, Black’s Law Dictionary</i> (12th ed. 2024)	61

Restatement (Third) of Torts: Phys. & Emot. Harm § 3 (2010)	32
2 W. Cole Durham & Robert Smith, <i>Religious Organizations and the Law</i> (2d ed. 2025).....	26-27

INTRODUCTION

Since its last sojourn in this Court, extensive merits discovery has shown that a judge and jury cannot determine the merits of this case without entering a religious thicket, overturning the Church on its choice and governance of clergy, and second-guessing its religious judgments—all in violation of the First Amendment. It has also shown that Father Alexander’s claims fail on their merits.

By his own account, Father Alexander’s case concerns a “faction struggle” over Church hierarchy within his former church, the Russian Orthodox Church Outside of Russia (ROCOR). This religious leadership dispute between him and ROCOR’s Diocesan and Synodal leadership turned on whether he should be a bishop. Father Alexander’s lawsuit alleged that he was elected bishop by ROCOR’s Synod, that some Church leaders resisted despite knowing he was elected, and that they ultimately succeeded in derailing his elevation by defaming him in a letter that accused him of fabricating the election and forging three key supporting documents. He claimed the defamation drove away Church members and required him to leave ROCOR.

The undisputed record now tells a very different story than the one this Court was required to assume true the last time around. Among the facts that emerged in discovery: (1) Father Alexander was never elected bishop; (2) the ROCOR Synod he alleged elected him doesn’t have canonical authority to elect bishops; (3) the ROCOR Synod *does* have authority

to suspend the candidacy of aspiring bishops, which it exercised with Father Alexander months before the alleged defamatory letter due to his ecclesiastical misconduct; (4) while the letter did accuse him of ecclesiastical misconduct—including breaking the seal of the confessional, manipulating parishioners, and committing self-serving financial practices—it didn’t say anything about him engaging in forgery or fabrication; and (5) even *before* the alleged defamation occurred, he had already formally sought to leave ROCOR for the Greek Orthodox Church.

Father Alexander would now have this Court believe that those facts are “irrelevant.” Setting aside that that’s not what he said in his complaint, they are certainly relevant to the Church’s defense that their statements were both true and reasonably made, were intrinsic to an internal Church investigation of an international leadership dispute, and involve religious determinations on matters of Church discipline. Indeed, to rule on the merits of Father Alexander’s claims, the factfinder would have to probe the contents of confidential internal Church meetings, the process and validity of a Church election, and whether the Church authorized false religious documents to be sent to the Church’s highest official. Contrary to Father Alexander’s account, discovery has confirmed that a signature on a piece of paper does not answer those questions.

The First Amendment’s church autonomy doctrine puts this kind of dispute well outside the ken of civil courts. The component of the doctrine that most cleanly resolves this dispute is the ministerial exception. The

First, Fifth, Sixth, and Seventh Circuits have held that the exception bars all claims—not just employment discrimination claims—by ministers that would infringe on a church’s right to select, supervise, and discipline their ministers. And with the facts all in, there’s no question that’s what Father Alexander’s claims do.

Even if he wasn’t a minister, the church autonomy doctrine bars Father Alexander’s claims for three more reasons. Namely, the claims would impermissibly require civil courts to second-guess the Church on questions of faith and doctrine, interfere in internal Church disciplinary communications, and entangle themselves in religious matters to resolve his asserted damages. For instance, discovery has confirmed that to decide if the statements in the letter were defamatory, the Court must wade into Church law and tradition over the canonical procedure for electing bishops and the relationship between ROCOR and the Moscow Patriarchate of the Russian Orthodox Church. This is impermissible.

Finally, the district court was correct that even with full discovery, the only support Father Alexander identifies for his claims “traffics in aspersions.” Father Alexander has not met his burden of showing publication by any of the Defendants, all of whom testified that they did not share the letter outside senior Church leadership. Nor has he shown the letter went beyond the Orthodox community and thus beyond applicable privilege. And he hasn’t shown that he has suffered monetary damage as a

result of the letter, that the Defendants ever even accused him of forgery, or that any statements in the letter are actually false.

For these reasons, the district court was right to hold both that Father Alexander's claims fail on the merits and that "trying this case would be impossible without violating the church's autonomy."

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction under 28 U.S.C. § 1332. This Court has jurisdiction under 28 U.S.C. § 1291. The district court granted summary judgment to Defendants on all Plaintiff's claims on March 31, 2025. JA.1571-85. Plaintiff filed a timely notice of appeal on April 28, 2025. JA.1586; Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF THE ISSUES

- I. Does Father Alexander's suit violate the Religion Clauses' bar on civil entanglement in religious leadership disputes (the ministerial exception) and in internal church governance (the broader church autonomy doctrine)?
- II. Does Father Alexander's suit violate the Free Exercise Clause?
- III. Do Father Alexander's defamation claims fail on the merits?

STATEMENT OF THE CASE

A. The Russian Orthodox Church Outside of Russia

ROCORA is a semi-autonomous part of the Russian Orthodox Church, founded in the wake of the 1917 Bolshevik Revolution to remain independent of Soviet control. JA.84-85, 179-80. Defendants are the Synod of Bishops of ROCORA, the Eastern American Diocese (EAD or Diocese) of ROCORA, the First Hierarch Metropolitan Nicholas, and other senior ROCORA clergy. JA.85.

ROCORA's most senior cleric is the First Hierarch of the Church, the Metropolitan. JA.86. In the relevant time period, the First Hierarch was Metropolitan Hilarion, named here as Hilarion Kapral, who reposed in the Lord in May 2022 after a lengthy illness. JA.86. The First Hierarch is now Metropolitan Nicholas, named here as Nicholas Olkhovskiy. JA.86. Today, following the fall of Soviet Russia, ROCORA is in communion with the Russian Orthodox Church in Moscow, also known as the Moscow Patriarchate (Moscow), led by Patriarch Kirill. JA.84-85.

ROCORA's highest ecclesiastical body is the Sobor (or Council) of Bishops, consisting of every ROCORA bishop. JA.85, 224. The Sobor's executive organ is the Synod of Bishops, which carries out the decisions of the Sobor. JA.86, 226. Certain ecclesiastical functions can only be performed by the full Sobor, including the election of bishops. JA.87, 225. In a lengthy religious discernment process, the Synod considers and decides whether to send candidates to the Sobor for a vote. JA.86-87, 183-184.

The Sobor, and only the Sobor, elects bishops. JA.87. The Sobor seeks consensus, so episcopal elections are generally unanimous and never take place over the serious objection of several bishops. JA.85.

ROCOR's selection of bishops is independent of the Patriarchate, which was a key condition of re-entering ecclesiastical communion in 2007 after almost 90 years apart. JA.85, 98. The ecclesial tradition has a specific form: the ROCOR Synod issues a formal letter on its own letter-head to the Moscow Synod recounting the Sobor's election. JA.87, 185. The Moscow Patriarchate then formally affirms ROCOR's appointment. JA.87, 185. After this, the ROCOR Sobor holds a sacramental consecration. JA.87, 185. Then, and only then, does the candidate become a bishop. JA.87, 186.

ROCOR is organized into dioceses, and Plaintiff, then-Father Alexander Belya, was a priest in the EAD. JA.90, 92. Metropolitan Hilarion was the ruling bishop of the EAD and was supported in the administration of ecclesiastical affairs by then-Vicar Bishop (now Metropolitan) Nicholas. JA.90, 106.

B. Father Alexander and his candidacy for bishop

Father Alexander Belya is an "Orthodox Christian archimandrite"—a monastic priest—who came to the United States from the Czech Republic in 2011. JA.187. He founded the Cathedral of St. Matrona in Miami, in ROCOR's Eastern American Diocese. JA.92. Father Alexander's brother, Ivan Belya, was a Church official for both Father Alexander's cathedral

and the cathedral in Brooklyn led by their father, Father Alexander Belya Senior. JA.89.

At a regular Synod meeting in September 2018, Father Alexander was informally raised as a potential bishop candidate, and the Synod invited him to appear at its December 2018 meeting. JA.93. After Father Alexander left, some members of the Synod voiced objections but expressed a willingness to consider his candidacy if certain concerns were addressed. JA.93-94, 189. Those concerns included Father Alexander's longstanding failure to ensure Church properties were organized under ROCOR by-laws, which require Church properties to be owned and controlled by the Church and not treated as a priest's personal possessions. JA.94, 189-90. The Synod appointed then-Bishop Nicholas and Archbishop Gabriel to ensure the conditions were met. JA.94, 189.

The Synod did not forward Father Alexander's name to the Sobor for consideration. JA.94. The Sobor accordingly never voted on Father Alexander's candidacy for bishop. JA.95, 191.

Father Alexander never met with then-Bishop Nicholas to provide evidence he had addressed the Synod's concerns. JA.192. Nor did he ever place the Church properties under ROCOR governance. JA.100. Instead, he created a shell corporation that he claimed transferred the Church properties to ROCOR, when in fact title to the properties remained with a corporation that he and his brother Ivan controlled. JA.94, 100.

In spring 2019, the Synod considered complaints against Father Alexander from multiple sources. Some of Father Alexander's parishioners complained that he had broken the seal of the confessional and that he was not conducting his parish in accordance with ROCOR practices. JA.95-97. Some complaints related to his lack of financial accountability to the EAD. JA.94-95. One episode of particular concern involved an unauthorized appearance before the Moscow Patriarchate at which Father Alexander exhibited behavior unbecoming of a cleric, behavior that numerous ROCOR clergy observed personally. JA.96-97. As a result, at its June 2019 meeting, the Synod voted to temporarily suspend Father Alexander's candidacy until the September 2019 Synod meeting, when it would evaluate the results of the ongoing investigations. JA.97. The suspension was issued in a Decree of the Synod, on official Synodal letterhead, with the seal of the Synod, signed by both Metropolitan Hilarion and the Secretary of the Synod. JA.246, 248.

As ROCOR later learned, Father Alexander claims he nonetheless obtained an audience with the Patriarchate shortly thereafter, in July 2019. JA.829. Father Alexander claims that Moscow contacted him directly on July 14, 2019, and invited him to meet with the Patriarch in person in Russia two days later. JA.829, 1243. According to Ivan, the Patriarch stated that Father Alexander was "a worthy candidate for bishop." JA.1243. Father Alexander intentionally did not tell Metropolitan Hilar-

ion or ROCOR about the meeting with Moscow, nor did he seek the Synodal authorization that any meeting with the Patriarch would require. *See* JA.1242-43, 205-06.

C. The proclamation from Moscow

On August 30, 2019, ROCOR was blindsided when the Moscow Patriarchate's official website published a proclamation stating Father Alexander had been elevated to the bishopric. JA.97. This worldwide announcement shocked ROCOR members and leaders. JA.97. It rocked the Church's hierarchy, who knew Father Alexander was not even an active candidate, much less elected by the Sobor. JA.97. Even the possibility of Moscow unilaterally asserting control over episcopal selection was astonishing and concerning. JA.98. Nothing like this had ever happened in the decade since re-unifying with the Patriarchate. *See* JA.97-98.

Five minutes after Moscow's proclamation was posted, Ivan Belya called Metropolitan Hilarion, surreptitiously recording the call. JA.1241. Ivan admitted that he and Father Alexander had concealed from the Metropolitan that Father Alexander had obtained a personal audience with the Patriarch. JA.1242-43. Ivan then told the Metropolitan how to respond to opposition: "If anyone puts pressure on you or anything, just say, 'It's not me, it's the Patriarch.'" JA.1244. Ivan instructed the Metropolitan to speak as if he'd known about the unauthorized audience: "say

... the Patriarch summoned [Father Alexander], the Patriarch had a conversation with him, the Patriarch approved him[.]” JA.1244.¹

Given the ecclesiastical uproar, the Synod and the EAD immediately began investigating what led to the mistaken announcement. JA.98. Father Serafim Gan, who normally handles Synodal communications with the Patriarchate, was tasked with contacting the Patriarchate. JA.88, 98. He received copies of three letters that Moscow had received in support of Father Alexander’s elevation:

- (1) A December 10, 2018 letter on Metropolitan Hilarion’s personal letterhead, bearing his personal seal, and purporting to be signed by him. This letter was sent to Patriarch Kirill and announced Father Alexander’s “election” by the “Synod.” JA.98-100.
- (2) An undated letter that was not on letterhead or bearing a seal but purported to be signed by Archbishop Gabriel. This letter was addressed to Metropolitan Hilarion and stated that Father Alexander had taken the necessary corrective steps to be considered as a bishop candidate. JA.101-04.
- (3) A January 11, 2019 letter on Metropolitan Hilarion’s personal letterhead, bearing his seal, and purporting to be signed by him. This letter was addressed to Patriarch Kirill, stated that Father Alexander had met the required conditions, and asked the Patriarch to “approve” his election. JA.100-01.

ROCOR clergy recognized that the Moscow letters facially violated canon law and Church custom. JA.98-103. For one thing, only the Sobor—

¹ Contradicting his own complaint, which alleged that Father Alexander had this conversation with Metropolitan Hilarion, JA.64, Father Alexander now claims he was out of cell and internet range all day on August 30 and did not know anything about the announcement until August 31, JA.830.

and not the Synod—can elect a bishop under canon law. JA.87. Yet the letters claimed the Synod had elected Father Alexander. JA.109-11. And the Sobor had never voted at all, a fact confirmed in discovery and which Father Alexander does not dispute. JA.98-102.

Even basic details were wrong. The Synod alone can formally inform the Patriarch of an election, which it does on Synodal letterhead with a Synodal seal. JA.87. A Metropolitan has no authority to act alone, so a notice of election is never sent on a Metropolitan's personal letterhead, with his personal seal, and—crucially—without Synodal authorization. JA.99-101.

More generally, leadership of both the Synod and the EAD knew Father Alexander was not an active candidate for bishop and that he had not placed his Church properties under ROCOR bylaws. JA.100, 102. Further, in the general course, Moscow's public confirmation of a new bishop is preceded by months of informal and formal communications throughout the Church, as local, regional, and national bodies prepare for new leadership. JA.97, 125. None of that happened before Moscow's announcement about Father Alexander, in sharp contrast to preparations before another bishop's similarly timed—and ROCOR-authorized—announcement. JA.97, 125-26.

Finally, the Church later learned that Archbishop Gabriel did not sign the letter bearing his signature. JA.102-03. Ivan and Father Alexander

Senior asked Archbishop Gabriel to sign a letter concerning the conditions for considering Father Alexander's candidacy. JA.103. He did so, but testified that the letter he signed was handwritten and not the typed letter that appeared in Moscow. JA.103. Further, Father Alexander alleged that Metropolitan Hilarion relied on Archbishop Gabriel's letter in the Metropolitan's January 11 letter stating that the conditions for election had been met. JA.101. But the meeting with Archbishop Gabriel occurred in late January 2019 at the earliest—weeks after the January 11 letter. JA.101, 103.

D. The allegedly defamatory communication

On the first business day after Moscow's shocking announcement, September 3, the Diocesan Council of the Eastern American Diocese met for a regularly scheduled meeting. JA.104. In a confidential executive session, the clergy members of the Diocesan Council discussed the letters to Moscow and broader concerns with Father Alexander. JA.104. They then sent a letter raising these issues to the Synod (the "Clergy Letter"). JA.105. The Clergy Letter is the communication that Father Alexander claims is defamatory.

The Clergy Letter expressed concerns about the documents used to support Father Alexander's claimed election. It stated that those documents contained false content and stark irregularities, which indicated the Synod had not authorized them. JA.104.

The Clergy Letter also described recent complaints against Father Alexander that could disqualify him from consideration for the bishopric, including accusations of religious misconduct such as “breaking of the seal of Confession” and using “information obtained during Confession ... for the purpose of denigrating parishioners and of controlling them.” JA.143. The letter closed by asking the Metropolitan to investigate these “serious” issues and to suspend Father Alexander “from performing any clerical functions” in the meantime. JA.143-44.

The Clergy Letter did not speculate about how these “irregular” letters were created, did not mention Father Alexander in relation to the Moscow letters, and never used the term “forgery.” *See* JA.142-44. All Defendants have testified that they did not distribute the letter beyond its intended recipient, the Synod, nor do they know who did. JA.105.

In response to the Clergy Letter, Metropolitan Hilarion immediately suspended Father Alexander from his religious duties. JA.105. On September 14, Metropolitan Hilarion issued a public letter communicating the suspension. JA.106. Father Alexander appealed his suspension through the Church. JA.106. In an appeal dated September 6, 2019, Father Alexander admitted that he knew that letters to the Patriarchate had not been delivered “as is usually done,” and that he somehow personally obtained and kept signed copies of one letter. JA.367. His appeal acknowledges that “the basis” for his suspension arose from “the canons of the Holy Apostles, Local Councils, Nomocanon, and others.” JA.368.

His appeal then responds to each canon law deficiency and claims the Diocesan Council “exceeded [its] authority” by calling for his suspension. JA.368-71. The EAD spiritual court affirmed his suspension, which the Synod later affirmed. JA.106-07.

Instead of abiding by the decision of the ecclesiastical court, Father Alexander left ROCOR. In fact, as ROCOR later learned, Father Alexander had already started the process of leaving the Church even before the Clergy Letter was sent to the Synod on September 3, formally petitioning the Greek Orthodox Church to accept him and his church out of ROCOR. JA.107; Br.12 (acknowledging taking steps to leave before September 3).² In a September 2 letter, the Greek Orthodox Church recognized Father Alexander’s petition. JA.107. Father Alexander took the Church’s properties with him, having never transferred them to ROCOR. JA.100.

E. Father Alexander’s lawsuit

One year later, on September 18, 2020, Father Alexander filed this action alleging that the Clergy Letter’s claims constituted defamation, defamation *per se*, and defamation by innuendo. He seeks over \$5 million in damages for “severely impaired reputation and standing” within

² Father Alexander claims he took this step after he became aware on August 31 of the Church’s response to Moscow’s announcement. Br.12. That is unlikely. August 31, 2019 was a Saturday. Father Alexander testified that he mailed the petition via U.S. Post from Florida to New York. JA.447. The Greek Orthodox Church responded in a letter dated September 2, 2019, which agreed to start the process of accepting him to its ecclesiastical communion. JA.107. September 2 was Labor Day.

ROCOR and for “humiliation, mental anguish and suffering” and loss of income due to diminished Church membership. JA.75.

The portion of the Clergy Letter that Father Alexander claims is defamatory is:

The confirmation by the Holy Synod of the Russian Orthodox Church of “the election of Archimandrite Alexander (Belya) as Bishop of Miami, vicar of the Eastern American diocese” and the preliminary study of the latest complaints received from Florida concerning him, resulted in serious discussion at the meeting of the Diocesan Council of the Eastern American Diocese, which was held on Tuesday, September 3rd of this year. With a sense of responsibility for our Church life, we feel we must respectfully and deferentially bring forward this concern and report the following to the Synod of Bishops.

- (1) It turns out that Metropolitan Hilarion of Eastern America & New York knew nothing about the written appeals directed to Moscow containing a request for confirmation of the “episcopal election” of the Archimandrite by the Synod of Bishops (which never took place). The Diocesan Council members have examined the content of these letters, which, as stated by His Eminence, were drawn up in an irregular manner. For example, the “request” does not contain the appropriate citation from the decision of the Synod of Bishops, nor does it contain a biography of the cleric “elected.”
- (2) The letter submitted with the signature of Archbishop Gabriel of Montreal & Canada raises doubts, as well, as it was not issued numbered or dated. In addition, it was not printed on the official letterhead of the Most Reverend Gabriel. Nevertheless, we understand that the Holy Synod, having received the appeal supposedly from our First Hierarch, had no reason to doubt the authenticity of the written request of His Eminence.

JA.75, 141-43. Father Alexander alleged that this language in the Clergy Letter accused him of “fabricat[ing]” that he “had been elected by the ROCOR Synod to the position of Bishop of Miami,” and that it “labeled [him] a forger and a swindler,” JA.67, 70, who “duped Patriarch Kirill and the Moscow Synod into confirming his election to the position of Bishop of Miami,” JA.78. And he alleged that the underlying purpose of all this was a “scheme to undo Plaintiff’s appointment as Bishop of Miami by means of the September 3 Letter.” JA.71-72. Father Alexander claims that every allegedly defamatory statement is contained in the Clergy Letter. JA.70-71.

Notably, Father Alexander does not challenge the Clergy Letter’s statements concerning his breaking of the seal of the confessional, his abuse of parishioners, or his financial misconduct. He also does not challenge that the letter called for him to be suspended from ministry while those charges were investigated.

For purposes of publication, Father Alexander alleged that Defendants disseminated the letter to the media, citing a mistaken posting of a media article on Father Serafim’s church website as evidence. JA.67-68. But Father Serafim did not make the post and ordered it removed immediately after he learned of it. JA.114. Later, Father Alexander claimed that Defendants leaked the Clergy Letter to a church member and layperson named Olga Tsibin, who posted it on Facebook twice, once on September 15 and again in October. JA.828. He also later claimed that two

other Defendants, Father Alexandre Antchoutine and Father Serge Lukianov, republished the defamation by linking to news articles. JA.1500-01, 1503.

F. Procedural history

After the district court denied Defendants’ three-page letter motion seeking dismissal, Defendants filed an interlocutory appeal. Dkt. 70. This Court dismissed the appeal for lack of jurisdiction, noting that “[f]or now, it appears that the case can be litigated with neutral principles of law.” *Belya v. Kapral*, 45 F.4th 621, 632-33 (2d Cir. 2022). But the Court left open the possibility that “[i]n the end, ... further proceedings may uncover that the merits do turn on the church autonomy doctrine.” *Id.* The Court stated that the district court had not yet “bar[red] any defenses,” “rule[d] on the merits of the church autonomy defense,” or denied Defendants the ability “to continue asserting the defense.” *Id.* at 631. The Court noted that “[i]t is possible that at some stage Defendants’ church autonomy defenses will require ... dismissal of the suit in its entirety.” *Id.* The Second Circuit split 6-6 over whether en banc review should be granted. *Belya v. Kapral*, 59 F.4th 570 (2d Cir. 2023).

Father Alexander represented to this Court that he would limit discovery to “three factual issues:” 1) whether Metropolitan Hilarion’s signatures on the disputed letters were “genuine”; 2) the “Defendants’ knowledge” at the time they wrote the Clergy Letter; and 3) “the extent

of the dissemination and publication of the defamatory statements.” Reply in Support of Motion to Dismiss at 7, *Belya*, No. 21-1498 (2d Cir. Aug. 2, 2021), Dkt. 46. On remand, however, he did not consider himself limited by this promise.

Father Alexander began discovery by requesting production of “all” internal ROCOR deliberations confirming the “election ... never took place” or that his election-related papers were “drawn up in an irregular manner.” JA.671. Father Alexander deposed ten Church officials, including Metropolitan Nicholas (ROCOR’s highest official), two archbishops, one bishop, and six priests.³ Depositions probed sensitive ecclesiastical relationships, including the “unification of ROCOR with the ... Russian Church in Moscow,” JA.479-80, asking whether “some in the EAD ... opposed the unification,” JA.479-80; whether “Patriarch Kirill supports President Putin,” JA.585; and whether ROCOR clergy are “responsible for Putin’s soul,” JA.541. *See* JA.117-18. When defense counsel objected to such intrusive questioning, Father Alexander’s counsel asserted that it was necessary because “[i]t goes to the motive and the willfulness of the defamatory conduct that we’re complaining of.” JA.477.

When Father Alexander’s counsel asked about the authenticity of the Moscow letters, witnesses explained that the letters’ “genuine[ness]”

³ The Table of Contents in the Joint Appendix erroneously cites a deposition transcript of “Hilarion Kapral.” The deponent there was Bishop Irenei Steenberg.

couldn't be determined “simply by looking at” the signatures. *See, e.g.*, JA.638. The witnesses explained that the letters must “be questioned for [their] authenticity” because they contain points “we know to be false and procedurally impossible” according to canon law and Church custom for electing bishops and communicating those elections to Moscow. JA.640, 650.

During summary judgment proceedings, Father Alexander significantly “narrowed ... the scope of the case” in his briefing and at oral argument. JA.1507; *see also* JA.1507-08. Father Alexander confirmed that a single statement from the Clergy Letter—“that Met. Hilarion ‘knew nothing about the written appeals directed to Moscow containing a request of the episcopal election [of the plaintiff] by the Synod of Bishops’”—is “[t]he only statement that is challenged.” Opp’n to Mot. for Summ. J. at 19, Dkt. 142 (quoting JA.142, 887); JA.1577 (quoting Dkt. 142 at 19) (alterations in original); *see also* JA.1507 (“THE COURT: “[T]he only statement that you allege to be at issue ... is the statement, [‘i]t turns out that Metropolitan Hilarion knew nothing about the written appeals directly to Moscow,’ right? MR. RIVKIN: That is correct, your Honor.”).

Father Alexander also abandoned the argument that the EAD members defamed him by sending the Clergy Letter to the Synod. *See* JA.1512 (“[W]e’re not challenging the circulation within the religious leadership of the church — priests, bishops, archbishops, et cetera.”); *cf.* JA.1513-14 (“Now, if, for example, [defendants] discussed this among themselves, if

they send it to the priest of a church or the bishop, those communications would arguably be privileged, covered by the First Amendment, but not communications to laymen.”).

The district court granted summary judgment for ROCOR on both First Amendment and state-law grounds. It held that sending the case to trial would “be exactly the sort of interference the First Amendment forbids.” JA.1583. Applying New York law, it also held that Belya’s defamation claims fail on the merits because he “can show neither publication nor actionability.” JA.1576. Father Alexander appealed.

SUMMARY OF THE ARGUMENT

I. Father Alexander’s claims are barred by the First Amendment’s protections for church autonomy, which guarantee broad independence for religious groups from state control in matters of faith, doctrine, and internal governance. His claims violate two distinct components of church autonomy. First, they violate the protection against a minister suing his former church on claims that arise from the church’s supervision and control of the minister. Second, they violate the protection against judicial interference in matters of internal church governance and discipline—“exactly the sort of interference the First Amendment forbids.” JA.1583.

II. Father Alexander’s claims also violate the Free Exercise Clause. He relies on common law requirements that are not generally applicable, treating comparable secular activity more favorably than religious exercise without adequate justification. That is unconstitutional.

III. Finally, Father Alexander’s claims fail on the merits. He failed to submit any admissible evidence meeting his burden to show basic elements of his claims, including publication and damages, and instead relied on speculation and conjecture. The district court was right: his suit is rife with “evidentiary issues,” “traffics in aspersions, not personal knowledge,” and “star[es] down an evidentiary lacuna.” JA.1579.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment *de novo*, “assessing whether the district court properly concluded that there was no genuine issue of material fact and that the moving party was entitled to judgment as a matter of law.” *Penn v. N.Y. Methodist Hosp.*, 884 F.3d 416, 423 (2d Cir. 2018). To defeat summary judgment, a non-movant “must do more than simply show that there is some metaphysical doubt as to the material facts, and may not rely on conclusory allegations or unsubstantiated speculation.” *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 358 (2d Cir. 2011) (cleaned up).

“Where the undisputed facts reveal that there is an absence of sufficient proof as to one essential element of a claim, any factual disputes with respect to other elements become immaterial and cannot defeat a motion for summary judgment.” *Chandok v. Klessig*, 632 F.3d 803, 812 (2d Cir. 2011).

ARGUMENT

I. Father Alexander’s claims are barred by the First Amendment’s protections for the autonomy of the church.

Through the First Amendment’s Religion Clauses, the church autonomy doctrine protects a religious organization’s “independence in matters of faith and doctrine and in closely linked matters of internal government.” *Belya*, 45 F.4th at 630 (quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020)). “State interference” in such matters would “obviously” violate the Free Exercise Clause, and “any attempt” by the judiciary to “dictate or even to influence such matters” is an equally clear violation of the Establishment Clause. *Our Lady*, 591 U.S. at 746. To avoid these constitutional problems, courts have long recognized and respected “distinct spheres for secular and religious authorities”—simultaneously protecting churches and confining courts to their proper role. *Catholic Charities Bureau v. Wisc. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 258 (2025) (Thomas, J., concurring).

One “component” of church autonomy is the ministerial exception, which bars government interference in a church’s selection, supervision, and control of its ministers. *Our Lady*, 591 U.S. at 746-47. And beyond such ministerial matters, church autonomy provides “broad” protections, *id.*, forbidding civil courts from interfering in “church discipline [and] ecclesiastical government,” including matters concerning “theological controversy, church discipline, ecclesiastical government, or the conformity

of the members of the church to the standard of morals required of them,” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713-15 (1976).

Here, both types of church autonomy protections bar Father Alexander’s claims. And because his claims involve internal ecclesiastical matters, the so-called “neutral principles” approach developed for church property disputes is not applicable here.

A. The ministerial exception bars Father Alexander’s claims.

The ministerial exception is the “component” of the church autonomy doctrine that specifically safeguards churches’ “authority to select, supervise, and if necessary, remove a minister without interference by secular authorities.” *Our Lady*, 591 U.S. at 746-47. This rule prohibits civil adjudication of a minister’s claims against religious bodies that would interfere with “the authority to select and control who will minister to the faithful.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194-95 (2012) (citing *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 119 (1952)). Thus, “where a defendant is able to establish that the ministerial exception applies, the ‘First Amendment has struck the balance for us’ in favor of religious liberty” and a civil claim is barred from proceeding. *Fratello v. Archdiocese of N.Y.*, 863 F.3d 190, 199 (2d Cir. 2017) (citation omitted) (quoting *Hosanna-Tabor*, 565 U.S. at 196).

1. The ministerial exception bars defamation claims that interfere with the selection and supervision of ministers.

The ministerial exception “ensur[es] the separation of church and state.” *Fratello*, 863 F.3d at 199. Grounded in “constitutional structure,” it “does not protect the church alone,” but also “confines the state and its civil courts to their proper roles.” *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024). The exception does this by “categorically prohibit[ing] federal and state governments from becoming involved in religious leadership disputes.” *Id.* (quoting *Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829, 836 (6th Cir. 2015)). This both protects the right of religious bodies to supervise, discipline, and remove their ministers without second-guessing through the “legal process,” and upholds “important institutional interests” of the judiciary by “prohibit[ing] the adjudication of disputes that are ‘beyond the ken of civil courts.’” *Id.* (quoting *Bell v. Presbyterian Church (USA)*, 126 F.3d 328, 331 (4th Cir. 1997)); accord *Lee v. Sixth Mount Zion Baptist Church*, 903 F.3d 113, 118 n.4 (3d Cir. 2018) (the “exception is rooted in constitutional limits on judicial authority”).

While some civil claims may survive this structural bar because they are unrelated to ministerial selection or control—such as a slip-and-fall on the church steps, *Rweyemamu v. Cote*, 520 F.3d 198, 208 (2d Cir. 2008)—“any federal or state cause of action” that would “impinge on the Church’s prerogative” to choose, supervise, or discipline its ministers is

barred, *Werft v. Desert Sw. Ann. Conf.*, 377 F.3d 1099, 1100 n.1 (9th Cir. 2004). This is because such claims, “whatever their ‘emblemata,’” will “inexorably entangle [courts] in doctrinal disputes.” *Rweyemamu*, 520 F.3d at 208 (quoting *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577 (1st Cir. 1989)).

“Howsoever a suit may be labelled, once a court is called upon to probe into a religious body’s selection and retention of clergymen, the First Amendment is implicated.” *Natal*, 878 F.2d at 1576-78. Thus, the operative question for the application of the ministerial exception is not whether an action sounds in tort, contract, or statute. Rather, it is whether the claim “interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.” *Hosanna-Tabor*, 565 U.S. at 188.

Accordingly, courts have repeatedly barred not only employment discrimination claims under the ministerial exception, but also any contract and tort claims that “implicate ecclesiastical matters.” *Starkey v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 944 (7th Cir. 2022); *see, e.g., Sixth Mount Zion*, 903 F.3d at 122 (barring contract claim; noting “sister circuit courts have repeatedly” done same). Such common law claims are often part and parcel of a standard wrongful termination claim, all of which can be subject to the ministerial exception. 2 W. Cole Durham & Robert Smith, *Religious Organizations and the Law* § 14:54 (2d ed. 2025) (“Wrongful termination claims are often joined with claims

of common law torts such as defamation and intentional or negligent infliction of emotional distress.”). Any other rule would allow “collateral attacks on [the Church’s] ministry-leadership decisions” framed as tort claims. *McRaney v. N. Am. Mission Bd.*, —F.4th—, 2025 WL 2602899, at *20 (5th Cir. Sep. 9, 2025).

That’s just as true of defamation claims. *Id.* Ever since *Hutchison v. Thomas* rejected a defamation claim that was “really seeking civil court review of subjective judgments made by religious officials and bodies that he had become ‘unappointable,’” 789 F.2d 392, 393 (6th Cir. 1986), other federal circuits and state supreme courts have consistently arrived at the same result. *See, e.g., McRaney*, 2025 WL 2602899, at *6 (defamation); *Natal v. Christian & Missionary All.*, 878 F.2d 1575 (1st Cir. 1989) (libel); *In re Diocese of Lubbock*, 624 S.W.3d 506, 517-18 (Tex. 2021) (defamation); *El-Farra v. Sayyed*, 226 S.W.3d 792, 796-97 (Ark. 2006) (same); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 932-38 (Mass. 2002) (same); *Heard v. Johnson*, 810 A.2d 871, 883-86 (D.C. 2002) (same). Thus, “most courts that have considered the question” have concluded that “a pastor’s defamation claims against a church and its officials” are generally barred. *Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 516 (Va. 2001) (collecting cases).⁴

⁴ *See also Gui v. First Baptist Church*, No. 8:24-cv-971, 2024 WL 5198700 (C.D. Cal. Oct. 30, 2024); *Byrd v. DeVeaux*, No. 17-cv-3251, 2019 WL 1017602, at *9 (D. Md. Mar. 4, 2019); *Hubbard v. J Message Grp.*,

Indeed, “it is difficult to conceive” of religious leadership disputes that could not at some level easily be re-cast as defamation cases. *Id.* A defamation loophole like Father Alexander urges would thus create exactly the kinds of intrusion into religious leadership that the Religion Clauses forbid in the employment dispute context. “[T]he prospect of future investigations and litigation would inevitably affect to some degree” ministerial decisions, and pressure churches, synagogues, mosques, and temples to make those decisions “with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments.” *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 466-67 (D.C. Cir. 1996) (quoting *Rayburn v. Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)).

For instance, knowing that communications with and about ministers could be made the basis of a defamation case—to include being “deposed, interrogated, and haled into court,” *id.*—cannot help influencing how church hierarchy chooses and controls the shepherds of its flock. Among

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. 01-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); *Hyman v. Rosenbaum Yeshiva of N.J.*, 317 A.3d 1260, 1273 n.3 (N.J. 2024); *Episcopal Diocese of S. Va. v. Marshall*, 903 S.E.2d 534 (Va. Ct. App. 2024).

other things, it will pressure religious bodies to either immediately terminate wayward ministers instead of engaging in pastoral discipline with them, or to overlook clergy misconduct for fear that such discipline of problematic ministers will lead to lawsuits. *Cha*, 553 S.E.2d at 517 (noting “chilling effect” of defamation suits). Ultimately, “[t]he First Amendment’s protection of internal religious disciplinary proceedings would be meaningless” if internal deliberations “could be tested in a civil court,” pressuring a religious body from “protecting its faithful from clergy who will take advantage of them.” *Hiles*, 773 N.E.2d at 936-37. Because safeguarding the faithful from “wayward minister[s]” is at the heart of the ministerial exception, *Our Lady*, 591 U.S. at 747, defamation claims “aris[ing] out of the church-minister relationship in the religious discipline context” are “barred absolutely,” *Hiles*, 773 N.E.2d at 937.

2. Father Alexander’s claims interfere with the Church’s selection and supervision of its ministers.

Father Alexander’s claims are barred. There is no dispute that he was a ROCOR minister and that he is suing his former Church and its hierarchy. The only question is whether his claims arise out of the religious disciplinary context.

They do. The topic of the Clergy Letter: whether “the ROCOR Synod had elected Plaintiff to the position of Bishop of Miami” and whether he was qualified for such a senior role. JA.70-71. Its audience: a higher ecclesiastical body. The sole motive alleged: a “scheme to undo Plaintiff’s

appointment as Bishop of Miami by means of the September 3 Letter.” JA.71-72. Given the Clergy Letter’s text and context, its contents are only intelligible as part of a “religious leadership dispute[,]” which courts are “categorically prohibit[ed]” from adjudicating as a matter of “constitutional structure.” *Billard*, 101 F.4th at 325.

Father Alexander claims courts can nitpick “two specific places” in the Clergy Letter to contest ROCOR’s ministerial choices. Br.43. That is not how defamation law works. Plaintiffs cannot “pick out and isolate particular phrases” but must “consider the publication as a whole.” *James v. Gannett Co.*, 40 N.Y.2d 415, 419 (N.Y. 1976); *see also Kavanagh v. Zwilling*, 578 F. App’x 24, 25 (2d Cir. 2014) (allegedly defamatory statements must be interpreted in light of their “context”). As a whole, the Clergy Letter is an internal religious communication correcting undisputedly incorrect documents about clergy elevation and making a disciplinary judgment related to those documents and to Father Alexander’s overall fitness to be bishop. *See* JA.65-66. That is exactly the kind of internal deliberation protected by the ministerial exception.

That context is even more clearly demonstrated on the fully developed record, which shows that the Clergy Letter was the Church’s response to an ecclesiastical emergency regarding its hierarchy and the worldwide Russian Orthodox Church. The documents that the Clergy Letter responded to are undisputedly unauthorized and uncanonical attempts to impose a bishop on the Church without the Sobor’s vote or the Synod’s

support. Those communications were delivered through undisputedly unauthorized ecclesiastical channels. Father Alexander undisputedly held a secret meeting with the Patriarch himself, keeping the meeting's existence hidden even from Metropolitan Hilarion. And he did so *after* the Synod suspended him from even a candidacy due to improper conduct. When this culminated in the Patriarchate making an incorrect worldwide announcement about Church hierarchy, it caused an ecclesiastical firestorm, threatened the Church's recently re-established communion with the Patriarchate, and severely upset internal senior clergy relationships. *See, e.g.*, JA.195-202.

In response, ROCOR was *of course* entitled to investigate what occurred and to supervise—and discipline—Father Alexander as it deemed necessary to protect its flock and its hierarchy, and to maintain an appropriate religious communion with the Patriarchate. With all the evidence in, Father Alexander's demand to nitpick the Church's scramble to extinguish a global fire he helped start is farcical.

Nor would ruling in his favor require mere nitpicking. Rather, a jury must accept his view that the Diocesan Council's statement "Metropolitan Hilarion knew nothing about the written appeals directed to Moscow" was not only false, but malicious. *See infra* Part III (elements of defamation). That "would depend on a determination that [the Church] was wrong" in its disciplinary deliberations and choices—and "it is precisely

such a ruling that is barred” by the ministerial exception. *Hosanna-Tabor*, 565 U.S. at 194-95.⁵ And it would require extensive and unconstitutionally intrusive trial testimony over “what one minister sa[id] in supervision of another.” *Demkovich v. St. Andrew the Apostle Par.*, 3 F.4th 968, 981 (7th Cir. 2021) (en banc). The Diocesan Spiritual Court and the Synod already upheld Father Alexander’s suspension. JA.106-07. To reject those judgments and agree that signing the Clergy Letter was “spiritual murder,” JA.1583, requires overturning the Church’s religious conclusion, replacing the Church’s ministerial supervision with the court’s. That would violate “the First Amendment’s prohibition of civil court interference in religious disputes.” *Belya*, 45 F.4th at 628 n.4, 630.

His claims are therefore barred.

3. Father Alexander’s counterarguments are wrong.

Father Alexander concedes that the ministerial exception bars remedies that “implicate ... protected ministerial decisions” and that “would necessarily snare the trial court in matters involving the discipline and dismissal of a religious leader.” Br.47-48. But he tries to evade these implications for his case in a number of ways.

⁵ Even determining whether the Clergy Letter was negligent would force this Court to second-guess religious determinations. Negligence is measured by the failure to act as a reasonable person under the circumstances. See Restatement (Third) of Torts: Phys. & Emot. Harm § 3 (2010). But how a reasonable priest would respond to the Moscow letters is a fundamentally religious question. In other words, courts would play Monday-morning cleric.

The first several are scattershot—claiming the ministerial exception is “narrow,” that it only protects “church employment decisions,” and that it really only bars “employment-discrimination claims.” Br.24-26. But the Religion Clauses’ protection reaches “broadly,” *McMahon v. World Vision Inc.*, 147 F.4th 959, 970 (9th Cir. 2025), it protects non-employers, *McRaney*, 2025 WL 2602899, at *18 (collecting cases), and it applies to “any” claims that interfere in the Church’s relationship with its ministers, *supra* Part I.A.1.

Similarly, Father Alexander suggests that since his defamation claim is not challenging his defrocking, the ministerial exception does not “immunize[] defendants” from liability for sending the Clergy Letter “to the thirteen members of the Synod.” Br.28-29. But discipline of ministers is just as protected as termination. *Our Lady*, 591 U.S. at 747. And the ministerial exception both “immunizes” and “exempt[s] from legal process” such disciplinary decisions. *Billard*, 101 F.4th at 324-25. Trials over such ministerial decisions constitute “unconstitutional judicial action,” *Markel v. Union of Orthodox Jewish Congregations of America*, 124 F.4th 796, 810 (9th Cir. 2024), and would operate as “collateral attacks” on the underlying constitutional right, *McRaney*, 2025 WL 2602899, at *20.

Nor is it hard to see why. If every sentence of every e-mail, letter, or post regarding clergy discipline could become a lawsuit, churches would feel pressure to discuss clergy misconduct and discipline “with an eye to avoiding litigation ... rather than upon the basis of their own personal

and doctrinal assessments of who would best serve the pastoral needs of their members.” *Rayburn*, 772 F.2d at 1171. That chill is anathema to “independence in ... matters of internal government.” *Our Lady*, 591 U.S. at 747.

Finally, Father Alexander argues that the exception does not apply where resolution of a claim “do[es] not hinge on the reasons for” the Church’s ministerial decisions. Br.47-48 (quoting *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 966 (9th Cir. 2004)); accord Br.28 (similarly relying on *Ogle v. Hocker*, 279 F. App’x 391 (6th Cir. 2008), and *Drevlow v. Lutheran Church*, 991 F.2d 468 (8th Cir. 1993)). But, of course, determining malice or negligence *would* turn on such reasons. And, regardless, requiring an “explanation” for ministerial choices, *Drevlow*, 991 F.2d at 472, is exactly the argument the Supreme Court unanimously rejected in *Hosanna-Tabor*. See 565 U.S. at 194-95. “The purpose of the exception is not to safeguard a church’s decision to fire a minister only when it is made for a [certain] reason”—rather, it is to ensure that the supervision and control of ministers is left to the “church alone.” *Id.*

B. The broader church autonomy doctrine bars Father Alexander’s claims.

Even if Father Alexander were not a minister, he is still contesting matters of internal Church discipline and governance, and so his claims are still barred by the church autonomy doctrine. Courts have consistently rejected defamation cases for exactly that reason. *McRaney*, 2025

WL 2602899, at *6 (collecting cases); *accord Kavanagh*, 997 F. Supp. 2d at 254 (same), *aff'd*, 578 F. App'x 24.⁶ And that result is particularly appropriate here for three reasons. A trial would require a civil court and jury to: (1) answer questions about Church faith and doctrine; (2) interfere with internal Church disciplinary communications; and (3) intrude into a religious thicket to untangle Father Alexander's request for damages. Thus, as the district court held, "trying this case would be impossible without violating the church's autonomy." JA.1582.

1. Father Alexander's claims require answering questions about Church faith and doctrine.

Despite Father Alexander's attempts to secularize his claims, his own factual recitations and legal arguments betray him. As the district court explained, if senior members of ROCOR clergy "take the stand and testify, their credibility to be examined by a jury," their "testimony would invariably cross over into core church functions" and "jockey[] into church affairs." JA.1582. For example, "[t]o get at what [the] Metropolitan knew and when," Defendants would be forced to testify regarding:

- "the proper election procedures of ROCOR bishops,"

⁶ See, e.g., *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 538 (Minn. 2016) (reviewing statements made during church disciplinary proceedings would "entangle ... [civil] court[s] with religion and severely interfere with the ability of religious organizations to govern their own affairs"); *Brazauskas v. Fort Wayne-S. Bend Diocese*, 796 N.E.2d 286, 294 (Ind. 2003) (rejecting defamation claim to "penalize communication and coordination among church officials ... on a matter of internal church policy and administration").

- “what was said among senior church leaders about church disciplinary procedures,” and
- “communications among senior clergy about internal church governance.”

And that’s just “to name a few.” JA.1582.

Even on appeal, Father Alexander again places these issues into question. Take his theory of publication. His entire argument depends on inferences drawn from speculation and conjecture to conclude that the Church conspired to publish the Clergy Letter in a Facebook post. To get there, he needs a jury to reject the unequivocal testimony to the contrary and instead:

- believe that factions within the Church orchestrated internal disciplinary measures as part of an extensive, worldwide “campaign to discredit him” and “build[] a case against [him] for misconduct,” Br.29-30;
- construe the meaning of an irregular July 2019 “ruling” from a church official addressing aspects of an internal investigation as compared to the June 2019 decree of the Synod suspending his candidacy, Br.30; *see also* JA.112-13;
- accept his understanding of how to interpret the response of Church hierarchy to the stunning announcement from Moscow that Father Alexander had been elected bishop, Br.31-32; and
- construe the significance of Metropolitan Hilarion’s use of “praise the Lord” in a surreptitiously recorded call informing him of the Moscow announcement. Br.31.

And as the district court noted, given that almost all of Father Alexander’s version of the story depends on hearsay statements from Metropolitan Hilarion, proving what the Metropolitan actually knew and said would require extensive competing testimony from Church officials.

JA.1582.⁷ The “mere adjudication” of that dispute would “pose[] grave problems for religious autonomy,” *Hosanna-Tabor*, 565 U.S. at 205-06 (Alito, J., joined by Kagan, J., concurring), and “plunge” courts “into a maelstrom of Church policy, administration, and governance”—which “this Court has expressly prohibited,” *Penn*, 884 F.3d at 425 n.4.

One of Father Alexander’s favored cases, *McRaney v. North American Mission Board*, now explains why. There, the Fifth Circuit initially reversed dismissal on church autonomy grounds and permitted a pastor’s defamation claim to proceed to merits discovery against a non-employer religious body. *McRaney v. N. Am. Mission Bd.*, 966 F.3d 346, 351 (5th Cir. 2020) (reversing dismissal of pastor’s defamation claims). But after discovery, the district court again rejected the pastor’s claims under church autonomy—and this time, the Fifth Circuit affirmed. The court concluded that, on the full record, the communications at issue were “inherently religious” and “steeped in religious doctrine,” and thus not “the proper subject of civil court inquiry.” *McRaney*, 2025 WL 2602899, at *17 (quoting *Milivojevich*, 426 U.S. at 713). Further, although the pastor’s claims were—as Father Alexander argues here—“facially ‘neutral’ causes of action,” they were still barred because the “*application* of the neutral

⁷ Hearsay statements attributed to the now-deceased Metropolitan are inadmissible. *Rosenfeld v. Basquiat*, 78 F.3d 84, 88 (2d Cir. 1996).

rules to [the] religious institutions” would result in “government interference with an internal church decision that affects the faith and mission of the church itself.” *Id.* at *18.⁸

So too here. The Clergy Letter is an inherently religious internal communication between ecclesiastical bodies that is steeped in the canon law, religious traditions, ecclesiastical relationships, and hierarchical decisions of the Church. And even if Father Alexander’s claims were facially neutral at the pleadings stage, discovery and the circumstances of the case show that proving them now before a jury would sharply intrude into “questions of church discipline and the composition of church hierarchy,” which are “at the core of ecclesiastical concern.” *Milivojevich*, 426 U.S. at 717. Thus, the district court correctly concluded that “trying this case would be impossible without violating the church’s autonomy” multiple times over. JA.1582.

2. Father Alexander’s claims interfere with internal Church disciplinary communications.

Every element of Father Alexander’s supposedly secular claims hinges on two types of “internal communications relating to church governance [and] matters of faith or doctrine,” *McRaney*, 2025 WL 2602899, at *9:

⁸ See also *Gaddy v. Corp. of the President of the Church*, 148 F.4th 1202, 1213-16 (10th Cir. 2025) (affirming dismissal under church autonomy where adjudication would intrude into religious questions); accord *Huntsman v. Corp. of the President of the Church*, 127 F.4th 784, 795 (9th Cir. 2025) (Bress, J., concurring) (same); *id.* at 800 (Bumatay, J., concurring) (same).

(1) the Clergy Letter itself; and (2) the internal discussions required to interpret and determine the truth or falsity of the Clergy Letter's statements. The church autonomy doctrine bars courts from probing either.

At base, the Clergy Letter itself is a protected form of internal Church deliberation and governance. It is a letter responding to a false Church announcement about a priest's elevation, sent from a senior group of Church clergy (the Diocesan Council) to the Church's highest ecclesiastical executive body (the Synod), all for the purpose of clarifying church hierarchy and exercising Church discipline over that priest. Because of the Clergy Letter's inescapably ecclesiastical character, "pars[ing] the internal communication" to determine which statements "are 'facts' and which are 'religious'" would be "tantamount to judicially creating an ecclesiastical test." *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018); see *Penn*, 884 F.3d at 427 (courts are "ill-equipped even to assess" such questions).

Even if such parsing were possible, it would require probing another form of internal deliberation: discussions about Father Alexander's bishopric candidacy. That's because, after Metropolitan Hilarion's death, the truth of whether "Metropolitan Hilarion ... knew nothing about the written appeals directed to Moscow" requires questioning senior clergy about

their communications concerning a Church disciplinary investigation and leadership dispute. JA.1573,1576-77, 1582.⁹

Several courts have concluded that considering such internal communications would violate the church autonomy doctrine. For example, the Tenth Circuit in *Bryce v. Episcopal Church in the Diocese of Colorado* held that “offensive” statements about sexual orientation were “not actionable” because they were made during “religious communication and religious dialogue between a minister and his parishioners” and “internal ecclesiastical dispute and dialogue [are] protected by the First Amendment.” 289 F.3d 648, 658-59 (10th Cir. 2002). Similarly, the Minnesota Supreme Court in *Pfeil* shielded “statements made in the context of a

⁹ On appeal, Father Alexander also argues that the Clergy Letter’s reference to “[t]he letter submitted with the signature of Archbishop Gabriel of Montreal and Canada” is defamatory. Br.42. But as the district court correctly recognized, Father Alexander dropped his challenge to the statement about that letter. JA.1576, 1581; see Dkt. 142 at 19 (“The only statement that is challenged is that Met. Hilarion ‘knew nothing about the written appeals directed to Moscow containing a request of the episcopal election ... by the Synod of Bishops.’”); JA.832-33 (“I am only asking the Court to decide whether the publicly disseminated charge that I had forged the Metropolitan’s signatures on his letters to the Patriarch (and therefore concocted the contents of the letters), is false.”); JA.1507-10 (repeatedly confirming it was “correct” that Father Alexander challenged only that statement). Having expressly—and repeatedly—waived any claims regarding any other statement, Father Alexander cannot attempt to challenge other statements on appeal. See *United States v. Coonan*, 938 F.2d 1553, 1561 (2d Cir. 1991) (appellant “waived appellate review” where he “attempt[ed] to evade the consequences of an unsuccessful tactical decision” below).

religious disciplinary proceeding” that were “disseminated only to members of the church congregation or the organization’s membership or hierarchy.” 877 N.W.2d at 542. And the Fifth Circuit in *Whole Woman’s Health* quashed a third-party subpoena requiring a religious organization “to turn over to a public policy opponent its internal communications” because disclosure would undermine the organization’s “ability to conduct frank internal dialogue and deliberations.” 896 F.3d at 373.

Indeed, courts have reached the same result even for wholly *external* statements to religious bodies’ faith groups. *See, e.g., In re Diocese of Lubbock*, 624 S.W.3d 506 (publication on church website protected); *Esses v. Rosen*, No. 24-cv-3605, 2024 WL 4494086, at *1 (E.D.N.Y. Oct. 15, 2024) (publication to “thousands” protected).

Had each court not “shielded [the church] from the scrutiny of civil courts,” its exposure of the church’s “proceedings and their participants to civil litigation w[ould] lead to a chilling effect” on intrachurch communications. *Pfeil*, 877 N.W.2d at 539. This Court should follow suit and confirm that it violates church autonomy to adjudicate defamation claims involving intrachurch communications about discipline of church leaders.

3. Father Alexander’s damages remedies raise intractable entanglement problems.

Father Alexander’s damages claims would also violate church autonomy. His complaint and summary judgment declaration asserted only that the Clergy Letter caused him to lose parishioners, students at the

church school, and parish donations. JA.75-78, 832. And on appeal, he relies on vague statements about what readers of Orthodox news outlets supposedly thought from second-hand accounts of the contents of the Clergy Letter. *See* Br.49-50. Neither path provides a viable way to use “exclusively” secular tools, *Belya*, 45 F.4th at 630, to evaluate the claimed “spiritual murder” of Father Alexander’s standing within the “Orthodox world,” JA.1581, 1583.

First, parsing the statements *in the Clergy Letter* alone presents “intractable causation questions” that would “ensnare [a jury] in religious matters.” *Marshall*, 903 S.E.2d at 544. That’s because the Clergy Letter is full of serious charges that Father Alexander does not (and cannot) contest. Indeed, he concedes that—apart from their alleged implications of forgery and fabrication—a jury should assume that “every other statement in the letter w[as] true” and that “every other accusation leveled at [him] was justified.” Br.43. These undisputed charges include that Father Alexander had broken the seal of the confessional, had used the sensitive religious information gained from the confessions of his flock to abuse and control them, and had engaged in knowing financial mismanagement of church resources. JA.95, 143. How is a jury supposed to decide whether a priest’s reputation was harmed more by words perhaps implying he may have had some role in an improper elevation than by direct charges that he was abusing ecclesiastical power over his own congregants for his own personal gain?

The temporal context immediately surrounding the dispute introduces yet more confounding variables. Before the Clergy Letter was first publicly posted (September 15), the Greek Orthodox Church accepted Father Alexander's request to switch churches (September 2) and ROCOR both suspended his priestly duties (September 3) and removed him from all clerical offices (September 14). JA.105-07. Just days later (September 23), the Synod permanently halted Father Alexander's episcopal candidacy. JA.106. And by February 2020, the Church defrocked him. JA.107. Again, how will a secular jury be able to separate out those significant ecclesiastical actions to assess reputational harm to an Orthodox priest?

It can't. In the context of Father Alexander's convoluted claims, there is simply no way to parse which (if any) of these undisputed charges in the Clergy Letter or seismic shifts in Father Alexander's religious reputation diminished his standing in the Church—much less among those outside ROCOR. “To side with [Father Alexander], the court would have to hold that [Church members and Russian Orthodoxy] rejected him because of [ROCOR's] defamation—and *not* because [they] found another Christ-like leader they liked better, trusted better, or otherwise preferred for any other non-defamatory ecclesiastical reason.” *McRaney*, 2025 WL 2602899, at *20. Similarly, assessing the role of Father Alexander's undisputed misconduct and abandonment of the Church in causing the alleged harms of “decreased giving and reduced membership in the Church” would “require[] a determination of what constitutes adequate

spiritual leadership and how that translates into donations and attendance”—thus again “impermissibly entangl[ing] the court in religious governance and doctrine.” *Sixth Mount Zion*, 903 F.3d at 121. This would inevitably thrust the judiciary into a “religious thicket.” *Milivojevich*, 426 U.S. at 719.

C. The “neutral principles” approach does not apply here.

Father Alexander claims this Court must ignore these First Amendment violations because it “already held” that his claims center on “a ‘decidedly non-ecclesiastical’ issue capable of resolution by neutral principles of law.” Br.17; *accord id.* at 28. To the contrary, this Court stated that it “d[id] not prematurely jump into the fray” to address the church autonomy merits. *Belya*, 45 F.4th at 631; *accord id.* at 633 (“Again, it is too soon to say at this point.”). And the Court “foreshadowed” that “further proceedings may uncover that the merits” of Father Alexander’s claims “turn on the church autonomy doctrine.” *Id.* at 632-33; JA.1583. Indeed they have.

The so-called neutral principles approach—or “‘formal title’ doctrine”—was designed to aid, not evade, church autonomy. *Md. & Va. Eldership of Churches of God v. Church of God*, 396 U.S. 367, 370 (1970) (Brennan, J., concurring). The approach “is endogenous to the church autonomy doctrine—it is not some freestanding exception to the doctrine that allows courts to tread on *terra sancta* in the name of ‘neutrality.’” *McRaney*, 2025 WL 2602899, at *15. Rather, it was meant to allow courts

to resolve disputes that “concern formal title to property” without having to make religious judgments about “which of two factions within the church should be recognized as the ‘true’ church entitled to ownership. *Crowder v. S. Baptist Conv.*, 828 F.2d 718, 722, 725-26 (11th Cir. 1987).

The Supreme Court developed the approach to *avoid* church autonomy problems in intrachurch property disputes, and “very clearly limited” its use of the approach accordingly. *McRaney*, 2025 WL 2602899, at *15. It has never applied neutral principles outside the church property context. *Compare Jones v. Wolf*, 443 U.S. 595, 597 (1979) (applying to property dispute), *with Hosanna-Tabor*, 565 U.S. 171 (declining to apply in church leadership dispute). And even in a case involving “control of church property,” the Supreme Court explicitly rejected a lower court’s application of the approach where the matter also implicated questions about “internal [church] discipline and government.” *Milivojevich*, 426 U.S. at 709, 723-24; *accord Crowder*, 828 F.2d at 725 (“civil courts may not use the guise of the ‘neutral principles’ approach to delve into issues concerning” internal governance).

Thus, even if the neutral principles approach could permit judicial involvement in some matters unrelated to church property (a prospect rejected by both courts and scholars, *McRaney*, 2025 WL 2602899, at *15), it certainly could not allow courts to second-guess a religious entity’s “internal management decision to investigate its clergy consistent with its

own norms and policies.” *Diocese of Lubbock*, 624 S.W.3d at 513, 518 (citing *Jones*, 443 U.S. at 603-05; *Milivojevich*, 426 U.S. at 710). Courts have repeatedly rejected applying the approach in defamation cases where, as here, it would authorize judicial interference in disputes arising from matters of internal church leadership, discipline, and governance. *See, e.g., McRaney*, 2025 WL 2602899, at *15-20; *Hutchison*, 789 F.2d at 396; *Diocese of Lubbock*, 624 S.W.3d at 515-19; *Pfeil*, 877 N.W.2d at 541; *El-Farra*, 226 S.W.3d at 795-96; *Hiles*, 773 N.E.2d at 935-37; *Brazauskas*, 796 N.E.2d at 294; *see also Gaddy*, 148 F.4th at 1211-16 (rejecting argument that “the neutrality and general applicability of fraud laws” could “thwart the church autonomy doctrine’s application”).

Yet in the name of “neutrality,” Father Alexander seeks to entangle civil courts in exactly such ecclesiastical matters. This would effectively “sideline the church autonomy doctrine,” *Huntsman*, 127 F.4th at 798 (Bress, J., concurring)—allowing the neutral-principles approach to “swallow” the constitutional rule it was designed to protect and “eviscerate the church autonomy doctrine,” *Belya v. Kapral*, 59 F.4th 570, 580 (2d Cir. 2023) (Park, J., dissenting from denial of rehearing en banc). Particularly at this stage of the case, with the facts all in, that is obviously impermissible.

II. Father Alexander’s claims are independently barred by the Free Exercise Clause.

The Free Exercise Clause independently bars Father Alexander’s defamation claims for two reasons. First, his claims are not generally applicable. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). By exempting or applying different legal standards to certain secular categories of speech—such as speech concerning public figures or privileged communications—defamation law “treats comparable secular activity more favorably than religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). Defamatory statements about a public figure or contained in a privileged communication certainly undermine “the asserted government interest that justifies the regulation at issue.” *Id.* Indeed, these exemptions often exist to protect First Amendment interests in secular speech, since “libel can claim no talismanic immunity from constitutional limitations” safeguarding the “interchange of ideas.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). So too for First Amendment interests in the free exercise of religion. New York law cannot exempt those defamatory statements while penalizing statements about religious leadership disputes. Father Alexander must therefore satisfy strict scrutiny, which he has never attempted and cannot do.

Second, Father Alexander’s claims “[i]mpos[e] tort liability” for religious conduct. *Paul v. Watchtower Bible & Tract Soc’y of N.Y.*, 819 F.2d

875, 881 (9th Cir. 1987). Just as the government cannot “approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings,” *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953), it cannot punish internal religious speech and governance without severely restricting religious exercise. Intruding on those matters for the purpose of adjudicating tort claims “would ... have the same effect as prohibiting the practice[s] and would compel the Church to abandon part of its religious teachings.” *Paul*, 819 F.2d at 881. That “substantial burden on religious exercise” again triggers, and fails, strict scrutiny. *Fulton*, 593 U.S. at 614 (Alito, J., concurring).¹⁰

III. Father Alexander’s claims fail on the merits.

The district court also properly granted summary judgment on the merits. “Under New York law a defamation plaintiff must establish five elements: (1) a written defamatory statement of and concerning the plaintiff, (2) publication to a third party, (3) fault, (4) falsity of the defamatory statement, and (5) special damages or per se actionability.” *Palin v. New York Times Co.*, 940 F.3d 804, 809 (2d Cir. 2019); *see also Dillon v. City of New York*, 704 N.Y.S.2d 1, 5 (N.Y. App. Div. 1999). And the plaintiff must overcome any applicable privilege. *Chandok*, 632 F.3d at 814. The district court correctly held Father Alexander could not meet

¹⁰ Defendants recognize this argument is currently barred by *Employment Division v. Smith*, 494 U.S. 872 (1990), but hereby preserve the issue.

the publication and damages elements. And he also fails to defeat privilege or establish that the statements concerned him or were false.

A. The Clergy Letter is a privileged communication.

To satisfy publication, Father Alexander must show that either no privilege applies to the allegedly defamatory communications or that any applicable privilege is overcome. *See Chandok*, 632 F.3d at 814. But all of Defendants' communications here were in service to their ecclesiastical and pastoral duty to ensure clarity on who is entrusted to shepherd the Church. Because this kind of communication is privileged, Father Alexander's claim fails.

New York's qualified common-interest privilege applies to "communication[s] made by one person to another upon a subject in which both have an interest," *Chandok*, 632 F.3d at 815, including communications within religious communities. *See Matter of Kantor v. Pavelchak*, 134 A.D.2d 352, 353 (N.Y. App. Div. 1987) (communications were privileged when communicated among church's hierarchy); *see also Sieger v. Union of Orthodox Rabbis*, 1 A.D.3d 180, 182 (N.Y. App. Div. 2003) (statements made "in furtherance of a common interest of a religious organization" were privileged); *Berger v. Temple Beth-El of Great Neck*, 41 A.D.3d 629 (N.Y. App. Div. 2007) (letter from temple's leadership to congregation was privileged). That has long been true. *Pendleton v. Hawkins*, 11 A.D. 602 (N.Y. App. Div. 1896).

The Clergy Letter fits comfortably within this qualified privilege. Father Alexander claims that Defendants shared the statements in the Clergy Letter with “members of the Synod,” “parishioners,” and “other members of the Orthodox community.” Br.29. While discovery produced evidence of dissemination only to the Synod, *see infra* Part III.B, the latter two allegations are also protected by the privilege. Following an erroneous communication from the Russian Orthodox Church in Moscow about a New York election of a priest in Florida, the Church membership in need of answers about its leadership is worldwide. One strikingly similar case applied the privilege to leaders of a religious school with a “common interest ‘in the leadership of the institution[.]’” who wrote an allegedly libelous letter to other leaders calling for the plaintiff’s resignation. *Kamerman v. Kolt*, 210 A.D.2d 454, 455 (N.Y. App. Div. 1994).

Here, the EAD Diocesan Council and the Synod had a common interest in investigating potential clergy misconduct and clarifying the truth of ecclesiastical elections within their overlapping jurisdictions. As a result, their communications fall within the qualified privilege. As for any communications to parishioners and the Orthodox community, New York also applies the privilege to communication of important information about the Church to members of the flock. *See Paul v. Zachariah*, No. 6509/99, 2001 WL 856405 (N.Y. Sup. Ct. May 21, 2001) (protecting Archbishop’s reading of a letter to church members concerning “possible corrupt practices”). So in addition to being protected by church autonomy,

JA.1578 n.3, any communication of the Clergy Letter to parishioners and the Orthodox community falls within the privilege.

This qualified privilege can only be overcome where the plaintiff can meet the high bar of showing “actual” malice or common-law malice—meaning “spite or ill will”—and that the malice “was the one and only cause for the publication.” *Chandok*, 632 F.3d at 815; *see also Carroll v. Trump*, 151 F. 4th 50, 76 (2d Cir. 2025) (same). Father Alexander cannot show that malice was the only motivation. He’s already claimed that the reason for the statements in the Clergy Letter was to “undo Plaintiff’s appointment as Bishop of Miami.” JA.71-72; *see also* JA.813-15 (describing opposition to Father Alexander’s elevation as a “struggle between competing candidacies and cliques within ROCOR,” “church politics,” and a “faction struggle” between Metropolitan Hilarion and others who wanted to “remold ROCOR”); *accord* Br.4. By Father Alexander’s own admission, the motivation was rooted at least in part not in malice, but in a struggle over the direction of ROCOR. Because communication of the Clergy Letter was privileged, it does not satisfy the publication element.

B. Father Alexander cannot show publication.

Even aside from privilege, to satisfy publication, Father Alexander must show that Defendants disclosed the allegedly defamatory material

to a third party. *See Chandok*, 632 F.3d at 814. As the district court found, Father Alexander failed to show actionable publication.¹¹

The sole “defamatory statements” that Father Alexander alleges “are contained in the September 3 [Clergy] Letter.” JA.70. *See also* Br.20-21. Father Alexander has not brought forth any admissible evidence that any Defendant published the Clergy Letter beyond the Synod. And his scattershot attempts to prove otherwise all fail.

Diocese to Synod. Father Alexander now claims that even sending the letter from the Diocese to the Synod is publication. Br.24, 29. But aside from the blatant First Amendment and privilege problems with this claim, he waived this argument. JA.1512 at 8:15-17 (“we’re not challenging the circulation within the religious leadership of the church”); JA.1578. He cannot now “attempt[] to evade the consequences of an unsuccessful tactical decision.” *Coonan*, 938 F.2d at 1561.

¹¹ Without arguing forfeiture, Father Alexander claims that Defendants did not argue publication in their summary judgment brief. Br.38 n.3. But Defendants did respond to the complaint’s only claim that they had “disseminated the letter to the media,” Dkt. 111 at 7, and noted that Father Alexander “fail[ed] to establish each element” of defamation, *id.* at 20-21. On reply, they responded to Father Alexander’s new arguments about publication via Olga Tsibin and additional hyperlinks. In any case, this Court may “affirm on any basis for which there is a record.” *Albert v. Loksen*, 239 F.3d 256, 266 (2d Cir. 2001).

Third-party publication. Outside the members of the Synod, Father Alexander has no evidence that Defendants sent the letter to anyone. Instead, he relies on sheer speculation that some Defendant must have leaked the Clergy Letter to a woman in Florida, Olga Tsibin, who posted it on Facebook two weeks after the announcement from Moscow and one day after the church issued a public letter communicating Father Alexander’s suspension (which he does not challenge). JA.106, 152-54.

As the district court explained, “[p]roving publication is Belya’s burden,” and “[h]e’s a far cry from doing that.” JA.1579. All admissible record evidence says one thing: that Defendants did not give the letter to Tsibin nor do they know who did. JA.1579 (Belya’s proffered exhibit contains “a whirlwind of evidentiary issues” but is “silent about what really matters”). After extensive discovery, Father Alexander failed to produce a single witness or a single page of admissible evidence to support this—he “traffics in aspersions, not personal knowledge.” JA.1579. Even the “circumstantial evidence” he claims is admissible leaves an “evidentiary lacuna” that fails to explain how Olga Tsibin got the letter. JA.1579; *see* Br.33 (letter “ended up in the hands of” Tsibin). Nor is his claim of a “campaign” to discredit him any better. Br.35. As the district court concluded, Father Alexander still fails to point to any evidence that the Defendants were involved, instead blaming “[u]nknown persons” and unnamed “others.” JA.1579; Br.34. Such “conjecture” and “speculation”

doesn't pass muster at summary judgment. *Bustamante v. KIND*, 100 F.4th 419, 432 (2d Cir. 2024).

Facebook Hyperlinks. Finally, Father Alexander raises three other Facebook posts. The district court correctly found that none constituted publication of the Clergy Letter.

First, Father Serafim Gan testified that the Facebook post attributed to him was actually made by a non-party parish. JA.1580, 114-15. He did not make that post and had it taken down as soon as he became aware of it. JA.796-97. As the district court found, Father Alexander (again) offered nothing but speculation in opposition. JA.1580. Father Alexander objects, Br.40, but “[a]t the summary judgment stage, a nonmoving party must offer some hard evidence” to show that there is a “*genuine* issue[] of material fact,” *Jeffreys v. City of New York*, 426 F.3d 549, 554 (2d Cir. 2005) (cleaned up) (emphasis in original).

As for the posts by Father Alexandre Antchoutine and Father Serge Lukianov, they fail on a host of threshold issues. For one, neither were mentioned in the operative complaint, and Father Alexander cannot amend his complaint by raising new arguments at summary judgment.

Crucially, none of the three articles incorporates the Clergy Letter, which Father Alexander points to as the sole “Defamatory Statement.” JA.70. Father Alexander only put into evidence the content of the article linked in Father Serge Lukianov’s post. *See* JA.942-43. That article references and links to public statements by ROCOR on Father Alexander’s

suspension and a subsequent “sorrowful statement” related to Father Alexander performing the Divine Liturgy in defiance of this suspension. JA.942-43. The article does not quote, link to, or reference the Clergy Letter, let alone mention forgery. JA.942-43.

Finally, the posts were hyperlinks to published articles in Orthodox publications. The posts did not contain any additional content editorializing on the articles. The district court correctly ruled that hyperlinks are not actionable republications and that hyperlinking is not publication because it is “the twenty-first century equivalent of the footnote.” JA.1580 (quoting *Sack on Defamation* § 7:3.1 (5th ed. 2017)). Just as a footnote in a book does not republish defamatory material, a hyperlink merely “identifies the location of an existing publication.” *Mirage Ent. v. FEG Entret-enimientos*, 326 F. Supp. 3d 26, 39 (S.D.N.Y. 2018); *see also Lokhova v. Halper*, 995 F.3d 134, 143 (4th Cir. 2021) (collecting cases and sources explaining that “merely linking to an article should not amount to republication” (cleaned up)). Thus, as the district court held, “Belya hasn’t put forth evidence, or even made any argument, that defendants’ Facebook posts evinced ‘an intent or ability’ to disseminate the forgery charge ‘beyond its previous limits.’” JA.1581. On appeal, Father Alexander does not point to record evidence of such intent.

Because Father Alexander cannot show that *Defendants* published the statements he alleges are defamatory without privilege, he cannot sustain any claims of defamation.

C. Father Alexander cannot show damages.

Father Alexander must also show either damages or *per se* actionability. *Palin*, 940 F.3d at 809. He cannot.

Plaintiffs making defamation or defamation-by-implication claims must prove special damages, which are “the loss of something having economic or pecuniary value.” *Lieberman v. Gelstein*, 605 N.E.2d 344, 347 (N.Y. 1992). Father Alexander failed to do either below and does not address special damages on appeal. Below, the closest he came was gesturing to an unsubstantiated “loss of income, resulting from the drastic decrease of the membership in his church.” JA.75. But loss of congregants is not an injury that a court can consider in a case like this, and he provided no evidence at all about his income during discovery. *See supra* Part I.B.3.

Even in his expert reports, the only evidence of damages he has produced, Father Alexander has not pointed to a specific loss of anything with pecuniary value. Instead, his expert rooted his analysis in Father Alexander’s reputation as “a church leader” and the damage to “his standing within the church.” JA.1101. The expert assigns unsubstantiated values based on Father Alexander’s inability to “know how [his acquaintances] feel about him” and “estimate[s]” of “impressions” of negative articles. JA.1110-11. But this kind of harm to “reputation or community standing” does not count as special damages. *Chamilia v. Pandora Jewelry*, No. 04-cv-6017, 2007 WL 2781246, at *15 (S.D.N.Y. Sep. 24,

2007). And Father Alexander provides nothing beyond that. *See* Br.49-50.

Moreover, as the district court found, all of his claims (including defamation *per se*) fail because he cannot show that the specific statement he takes issue with actually caused the harm he alleges. JA.1581-82. Defamation, like all torts, requires a “causal connection” between the violation and the harm alleged. *Aronson v. Wiersma*, 493 N.Y.S.2d 1006 (N.Y. App. Div. 1985); *Sharratt v. Hickey*, 799 N.Y.S.2d 299, 301 (N.Y. App. Div. 2005). And statements are not actionable if “they merely imply the same view[] and are simply an outgrowth of and subsidiary to those claims upon which ... there can be no recovery.” *Herbert v. Lando*, 781 F.2d 298, 312 (2d Cir. 1986).

Father Alexander maintains that he has “a discre[te] claim based on two sentences in the September 3 letter” and “[n]one of the remaining statements in the September 3 letter are of any consequence to Belya’s claim.” Br.42-43. But, as the district court found, Father Alexander cannot show that damage to his reputation resulted from those statements in the Clergy Letter rather than other statements he does not challenge. JA.142-44. Father Alexander does not challenge the public letter published the day before Olga Tsibin’s Facebook post that suspended him from priestly duties. JA.106, 152-54. Nor does he challenge the Church’s announcement of his permanent removal from consideration for the bish-

opric, or even his later defrocking. JA.106-07. And, at summary judgment, he admitted that his injuries arose *before* the Clergy Letter was written (on September 3) or posted online (on September 15). Instead, by no later than September 2, he claims he had *already* been accused of “fraud and forgery” by “[u]nknown persons” and *already* chosen to abandon ROCOR. Br.11; *see also* JA.830-31; *supra* n.2 (describing timing problems).¹² Even if these alternate causes didn’t cause entanglement problems, *supra* Part I.B.3, they would prevent a jury from awarding Father Alexander damages on the merits.

D. The statement is not “of and concerning” Father Alexander.

Statements must also be “of and concerning” the plaintiff—“a significant limitation on the universe of those who may seek a legal remedy” for defamation. *Kirch v. Liberty Media*, 449 F.3d 388, 398, 399-400 (2d Cir. 2006). The Clergy Letter never called Father Alexander a forger or accused him of “fabricating” Church documents. Br.13, 15, 28, 42, 43.

Father Alexander relies upon one statement: “[i]t turns out that Metropolitan Hilarion of Eastern America & New York knew nothing about

¹² The timing for Father Alexander’s petition to the Greek Orthodox Church is questionable. He says he sent it via post after he became aware on August 31 of the Church’s response to Moscow’s announcement. Br.12, JA.447. But the Greek Orthodox Church’s response is dated the following Monday, Labor Day. JA.281. It is unlikely the Greek Orthodox Church made the weighty religious decision to accept him in less than 48 hours. It is even less likely that the U.S. Post office delivered his petition on a Sunday or Labor Day.

the written appeals directed to Moscow containing a request for confirmation of the ‘episcopal election’ of the Archimandrite by the Synod of Bishops (which never took place)[.]” Br.42 (quoting JA.138-44). This statement does not mention Father Alexander at all.¹³ Nevertheless, Father Alexander claims the “only reasonable interpretation” of the statement about Metropolitan Hilarion’s awareness of the letters being sent to Moscow is as an accusation that “Plaintiff, *not someone else*, had fabricated the letters.” Dkt. 142 at 20.¹⁴

As an initial matter, that’s not true. His brother Ivan was also deeply involved in Father Alexander’s efforts. And, as the audience of the Clergy Letter knew, Ivan had regular access to Metropolitan Hilarion’s letterhead and seal and helped compose his personal correspondence. JA.89. So, any supposed implication would be just as applicable to Ivan as it would to Father Alexander.

¹³ Father Alexander seeks to reintroduce the statements about Archbishop Gabriel’s letter, but he waived that argument when he disclaimed it at the district court. *See supra* n.9. Regardless, the statements about irregularities with that letter are true and turn on Church custom. *See* JA.101-02, 104, ¶¶137-47, 163; JA.143.

¹⁴ This alone dooms his defamation *per se* claim because it must be evident on the face of the document. *See Ava v. NYP Holdings, Inc.*, 64 A.D.3d 407, 412 (N.Y. App. Div. 2009). The Clergy Letter never mentions Metropolitan Hilarion’s signature and seal at all. JA.142-43. None of the “Defamatory Statements” Father Alexander points to actually appear on the face of the letter. Br.20-21; JA.142-44.

Further, the “of and concerning” requirement “is not a light one.” *Three Amigos SJJ Rest. v. CBS News*, 65 N.E.3d 35, 37 (N.Y. 2016). To show that the statement was “of and concerning” him, Father Alexander “must ... prove that the statement referred to [hi]m and that a person hearing or reading the statement reasonably could have interpreted it as such.” *Id.* For example, the statement that a club was “run by the mafia” for human trafficking was not “of and concerning” plaintiffs, though they managed the club’s employees, food, and drinks. *See id.* Just as saying that the mafia ran the club did not accuse specific managers of trafficking, *id.*, asserting Metropolitan Hilarion’s ignorance of the letter to Moscow did not accuse Father Alexander of forgery.

This is even clearer given the two stated purposes of the letter: (1) to discuss the announcement of “the election of Archimandrite Alexander [] as Bishop of Miami” and (2) to review “complaints received from Florida concerning” Father Alexander. JA.142. The first two points in the letter go on to discuss the “invalid[ity]” of the “petition letters,” while the later three discuss the complaints. JA.142-43. The letter is clear when it is discussing accusations against Father Alexander. And the statements about the letters do not point to him. JA.142-43. To be sure, the Clergy Letter imputes plenty of blame on Father Alexander—just not for the invalidity and irregularity of the letters or Metropolitan Hilarion’s knowledge about them. JA.142-44.

E. The statement is true.

Even taking the statements in the Clergy Letter as Father Alexander paints them, they are true. “Truth is an absolute defense to an action based on defamation.” *Goldberg v. Levine*, 97 A.D.3d 725, 726 (N.Y. App. Div. 2012). Even if the Clergy Letter *had* stated that the letters were forged, it would have been legally accurate. Under the Model Penal Code, “forgery” includes “issuing ... or transferring a writing *without appropriate authorization*.” *Forgery*, *Black’s Law Dictionary* (12th ed. 2024) (emphasis added). The letter Father Alexander claims Metropolitan Hilarion signed was transferred to Moscow “without appropriate authorization,” *i.e.*, without the required vote from the full Sobor.¹⁵ Calling the letters forged would be accurate, because they claimed authorization from the Synod, which had not authorized them and could not do so. JA.87, 93-95.

CONCLUSION

The district court’s final judgment against Father Alexander’s claims should be affirmed.

¹⁵ Father Alexander now seeks to reopen whether the election occurred: “The implication of Belya’s ‘faking’ of the letters and the implication in them ... that he had fabricated his election *are one and the same*.” Br.20. This “implication” is inextricably tied to the validity of the “election,” which civil courts cannot decide. *See supra* Part I.

Donald J. Feerick, Jr.
FEERICK NUGENT
MACCARTNEY, PLLC
96 South Broadway
South Nyack, NY 10960

Respectfully submitted,

/s/ Diana Verm Thomson

Diana Verm Thomson
Daniel H. Blomberg
Lori H. Windham
Daniel L. Chen
Amanda L. Salz
Amanda G. Dixon
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, DC 20006
(202) 955-0095
dthomson@becketfund.org

CERTIFICATE OF COMPLIANCE

This document complies with the requirements of Fed. R. App. P. 27(d) because it has 13,995 words.

This document also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

October 9, 2025

/s/ *Diana Verm Thomson*
Diana Verm Thomson

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on October 9, 2025.

I certify that all participants in the case have been served a copy of the foregoing by the appellate CM/ECF system or by other electronic means.

October 9, 2025

/s/ Diana Verm Thomson
Diana Verm Thomson