

25-1085

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,

Defendant-Appellees,

PAVEL LOUIKIANOFF,

Defendant.

On Appeal from the United States District Court

For the Southern District of New York

**BRIEF OF AMICI CURIAE PROFESSORS DOUGLAS LAYCOCK,
MICHAEL MCCONNELL, AND RICHARD GARNETT IN
SUPPORT OF DEFENDANTS-APPELLEES**

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STATEMENT OF INTEREST OF THE *AMICI CURIAE*

Amici are professors Douglas Laycock, Michael McConnell, and Richard Garnett, prominent legal scholars whose research and scholarly interests focus on religious liberty and have shaped the legal doctrines relevant here.

Douglas Laycock is the Robert E. Scott Distinguished Professor of Law Emeritus at the University of Virginia and the Alice McKean Young Regents Chair in Law Emeritus at the University of Texas. He is one of the nation's leading authorities on the law of religious liberty, having taught and written about the subject for four decades at Texas, Virginia, the University of Chicago, and the University of Michigan. He has testified many times before Congress and the Texas legislature and has argued many religious freedom cases in the courts, including the Supreme Court. He was lead counsel for petitioner in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), a decision that controls this case.

Michael McConnell is the Richard & Frances Mallery Professor and Director of the Constitutional Law Center at Stanford Law School, and a Senior Fellow at the Hoover Institution. He previously served as a judge

on the U.S. Court of Appeals for the Tenth Circuit, and his extensive scholarship on the Religion Clauses has played a significant role in informing the nation's judiciary on the meaning and application of those Clauses. Professor McConnell filed an *amicus* brief in *Hosanna-Tabor*, and the Court's majority opinion cited Professor McConnell's scholarship, *see* 565 U.S. at 183.

Richard Garnett is the Paul J. Schierl Professor of Law and the founding Director of the Program on Church, State & Society at the University of Notre Dame. He has published dozens of articles, essays, and book chapters on the Religion Clauses over the course of his career, and he regularly provides commentary on religious liberty issues for legal publications and news outlets. His scholarship on religious liberty was recently cited by Justice Thomas in a concurring opinion. *See Mahmoud v. Taylor*, 145 S. Ct. 2332, 2378–79 (2025) (Thomas, J., concurring).¹

¹ All parties have consented to the filing of this brief. This brief was not authored in whole or in part by counsel for a party. No person other than the *amici* made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

In this case, Plaintiff is a former priest of the Russian Orthodox Church Outside of Russia (“ROCOR”) and is suing two hierarchical ROCOR entities and senior ROCOR clergymen for allegedly defamatory statements made regarding the defrocked priest’s disputed election as bishop. *Amici* take no position regarding the disputes about that election or the truth or falsity of the underlying allegations. Rather, *amici* submit this brief because allowing this suit to proceed would clearly violate the ministerial exception (a component of the church-autonomy doctrine), which protects the authority of religious institutions to govern themselves, including by holding church elections, appointing clergy, and investigating clergy misconduct.

Plaintiff’s case—as detailed in the District Court’s summary judgment opinion (“Op.”)—challenges a letter sent by seven ROCOR clergy in 2019. Op. 2. Before that letter was sent, ROCOR’s former leader, Hilarion Kapral (“Metropolitan Hilarion”) had purportedly written to the Russian Orthodox Church in Russia and stated that Plaintiff had been elected the bishop of Miami. Op. 2. But in a September 2019 letter to the governing body of bishops in the church (“ROCOR

Synod”), seven ROCOR clergy disputed Plaintiff’s election, questioning the validity of Metropolitan Hilarion’s communications, calling them “irregular,” and stating that Plaintiff had engaged in other improper acts, including breaking “the seal of Confession.” Op. 3. Plaintiff claims that the ROCOR clergy’s letter—which became public and led to Plaintiff’s investigation—effectively accused Plaintiff of “forg[ing]” correspondence by Metropolitan Hilarion. Op. 4. Plaintiff ultimately resigned from ROCOR. Op. 4.

Plaintiff sued ROCOR and its church leaders, including Metropolitan Hilarion and the seven clergy, for defamation based on the statements made in the ROCOR clergy’s September 2019 letter. Defendants unsuccessfully moved to dismiss under the church-autonomy doctrine, and this Court refused to hear Defendants’ interlocutory appeal, holding that the denial of their motion to dismiss did not fall within the “collateral order doctrine.” *See Belya v. Kapral*, 45 F.4th 621, 628 (2d Cir. 2022); *but see Belya v. Kapral*, 59 F.4th 570, 573 (2d Cir. 2023) (Cabranes, J., and Park., J., dissenting from the denial of rehearing en banc). On remand, the district court granted Defendants’ motion for summary judgment, holding both that Plaintiff’s defamation claim failed on the

merits and that Plaintiff's claim was barred by the church autonomy doctrine. *See* Op. 8–12.

Plaintiff has now appealed. Because the Court's prior decision in this case generated questions about the church-autonomy doctrine in the Second Circuit, this Court should affirm on church-autonomy grounds. Doing so is straightforward here. Courts "cannot penetrate the veil of the church" by attempting to adjudicate matters that involve "church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 731, 733 (1872). If courts were to wade into such issues, they would run afoul of religious organizations' fundamental Free Exercise and Free Association rights to decide who to appoint as church leaders—and how to do so. That is precisely what the church-autonomy doctrine forbids. This Court should affirm the decision below.

ARGUMENT

I. The church-autonomy doctrine provides a defense to civil liability for a religious organization's actions governing itself, including by determining those who minister on its behalf.

In *Hosanna-Tabor*, 565 U.S. 171, the Supreme Court explicitly and unanimously affirmed 40 years of unanimous lower court precedent

establishing that the First Amendment protects the right of religious organizations to autonomously select and remove those who perform significant religious functions, including ordained members of the clergy such as Plaintiff. *Id.* at 186–90. As the Court explained, “the authority to select and control who will minister to the faithful—a matter strictly ecclesiastical—is the church’s alone” and is immune from interference by the courts. *Id.* at 194–95 (internal quotations and citation omitted). This principle, known as the ministerial exception, falls within the broader constitutional doctrine of church autonomy. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (ministerial exception is a “component of this autonomy” of religious institutions). It provides a broad legal defense that protects churches from civil liability for their decisions concerning the hiring, removal, or supervision of “individuals who play . . . key roles.” *Id.*

The ministerial exception specifically and the church-autonomy doctrine more broadly are crucial safeguards of core religious rights. They preserve religious autonomy “with respect to internal management decisions that are essential to the institution’s central mission.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 746. Church autonomy “protects

the freedom of religious groups to engage in certain key religious activities . . . as well as the critical process of communicating the faith . . . in [their] own voice, both to [their] own members and to the outside world.” *Hosanna-Tabor*, 565 U.S. at 199, 201 (Alito, J., concurring). A religious organization “cannot depend on someone to be an effective advocate for its religious vision if that person’s conduct fails to live up to the religious precepts that he or she espouses.” *Id.* at 201. Thus, “a religious body’s right to self-governance must include the ability to select, and to be selective about, those who will serve as the very ‘embodiment of [the] message’ and ‘its voice to the faithful.’” *Id.* (quoting *Petruska v. Gannon Univ.*, 462 F.3d 294, 306 (3d Cir. 2006)); *see also Our Lady of Guadalupe Sch.*, 591 U.S. at 747 (same). These principles apply not just to individual employment decisions by a church, but also to broader “matters of church government” by “religious institutions,” *Our Lady of Guadalupe Sch.*, 591 U.S. at 746 (citation and internal quotations omitted), such as church decisions on leadership and “the standard of morals required of them,” *Watson*, 80 U.S. at 733.

The principle that government has no authority to interfere with a religious organization’s internal affairs “has long meant, among other

things, that religious communities and institutions enjoy meaningful autonomy and independence with respect to their governance, teachings, and doctrines.” Thomas C. Berg, et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 NW. U. L. REV. COLLOQUY 175, 175 (2011). A religious organization’s freedom over matters of government, faith, and doctrine includes the right to “control . . . the selection of those who will personify its beliefs.” *Hosanna-Tabor*, 565 U.S. at 188; *Our Lady of Guadalupe Sch.*, 591 U.S. at 747 (“authority to select, supervise, and if necessary, remove a minister”). Ensuring the religious institution’s autonomy over selecting, overseeing, and removing those with significant religious responsibilities, and especially of its leaders or member churches, is an essential component of the religious freedoms enshrined in the First Amendment—and the “ministerial exception,” as part of the church-autonomy doctrine, “was recognized to preserve a church’s independent authority in such matters.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 747.

The church-autonomy doctrine is rooted in three First Amendment protections: the Free Exercise Clause, the Establishment Clause, and the freedom of association. *Hosanna-Tabor*, 565 U.S. at 188–89; *Catholic*

Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm’n, 605 U.S. 238, 256–57 (2025) (Thomas, J., concurring). The Free Exercise Clause protects the right of churches to select and control the individuals who perform important religious functions on their behalf, because those activities are central to the church’s ability to “shape its own faith and mission.” *Hosanna-Tabor*, 565 U.S. at 188. The Establishment Clause, meanwhile, prevents courts from appointing ministers, reinstating ministers whom a religious organization has disciplined or terminated, or evaluating the reasons a church disciplined or terminated a minister. *Id.* at 188–89. “[G]overnment involvement in such ecclesiastical decisions” is “prohibit[ed].” *Id.* at 189. Thus, these two clauses form a “two-way street, protecting the autonomy of organized religion and not just prohibiting governmental ‘advancement’ of religion.” Michael W. McConnell, *Reflections on Hosanna-Tabor*, 35 HARV. J.L. & PUB. POL’Y 821, 834 (2012).

Finally, freedom of association demands the ministerial exception because the “very existence [of a religious group] is dedicated to the collective expression and propagation of shared religious ideals.” *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring); *see also Catholic*

Charities, 605 U.S. at 256–57 (Thomas, J., concurring). Freedom of association thus protects the right of churches to control their membership, their leadership, and those authorized to speak for them.

II. The church-autonomy doctrine extends not just to a religious institution’s governance decisions, but also to speech that is intertwined with those decisions.

To fulfill its function of preserving autonomy over religious organizations’ ecclesiastical functions, the church-autonomy doctrine extends not just to church-government decisions themselves—such as who to affiliate with, hire, or fire—but also to speech intertwined with these decisions. The church-autonomy doctrine would be meaningless if it protected a religious organization’s decision to remove a minister or disassociate with a local church, but exposed it to liability for investigating, announcing, or explaining that decision. *See Hosanna-Tabor*, 565 U.S. at 195.

The purpose of the ministerial exception is to protect “the internal governance of the church.” *Hosanna-Tabor*, 565 U.S. at 188; *see also Watson*, 80 U.S. at 727 (recognizing church-governance decisions as “binding on” legal tribunals). Religious self-governance, by definition, includes communications relating to governance decisions; such

communications are an important part of the religious institution’s “message.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 752 (citation and internal quotations omitted). The Supreme Court held more than 150 years ago that “[t]he right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine” is “unquestioned.” *Watson*, 80 U.S. at 728–29.

Justice Alito, joined by Justice Kagan, echoed this fundamental idea in *Hosanna-Tabor*, explaining that the ministerial exception plays a central role in protecting the ability of religious organizations to express their religious messages: “[B]oth the content and credibility of a religion’s message depend vitally on the character and conduct of its teachers. . . . For this reason, a religious body’s right to self-governance must include the ability to select, and to be selective about, those who will serve as the very ‘embodiment of its message’ and ‘its voice to the faithful.’” *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring) (citation omitted). If the “character and conduct” of a religious organization’s affiliated leaders or churches is central to its religious message, the ministerial exception must cover the religious organization’s statements

regarding the hiring, investigation, discipline, removal, or disassociation of those leaders or local churches.

Here, Plaintiff maintains that the clergy defamed him in a letter to the ROCOR Synod by questioning the legitimacy of Metropolitan Hilarion's ecclesiastical statements confirming Plaintiff's election as bishop. Op. 6. At bottom, the clergy's statements concerned the proper appointment and election of ministers, which is the very "polity of a religious institution." *Catholic Charities*, 605 U.S. at 257 (Thomas, J., concurring). No court may "substitute[] its own inquiry into church polity and resolutions" for whether a priest has properly been elected a bishop. *Serbian E. Orthodox Diocese for U. S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 708 (1976).

The district court correctly held as much here. As the court explained, inquiring into whether Metropolitan Hilarion actually sent the ecclesiastical letters and what he knew about Plaintiff's election—as Plaintiff demands—"would invariably cross over into core church functions," such as the "proper election procedures of ROCOR bishops" and "communications among senior clergy." Op. 12. The Court should affirm that reasoning.

Plaintiff's defamation claim here is cut from the same cloth as *Milivojeovich*. The question there was whether the church had followed "its own laws and procedures" in suspending a minister. 426 U.S. at 713. The Supreme Court held that judicial intrusion into that question would violate the First Amendment: "To permit civil courts to probe deeply enough into the allocation of power within a hierarchical church so as to decide religious law governing church polity would violate the First Amendment in much the same manner as civil determination of religious doctrine." *Id.*

So too here. A court (or jury) could not "assess" Plaintiff's defamation claim "without considering the reasons for the church's decisions, including whether Defendants correctly determined that [Plaintiff] was never elected Bishop of Miami and whether they acted in good faith—all matters of 'internal church procedures.'" *Belya*, 59 F.4th at 581 (Park, J., dissenting) (quoting *Milivojeovich*, 426 U.S. at 718). Those are precisely the questions and procedures that the First Amendment shields from the courts' review.

III. The church-autonomy doctrine bars civil tort claims that—like the defamation claim here—interfere with a religious organization’s assessment or evaluation of those who minister on its behalf.

The church-autonomy doctrine is not confined to statutory employment claims like the antidiscrimination claim at issue in *Hosanna-Tabor*. The doctrine also applies to any claim that seeks monetary or other relief for alleged harm caused by a religious organization’s communications in the process of making decisions regarding selecting and elevating its ministers—including the defamation claim at issue here.

An award of relief for defamation would “operate as a penalty on the Church for terminating” or otherwise taking action against “an unwanted minister” no less than an award of relief for employment discrimination, producing “precisely” the type of liability “that is barred by the ministerial exception.” *Hosanna-Tabor*, 565 U.S. at 194; *see also Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335–36 (1987) (explaining that “[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission”). The church-autonomy doctrine does not depend on whether the plaintiff’s cause of action is styled as a

tort claim (like defamation), a contract claim, or a statutory claim under employment or civil-rights laws. If the law were otherwise, then a plaintiff could easily avoid the doctrine through artful pleading.

No matter how a claim is pleaded, it is barred by the church-autonomy doctrine if it involves a court interfering in a religious organization’s church-governance decisions, processes, and communications—including matters relating to hiring, firing, disciplining, or disassociating with particular ministers, members, or churches. Some claims will clear this hurdle and others will not. For example, a slip-and-fall case or a contract claim disconnected from religious beliefs could proceed; a defamation claim based on a religious body’s explanation of its concerns with an affiliated church or minister cannot.

This “functional approach” is a hallmark of the ministerial exception. *Hosanna-Tabor*, 565 U.S. at 204 (Alito, J., concurring). Just as courts look beyond the “title” of a person’s position and consider “what an employee does,” *Our Lady of Guadalupe Sch.*, 591 U.S. at 752–53, so too the substance of the plaintiff’s claim—and not its label—governs.

Courts have accordingly dismissed many types of civil claims that questioned a church's official treatment of clergy or others in positions of religious leadership. For example, the Sixth Circuit affirmed the dismissal of a minister's claims for defamation, breach of implied contract, tortious interference with business relationships, conspiracy, and invasion of privacy, all of which were based on an internal church complaint alleging that the minister had engaged in inappropriate sexual behavior. *Ogle v. Church of God*, 153 F. App'x 371, 374–76 (6th Cir. 2005). Dismissal was required because adjudicating the minister's claims would “implicate the Church of God's internal disciplinary proceedings.” *Id.* at 376. Similarly, the Third Circuit held that the ministerial exception barred a minister's claim for alleged breach of his employment contract after the church removed him for “failing to provide adequate spiritual leadership.” *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 121 (3d Cir. 2018). The court explained that to adjudicate the claim would “intrude on internal church governance, require consideration of church doctrine, constitute entanglement prohibited under the ministerial exception, and violate the Establishment Clause.” *Id.* at 122.

Defamation claims, in particular, are routinely dismissed under the ministerial exception. For example, the Texas Supreme Court dismissed defamation claims brought by a Catholic deacon against his diocese. *In re Diocese of Lubbock*, 624 S.W.3d 506, 510 (Tex. 2021). The plaintiff alleged that the diocese had wrongfully included his name on a list of “clergy against whom credible allegations of sexual abuse of a minor” were made. *Id.* Yet the Texas Supreme Court held that the claims were barred by the church-autonomy doctrine because the claims “ultimately challenge[d] the result of a church’s internal investigation into its own clergy.” *Id.* at 517–18.

In reaching that result, the court followed a long line of federal and state cases that have dismissed similar claims against church leadership. *See, e.g., Ogle*, 153 F. App’x at 374; *Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 516 (Va. 2001) (“most courts” have held that “the Free Exercise Clause divests a civil court of subject matter jurisdiction to consider a pastor’s defamation claims against a church”); *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 541 (Minn. 2016) (a defamation claim “based on statements made during the course of a church disciplinary proceeding” would “necessarily foster[] an

excessive entanglement with religion”); *see also Hyman v. Rosenbaum Yeshiva of N.J.*, 289 A.3d 826, 838 (N.J. App. Div. 2023) (First Amendment barred defamation claim against religious institution that would require the court to “inquire into [the institution’s] reasons for terminating plaintiff and [its] decision to” speak about those reasons to the public in a letter), *aff’d*, 258 N.J. 208 (2024). This Court should reach the same result here.

IV. A religious organization does not lose the protections of the church-autonomy doctrine merely because it speaks about church-governance matters or does not explicitly reference religious concerns.

Plaintiff argues that secular courts can adjudicate whether ROCOR “disseminat[ed]” defamatory statements about him in the 2019 letter to the ROCOR Synod raising concerns about the legitimacy of his election. Opening Br. 45, 49. *Amici* take no position on the merits of the defamation analysis, Op. 2–3, because it does not matter to the church-autonomy analysis. A religious organization does not forfeit its religious liberty because it communicates with related entities about adherence to religious beliefs. To the contrary, such communications are part and parcel of the religious institution’s “message.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 752 (citation and internal quotations omitted).

Indeed, Plaintiff's view would stifle ROCOR's religious mission, which includes elevating only properly selected priests of sound character to leadership positions. *See* Compendium of Regulations, Statutes and Laws of the Russian Orthodox Church Outside of Russia 112–14 (2006), tinyurl.com/bdz2kbv8. That mission—as well as the governance mechanisms by which ROCOR attempts to achieve it—is shared by many Christian churches, and many other faiths have similar goals and selection processes. There can be no doubt that potential impropriety in the selection of a church's leadership is a substantial obstacle to achieving the church's core religious mission—an obstacle that, to be overcome, must be discussed. The church autonomy doctrine accordingly protects ROCOR's ability to freely “communicat[e]” messages relating to advancing its religious mission “in its own voice, both to its own members and to the outside world.” *Hosanna-Tabor*, 565 U.S. at 199, 201 (Alito, J., concurring).

One other way to think about the church's right to communicate is that if the church simply fired the accused minister, that decision would plainly be protected by the ministerial exception. No one would benefit—not the accused, not the church, not anyone else—if the church could not

conduct a rational investigation of alleged improprieties before deciding whether to terminate or retain the minister. Candid communication is essential to any such investigation. Liability for such communications would make everyone worse off.

There is also no basis to say that the church-autonomy doctrine does not apply here because the challenged letter did not expressly invoke religious reasons for its assertions or the decision to send it. Although this Court previously suggested in dicta that certain questions about whether Metropolitan Hilarion's written statements were forged may *themselves* be "non-ecclesiastical questions," it is incorrect to suggest that they do not implicate the church-autonomy doctrine. *Belya*, 45 F.4th at 634. Those questions arise in the context of a dispute over church governance, irrespective of whether the dispute is facially about religious doctrine. *Cf. Rweyemamu v. Cote*, 520 F.3d 198, 209 (2d Cir. 2008) (courts may not assess whether a justification for an employment decision concerning a minister is "pretextual"). The Court should not apply that dicta here.

Indeed, the Supreme Court has already resolved this issue. In *Hosanna-Tabor*, the Court explained that the ministerial exception (and

by extension, the broader church-autonomy doctrine) cannot depend on whether the church articulated “a religious reason” for its conduct. 565 U.S. at 194. Instead, the Court unanimously adopted a bright-line rule that precludes any inquiry into a religious institution’s motivations. *Id.* at 194–95. As the Court explained, “[t]he purpose of the exception is not to safeguard a church’s decision to fire a minister only when it is made for a religious reason.” *Id.* at 194. “The exception instead ensures that the authority to select and control who will minister to the faithful—a matter ‘strictly ecclesiastical,’ is the church’s alone.” *Id.* at 194–95 (citation omitted).

Thus, it does not matter whether the ROCOR clergy’s letter explicitly invoked religious concerns when suggesting that Metropolitan Hilarion’s written statements may not have been genuine. The dispute inherently concerns matters of internal church governance, which goes to the core of First Amendment protection. *Milivojevich*, 426 U.S. at 713. A religious body’s motivation for taking an action protected by the First Amendment can be purely ecclesiastical, secular as well as ecclesiastical, or secular instead of ecclesiastical; regardless of how it is characterized, the church’s conduct is protected. Put differently, the ministerial

exception is absolute when it applies, meaning that the right to assess and evaluate ministers, members, or affiliated churches “is the church’s alone,” even if the plaintiff argues that a religious organization’s decision, process, or speech was motivated entirely by nonreligious concerns. *Hosanna-Tabor*, 565 U.S. at 194–95. Indeed, “the mere adjudication” of the reasons for a religious organization’s conduct “would pose grave problems for religious autonomy” by placing “a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church’s overall mission.” *Id.* at 205–06 (Alito, J., concurring).

Here, ROCOR has adopted strict rules for establishing the authenticity of ecclesiastical letters. Appellees’ Brief at 6, 10–11. The district court rightly refused to assess the authenticity of Metropolitan Hilarion’s written statements regarding Plaintiff’s election as bishop—let alone the basis for the ROCOR clergy’s 2019 letter disputing the authenticity of Metropolitan Hilarion’s statements. Under *Hosanna-Tabor*, what matters is that the 2019 letter to the ROCOR Synod disputed the election of a bishop, a matter of core church governance. 565 U.S. at 194–95. This Court should apply *Hosanna-Tabor*’s bright-line

rule and hold that the district court correctly applied the Supreme Court’s instruction that the authority to determine who is a bishop of ROCOR “is the church’s alone.” *Id.*

V. The Court cannot apply “neutral principles” to impose liability on a religious organization for covered conduct.

Plaintiff is also wrong to insist that his defamation claim could be resolved through “neutral principles of law.” Opening Br. 49. The “neutral principles” methodology has no place here. As explained above, the church-autonomy doctrine is absolute within its scope. Once the Court determines that ROCOR’s investigation and related statements fall within the scope of the doctrine, “the First Amendment requires dismissal of [Plaintiff’s] suit.” *Hosanna-Tabor*, 565 U.S. at 194. Courts may not apply “neutral principles” to determine whether a church followed its own procedures or provided valid justifications for its actions. *See id.* at 187, 194–95. Indeed, it is not for courts to balance secular and religious interests—“the First Amendment has struck the balance for us.” *Id.* at 196.

Here, Plaintiff’s claim depends on second-guessing the 2019 letter to the ROCOR Synod, sent by ROCOR clergy, disputing his election as bishop. “[I]t is precisely such a ruling that is barred by the ministerial

exception.” *Hosanna-Tabor*, 565 U.S. at 194. “[T]he authority to select and control who will minister to the faithful” in leadership roles, and the procedures and explanations used to arrive at those decisions, are “strictly ecclesiastical” and therefore “the church’s alone.” *Id.* at 195.

The Supreme Court has never applied “neutral principles” to a dispute concerning an investigation into a local church’s practices and beliefs or a decision regarding the status of a clergy member. *See Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696 (1976); *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952); *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929). The Court has instead held that “it is impermissible for the government to contradict a church’s determination of who can act as its ministers.” *Hosanna-Tabor*, 565 U.S. at 185.

To apply so-called neutral principles to this case is to resolve all issues of religious teaching, government, and authority against the church by simply ignoring those issues, treating the church as though it were a for-profit business corporation. As the district court rightly recognized, this case exemplifies why courts should not attempt to

discern “neutral principles” to resolve disputes concerning church management and leadership. Hashing out the truth or falsity of the challenged letter, and determining what damages Plaintiff was owed, would require adjudicating “core church functions” such as “the proper election procedures of ROCOR bishops; what was said among senior church leaders about church disciplinary procedures; and communications among senior clergy about internal church governance.”

Op. 12. Resolving Plaintiff’s claim also would “require divining what ROCOR doctrine requires of such letters, a task fit for no secular factfinder.” *Id.* at 13.

It is thus for good reason that the cases in which the Supreme Court has applied “neutral principles” involved church-property disputes—not disputes concerning the selection, supervision, or removal of individuals identified by a church as clergy. *See Jones v. Wolf*, 443 U.S. 595 (1979); *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440 (1969); *see also Belya*, 59 F.4th at 580 (Park, J., dissenting from the denial of rehearing en banc) (“Courts have generally declined to extend” the neutral-principles

approach to areas “other” than “church property disputes.”). And again, for good reason: Claims involving a church’s decisions regarding its ministers and leadership implicate profound First Amendment concerns.

This Court’s prior decision acknowledged this point: “Most cases applying the ‘neutral principles of law’ approach have resolved disputes over church property.” *Belya*, 45 F.4th at 630 n.8. While this Court suggested in a footnote that the neutral-principles approach could “g[o] beyond” that context, *id.*, the only support the Court cited for that statement was *Moon v. Moon*, 833 F. App’x 876, 879 (2d Cir. 2020), a nonprecedential summary order resting on statute of limitations grounds and citing only *Jones*, 443 U.S. at 601—a property dispute—as support for the “neutral principles” approach. *See Mei Xing Yu v. Hasaki Rest., Inc.*, 944 F.3d 395, 405 (2d Cir. 2019) (declining to follow “dicta in a footnote”). The Court should not extend *Jones* to an entirely new and improper context on such a flimsy basis.

CONCLUSION

For these reasons, the Court should affirm the judgment of the district court.

Dated: October 16, 2025

Respectfully submitted,

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Dated: October 16, 2025

/s/ Andrew G.I. Kilberg
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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed on this date with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users such that service will be accomplished by the appellate CM/ECF system.

Dated: October 16, 2025

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