21-1498

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ALEXANDER BELYA,

Plaintiff-Appellee,

v.

HILARION KAPRAL, et al.,

Defendants-Appellants,

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

BRIEF OF AMICI CURIAE STATES OF NEBRASKA, ALABAMA, ARIZONA, ARKANSAS, GEORGIA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, OKLAHOMA, SOUTH CAROLINA, AND UTAH IN SUPPORT OF APPELLANTS AND REVERSAL

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Nebraska, Alabama, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Oklahoma, South Carolina, and Utah. We submit this brief in support of Appellants pursuant to States' authority under Fed. R. App. P. 29(a)(2) to file amicus briefs "without the consent of the parties or leave of court."

Amici raise two important interests in this case. First, we seek to protect the First Amendment rights of religious organizations and their leadership. Those rights include the freedom to communicate about internal management decisions free from governmental interference. Using state defamation law to punish churches for their leadership communications jeopardizes that freedom. Thus, the district court's refusal to dismiss this case threatens to infringe on the First Amendment rights of a church and its leaders.

Second, amici also have an interest in protecting their courts from excessive entanglement in the internal affairs of religious groups. Clear First Amendment jurisprudence is critical to achieving this goal because it enables courts to dismiss lawsuits that religious leaders file against their organizations before entanglement occurs. The district court misunderstood the governing First Amendment law and erred in allowing this case to proceed. Amici States seek clarity from this Court, which in turn will provide guidance to their state courts when they are asked to

similarly intervene in internal religious disputes concerning the selection of religious leaders.

SUMMARY OF ARGUMENT

Churches, synagogues, and mosques must be free to communicate about their leaders without fear that secular courts will punish them or otherwise interfere with their decisionmaking. Plaintiff Alexander Belya seeks to use the courts to challenge internal church communications that kept him from becoming the Bishop of Miami. The First Amendment bars secular courts from getting involved in these kinds of disputes.

I. The ministerial exception applies to this case. At all times relevant to this suit, Belya was a priest of the Russian Orthodox Church Outside of Russia (ROCOR) and thus qualifies as a "minister" under the ministerial exception. He attempts to avoid the ministerial exception by bringing a defamation claim rather than an employment suit. Despite this maneuver, the ministerial exception applies because judicial involvement in this case would punish the church for its communications about its leadership decisions. The church and its leaders sought to bring to light allegations against Belya that they believed should preclude him from serving as the Bishop of Miami. Because those communications directly related to the church's internal choice of its own ministers, a challenge to it is barred by the ministerial exception.

II. The district court nonetheless refused to dismiss Belya's defamation claim because it thought that the claim could be resolved based on

"neutral principles of law." This conclusion was wrong for two reasons. First, the Supreme Court has never extended the neutral-principles rule beyond church-property disputes; nor does it make sense to do so. Second, when the ministerial exception applies, it overrides the neutral-principles rule. Any other conclusion would conflict with *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171 (2012), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020), both of which declined to apply purportedly neutral statutes to decide legal claims that ministerial employees brought against their organizations.

III. Finally, allowing Belya's suit threatens to excessively entangle courts in religious leadership disputes. Lawsuits like this interject courts into religious affairs in at least two ways: (1) when they decide questions of liability; and (2) when they oversee and compel discovery. State amici have a strong interest in encouraging courts to avoid this.

ARGUMENT

I. The ministerial exception bars Belya's defamation suit.

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. "[R]adiat[ing]" from this language is "a spirit of freedom for religious organizations" that protects their "power to decide for themselves, free from state interference, matters of church government as well as those of faith and

doctrine." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 186 (2012).

A. A critical aspect of this protection is the so-called ministerial exception. It recognizes that "the authority to select and control who will minister to the faithful" is a "matter strictly ecclesiastical" and "the church's alone." *Hosanna-Tabor*, 565 U.S. at 195. In other words, the ministerial exception "preserve[s] a church's independent authority" to "select, supervise, and . . . remove a minister without interference by secular authorities." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060–61 (2020).

Three elements must be met for the ministerial exception to apply. First, the defendant must be a religious organization. *See Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833 (6th Cir. 2015). Second, the plaintiff's role must be ministerial in nature. *See Hosanna-Tabor*, 565 U.S. at 190; *Our Lady*, 140 S. Ct. at 2066. Third, the claim must implicate the "internal governance of the church" or the "selection of those who will personify its beliefs." *Hosanna-Tabor*, 565 at 188. The first two requirements are clearly satisfied here: (1) ROCOR is a church; and (2) Belya, as a priest of ROCOR, is a minister. The only question, then, is whether adjudicating Belya's defamation claim would punish ROCOR for its internal operations and infringe its right to choose who will personify its beliefs.

B. Courts have recognized that the ministerial exception applies beyond the facts in *Hosanna-Tabor* and *Our Lady*—the two seminal Supreme Court cases. Just recently, for example, the en banc Seventh Circuit applied the ministerial exception to dismiss a minister's hostile-work-environment claim that complained of comments from another minister. *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 973 (7th Cir. 2021). The court there recognized two key principles from *Hosanna-Tabor* and *Our Lady*. First, the rationale of those cases "is not limited" to "allegations of discrimination in termination" because "[t]he protected interest of a religious organization in its ministers covers the entire employment relationship." *Id.* at 976. Second, the ministerial exception aims to prevent two specific "harms—civil intrusion and excessive entanglement"—that arise outside of the specific fact patterns in *Hosanna-Tabor* and *Our Lady*. *Id.* at 977.

Given the breadth of these principles, the Seventh Circuit held that adjudicating allegations concerning "what one minister . . . said to another" would both "undercut a religious organization's constitutionally protected relationship with its ministers" and "cause civil intrusion into, and excessive entanglement with, the religious sphere." *Id.* at 977–78; *see also Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 121–22 (3d Cir. 2018) (dismissing a minister's breach-of-contract claim because inquiring into the church's motivation "would intrude on inter-

nal church governance, require consideration of church doctrine, constitute entanglement prohibited under the ministerial exception, and violate the Establishment Clause").

For these same reasons, courts have routinely held that the ministerial exception requires dismissal of ministers' defamation claims against their religious organizations. *E.g.*, *Heard v. Johnson*, 810 A.2d 871, 883 (D.C. 2002) (holding that "[w]hen a defamation claim arises entirely out of a church's relationship with its pastor, the claim is almost always deemed to be beyond the reach of civil courts"); *Patton v. Jones*, 212 S.W.3d 541, 552 (Tex. Ct. App. 2006) (holding that allegedly defamatory statements connected to the termination of a minister are protected from judicial review); *Bourne v. Ctr. on Children, Inc.*, 838 A.2d 371, 380 (Md. Ct. Spec. App. 2003) ("Any statements made by [a religious group] with regard to [a minister's] performance as a minister are protected.") *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in Am.*, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994), *aff'd*, 64 F.3d 664 (6th Cir. 1995) (dismissing a defamation claim because "all matters touching" the relationship between a church and its minister "are of ecclesiastical concern").

Farley v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1286 (D. Minn. 1993), is particularly instructive. In that case, the Wisconsin Evangelical Lutheran Synod declined to grant mission status to a church because it determined that the pastor did not possess the skills to grow

the church into a self-sustaining congregation. *Id.* at 1287. Objecting to this statement, the pastor sued for defamation. *Id.* He argued that his claim did not implicate First Amendment concerns because he did not contest his termination but only the allegedly defamatory statements. *Id.* at 1290. The court disagreed because the pastor's claim challenged the Synod's "authority . . . to comment on [his] actions and abilities as a . . . minister." *Id.* Thus, "[r]esolution of [the] defamation claim would require the court to review" the Synod's bases for its action. *Id.* And "[s]uch an inquiry would implicate [First Amendment] concerns." *Id.*; *see also Ogle v. Church of God*, 153 F. App'x 371, 376 (6th Cir. 2005) (unpublished) (foreclosing a bishop's defamation claim because it arose out of the church's internal proceedings and adjudicating such claims would require the court "to enter into areas implicating the First Amendment").

C. Following the roadmap of the pastor in *Farley*, Belya similarly attempts to avoid the ministerial exception by bringing a defamation claim. But the same principles that would have barred judicial resolution had Belya filed an employment-discrimination claim similarly preclude his defamation claim. This case is fundamentally a clash over the church's selection of—and communication concerning—its ministers because it arises out of a disputed election to fill the bishopric of Miami. After Belya claimed that he was elected to that position under ROCOR's laws, the defendants who authored the allegedly defamatory statements disclosed serious allegations regarding that election and Belya's actions as

a minister to his congregation and a representative of the church. They were speaking solely about internal church matters.

The First Amendment requires that ROCOR be free to communicate internally about these matters without fear of governmental interference. *See Hosanna-Tabor*, 565 U.S. at 201 (Alito, J. concurring) (recognizing a religious body's "freedom to speak in its own voice . . . to its own members"). Imposing liability for speaking out against someone seeking to gain a position of leadership in the church "punish[es] [the] church for failing" "to accept or retain an unwanted minister." *Id.* at 188. This is "precisely" the type of liability "that is barred by the ministerial exception." *Id.* at 194.

II. The district court's reliance on the "neutral principles" rule is misplaced.

The district court believed that it could decide this case by applying "neutral principles." *Belya v. Hilarion*, No. 20 Civ. 6597, 2021 WL 1997547, at *4 (S.D.N.Y. May 19, 2021). But this conclusion misses the mark for two reasons. First, the Supreme Court has never applied the neutral-principles rule beyond the context of a church-property dispute. Second, when the ministerial exception applies, it precludes courts from enlisting the neutral-principles rule.

A. The Supreme Court created the neutral-principles rule in *Jones v. Wolf*, 443 U.S. 595 (1979). It held there that a court can decide a church-property dispute without violating the First Amendment if it

bases its decision solely on "neutral principles of law." *Id.* at 604. But in so holding, *Jones* did not approve of judicial interference in all religious disputes. On the contrary, it emphasized that even the application of neutral principles cannot justify a "civil court" in resolving a dispute that is effectively "a religious controversy." *Id.* And importantly, the Supreme Court has never extended the neutral-principles rule "beyond the context of church-property disputes." *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1072 (5th Cir. 2020) (Ho, J., dissenting from denial of rehearing en banc) (recognizing that the Supreme Court has "intimated that the church autonomy doctrine cannot be brushed aside as irrelevant or controlled by the neutral principles rule of *Jones v. Wolf* merely because it is raised in defense to common law claims") (quotation marks omitted).

Nor should it be extended beyond that context. The Court adopted the neutral-principles rule to protect—not undermine—religious autonomy. *Id.* at 1071. It does so by allowing secular courts to intervene when a religious entity invites their involvement. Essentially, when religious groups decide that their controversies should be resolved according to neutral principles of law, they request the expertise of secular courts, and those courts' intervention "ensure[s] that a dispute over the ownership of church property [is] resolved in accord with the desires of [its] members." *Jones*, 443 U.S. at 604. But under *Jones*'s logic, religious entities could alternatively decide to protect themselves from secular interference by

prescribing the application of religious principles rather than secular law. The justification in *Jones* thus does not apply to situations like this where the supposedly neutral principles are imposed by the government without the religious organization's consent.

B. Even if the neutral-principles rule could be extended beyond church-property disputes, it cannot override the ministerial exception. The Supreme Court has already rejected the argument that neutral laws can override a church's authority to select its ministers. The plaintiffs in *Hosanna-Tabor* argued that the Supreme Court's earlier decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which generally approved of governments applying neutral rules to infringe religious liberty, precluded application of the ministerial exception. 565 U.S. at 189–90. The Court disagreed. Although it recognized that *Smith* allowed the enforcement of neutral laws against a religious entity's outward physical acts, it held that there was "no merit" to the idea that neutral laws could allow "government interference with . . . internal decision[s] that affect[] the faith and mission of the church itself." *Id.* at 190. Similarly, here, there is no merit to Belya's claim that courts can apply neutral principles of law to punish church leadership for their comments addressing internal matters of church government.

Beyond this clear statement of law in *Hosanna-Tabor*, applying the neutral-principles rule to override the ministerial exception would conflict with the facts in both *Hosanna-Tabor* and *Our Lady*. In those cases,

the plaintiffs alleged violations of nondiscrimination laws that everyone assumed were neutral. *See Hosanna-Tabor*, 565 U.S. at 179 (declining to adjudicate a claim under the Americans with Disabilities Act); *Our Lady*, 140 S. Ct. at 2058–59 (declining to adjudicate a claim under the Age Discrimination in Employment Act). Since a court cannot apply purportedly neutral nondiscrimination laws to dictate how a religious group chooses its leaders, neither can it apply neutral tort law to punish church leaders for their comments concerning the election of a minister.

More generally, the Supreme Court has made clear that the ministerial exception applies regardless of whether the plaintiff's claim directly implicates religious doctrine or policy. *Hosanna-Tabor*, 565 U.S. at 194 (recognizing that the ministerial exception's purpose "is not to safeguard a church's decision . . . only when it is made for a religious reason"); *see also Tomic v. Cath. Diocese of Peoria*, 442 F.3d 1036, 1038 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. 171 (2012) ("Even if the suit does not involve an issue of religious doctrine, but concerns merely the governance structure of the church, the courts will not assume jurisdiction if doing so would interfere with the church's management."). This principle further confirms that the ministerial exception bars ministers' claims even if they allege that courts can adjudicate their allegations based on neutral legal principles unrelated to religious doctrine.

Against all this, the district court cited only one case in which a court decided that it could address a defamation claim despite a defendant's asserted First Amendment concerns. *See Belya*, 2021 WL 1997547, at *4. But that case—*Sieger v. Union of Orthodox Rabbis of U.S. & Canada*, 767 N.Y.S.2d 78 (N.Y. App. Div. 2003)—offers no guidance here. The plaintiff there was a wife and mother challenging statements made during a religious divorce proceeding. *Id.* at 79–80. She did not argue that she was a minister; nor did the court discuss the ministerial exception. *Sieger* is thus inapposite, and the district court erred in relying on it.

III. The district court's ruling excessively entangles courts in the affairs of religious entities.

The First Amendment forbids "judicial entanglement in religious issues." *Our Lady*, 140 S. Ct. at 2069; *see also id.* at 2070 (Thomas, J. concurring) (noting that the Supreme Court "goes to great lengths to avoid governmental 'entanglement' with religion"); *Jones*, 443 U.S. at 603 (reciting the goal of "free[ing] civil courts completely from entanglement in questions of religious doctrine, polity, and practice"). And the Supreme Court has recognized that "[i]t is not only the [legal] conclusions" in cases like this that "may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979). Thus, these kinds of suits risk church-state entanglement in two ways. First, they require courts to assess liability based on their evaluation of

internal church decisions and communications, which often puts judges in the difficult position of scrutinizing religious doctrine, policy, and practice. Second, these types of cases force courts to oversee the discovery process and to compel religious institutions to submit to probing discovery demands.

A. Inquiring into the merits of Belya's defamation claim would excessively intertwine the district court in ROCOR's internal governance. *See Farley*, 821 F. Supp. at 1290 (holding that the First Amendment precludes inquiry into a religious body's "bases for terminating [a minister]" and "the veracity of [the religious body's] statements"); *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 538 (Minn. 2016) (holding that inquiry into a religious body's statements is the "sort of complicated and messy inquiry that we seek to avoid by prohibiting courts from becoming excessively entangled with religious institutions").

As Belya stated in his amended complaint, "[t]he threshold issue" on the merits "is whether the documents [he] is alleged to have forged are in fact genuine." JA 87 (First Amended Complaint at 2 (Dkt. 48)). And according to Belya, the allegedly forged documents "evidenced his appointment to the position of Bishop of Miami." *Id.* In effect, then, by requesting that the district court declare the documents genuine, Belya is asking the court to declare his election valid. Despite how Belya would

like to frame it, this is not a straightforward defamation action. Ultimately, it requires the district court to find either that Belya forged documents to seize a position in ROCOR or that ROCOR's hierarchy conspired to frame him for forgery. Resolving that dispute requires the district court not only to resolve a fundamental decision about church leadership, but also to assess the church's internal process for appointing bishops and to determine whether that process was followed. These inquiries are exactly the sort of church-state entanglement that courts must avoid.

B. In addition, the process of overseeing and compelling discovery further entangles courts in the internal governance of religious groups. *See Purdum v. Purdum*, 301 P.3d 718, 726 (Kan. Ct. App. 2013) (holding that "there [was] no way for [the plaintiff] to prove his defamation action" because the "requested discovery alone [would] entangle the civil courts" in church administration). The district court has already ordered the parties to complete discovery on the merits. JA 142 (Order at 1 (Dkt. 59)). Such discovery would likely subject ROCOR's "personnel and records" "to subpoena, discovery, cross-examination," and "the full panoply of legal process designed to probe the mind of the church in the selection of its ministers." *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). Intrusions like these are unacceptable because they pressure churches to make decisions "with an eye to avoiding

litigation or bureaucratic entanglement rather than" basing those decisions on "their own . . . doctrinal assessments." *Id.*

Since discovery imposes this inherent risk of excessive entanglement, it is important for courts to dismiss these cases at the outset. As the Tenth Circuit has explained, courts must dismiss claims precluded by the ministerial exception "early in litigation" to "avoid excessive entanglement in church matters." *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 654 n.1 (10th Cir. 2002). Because the district court failed to dismiss this case and now discovery is underway, it is imperative that this Court rule promptly, order the district court to dismiss Belya's complaint, and put an end to the ongoing violation of the defendants' First Amendment rights.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision and order the district court to dismiss Belya's suit.

Dated: September 2, 2021.

Respectfully submitted,

/s/ James A. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2021, this brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Second Circuit through the Court's CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ James A. Campbell
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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(a)(5) and Local Rule 29.1(c) because, excluding the portions exempted by Fed. R. App. P. 32(f), this brief contains 3,421 words.

This brief 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.

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