Nos. 20-CV-714 & 20-CV-715

In the District of Columbia Court of Appeals

HYUN JIN MOON, *ET AL.*,
DEFENDANTS-APPELLANTS

v.

FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *ET AL.*,
PLAINTIFFS-APPELLEES

APPEAL FROM THE SUPERIOR COURT OF D.C. CIVIL DIVISION
CASE NO. 2011 CA 037211 B

BRIEF *AMICI CURIAE* FOR PROFESSORS ELIZABETH A. CLARKE, ROBERT F. COCHRAN, JR., TERESA COLLETT, CARL H. ESBECK, RICHARD W. GARNETT, JOHN D. INAZU, DOUGLAS LAYCOCK, MICHAEL P. MORELAND, ROBERT J. PUSHAW, AND DAVID A. SKEEL IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

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All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the prior appeal in this case, this Court affirmed the principle that "the First Amendment bars judicial resolution of disputes" that cannot be resolved without "consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of the faith.'" *Family Fed'n for World Peace & Unification Int'l v. Hyun Jin Moon*, 129 A.3d 234, 249 (D.C. 2015) (quoting *Second Episcopal Dist. African*

Methodist Episcopal Church v. Prioleau, 49 A.3d 812, 816 (D.C. 2012)). This doctrine of religious abstention has deep roots in the history of the First Amendment and our constitutional tradition of religious autonomy.

England had an established national church, with government control over doctrine, personnel, and religious observance. Many of those who first settled in the American colonies were seeking to escape the control of England's religious establishment. Some colonies (and States) had established churches; at the Federal level, the First Amendment prohibited the "establishment of religion" and guaranteed the "free exercise thereof." These twin commands ensured that the new Federal government would have no role in dictating religious doctrine or personnel. Early practice of Presidents Thomas Jefferson and James Madison, and others confirmed this understanding of the limits of the power of civil government over religious affairs.

A long line of United States Supreme Court cases has affirmed the principle of religious autonomy. "First Amendment values are plainly jeopardized" when disputes "turn on the resolution by civil courts of controversies over religious doctrine and practice." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("*Hull Church*"). Civil courts are thus barred from deciding whether a denomination has departed from its prior doctrine (*id.* at 442–444), who may hold leadership posts in a church or religious organization (*Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 717 (1976)), and whether

other individuals "holding certain important positions with churches and other religious institutions" may sue their employers (*Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020)).

Applied here, these principles compel reversal of the judgment below. In ruling for the plaintiffs, the trial court resolved "controversies over religious doctrine" that civil courts have no power to decide. *Hull Church*, 393 U.S. at 449. For example, the court below held that the Director-Defendants "fundamentally alter[ed]" Unification Church International's purposes by replacing references to the "Unification Church and the Divine Principle" with a promise to support the "theology and principles of the Unification movement." JA.0271–276. But determining whether there is a "fundamental[]" difference between the "Unification Church" and the "Unification movement" or whether the latter's "theology and principles" are "fundamentally" different from "the Divine Principle" (*id.*) requires a civil court to make judgments about "the interpretation of particular church doctrines and the importance of those doctrines to the religion" that the First Amendment "[p]lainly . . . forbids." *Hull Church*, 393 U.S. at 450.

ARGUMENT

I. The First Amendment circumscribes the role of civil courts in religious disputes, as confirmed by pre- and post-ratification history.

The First Amendment provides, in pertinent part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof." "Together, the Free Exercise and Establishment Clauses operate to 'severely circumscribe the role that civil courts may play in the resolution of disputes involving religious organizations.'" *Moon*, 129 A.3d at 248 (quoting *Samuel v. Lakew*, 116 A.3d 1252, 1256–57 (D.C. 2015)). Indeed, as a matter of both text and history, the Free Exercise and Establishment Clauses work hand-in-hand to prevent courts from interfering in matters of religious doctrine and leadership. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 181–85, 188–89 (2012) (recounting English, colonial, and early American history).

A. Religious autonomy in the American colonies pre-ratification

The religious abstention doctrine is a hard-won product of the religious liberty that was both created in and woven into our founding.[1] As the Supreme Court recounted in *Hosanna-Tabor*, many of the earliest settlers—Puritans and Quakers—came to America seeking to "escape the control" of the established Church of England. 565 U.S. at 182–83. In England and colonial America, religious establishment was accomplished in part through "control over doctrine, governance, and personnel

[1] The religious abstention doctrine has many names, including the religious autonomy doctrine, church autonomy doctrine, and the ecclesiastical abstention doctrine. Because this Court's precedents refer to it as the "religious abstention" doctrine (*Moon*, 129 A.3d at 247), we refer to it by that name. Some of the decisions discussed in this brief and some of our scholarship use these other names, in part because the term "abstention" could be taken to imply that the application of this doctrine is not constitutionally required—only discretionary. But civil court resolution of these matters is constitutionally "forbid[den]." *Hull Church*, 393 U.S. at 450.

of the church." Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2131 (2003). Before the Revolution, one "principal means of government control" over the established church had been laws conferring "the power to appoint prelates and clergy," prompting "continual conflicts between clergymen, royal governors, local gentry, towns, and congregants over the qualifications and discipline of ministers." *Id.* at 2132, 2137.

The religious freedom clauses in the new constitutions adopted by the States between 1776 and 1780 enshrined a principle of non-interference. These clauses "allow[ed] churches and other religious institutions to define their own doctrine, membership, organization, and internal requirements without state interference." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1455, 1464–65 (1990).

Under the Articles of Confederation, Congress too applied the non-interference principle to questions involving church leadership. In response to the Vatican's 1783 proposal to approve a Bishop-Apostolic for America, "Congress responded that it had 'no authority to permit or refuse' the appointment, and the Pope could appoint whomever he wished because 'the subject . . . being purely spiritual . . . is without the jurisdiction and powers of Congress.'" Thomas C. Berg, Kimberlee Wood Colby, Carl H. Esbeck, and Richard W. Garnett, *Religious Freedom, Church-*

State Separation, and the Ministerial Exception, 106 Nw. U. L. Rev. Colloquy 175, 181 (2011) (quoting 1 Anson Phelps Stokes, Church and State in the United States 479 (1950)). In other words, "Congress said that it had no jurisdiction over the subject matter, not that it had jurisdiction so long as it acted on the basis of a religion-neutral, secular, or nontheological basis." *Id.* at 181 n.30; *see also* Carl H. Esbeck, *Religion During the American Revolution and the Early Republic*, *in* 1 Law and Religion, An Overview at 57, 72–73 (Silvio Ferrari & Rinaldo Cristofori, eds. 2013).

Individual framers were themselves skeptical that governments could decide matters of doctrine. In his famous Memorial and Remonstrance, James Madison declared the proposition that a "Civil Magistrate is a competent Judge of Religious truth" to be "an arrogant pretension falsified by the contradictory opinions of Rulers in all ages, and throughout the world." James Madison, *Memorial and Remonstrance Against Religious Assessments, in* 8 The Papers of James Madison, 295, 301 (Robert A. Rutland et al eds., 1973).

"It was against this background that the First Amendment was adopted." *Hosanna-Tabor,* 565 U.S. at 183. "Familiar with life under the established Church of England, the founding generation sought to foreclose the possibility of a national church." *Id.* "By forbidding the 'establishment of religion' and guaranteeing the 'free exercise thereof,' the Religion Clauses ensured that the new Federal Government . . . would have no role in filling ecclesiastical offices." *Id.* at 184.

B. Religious autonomy in the United States post-ratification

The principle of religious autonomy enshrined in the Religious Clauses "was reflected in two events involving James Madison," the driving force behind the First Amendment. *Id. First,* after the Louisiana Purchase, John Carroll—the first Roman Catholic Bishop in the United States—asked Secretary of State Madison for advice on who should be appointed to head the Catholic Church in New Orleans. Michael W. McConnell, *Reflections on Hosanna-Tabor,* 35 Harv. J. L. & Pub. Pol'y 821, 830 (2012). Madison responded that the government should not be involved, as the "selection of [religious] functionaries . . . is entirely ecclesiastical." Letter from James Madison to John Carroll (Nov. 20, 1806), The Records of the Am. Catholic Historical Soc. of Phila., 20:63, 63–64 (1909). Underscoring the separation of church and state, Madison later wrote a letter offering his personal opinion as a private citizen on the matter. Kevin Pybas, *Disestablishment in the Louisiana and Missouri Territories, in* Disestablishment and Religious Dissent: Church-State Relations in the New American States, 1776–1833 273, 283–85 (Carl H. Esbeck & Jonathan J. Den Hartog eds., 2019). But when writing in his official capacity, "[h]e declined even to express an opinion on whom Carroll should select." McConnell, *supra,* at 830.

Second, in 1811, Congress passed a bill incorporating the Protestant Episcopal Church in Alexandria. *Hosanna-Tabor,* 565 U.S. at 184–85. At the time, incorporation was a special privilege, granted sparingly and only for some public purpose.

See Louis K. Liggett Co. v. Lee, 288 U.S. 517, 548–49 (1933) (Brandeis, J., dissenting). President Madison vetoed the bill "on the ground that it 'exceeds the rightful authority to which Governments are limited, by the essential distinction between civil and religious functions, and violates . . . the article of the Constitution of the United States, which declares, that "Congress shall make no law respecting a religious establishment."'" *Hosanna-Tabor,* 565 U.S. at 184–85 (quoting 22 Annals of Cong. 982–983 (1811)). Madison detailed the offending entanglement:

> The bill enacts into, and establishes by law, sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the Minister of the same; so that no change could be made therein by the particular society, or by the general church of which it is a member, and whose authority it recognises.

Id. at 185 (emphasis omitted) (quoting 22 Annals of Cong. 983 (1811)). This episode demonstrates that the principle of non-interference extends beyond the appointment of clergy; it broadly forbids government from interfering in "'the organization and polity of the church.'" *Id.* (quoting 22 Annals of Cong. 983 (2011)).

Thomas Jefferson took the same view when president. In 1804, the governor of Orleans Territory wrote to Secretary of State Madison to inform him that local federal authorities had shut the doors of the parish church "in response to a conflict between two priests concerning who was the rightful leader of the congregation." Pybas, *supra,* at 281. Although the territorial governor was pleased with this manner

of handling the dispute, Jefferson, who learned about it from Madison, was not. *Id.* at 282. In a July 5, 1804, letter to Madison, Jefferson wrote:

> [I]t was an error in our officer to shut the doors of the church . . . . The priests must settle their differences in their own way, provided they commit no breach of the peace. . . . On our principles all church-discipline is voluntary; and never to be enforced by the public authority.

Id.

Eight days later, Jefferson penned another letter, this time in response to a letter from the Ursuline Nuns of New Orleans in 1804. In his letter, Jefferson assured the nuns that the Louisiana Purchase—and the transfer of control from Catholic France to the United States—would not undermine their legal rights, including their "broad right of self-governance and religious liberty." Pybas, *supra,* at 281; *see also* 1 Anson Phelps Stokes, *Church and State in the United States* 678 (1950). As Jefferson explained, "[t]he principles of the [C]onstitution . . . are a sure guaranty to you that [your property and rights] will be preserved to you sacred and inviolate, and that your institution will be permitted to govern itself according to [its] own voluntary rules, without interference from the civil authority." Pybas, *supra,* at 281. Thus, "Jefferson also saw church-state separation as guaranteeing the autonomy, independence, and freedom of religious organizations," which includes their freedom to "select [their] own leaders." Berg, *supra,* at 182–83.

The process of disestablishment in the States further confirms the founding generation's understanding that non-interference is vital to religious liberty. Because the original Bill of Rights did not apply to state governments, roughly half the States maintained established religions after ratification of the First Amendment. McConnell, *Reflections on Hosanna-Tabor, supra,* at 829. "Disestablishment occurred on a state-by-state basis through adoption of state constitutional amendments—Massachusetts being the last to dismantle its localized establishment in 1833." *Id.* Importantly, "each of the states that first maintained an establishment and later adopted a state constitutional amendment forbidding establishment of religion—South Carolina, New Hampshire, Connecticut, Maine, and Massachusetts—adopted at the same time an express provision that all 'religious societies' have the 'exclusive' right to choose their own ministers." *Id.* Similarly, "[e]ach of Vermont's constitutions [1777, 1787, and 1793] . . . freed citizens from compulsion to . . . maintain any minister not of their own persuasion." Shelby M. Balik, *In the Interests of True Religion: Disestablishment in Vermont, in* Disestablishment and Religious Dissent: Church-State Relations in the New American States, 1776–1833 296 (Carl H. Esbeck & Jonathan J. Den Hartog eds., 2019). A church's freedom to choose those with significant religious responsibilities was thus "part and parcel of disestablishment." McConnell, *supra,* at 829.

In sum, history confirms that our "constitutional order" is one "in which the institutions of religion . . . are distinct from, other than, and meaningfully independent of, the institutions of government." Richard W. Garnett, *Religion and Group Rights: Are Churches (Just) Like the Boy Scouts?,* 22 St. John's J. Legal Comment. 515, 523 (2007). "Church autonomy inheres *in the church* as a body and involves more than rights of individual conscience." Paul Horwitz, *Essay: Defending (Religious) Institutionalism,* 99 Va. L. Rev. 1049, 1058 (2013) (emphasis added). Religious freedom thus "involve[s] a structural as well as an individual component, one that recognizes the limits of the state and the separate existence of the church." *Id.* "[E]arly American leaders embraced the idea of a constitutionalized distinction between civil and religious authorities." Richard W. Garnett & John M. Robinson, Hosanna-Tabor, *Religious Freedom, and the Constitutional Structure,* 2011–2012 Cato Sup. Ct. Rev. 307, 313 (2012). "And they saw that this distinction implied, and enabled, a zone of autonomy in which churches and religious schools could freely select and remove their ministers and teachers." *Id.*

II. The Supreme Court's decisions reflect a doctrine of abstention that respects the independence of religious entities in matters of faith and doctrine and in closely linked matters of internal government.

Both Religion Clauses—the Establishment Clause and the Free Exercise Clause—reflect a "general principle of church autonomy": "independence in matters

of faith and doctrine and in closely linked matters of internal government." *Morrissey-Berru*, 140 S. Ct. at 2061. Recognizing these reinforcing First Amendment protections, state and federal courts have long refrained from interfering with the internal affairs of religious organizations under the religious abstention doctrine.

A. First principles of the Religion Clauses

For its part, the Free Exercise Clause requires that religious organizations have the "power to decide for themselves, free from state interference, matters of church government, as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). As Justice Brennan put it, "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to[] 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'" *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 341 (1987) (Brennan, J., concurring) (quoting Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1372, 1389 (1981)). Thus, free exercise concerns not only the freedom to control matters of doctrine, but also the "operation of churches" and "appointment of clergy" free from government-mandated "conformity to ancient faith and doctrine." *Kedroff*, 344 U.S. at 107–08

(The "invalidity" of a law "establishing a different doctrine" "would be unmistakable"); *see also Hull Church*, 393 U.S. at 450 (The "very core of a religion" is "the interpretation of particular church doctrines."). By involving themselves in matters of church governance and doctrine, moreover, courts "inhibit[] the free development of religious doctrine"—*i.e.*, chill the free exercise of religion. *See id.* at 449.

Likewise, when courts interfere in matters of church governance and doctrine, they also run afoul of "the Establishment Clause, which prohibits government involvement" regarding "ecclesiastical decisions." *Hosanna-Tabor*, 565 U.S. at 188–89. "[T]here is a substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs." *Milivojevich*, 426 U.S. at 709. Because of this danger, "the First Amendment severely circumscribes the role that civil courts may play in resolving church . . . disputes." *Id.* (quoting *Hull Church*, 393 U.S. at 449). Because of this categorical limitation on government control over religious matters, it is a violation of the Establishment Clause for a court to "substitute[] its interpretation" of religious law for that of religious authorities vested with the power "to make that interpretation." *Id.* at 721.

The Supreme Court's recognition of the religious abstention doctrine dates back to its decision in *Watson v. Jones*, 80 U.S. 679 (1871). *Watson* involved a

dispute between proslavery and anti-slavery factions of the Walnut Street Presbyterian Church in Louisville, Kentucky. Both sides had formed "distinct bodies, with distinct members and officers," each claiming to be the true "church." *Id.* at 717. The Court recognized that "[r]eligious organizations come before [the courts] in the same attitude as other voluntary associations," and that courts have "the obvious duty" to enforce the terms of civil instruments, but also affirmed "the full and free right" of all people "to organize voluntary religious associations" in accordance with their "religious doctrine" and that "civil courts exercise no jurisdiction" over disputes that are "purely ecclesiastical in . . . character." *Id.* at 714, 723, 728–29, 733.

The Court thus drew a sharp contrast between civil courts in the United States and the Lord Chancellor in England, who was "in a large sense, the head and representative of the Established Church," controlled "the church patronage," and had his "judicial decision . . . invoked in cases of heresy and ecclesiastical contumacy." *Id.* at 727–28. The "dissenting church in England [wa]s not a free church," the Court explained, and "there did not exist that full, entire and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles." *Id.* at 728. "In this country," by contrast, because of the "full and free right to entertain [sic] any religious belief," courts may not "grappl[e] with the most abstruse problems of theological controversy"—"[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Id.* Although

Watson was decided as a matter of federal common law, the dual pillars of religious liberty—no establishment and free exercise—were present at the inception of the religious abstention doctrine. As the Court has since noted, *Watson* was this Court's first decision to affirm the "freedom for religious organizations" to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor*, 565 U.S. at 186 (citation omitted).

B. The Supreme Court's religious autonomy cases

Over the next century and a half, the Supreme Court elaborated on the principles of religious autonomy first announced in *Watson*. In *Kedroff*, the Court explicitly grounded these principles in the Religion Clauses. That case involved a New York law that attempted to give an archbishop elected by a convention of American churches "affiliated with the Russian Orthodox Church" control of St. Nicholas cathedral, over and against the claim of another archbishop appointed by the Patriarch of the Russian Orthodox Church in the Soviet Union. 344 U.S. at 95–97. Thus, at its core, the case was about who was the true archbishop. The Court held the law unconstitutional because it "displace[d] one church administrator with another" and "pass[ed] the control of matters strictly ecclesiastical from one church authority to another." *Id.* at 119. "Freedom to select the clergy," the Court explained, "must now be said to have federal constitutional protection as a part of the free exercise of

religion against state interference." *Id.* at 116. Furthermore, meddling with "control" of churches "violates our rule of separation between church and state." *Id.* at 110. Echoing *Watson*, the Court explained that the Constitution preserves the power of religious bodies "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* at 116.

In a concurring opinion in *Kedroff*, Justice Frankfurter explained that "[w]hat is at stake here is the power to exercise religious authority." *Id.* at 121 (Frankfurter, J., concurring). And he concluded that "it is not open to the governments of this Union to reinforce the loyalty of their citizens by deciding who is the true exponent of their religion," as governments have no power "to settle conflicts of religious authority and none to define religious obedience." *Id.* at 122, 125.

The Supreme Court elaborated on these principles in *Hull Church*. There, two local churches withdrew from the Presbyterian Church, alleging that the denomination had, through "certain actions and pronouncements," violated its own constitution and had departed from "the doctrine and practice in force at the time of affiliation." 393 U.S. at 442. The local churches sued to enjoin the general church from trespassing. Under Georgia's law of implied trusts, the general church had a claim to the property only for so long as it "adhere[d] to its tenets of faith and practice existing at the time of affiliation by the local churches." *Id.* at 443. After a jury

found that the general church had departed from its original doctrine, the state courts ruled for the local churches. *Id.* at 444.

The Supreme Court reversed, rejecting the state court's "departure-from-doctrine" test as unconstitutional because civil courts could not interpret "the meaning of church doctrines" or "assess[] the relative significance to the religion of the tenets from which the departure was found," without violating the First Amendment. *Id.* at 450. The "American concept of the relationship between church and state," the Court reasoned, "leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes." *Id.* at 445–46, 447 (emphasis omitted). "If civil courts undertake to resolve [doctrinal] controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Id.* at 449. Applying the departure-from-doctrine test, however, required the "civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.* at 450.

In *Milivojevich*, the Court held that civil courts may not enjoin the removal of a bishop or reorganization of a diocese, regardless of whether civil courts believed the church had complied with its own laws and regulations. 426 U.S. at 724–25. *Milivojevich* involved a bishop who resisted the reorganization of the American-

Canadian Diocese of the Serbian Eastern Orthodox Church. The mother church removed the bishop from office and split his former diocese into three new dioceses. *Id.* at 697–98. The state court ruled for the defrocked bishop because, in its view, the church's adjudicatory procedures were "arbitrary" and conflicted with the state court's "interpretation of the Church's constitution and penal code." *Id.* at 708. The state court also invalidated the diocesan reorganization, on the theory that, under the church constitution, it was "beyond the scope of the Mother Church's authority to effectuate such changes without Diocesan approval." *Id.*

The Supreme Court, however, rejected the notion that an "arbitrariness" test could validly be applied to the discipline of church leaders. *Id.* at 712–20. The Court began from the premise that "it is the essence of religious faith that ecclesiastical decision are reached and are to be accepted as matters of faith, whether or not rational or measurable by objective criteria." *Id.* at 714–15. Thus, "[c]onstitutional concepts of due process, involving secular notions of 'fundamental fairness'" were "hardly relevant to such matters of ecclesiastical cognizance." *Id.* at 715. The Court reversed the state court's injunction prohibiting the diocesan reorganization on similar grounds. *Id.* at 721. *Milivojevich* confirms that the religious abstention doctrine is not limited to the selection of religious leaders, but also extends to the interpretation of doctrinal terms in organizational documents.

The Supreme Court clarified the scope of the religious autonomy doctrine in *Jones v. Wolf*, 443 U.S. 595 (1979). *Jones*, like *Watson*, involved a property dispute between two factions of a local church, each claiming to represent the church itself. The state court had resolved the case using neutral principles of law, that is, "objective, well-established concepts of trust and property law familiar to lawyers and judges." 443 U.S. at 603–04. In blessing the neutral principles of law approach, however, the Court reaffirmed that "the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice," such that any approach that civil courts adopt must "involve[] no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.'" *Id.* at 602 (quoting *Maryland & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)). The Court rejected the argument that the state courts would necessarily have to decide the "ecclesiastical question" of which faction was the "true congregation" to identify who was entitled to act for the title-owner of the property, recognizing that the nature of the dispute allowed the state to employ a "presumptive"—but "defeasible"—"rule of majority representation" or other rule that "does not impair free-exercise rights or entangle the civil courts in matters of religious controversy." *Id.* at 607–08. *Jones* thus underscores the requirement that "States, religious organizations, and individuals [] structure relationships involving church property so as not to require the civil

courts to resolve ecclesiastical questions"; otherwise, civil courts may not resolve these property disputes at all. *Hull Church*, 393 U.S. at 449.

More recently, in *Hosanna-Tabor*, the Supreme Court unanimously recognized that the First Amendment requires a ministerial exception to employment-discrimination claims brought against religious organizations. 565 U.S. at 188. The Court there described the history of the First Amendment as reflecting the Framers' desire to preserve "the essential distinction between civil and religious functions." 565 U.S. at 185 (citation omitted). The fundamental "purpose" of the ministerial exception, the Court explained, is "ensur[ing] that the authority to select and control those who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone." *Id.* at 194–95 (quoting *Kedroff*, 344 U.S. at 119). As the Court in *Hosanna-Tabor* put it, "[t]he members of a religious group put their faith in the hands of their ministers," and a government-created cause of action that would punish a church for failing to retain an unwanted minister would infringe the First Amendment's "special solicitude to the rights of religious organizations" to "select [their] own ministers." *Id.* at 188–89. The Court also explained that "the ministerial exception is not limited to the head of a religious congregation." *Id.* at 190. Rather, the exception advances both Religion Clauses' purpose of protecting "the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry

out their mission" and thus extends further than those identified as ministers. *Id.* at 196. "The church must be free to choose those who will guide it on its way." *Id.*

The Supreme Court applied the ministerial exception in *Morrissey-Berru*, which, together with its companion case, *St. James v. Biel*, involved teachers at Catholic elementary schools. 140 S. Ct. at 2056–60. The Ninth Circuit had refused to apply the ministerial exception to the teachers, principally because they did not have "clerical titles" and had "less formal religious schooling" than the teacher in *Hosanna-Tabor*. *Id.* at 2067–68. The Supreme Court reversed, explaining that the Ninth Circuit's "rigid test" had "distorted" the law. *Id.* at 2067. A proper inquiry, the Court noted, required considering "all relevant circumstances" in light of "the fundamental purpose of the exception." *Id.* Titles could not be "all-important," given that the variety of titles within and among religions would require such an inquiry either to "look[] behind the titles to what the positions actually entail" or "privileg[e] religious traditions with formal organizational structures" and familiar titles. *Id.* at 2064 In addition, schooling could not be dispositive since "[t]he schools in question" thought the teachers "had a sufficient understanding of Catholicism to teach their students, and judges have no warrant to second-guess that judgment or to impose their own credentialing requirements." *Id.* at 2068.

In sum, the Supreme Court has steadfastly recognized that "First Amendment values are plainly jeopardized when [religious disputes are] made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Hull Church*, 393 U.S. at 449. The religious abstention doctrine is necessary both to prevent Establishment Clause concerns with excessive entanglement between religious organization and secular courts, and to promote free religious exercise: "If civil courts undertake to resolve such controversies . . . , the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Id.*

III. This case cannot be decided without improperly resolving controversies of religious leadership and doctrine.

The religious abstention doctrine bars civil courts from deciding plaintiffs' claims. In ruling for the plaintiffs below, the trial court overstepped its "severely circumscribe[d] . . . role" in this religious dispute by resolving disputes over the meaning and relative importance of religious doctrines. *Moon*, 129 A.3d at 248. Courts must not resolve "controversies over religious doctrine" or "make [their] own interpretation of the meaning of church doctrine." *Hull Church*, 393 U.S. at 449–50. Here, the trial court did exactly that.

Plaintiffs below argued that that the Director-Defendants "substantially altered UCI's corporate purposes" through certain 2010 amendments to UCI's 1980 articles of incorporation. JA.0276. The amendments replaced references to "the

Divine Principle" and "the theology of the Unification Church" with a reference to the "theology and principles of the Unification Movement." *Compare* JA.1418–1419 *with* JA.0983. They also removed language that expressly referred to assisting "Unification Churches," although the revised articles contained a corporate commitment to "promote and support the understanding and teaching of the theology and principles of the Unification Movement." *Compare* JA.1418–1419 *with* JA.0983.

Whether these amendments substantially altered UCI's purposes was disputed. The director-defendants testified that they regarded the "Unification Church" and "Unification Movement" as interchangeable labels, with the latter simply more faithful to Rev. Moon's declaration in the 1990s about the "end of the church era." *See, e.g.*, JA.1812–1813, JA.1815–1817. The record similarly reflected that the director-defendants understood the theology of the Unification Movement to embrace the Divine Principle and support for Unification Churches. JA.1817–1819 (testifying that "the new amended articles incorporated all the purposes" of the original articles while "reflect[ing] more accurately the changes . . . in our movement").

Wading into this theological debate, the trial court ruled for the plaintiffs. JA.0276. In the trial court's view, the amended 2010 articles did not reference the "Divine Principle" or "any other spiritual text." JA.0275. The court acknowledged that the "sacred texts of the Unification Church have undergone several revisions

over time," but it nevertheless concluded that the amendment to a more general reference to "the theology and principles of the Unification movement" was a breach of defendants' fiduciary duties. JA.0273–0275. Further, the court resolved theological questions by inferring that the change from "Unification Church" to "Unification Movement" must have been "a substantial change," asserting that the "Unification Church" is a "specific denomination[]" and the "Unification Movement" is not. JA.0274. The court buttressed its reasoning with doctrinal observations it attributed to defendants—namely, that they had amended the articles because they believed Reverend Moon had announced an "end of the church era," and that "church-like institutions were antithetical to Reverend Moon's ideals since the inception of the Unification Church." JA.0275. These were "controversies over religious doctrine and practice" that the court had no power to resolve. *Hull Church*, 393 U.S. at 449.

The trial court's remedies order compounded the error. The court resolved the issue of the theological significance of the "end of the church era," finding that it was "aspirational" rather than an actual change in church polity. JA.0343. The court additionally found—without any finding of insincerity—defendants' theological positions "not credible." JA.0323–0324, JA.0343–0346.

The trial court's ruling suffers from the same fatal flaw as the lower court's ruling in *Hull Church*. There, the lower court had to "decide whether the challenged actions of the general church depart substantially from prior doctrine," and whether

the point of departure "holds a place of such importance in the traditional theology" as to require termination of a trust. 393 U.S. at 450. Here, the trial court had to decide whether the change from "Unification Church" to "Unification Movement" was substantial, and then whether that change was so substantial as to be a change of UCI's corporate purpose and a breach of the directors' fiduciary duty. That inquiry required the court "to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion"—an inquiry that "[p]lainly, the First Amendment forbids." *Id.* at 450.

Even supposing that the trial court could properly conclude these amendments "fundamentally alter[ed] the corporation's purposes" (JA.0271), its decision would still flout the principles of religious autonomy. In the trial court's view, UCI's original religious corporate purpose was to support "the activities of the Unification Churches" and the doctrine of "the Divine Principle." JA.0274. And by the court's logic, these corporate purposes could never change—even if the very religious faith that UCI was created to serve required it. Yet that is precisely the problem identified in *Hull Church* as justifying non-involvement in doctrinal controversies: "[i]f civil courts undertake to resolve such controversies . . ., the hazards are ever present of inhibiting the free development of religious doctrine." 393 U.S. at 449.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

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