

No. 24-530

In the Supreme Court of the United States

BETHESDA UNIVERSITY, ET AL.,

Petitioner,

v.

SEUNGJE CHO, ET AL.,

Respondents.

*On Petition for a Writ of Certiorari to the
Court of Appeal of the State of California,
Fourth Appellate District, Division Three*

**BRIEF OF THE MANHATTAN INSTITUTE AND
JEWISH COALITION FOR RELIGIOUS
LIBERTY AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Bethesda University is a Pentecostal institution that requires its board members to share its religious faith and to act consistently with its Pentecostal beliefs. Consistent with these requirements, Bethesda removed purported Board members who did not share its religious beliefs. Nonetheless, a California state court adjudicated an intra-faith dispute over the Board members' religious qualifications, allowing a non-Pentecostal religious faction to usurp control of the university. The question presented is:

Does the ecclesiastical-abstention doctrine bar courts from adjudicating the religious qualifications of the leaders of a religious institution?

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INTEREST OF *AMICI CURIAE*¹

The **Manhattan Institute** is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. It has historically sponsored scholarship and filed briefs opposing regulations and other government actions that impede the flourishing of civil society.

The **Jewish Coalition for Religious Liberty** is an association of American Jews concerned with the current state of religious liberty jurisprudence. It aims to protect the ability of all Americans to freely practice their faith and to foster cooperation between Jews and other faith communities. Its founders have submitted amicus briefs, written op-eds, and established an extensive volunteer network to spur public statements and action on religious liberty issues.

This case interests *amici* because it involves state interference with the internal governance decisions of a private university, thus hampering that institution's ability to fulfill its religious mission.

SUMMARY OF ARGUMENT

The decision below adopts a broad “neutral principles” exception to the church-autonomy doctrine in a manner that threatens to undermine the Free Exercise Rights of religious minorities. This Court should grant the petition to clarify that the neutral-principles exception does not grant civil courts the authority to

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

interfere in religious organizations' theological and leadership decisions.

Amici write to highlight the dangers inherent in expanding the neutral-principles exception beyond property disputes—specifically, how such a decision might affect religious minorities like the Jewish community. The court below found that it could apply neutral principles to interpret portions of Bethesda University's constitution and bylaws that relate to internal governance. The court characterized this analysis as an inherently secular endeavor despite the school's protests that it was a matter of church doctrine and governance. As *amici* show with respect to areas of the Jewish faith where seemingly secular questions have important religious consequences, stretching the neutral-principles exception beyond its property-law roots would inevitably ensnare courts in theological matters, to the detriment of religious minorities.

Finally, this brief explains the importance of leadership decisions to religious communities. Such decisions are at the core of the interests protected by the church-autonomy doctrine, so the neutral-principles exception should not apply here. Religious organizations are most able to fulfill their religious missions when they are led by individuals who understand the community's practices and beliefs based on first-hand experience. This is evidently true in religious Jewish organizations where many issues emerge in the context of religious life that can be best understood by someone who themselves practices and lives as a Jew. It is similarly appropriate for a Pentecostal organization to choose Pentecostals for its board. Such leaders help keep the organization, here a university, in line with the basic principles it was founded upon. They

best understand the needs of students seeking an education imbued with Pentecostal Christianity.

The Court should grant the petition to clarify the proper boundaries of the neutral-principles exception to the church-autonomy doctrine—and thus to protect religious institutions from the interference of courts in their governance and leadership decisions.

ARGUMENT

I. THE CHURCH-AUTONOMY DOCTRINE OFFERS VITAL PROTECTION TO RELIGIOUS MINORITIES BY STOPPING COURTS FROM INTERFERING IN INTERNAL RELIGIOUS DISPUTES

It is axiomatic that the First Amendment protects religious organizations from judicial intervention into their governance and leadership decisions. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2055 (2020) (citing *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952)). Courts lack jurisdiction over theological controversies and related matters. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713–14 (1976). This doctrine is referred to as “ecclesiastical abstention” or “church autonomy.” *Belya v. Kapral*, 45 F.4th 621, 628 n.4 (2d Cir. 2022), *cert. denied sub nom. Synod of Bishops of the Russian Orthodox Church Outside of Russia v. Belya*, 143 S. Ct. 2609 (2023).

However, the court below held that it was not bound by that doctrine because of the “neutral principles” exception. That exception allows courts to decide a question involving “church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets

of faith.” *Jones v. Wolf* 443 U.S. 595, 602 (1979). The court below greatly expanded the scope of that narrow exception to justify telling a religious university that individuals who do not practice its faith are nonetheless qualified to occupy some of the highest leadership positions in the school. If that exception is applied so broadly, it will quickly prove unworkable, and it will ensnare courts in theological questions.

A. Applying a Broad Neutral-Principles Exception Would Prove Unworkable

This case highlights the problem with a broad application of the “neutral principles” exception to the church autonomy doctrine. While the court below maintained that it could decide this case based solely on “neutral principles,” it nonetheless found itself deciding matters imbued with theological significance. The fitness of nonadherents to fill leadership roles at a religious college requires the consideration of doctrinal matters and cannot be resolved by applying secular principles.

The court below disagreed with the petitioner’s insistence that the questions had religious significance and reframed the issues as “secular.” The broader that the neutral-principles exceptions is allowed to spread from its narrowly circumscribed property-law origins, the more frequently courts will be tempted to make such determinations. Yet this Court has recognized that the First Amendment stops courts from redefining theological disputes as secular, even when they appear secular to a nonadherent. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012). Cabining the neutral-principles exception to the church-autonomy doctrine to property

disputes will remove the temptation that leads lower courts to violate this Court's instruction.

Indeed, the neutral-principles exception was created with an eye towards its limit. This Court's decision in *Jones* explained that when invoking the neutral-principles exception, courts must abstain from resolving questions of religious doctrine. *Jones*, 443 U.S. at 595. The exception was designed in the context of property disputes involving specified concepts distinct from any religious determination. *Id.* at 603 ("The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice.").

Even if it were appropriate to apply the neutral-principles exception to some narrow areas beyond property disputes, the Court should make it clear that it cannot reach decisions relating to religious doctrine or church governance.

B. Applying a Broad Neutral-Principles Exception Would Also Negatively Impact Religious Minorities

Expanding the neutral principles-exception beyond property disputes—and possibly a narrow band of similar situations—would prove especially harmful to minority faiths. Judges who are unfamiliar with minority religious practices lack the context to understand that facially secular words or practices may have deep religious significance. A judge will instantly recognize that a Christmas tree is not a mere houseplant, but that same judge may not recognize that an etrog is not simply a pungent citrus fruit. *See* Menachem Posner,

What Is an Etrog?, Chabad.org, <https://shorturl.at/nJzL6>.

We provide two examples from the Jewish practices that turn on questions of what could be misinterpreted as mundane “secular facts.” Consider the question of whether a particular fish is kosher. A court might believe that this is an entirely secular question because the bible says that a fish is kosher if it has fins and scales. Yehuda, Shurpin, *Which “Scales” Make a Fish Kosher?*, Chabad.org, <https://shorturl.at/4KT3b>. A court might thus determine that it can look at a fish and use neutral principles to determine whether it possesses those attributes. But the matter is not that simple. The Talmudic definition of scales may differ from the secular definition of scales even if the word would appear the same in print. *Id.* How would a court determine if swordfish, which have scales at birth but lose them later in life, are kosher? This is a hotly debated question among Jewish denominations, not one subject to an answer based on “neutral principles.:

This type of question might arise in a dispute regarding a restaurant that seeks to advertise itself as kosher. For example, a restaurateur may seek legal redress against a rabbi for deeming his establishment non-kosher. Can a court use neutral principles to determine if a swordfish is kosher? Rabbis will be wary of providing guidance on kosher establishments if they know that they can be sued for providing it.

And that’s no hypothetical matter. The judgments of religious leaders can cause financial or reputational harm to an individual or business. A rabbi’s declaration that a restaurant fails to meet kosher standards will cause it to lose the business of kosher-observant customers—leading to litigation related to defamation

or interference with business relations. *See, e.g.*, Richard Greenberg, *Treif Meat Found at Washington DC JCC Cafe; Vaad Shuts Down Store*, *Yeshiva World* (Sept. 2, 2009); Shayna M. Sigman, *Kosher Without Law: The Role of Nonlegal Sanctions in Overcoming Fraud Within the Kosher Food Industry*, 31 *Fla. St. U.L. Rev.* 509, 547-48 (2004) (recounting restaurant's failure after kosher fraud was discovered).

The biblical charge to avoid leavened food during the Passover holiday is another area where religious requirements can appear secular. For example, many Jewish communities have a tradition of avoiding rice, beans, or millet during this period—even though these foodstuffs do not ferment when used to produce bread—because they nonetheless can resemble leavened foods. Could a court consult a food scientist to determine whether a particular food qualifies as leavened? While this may seem like a secular question that lends itself to a neutral answer, it actually relates to religious tradition and is a matter of divergence within the Jewish community. Jeffery Spitzer, *Kitniyot: Not Quite Hametz*, *MyJewishLEarning.com*, <https://shorturl.at/1aI7C>. If a Jewish prisoner requests an accommodation so that he can observe a Passover-observant diet, no court should be empowered to tell him that he misunderstands objective secular facts concerning which foods are prohibited on that holiday.

To make matters more complicated, there is no universally accepted set of Jewish practices and, indeed, many active theological debates within Judaism. Getting away from gastronomy and kashrut, even a term like “social justice” may be viewed as secular by some Orthodox Jews but religiously important to a Reform Jew. There are all sorts of debates between different

streams of Judaism, as well as between Jewish communities from different parts of the globe. It would be impossible to expect a court to identify and parse what terms, items, and practices have religious significance to any particular Jewish person or organization. Expanding the neutral-principles doctrine beyond property disputes would invite courts to stumble into religious minefields that they misperceive as straightforward secular questions.

II. IT IS CRUCIAL THAT THE RELIGIOUS-AUTONOMY DOCTRINE GOVERN THE LEADERSHIP DECISIONS OF RELIGIOUS ORGANIZATIONS, WHICH NEED LEADERS WHO SHARE THEIR FAITH TO FULFILL THEIR MISSIONS

The church-autonomy doctrine is at the zenith of its protection—and thus the case for applying the neutral-principles exception—is at its weakest, in cases concerning the internal governance of religious organizations. Such organizations are uniquely suited to understanding the religious characteristics that would make someone the proper fit to lead them. For that reason, the First Amendment prevents secular courts from second-guessing such decisions, allowing no exception for civil-court interference.

And so it is eminently reasonable for Bethesda University, founded as a Pentecostal institution, to decide that it would be best-served by having a Pentecostal president. It hardly needs to be said that the role of president is central to any institution, affecting its future direction. By reading Pentecostalism out of the college's bylaws, the court below risks inflicting irreparable damage on the university and its mission.

Religious Jewish institutions could similarly find it more difficult to carry out their missions if non-Jews could be appointed to significant leadership positions. Judaism is a minority faith that has many religious obligations, practices, and rituals that may be difficult for outsiders to understand or appreciate. Having experienced faith as a member of the community makes one uniquely qualified to serve as a religious leader.

Indeed, fully appreciating Judaism requires experiencing it firsthand. To internalize Jewish practices such as observing the Sabbath, repenting on Yom Kippur, or reenacting the Jewish national-origin story on Passover, one must participate in them as a member of the community with a shared sense of history, obligation, and belonging. The Passover service, or *seder*, emphasizes that every participant should see himself as if he were personally taken out of Egypt. Services on the fast day known as Tisha b'Av include mourning rituals to commemorate the destruction of the Jewish temples and exile from Israel. Observant Jews spend the day acting as if a family member had recently died.

There is no substitute for experiencing these rituals firsthand, particularly if one is to lead such a community. It would be impossible for a leader to convey the meaning of these practices, either to members of the organization or the larger community, unless he had personal first-hand experience observing them.

Additionally, given the practical importance that 613 commandments, or *mitzvot*, play in nearly every aspect of a religious Jew's life, an observant Jew is uniquely suited to lead a religiously Jewish organization. Consider again compliance with the complex laws of keeping kosher. These laws relate not only to the types of food that can be eaten, but to food preparation

and heating and the appliances and utensils that can be used to cook and eat. *What is Kosher?*, Chabad.org, <https://shorturl.at/UBLVk>. Similarly, the laws that govern activity on the Shabbat are complicated and require dedication to master. *The Shabbat Laws*, Chabad.org, <https://shorturl.at/aPFnS>. Given these complexities, having Jewish adherents as the leaders of religious Jewish organizations puts those organizations in the best positions to succeed. Such decisions are not susceptible to the application of a neutral-principles examination by a secular court.

CONCLUSION

For the foregoing reasons, and those stated by the petitioners, the Court should grant the petition.

Respectfully submitted,

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