No. 24-530

In the Supreme Court of the United States

BETHESDA UNIVERSITY, ET AL.,
Petitioners,
v.
SEUNGJE CHO, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

BRIEF OF THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL AND THE AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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December 12, 2024

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QUESTION PRESENTED

Does the church autonomy doctrine (also known as the ecclesiastical abstention doctrine) bar courts from applying "neutral principles" to the constitution and bylaws of a religious institution to resolve disputes about the religious qualifications and identity of the institution's leaders?

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INTERESTS OF *AMICI CURIAE*[*]

The Association of Christian Schools International (ACSI) is a nonprofit association that supports 25,000 Christian schools in over 100 countries. ACSI serves member schools worldwide, including 2,200 Christian preschools, elementary, and secondary schools and 60 postsecondary institutions in the United States. ACSI provides pre-K–12 accreditation, professional development, curricula, and other services that cultivate a vibrant Christian faith that embraces all of life.

The American Association of Christian Schools (AACS) is an association of 40 state, regional, and international associations that promote high-quality Christian education. AACS represents more than 700 schools. AACS seeks to integrate faith into scholarship and form the next generation of Christian leaders.

These organizations, their members, and the students that they serve have a unique interest in the outcome of this case. *Amici* serve schools and students throughout the country, many of which feature congregational leadership structures and favor the selection of co-religionists as their leaders. These schools' religious and educational missions include the integration of faith throughout all aspects of their educational programs, and they have a wide variety of

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[*] Consistent with Supreme Court Rule 37.2, counsel for ACSI and AACS provided ten days' notice of their intention to file this brief. Also, no counsel for any party authored this brief in whole or in part, and no person or entity has made a monetary contribution intended to fund the preparation or submission of this brief. See Sup. Ct. R. 37.6.

foundational documents outlining these objectives. Most importantly, these religious schools desire to see strong protections for religious liberty that safeguard their ability to select their own leadership and resolve such disputes free from judicial interference.

SUMMARY OF ARGUMENT

The California Court of Appeal improperly disregarded the "church autonomy" doctrine. See *Our Lady of Guadalupe School* v. *Morrissey-Berru*, 591 U.S. 732, 747 (2020). Failing to apply the ecclesiastical abstention, it intruded in a dispute about the religious qualifications and identity of a religious institution's leaders based on supposed "neutral principles." But the California court blew past a critical question-precedent to the mere "property dispute[]" that it mistakenly characterized itself as facing. *Bethesda Univ.* v. *Seungje Cho*, No. G062514, 2024 Cal. App. Unpub. LEXIS 2001, at *12 (Mar. 28, 2024). The court thereby stretched the neutral-principles approach for resolving *property* matters by using it to first *identify* which members of the Bethesda University board are religiously qualified to lead that institution. It implicitly adjudicated that certain board members were 'Christian-enough' to lead Bethesda University. The court thus "engage[d] in the forbidden process of interpreting and weighing church doctrine," *Presbyterian Church in the U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church (Presbyterian Church I)*, 393 U.S. 440, 451 (1969), through its review and interpretation of the university constitution, bylaws, and other governance documents.

Petitioner shows such errors are proliferating across federal and state courts of the United States. See Pet. for Writ of Cert. 19–28. This has dangerous implications for the First Amendment freedoms of institutions and individuals of faith. Religious organizations are to have the power "to decide for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine." *Our Lady of Guadalupe*, 591 U.S. at 737 (emphasis added) (quoting *Kedroff* v. *Saint Nicholas Cathedral of the Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). Thus, "[b]oth Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 181 (2012). They likewise prohibit "judicial intervention into disputes between the school and the teacher," where a "particular position implicate[s] the fundamental purpose of the" religious institution and the church autonomy protected by this Court's precedents. *Our Lady of Guadalupe*, 591 U.S. at 758, 762.

To be sure, a university board of trustees ultimately exercises practical control over the property of such a religious institution. But that doesn't make the predicate question about the selection of such board members and any religious requirements for serving on such a board a mere "property dispute." The prospect of judicially (or other governmentally) installed boards wrestling control of religious institutions away from true adherents to a faith is why it is critically important for this Court to confirm that civil courts must stay *out* of such disputes.

This Court should grant certiorari. And the proper limits for application of a neutral-principles approach should be further refined. In the absence of such guidance, the California courts have "unconstitutionally undertake[n] the resolution of quintessentially religious controversies" regarding the proper qualification and identity of a religious institution's leaders. See *Hosanna-Tabor*, 565 U.S. at 187 (quoting *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 720 (1976)).

ARGUMENT

I. The church autonomy doctrine bars judicial interference in governance disputes implicating ecclesiastical principles.

This Court's "church autonomy" doctrine has deep roots in the Free Exercise and Establishment Clauses of the First Amendment. *Our Lady of Guadalupe*, 591 U.S. at 747. As this Court has explained, "the Religion Clauses protect the right of churches and other religious institutions to decide matters of 'faith and doctrine' without government intrusion." *Id.* at 746 (quoting *Hosanna-Tabor*, 565 U.S. at 186). The Constitution thus requires courts to grant "special solicitude to the rights of religious organizations" in numerous ways. *Hosanna-Tabor*, 565 U.S. at 189.

As far back as 1872, the Court has held that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must

accept such decisions as final, and as binding on them, in their application to the case before them." *Watson* v. *Jones*, 80 U.S. 679, 727 (1872). Nearly a century later, this Court reaffirmed the same "spirit of freedom for religious organizations, an independence from secular control or manipulation" by secular laws. *Kedroff*, 344 U.S. at 116 (discussing *Watson*). It held that a New York state law recognizing the primacy of one of two religious factions to access a cathedral violated the Constitution's separation of church and state.

More recently, this Court recognized that the "principle of church autonomy" required a "ministerial exception" to the application of the civil rights laws. *Our Lady of Guadalupe*, 591 U.S. at 747–49 (surveying the origins of the Religion Clauses and the church autonomy precedents interpreting them); *Hosanna-Tabor*, 565 U.S. at 181–90 (same). This Court pointedly declared that the "constitutional foundation for our holding [in *Hosanna-Tabor*] was the general principle of church autonomy"—specifically, "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe*, 591 at 747.

Some courts—including the Ninth Circuit and the California courts below that drew from that Circuit's precedents—refer to these constitutional principles as the "ecclesiastical abstention doctrine." See *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *2; see also *Paul* v. *Watchtower Bible & Tract. Soc'y of N.Y., Inc.,* 819 F.2d 875, 878 (9th Cir. 1987). Whatever the label, when a court is faced with a controversy where the

"subject-matter of dispute" is "strictly and purely ecclesiastical in its character," that is "a matter over which the civil courts exercise no jurisdiction." *Watson*, 80 U.S. at 733; see also *Serbian E. Orthodox*, 426 U.S. at 713–14 (approvingly quoting *Watson* for the same proposition). Thus, when a lower court waded into ecclesiastical matters in *Presbyterian Church I*, this Court reversed. It reprimanded the state court for "engag[ing] in the forbidden process of interpreting and weighing church doctrine." 393 U.S. at 451. For our "civil courts [can]not review and enforce [a] church decision without violating the Constitution." *Id.*[1]

The principle of "church" autonomy applies to all religious institutions and organizations, not just places for worship. As *Watson* first emphasized, with specific reference to "Protestant dissenters . . . Catholics and Jews," everyone in the United States enjoys "the full and free right" to entertain "any religious belief." 80 U.S. at 728. This wide range of protected religious expression necessarily means that some oft-repeated terms, such as church, will not fully reflect the breadth of the First Amendment's protections. *Cf. Our Lady of Guadalupe*, 591 U.S. at 752 (explaining how "priests, nuns, rabbis, and imams" all benefit from the same protections as a "minister"). Church autonomy cases thus regularly reference "religious organizations," rather than simply churches. See *Jones* v. *Wolf*, 443 U.S. 595, 604 (1979) (citation omitted); *Serbian E. Orthodox*, 426

[1] In this way, the broader church autonomy doctrine or ecclesiastical abstention doctrine differs from the more specific ministerial exception to civil rights liability, which is "not a jurisdictional bar." *Hosanna-Tabor*, 565 U.S. at 195 n.4.

U.S. at 724; *Presbyterian Church I*, 393 U.S. at 449; *Kedroff*, 344 U.S. at 116; *Watson*, 80 U.S. at 714. When examining the same First Amendment principles, *Hosanna-Tabor* and *Our Lady of Guadalupe* discussed "religious groups" and "religious institutions," respectively. *Hosanna-Tabor*, 565 U.S. at 184; *Our Lady of Guadalupe*, 591 U.S. at 746. Religious organizations, groups, and institutions come in many forms. There are churches, cathedrals, synagogues, mosques, schools, hospitals, community centers, charities, and more. The church autonomy doctrine, borne out of the Religion Clauses of the Constitution, protects the faith-infused aspects of them all.

The church autonomy doctrine (like the Religion Clauses) also protects both hierarchical and "congregational" religious organizations. Certain precedents discuss deferring to the governing bodies of "hierarchical" religious organizations. See *Kedroff*, 344 U.S. at 110; *Presbyterian Church I*, 393 U.S. at 441*; Serbian E. Orthodox*, 426 U.S. at 724. This simply reflects the historic context and facts in which these principles and precedents first arose. Many religious organizations have hierarchical structures. But this dicta does not and cannot principally limit the protections of the First Amendment to only certain forms of religious organization.

II. Because some religious property disputes are not ecclesiastical disputes, the church autonomy doctrine allows courts to resolve certain property disputes by using neutral principles.

Civil courts are not deprived of all jurisdiction to resolve disputes about and among a religious institution. Ecclesiastical matters are under the sole purview of religious authorities. There are, however, secular matters that those same religious authorities are observed to lack jurisdiction to decide, or which it may be proper for civil judicial authorities to resolve. As the Court in *Watson* concisely explained, "[I]f the General Assembly of the Presbyterian Church should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil court or anywhere else." 80 U.S. at 733.

In addition, when a dispute over "real or personal" property "*in no sense* depend[s] on ecclesiastical questions," civil authorities can resolve such controversies, even when they occur between religious parties. *Id.* (emphasis added). In these situations, civil authorities "may adopt any one of various approaches for settling 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*, 443 U.S. at 602 (emphases replaced) (quoting *Md. & Va. Eldership of the Churches of God* v. *Church of God at Sharpsburg, Inc. (Maryland & Virginia Churches)*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring)).

In *Jones*, the Court faced competing factions of a single Georgia congregation, with each faction claiming control of the church and its property. But "there"—unlike at Bethesda University—"was no dispute in the [*Jones*] case about the identity of the duly enrolled members of the Vineville church when the dispute arose, or about the fact that a quorum was present, or about the final vote." 443 U.S. at 607. The Court thus concluded a "neutral-principles approach" might permit civil disposition of the dispute regarding which faction would control the church's property. *Id.* But "if Georgia law provides that the identity of the Vineville church is to be determined according to the 'laws and regulations' of the [general Presbyterian church], then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity." *Id.* at 609. The Court remanded the case for further development, while reiterating that civil courts cannot "pass [judgment] on questions of religious doctrine." *Id.*

Jones reflects that the application of "neutral principles of law" *can* resolve *certain* church property disputes consistent with the Constitution. *Id.* at 603. But application of any neutral-principles method is closely circumscribed by the case law. Such an approach must "rel[y] exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Id.* Only this can "free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Id.*

This Court thus affirmed the application of neutral principles in *Maryland & Virginia Churches*. This was "a church property dispute" between a general church and two secessionist congregations. 396 U.S. at 367 (per curiam). There, the Maryland Court of Appeals "relied upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the [general church] pertinent to the ownership and control of church property." *Id.* There was, however, no dispute as to the qualified, religious identity of the disputing parties. Since there was "no inquiry into religious doctrine," the Court affirmed the state court's resolution of the case. *Id.* at 368; see also *Jones*, 443 U.S. at 602–03 (noting that the "neutral-principles approach was approved in *Maryland & Virginia Churches*").

Maryland & Virginia Churches should not be misread, however, as a blank check for civil courts to invoke so-called "neutral principles" for any case. For "the application of the neutral-principles approach is [not] wholly free of difficulty." *Jones*, 443 U.S. at 604. Depending on the case and context, a neutral-principles approach may "require[] a civil court to examine certain religious documents, such as a church constitution" to resolve a property dispute. *Id.* This Court thus warned that "[i]n undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have

intended to create a trust." *Id.* The same limitations apply when considering a religious institution's "deed" or "corporate charter." *Id.* Therefore, if "the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body." *Id.*

Proper application of "neutral principles" is therefore not—as the California courts below erroneously conceived—a simple matter of applying state contract interpretation to the bylaws and corporate charters of religious institutions. For example, in *Presbyterian Church I*, two local churches trying to leave the general Presbyterian church sued in state court. They both sought to secure their claims to their local church properties. 393 U.S. at 441–44. The general church claimed ownership based on principles of implied trust. Nevertheless, the documented "title to [the property] was in the local churches," which further argued that the general church had departed from church doctrine when disputing such a trust. *Id.* at 443.

The jury determined that the general church had departed from religious doctrine, thus ruling in the local churches' favor on the question of implied trust. *Id.* at 444. The Supreme Court later reversed. It held that civil courts could not weigh in on such religious matters. *Id.* at 452. *Presbyterian Church I* thus stands as a counterpoint to *Maryland & Virginia Churches*—where no question of religious import was required to address control. While both cases putatively involved church property, there is a key

difference between them. *Presbyterian Church I* featured an impermissible adjudication of ecclesiastical matters of identity as a question-precedent to resolving the property dispute. 393 U.S. at 451. *Maryland & Virginia Churches* reflects a wholly secular property dispute—requiring no inquiry into religious qualification or identity—that could be resolved using neutral principles. 396 U.S. at 367–68.

Once civil judicial authorities recognize that a resolution of religious qualification and identity is necessary to resolve a religious-institutional dispute, the duty is simply to abstain. To wit, this Court explicitly rejects even an "arbitrariness exception" that would allow courts to consider a religious body's compliance with its own written rules. *Serbian E. Orthodox*, 426 U.S. at 713. For "recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them." *Id.*

At bottom, a neutral-principles approach is sometimes permissible. But it is a situational tool. It cannot be allowed to usurp the First Amendment's protections. "Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls." *Kedroff*, 344 U.S. at 120–21.

III. The California courts mischaracterized this ecclesiastical dispute as a property dispute and improperly adjudicated the *scope* and contours of the necessary religious commitment to serve on Bethesda University's board.

This Court's precedents distinguish religious institutional disputes requiring ecclesiastical examination from essentially secular property disputes. But the California courts ignored this critical distinction. They framed this case as a mere "property dispute[]," and went on to resolve it by purported "neutral principles." *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *12. This was error.

To support its "neutral principles of law approach," the California Court of Appeal passingly quoted from this Court's decision in *Jones*. *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *12. The California court did so without regard to the actual holding of *Jones*. For *Jones* articulated clear limitations to its endorsement of "neutral principles." 443 U.S. at 604. Specifically, *Jones* warned against any intersection of "neutral principles" and state law that "would appear to require a civil court to pass on questions of religious doctrine." *Id.* at 604, 609. Even more pointedly, *Jones* suggested that neutral principles may not be able to constitutionally resolve congregational disagreements "about the identity of the duly enrolled members," or "about the fact that a quorum was present, or about the final vote." *Id.* at 607. As the *Jones* Court noted:

> [T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

Id. at 604.

The dispute at Bethesda University involves these very complicating factors of religious entanglement. There is a disagreement over the requisite religious qualifications for Bethesda University board members, which casts doubt on who the duly enrolled board members are. *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *4. There are questions about whether a quorum of religiously qualified leaders was present at various critical points, such as the April 9, 2022, board meeting. *Id.* And there is a dispute over final votes, such as the validity of the June 2021 vote that appointed arguably unfit board members. *Id.* at *3. Thus—unlike *Maryland & Virginia Churches*—this controversy is not susceptible to a neat resolution via simple nose-counting and "neutral" principles of state contract or property law.

The California court nevertheless cavalierly reviewed Bethesda University's governing documents. It fly-specked those materials. It stretched and strained the witness testimony. And it concluded that

"nothing in the Constitution and Bylaws prevents a 'Protestant' minister, or someone not of the Pentecostal faith, from serving on the [Bethesda University] Board." *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *13 (alteration accepted). It then affirmed reconstituting the institution's board in a manner inconsistent with the university's broader historic Pentecostal founding, funding, and decades of tradition.

Nor can this decision be defended as wholly "secular." *Id.* at *12. The California appellate court attempted to justify its ruling as "no different than other board member requirements commonly found in corporate documents." *Id.* at 13. Not so. Because the California court's ultimate holding was, implicitly, that the disputed board members were 'Christian-enough' to lead Bethesda University.

The decisions below confirm the California courts' recognition that the Bethesda University "Board Member Qualifications" require:

- "A high level of spiritual development defined in terms of Evangelical and Charismatic understanding and style of life. Emphasis is placed on those who have been involved in Christian ministry exhibiting a theology consistent with the theological positions of [Bethesda University]," as well as,
- "An on-going commitment to ministry *within the Christian community*. This will be evidenced by the applicant's *current membership in a local church* or participation in a local church setting."

Bethesda Univ. v. *Kim*, No. 30-2022-01276823-CU-PP-NJC, 2023 Cal. Super. LEXIS 21982 (Mar. 27, 2023), at *20–21 (emphases added). Aware that the governing documents thus required board members to be—at a minimum—"Christian," the California courts nevertheless adjudicated the *scope* and contours of the required Christian commitment. *Id.* at 18–21. They thus held that a Bethesda University board member could be "Presbyterian or Pentecostal." *Bethesda Univ. v. Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *17. The theological divide "doesn't matter" when serving as a board member, "as long as they are willing to follow Pentecostal ideals." *Id.*

Such statements would find good company in an encyclical. They are concerningly out of place in a civil legal opinion. Once the California courts recognized that Bethesda University requires board members to be (at least) Christian (and even "Protestant") to serve, *id.* at *13, they should have stopped. They should have conceded their trespass on sacred lands and declined jurisdiction. They nevertheless impermissibly "inject[ed] the civil courts into substantive ecclesiastical matters." *Presbyterian Church I*, 393 U.S. at 451.

IV. The California courts' ruling sets a troubling precedent for future cases warranting a grant of certiorari.

There are many Supreme Court cases about religious property disputes. None have approved the use of "neutral principles" to resolve a dispute when such questions of religious qualification and identity are implicated. Failure to correct this error—and maintain a clear barrier from civil judicial

interference in questions of religious qualification to institutional leadership—presents grave threats to religious institutions, including religiously-affiliated educational institutions like *Amici*.

The "neutral-principles approach" must only be employed to review the "corporate charter or the constitution" of a religious institution "so long as the use of that method does not impair free-exercise rights or *entangle the civil courts in matters of religious controversy*." *Jones*, 443 U.S. at 607–08 (emphasis added). In other words, the neutral-principles approach is a situational tool, not a generalizable rule of procedure. As the Court wrote in *Serbian Eastern Orthodox*, allowing civil courts to inquire into ecclesiastical matters "would deprive these [religious] bodies of the right of construing their own church laws, . . . and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions." 426 U.S. at 714 (emphasis removed) (quoting *Watson*, 80 U.S. at 733–34).

Both concerns—impaired free exercise and ecclesiastical entanglement—are at play here. At Bethesda University, the wholly Pentecostal incumbent board members have now lost their ability to freely and uniformly direct their previously-Pentecostal religious institution in matters of faith. *Bethesda Univ.* v. *Seungje Cho*, 2024 Cal. App. Unpub. LEXIS 2001, at *8–9. This outcome occurred because the California state courts intervened in favor of religious rivals after undertaking a purportedly "neutral" analysis of the religious qualifications for the new, controverted board members as sufficiently

"Protestant." *Id.* at *13–14, 17–18. And those courts ultimately justified their decision to jettison decades of Bethesda University tradition requiring Pentecostal leadership because the school's documents were, so they said, "poorly drafted" and merely "aspirational." *Id.* at *7.

The Court should not allow First Amendment protections to become contingent upon the document-drafting skills of a religious entity or its attorneys. The thousands of Christian schools represented by *Amici* each have different founding documents. Many are budget constrained, with limited capacity to hire lawyers. Their ability to successfully protect the identity of their particular institutions should not turn on their successful prediction of the myriad ways that creative litigants and reviewing courts might someday pervert (or ignore statements in) their establishing documents. Nor should their religious freedoms be risked by civil courts reframing ecclesiastical questions about a religious leader's qualifications as property disputes.

This case presents an excellent opportunity for this Court to reaffirm the limits of a "neutral principles" approach. The Constitution requires civil courts to decline jurisdiction entirely when asked to address governance and property claims that are intertwined with the resolution of ecclesiastical questions of religious qualification and identity. Here, the California courts failed to do so. This warrants correction, lest continued widespread misapplication of "neutral principles" undermine the important First Amendment barrier that this Court's precedents have carefully and consistently policed.

CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari to consider and resolve these important questions.

Respectfully submitted,

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December 12, 2024