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

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, THE ANGLICAN CHURCH IN NORTH AMERICA, COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES, THE NAVIGATORS, AND REJOYCE IN JESUS MINISTRIES IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Amici agree with the Petitioners' statement of the Question Presented:

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]

Amici are organizations with an interest in the limits of secular court authority over matters of doctrine and the internal governance of religious organizations. Amici believe that the interpretation of organizational policies tied to the doctrine and religious missions of religious organizations fall within the church autonomy doctrine's zone of protection, and that the First Amendment forbids secular court examination of such matters.

SUMMARY OF ARGUMENT

Amici respectfully request this Court grant the petition for certiorari to resolve a significant circuit split regarding when, and how, to apply the "neutral principles" exception to the "church autonomy doctrine."[2] In doing so, this Court should clarify that the church autonomy doctrine creates a structural bar to judicial intervention when religious governance and doctrinal interpretation are at stake in a dispute involving a religious institution.[3]

At present, the boundary lines of the church autonomy doctrine shift from court to court. This Court should further clarify when and how the

[1] Pursuant to Rule 37.6, no counsel for any party in this case wrote any part of this brief, and no person except amici contributed to the costs of its preparation. Counsel for amici notified counsel for all parties on September 30, 2024, of their intention to file this brief.

[2] Amici use the term "church autonomy" throughout this brief in place of "ecclesiastical abstention doctrine."

[3] *See* Carl H. Esbeck, *An Extended Essay on Church Autonomy*, 22 Federalist Soc' Rev. 244, 266 (2021).

government may weigh in on disputes involving the decisions of religious organizations. Exceptions to the church-autonomy bar on adjudication—*e.g.*, the application of "neutral principles"—must not be permitted to swallow the rule.[4] Many judges, in purporting to apply "neutral principles," fail to notice the intertwined religious questions and the impact adjudicating such disputes has on the identities, missions, and authentic religious practices of religious organizations.

In this case, California state courts erred when they applied "neutral principles." The dispute here is within the zone protected by the church autonomy doctrine because it's intertwined with how the organization defines and interprets its beliefs and religious mission.[5] The California courts erred by venturing to interpret the bylaws' requirements for board members as to their spiritual fitness and concluding that a plain language interpretation meant board members didn't have to agree with Pentecostal doctrine. This case falls squarely in church autonomy's zone of protection where religious questions must not be adjudicated. While this Court has held that the Religion Clauses create a zone of protection for governance and doctrinal interpretation, the zone needs demarcation. Amici propose a workable three-part standard *infra* at pp. 19-24 asking first, if a dispute falls within the zone of

[4] See case examples beginning on p. 11, *infra*.

[5] *See Serbian E. Orthodox Diocese for U.S. & Canada v. Milivojevich*, 426 U.S. 696, 723 (1976) (stating that enforcing religious organizing documents can result in "impermissible inquiry into church polity").

protection; second, if there is a decision by a religious authority to defer to; and third, if the carefully cabined "neutral principles" exception applies.

ARGUMENT

I. The California Court of Appeal Erred in Failing to Find the Church Autonomy Doctrine Applied to bar Consideration of This Case.

This case involves a dispute between two groups who both claim board authority for Bethesda University ("Bethesda"), a private, accredited Christian university in Anaheim, California. Bethesda, founded in 1976, is explicitly grounded in Pentecostal theology. One of its stated "Institutional Objectives" is to "[u]nderstand theology and society through a Pentecostal Evangelical perspective." Pet. App. 16a. Its governing documents refer to the Pentecostal faith, requiring that board members "must possess"

> [a] high level of spiritual development and integrity 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 position of BU. This will be evidenced by their agreement to sign the BU Statement of Faith.

Pet. App. 45a, 104a.

This case requires the interpretation of Bethesda's bylaws and constitution to resolve a dispute and split within Bethesda's board of directors. The board was expanded to include more members, and some non-Pentecostal members were voted in based on a disputed explanation of the board qualification requirements. One group (the "Cho board") claimed the change was appropriately made. Another group (the "Kim board") felt a mistake had been made and sought to correct it, contending that Bethesda's identity as a Pentecostal institution was at stake.

The Cho board brought suit, claiming it represented Bethesda. In response, the Kim board cross-complained. Pet. App. 30a-33a. The trial court chose to adjudicate and interpreted Bethesda's board member standards in the bylaws, including those related to spiritual qualifications and beliefs. Pet. App. 29a, 45a-48a. The court concluded the religious qualifications listed were "aspirational;" determined they had been met by the Cho board; invalidated some of the actions of the Kim board; and found the Cho board was the legitimate and governing board. Pet. App. 47a-49a. The California Court of Appeal affirmed. Addressing the constitutional question, it found the leadership questions could be resolved under "neutral principles of law." Pet. App. 13a-14a. The court then interpreted religious leadership qualifications based on "plain language" and remarkably concluded that "[i]t does not intrude upon religious or doctrinal matters" to do so. Pet. App. 14a. The court, in rejecting the church autonomy claim, emphasized that the Kim board had asked it to adjudicate the issue. Pet. App. 4a. Subject matter jurisdiction on this point, however, cannot be waived

because church autonomy is a structural bar, *see, e.g.*, *Billard v. Charlotte Cath. High Sch.*, 101 F.4th 316, 325 (4th Cir. 2024), and the Kim board's hand was forced initially because the Cho board held itself out as representing Bethesda in the original complaint.

II. This Court Has Established a Strong Zone of Protection Based on Church Autonomy.

The First Amendment's Religion Clauses structurally bar adjudication of cases that interfere with the internal governance of a religious organization or school. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012) (emphasizing a religious organization's ability to control "the selection of those who will personify its beliefs" and its constitutional right "to shape its own faith and mission through its appointments"); *see also Milivojevich*, 426 U.S. at 714 (stating religious bodies have "the right of construing their own church laws").

Hosanna-Tabor clearly established the ministerial exception as a bar grounded in both Religion Clauses, 565 U.S. at 190, and confirmed it is based on broader principles of church autonomy that commit "the resolution of quintessentially religious controversies" to religious decisionmakers. *Id.* at 187. The First Amendment text "gives special solicitude to the rights of religious organizations." *Id.* at 189.

This Court's protection of church autonomy spans at least a century and a half. In *Watson v. Jones*, 80 U.S. 679 (1871), this Court addressed a dispute between church factions split over doctrinal views

involving slavery. It laid out enduring principles grounded in common law about how courts may be involved in disputes involving ecclesiastical matters:

> The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority. The judgments, therefore, of religious associations, bearing on their own members, are not examinable here.

Id. at 730-31. Judges, therefore, must see themselves as "incompetent judges of matters of faith, discipline, and doctrine." *Id.* at 732. They must avoid adjudicating "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standards of morals required of them." *Id.* at 733.

This Court confirmed that matters of spiritual qualification are also off-limits for the courts, holding "it is the function of the church authorities to determine . . . essential qualifications . . . and whether the candidate possesses them." *Gonzalez v. Roman Cath. Archbishop of Manila*, 280 U.S. 1, 16 (1929). While *Gonzalez* indicated in dictum there might be exceptions to this principle if "fraud, collusion, or arbitrariness" are involved, 280 U.S. at 16, the "arbitrariness" exception was later specifically rejected in *Milivojevich*, further confirming the

decisions of church authorities in such cases must receive deference. *Milivojevich*, 426 U.S. at 712-13.

This Court reinforced deference to original church authority on religious matters, calling the principle a "federal constitutional protection . . . against state interference." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). There it rejected a state statute seeking to dictate church authority, emphasizing that churches have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* This Court later confirmed the limit prevents courts from determining matters of "ecclesiastical governance." *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960).

This Court again affirmed the bar against government control over churches based on the Religion Clauses, saying they "prevented the kind of involvement that would tip the balance toward government control of churches or governmental restraint on religious practice." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 669-70 (1970). Internal church disputes must be protected against civil review. *Milivojevich*, 426 U.S. at 709. When religious bodies have processes for deciding their own religious questions, their members have given "implied consent" to their authority. *Id.* at 711. It "would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Id.*

These constitutional principles establishing the church autonomy doctrine create a *zone of protection* for decision making by religious bodies in matters touching on the doctrine, practice, governance, and mission of religious bodies.

Even Supreme Court cases discussing seemingly neutral laws as to religious organizations preserve a brightline boundary for the First Amendment zone where government involvement is inappropriate. *See NLRB v. Cath. Bishop of Chicago*, 440 U.S. 490 (1979) (construing the NLRA as inapplicable to religious schools to avoid the issue of church autonomy). It is critical not to "impinge upon the freedom of church authorities to shape and direct teaching in accord with the requirements of their religion." *Id.* at 496. Some compliance standards (like fire codes, etc.) may be required without any hint of impact on the "exercise of the . . . control of the religious mission." *Id.* The zone around religious decision making, however, needs to be broadly drawn to prevent any risk of infringement. *Id.* at 504.

Church property disputes have created tension in applying these principles because states have a strong interest in resolving property disputes. Nevertheless, this Court has never wavered from placing a limit on court engagement "when these disputes implicate controversies over church doctrine and practice." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Church*, 393 U.S. 440, 445 (1969). Indeed, this Court described the danger involved when courts ignore such limits: "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.

This Court has allowed the use of “neutral principles” in property disputes if there is “no inquiry into religious doctrine.” *Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367 (1970). This narrow exception has not been more broadly applied because it “would violate the First Amendment” if such a case involves any interpretation of religious law or doctrine. *Id.* at 369 (Brennan, J., concurring).

This Court reaffirmed the narrow constitutional application of neutral principles in *Jones v. Wolf*, 443 U.S. 595 (1979), a case involving an internecine dispute about property. The Court first affirmed “[m]ost importantly, the First Amendment prohibits civil courts from resolving church property disputes *on the basis of religious doctrine and practice*.” *Id.* at 602 (emphasis added). It then noted if “well-established concepts of trust and property law” could be applied in a “completely secular” way, then it might be appropriate to use them. *Id.* at 603. This framing sought to avoid “entanglement” and to encourage foresight by religious bodies in setting up their property documents. *Id.* at 603-04. Yet this Court affirmed that caution must be taken in examining “certain religious documents.” If review would require courts to resolve “religious controvers[ies],” then courts “must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.” *Id.* at 604.

A. The zone of protection based on church autonomy should apply equally for all religious traditions—both hierarchical and nonhierarchical.

Because many church autonomy cases deal with factual scenarios that involve hierarchical churches, courts inconsistently apply church autonomy principles to nonhierarchical churches and institutions. *E.g.*, *Watson*, 80 U.S. at 726-27 (describing deference "when there is a hierarchical structure"); *Milivojevich*, 426 U.S. at 709 (mentioning not disturbing "the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity"). It is mistaken to limit the application of these church autonomy principles to the hierarchical church setting because First Amendment rights apply equally to all churches, both hierarchical and nonhierarchical. *Milivojevich*, 426 U.S. at 713 (stating "this is exactly the inquiry that the First Amendment prohibits").

The application of church autonomy principles to hierarchical churches is just that—*an* application. It means that, when the highest level of a hierarchical church structure has decided "questions of discipline, or of faith, or ecclesiastical rule, custom, or law," then that religious body's decision must be accepted as final. *Watson*, 80 U.S. at 727. Amici respectfully submit that this Court should hold that the church autonomy doctrine applies to hierarchical and nonhierarchical religious institutions and clarify that, in the context of religious traditions that do not necessarily have a clearly defined "highest level" religious tribunal, courts should still leave the

decision making to the private resolution of the religious institution.

The "neutral principles of law" doctrine was never intended by this Court to be the default alternative if a religious structure is not hierarchical. That would produce inequality and undermine principles of church autonomy. Instead, "neutral principles" applications must be carefully cabined. *See Jones*, 443 U.S. at 602-03.

B. Lower courts are confused about what specific principles to apply in church autonomy cases, especially when it involves a non-property dispute in a nonhierarchical religious organization setting.

The following are some examples of how lower courts apply these principles inconsistently. Some courts overstate the standard in property disputes, suggesting that the default is to apply "neutral principles of law" if a church is not hierarchical. *E.g.*, *In re Episcopal Church Cases*, 45 Cal.4th 467, 480 (2009). This Court foreclosed such a broad categorical default, limiting application of "neutral principles" to situations where it can be "effected without consideration of doctrine." *Sharpsburg*, 396 U.S. at 370 n.2 (Brennan, J. concurring); *see also Presbyterian Church*, 393 U.S. at 449.

It becomes even more fraught when courts apply "neutral principles" to a religious organization's understanding of its leadership standards. Such

details are in the zone of protection, and courts risk transgressing constitutional boundaries in doing so.

1. Courts that broadly apply "neutral principles" to religious organization disputes erode First Amendment protections.

The application of "neutral principles" to religious disputes outside of the property context has produced inconsistent exceptions to the church autonomy doctrine's zone of protection.

For example, the Ninth Circuit scrutinized and interpreted an organizing document for a religious organization to determine its leadership in *Puri v. Khalsa*, 844 F.3d 1152, 1162 (9th Cir. 2017). The court dismissed concerns about religious interference, saying that the board's "responsibilities are largely secular" despite requirements that members be ordained ministers and meet other religious criteria. *Id.* at 1157. The court then purported to apply neutral principles, saying they were favored as long as the court could purport to apply "purely secular legal rules" and did not resolve "underlying controversies over religious doctrine." *Id.* at 1165. The court did not consider the implications on the organization's leadership or mission resulting from its interference in these matters of polity. *Id.* at 1168.

The Fifth Circuit, in reversing a district court's dismissal of a case based on church autonomy, promoted a narrow view of church autonomy when it said a dismissed pastor's complaint did not "require the court to address purely ecclesiastical questions."

McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc., 966 F.3d 346, 349 (5th Cir. 2020). Under this logic, "neutral principles" could apply to almost any dispute, swallowing up the church autonomy doctrine. In his dissent from the denial of *rehearing en banc*, Judge Ho rightly noted that "[t]his case falls right in the heartland of the church autonomy doctrine" and clearly involves "matters of church governance that federal courts have no business adjudicating." *Id.* at 1068-69 (Ho, J., dissenting).

2. Courts that narrowly apply "neutral principles" protect church autonomy and preserve the special status of religious identity and practice enshrined in the First Amendment.

The integrity of the church autonomy doctrine is preserved when the neutral principles exception is carefully cabined. The First Amendment Religion Clauses require vigilant demarcation of their zone of protection for religious organizations' governance and doctrine-laced decision making.

Some circuit courts get this right. They wisely avoid "unconstitutional entanglement with religion" when "the Government is placed in a position of choosing among 'competing religious visions.'" *EEOC v. Cath. Univ. of Am.*, 83 F.3d 455, 465 (D.C. Cir. 1996); *see also Hutterville Hutterian Brethren, Inc. v. Sveen*, 776 F.3d 547, 556 (8th Cir. 2015) (stating that a religious colony's membership dispute was "central to the governance question"). They give appropriate latitude to religious controversies when "actions

involve rules, policies and decisions which should be left to the exclusive religious jurisdiction of the church." *Dowd v. Soc'y of St. Columbans*, 861 F.2d 761, 764 (1st Cir. 1988). A religious organization's "internal guidelines and procedures must be allowed to dictate what its obligations to its members are without being subject to court intervention." *Id.* Similarly, the Eighth Circuit said the application of church discipline procedures are "matters of concern with the church and . . . go to the heart of internal church discipline, faith, and church organization." *Kaufmann v. Sheehan*, 707 F.2d 355, 358 (8th Cir. 1983). The Sixth Circuit also refused to weigh into the application of church rules to force a pastor's retirement, saying "[t]his Court cannot constitutionally intervene in such a dispute." *Hutchison v. Thomas*, 789 F.2d 392, 393 (6th Cir. 1986).

Some circuit courts affirm that the "neutral principles" exception is limited to property disputes. The Eleventh Circuit rejected adjudication of a dispute about bylaws interpretation. It stated the general principle that "courts may not adjudicate ecclesiastical disputes;" noted the special interests involved in property matters; confirmed the matter was not about property; and indicated that resolving the controversy "would violate the first amendment." *Crowder v. S. Baptist Convention*, 828 F.2d 718, 725-726 (11th Cir. 1987). The D.C. Circuit interpreted *Jones v. Wolf* as "a dispute over church property" and rejected broader application of neutral principles. *Cath. Univ. of Am.*, 83 F.3d at 466. It stated that, even though the trial court used some secular criteria in evaluating handbook qualifications for faculty, "it is

by no means clear that its decision was unaffected by religious considerations" and then dismissed the case. *Id.* The Sixth Circuit also refused to "interfere with the internal ecclesiastical workings and disciplines of religious bodies," while noting and finding inapplicable that courts may resolve some property disputes. *Hutchison*, 789 F.2d at 393.

One helpful framing of this question—to determine if the zone of protection applies and if "neutral principles" should be carefully cabined—is to ask: *What is at the heart of the controversy*? In *Congregation Beth Yitzhok v. Briskman*, 566 F. Supp. 555 (E.D.N.Y. 1983), a court was asked to apply the principles of the Racketeer Influenced and Corrupt Organizations Act to an internecine dispute between rival religious factions. The trial court held that it could not decide the case using "neutral principles" because "the Court must look beyond the allegations of the complaint to ascertain what lies at 'the heart of the controversy.'" *Id.* at 558. Because the heart of the dispute in *Briskman* was about the "proper succession" of a religious leader, it was not proper to weigh in. *Id.*

III. Church Autonomy Applies to bar Adjudication When it Involves a Matter of Doctrine and Internal Governance, Even When a Religious Organization is not Hierarchical.

While state courts have authority over many areas of state law that do impact religious organizations, such as corporations law and property law, First Amendment limits are set by this Court.

When parties and court authorities come from diverse backgrounds (without a common understanding of what is or is not intertwined with religious doctrine for different faiths), clear steps to apply the church autonomy doctrine are needed. For example, if a religious organization's mission is to run a shelter, its faith tenets will motivate its work and will directly inform its structure and practices. It will view many aspects of its decision making as tied to its religious identity and mission. A court should not seek to subjectively dissect which elements are secular and which are connected to doctrine. The question should not be "Does this aspect seem secular?" because the court cannot assume to understand doctrinal faith implications. Courts should instead ask if the heart of the controversy is in the zone of protection.

A. This case is a prime opportunity for this Court to reduce this threat to the First Amendment rights of religious bodies.

This case involves a leadership issue at a religious university. It is about board member qualifications in a setting where the board is responsible for ensuring that the religious mission of the school, tied to its particular religious tradition, is preserved and maintained. The ministerial exception (also based on church autonomy) may be involved but is not clearly before the court. Nevertheless, the same Religion Clauses principles and entanglement concerns apply.

This case involves the aspects of the church autonomy doctrine's reach applied most inconsistently by the courts:

- The case does not involve a property dispute;
- Bethesda's history and structure are not from within a hierarchical church tradition; and
- Although it involves leadership, the determination may not be easily resolved by the ministerial exception.

This Court must correct narrow views of church autonomy that erode the doctrine. Exceptions to the doctrine must not swallow the First Amendment rule. Ways this can happen include thinking that the only necessary thing to protect is individual rights, leaving ambiguous what falls into the zone of protection, and/or misapplying the extremely narrow "neutral principles" exception.

Over applying "neutral principles" by claiming to use "plain meaning" or "reasonableness" for religious disputes within the zone of protection will lead to improperly resolving religious questions by evaluating spiritual duties and "differing (sometimes conflicting) interpretations of scripture, doctrine, and religious tradition." Esbeck at 257.

B. Failing to address this question will leave unabated the risk of unfair treatment of different religious groups.

Judges must treat all faiths fairly based on such a principle and not make unilateral decisions or assumptions about what is or is not important to a particular religious tradition. Faith leaders, not judges, have the authority to interpret unclear doctrinal language.

Whether someone meets religious leadership qualifications is at the heart of "purely ecclesiastical concern[s]." *Presbyterian Church*, 393 U.S. at 449. Courts should not second guess whether someone meets articulated religious qualifications. Rather, courts must defer to the religious decision-making body in that setting, *Milivojevich*, 426 U.S. at 709, or dismiss the case as inappropriate to resolve because of its religious character. *See Hosanna-Tabor*, 565 U.S. at 176. Neither should any court have the temerity to divide religious qualifications between the "aspirational" and the truly required, as the courts did here.

C. Principles behind church autonomy must be applied logically and consistently.

Amici respectfully submit that this Court should correct misapplied standards that obfuscate First Amendment principles. First, the Court should clearly reject that only hierarchical churches get protection (while still allowing the clearly established principles about how to defer to the highest authority in a hierarchical church to stand). Second, the Court should clarify the scope of when application of "neutral principles" is barred by the First Amendment. Amici seek to articulate a possible workable standard below.

IV. A Clear and Principled Standard is Necessary and Possible.

Given the strong historical foundations of the church autonomy doctrine, its wide boundaries must be clearly demarked to preserve religious freedom and

pluralism. Religious organizations must retain their "secured religious liberty from the invasion of civil authority." *Watson*, 80 U.S. at 730. This is particularly important in the area of polity: how a religious organization defines its rules, practices, and authority structures and how it—not an outsider judge—sees them as inextricably related to its doctrinal beliefs.

To help resolve the circuit split and provide future guidance to courts, amici propose a three-part standard. First, a court should determine whether the heart of the case falls in the church autonomy doctrine's zone of protection. Second, the court should determine whether deference to the decision of a highest church adjudicating body can resolve the dispute. Third, the court should determine whether the narrow "neutral principles" exception should apply.

A. A proposed standard.

1. First, a court must ask if the heart of the case falls in the zone of protection afforded by the church autonomy doctrine.

Does an examination of the dispute require understanding, defining, or interpreting the scope or meaning of religious goals, beliefs, or terms and their implications on the mission or practices of the church or religious organization?

This Court should clarify that "matters of faith and doctrine," *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020), are broader than

many courts have understood. Courts must rigorously avoid "extensive inquiry . . . into religious law and polity," *Milivojevich*, 426 U.S. at 709, to make sure that courts do not "inhibit[] the free development of religious doctrine" and "implicat[e] secular interests in matters of purely ecclesiastical concern." *Presbyterian Church*, 393 U.S. at 449. In the church setting, language is often infused with doctrinal implications such that its interpretation falls in the zone of protection.

The following are non-exhaustive examples of situations that would fall in the zone of protection:

- The selection of leaders responsible for defining, pursuing, or effectuating the religious mission of the organization (regardless of whether they are employees).
- The interpretation or application of specific religious beliefs and doctrine.
- The interpretation or application of standards or qualifications (including standards of conduct of the organization) founded upon religious beliefs and practices.

If the dispute falls in the zone of protection, the court should proceed to step two.

2. Second, the court should determine whether deference to the decision of a highest church adjudicating body can resolve the dispute.

A resolution is often possible by identifying the highest ecclesial authority of the religious institution and deferring to its determinations on any matters of religious faith, practice, or polity. *Milivojevich*, 426 U.S. at 709.

To determine whether a religious institution is hierarchical, a court should respect the religious institution's polity and how it structured itself. That in turn triggers the rule of deference and abstention. The mention of hierarchy is helpful insofar as it establishes what the religious unit being considered is and who gets to define it. Yet every religion should have the same rights. The court must stay out of "how" the unit identifies and defines its religious identity and how it applies its beliefs in determining this.

Treating all religions fairly and applying the same principle means the courts ask: Is there a clear submitted-to authority on matters of faith, doctrine, and polity to which the court must defer? The search for such an authority should be limited to articles, bylaws, or synod resolutions or to other clearly established policies and practices. It is not a free-for-all ransacking of every past dispute. The process cannot itself become the interference into the zone of protection. If the court cannot determine an authority without evaluating matters of church government, faith, or doctrine, but the case is in the zone of protection, then the court must still apply the

structural bar of church autonomy. Adjudication is barred, and resolution must be left to the religious body. This Court described the constitutional protection in *Kedroff* as "an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. at 116.

In sum, deference should apply to both hierarchical and nonhierarchical religious institutions. In hierarchical situations, if the court can readily identify the highest ecclesial authority, and that authority has already made a decision, the court can simply defer to and enforce that decision. If a decision has not yet been made, the court should relinquish jurisdiction so the parties can submit the dispute to the ecclesial authority. In nonhierarchical situations, the court should simply relinquish jurisdiction, leaving the resolution to the religious body.

3. Third, the court should ask if "neutral principles of law" may apply in narrow circumstances.

There are a few ways neutral principles may come into play in a church dispute. First, if the dispute is *not* within the zone of protection (question one's answer is "no"), then neutral legal principles may apply because First Amendment protections are not involved, and there is no danger of entanglement in religious matters. Disputes about non-religious questions related to things like building codes, city permit forms, and whether the backgrounds of

volunteers have been checked properly may be resolved in this manner. Second, if the dispute is within the zone of protection ("yes" to question one), and the courts have clarified any religious questions through deference to a religious authority (question two), the court may be able to apply that ecclesial decision within a neutral legal process (such as effectuating certain contract terms). Third (and this is the heart of *this case*), if the dispute is within the zone of protection ("yes" to question one) and it is unclear how to apply deference (question two), courts may not then turn to "neutral principles" unless the dispute falls within a narrow category of property-like disputes where the state interest (*e.g.*, in clarity of property ownership) weighs strongly against dismissing the case.

It is crucial that, when a dispute falls within this final scenario, the "neutral principles" exception is applied extremely narrowly, limited only to property-like disputes. The Eleventh Circuit nicely illustrated this principle in *Crowder* when it acknowledged the unique "state interests in resolving disputes concerning rights to property" but then dismissed the case after determining the case was not in fact about property. 828 F.2d at 725-26.

"Neutral principles" must not be used to interpret the boundaries of religious belief and identity nor to determine who is or is not part of a religious community. It must not involve disputes over polity or religious doctrine and leadership.

"Neutral principles" may not apply just because a court feels it's possible to apply them "in a secular

way" while ignoring religious aspects, so as not to weigh in on them. It cannot be based on whether a judge thinks the dispute feels "secular enough" or "separated enough" from faith-based matters.

The Ninth Circuit dangerously ignored these limits in *Puri*. After dismissively finding that the ministerial exception did not apply, the court took an expanded view of "neutral principles," plainly asserting it could decide various types of church disputes "by application of purely secular legal rules" if they could be decided "without resolving underlying controversies over religious doctrine." 844 F.3d at 1165. This ignored the zone of protection and created a "preference for neutral principles." *Id.* at 1166. Instead, courts must default to church autonomy, taking "special care" in any dispute entangled with religious affairs, *Jones*, 443 U.S. at 604, because even if some secular criteria are involved, "it is by no means clear" that a decision in such spaces will be "unaffected by religious considerations." *Cath. Univ. of Am.*, 83 F.3d at 466.

This is crucial because many courts will claim they can keep a neutral and secular focus, even if they are unwittingly judging matters intertwined with religious beliefs, nomenclature, leadership, or doctrine. If on the borderline, the court should not venture in or try to straddle the zone of protection.

B. How that standard would apply in this case.

First, the heart of this case falls clearly within the zone of protection of the church autonomy doctrine

because it is about the interpretation of faith-based qualifications for board members. That means it unavoidably touches on both doctrine and questions of religious leadership. A key finding of the California Superior Court was that "nothing in the [bylaws] prevents . . . someone not of the Pentecostal faith from serving on the Board." Pet. App. 24a. This required interpreting the meaning of the goals of the university, as articulated in the bylaws, and of the spiritual qualifications for board members. It is not appropriate for the court to interpret what it means to have a "high level of spiritual development . . . defined in terms of . . . Charismatic understanding" or to weigh in on how significant the statement is that "[e]mphasis is placed" on whether a candidate has exhibited in some way "a theology consistent with the theological position of BU." Pet. App. 104a. A religious body must be able to interpret its own spiritual requirements and rules.

Second, Bethesda is affiliated with the Pentecostal denomination of Christianity (a nonhierarchical denomination), and, therefore, a court would likely find that Bethesda is nonhierarchical, at least as it pertains to its affiliation with a Christian denomination. Further, the highest authority of Bethesda itself is its board of directors. Accordingly, in this case, which involves the very question of authority, it is likely not possible for a court to enforce a ruling of the highest adjudicating body of the religious organization. As explained above, however, this does not mean that the court should default to the "neutral principles" exception. Rather, because the heart of this case falls into the church autonomy

doctrine's zone of protection, the court should move on to step three of the test.

Third, the court should conclude the "neutral principles" exception does not apply. As explained above, the heart of the controversy at Bethesda is the interpretation of religious qualifications for prospective board members. It is not about property, nor is it otherwise outside of the church autonomy doctrine's zone of protection. A court, therefore, should take great care to avoid applying secular principles to the religious matters involved here. The California Court of Appeal erred when it said it "does not intrude" to read the "plain language" of the bylaws. Pet. App. 14a. This might be true if it was a procedural matter having nothing to do with the interpretation of religious terms and did not impact the missional goals of the school. But that is not this case. To make the determination here, a court arrogates to itself the ability to winnow plain secular meaning out of religious language in church governance documents. It also ignores the layers of implications that come from such an interpretation; there are clear religious and doctrinal implications for the university based on who is on its board.

CONCLUSION

This case is about the religious identity of an organization and how it defines itself, placing it clearly within the Religion Clauses' "zone of protection." The California Court of Appeal incorrectly applied the "neutral principles" exception to this religious dispute. It should instead have found it was structurally barred from such considerations. For

these reasons and the reasons set forth by the Petitioners, the Petition should be granted.

Respectfully submitted,

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