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 California,
Fourth Appellate District, Division Three

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review an unpublished, nonprecedential decision of a state intermediate appellate court based on a petition by dissident former and putative corporate directors of a faith-based university who claim that the judgment violated the ecclesiastical abstention doctrine, where petitioners:

(1) sought the very judicial resolution that they complain about when they brought a cross-claim to procure expedited judicial resolution of a dispute over the membership of the university's board of directors;

(2) insisted that the trial court decide whether the corporate documents restricted board membership to members of a Pentecostal denomination;

(3) repeatedly assured the trial court that it could resolve the dispute without deciding any issues of religious doctrine;

(4) identified no ecclesiastical authority to which a court could defer, other than the board of directors whose composition they unsuccessfully challenged; and

(5) lost in the courts below based on neutral quorum and notice requirements as well as the construction of the governing corporate documents.

PARTIES TO THE PROCEEDING

Contrary to the caption of the petition, respondents rather than petitioners have been adjudicated to be the valid governing board of directors of Bethesda University. See Pet. App. 23a (trial court judgment); Pet. App. 20a (affirming judgment). Petitioners are dissident former or putative directors. The statute under which they sued authorizes an action only "by any director or member, or by any person who had the right to vote in the [board of directors] election at issue." Cal. Corp. Code §9418(a). The corporation must be *served* with the complaint, along with the challenged directors and any other directors. *Id.* §9418(b). Yet, apart from petitioner Pan-Ho Kim, petitioners purported to sue in the name of the University rather than as individuals.

Respondents are not certain which individuals apart from Kyung Moon Kim and Pan-Ho Kim continue to be associated with petitioners and are the real parties in interest in this case. There likely is overlap between petitioners and the defendants in the ongoing related case listed at page iv, *infra*, which may assist the Court in determining any recusal issues.

CORPORATE DISCLOSURE STATEMENT

Respondents, not petitioners, have been adjudicated to be the governing board of directors of Bethesda University. See Pet. App. 23a (trial court judgment); Pet. App. 20a (affirming judgment). Bethesda University is a nonprofit religious corporation organized under the California Corporations Code, and has no parent corporation or stock.

STATEMENT OF RELATED PROCEEDINGS

The petition arises from a ruling on a cross-complaint to a complaint brought by the actual governing board of Bethesda University against the petitioners and other persons. The case remains pending in the California Superior Court for the County of Orange: *Bethesda University* v. *Kyung Moon Kim*, *Pan Ho Kim*, *Young Hoon Lee, Sun Wook Hwang, Seung Hyun Moon, Samuel Minje Cho, Chun Soo Kim, Esther Kim, Young Hwa Jang, and Ji Yeon Kim*, No. 30-2022-01276823-CU-PP-NJC.

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BRIEF IN OPPOSITION

Petitioners are not "Bethesda University." They are dissident former and putative directors of Bethesda University who failed in their effort to use California law to displace the University's board of directors. Petitioners belatedly regretted participating in the board's unanimous election of four new board members, but couldn't get a quorum of the board to reverse that decision.

So petitioners sued in state court, invoking a provision of the California Nonprofit Religious Corporation Law that allows "any director or member, or * * * any person who had the right to vote in the [board of directors] election at issue"—not the corporation itself—to seek an expedited determination of "the validity of any election or appointment of any director of any corporation." Cal. Corp. Code §9418(a).

Having lost their case, however, petitioners now ask this Court to review a fact-bound, nonprecedential decision on the ground that the California courts intruded on doctrinal issues. But petitioners "entirely ignor[e] the fact that [they were] the entity that sought this relief in the trial court in the first place." Pet. App. 13a.

The petition does not reveal that petitioners specifically *asked* the courts below to decide whether board membership was restricted to members of Pentecostal denominations or was open to other Christians. And the petition does not mention that, when grilled by a trial court leery of resolving any forbidden doctrinal issues, petitioners repeatedly assured that court that they were "not asking [the]

Court to intervene in religious matters," C.A. App. 286, and that it could decide the qualification question without intruding on doctrinal issues.

Petitioners not only invited the supposed error they complain about; they insisted on it. Their failure to disclose that role is sufficient to deny the petition under Rule 14.4.

Petitioners also assume that their litigating position was entitled to deference if—contrary to their own assurances—doctrinal issues were involved. If doctrinal issues had been involved, however, the only entity to which courts could defer would be the properly constituted University board itself.

Contrary to the petition, "Bethesda" never "determined that the purported non-Pentecostal Board members were ineligible to serve and therefore removed them." Pet. 16. The petition does not inform the Court that, on the contrary, the courts below held that a quorum of the University's board in properly noticed meetings—the only legally valid board actions—elected the board members that petitioners dispute, and therefore accepted their qualifications. In contrast, the courts held, purported actions of petitioners to undo that election lacked both a quorum and proper notice. That independent state-law ground is enough to decide board membership, and thus to decide this case, without touching on any issue more doctrinal than arithmetic.

The petition also does not bother to mention that the decision of the California Court of Appeal is unpublished and nonprecedential, such that it cannot be cited in any California court. Petitioners went so far as to omit the court's prominent boldface notice to that

effect from the reprint of the opinion in their appendix, without indicating the omission to this Court. Compare Pet. App. 2a with Appl. Ex. B at 1, No. 24A292 (filed Sept. 23, 2024) (slip op.); see p. 4, *supra*.

This nonprecedential and uncitable decision cannot deepen any conflict of authority because it is no authority at all. And it reflects no conflict.

Petitioners identify no decision that places neutral issues of corporate law beyond the reach of the courts. Rather, like the courts below, the other courts to address the issue determined on the facts of each case whether any disputed issues can be resolved without deciding doctrinal matters.

Nor did the nonhierarchical nature of the University enter into the decision below, in which no form of the word "hierarchy" appears. Rather, in light of petitioners' initial concession that no doctrinal questions were involved, the courts below identified no issues warranting deference.

And the decision below was correct. Petitioners did not and do not claim that the statutory provision they invoked unconstitutionally intrudes on the autonomy of religious corporations. Yet they now assert that no court can ever apply neutral principles of law to a struggle for control over a religious corporation—which would make the provision facially unconstitutional.

In any event, no court below decided any doctrinal question or who adhered to any denomination or sect. The courts simply construed the corporate documents, determined that the board that appointed the disputed members acted lawfully with a quorum, that meetings

purporting to undo the appointment were not properly noticed and lacked a quorum (and thus could not validly act), and that the corporate documents did not contain any faith-based restriction that was implicated here given the undisputed status of the challenged directors.

Once the courts recognized that the incumbent board was validly appointed, the case was effectively over, as that board was the only body that could warrant deference on any religious issues.

Petitioners' remedy is to convince a quorum of the board to act differently in a properly noticed meeting. One can hardly imagine a worse vehicle to address the question advanced for review.

OPINIONS BELOW

The petition disregards, and the appendix redacts, the statement of the California Court of Appeal with regard to the report of the opinion below. The first page of the slip opinion is headed in boldface: "**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**," followed by this boxed, boldface note: "**California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.**" See Appl. Ex. B at 1, No. 24A292 (filed Sept. 23, 2024) (slip op.).[1]

[1] The slip opinion is available from the California courts. See https://www.courts.ca.gov/opinions/nonpub/G062514.PDF.

Petitioners attached the slip opinion to their application for an extension of time to file their petition yet petitioners' appendix omits both the heading and the boxed note. Compare *id.* with Pet. App. 2a.

STATUTORY PROVISIONS INVOLVED

The petition (at 6) mislabels the text of California Corporations Code §9418 as part of the California Labor Code. Section 9418 is part of Division 2, Part 4 of the Corporations Code. That Part is headed "Nonprofit Religious Corporations," and is known as the Nonprofit Religious Corporation Law, see Pet. App. 14a.

Rule 8.1115 of the California Rules of Court provides in pertinent part:

> **Rule 8.1115. Citation of opinions.**
>
> **(a) Unpublished opinion**
>
> Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.
>
> **(b) Exceptions**
>
> An unpublished opinion may be cited or relied on:
>
> (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or
>
> (2) When the opinion is relevant to a criminal or disciplinary action because it states

> reasons for a decision affecting the same defendant or respondent in another such action.
>
> * * *

STATEMENT OF THE CASE

In seeking a third opinion on the fact-specific issues resolved below, the petition ignores both the evidence and the contrary findings of two courts.

A. Factual Background

Bethesda University is organized as a nonprofit religious corporation under the California Nonprofit Religious Corporations Law, Cal. Corp. Code §§9110–9690. The corporation is governed by a board of directors subject to the University's constitution and bylaws. See *id.* §9210; Pet. App. 2a–3a, 101a–106a, 112a–123a.

The board may include between 5 to 30 members elected to three-year terms. Pet. App. 112a–113a. The board may conduct business only by a quorum consisting of half or more of the current members. Pet. App. 4a, 115a; see also Cal. Corp. Code §9211(a)(7).

Although one of the stated "goals" of the University is to "[u]nderstand theology and society through a Pentecostal Evangelical perspective," that sentence is the sole reference to "Pentecostal" in the governing documents. Pet. App. 16a. In contrast, the stated qualifications for the board repeatedly refer to involvement in "Christian ministry" and the "Christian community." Pet. App. 15a–16a, 103a–105a, 113a–114a. As two courts below determined, the University's constitution and bylaws contain no explicit or implicit requirement that board members

belong to any particular Christian denomination. Pet. App. 16a–17a, 47a–48a.[2]

The board had 11 members when an undisputed quorum of that group met in June 2021 and unanimously elected six more members, including four of the Presbyterian faith. Pet. App. 4a–5a. Kyung Moon Kim (a petitioner not identified in the caption, see p. ii, *supra*) chaired that meeting. *Id.* at 5a.

There were no objections to the Board's 17-member composition for many months after their election. In early 2022, however, Kyung Moon Kim began trying to remove the four Presbyterian directors. See Pet. App. 5a. In April 2022, he convened a meeting of either seven or eight board members—fewer than half the 17 members, and thus not a quorum. *Ibid*. That rump meeting purported to hold the June 2021 election of six directors "void and of no effect." *Id.* at 6a. Additional meetings chaired by Mr. Kim, all short of a quorum, purported to elect six new board members and to remove President Cho from his office and from the board, and to remove another director, while electing six replacement directors. Pet. App. 6a, 20a.

These repeated actions by less than a quorum were characterized below as actions of the "Kim Board." *E.g.*, Pet. App. 3a. Petitioners here are members of the Kim Board.

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[2] The governing documents reference a statement of faith that was not in the record below. See Pet. App. 17a n.4. That is why the petition (at 8–9) cites to a website rather than the record.

B. Proceedings Below

1. Petitioners bring a special action seeking a judicial determination of the validity of University board elections.

Acting in the name of the University, respondents (identified below as the "Cho Board") sued Kyung Moon Kim and others for fraudulent deceit and breach of fiduciary duty. Pet. App. 6a. That action continues in the California Superior Court. See p. iv, *supra*..

The Kim Board, *i.e.*, petitioners, filed a cross-complaint against respondents under California Corporations Code section 9418, claiming the mantle of the University despite the contrary requirements of the statute. See p. ii, *supra*. Applicable to nonprofit religious corporations, section 9418 provides for an expedited judicial determination of "the validity of any election or appointment of any director of any corporation." See Pet. 6.

The complaint did not mention religious doctrine, but alleged that the Cho Board was "invalid as it was unauthorized and violative of the bylaws." C.A. App. 25.[3] Petitioners' trial brief identified the principal issue as: "Whether the June 14, 2021 Board Meeting (wherein the election of 6 new members in issue occurred) was invalid because a quorum was not reached and/or because the minutes were never ratified[.]" C.A. App. 87. The brief also chided respondents for *not* "seeking relief pursuant to Corp. Code §9418" to allow a court to determine the

[3] "C.A. App." citations are to the Appellants' Appendix in the California Court of Appeal.

composition of the board. C.A. App. 86 (emphasis omitted).

2. Petitioners ask the court to decide whether the bylaws require membership in a particular faith but assure the court that they are "not asking [the] Court to intervene in religious matters."

Petitioners' trial brief added a question whether "the election as to 4 of the 6 new members" was "still invalid because they do not subscribe to the same faith as Bethesda University." C.A. App. 87. Respondents maintained that "the paramount question, and perhaps the only question, is whether a proper meeting occurred with a quorum on June 14, 2021, which resulted in the election of six new members." C.A. App. 29. Respondents' brief did not address any denominational requirement. See C.A. App. 28–39.

At the outset of trial, the court warned that it was "not getting involved in religious or theological matters." Rep. Tr. 17.[4] The court asked petitioners whether their argument that the University bylaws did not "allow for denominations other than Pentecostal or Full Gospel to be Board of Directors members" would implicate "that distinction that the court has to be very wary of." *Ibid.*

Petitioners assured the court that they were asking only for "a view of the bylaws itself [*sic*] and what the bylaws say." Rep. Tr. 17. When the court reiterated that it had to be "very cautious not to cross

[4] "Rep. Tr." citations are to the Reporter's Transcript of trial court proceedings filed in the California Court of Appeal.

the line between judicating state law issues and getting involved in what is [*sic*] perceived religious issues" because it was "not the arbiter of any religious matters or any theological disputes," petitioners again assured the court that they did "not ask the court to make those sorts of decisions." Rep. Tr. 18. Rather, petitioners declared, "the court has to decide whether the Kim Board is in charge, or the Cho Board is in charge, or under the code, the court is allowed to hold a new election, … if the court cannot decide which one is in charge." Rep. Tr. 20.

At trial, there was undisputed testimony that the University was not associated with any church. Rep. Tr. 45. Kyung Moon Kim admitted that the University's board may not have consisted solely of members of Full Gospel or Pentecostal denominations: "[T]here could have been one or two people from other denominations who would have given a donation of hundreds of thousands of dollars." Rep. Tr. 138. Respondent Cho similarly testified that the board had formerly included at least one person from another denomination. See Pet. App. 36a.

Petitioners' post-trial brief told the trial court that, "before anything else can take place in this case, the Court must decide whether the Kim Board or Cho Board is the proper governing board of Bethesda University." C.A. App. 285. Petitioners again made clear that they were

> not asking [the] Court to intervene in religious matters as the Court expressed concern over at the outset of the hearing (Tr. 12:6-8). This is simply a matter of interpreting the ByLaws and Trustee's

> Handbook to decide whether Presbyterians can run a Pentecostal school without signing the statement of faith.

C.A. App. 286.

3. After losing, petitioners tell the trial court it couldn't decide the issue they asked it to decide.

In a final judgment, the court found:

> 1. … that the election that brought the Board to 17 members was properly held and is valid.
>
> 2. … that nothing in the [Bylaws] prevents a 'Protestant' minister, or someone not of the Pentecostal faith, from serving on the Board.
>
> 3. … that there is no requirement in the [Bylaws] that a Board member sign a Statement of Faith to become, or remain, a member of the Board.
>
> 4. … that the special meetings brought to remove the Protestant ministers from the Board were not properly noticed under the provisions of the [Bylaws] and are therefore invalid.
>
> 5. … that the Trustee handbook cannot supersede the rules as stated in the [Bylaws].

Pet. App. 8a–9a, 48a.

The court's final order stated that the Cho Board was the University's legitimate board, and that Cho was the chairman. Pet. App. 9a, 23a. And, contrary to petitioners' misleading caption here, that order provided that the "Cho Board was Plaintiff, Bethesda

University," and identified the legitimate board members as respondents. Pet. App. 23a.

The court also ordered the board to retain an attorney to revise the University's constitution and bylaws into a "workable" form that would "spell out the rules and regulations that will govern it in the future." Pet. App. 9a n.3, 25a.[5]

In a post-judgment hearing, petitioners for the first time suggested that the court had intruded upon ecclesiastical matters. The court responded: "[T]hat seemed to come out of left field. ... I was assured that this had nothing to do with doctrinal matters." Rep. Tr. 170. The court continued, "I want to be careful in the language I use, but I don't think that's appropriate to sort of mislead the court. I think that's a bit misleading to not tell the court what's really going on." Rep. Tr. 167.

4. The Court of Appeal affirms.

A unanimous panel of the California Court of Appeal affirmed in an unpublished opinion. Pet. App. 2a–21a. That unpublished opinion has no precedential value, and cannot be cited in any California court. See Cal. R. Ct. 8.1115; p. 4, *supra*.

The court of appeal disagreed that "the interpretation of Bethesda's governing documents—the very determination that [petitioners] asked the court to make—invaded the province of ecclesiastical matters." Pet. App. 4a. The court confirmed that the challenged board members had been properly elected

[5] Although the court of appeal stayed this aspect of the injunction pending appeal, neither party challenged this relief in their briefing on the merits. Pet. App. 9a n.3.

at a meeting with a quorum, *ibid.*, and that the Kim Board's "April and June 2022 meetings were improperly noticed." Pet. App. 19a. The latter finding was supported by substantial evidence, as was "the trial court's ruling that the Kim Board"—petitioners—"was not the validly elected board of Bethesda during this time period." *Ibid.* In any event, "the disputed meetings lacked a quorum of legitimate board members." *Ibid.*; see *id.* at 20a. Thus, noticed or not, the directors attending the Kim Board's disputed meetings could not validly take action.

The court of appeal also affirmed the trial court's decisions that nothing in the University's constitution and bylaws prevented a person not from a Pentecostal denomination from serving on the board, or required a board member to sign a statement of faith in order to serve. Pet. App. 8a, 14a, 15a–16a. The court observed:

> These are no different than other board member requirements commonly found in corporate documents. Either the documents require certain qualifications, or they do not. It does not intrude upon religious or doctrinal matters to read the documents involved and determine what the plain language of the documents states.

Pet. App. 14a.

The court of appeal noted that the sole reference to "Pentecostal" in the University's constitution and Bylaws was among the "goals" under the heading of "Institutional Objectives," and "committed" the University to "[u]nderstand theology and society through a Pentecostal Evangelical perspective." Pet. App. 16a. This "goal" was "not included in the section

of the Bylaws governing board member qualifications." *Ibid.* Nor was the reference to a "Statement of Faith" presented as a requirement, and in any event the Statement was not in the record. Pet. App. 16a–17a & n.4. Given that no provision in the Constitution and Bylaws "require[d] Pentecostal membership," the court declined to infer "unstated requirements." Pet. App. 17a. "[N]othing beyond the plain language of these documents is required to reach this conclusion." Pet. App. 17a–18a.

In response to petitioners' argument that it should not construe the governing documents, the court of appeal observed that petitioners "entirely ignor[ed] the fact that [they were] the entity that sought this relief in the trial court in the first place." Pet. App. 13a. Thus, the court of appeal "reject[ed]" petitioners' "argument that the trial court lacked jurisdiction to apply neutral principles of corporation law to resolve the dispute before it." Pet. App. 14a.

The court of appeal also rejected petitioners' unpleaded assertion that respondents had "fraudulently induced" the vote for the Presbyterian board members. Pet. App. 18a. "[T]here was substantial evidence to support the trial court's implied ruling that any misstatements by Cho did not rise to the level of fraudulent inducement." *Ibid.* Indeed, contrary to the petition (at 9), the court of appeal pointed out that there was no evidence that Cho said that the Transnational Association of Christian Colleges and Schools accrediting agency required a diversity of denominations in an institution's board. Pet. App. 5a n.2.

Petitioners unsuccessfully petitioned for review in the California Supreme Court. See Pet. App. 1a.

REASONS FOR DENYING THE PETITION

I. This Case Provides No Vehicle To Resolve Any Issue Relating to the Ecclesiastical Abstention Doctrine.

This nonprecedential opinion can rest entirely on issues of quorum and notice. For that and many other reasons, among them that petitioners procured the decision they now complain about by (correctly) assuring the trial court that no doctrinal issues were involved, this case provides no vehicle to resolve any issues of ecclesiastical abstention.

A. Petitioners Sought the Adjudication They Now Contest and Assured the Trial Court—Correctly—That No Doctrinal Issues Were Involved.

This case is an inadequate vehicle to decide any issue relating to ecclesiastic abstention because petitioners were the ones who insisted on obtaining the precise judicial ruling they now claim the courts could not make. See Pet. App. 13a; see also pp. 8–11, *supra*.

It was petitioners who brought this dispute over board composition to court, proceeding under a statute that provides for expedited judicial determination of the validity of any election or appointment of any director of any religious nonprofit corporation. Cal. Corp. Code §9418(a); see Pet. 6, 10. In conflict with their current position that courts cannot make any corporate-law rulings with respect to the boards of religious corporations, petitioners relied on §9418

rather than challenging its constitutionality below, Pet. App. 14a, and they do not challenge its constitutionality here. There can be no doubt that the court had jurisdiction to entertain at least the claims regarding compliance with notice and quorum requirements—jurisdiction that petitioners invoked.

It was petitioners who insisted that the court decide whether the bylaws restricted board members to members of a particular denomination. See p. 9, *supra.* Although respondents agreed that notice and quorum issues were sufficient to decide the dispute (see C.A. App. 29, 87; p. 9, *supra*), petitioners pointedly asked the trial court also to determine whether Presbyterians could be members of the University's board. See C.A. App. 87.

And when the trial court asked petitioners whether it would have to resolve any forbidden doctrinal issues, petitioners assured the court that it need only construe the governing corporate documents, and that it could do so without trenching on doctrinal issues. See pp. 9–11, *supra.* Only after they lost did petitioners decide that the relief they had sought was unconstitutional. The trial court suspected a fail-safe strategy to "mislead[]" the court all along. Rep. Tr. 167. Petitioners' conduct appears to be a classic example of "'sandbagging' the court—remaining silent about [their] objection and belatedly raising the error only if the case does not conclude in [their] favor." *Puckett* v. *United States*, 556 U.S. 129, 134 (2009).

Whether or not that is true, petitioners are asking this Court to hold that the California courts should not have decided the issues that *petitioners* asked them to

decide. That they cannot do. Invited error is an independent and adequate ground under California law for rejecting petitioners' claims—whatever their merit. *Norgart* v. *Upjohn Co.*, 21 Cal. 4th 383, 403, 981 P.2d 79, 92 (1999).

Unsurprisingly, similar considerations have led the Court to dismiss a writ of certioriari as improvidently granted because "there would be considerable prudential objection to reversing a judgment because of instructions that petitioner accepted, and indeed itself requested." *City of Springfield* v. *Kibbe*, 480 U.S. 257, 259 (1987). And this Court has repeatedly rejected similar attempts by earlier petitioners to relieve themselves from the consequences of a litigation strategy they came to regret. "The action of the court was in this particular exactly what [petitioners] asked. … [They] cannot now be permitted to complain in this court of an order made in the inferior court at [their] instance." *United States* v. *City of Memphis*, 97 U.S. 284, 292 (1877); see also, *e.g.*, *Mercelis* v. *Wilson*, 235 U.S. 579, 583 (1915); *Perego* v. *Dodge*, 163 U.S. 160, 164 (1896); *Cowley* v. *Northern Pacific R.R.*, 159 U.S. 569, 583 (1895).

B. The Judgment Below Can Be Independently Sustained on State-Law Quorum and Notice Requirements.

The judgment can be sustained simply by looking to which actions were taken by a board acting with a quorum and with proper notice. Although they changed their tune once they lost, petitioners were right when they told the trial court it could decide the case without "interven[ing] in religious matters." C.A. App. 286. Basic principles of California corporate law

resolved the issue here. The parties agreed that the board that unanimously elected the disputed Presbyterian members was properly constituted, acting with a quorum and proper notice; unnamed petitioner Kyung Moon Kim presided over that meeting. See Pet. App. 3a, 4a, 5a. The meetings where rump factions purported to disavow or replace those members (or respondent Cho) lacked a quorum (Pet. App. 19a–20a) and were not properly noticed (Pet. App. 19a). The courts could and did easily conclude that the challenged directors were validly elected and not validly removed, so that the Cho Board—respondents—are the University's governing body. Pet. App. 20a, 23a.

The courts below did what petitioners asked them to do: construe the corporate documents to determine the proper composition of the University's board. That fact-bound determination does not warrant this Court's review.

C. The Opinion Below Is Unpublished, Nonprecedential, and Uncitable.

Petitioners neglect to tell this Court that the opinion for which they seek review is unpublished, lacks precedential value, and cannot even be cited in any California court.[6] See p. 4, *supra*; Cal. R. Ct.

[6] Some courts outside the California state system allow citation of unpublished California decisions, but of course such citations can have at most persuasive authority. And any such authority would be severely limited, given that the Westlaw version of the opinion—also unlike the version in the Petitioner's Appendix—makes clear that the opinion is "Not Officially Published," cites the relevant rules restricting its use, and warns the "California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts." *Bethesda University* v. *Cho,* No.

8.1115(a). The concealment of the opinion's status, and the alteration of the opinion in the appendix, are sufficient to deny the petition under Rule 14.4.

To the extent any stray language might raise concerns in a binding, precedential opinion, such concerns are absent here. This petition at most could present an issue of error correction in a single case, but there are no errors to correct. See pp. 27–29, *infra*.

D. This Nonprecedential and Fact-Bound Decision Presents No Issues of Broader Importance, Especially Because the Only Authority to Which A Court Might Defer Was the Board That Elected the Challenged Directors.

Further weighing against review are the unusual circumstances of this case. This Court has recognized that, if "interpretation" of controlling documents "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." *Jones* v. *Wolf*, 443 U.S. 595, 604 (1979).

Nothing in the corporate constitution or bylaws identifies any other religious body with authority over the University. Rather, like any other corporation, the University acts through its board. To the extent any doctrinal issues might be presented in a dispute, the board is the only body that could decide them. In very few, if any, other cases is the identity or composition

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G062514, 2024 WL 1328330, at *1 (Cal. Ct. App. Mar. 28, 2024). The Westlaw version additionally displays a red flag with the note "Unpublished/noncitable." *Ibid.*

of the religious body to which courts might defer itself the focus of the litigation.

Moreover, unlike many members of the University faculty and staff, board members had no ministerial duties with respect to the University. While petitioners and their amici invoke a raft of ministerial exception decisions, they do not contend here (see Pet. 35), and did not contend below, that the ministerial exception applies to board members.

In addition, the "poorly drafted" corporate documents at issue here at most expressed aspirational requirements for board members. Pet. App. 8a, 16a–18a, 47a. The parties agreed that the documents could be construed without treading on doctrinal issues. This Court does not sit to reinterpret unique "governing documents" or to retry factual determinations "supported by substantial evidence." Pet. App. 4a.

Whatever the importance of the ecclesiastical abstention doctrine in general, the fact-bound issues here have no importance beyond the parties to this case. This Court has repeatedly and prudently denied certiorari when asked to plunge into fact-bound disputes over the application of the ecclesiastical abstention doctrine. *McRaney* v. *North American Mission Board of Southern Baptist Convention, Inc.*, 966 F.3d 346 (5th Cir.), reh'g en banc denied, 980 F.3d 1066 (5th Cir. 2020), cert. denied, 141 S. Ct. 2852 (2021); *Moon* v. *Moon*, 833 F. App'x 876 (2d Cir. 2020), cert. denied, 141 S. Ct. 2757 (2021); *Episcopal Diocese of Fort Worth* v. *Episcopal Church*, 602 S.W.3d 417 (Tex. 2020), cert. denied, 141 S. Ct. 1373 (2021); *Presbyterian Church (U.S.A.)* v. *Edwards*, 566 S.W.3d

175 (Ky. 2018), cert. denied, 140 S. Ct. 98 (2019); *Protestant Episcopal Church in Diocese of South Carolina* v. *Episcopal Church*, 421 S.C. 211, 806 S.E.2d 82 (2017), cert. denied, 584 U.S. 1032 (2018); *Doe* v. *First Presbyterian Church U.S.A.*, 421 P.3d 284 (Okla. 2017), cert. denied, 586 U.S. 1126 (2019); *Myhre* v. *Seventh-Day Adventist Church Reform Movement American Union Int'l Missionary Soc'y*, 719 F. App'x 926 (11th Cir.), cert. denied, 586 U.S. 861 (2018); *Masterson* v. *Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013), cert. denied *sub nom. Episcopal Church* v. *Episcopal Diocese of Fort Worth*, 574 U.S. 973 (2014); *Banks* v. *St. Matthew Baptist Church*, 750 S.E.2d 605, 608 (S.C. 2013), cert. denied *sub nom. Brantley* v. *Banks*, 574 U.S. 814 (2014); *Falls Church* v. *Protestant Episcopal Church in U.S.*, 285 Va. 651, 740 S.E.2d 530 (2013), cert. denied, 572 U.S. 1002 (2014); *In re Episcopal Church Cases*, 45 Cal. 4th 467, 198 P.3d 66 (2009), cert. denied *sub nom. Rector, Wardens & Vestrymen of Saint James Parish* v. *Protestant Episcopal Church*, 558 U.S. 827 (2009); *Cha* v. *Korean Presbyterian Church of Wash.ington*, 553 S.E.2d 511 (Va. 2001), cert. denied, 535 U.S. 1035 (2002); *Crowder* v. *Southern Baptist Convention*, 828 F.2d 718 (11th Cir. 1987), cert. denied, 484 U.S. 1066 (1988).

Most of these decisions were precedential, and all of them were citable in any court. The nonprecedential decision here, which cannot be cited in the only courts it could bind, is a far worse vehicle than those this Court has rejected in the past.

II. The Nonprecedential Decision Below Does Not Implicate Any Conflicts.

Petitioners invoke broad conflicts over the application of neutral principles to resolve disputes involving religious bodies. They and their amici cite many cases dealing with the employment of clergy.[7] But they do not contend that the ministerial exception applies here. See Pet. 35.

No genuine conflicts are implicated here. To begin with, the unpublished, uncitable, and nonprecedential opinion of the Court of Appeal can neither create nor deepen any kind of conflict of authority, because that opinion lacks authority beyond the parties to this dispute.

But even if an opinion without precedential value could be counted in a conflict of authority, no conflict is implicated here.

A. There Is No Conflict Over the Ability of Courts to Enforce Neutral Corporation Laws in Disputes Involving Religious Corporations.

Petitioners assert that there is a conflict between courts that apply neutral principles to decide disputes involving religious corporations only in disputes over property, and those that apply neutral principles to decide other disputes. But contests over corporate control are classic disputes over property—corporate

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[7] *E.g.*, *EEOC* v. *Catholic University of America*, 83 F.3d 455 (D.C. Cir. 1996); *Minker* v. *Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990); *Natal* v. *Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Hutchison* v. *Thomas*, 789 F.2d 392, 396 (6th Cir. 1986).

property, here including the University, an additional seven acres in Pasadena, and the University president's residence. See Pet. App. 32a–33a (noting parallel dispute over tenancy of the University president's residence). So this case falls comfortably on the property side of any conflict.

In any event, petitioners identify no decision that adopts the position petitioners appear to advocate: a blanket refusal to apply state corporation law to a religious corporation organized under state law. Nor could they: petitioners *invoked* state corporation law in bringing and prosecuting this action. As the Court of Appeal observed, although §9418 applies only to nonprofit religious corporations, that provision "has never, including in this case, had its constitutionality challenged." Pet. App. 14a. Thus, the Court of Appeal correctly concluded that it and the trial court had "jurisdiction to apply neutral principles of corporation law to resolve the dispute before it." *Ibid*.

But even if petitioners could maintain the argument that courts can never apply neutral principles of law in adjudicating corporate-law issues, there is no conflict on the point. The petition does not identify a single court that has held itself disabled from adjudicating any dispute involving the structure or governance of a religious corporation, or that has categorically refused to interpret any aspect of a religious corporation's corporate documents in light of state corporation law—let alone an aspect that both parties assured the court involved no impermissible doctrinal issues. In the few decisions involving corporate governance that they cite, courts carefully reviewed the controlling corporate documents and

determined which issues, if any, they could resolve without intruding on questions of religious doctrine. That is what the courts below did here.

Petitioners cite (Pet. 21) an Eighth Circuit decision relying on principles of judicial estoppel, see *Hutterville Hutterian Brethren, Inc.* v. *Sveen*, 776 F.3d 547, 556–557 (8th Cir. 2015), as if it forbade any inquiry into the corporate documents of a religious corporation. Estoppel, not judicial disability, determined the result in that case.

More instructive are the underlying South Dakota Supreme Court cases that caused the estoppel. Petitioners cite only one of them, which turned on the court's review of a religious corporation's documents that—in sharp contrast to the corporate documents at issue here—"made following the Hutterian religion a condition of corporate membership." *Wipf* v. *Hutterville Hutterian Brethren, Inc.*, 808 N.W.2d 678, 686, 2012 S.D. 4, ¶ 27 (S.D. 2012).

But it is the earlier decision prompting estoppel—the one petitioners do not cite—that is relevant here. There, the South Dakota Supreme Court conducted a searching analysis to "determine whether the corporate governance issues can be resolved without resolving those disputes involving religious doctrine." *Hutterville Hutterian Brethren, Inc.* v. *Waldner*, 791 N.W.2d 169, 175, 2010 S.D. 86, ¶ 21 (S.D. 2010). And the court *approved* the trial court's earlier resolution of a "director/officer dispute by a neutral-principles review of Hutterville's articles of incorporation and bylaws regarding quorums and the calling of special meetings." *Id.* at 176, 2010 S.D. 86, ¶ 25. The court abstained only after "the nature of th[e] dispute

changed," *ibid.*, 2010 S.D. 86, ¶ 26, and focused on the validity of certain excommunications. *Id.* at 177–178, 2010 S.D. 86, ¶¶ 29–31. See also *id.* at 178–179 (citing *Second International Baha'i Council* v. *Chase*, 326 Mont. 41, 106 P.3d 1168 (2005), and *Viravonga* v. *Samakitham*, 372 Ark. 562, 279 S.W.3d 44 (2008), as examples where neutral principles of corporate law were applied).

Similarly, in *Crowder* v. *Southern Baptist Convention*, 828 F.2d 718 (11th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988), the court declined to rule on the issue before it but carefully noted that in a different case "a civil court might be able to avoid questions of religious beliefs or doctrines in ruling on the issue of whether the SBC Committee on Boards elected at the 1985 Convention was entitled to serve in that capacity." *Id.* at 726. And in *Puri* v. *Khalsa*, 844 F.3d 1152, 1162 (9th Cir. 2017), the court examined the precise issues raised and determined that the courts could proceed to adjudicate them unless and until disputes over doctrine arose, *id.* at 1167–1168.

In no cited case, and in no case of which we are aware, has a court flatly refused to inquire whether a corporation-law dispute can be resolved using neutral principles of law. Rather, like the courts below, they conduct the inquiry in order to determine whether and to what extent abstention is appropriate.

B. The Decision Does Not Implicate Any Conflict Over the Application of Ecclesiastical Abstention to Nonhierarchical Religious Entities.

Petitioners claim that this case implicates a conflict between decisions that defer to religious bodies on questions of doctrine only when a hierarchical organization is involved, and those that also defer to nonhierarchical religious bodies. No such conflict is implicated here.

The nonhierarchical nature of the University board played no part in the decision below, and makes no difference here. No form of the word "hierarchy" appears in the unpublished opinion of the Court of Appeal. That court, like the trial court, did not ask whether the University was part of a hierarchy, let alone decline deference because the University board stood as its own authority on religious issues. Rather, the state courts were solicitous to avoid deciding doctrinal issues without so much as mentioning the lack of a hierarchy. The courts asked whether the issues petitioners put before them required resolution of any doctrinal issues, and decided that petitioners were correct when they told the trial court that no doctrinal issues were involved. See also, *e.g.*, Pet. App. 4a, 13a–14a.

Petitioners' position seems to be that a court must defer to petitioners because petitioners say so. No cited decision adopts such a sweeping rule allowing a party to claim deference based solely on its own assertion. In every case, governing documents assigned specific responsibilities to a board, congregation, or clergy-member.

As explained above, the only entity that could warrant deference here is the board. There is no sign that the court of appeal would not defer to the University board on any doctrinal issues that happened to be presented. But the entire dispute here turns on the composition of the board. And, in findings not subject to further review here, the courts found that the challenged members were elected by a quorum that presumably interpreted the bylaws differently from petitioners' current view. No contrary action has been taken by a quorum of the board. Explicit deference to the board would reach the same result.

III. The Decision Below Is Correct.

The court of appeal correctly held "that the interpretation of Bethesda's governing documents—the very determination that [petitioners] asked the court to make—" did not "invade[] the province of ecclesiastical matters." Pet. App. 4a. Rather, the trial "court was only required to interpret the governing documents, and its factual findings were supported by substantial evidence." *Ibid.*

The courts below were correct that they could apply neutral principles of law to disputes over corporate control so long as they did not decide any doctrinal issues. While no court may "rely on religious precepts" in deciding any aspect of the case, *Jones*, 443 U.S. at 604, the petition's effort to limit the application of neutral principles of law to a narrow range of property disputes makes no sense. As noted above, disputes over corporate control are disputes over who controls corporate property. Moreover, neutral principles of law govern every aspect of life in this

society. Neutral principles will govern any case unless there is some reason they can't, as when a dispute would require resolution of an issue of religious doctrine. There is no universal exemption from all neutral principles of law based on the religious nature of a party. There are simply issues intertwined with religious doctrine that cannot be decided under neutral principles of law.

This Court certainly does not view the scope of neutral principles as narrowly as petitioners. On the contrary, the Court in *Jones* referred approvingly (and analogously) to "other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods." 443 U.S. at 606. And the Court has repeatedly approved the resolution of disputes involving religious organizations on the basis of statutes, including "state statutory law governing the holding of property by religious corporations," and legal documents such as corporate charters or constitutions, so long as the "resolution of the dispute involved no inquiry into religious doctrine." *Maryland & Virginia Eldership of Churches of God* v. *Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 367–368 (1970) (per curiam); see *Jones*, 443 U.S. at 602.

But even the denominational issue that petitioners insisted the courts resolve "involved no inquiry into religious doctrine." *Sharpsburg*, 396 U.S. at 368; see *Jones*, 443 U.S. at 602–04. The line-drawing at times may be difficult, but petitioners were correct when they told the trial court that the issues for determination did not cross the doctrinal line. The courts in this case only had to determine whether the

corporate documents restricted board membership to members of a Pentecostal denomination, excluding Presbyterians. The courts did not have to, and did not, determine whether any individual was or was not sufficiently Pentecostal; it was essentially undisputed that the four Presbyterian board members were Christian but were not Pentecostal. The courts found the bright-line Pentecostal test was absent from the corporate documents. And there was no dispute that a properly convened quorum of the board determined that the challenged directors satisfied the aspirational requirements in the bylaws.

No constitutional issue arises from the determinations below regarding notice or quorum at the various board meetings. See *Jones*, 443 U.S. at 607 (noting that a court may enforce a majority rule). Indeed, the petition does not even mention those holdings. Nor do petitioners assert that counting directors or evaluating compliance with notice requirements could present an illicit ecclesiastical issue beyond the reach of the courts. But the resolution of those issues was enough to decide the case. A party that seeks to seize unlawful control over a religious corporation cannot excuse itself from scrutiny by merely asserting that any challenge to the seizure is a doctrinal dispute—especially when the party asks for a judicial decision under corporate law.

CONCLUSION

The petition for a certiorari should be denied.

Respectfully submitted.

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