SUPREME COURT OF NEW JERSEY
DOCKET NO. 087994

SHLOMO HYMAN, *Plaintiff-Petitioner*, and FREIDI HYMAN, BRACHA HYMAN, AHARON HYMAN, TEMIMA HYMAN, and ELIORA HYMAN, (a minor by her parent and guardian SHLOMO HYMAN), *Plaintiffs*, v. ROSENBAUM YESHIVA OF NORTH JERSEY, ADAM MERMELSTEIN, YEHUDA ROSENBAUM, and DANIEL PRICE, *Defendants-Respondents*.	On Certification from the Superior Court of New Jersey, Appellate Division Docket No. A-2650-20 Sat below: Hon. Patrick DeAlmeida, J.A.D. Hon. Greta Gooden Brown, J.A.D. Hon. Stephanie Ann Mitterhoff, J.A.D. Civil Action

BRIEF *AMICUS CURIAE* AND APPENDIX OF EASTERN ORTHODOX CHURCHES IN SUPPORT OF DEFENDANTS-RESPONDENTS AND AFFIRMANCE

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INTEREST OF THE *AMICI CURIAE*

Amici curiae are the Diocese of Eastern America of the Serbian Orthodox Church, the Eastern American Diocese of the Russian Orthodox Church Outside Russia, the Romanian Orthodox Metropolia of the Americas, and the Antiochian Orthodox Christian Archdiocese of North America.

The Diocese of Eastern America of the Serbian Orthodox Church is an integral part of the Serbian Orthodox Church, which is one of the fourteen autocephalous/self-governing, hierarchical/episcopal churches that comprise the Orthodox Christian Church, commonly referred to as the Eastern Orthodox Church. The Ruling Bishop of the Diocese is the Right Reverend Bishop Irinej Dobrijević. The headquarters of the Diocese is in New Rochelle, New York. Bishop Irinej has territorial jurisdiction over all Serbian Orthodox monasteries, parishes, church-school congregations, and the like in the States of Connecticut, Florida, Georgia, Maine, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Maryland, Pennsylvania, Virginia, and West Virginia, as well as the District of Columbia. The Diocese comprises over 45 parishes, three monasteries, and other institutions which administer the Holy Mysteries/Sacraments, educate, and minister to the more than 20,000 persons of Serbian descent who live in these States and to the Orthodox Christians who have chosen to accept the omophorion/jurisdiction of the Serbian Orthodox

Patriarchate. The Diocese serves more than 1,500 Serbian Orthodox Christians in its three New Jersey parishes and oversees church schools and other church-related organizations. The United States Supreme Court discussed the Diocese in a leading church autonomy case, *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 703-04 (1976).[1]

The Eastern American Diocese of the Russian Orthodox Church Outside Russia is a diocese of the Russian Orthodox Church Outside Russia (ROCOR), a semi-autonomous part of the Russian Orthodox Church. ROCOR was founded shortly after the Bolshevik Revolution, and the Supreme Court recounted its history at length in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952). ROCOR exists to promote "the overall spiritual nourishment of the Orthodox Russian flock in the diaspora." Regulations of the Russian Orthodox Church Outside of Russia ¶ 3, https://perma.cc/TN4H-FNSG (Regulations). ROCOR's highest ecclesiastical body is the Sobor of Bishops (Архиерейский собор). *See* Regulations ¶ 7; *Kedroff*, 344 U.S. at 96 n.1. The Eastern American Diocese is based in Paramus, New Jersey, and is headed by Metropolitan Nicholas, the Metropolitan of Eastern America and New York, and First Hierarch of the

[1] *Amici* follow the practice of the United States Supreme Court and use the term "church" generically to mean religious institutions of all different faith traditions.

Russian Church Abroad. The Eastern American Diocese includes over 150 local churches located across 16 states (including New Jersey), the District of Columbia, Costa Rica, the Dominican Republic, Haiti, and Nicaragua.

The Romanian Orthodox Metropolia of the Americas is part of the Patriarchate of Romania. It has some 70 parishes, missions, and monasteries in the United States, Canada, and Central and South America, served by more than 80 clergymen. The Metropolia, composed of the Romanian Orthodox Archdiocese of the United States of America and the Romanian Orthodox Diocese of Canada, is led by His Eminence Metropolitan Nicolae Condrea.

The Antiochian Orthodox Christian Archdiocese of North America is part of the Greek Orthodox Patriarchate of Antioch and All the East. The Archdiocese has nearly 300 parishes and 600 clergy in the United States and Canada. The Archdiocese was established in 1923 and is led by His Eminence Metropolitan Saba Isper.

Amici have a strong interest in this case because they regularly rely upon the constitutional protections afforded by the ministerial exception as they carry out their spiritual mandate to form the faithful entrusted to their care. This mandate necessarily requires ensuring that their ministers, who are "the chief instrument by which the Church seeks to fulfill its purpose," remain worthy of that weighty responsibility. *Alicea v. New Brunswick Theological Seminary*, 128 N.J. 303,

315 (1992) (quoting *McClure v. Salvation Army*, 460 F.2d 553, 558-59 (5th Cir. 1972)); *see also Petruska v. Gannon Univ.*, 462 F.3d 294, 306 (3d Cir. 2006). But *Amici* cannot meet this duty without the ability to control and discipline church clergy free from governmental interference, including—where necessary—to inform the faithful of disciplinary actions taken against their ministers.

Though the Appellate Division recognized that the United States Constitution has long protected such actions from civil court review, Petitioner Rabbi Shlomo Hyman asks this Court to proclaim an entirely novel rule that would break from the national consensus of state and federal courts across the country, enabling end-runs around bedrock constitutional protections and rendering the ministerial exception toothless. *Amici* therefore submit this brief to provide this Court with a framework for assessing when the ministerial exception applies to bar civil claims and to explain to the Court the consequences that will necessarily result from Hyman's attempts to nullify a foundational constitutional protection.

PRELIMINARY STATEMENT

To hear Petitioner Rabbi Hyman tell it, the ministerial exception is a restricted defense, available *only* when a plaintiff brings a claim under employment discrimination laws, such as Title VII or the Law Against Discrimination. Thus, so long as an artful plaintiff can plead a termination claim

against his religious employer in tort or in contract, the ministerial exception defense simply does not apply. All that is required is a little repackaging, and the ministerial exception vanishes.

Nothing could be further from the truth. The ministerial exception, as recognized and applied by courts from the United States Supreme Court on down, has always been meant to protect the *relationship* between a religious organization and its ministers, regardless of what claims a minister-plaintiff chooses to put in his complaint. That is why courts have for decades applied the ministerial exception and the broader principles of church autonomy to prevent the application of tort and contract claims where that would interfere with the church-clergy relationship (here, the yeshiva-rabbi relationship).[2] As we explain below, state and federal courts across the country have consistently rejected claims of any sort that would entangle the courts or other government bodies in the internal affairs of religious organizations.

This is not to say that if an archbishop were to punch a priest in the face that the priest has no legal recourse—the ministerial exception provides no defense to the tort of battery. That is because some tort claims do not interfere with the

[2] The United States Supreme Court and other courts variously refer to the doctrine of church autonomy as "church autonomy," "religious autonomy," or "ecclesiastical abstention." In this brief, we use "church autonomy," but courts largely use the terms interchangeably.

church-clergy relationship. Indeed, for decades courts have consistently drawn the line between tort claims that don't interfere with the church-clergy relationship (battery, assault, other physical torts) and tort claims that do (defamation, false light, and other relational torts). Put another way, if a tort claim is based on words alone, it almost always gives rise to a ministerial exception defense.

Once the line is drawn in the right place, this appeal becomes simple. Hyman's remaining claims all turn on the *relationship* between the Yeshiva and Hyman, and therefore fall on the forbidden side of the First Amendment line. The decision below should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici rely on and incorporate by reference the procedural history and statement of facts as presented by Rosenbaum Yeshiva of North Jersey. *See* Defendants-Respondents' App. Div. Br. 8-20; Opp. to Pet. for Certification 3-8. Because Hyman has not appealed from the Appellate Division's rulings regarding his contract claims or his non-defamation tort claims, *Amici* address Hyman's defamation claims only. *See* Pet. for Certification filed Mar. 31, 2023 4-6 (Pet. for Certification).

ARGUMENT

I. The ministerial exception bars Hyman's defamation claims.

Courts have long recognized the right of religious organizations to control their internal affairs. *See Watson v. Jones*, 80 U.S. 679, 728-29 (1872). Through both the Free Exercise Clause and Establishment Clause, the First Amendment guarantees religious organizations the power "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *McKelvey v. Pierce*, 173 N.J. 26, 52 (2002) (quoting *Kedroff*, 344 U.S. at 116); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012) (Religion Clauses protect autonomy of internal decisions that "affect[] the faith and mission" of the organizations themselves).

This "general principle of church autonomy" applies especially "to internal management decisions that are essential to the [religious] institution's central mission." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060-61 (2020). That's because disputes over "church discipline [and] ecclesiastical government" lie at "the core of ecclesiastical concern." *Milivojevich*, 426 U.S. at 714, 717. The church autonomy doctrine therefore protects a religious organization's selection and discipline of its leaders, as well as church communications about those internal matters. *See Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929) ("it is the function of the church

authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them"); *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002) ("internal ecclesiastical dispute and dialogue [are] protected by the First Amendment").

When it comes to a church's selection and discipline of its clergy, an essential "component" of the church autonomy doctrine is the ministerial exception. *Our Lady*, 140 S. Ct. at 2060-61; *McKelvey*, 173 N.J. at 44 (ministerial exception arises "under the church autonomy doctrine"). The ministerial exception secures the right of religious groups "to shape [their] own faith and mission" by choosing those "who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor*, 565 U.S. at 188, 196. The First Amendment affords religious groups this special protection because "it is the function of the church authorities"—and not the government—"to determine what the essential qualifications of a [minister] are and whether the candidate possesses them." *Milivojevich*, 426 U.S. at 711 (quoting *Gonzalez*, 280 U.S. at 16).

Here, Rosenbaum Yeshiva is a religious school protected by the ministerial exception, and Hyman concedes that he is a minister. 2Psa27. Allowing his defamation claims to proceed would therefore interfere with Rosenbaum Yeshiva's right to "select, supervise, and if necessary, remove a minister without interference by secular authorities." *Our Lady*, 140 S. Ct. at 2060. Doing so

would also split from decades of decisions from other state courts, federal Courts of Appeals, and the United States Supreme Court. Thus, as the lower courts correctly held, Hyman's defamation claims are barred by the ministerial exception.

A. The ministerial exception bars all claims entangling courts in the relationship between the minister and the religious organization.

Courts have long recognized the special nature of the church-clergy relationship. *See, e.g.*, *McClure*, 460 F.2d at 558 ("The relationship between an organized church and its ministers is its lifeblood."); *Rayburn v. Gen. Conf. of Seventh Day Adventists*, 772 F.2d 1164, 1167-68 (4th Cir. 1985) ("The right to choose ministers without government restriction underlies the well-being of religious community, for perpetuation of a church's existence may depend upon those whom it selects to preach its values, teach its message, and interpret its doctrines"); *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577 (1st Cir. 1989) (collecting cases); *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299, 1301 (11th Cir. 2000) (interference in the church-clergy relationship "would result in an encroachment by the State into an area of religious freedom which it is forbidden to enter"); *Hosanna-Tabor*, 565 U.S. at 188 n.2 (collecting cases); *McKelvey*, 173 N.J. at 44 ("[t]he right to choose ministers is an important part of internal church governance and can be essential to the well-being of a church" (alteration in original)); *Williams v. Episcopal*

Diocese of Mass., 766 N.E.2d 820, 823-24 (Mass. 2002) ("The minister is the chief instrument by which the church seeks to fulfill its purpose."); *Pardue v. Ctr. City Consortium Schs. of Archdiocese of Wash., Inc.*, 875 A.2d 669, 673 (D.C. 2005) (the church-clergy relationship "is a core matter of ecclesiastical self-governance not subject to interference by a state"); *El-Farra v. Sayyed*, 226 S.W.3d 792, 794 (Ark. 2006) (church-clergy relationship "go[es] to the heart of internal church discipline, faith, and church organization").

Because the "relationship between an organized church and its ministers is its lifeblood," *Petruska*, 462 F.3d at 306 (quoting *McClure*, 460 F.2d at 558), courts have held that the ministerial exception bars any claim that would interfere in the *relationship* between a church and its clergy—an area that is "strictly ecclesiastical," *Hosanna-Tabor*, 565 U.S. at 194-95. Adjudication of a claim that interferes in this sort of relationship "infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission" and "also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." *Id.* at 188-89; *McKelvey*, 173 N.J. at 40-43 (explaining the ministerial exception's roots in both religion clauses).

"Thus, where a minister seeks redress for termination, failure to hire, changes in work schedule, or other similar decisions involving, at their heart, a church's

core right to decide who (and in what manner he or she) may propagate its religious beliefs," the First Amendment "clearly prevents review by a civil court." *McKelvey*, 173 N.J. at 42. This remains so, regardless of whether the claims brought by ministers against the religious organizations to which they are bound sound in statute, contract, or tort. *See, e.g.*, *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 978 (7th Cir. 2021) (en banc) (statutory discrimination claims); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (statutory discrimination claims); *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 121 (3d Cir. 2018) (contract claims); *Bell v. Presbyterian Church (U.S.A)*, 126 F.3d 328, 330 (4th Cir. 1997) (contract claims); *Starkey v. Roman Catholic Archdiocese of Indianapolis*, 41 F.4th 931, 945 (7th Cir. 2022) (tort claims); *Petruska*, 462 F.3d at 309 (tort claims). The courts have rejected these claims because "whatever their 'emblemata,'" they "inexorably entangle [courts] in doctrinal disputes" and, as a result, are prohibited by the First Amendment. *Rweyemamu v. Cote*, 520 F.3d 198, 208 (2d Cir. 2008) (quoting *Natal*, 878 F.2d at 1577).

The operative question in ministerial exception cases, then, is not whether a particular claim is couched as a tort claim, a contract claim, or a statutory claim. Rather, it is whether the claim entangles a court in the church-clergy relationship—an area of "prime ecclesiastical concern." *Petruska*, 462 F.3d at

306. If the minister's claim "interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs," *Hosanna-Tabor*, 565 U.S. at 188, the minister's claim against the religious organization must be dismissed, *Natal*, 878 F.2d at 1577; *see also Werft v. Desert Sw. Ann. Conf.*, 377 F.3d 1099, 1100 n.1 (9th Cir. 2004) (the ministerial exception bars "*any* federal or state cause of action" that would "impinge on the Church's prerogative to choose its ministers" (emphasis added)).

B. Tort claims, including defamation claims like Hyman's, are barred under the ministerial exception where they are intertwined with the relationship between a religious body and its clergy.

1. Courts frequently reject tort claims that turn on the church-clergy relationship.

Tort claims are subject to the ministerial exception just like any other category of claims. Courts have long concluded that the ministerial exception bars tort claims where "judicial review . . . would impermissibly interfere with a church's ability to regulate the character and conduct of its leaders," including through disciplinary processes. *In re Diocese of Lubbock*, 624 S.W.3d 506, 516 (Tex. 2021); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 935 (Mass. 2002) ("Once a court is called on to probe into a religious organization's discipline of its clergy, the First Amendment is implicated."). As with employment-discrimination claims and contract claims, these decisions reflect

the long-recognized understanding that because "[a] minister serves as the church's public representative, its ambassador, and its voice to the faithful," *Petruska,* 462 F.3d at 306, any interference with the church-clergy relationship "affects the faith and mission of the [religious organization] itself," *Hosanna-Tabor*, 565 U.S. at 190, such that all "[m]atters touching this relationship must necessarily be recognized as of prime ecclesiastical concern," *Petruska*, 462 F.3d at 306 (quoting *McClure*, 460 F.2d at 559).

This "lifeblood" relationship encompasses not only a religious organization's decisions about selection and retention of ministers, but also "the core right to . . . regulate members of its own clergy." *McKelvey*, 173 N.J. at 44; *Hiles*, 773 N.E.2d at 935 (ministerial exception covers decisions concerning a religious organization's "discipline of its clergy"); *see also Our Lady*, 140 S. Ct. at 2055, 2060 (ministerial exception includes the "supervision" of "wayward minister[s]"); *Milivojevich*, 426 U.S. at 717 (matters of church discipline "are at the core of ecclesiastical concern"). Thus, courts across the country have repeatedly refused to adjudicate claims when doing so would infringe in any way on a religious organization's independence over its ministers, including the ability to discipline those ministers in the way the religious organization deems fit:

- *Starkey,* 41 F.4th at 945 (concluding that "State law claims" including torts "may not be used to deprive a religious organization of 'control over the selection of those who will personify its beliefs'" (quoting *Hosanna-Tabor*, 565 U.S. at 188));
- *Taylor v. Evangelical Covenant Church*, 203 N.E.3d 305, 311 (Ill. App. Ct. 2022) (dismissing tort claims where they were "inexorably intertwined with defendant's investigation as to whether he was fit to serve as a pastor, given the accusation of sexual misconduct against him");
- *Harrison v. Bishop*, 44 N.E.3d 350, 363 (Ohio Ct. App. 2015) (dismissing tort claims where "resolution of the issues contained in appellants' complaint would involve a determination of wrongdoing on the part of church leadership, and, by extension, whether appellees should be removed from their positions");
- *Petruska*, 462 F.3d at 307 ("[t]he ministerial exception . . . operates to bar *any claim*, the resolution of which would limit a religious institution's" rights over its ministers and dismissing state-law tort claims (emphasis added));
- *Hiles*, 773 N.E.2d at 938 (dismissing defamation, conspiracy, civil rights violations, and negligence claims based on priest's suspension

after allegations of sexual misconduct because adjudicating the claims would "require the court to inquire into the motives of these defendants to determine whether the Church's disciplinary procedures were properly invoked");

- *Bell*, 126 F.3d at 329 (rejecting claims for "various torts");
- *Lewis v. Seventh Day Adventists Lake Region Conf.*, 978 F.2d 940 (6th Cir. 1992) (dismissing intentional infliction of emotional distress and loss of consortium claims);
- *Natal*, 878 F.2d at 1576 (finding ministerial exception barred inquiry into a minister's state-law claims that his "property and contract rights were mutilated, his reputation tarnished, and his emotional health ruined");
- *Werft*, 377 F.3d at 1100 n.1 ("Because the ministerial exception is based in the First Amendment, we make no distinction between the various federal and state law claims.");
- *Dobrota v. Free Serbian Orthodox Church St. Nicholas,* 952 P.2d 1190, 1194-95 (Ariz. Ct. App. 1998) (in case involving the Serbian Orthodox Church, dismissing torts that were "were inseparable parts of the process of divesting Father Dobrota of his priestly authority").

In each of these cases, the court determined that because the claims "implicate[d] ecclesiastical matters," "the ministerial exception applied." *Starkey*, 41 F.4th at 944. That's because the foundational purpose of the ministerial exception is to "ensure[] that the authority to select *and control* who will minister to the faithful—a matter 'strictly ecclesiastical'—is the [religious body's] alone." *Hosanna-Tabor*, 565 U.S. at 194-95 (quoting *Kedroff*, 344 U.S. at 119) (emphasis added). Any claims that infringe upon that prerogative in any way violate the First Amendment and cannot proceed, "whatever their 'emblemata.'" *Rweyemamu*, 520 F.3d at 208 (quoting *Natal*, 878 F.2d at 1577); *Hiles*, 773 N.E.2d at 937 (noting that how a plaintiff frames his cause of action is "immaterial"). "[I]f the substance and nature of the plaintiff's claims are inextricably intertwined with matters of doctrine or church governance, then the case must be dismissed." *Diocese of Lubbock*, 624 S.W.3d at 514.

Contrary to Hyman's assertions, Pet. for Certification 6-9, the ministerial exception covers far more than employment discrimination claims, and it has done so for a long time. Instead, it "protect[s] the relationship between a religious organization and its clergy from 'constitutionally impermissible interference by the government'" of any kind. *Werft*, 377 F.3d at 1101 (quoting *Fireman's Fund Ins. Co. v. City of Lodi*, 302 F.3d 928, 946 (9th Cir. 2002)). The ministerial exception therefore operates to bar all civil claims that would

interfere with a religious organization's ability to discipline or control its ministers, regardless of how that claim is presented.

Nor could it be otherwise. The guarantees of the First Amendment cannot be "reduced to a simple semantic exercise," nor do "the substance of free exercise protections" turn on "the presence or absence of magic words." *Carson v. Makin*, 142 S. Ct. 1987, 1999-2000 (2022). If a plaintiff could simply "repackage[]" employment-discrimination claims as torts to avoid the ministerial exception, *Demkovich*, 3 F.4th at 973, "the preeminent policies embedded in the First Amendment would be susceptible of easy circumvention," *Natal v. Christian & Missionary All.*, No. 88-0676, 1988 WL 159169, at *8 (D.P.R. Dec. 15, 1988) (EOCa97), *aff'd*, 878 F.2d at 1576. This is especially so given that, as in this case, such common-law claims are often part and parcel to a standard wrongful termination claim. 2 W. Cole Durham & Robert Smith, *Religious Organizations and the Law* § 14:54 (2020) ("Wrongful termination claims are often joined with claims of common law torts such as defamation and intentional or negligent infliction of emotional distress."). In tort law, no less than in employment discrimination law, "the First Amendment has struck the balance" in favor of a religious organization's control over and discipline of those "who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor*, 565 U.S. at 196. That is why numerous jurisdictions have refused to hear these

claims for decades. This Court should follow suit rather than adopting Hyman's novel and sweeping rule.[3]

2. Defamation claims arising out of disciplinary proceedings cannot be separated from the ministerial relationship.

Defamation claims follow the same analysis. As with other torts, courts have for decades rejected defamation claims under the ministerial exception when such claims are "inextricably intertwined" with the disciplinary process giving rise to the claim, including under analogous facts as those presented in this case.

For example, in *Diocese of Lubbock*, a Roman Catholic deacon for the Diocese of Lubbock had his diaconal faculties suspended "after receiving reports of sexual misconduct involving [the deacon] and a woman with a history of mental and emotional disorders." 624 S.W.3d at 509. The woman's mental

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[3] Although Hyman has not pursued his contract claims in this Court, Pet. for Certification 4-6, contract claims are similarly rejected by courts under the ministerial exception where adjudicating the claim would interfere with the church-clergy relationship. *See Lee*, 903 F.3d at 121; *Friedlander v. Port Jewish Ctr.*, 347 F. App'x 654, 655 (2d Cir. 2009) (EOCa38) (rabbi); *Bell*, 126 F.3d at 330; *Pilgrim's Rest Baptist Church v. Pearson*, 872 N.W.2d 16, 20 (Mich. Ct. App. 2015) (breach of contract and promissory estoppel claims barred); *Dayner v. Archdiocese of Hartford*, 23 A.3d 1192, 1208 (Conn. 2011) (breach of contract claim barred because it "essentially asks the court to police the archdiocese's compliance with its own internal procedures"); *Bourne v. Ctr. on Children, Inc.*, 838 A.2d 371, 379 (Md. Ct. Spec. App. 2003) (breach of contract claim barred); *Pierce v. Iowa-Missouri Conf. of Seventh-Day Adventists*, 534 N.W.2d 425, 427 (Iowa 1995) (contract claims that concern "internal church discipline, faith, and organization" forbidden); *Dobrota,* 952 P.2d at 1194-95 (contract claim could not proceed because "civil court authority over a church employment dispute inhibits religious liberty").

health conditions meant she met the canonical definition of a "minor." *Id.* at 510. After an investigation found the allegations credible, and in accordance with a directive from the Vatican, the diocese included the deacon on its list of "Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor," which it posted to its website. *Id.* The list's publication was accompanied by a press release explaining "The decision to release the list 'was made in the context of [the Church's] ongoing work to protect children from sexual abuse' and 'to promote healing and a restoration of trust in the Catholic Church.'" *Id.*

The deacon sued, claiming that inclusion of his name on the diocese's published list of clergy accused of abusing "minor[s]" had falsely branded him as a child abuser. *Id.* at 509. He further contended that the First Amendment had no application "because the statements extended beyond church walls." *Id.* at 514. The Texas Supreme Court disagreed.

Citing *Our Lady*, the court noted that "courts are prohibited from risking judicial entanglement with ecclesiastical matters," and concluded that the deacon's suit "ultimately challenge[d] the result of a church's internal investigation into its own clergy, which is inherently ecclesiastical." *Id.* at 514, 518. "[J]udicial review" of this investigation "would impermissibly interfere with a church's ability to regulate the character and conduct of its leaders," thus "necessarily reach[ing] behind the ecclesiastical curtain." *Id.* at 515, 516.

The fact that the diocese published the results of its investigation on its website had no impact on the First Amendment analysis:

> Even to the extent that his suit challenges the publication of the list, . . . the Diocese only published the results of its own investigation. That is, [the deacon's] claims are inextricably intertwined with the Diocese's decision to include his name on the list—which it published on its website as an ordinary means of communication to its membership—at the culmination of its investigation into its clergy. . . . Thus, the list's publication, and [the deacon's] suit, cannot be severed from the process that led to its creation.

Id. at 518. Therefore, whether framed as a direct challenge to the investigation or to its "fruit," the "substance and nature" of the deacon's claims would "entangle the courts in a religious dispute" over how the Church, influenced by religious doctrine, chose to discipline its clergy. *Id.* at 516-517, 519.

Likewise, in *Stepek v. Doe*, a Roman Catholic priest accused two parishioners of "'concocting a false and defamatory story' that [he] had sexually abused [them] approximately 20 years earlier," which led to a disciplinary proceeding and the removal of Stepek from the ministry. 910 N.E.2d 655, 660, 661 (Ill. App. Ct.), *review denied,* 919 N.E.2d 366 (Ill. 2009). The court noted that defendants' "statements were used to invoke the Catholic Church's internal disciplinary procedures and became part of the internal disciplinary proceeding." *Id.* at 666. It then refused to adjudicate the claim, reasoning that "[t]he First Amendment's protection of internal religious disciplinary proceedings would be meaningless

if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." *Id.* (quoting *Hiles*, 773 N.E.2d at 937).

Similarly, in *Higgins v. Maher*, 258 Cal. Rptr. 757 (Cal. Ct. App. 1989), *cert. denied,* 493 U.S. 1080 (1990), a former Roman Catholic priest brought defamation and other claims against his former bishop after the bishop accused him of "social misconduct" and "caus[ing] grave scandal" by "frequently solicit[ing] people," which ultimately led to the suspension of his position and responsibilities. *Id.* at 758-59. Like Hyman, Higgins alleged the investigation into the allegations was a sham, contained numerous falsehoods, and violated canon law. *Id.* at 759. And also like Hyman, he contended that his suit involved nothing more than "garden-variety torts which just happen[ed] to involve the Bishop." *Id*. at 758.

The California appellate court disagreed, concluding that "[t]he accusations, false or not, pertain directly to the ecclesiastical functions of the church" such that they were "inseparable parts of a process of divestiture of priestly authority." *Id.* at 761. Thus, the purportedly false statements were "simply too close to the peculiarly religious aspects of the transaction to be segregated and treated separately—as simple civil wrongs." *Id.* If the court could resolve disputes such as these, "it is difficult to conceive the termination case which

could not result in a sustainable lawsuit," rendering the First Amendment's protections meaningless. *Id.*

Diocese of Lubbock, *Stepek*, and *Higgins* are hardly outliers. Indeed, numerous courts to consider the issue have "clearly held that the ministerial exception applies to . . . defamation claims" where resolving the suit would entangle courts in ecclesiastical disputes between a religious organization and its ministers. *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, No. 15-cv-1599, 2017 WL 3608140, at *34 (W.D. Pa. Aug. 22, 2017) (EOCa75), *aff'd*, 903 F.3d 113 (collecting cases); *see also Anderson v. Watchtower Bible & Tract Soc'y of N.Y., Inc*., No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *26 (Tenn. Ct. App. Jan. 19, 2007) (EOCa19) ("A number of courts have held that defamation claims arising out of minister employment or discipline disputes are outside the subject matter jurisdiction of the courts because all matters touching the relationship between pastor and church are of ecclesiastical concern and not subject to court review" (collecting cases)).

This has long been the case too. In 1986 the Sixth Circuit had no trouble rejecting a defamation claim that was "really seeking civil court review of subjective judgments made by religious officials and bodies that he had become 'unappointable,'" reasoning that "secular authorities may not interfere with the internal ecclesiastical workings and disciplines of religious bodies." *Hutchison*

v. Thomas, 789 F.2d 392, 393 (6th Cir. 1986). And not long after, the First Circuit similarly affirmed a ruling barring libel and slander claims that were "inextricably intertwined" with an "ecclesiastical dispute" over a church's decision to terminate its minister. *Natal*, 1988 WL 159169, at *8 (EOCa98), *aff'd*, 878 F.2d 1575.

Ever since then, state and federal courts have continued to reject defamation claims brought by a minister against the minister's employer, following the basic rule that where the "plaintiff's claims of . . . defamation are essentially tied to" a ministerial dispute, the claim is barred. *Kraft v. Rector, Churchwardens & Vestry of Grace Church in N.Y.*, No. 01-cv-7871, 2004 WL 540327, at *6 (S.D.N.Y. Mar. 17, 2004) (EOCa44). And this remains true irrespective of whether the defamatory statements were communicated to third parties:

- *Maize v. Friendship Cmty. Church, Inc.*, No. E2019-00183-COA-R3-CV, 2020 WL 6130918, at *7 (Tenn. Ct. App. July 21, 2020) (EOCa86) (dismissing a former pastor's defamation claims based on communications made to church members because "the communication of a disciplinary action by a church 'is as much within the rights protected by ecclesiastical abstention as is the church's right to take such actions, even though it may carry some kind of negative implication'");

- *Byrd v. DeVeaux*, No. 17-cv-3251, 2019 WL 1017602, at *3, *9 (D. Md. Mar. 4, 2019) (EOCa30, 35) (barring false-light claim based on reports that were compiled and read aloud in front of church members because the "claim is rooted in the [church's] disciplinary review of Plaintiff and decision that Plaintiff should be placed on administrative leave");
- *Speller v. Saint Stephen Lutheran Church of Drayton Plains*, No. 330739, 2017 WL 1190933, at *4 (Mich. Ct. App. Mar. 28, 2017) (EOCa103) (barring minister's defamation claims based on letters to church congregation that were "all concerning the internal church matter of plaintiff's status and employment as St. Stephen's pastor and as a minister of the [church]");
- *Thibodeau v. Am. Baptist Churches of Conn.*, 994 A.2d 212, 221, 222, 224 (Conn. App. Ct. 2010) (barring defamation claim based on letters circulated to the church about plaintiff's fitness to serve as pastor that allegedly "blacklisted him from potential employment opportunities" because "its resolution would require an impermissible inquiry into the defendant's bases for its action and its ground for evaluating ministers" and thus "cannot be entertained in isolation from the dispute over fitness for the clergy");

- *Klouda v. Sw. Baptist Theological Seminary*, 543 F. Supp. 2d 594, 613 (N.D. Tex. 2008) (barring defamation claim based on published statement made to newspaper because it was "derivative of or intimately related to the employment action taken" against minister);
- *El-Farra*, 226 S.W.3d at 796-97 (dismissing defamation claims involving a statement that a former imam "contradict[ed] the Islamic law" because resolving the dispute would "require[]" the court "to inquire into religious doctrine and governance" and conduct an "examination of religious doctrines, laws, procedures, and customs regarding who is and is not fit to be the Imam");
- *Seefried v. Hummel*, 148 P.3d 184, 190-91 (Colo. App. 2005) (barring defamation claims based on statements made at public church meeting because they "related directly to a church process that resulted in Richard Seefried's termination as pastor" and thus "evaluation of the statements in isolation of this process . . . [wa]s not possible");
- *Hiles*, 773 N.E.2d at 936 (barring defamation claims based on letter accusing priest of sexual misconduct because it "arose from the church-minister relationship, and specifically . . . religious discipline");

- *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d 200, 218-19 (D. Conn. 2000) (barring defamation and libel claims regarding defendants' statements to "the press and the public that [minister] had misrepresented his priestly status" because analyzing the claim would require the court to evaluate competing definitions of the word priest, thus "entangling itself in a matter of ecclesiastical concern");
- *Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (barring adjudication of defamation claims arising out of "an eighty-five-page manual documenting the grievances against Johnson, the reasons for his dismissal as pastor, and the attempts the congregation had made to remove Johnson as pastor" because "any analysis of the possible defamatory nature of the manual would require us to examine the reasons for Mt. Airy's dismissal of Johnson as pastor").

As with other torts, the enduring national consensus among both state and federal courts is that resolving defamation claims that "arise[] entirely out of a church's relationship with its pastor" would burden internal church management in ways that the Religion Clauses forbid. *Id.* at 883 (collecting cases). That's because those claims simply "[can] not be examined in isolation" from the ecclesiastical dispute in which they arose. *Seefried*, 148 P.3d at 190 (collecting cases). Indeed, were these claims permitted to proceed, "the prospect of future

investigations and litigation would inevitably affect to some degree" ministerial decisions, and pressure religious bodies to make those decisions "'with an eye to avoiding litigation or bureaucratic entanglement rather than upon the basis of their own personal and doctrinal assessments.'" *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 466-67 (D.C. Cir. 1996) (quoting *Rayburn*, 772 F.2d at 1171). This distortion of ministerial relationships, church doctrine, and discipline, is impermissible: "any attempt . . . even to influence such matters would constitute one of the central attributes of an establishment of religion." *Our Lady*, 140 S. Ct. at 2060. And because virtually every employment dispute can be recast as defamation, *Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 516 (Va. 2001) (quoting *Higgins*, 258 Cal. Rptr. at 761), allowing these claims to go forward would eviscerate the very protections the ministerial exception exists to provide.

C. Some tort claims will fall outside the ministerial exception and can be litigated in civil court, but Hyman's defamation claims fall squarely within it.

Hyman argues that if this Court recognizes that the ministerial exception bars his claims, religious bodies will be able to commit torts "with impunity" against their ministers. Pet. for Certification 4. This is hyperbole. As the Appellate Division explained, many torts will not touch upon a religious body's oversight of its ministers at all, and so will not come within the exception. 2Psa29

(ministerial exception does "not apply" to claims that "would not require the court to infringe on a religious institution's decision to select its ministers"). Thus, personal injuries, *id.*; *Rweyemamu*, 520 F.3d at 208; battery, *Higgins*, 258 Cal. Rptr. at 761; false imprisonment, *id.*; and other physical torts can freely be litigated by civil courts. And other torts that are not intertwined with a religious body's discipline or control of its ministers, like sexual harassment, may also be resolved by civil courts. *See, e.g.*, *Black v. Snyder*, 471 N.W.2d 715, 717-18, 720 (Minn. Ct. App. 1991) (permitting litigation of sexual harassment claim based on the pastor "repeatedly ma[king] unwelcome sexual advances toward [an associate pastor], referring to the two of them as 'lovers,' physically contacting her in a sexual manner, and insisting on her companionship outside the work place, despite her objections"). But others will fall within the "private sphere" that religious bodies have over those "whose role is instrumental in charting the course for the faithful." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., joined by Kagan, J., concurring); *Alicea*, 128 N.J. at 311. Hyman's defamation claims fall within the heartland of this protected realm.

1. Hyman's defamation claims are inextricably intertwined with disciplinary action.

Here, Hyman's claims fall squarely within the realm of discipline and control protected by the ministerial exception, and adjudicating them would inevitably result in civil court entanglement in a religious dispute. Indeed, Rosenbaum

Yeshiva's religious beliefs permeate Hyman's claims from start to finish. Former fifth- and sixth-grade female students alleged to the Yeshiva that Hyman had inappropriately touched them by massaging their shoulders, placing stickers on their chests, and touching them on clothed parts of their body, all of which would violate Orthodox Jewish law governing interactions between the sexes. 2Psa4-5. After the Yeshiva specifically "consult[ed] halachic authorities"—*i.e.*, experts in Jewish religious law—it determined that it should discipline Hyman by terminating him "because plaintiff's conduct violated the Orthodox Jewish standards of conduct set out in the RYNJ Staff Handbook." 2Psa5. Then, and again after consulting religious experts, Rosenbaum Yeshiva determined it needed to inform the school community of the disciplinary action taken against Hyman. 2Psa5-6. And in its letter, Rosenbaum Yeshiva once again reiterated that its course of conduct was developed "[i]n consultation with . . . halachic advisors." 2Psa6.

In short, Rosenbaum Yeshiva's decisions concerning Hyman not only arose specifically because of a purported violation of religious conduct, but they were also expressly informed by religious law. Based on religious judgments, the Yeshiva concluded it was appropriate both to terminate Hyman and to inform the community of its action. Adjudicating Hyman's defamation claims would allow courts to second-guess these religiously motivated disciplinary actions,

thereby "impermissibly interfer[ing] with [Rosenbaum's] ability to regulate the character and conduct of its leaders." *Diocese of Lubbock*, 624 S.W.3d at 516; *McKelvey*, 173 N.J. at 44. And just like the canonical definition of "minor" in *Diocese of Lubbock*, 624 S.W.3d at 515-16, or "unappointable" in *Hutchison*, 789 F.2d at 393, resolving the dispute would require the court to take sides on the religious questions of whether Hyman violated Jewish law and whether such infractions required Rosenbaum Yeshiva to inform the broader community. Permitting a court to weigh in on this controversy between a religious body and its minister would necessarily "jeopardize [Rosenbaum Yeshiva's] ability to establish its own rules and regulations for adequately investigating its clergy." *Diocese of Lubbock*, 624 S.W.3d at 519; *see also El-Farra*, 226 S.W.3d at 796-97; *Hartwig*, 93 F. Supp. 2d at 218-19; *Thibodeau*, 994 A.2d at 224; 2Psa28. "[B]ecause of the doctrinal nature of the dispositive issue," Hyman's claims "should not be in [civil] courts." *Alicea*, 128 N.J. at 312.

Thus, Hyman's complaints about the "fruit" of Rosenbaum Yeshiva's investigation are barred by the ministerial exception just as much as if he complained about the termination decision directly. As in numerous other cases, that "fruit"—here, the letter to parents—"cannot be severed from the process that led to its" issuance. *Diocese of Lubbock*, 624 S.W.3d at 518; *see also, e.g.*, *Gunn v. Mariners Church, Inc.*, 84 Cal. Rptr. 3d 1, 8 (Cal. Ct. App. 2008)

(ministerial exception covers torts that are "part and parcel" of disciplinary action); *Dobrota*, 952 P.2d at 1195 (torts barred where they were "intimately connected with matters of Church discipline"); *Natal*, 1988 WL 159169, at *8 (EOCa98) (torts covered where they are "inextricably intertwined" with disciplinary process). And because "judicial inquiry into the propriety of the removal procedures followed would intrude impermissibly on matters of church doctrine and polity," *Chavis v. Rowe*, 93 N.J. 103, 110 (1983), the claim is barred.

2. Allowing Hyman's claims to proceed would prevent investigations into credible allegations of sexual misconduct.

"[P]ublic policy favors religious organizations taking allegations of sexual abuse against their clergy seriously and investigating them thoroughly, regardless of when the alleged abuse occurred." *Taylor*, 203 N.E.3d at 311. Permitting claims like Hyman's to be decided by civil courts will necessarily chill religious bodies from undertaking these efforts.

Across the country, a host of religious bodies are seeking to increase transparency and accountability when it comes to credible allegations of sexual impropriety by the clergy. These attempts are often informed by religious duties to safeguard the faithful and, accordingly, contemplate disclosing credible findings to the broader community as a way of expressing a spiritual commitment to combat such abuse. *See, e.g.*, *Diocese of Lubbock*, 624 S.W.3d

at 510-11 (describing procedures of Roman Catholic Church); *Policies, Standards, and Procedures of the Orthodox Church in America on Sexual Misconduct,* 10.02(5) (2014), https://perma.cc/PD8Q-CXTZ; Elizabeth Dias, *Southern Baptist Convention Vows to Address Sex Abuse in Its Churches*, NY Times (June 11, 2019), https://perma.cc/CF36-Q5GC. Others, like *Amici*, are actively involved in promulgating such guidelines. Religious organizations should be empowered, not hindered, as they engage in this necessary task. But under Hyman's proposed rule, religious bodies will be hamstrung in these efforts, forced to address credible allegations of clergy misconduct not by focusing on their spiritual duties, but "with an eye to avoiding litigation." *Catholic Univ.*, 83 F.3d at 467 (quoting *Rayburn*, 772 F.2d at 1171).[4]

[4] Sexual misconduct is far from the only area in which a religious body might deem it necessary to inform its community about "wayward minister[s]." *Our Lady*, 140 S. Ct. at 2060. Religious bodies discipline ministers for a host of reasons, including financial impropriety, Adelle M. Banks, *Prominent bishop of AME Zion Church suspended, faces financial accusations*, Religion News Service (Jan. 8, 2021), https://bit.ly/3sUs0IF; doctrinal disagreements, Egan Millard, *Disciplinary Panel finds Albany Bishop William Love broke church law in banning same-sex marriages*, Episcopal News Service (Oct. 5, 2020), https://perma.cc/6DC9-CKD3; adulterous behavior, Leanne Italie, *Megachurch Pastor Carl Lentz fired, admits cheating on wife*, Associated Press (Nov. 5, 2020), https://bit.ly/3sJ462z; and consuming illegal drugs, *Every monk in Thai temple defrocked after testing positive for meth*, CBS News (Nov. 29, 2022), https://perma.cc/J32D-VUNN. Hyman's proposed rule would subject religious organizations to the threat of litigation every time they felt compelled to inform their members about the basis for these and myriad other disciplinary actions.

The First Amendment permits none of this. Religious bodies must maintain absolute freedom from "secular control or manipulation" over the relationships with their ministers. *Hosanna-Tabor*, 565 U.S. at 186 (quoting *Kedroff*, 344 U.S. at 116). Indeed, "any attempt by government . . . even to influence" that relationship is "outlaw[ed]" by the First Amendment. *Our Lady*, 140 S. Ct. at 2060. Adjudicating Hyman's claims would do far more than merely influence this relationship—it would go a long way toward nullifying it altogether. By allowing a civil court to examine under a microscope every word and action taken during the Yeshiva's "inherently ecclesiastical" clerical investigation and threatening the Yeshiva with liability if the court determines that the investigation was not "consistent with judicial standards," *Diocese of Lubbock*, 624 S.W.3d at 518-19, the "private sphere" reserved to religious bodies will be irreparably lost, *Hosanna-Tabor*, 565 U.S. at 199.

II. Rigorous enforcement of the ministerial exception is important to religious minorities, including Orthodox Christians like *Amici* and their members.

The ministerial exception serves a crucial role in safeguarding all faith traditions from impermissible governmental intrusion in their internal affairs. But rigorous enforcement of the ministerial exception is even more essential to protect minority religious groups whose beliefs and practices may be unfamiliar or not widely held. Indeed, "[i]n a country with the religious diversity of the

United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady*, 140 S. Ct. at 2066. As a result, a minority religious group "might understandably be concerned that a judge would not understand its religious tenets and sense of mission." *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 336 (1987). And that concern chills its religious exercise because the "[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission." *Id.*

Thus, if this Court reversed the lower court decisions, and allowed Hyman's defamation claims to proceed, it would threaten religious organizations whose beliefs—like those of the Serbian Orthodox Church, the Russian Orthodox Church, the Romanian Orthodox Church, and the Antiochian Orthodox Church—are not widely known. For example, these Churches are characterized by a rich monastic tradition permeated with practices unfamiliar to civil courts. Under that tradition, monks are subject to any rule established by their abbot, who serves as the leader of that monastery and often provides various spiritual disciplines to those under his care. These rules of spiritual discipline can include anything from strict fasting regimens to prescribed work assignments.

If a disgruntled monk could repackage disagreements over these disciplinary practices as a mere tort, it is unlikely that any judge would be familiar with or

fully appreciate this less familiar practice of the Eastern Orthodox Churches. *Cf. Alcazar v. Corp. of the Catholic Archbishop of Seattle*, 627 F.3d 1288, 1292 (9th Cir. 2010) (en banc) (barring claims by Roman Catholic seminarian seeking remuneration for work performed "as part of his seminary training"). And it would expose those beliefs to judicial second-guessing by an unfamiliar court that might misunderstand those beliefs or confuse them with beliefs and practices that are interpreted differently among similar religious communities. *See, e.g.*, *Thomas v. Review Bd.*, 450 U.S. 707, 715 (1981) ("Intrafaith differences . . . are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences"); *Our Lady*, 140 S. Ct. at 2068 ("judges have no warrant to second-guess [a religious school's] judgment"); *Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1265 (10th Cir. 2008) (These matters "threaten to embroil the government in line-drawing and second-guessing regarding matters about which it has neither competence nor legitimacy.").

Similarly, minority religious groups with unfamiliar beliefs may "regard the conduct of certain functions as integral to [their] mission," but—if this Court were to reverse—secular courts could "disagree." *Amos*, 483 U.S. at 343 (Brennan, J., concurring). Such a result would pressure these minority religious groups "to characterize as religious only those activities about which there likely

would be no dispute, even if [they] genuinely believed that religious commitment was important in performing other tasks as well." *Id.* And it would mean that a religious organization's "process of self-definition would be shaped in part by the prospects of litigation" instead of its sincerely held religious beliefs. *Id.* at 343-44. This "danger of chilling religious activity" is especially pronounced for minority faiths and is even more reason to affirm the Appellate Division's decision. *Id.* at 344.

In addition, rigorous enforcement is also necessary because minority faiths are less likely to be able to bear the brunt of litigation. To start, minority faiths are often much smaller than majority faiths. Indeed, Protestants (40%), Catholics (21%), and the religiously unaffiliated (30%) account for 91% of the entire U.S. population. *See* Besheer Mohamed, *Why Pew Research Center typically can't report the views of smaller U.S. religious groups*, Pew Research Center (Aug. 8, 2022) https://perma.cc/Y7VK-WCPC. By contrast, no other religious group makes up more than 2% of the American population, and Orthodox Christians account for only 0.5%. *Id.*

With such significant disparity between majority and minority faith groups, it's no surprise that minority faith groups receive less money. In 2017, for example, 61% of American religious groups received less than $250,000 annually, and 28% received less than $100,000. *See* David P. King, et al.,

National Study of Congregations' Economic Practices, Lake Institute on Faith & Giving, 11, https://perma.cc/37CW-SRGS. Religious groups with annual revenues of this size—which will disproportionately include minority faith groups—will have a harder time bearing the burdens of litigation. Thus, without full enforcement of the ministerial exception, these minority faith groups will be forced to either give up their First Amendment rights or divert their limited resources to legal-defense funds—and thereby away from their religious mission.

CONCLUSION

For the foregoing reasons, the Appellate Division's decision should be affirmed.

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Respectfully submitted,

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