21-1498

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ALEXANDER BELYA,

Plaintiff-Appellee,

v.

HILARION KAPRAL, et al.,

Defendants-Appellants,

On Appeal from the United States District Court for the Southern District of New York, Case No. 20-cv-6597

BRIEF OF AMICI CURIAE STATES OF NEBRASKA, ALABAMA, ALASKA, ARIZONA, ARKANSAS, GEORGIA, KANSAS, KENTUCKY, LOUISIANA, MISSISSIPPI, MONTANA, OKLAHOMA, SOUTH CAROLINA, TEXAS, AND UTAH IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING EN BANC

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

Amici curiae are the States of Nebraska, Alabama, Alaska, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, Texas, and Utah. We submit this brief in support of the church officials' petition for rehearing en banc under the States' authority in Fed. R. App. P. 29(b)(2) to file amicus briefs "without the consent of the parties or leave of court."

Churches, synagogues, and mosques must be free to communicate about their leaders without fear that secular courts will punish them or otherwise interfere with their decision-making. Plaintiff Alexander Belya seeks to use the courts to challenge internal church communications that kept him from becoming the Bishop of Miami for the Russian Orthodox Church Outside of Russia (ROCOR). The First Amendment bars secular courts from reviewing these kinds of disputes.

A motions panel of this Court appears to have initially agreed that the district court should have dismissed this case. By granting the church officials' motion for a stay pending appeal, *see* Docket No. 138 (Nov. 3, 2021) (citing *Nken v. Holder*, 556 U.S. 418, 434–35 (2009)), that panel signaled that the church officials "made a strong showing that [they are] likely to succeed on the merits" of their appeal, *Nken*, 556 U.S. at 434.

But the merits panel had a different take. Its cramped view of the collateral-order doctrine, which was premised on a flawed understanding

of church-autonomy principles, prevents church officials from immediately appealing district courts' interlocutory rulings subjecting them to lawsuits like these. The panel's decision thus exposes religious organizations to years-long litigation and intrusive discovery into their leadership decisions with no appellate review until final judgments are entered. This deprives religious groups of the protection that the First Amendment promises them.

Amici States raise two important interests in this case. First, we seek to protect the First Amendment rights of religious organizations and their leaders. Those rights include the freedom to communicate about internal leadership decisions free from governmental interference. Second, amici want to protect against excessive government entanglement in the internal affairs of religious groups. The panel's decision, by barring appeals from interlocutory orders denying church-autonomy defenses, ensures that such entanglement will occur unchecked.

ARGUMENT

I. The panel's reliance on the neutral-principles approach conflicts with Supreme Court precedent.

The panel rested its collateral-order analysis on a flawed view of the applicable church-autonomy principles. *See* Panel Op. at 16–18. It repeated the district court's position that the church-autonomy doctrine does not apply if courts may use "neutral principles of law" to resolve a plaintiff's claims. *Id.* at 17; *see also Belya v. Hilarion*, No. 20 Civ. 6597,

2021 WL 1997547, at *4 (S.D.N.Y. May 19, 2021). But this approach misses the mark for two reasons. First, the Supreme Court has never applied the neutral-principles rule beyond the context of a church-property dispute. Second, when the church-autonomy doctrine's ministerial exception applies, as it does here, that precludes courts from employing the neutral-principles approach.

A. As the panel recognized (at 17), the Supreme Court first established the neutral-principles rule in *Jones v. Wolf*, 443 U.S. 595 (1979). The Court there held that judges can decide a church-property dispute without violating the First Amendment if they base their decision solely on "neutral principles of law." *Id.* at 604. But in so holding, *Jones* did not approve of judicial interference in religious disputes. On the contrary, it emphasized that even the application of neutral principles cannot justify a "civil court" in resolving a dispute that is effectively "a religious controversy." *Id.* Importantly, the Supreme Court has never extended the neutral-principles rule "beyond the context of church-property disputes." *McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc.*, 980 F.3d 1066, 1072 (5th Cir. 2020) (Ho, J., dissenting from denial of rehearing en banc) (recognizing that the Supreme Court has "intimated that the church autonomy doctrine cannot be brushed aside as irrelevant or controlled by the neutral principles rule of *Jones v. Wolf* merely because it is raised in defense to common law claims") (quotation marks omitted).

Nor should the neutral-principles rule extend to this context. The Supreme Court applies the neutral-principles approach in church-property disputes to protect—not undermine—religious autonomy. *Id.* at 1071. That rule protects religious autonomy by allowing secular courts to intervene when a religious entity *invites* their involvement. Thus, when religious groups want their controversies to be resolved according to neutral principles of law, and they request the expertise of secular courts in doing so, those courts' intervention "ensure[s] that a dispute over the ownership of church property [is] resolved in accord with the desires of [its] members." *Jones*, 443 U.S. at 604. But under *Jones*'s logic, religious entities could alternatively decide to protect themselves from secular interference by requiring the application of religious principles rather than secular law. The justification in *Jones* thus does not apply to situations like this where the supposedly neutral principles are imposed by the government without the religious organization's consent.

B. Even if the neutral-principles rule could be extended beyond church-property disputes, it cannot override the ministerial exception. The Supreme Court has already rejected the argument that neutral laws may trump a church's authority to select its ministers. The plaintiffs in *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171, 189–90 (2012), argued that the Supreme Court's earlier decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), which generally allows governments to apply neutral rules to infringe religious

liberty, precluded application of the ministerial exception. The Court disagreed. Though it recognized that *Smith* allowed the enforcement of neutral laws against a religious entity's outward physical acts, it held that there was "no merit" to the argument that neutral laws could allow "government interference with . . . internal decision[s] that affect[] the faith and mission of the church itself." *Id.* at 190. Similarly, here, there is no merit to the panel's view that courts can apply neutral principles of law to punish church leadership for their comments addressing internal matters of church government.

Beyond this clear statement of law in *Hosanna-Tabor*, applying the neutral-principles rule to override the ministerial exception would also conflict with the facts in both *Hosanna-Tabor* and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). In those cases, the plaintiffs asserted violations of nondiscrimination laws that everyone assumed were neutral. *See Hosanna-Tabor*, 565 U.S. at 179 (declining to adjudicate a claim under the Americans with Disabilities Act); *Our Lady*, 140 S. Ct. at 2058–59 (declining to adjudicate a claim under the Age Discrimination in Employment Act). But *Hosanna-Tabor* and *Our Lady* establish that a court cannot apply purportedly neutral nondiscrimination laws to dictate how a religious group chooses its leaders. Likewise, neither can judges apply neutral tort law to punish church leaders for their comments concerning the election of a minister.

More generally, the Supreme Court has made clear that the ministerial exception applies regardless of whether the plaintiff's claim directly implicates religious doctrine or policy. *Hosanna-Tabor*, 565 U.S. at 194 (recognizing that the ministerial exception's purpose "is not to safeguard a church's decision . . . only when it is made for a religious reason"); *see also Tomic v. Cath. Diocese of Peoria*, 442 F.3d 1036, 1038 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. 171 (2012) ("Even if the suit does not involve an issue of religious doctrine, but concerns merely the governance structure of the church, the courts will not assume jurisdiction if doing so would interfere with the church's management."). This further confirms that the ministerial exception bars ministers' claims even if they allege that courts can adjudicate their allegations based on neutral legal principles unrelated to religious doctrine.

C. The panel readily acknowledged that "[m]ost cases applying the 'neutral principles of law' approach have resolved disputes over church property." Panel Op. at 17 n.8. But instead of exploring why the Supreme Court has been so limited in applying the neutral-principles rule, the panel said that this circuit has applied the rule outside the property-dispute context. *Id.* Yet the only Second Circuit example expanding "neutral principles" beyond that context is an unpublished summary order. *Id.* That hardly justifies the panel in ignoring the obvious conflict between applying the neutral-principles rule in a ministerial-exception

case like this one and the rejection of the "neutral principles" argument in *Hosanna-Tabor*.

The panel's error in assuming that the neutral-principles rule governs this case tainted its collateral-order analysis. Notably, the panel reasoned (at 23) that the second collateral-order requirement was not satisfied because assessing the church-autonomy doctrine under the "neutral principles" approach was too intertwined with the merits of Belya's claims. Had the panel recognized that the collateral question here is whether the ministerial exception applies (rather than asking whether "neutral principles" apply), it would have easily seen that this ministerial-exception issue is separate from Belya's claims. After all, the ministerial-exception analysis focuses on matters such as Belya's "role in conveying the Church's message and carrying out its mission," *Our Lady*, 140 S. Ct. at 2063, whereas resolving the merits of Belya's claim depends on whether church officials defamed him. Because the panel's deeply mistaken view of the church-autonomy doctrine permeated its collateral-order analysis, the full Court should grant rehearing en banc.

II. The panel's ruling will excessively entangle courts in the leadership decisions of religious entities.

The First Amendment forbids "judicial entanglement in religious issues." *Our Lady*, 140 S. Ct. at 2069; *see also id.* at 2070 (Thomas, J. concurring) (noting that the Supreme Court "goes to great lengths to avoid governmental 'entanglement' with religion"); *Jones*, 443 U.S. at 603

(reciting the goal of "free[ing] civil courts completely from entanglement in questions of religious doctrine, polity, and practice"). And the Supreme Court has recognized that "[i]t is not only the [legal] conclusions" in cases like this that "may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979). Thus, these kinds of suits risk church-state entanglement in two ways. First, they require courts to assess liability based on their evaluation of internal church decisions and communications, which often puts judges in the difficult position of scrutinizing religious doctrine, policy, and practice. Second, these types of cases force courts to oversee discovery and compel religious institutions to submit to probing discovery demands.

A. Inquiring into the merits of Belya's defamation claim would impermissibly interject judges in ROCOR's internal governance. *See Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 538 (Minn. 2016) (holding that inquiry into a religious body's statements is the "sort of complicated and messy inquiry that we seek to avoid by prohibiting courts from becoming excessively entangled with religious institutions"); *Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F. Supp. 1286, 1290 (D. Minn. 1993) (holding that the First Amendment precludes inquiry into a religious body's "bases for terminating [a minister]" and "the veracity of [the religious body's] statements").

As Belya stated in his amended complaint, "[t]he threshold issue" on the merits "is whether the documents [he] is alleged to have forged are in fact genuine." JA 87 (First Amended Complaint at 2 (Dkt. 48)). According to Belya, the allegedly forged documents "evidenced his appointment to the position of Bishop of Miami." *Id.* In effect, then, by requesting that the district court declare the documents genuine, Belya is asking the court to declare his election valid. Despite how Belya would like to frame it, this is not a straightforward defamation action. Ultimately, it requires the district court to find either that Belya forged documents to seize a position in ROCOR or that ROCOR's hierarchy conspired to frame him for forgery. Resolving that dispute forces the district court not only to resolve a fundamental decision about church leadership, but also to assess the church's internal process for appointing bishops and to determine whether that process was followed. These inquiries are exactly the sort of church-state entanglement that courts must avoid.

B. In addition, the process of overseeing and compelling discovery further enmeshes courts in the internal governance of religious groups. *See Purdum v. Purdum*, 301 P.3d 718, 726 (Kan. Ct. App. 2013) (holding that "there [was] no way for [the plaintiff] to prove his defamation action" because the "requested discovery alone [would] entangle the civil courts" in church administration); *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 982 (7th Cir. 2021) (en banc) (expressing concern about "the prejudicial effects of incremental litigation"). The

discovery in a case like this will subject ROCOR's "personnel and records" "to subpoena, discovery, cross-examination," and "the full panoply of legal process designed to probe the mind of the church in the selection of its ministers." *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). Intrusions like these are unacceptable because they pressure churches to make decisions "with an eye to avoiding litigation or bureaucratic entanglement rather than" basing those decisions on "their own . . . doctrinal assessments." *Id.*

Because discovery imposes this inherent risk of excessive entanglement, courts should dismiss cases like this in their infancy. Recognizing this, the Tenth Circuit has compared church-autonomy defenses to qualified-immunity defenses, explaining that courts must dismiss claims precluded by the ministerial exception "early in litigation" to "avoid excessive entanglement in church matters." *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 654 n.1 (10th Cir. 2002).

The panel here (at 25) acknowledged this analogy between qualified immunity and church autonomy. But the panel determined that the analogy did not help the church officials because qualified-immunity denials are immediately appealable only when they "turn[] on an issue of law" and the church-autonomy question here supposedly implicates "disputed fact questions." *Id.* Yet the circuits have widely recognized that applying the ministerial exception is a pure question of law. *See Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 833 (6th Cir. 2015)

("whether the exception attaches at all is a pure question of law"); *Skrzypczak v. Roman Cath. Diocese of Tulsa*, 611 F.3d 1238, 1244 (10th Cir. 2010) ("the ministerial exception's application" is a "legal conclusion"); *Starkman v. Evans*, 198 F.3d 173, 176 (5th Cir. 1999) (similar). The ministerial-exception question presented in this appeal thus fits comfortably within the collateral-order doctrine.

By holding that the collateral-order doctrine does not apply here, the panel exacerbates the church-state entanglement concerns discussed above. It does so by preventing religious organizations from appealing erroneous denials of church-autonomy defenses before final judgment. That forces religious groups, when trial courts reject their church-autonomy arguments early in proceedings, to endure full discovery and trials concerning their leadership decisions. To avoid this, the en banc court should grant review, conclude that the collateral-order doctrine applies, and ensure that religious organizations are able to immediately appeal orders subjecting them to church-state entanglement.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing en banc.

Dated: September 7, 2022.

Respectfully submitted,

/s/ James A. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2022, this brief was filed electronically with the Clerk of the Court for the United States Court of Appeals for the Second Circuit through the Court's CM/ECF system. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 29(b)(4) because, excluding the portions exempted by Fed. R. App. P. 32(f), it contains 2,503 words.

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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