No. 21-164

In the Supreme Court of the United States

TRUSTEES OF THE NEW LIFE IN CHRIST CHURCH,
Petitioners,

v.

CITY OF FREDERICKSBURG, VIRGINIA,
Respondent.

On Petition for Writ of Certiorari to the
Circuit Court of the City of Fredericksburg, Virginia

BRIEF OF KENTUCKY, ALABAMA, ARIZONA, ARKANSAS, GEORGIA, INDIANA, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, OKLAHOMA, SOUTH CAROLINA, TEXAS, AND UTAH AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

The *amici* States have an interest in protecting their citizens. That means not just guarding their citizens against threats to their physical safety, but also safeguarding their constitutional rights. And among the most sacred of those rights lies in the First Amendment—the right to freely exercise one's faith without government intrusion. This is "our first freedom." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring).

This case is about a state court's improper interference with the religious autonomy of a church in Fredericksburg, Virginia. Because a threat to First Amendment rights anywhere is a threat to First Amendment rights everywhere, the *amici* States desire to be heard to ensure their citizens' rights are not endangered.

SUMMARY OF THE ARGUMENT

The First Amendment prohibits the judiciary and other civil authorities from resolving theological disputes over faith and doctrine. "Courts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981). This principle forms the basis of what is perhaps the most consistent rule of constitutional law that the Court has articulated. While the Court's decisions applying both of the Religion Clauses has waxed and waned over time, it has repeatedly reaffirmed the simple rule

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[1] *Amici* have notified counsel for all parties of their intention to file this brief. Sup. Ct. Rules 37.2(a), 37.4.

that courts should defer to the judgment of religious authorities when adjudicating disputes that turn on ecclesiastical questions.

The Virginia court did the opposite when it denied the New Life in Christ Church's tax exemption for its parsonage. New Life Church allows its two college ministers to live on a church-owned property and use that house as a place of worship and religious gathering. These two individuals are ministers according to the only authority that matters: the governing body of New Life Church. Yet the Virginia court ignored New Life Church's ecclesiastical decision, instead adopting the City of Fredericksburg's contrary interpretation of New Life Church's religious doctrine.

The court did not do so because it found that New Life Church was committing fraud or abusing the legal system. Nor did the court do so because of any generally applicable constraint on how Virginia's parsonage exemption applies across religious traditions. Rather, the City itself acknowledged that Virginia's law largely leaves it to a religious organization to define for itself who its ministers are when seeking a parsonage exemption. And yet, the Virginia court allowed the City to rely on its own interpretation of New Life Church's doctrine to overrule the church's designation of its college pastors as "ministers."

Such a profoundly erroneous decision merits summary reversal. States like Virginia, of course, are free to limit the availability of religious tax exemptions for secular reasons that do not require civil authorities to

wade into issues of theological importance. The federal government does just that, along with countless other jurisdictions. But once the government uses its judiciary to resolve matters of faith and doctrine, it has stepped into forbidden territory. That is what the Virginia court did here, and this Court should therefore grant the petition and summarily reverse the decision below.

ARGUMENT

Only a handful of First Amendment principles have had lasting power like this Court's consistent respect for the autonomy of religious institutions. "Courts are not arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716. And so they must not attempt to adjudicate "ecclesiastical questions" that they lack the competency and authority to resolve. *See Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 447 (1969).

The Virginia court ignored this well-established rule below when it adopted the theological position of the City of Fredericksburg—rather than New Life Church—to resolve a dispute over property taxes. Like many States, Virginia grants churches and other religious institutions a tax exemption for property "used . . . for the residence of the minister." Va. Code § 58.1-3606(A)(2). This practice has deep historical roots. *See* John Witte, Jr., *Tax Exemption of Church Property: Historical Anomaly or Valid Constitutional*

Practice?, 64 S. Cal. L. Rev. 363, 380 (1991). But it often requires balancing on "a tight rope," so that civil authorities are not entangling themselves into the autonomy of religious organizations. *See Walz v. Tax Commission of New York*, 397 U.S. 664, 672 (1970) (internal quotation marks omitted).

Yet whatever that careful balance looks like, it should never allow a court to adjudicate the meaning of a church's internal doctrine like it would a statute. Instead, when the resolution of a civil claim requires answering ecclesiastical questions, courts must defer to the decisions of the religious institution. The Virginia court failed to do so here. And in the process, it defied more than a century of clear and consistent precedent from this Court.

I. The government has no business second-guessing the application of religious doctrine.

1. It is perhaps uncontroversial to say that the jurisprudence of the Religion Clauses is no picture of clarity. *See Rowan Cnty., N.C. v. Nancy Lund*, 138 S. Ct. 2564, 2564 (2018) (Mem.) (Thomas, J., dissenting from the denial of certiorari) ("This Court's Establishment Clause jurisprudence is in disarray."); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1915–16 (2021) (Alito, J., concurring in the judgment) (explaining the inconsistencies between Free Exercise Clause precedent). Over time, the Court has vacillated between standards for applying the Free Exercise Clause. *Compare Reynolds v. United States*, 98 U.S. 145, 166–67

(1878), *with Sherbert v. Verner*, 374 U.S. 398, 399–402 (1963), *and Employment Division, Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878–79 (1990). It has announced an intricate, multipart test for applying the Establishment Clause, *see Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971), only to walk it back over the next several decades, *see Am. Legion v. Am. Humanist Ass'n*, 139 S. Ct. 2067, 2092–93 (2019) (Kavanaugh, J., concurring). And it has questioned the long-term existence of modern rules even while applying them to the case at hand. *See Fulton*, 141 S. Ct. at 1882 (Barrett, J., concurring) ("As a matter of text and structure, it is difficult to see why the Free Exercise Clause—lone among First Amendment freedoms—offers nothing more than protection from discrimination."); *id.* at 1883 (Alito, J., concurring in the judgment) ("[*Smith*] is ripe for reexamination.").

Yet despite the doctrinal movement that has plagued the Religion Clauses over time, this Court has been remarkably consistent on one particular principle. Whether the issue arises under the Establishment Clause or the Free Exercise Clause, whether it arose before incorporation of the Bill of Rights or after, the Court has repeatedly reaffirmed the rule that the civil judiciary has no role to play when it comes to resolving questions of "church government" and "faith and doctrine." *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

That's because the First Amendment is "plainly jeopardized" when civil courts weigh into "controversies over religious doctrine and practice." *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (Brennan, J., concurring). The Court has said so time and time again. *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020); *Jones v. Wolf*, 443 U.S. 595, 602–05 (1979); *Serbian E. Orthodox Diocese for United States of Am. & Canada v. Milivojevich*, 426 U.S. 696, 722 (1976); *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. at 449; *Kedroff*, 344 U.S. at 115–16; *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 16 (1929); *Watson v. Jones*, 13 Wall. 679, 727 (1871). So when faced with legal disputes that require the government to second-guess the position of a religious institution on "ecclesiastical questions," the government must ordinarily stand down. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. at 447.

The Court first considered this problem "in the context of disputes over church property." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 185 (2012). Those disputes often pit competing factions of a religious organization against each other—both claiming to be the rightful owner of the organization's property. Applying a "broad and sound view of the relations of church and state," this Court made clear early on that it is not the judiciary's role in such cases to question the decisions made by the leadership of a religious body. *Watson*, 13 Wall. at 727.

Almost one hundred years later, the Court reaffirmed the same principle when assessing the constitutionality of a Georgia law that would have required a jury to decide whether a church had "abandoned or departed from the tenets of [its] faith and practice." *See Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. at 441–44. Even though "the State has a legitimate interest in resolving property disputes," this Court explained, "[s]pecial problems arise" when the disagreement "implicate[s] controversies over church doctrine and practice." *Id.* at 445. The Georgia law, for example, required courts to engage in theological interpretation and to weigh the relative significance of individual church doctrines to the faith at large. *Id.* at 450. "Plainly," the Court concluded, "the First Amendment forbids civil courts from playing such a role."

Other cases have consistently applied this same principle. In *Gonzalez*, the Court declined to second-guess the "purely ecclesiastical" decision about who was entitled to a chaplaincy, even though the chaplaincy was created using traditional legal documents. *See Gonzalez*, 280 U.S. at 11, 16. Because "the appointment is a canonical act," this Court held, "it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them." *Id.* at 16. Thus, "[i]n the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil

rights, are accepted in litigation before the secular courts as conclusive." *Id.* at 16.

In *Thomas*, the Court turned back a state-court decision that improperly inquired into the legitimacy of an individual's religious belief by comparing the believer to other adherents of the faith. *Thomas*, 450 U.S. at 715. In deciding whether an individual had a "religious" objection to particular forms of employment, the state court gave "significant weight to the fact that another [individual of the same faith] had" taken a different position. *Id.* at 715. This Court made clear that, under the Free Exercise Clause, those kinds of intrafaith disagreements are not for secular courts to resolve: "Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith." *Id.* at 16. Said more bluntly: "Courts are not arbiters of scriptural interpretation." *Id.*

The Court recently applied the same principle to exempt religious institutions from civil employment laws for their religious leaders. *See Hosanna-Tabor*, 565 U.S. at 188. Under the so-called "ministerial exception," employment discrimination laws cannot be constitutionally applied to individuals working for a religious organization who are charged with carrying out important religious functions. *See id.* Doing so violates *both* the Free Exercise Clause and the Estab-

lishment Clause of the First Amendment by "interfer[ing] with the internal governance of the church" and allowing the government "to determine which individuals will minister to the faithful." *Id.* at 188–89.

Ecclesiastical abstention also informs other strands of First Amendment jurisprudence. Consider, for example, the longstanding rule that courts cannot adjudicate "the truth" of an individual's "religious doctrines or beliefs." *United States v. Ballard*, 322 U.S. 78, 86 (1944). Because the First Amendment prohibits "compulsion by law of the acceptance of any creed or the practice of any form of worship," it follows that the government is also prohibited from assessing the truth of any particular belief. *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)). This rule is an inevitable companion to the doctrine prohibiting civil authorities from resolving ecclesiastical disputes. *See also Smith*, 494 U.S. at 886–87; *id.* at 906–07 (O'Connor, J., concurring in judgment) (explaining that courts cannot weigh the "centrality" of a religious belief); *id.* at 919 (Blackmun, J., dissenting) (same); *Hernandez v. Commissioner*, 490 U.S. 680, 699 (1989) (same).

So despite doctrinal shifts that have plagued both of the Religion Clauses over time, one principle has remained firm: the civil judiciary has no authority to resolve questions of faith and doctrine. Sometimes that principle arises in the Free Exercise context. Other times, as an Establishment problem. And more re-

cently, as both. But the Court's firm line against intruding into matters of internal religious governance and doctrine has remained constant.

2. The long, uninterrupted precedent on this issue puts this case into proper context. By adopting the City of Fredericksburg's theological position, rather than deferring to New Life Church, the Virginia court plainly interfered with the petitioner's right to religious autonomy.

Consider the following: Virginia's parsonage exemption applies generally to any property owned by a religious organization and occupied by its "minister." Va. Code § 58.1-3606(A)(2). In the proceedings below, the City admitted that there was no secular authority as to what qualified as a "minister" under state law. Pet. App. 35a, 169a. And the City also admitted that, because of this, the statute is best understood as saying to religious organizations, "[Y]ou tell us who your leader is, and if they reside in church-owned property, we will exempt that specific property from taxation." Pet. App. 169a.

So New Life Church did just that. Josh and Anacari Storms are employed as ministers and reside in a church-owned residence that they use as part of their ministry—including hosting regular Bible studies, fellowships, and other group meetings with individuals in the church. Pet. App. 45a–46a, 58a, 93a–95a. New Life Church's governing body supervises the Stormses and gives them regular guidance. *Id.* at 93a. And both have extensive religious training and education. *Id.*

Despite this, the City of Fredericksburg took it upon itself to review the church's governing text to decide whether the Stormses were in fact "ministers" under the applicable doctrine. Pet. App. 70a–71a. And because the City reached a different conclusion from the church as to what *the church's* religious text means, the City concluded that the Stormses are not "ministers" and denied the tax exemption.

It is hard to come up with a fact pattern that more starkly defies the long line of First Amendment precedent that governs this kind of dispute. Contrary to *Thomas*, the City decided for itself "whether the petitioner[s]" had "correctly perceived the commands of their common faith." 450 U.S. at 716. Contrary to *Gonzalez*, the City decided for itself "what the essential qualifications of a [minister] are." 280 U.S. at 16. Contrary to *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, the City "determin[ed] ecclesiastical questions" about who qualifies as a minister in the church. 393 U.S. at 447. Contrary to *Kedroff*, the City overruled the church's "power to decide for [itself], free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. at 117. And contrary to *Our Lady of Guadalupe*, the City decided for itself "which titles count and which do not" as ministers of a particular faith. 140 S. Ct. at 2064.

"A religious organization's right to choose its ministers would be hollow, however, if secular courts could second-guess the organization's sincere determination

that a given employee is a 'minister' under the organization's theological tenets." *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring). That is what the City of Fredericksburg did here. And the Virginia court's blind deference to the City's second-guessing of New Life Church's decision as to who is and is not a minister should be summarily reversed.

II. Judicial intrusion into religious autonomy is not necessary to enforce reasonable limits on a parsonage exemption.

There is real danger to allowing civil authorities to wade into theological questions like the City did here. Courts lack the institutional competence to resolve disagreements over faith and doctrine. *See Thomas*, 450 U.S. at 716. Doing so thus "risk[s] judicial entanglement in religious issues" of exactly the sort that the First Amendment prohibits. *See Our Lady of Guadalupe*, 140 S. Ct. at 2069. And it "may cause a religious group to conform its beliefs and practices regarding 'ministers' to the prevailing secular understanding." *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring) (citing *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987)).

These dangers are unnecessary. The federal government, for example, provides similar tax relief without requiring civil authorities to resolve ecclesiastical questions. *See Gaylor v. Mnuchin*, 919 F.3d 420, 431–32 (7th Cir. 2019); 26 U.S.C. § 107(2). Under the federal exemption, the analysis is similar to the holistic

and deferential analysis this Court has used to apply the ministerial exception. *See Gaylor*, 919 F.3d at 432; *Our Lady of Guadalupe*, 140 S. Ct. at 2067–69. And, unlike what the City of Fredericksburg did here, the federal exemption does not require civil courts to act as "arbiters of scriptural interpretation." *Thomas*, 450 U.S. at 716.

Civil authorities also remain free to enforce secular constraints on tax exemptions for religious organizations that do not require inquiring into religious belief. The Court has, for example, long permitted civil authorities to overrule religious claims based on "fraud, collusion, or arbitrariness." *See Gonzalez*, 280 U.S. at 16. States can also restrict similar parsonage exemptions to individuals whose "principal occupation" is the ministry, *see, e.g.,* Tex. Tax Code § 11.20(A)(3), but they need not do so, *see City of Nome v. Catholic Bishop of N. Alaska*, 707 P.2d 870, 882–83 (Alaska 1985) (holding that an "assistant pastor" who is not "committed exclusively as a clergyman" is nevertheless a "minister" for assessing Alaska's parsonage exemption). And no one doubts that a State can inquire into whether a religious organization actually uses its property for religious purposes. *See, e.g., Broadway Christian Church v. Commonwealth*, 66 S.W. 32, 33 (Ky. 1902); Ky. Const. § 170. But unlike how the City applied Virginia's law here, none of these restrictions on parsonage exemptions require the judiciary to resolve the kinds of theological questions that "risk judicial entanglement in religious issues." *See Our Lady of Guadalupe*, 140 S. Ct. at 2068.

The decision to deny New Life Church's tax exemption was an undeniable and *unnecessary* intrusion on the First Amendment. Parsonage exemptions have existed since the founding without this kind of judicial intrusion into matters of faith and doctrine. They can continue to do so as long as this Court and the courts below strictly enforce the limits on judicial authority.

CONCLUSION

The Court should grant the petition and summarily reverse the decision below.

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