Appeal No. 16-1078

IN THE SUPREME COURT OF IOWA

VALERIE BANDSTRA, ANNE BANDSTRA, RYAN BANDSTRA, & JASON BANDSTRA,

Plaintiffs–Appellants,

v.

COVENANT REFORMED CHURCH,

Defendant–Appellee.

Appeal from the Iowa District Court for Marion County
The Hon. John D. Lloyd • Case No. LACV094670

Brief *Amicus Curiae* of The Becket Fund for Religious Liberty in Support of the Defendant

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[*]

The Becket Fund for Religious Liberty ("Becket") is a nonprofit law firm that protects the free expression of all faiths. It is founded on a simple but crucial principle: that religious freedom is a fundamental human right rooted in the dignity of every human person. To vindicate this principle, Becket has represented agnostics, Buddhists, Christians, Hindus, Jews, Muslims, Santeros, Sikhs, Zoroastrians and many others in lawsuits across the country and around the world.

This case goes to an important component of the principle: protecting religious freedom for individual persons requires protecting their ability to exercise their faith together as religious organizations. Becket frequently advocates (both as counsel of record and as *amicus curiae*) to protect the autonomy of such religious organizations from government intrusion and entanglement. At the United States Supreme Court, Becket successfully represented the church

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[*] No party's counsel authored any part of this brief. No person other than the *amicus curiae* contributed money intended to fund the preparation or submission of this brief.

in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, resulting in a unanimous decision that firmly protected church autonomy. 565 U.S. 171 (2012). It is also counsel in other ongoing church autonomy cases. *See Fratello v. Archdiocese of N.Y.*, No. 16-1271 (2d Cir.); *Yin v. Columbia Int'l Univ.*, No. 15-cv-3656 (D.S.C.); *see also, e.g.*, *Alcazar v. Corp. of the Catholic Archbishop of Seattle*, 627 F.3d 1288 (9th Cir. 2010) (en banc) (*amicus curiae*).

Becket files this brief to urge the Court to properly apply the church autonomy doctrine and thus refrain from deciding religious questions—such as what constitutes sin and forgiveness, and how a "reasonable church" should discuss matters of sin and forgiveness.

INTRODUCTION

The church autonomy doctrine is a fundamental principle of federal constitutional law, rooted in both the Establishment Clause and the Free Exercise Clause of the First Amendment, and reflected in the Iowa Constitution's own Religion Clauses. The doctrine provides that churches and religious leaders must be free to decide questions of religious doctrine and internal church governance without governmental interference or entanglement.

Plaintiffs' defamation and negligence claims directly violate the doctrine. Those claims concern their disagreement with their former church's religious beliefs about sin and forgiveness, and with the church's expression of those beliefs to its congregation in the context of internal church discipline proceedings.

The beliefs and communications in question concerned improper sexual relations the church's pastor had with members of the congregation, including the female Plaintiffs. Immediately after learning of the situation, the church accepted the pastor's resignation, instructed him to cease communications with the church's congregation, deposed him of his ministerial status, and indefinitely suspended him from receiving certain sacraments. The church also condemned the pastor's conduct in statements to the congregation, stating that he had "misused his sacred office" in a "predatory" way which "prey[ed] on some of the most vulnerable members under his care." Def.'s Br. at 22 (April 3, 2017). The church never identified any of the women by name in communications with the congregation, and admonished the congregation that they likewise respect the women's privacy. Plaintiffs have no complaint with any of that.

Plaintiffs' complaint before this Court is that the church also believed that the women engaged in a (much lesser) degree of sin in their conduct with the pastor, that it extended them forgiveness, and that it communicated these beliefs to the congregation instead of using a social worker's recommended statement which identified the women solely as victims. Plaintiffs disagree with the church on that core religious matter—they believe that they committed no sin and needed no forgiveness—so they sued the church.

The church autonomy doctrine squarely forecloses Plaintiffs' defamation claim and their claim that the church was negligent in communicating its beliefs to the congregation. Both the U.S. and Iowa Constitutions protect the rights of churches to govern themselves on matters of doctrine, discipline, and membership. Resolving Plaintiffs' defamation claim would require civil courts to punish a church for its internal communications and governance, to define what constitutes "sin" and "forgiveness," and to establish a religious meaning of "adultery." And resolving Plaintiffs' negligence claim would require courts to define what constitutes a "reasonable church," and to punish churches when they fall short of that court-

imposed standard. Pls.' Br. at 15 (Jan. 31, 2017). These are tasks that no civil court could have the competence or authority to perform. Therefore, this Court should decline Plaintiffs' invitation to entangle courts in the inescapably religious determinations of churches, and instead affirm the church's right to carry out its internal religious mission without government intrusion.

ARGUMENT

I. The First Amendment's church autonomy doctrine leaves religious questions and disputes in the hands of churches, not courts.

Both the United States Constitution and the Iowa Constitution employ identical language that forbids civil courts from involving themselves in internal church decisions or answering religious questions: government "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I; Iowa Const. art. I, § 3 (same); *see also Mitchell Cnty. v. Zimmerman*, 810 N.W.2d 1, 7 (Iowa 2012) (First Amendment applies to the States).

These establishment and free exercise guarantees "give[ ] special solicitude to the rights of religious organizations," working in tandem to protect the autonomy their internal decisions that "affect[ ] the faith and mission" of the organizations themselves. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 181, 188-90 (2012); *Pierce v. Iowa-Missouri Conf. of Seventh-Day Adventists*, 534 N.W.2d 425, 427 (Iowa 1995) ("The First and Fourteenth Amendments to the United States Constitution prohibit courts from interfering with ecclesiastical decision making."). As relevant here, they ground the church autonomy doctrine's rule that churches and religious leaders must decide religious questions and resolve internal church disputes without intrusion or entanglement from the government, including by courts. *See Hosanna-Tabor*, 565 U.S. at 188-89 (discussing both clauses); *Erdman v. Chapel Hill Presbyterian Church*, 286 P.3d 357, 371 (Wash. 2012) (same).

The church autonomy doctrine forecloses Plaintiffs' defamation and negligent-communication claims against Covenant Reformed Church (the "Church") because those claims involve fundamentally

religious questions about "sin," "forgiveness," and how a "reasonable church" would perform its religious duties. Such questions are for churches to answer, and are beyond the competence or reach of civil courts.

A. The church autonomy doctrine is a fundamental principle of constitutional law.

The First Amendment's respect for church autonomy has historical roots that stretch back at least to Magna Carta in 1215. *Hosanna-Tabor*, 565 U.S. at 182. There, the king agreed that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired." *Id.* (quoting Magna Carta). When that freedom proved "more theoretical than real," many colonists came to America in search of the freedom to adopt "their own modes of worship" and to avoid the "control exercised by the Crown" over religious offices. *Id.* at 182-83. "It was against this historical background that the First Amendment was adopted." *Id.* at 183; *see also Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1819 (2014) (ruling that "the Establishment Clause must be interpreted by reference to historical practices and understandings." (internal quotation omitted)).

The Supreme Court has therefore long recognized the "right to organize voluntary religious associations" and to provide for the governance of those associations. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728-29 (1871). Under this right, courts "have no power to revise or question ordinary acts of church discipline, or of excision from membership." *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139 (1872). The courts "cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off." *Id.* at 139-40. These types of decisions about who is part of the church, how the church will make and communicate religious determinations to the congregation, who will be the leaders of the church, and how to lead the congregation are central to a church's existence and identity.

As Justice Brennnan explained three decades ago, "religious organizations have an interest in autonomy in ordering their internal affairs, so they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions." *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 341-

42 (1987) (Brennan, J., concurring) (quoting Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1389 (1981)). Individuals often "exercise their religion through religious organizations, and these organizations must be protected'" under the First Amendment. *Id.*; *accord Hosanna-Tabor*, 565 U.S. at 198-99 (Alito, J., joined by Kagan, J., concurring) (noting "the important issue of religious autonomy that is presented in cases like this one").

Watson is illustrative of this principle. There, in the context of a dispute between pro-slavery and anti-slavery factions within a Kentucky church, the Supreme Court held that civil courts could not second-guess the decision of an ecclesiastical body. 80 U.S. (13 Wall.) 679, 727-29 (1872). Instead, "questions of discipline, or of faith, or ecclesiastical rule, custom, or law" were issues for churches to decide, not civil courts. *Id.* at 727. Although *Watson* was a common-law decision, the Supreme Court has since repeatedly recog-

nized *Watson*'s result as "mandated by the First Amendment." *Serbian Eastern Orthodox Diocese for the U.S. and Canada v. Milivojevich*, 426 U.S. 696, 712 & n.6 (1976).

Thus, in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, the Court affirmed *Watson* as protecting a "spirit of freedom for religious organizations," and agreed that churches must be able to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 344 U.S. 94, 116 (1952). And in *Kreshik v. Saint Nicholas Cathedral*, the Court recognized that this principle of church autonomy limited governmental attempts to restrict churches through the judicial branch. 363 U.S. 190, 191 (1960) (per curiam).

In *Serbian Eastern Orthodox Diocese for the U.S. and Canada v. Milivojevich*, the Court applied the church autonomy doctrine to reject a bishop's claim that he had been arbitrarily—and therefore illegally—defrocked. 426 U.S. at 698. The Court wrote that before a church's decision could be deemed arbitrary, there would have to be an "inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the

substantive criteria by which they are supposedly to decide the ecclesiastical question." *Id.* at 713. That inquiry, the Court held, is "exactly the inquiry that the First Amendment prohibits." *Id.*

The Supreme Court most recently, and unanimously, applied this protection for church autonomy in the "ministerial exception" case of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012). There, a minister named Cheryl Perich was fired from her teaching position at a Lutheran church school. The church said it fired Perich because she violated church teachings. The Equal Employment Opportunity Commission and Perich countered that she had been unlawfully fired because she had threatened to sue for disability discrimination under the Americans with Disabilities Act. *See id.* at 179-80.

The Court rejected Perich's claim. *Id.* at 190. The Court made clear that deciding Perich's suit would constitute impermissible "government interference with an internal church decision that affects the faith and mission of the church itself." *Id.* That is, because the church's employment relationship with a minister inescapably involves religious considerations, *id.* at 193-94, resolving Perich's

claims would inevitably involve the government in "ecclesiastical decisions" (in violation of the Establishment Clause) and restrict how the church shaped its "faith and mission" (in violation of the Free Exercise Clause), *id.* at 189; *accord*, *id.* at 196-97 (Thomas, J., concurring) ("As the Court explains, the Religion Clauses guarantee religious organizations autonomy in matters of internal governance . . ."); *id.* at 198-99 (Alito, J., joined by Kagan, J., concurring) (noting "the important issue of religious autonomy that is presented in cases like this one").

B. The church autonomy doctrine protects the right of churches to freely manage their internal affairs, and it helps courts avoid religious questions and disputes.

These and other cases reveal two key principles of the church autonomy doctrine: first, courts cannot decide religious matters, and second, courts must draw a wide circle around what qualifies as a religious matter.

First, only churches, not courts, can answer religious questions or resolve religious disputes. In part, this means courts cannot decide whether a religious statement is true or false. *See Watson*, 80

U.S. (13 Wall.) at 728-29 ("The law knows no heresy, and is committed to the support of no dogma"); *United States v. Ballard*, 322 U.S. 78, 86 (1944) ("Heresy trials are foreign to our Constitution."). But it also means courts are categorically prohibited from intruding into whether a church is faithfully interpreting religious texts, correctly applying religious teachings, or properly resolving ecclesiastical disputes. *See, e.g.*, *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981) ("Courts are not arbiters of scriptural interpretation."). At its core, the "church autonomy doctrine is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely." *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 658 (10th Cir. 2002).

Moreover, as a matter of constitutional structure, courts have neither authority nor competence to decide such matters. *Milivojevich*, 426 U.S. at 713 ("religious controversies are not the proper subject of civil court inquiry"); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (courts cannot resolve "controversies over religious doctrine and practice" because "the First Amendment enjoins the

employment of organs of government for essentially religious purposes").[1] As the Sixth Circuit recently explained, the First Amendment's rule against governmental "interfer[ence] with the internal governance of the church" is a "structural" protection that "categorically prohibits federal and state governments from becoming involved in religious . . . disputes." *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015).

Nor is there a balancing of government interests in upholding state laws against the church's interests in autonomy. In the context of internal ecclesiastical matters, "the First Amendment has struck the balance." *Hosanna-Tabor*, 565 U.S. at 196. Thus, "a civil court must accept" a church's "ecclesiastical decisions . . . as it finds

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[1] *See also Watson*, 80 U.S. (13 Wall.) at 729 (noting judicial incompetence regarding questions of "ecclesiastical law and religious faith"); *Paul v. Watchtower Bible & Tract Soc. of N.Y., Inc.*, 819 F.2d 875, 878 n.1 (9th Cir. 1987) ("Ecclesiastical abstention . . . provides that civil courts may not redetermine the correctness of . . . some decision relating to government of the religious polity."); *see also Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 534 (Minn.), *cert. denied,* 137 S. Ct. 493 (2016) (discussing the church autonomy doctrine); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936-37 (Mass. 2002) (same).

them," *Milivojevich*, 426 U.S. at 713, to avoid the "total subversion of . . . religious bodies." *Watson*, 80 U.S. (13 Wall.) at 729.

This Court was therefore correct when it recognized that it has "no jurisdiction over, and no concern with, purely ecclesiastical questions and controversies." *Kliebenstein v. Iowa Conf. of United Methodist Church*, 663 N.W.2d 404, 406 (Iowa 2003) (quoting *Brown v. Mt. Olive Baptist Church*, 124 N.W.2d 445, 446 (Iowa 1963)); *see also Varnum v. Brien*, 763 N.W.2d 862, 905 (Iowa 2009) ("Our constitution does not permit any branch of government to resolve . . . religious debates") (citing Iowa Const. art. I, § 3). Similarly, it was correct that courts "may not prescribe what shall be orthodox in any religion or religious culture." *Amro v. Iowa Dist. Court for Story Cty.*, 429 N.W.2d 135, 138 (Iowa 1988).

Second, the church autonomy doctrine requires a "buffer zone" around religious questions and disputes. *Varnum*, 763 N.W.2d at 905 ("Our constitution . . . entrusts to courts the task of ensuring government *avoids* [religious debates]"). This is because the "very process of inquiry" into religious claims "may impinge on rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop of*

Chi., 440 U.S. 490, 502 (1979); *see also New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977) ("The prospect of church and state litigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment"); *see also Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality op.) ("It is well established . . . that courts should refrain from trolling through [an] institution's religious beliefs"). Indeed, the "very act of litigating a dispute that is subject to" church autonomy doctrine "result[s] in the entanglement of the civil justice system with matters of religious policy, making the discovery and trial process itself a first amendment violation." *Dayner v. Archdiocese of Hartford*, 23 A.3d 1192, 1198-200 (Conn. 2011).

Even if a church acts in a manner that, to some secular observers, appears unreligious, the process and prospect of courts making the religiosity determination would itself chill religious activity. *See Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 343-44 (1987) (Brennan, J., concurring) (stating that "determining whether an activity is religious or secular requires a searching case-by-case analysis" and that such

an analysis "would both produce excessive government entanglement with religion and create the danger of chilling religious activity"). Such intrusive "types of investigations . . . could only produce by [their] coercive effect the very opposite of that separation of church and State contemplated by the First Amendment." *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1245 (10th Cir. 2010) (quoting *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972)).

This protection is particularly important for unpopular and minority religions. *State v. Amana Soc'y*, 109 N.W. 894, 899 (Iowa 1906) (the Religion Clauses' protections safeguard religious exercise that can be seen as "obnoxious to sound public policy" or contrary to "prevailing American ideals"). If a minority church's beliefs are unusual, difficult to understand, or unpopular to the surrounding majority community, then a church might self-censor its religious practices to avoid costly, time-consuming litigation. *Amos*, 483 U.S. at 336 ("[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious."). To prevent

that result, the church autonomy doctrine both guarantees churches the right to manage their own internal affairs and, on the flipside, orders government to tread lightly when even approaching such affairs. *Moussazadeh v. Tex. Dep't of Crim. Justice*, 703 F.3d 781, 792 (5th Cir. 2012) (courts must employ "a light touch" concerning religious convictions, since it is "an area into which we are forbidden to tread").

C. The church autonomy doctrine applies to some tort claims.

Because the church autonomy doctrine is both a right meant to protect church's internal governance and a structural limitation on civil courts, it applies just as much to tort claims which involve religious questions or internal church governance as it does to property disputes and ministerial decisions.

To be sure, churches can be liable for types of tort claims that do not involve religious questions or internal church governance. *See Marchese v. St. Martha's Roman Catholic Church, Inc.*, 965 N.Y.S.2d 557, 558-59 (N.Y. App. Div. 2013) (allowing a personal injury action against a church where plaintiff tripped on carpeting);

Garber v. Scott, 525 S.W.2d 114, 119-20 (Mo. Ct. App. 1975) (allowing tort claim against church where church vehicle hit plaintiff).

But tort claims involving or arising out of religious questions or internal church governance are "barred" as an impermissible exercise of state power where "imposition of liability would result in the abridgement of the right to free exercise of religious beliefs." *Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 880 (9th Cir. 1987). Hence *Watson*'s refusal to accept claims which would require the government to "decide who ought to be members of the church, [or] whether the excommunicated have been justly or unjustly . . . cut off from the body of the church." 80 U.S. (13 Wall.) at 730. Courts likewise regularly dismiss tort suits in which individuals attempt to challenge church discipline. *See, e.g.*, *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007) (refusing to interfere with scriptural disciplinary process); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994) (refusing to interfere with excommunication).

And the same is true for certain tort claims by ministers. Thus, for instance, the Connecticut Supreme Court found that the First

Amendment prohibited tort claims for negligent infliction of emotional distress and tortious interference with business expectancies where those claims "ar[o]se directly from, and in furtherance of, the [ministry's] decision to terminate the employment of the [minister]." *Dayner*, 23 A.3d at 1210; *accord Lewis v. Seventh Day Adventists Lake Region Conference*, 978 F.2d 940 (6th Cir. 1992) (rejecting claims for intentional infliction of emotional distress and loss of consortium when those claims arose out of a minister's and his spouse's lawsuit against the minister's church for employment termination).[2]

Here, Plaintiffs ask this Court to judge the Church's internal religious speech and decisions, and claim harms that arise strictly out

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[2] *See also* Victor E. Schwartz & Christopher Appel, *The Church Autonomy Doctrine: Where Tort Law Should Step Aside*, 80 U. Cin. L. Rev. 431, 453 (2011) ("[T]he church autonomy doctrine sets constitutional boundaries on the scope of tort law, thereby presenting threshold considerations for defining duty and liability when tort actions are brought against religious institutions."); Christopher C. Lund, *Free Exercise Reconceived*, 108 Nw. U. L. Rev. 1183, 1207-17 (2014) (arguing that the church autonomy doctrine extends to negligence and defamation claims that implicate religious questions).

of those religious matters. That violates the church autonomy doctrine because it would "unconstitutionally impede the church's authority to manage its own affairs." *Westbrook*, 231 S.W. 3d at 397.

II. Plaintiffs' claims are barred by the church autonomy doctrine because they require this Court to intrude into internal church affairs and to resolve religious questions.

Plaintiffs' defamation claims require this Court to intrude on and impermissibly second-guess the Church's decisions about what constitutes "sin" or "adultery," and their negligence claims would inevitably force this Court to define what is a "reasonable church." All of Plaintiffs' claims would force the Court to shrink the sphere of a church's freedom to decide its internal affairs, and, correspondingly, to entangle the Court in answering religious questions. Therefore the district court's dismissal was constitutionally required.

A. Deciding Plaintiffs' defamation claims would impermissibly require courts to make religious judgments and impede internal religious decisions.

Defamation is the "(1) publication, (2) of a defamatory statement, (3) which was false and (4) malicious, (5) made of and concerning the plaintiff, (6) which caused injury." *Bierman v. Weier*, 826

N.W.2d 436, 443 (Iowa 2013). Defamation claims necessarily require a court to confirm or deny the truth of the alleged defamatory statement. *See, e.g.*, *Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 221 (Iowa 1996) (recognizing that "truth of the statement is an absolute defense" to a defamation claim); *Behr v. Meredith Corp.*, 414 N.W.2d 339, 344 (Iowa 1987) (granting summary judgment for defendant after determining "substantial truth" as a matter of law).

Here, Plaintiffs focus on two statements they claim are defamatory. Pls.' Br. at 38. The first was a letter stating that the leadership had "learned of a prolonged period of sexual immorality and/or inappropriate conduct between [the pastor] and multiple women congregant members." *Id.* The second statement was read during a Church service, identified the pastor as primarily culpable and his actions as "predatory," and said that the women had also sinned because "God calls it sin when someone who is married willingly has intimate relations with a person who is not their spouse." *Id.* Both statements were made by Church leadership to the Church's membership. Neither named the Plaintiffs.

Interpreting those statements, deciding how a reasonable church member would understand them, and determining their truth or falsity would plainly implicate questions of church doctrine. Moreover, the process of adjudicating the claim would require this Court to second-guess the Church's authority over *the very definition of sin*—an inherently and inescapably religious matter over which "no official, high or petty, can prescribe what shall be orthodox[.]" *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Preventing religious associations from forming and communicating their own beliefs about sin within internal religious communities would fundamentally undermine the integrity and autonomy of those associations.

At bottom, Plaintiffs' defamation claim is that the Church is wrong about its religious beliefs and wrong about how to express those beliefs within the Church itself. As the district court noted, there is "zero evidence" that the Church was "lying" about its beliefs; instead, "[t]he church is accused of simply being wrong." Dist. Ct. Mot. Sum. Judg. Op. on Defamation at 7 (June 3, 2016). That is an accusation that no civil court can constitutionally answer. The

church autonomy doctrine therefore precludes Plaintiffs' defamation claim.

1. Adjudicating Plaintiffs' claim would interfere with internal church governance.

Plaintiffs' defamation claim is foreclosed because it invites a court to punish the church for implementing church discipline. In adjudicating this claim, the Court would thwart the church's own decisions about its membership and beliefs.

Courts have widely recognized constitutional prohibition against adjudicating claims made regarding statements made in "internal ecclesiastical dispute and dialogue." *Bryce*, 289 F.3d at 659. Courts cannot decide such claims without relitigating the church proceedings, thus rendering themselves ecclesiastical courts of last resort and usurping the church's own governance. *See, e.g.*, *Hiles*, 773 N.E.2d at 937 ("The 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."). Hence the Tenth Circuit's ruling in *Bryce*, where it found that a church's internal communications about a church member's religiously improper sexual relationship

was "protected by the First Amendment under . . . the church autonomy doctrine." 289 F.3d at 658 n.2.

Indeed, subjecting the Church to liability here would effectively overrule the well-recognized right of churches to decide membership questions. The church autonomy doctrine clearly protects a church's right to excommunicate members due to sinful behavior, unbelief, or apostasy. *See O'Connor*, 885 P.2d at 371 (recognizing right of church to excommunicate members); *Paul*, 819 F.2d at 879 (recognize church's right to shun members). That right would be hollow if courts allowed disgruntled members to sue churches for articulating the basis of excommunication. Subjecting church authority to such review "would clearly have a 'chilling effect' on churches' ability to discipline members, and deprive churches of their right to construe and administer church laws." *Westbrook*, 231 S.W.3d at 400, 393 (citations omitted) (holding that the First Amendment barred a defamation claim where pastor published letter calling for shunning a former church member for engaging in a "biblically inappropriate" relationship). The inevitable effect of such a chill would be to prevent churches from making the governance

decisions that they think best—whether by retaining members they might otherwise excommunicate, or by communicating less about their governance decisions to their members. This, in turn, would prevent religious organizations from communicating and acting on their shared religious beliefs. In terms of discipline, membership, and belief, "the community's process of self-definition would be shaped in part by the prospects of litigation." *Amos*, 483 U.S. at 343-44 (Brennan, J., concurring).

2. Evaluating the challenged statements requires making religious judgments.

Courts also regularly reject defamation claims arising from internal church communications where adjudicating those claims would require the court to make religious judgments. *See Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1576-77 (1st Cir. 1989) (rejecting minister's defamation claim because "Religious bodies must be free to decide for themselves, free from state interference, matters which pertain to church government, faith and doctrine"); *accord Westbrook*, 231 S.W.3d at 400. There are two reasons why the same result should obtain here.

First, where, as here, the speaker is "the last word and authority of the Church," Pls.' Br. at 47, and he makes allegedly defamatory statements while "instructing the congregation," *id.* at 48, a reasonable audience will presume that his statements express religious truth. *See Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 534 (Minn.), *cert. denied,* 137 S. Ct. 493 (2016) ("Although other statements seem more secular in nature, it would certainly be difficult to differentiate between secular and religious statements, especially when the context in which the statements were made was clearly religious.").

Second, this natural presumption that the statements express religious truth can only be overcome if one understands church doctrine, particularly whether the statement relates to a moral teaching. *Pfeil*, 877 N.W.2d at 538 ("[A] court might be forced to interpret doctrine just to determine whether or not a statement had a religious meaning."); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732, 741 (D.N.J. 1999), *aff'd* 263 F.3d 158 (3d Cir. 2001) ("[T]o ascertain whether the statements were defamatory, this court must ask whether Seymour Klagsbrun was in fact

engaged in bigamy *within the meaning of the Orthodox Jewish faith*.") (emphasis in original).

In this case, a church authority spoke before the congregation as such. The Church's leadership instructed the congregation about "sexual immorality" and what "God calls . . . sin." Pls.' Br. at 38. One cannot discern the meaning of these instructions without evaluating church teaching.

Similarly, if a court cannot determine *what* was said without interpreting church doctrine, it certainly cannot determine the *truth* of that statement without doing the same. Neither judge nor jury can decide whether it is *true* that one committed "adultery"—or *true* that "God calls it a sin"—without first knowing what "adultery" means within the church, what "God calls" a sin, and then drawing religious conclusions. *Compare id.* at 41-42 (defining adultery as an "act of voluntary sexual intercourse between a married person and another who is not a spouse") *with Matthew* 5:28 ("But I say to you that whoever looks at a woman to lust for her has already committed adultery with her in his heart.") (New King James Version). Be-

cause defining "adultery" as it is used in the church requires interpreting religious doctrine, a court cannot adjudicate a defamation claim arising from a church's use of that term.

Remarkably, Plaintiffs think that a court can determine whether such statements are defamatory "without treading on—or wading into—religious doctrine." Pls.' Br. at 41 (quoting *Kliebenstein*, 663 N.W.2d at 407). Not so. Interpreting and verifying internal church communication necessarily implicates religious doctrine, as discussed above. Nor can a civil court gainsay the Church's determination about what God says is sin. *See, e.g.*, *Milivojevich*, 426 U.S. at 698 (rejecting any "inquiry into . . . the substantive criteria by which [churches] are supposedly to decide the ecclesiastical question.").

The lone case Plaintiffs cite for support involved a very different context. In *Kliebenstein*, this Court allowed a defamation claim to proceed past summary judgment because—as the Court repeatedly emphasized—the church officials intentionally mailed to non-church members an allegedly defamatory statement that singled the plaintiff out by name and issued an ultimatum to her. 663

N.W.2d at 405. The Court was clear that had the defendant church published the statement to only its own members, the claim would have failed. *Id.* at 406-07 ("Plainly Iowa's courts could not entertain this case if it involved solely the discipline or excommunication of Jane Kliebenstein") (citation omitted). In the context of that case, the church's intentional choice to mail the ultimatum-laden statement naming the plaintiff to non-members who had no disciplinary role within the church was dispositive because it appeared, at that stage in the case, to negate both bases for the church autonomy doctrine. First, it cast serious doubt on whether the statements truly concerned internal church affairs, but rather were fraudulent attempts to "abus[e] the ecclesiastical abstention doctrine." *Pfeil*, 877 N.W.2d at 540 (citing *Kliebenstein* in this light). Second, it showed that the church *intended* the statements to be interpreted by a secular, non-church audience. *Kliebenstein*, 663 N.W.2d at 407-08.

But in this case, as Plaintiffs repeatedly admit, the Elders made the allegedly defamatory statements to the congregation alone. *See* Pls.' Br. at 43; *id* at 48 ; *see also id.* at 41 (implying that the statements were made in a "religious context"). The communications

here were meant to go from the Church leadership to the Church congregation, did not identify the women involved by name, instructed the congregation not to identify the women and to be loving and prudent in their speech, and were meant to express the Church's beliefs on the inescapably religious concepts of sin and forgiveness to a religious audience. Thus, by its express terms, the narrow exception identified in *Kliebenstein* does not apply.[3]

For these reasons, the church autonomy doctrine bars Plaintiffs' defamation claims.

B. Resolving Plaintiffs' negligence claims would impermissibly require this Court to punish a church's internal communications about the faith and decide how a "reasonable church" should answer religious questions.

Plaintiffs' negligence claims are likewise barred by the church autonomy doctrine. As with defamation, it is simply impossible to

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[3] Plaintiffs note that the statements were obtained by local media. But they neither argue nor submit evidence that the *Church* gave the statements to the media. And the church autonomy doctrine would be a thin shield if it could be so easily pierced by a single disgruntled or indiscrete congregant. More importantly, for purposes of *Kliebenstein*'s narrow exception, there is no reason to think that the Church had a fraudulent purpose or that it intended to communicate with any secular audience.

adjudicate what a "reasonable church" would have done, Pls.' Br. at 15, without impermissibly punishing a church for its internal governance and communications. Likewise, it is impossible to adjudicate the negligence claim without entangling the court in religious questions, namely determining how a "reasonable church" should talk about sin and forgiveness.

A negligence claim asserts that the defendant breached a duty of care that it owed to the plaintiff. *Lewis v. State*, 256 N.W.2d 181, 188 (Iowa 1977) (citing Restatement (Second) of Torts §§ 281, 286). According to Plaintiffs, the Church had a duty to conduct itself like a "reasonable church." Pls.' Br. at 15. Plaintiffs assert that the Church "breached its duty" by "willfully disregarding the advice of professional counselors and denouncing established and accepted mental health treatment concepts after it learned of the abuse," and by "ignoring its duty to the Bandstras by blaming them." *Id.* at 13. These allegations significantly implicate the church autonomy doctrine.

As an initial matter, Plaintiffs contradict themselves when they claim that the Church has "every right to believe and to practice as

they see fit" but that those beliefs and practices can subject the Church to punishment or "consequences." *Id.* at 15. A "right" to exercise religion and then face government imposed punishment or "consequences" for exercising religion is no right at all.

Plaintiffs are of course free to believe that the Elders did an insufficient job of trying to heal the Church, but such determinations of sin, forgiveness, church discipline, and church governance are precisely what the church autonomy doctrine protects from the interference of government. The First Amendment leaves churches free to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff,* 344 U.S. at 116.

The church autonomy doctrine likewise forecloses courts from deciding the fundamentally religious questions at the heart of Plaintiffs' claims. Courts have refused to define what constitutes a "reasonable church" (or minister) because doing so inevitably raises religious questions. *See, e.g.*, *Franco v. The Church of Jesus Christ of Latter-day Saints*, 21 P.3d 198, 205-06 (Utah 2001) (refusing to establish a "reasonable cleric[ ]" standard due to First Amendment

issues); *Gibson v. Brewer*, 952 S.W.2d 239, 246-47 (Mo. 1997) (en banc) (rejecting negligent retention-of-cleric claim against church); *Pritzlaff v. Archdiocese of Milwaukee*, 533 N.W.2d 780, 790-91 (Wis. 1995) (refusing to determine the standard for a "competent" Catholic priest); *Roppolo v. Moore*, 644 So. 2d 206, 208 (La. Ct. App. 1994) (refusing to "determine the standards of the Episcopal Church and then put the weight of the State behind those standards or to require a different standard"); *Schmidt v. Bishop*, 779 F. Supp. 321, 328 (S.D.N.Y. 1991) (refusing to adopt a standard for a "reasonably prudent Presbyterian pastor"); *Nally v. Grace Cmty. Church*, 763 P.2d 948, 960 (Cal. 1988) (refusing to set duty of care for pastoral counseling).

It is both "impossible" and "unconstitutional" for a court to second-guess whether a church has properly cared for the spiritual needs of its members. *See Franco*, 21 P.3d at 206. And doing so requires "establishing the training, skill, and standards applicable for members of the clergy" and those who supervise them. *Id.* Courts can determine whether a pastor drove the church bus with the ordinary care required of a reasonable bus driver, or whether a church

shoveled its walkway with the ordinary care required of a reasonable property owner. But they cannot determine whether a religious group engages in core religious activities to shepherd the flock in a way that is "reasonable" to others.

Ultimately, Plaintiffs admit that they want this Court to punish the church for holding "counterculture" beliefs that the Plaintiffs think deserve government-imposed "consequences." Pls.' Br. at 15. But safeguarding unpopular or minority beliefs is the First Amendment's *raison d'être*. *See Amana Soc'y*, 109 N.W. at 899 (the Religion Clauses protect beliefs that are "obnoxious to sound public policy" or contrary to "prevailing American ideals"). And for this reason "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Thomas*, 450 U.S. at 714.

When Plaintiffs ask this Court to punish the Church for not giving voice to those who those who disagree with its religious views, they are asking the judiciary to interfere in the church's internal governance and communications and to determine that the Elders should have expressed different religious views. But, again, that is

precisely what the First Amendment protects—the right to have one's own views and to avoid compulsion to express others. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 715 (1977) ("The First Amendment protects the right of individuals to hold a point of view different from the majority and to refuse to foster . . . an idea they find morally objectionable."); *cf. Hosanna-Tabor*, 565 U.S. at 188 ("By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments."). Accordingly, adjudicating Plaintiffs' negligence claim would violate the church autonomy doctrine by punishing constitutionally protected internal church communications and governance, and by forcing a secular authority to determine how a "reasonable church" should talk about matters of sin and forgiveness.

* * *

The church autonomy doctrine both protects internal church decisions and forecloses judicial inquiry into religious questions. Plaintiffs' claims breach both boundaries and must be dismissed.

CONCLUSION

For the reasons above, the judgment of the Iowa District Court for Marion County should be *affirmed*.

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Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1)–(2) and 6.906(3) because this brief contains 6,585 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Matthew C. McDermott — June 1, 2017

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I, Matthew C. McDermott, e-filed this brief on June 1, 2017, with the Clerk of Court of the Iowa Supreme Court using the Iowa Electronic Document Management System, with copies to the following:

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