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 a Writ of Certiorari to the Circuit Court of the City of Fredericksburg, Virginia

BRIEF FOR *AMICI CURIAE* AMERICAN ASSOCIATION OF CHRISTIAN SCHOOLS AND ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici curiae are the American Association of Christian Schools and the Association of Christian Schools International.[1] *Amici* represent hundreds of primary and secondary Christian schools that operate throughout the

[1] Pursuant to this Court's Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici* and their counsel made such a monetary contribution. Counsel of record for both parties received timely notice of *amici*'s intent to file this brief, and both parties have consented to its filing. See this Court's Rule 37.2(a).

nation, either directly or through state-level organizations. These schools are private, but they interact with local, state, and federal government agencies or officials on issues ranging from accreditation and certification to employment and taxes. Each such interaction reinforces the importance of the guarantee, embodied in both Religion Clauses of the First Amendment, "that civil courts defer" to religious bodies for "the resolution of issues of religious doctrine." *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979). *Amici* urge review because the decision below undermines that guarantee, and thereby the religious autonomy of American religious schools.

The **American Association of Christian Schools** (AACS) is a leading association of Christian schools. AACS's general purpose is to establish, protect, and promote Christian schools and education in America. AACS achieves this purpose through a federation of locally controlled state associations that join with AACS to provide services to member schools. These services include accreditation, certification, and materials for achievement testing. Based in Tennessee, and founded almost fifty years ago, AACS serves more than 100,000 students and teachers in more than 750 member schools nationwide.

The **Association of Christian Schools International** (ACSI) is the world's largest Protestant educational organization. ACSI was founded in 1978 when several regional U.S. school associations united to advance excellence in Christian education by strengthening Christian schools and equipping Christian educators worldwide to prepare students academically and inspire them to live as devoted followers of Jesus Christ. ACSI advances excellence in Christian schools by enhancing Christian educators' professional and personal development and by providing vital support functions for Christian schools.

ACSI is headquartered in Colorado Springs, Colorado,

and it supports eighteen global member offices around the world. Its members include early education programs and schools, K-12 schools, international schools, higher education schools, and individuals. ACSI offers many services to its members, including teacher and administrator certification, school accreditation, legal and legislative updates, curriculum, and textbook publishing. ACSI supports over 5,000 member schools throughout the United States and around the world, which collectively serve over 1.2 million students. Through additional training programs, materials, and expertise provided to other educational groups worldwide, ACSI's overall influence and positive impact reaches over 26,000 schools operating in over 100 countries and together serving 5.5 million people.

Consistent with the First Amendment's guarantee of religious freedom, both *amici* advocate for the right of religious educational institutions to operate free of government intrusion into matters of religious doctrine or self-governance. Both *amici* thus argue that courts should defer to a religious institution's view of the religious nature of a job position to minimize improper government incursion into matters of religious self-determination and to avoid religious discrimination.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below turns on the premise that a government official and a state court can authoritatively determine the true meaning of the Presbyterian Church in America's requirements to qualify as a minister. Any *other* religious requirement from any *other* religious tradition would presumably be equally subject to official scrutiny. *Amici*—which represent thousands of Christian schools—have a decided interest in ensuring that the "true" meaning of a religious text, requirement, status, doctrine, governing document, or anything else remains a

question for religious authorities and believers. This basic principle is so foundational that its utter disregard below warrants relief in this Court. Summary reversal would arrest the proliferation of such grave improprieties; denial of the petition would encourage them.

The Religion Clauses and this Court's decisions interpreting them show why the proceedings below are not just wrong, but startlingly so. "[I]t [i]s wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions." *Presbyterian Church in U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445-446 (1969). "[T]he authority to select and control who will minister to the faithful—a matter 'strictly ecclesiastical'—is the church's alone." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 195 (2012) (internal citation omitted).

For a governmental authority to intrude into "strictly ecclesiastical" terrain by mandating the use of generally applicable secular employment or antidiscrimination law for ministers crosses the First Amendment's boundary line, as this Court has held. But surely it is worse for government officials to directly interpret and apply *religious* teachings to "correct" a church's supposed misunderstanding of who its own ministers are.

These constitutional principles extend to religious schools (many of which operate under a church's governance) as well as to churches themselves. The decision below threatens the principles' vitality, and thus the independence of Christian and other religious schools from the government's meddling.

To take but one example, *amici* offer accreditation to Christian schools. Such accreditation requires individual schools to affirm certain doctrinal tenets. Could a state university deny admission to a graduate of an accredited

school based on a university administrator's *own* determination that the school's religious doctrines do not *actually* align with the statement of faith that *amici*'s respective accreditation standards require? One would regard the answer as self-evident. But so would one have regarded as preposterous what happened here—a tax assessor poring over the Presbyterian Church in America's "Book of Church Order" only to emerge after study with the conclusion that the church misunderstood its own rules when identifying its own ministers.

If the authority to second-guess *a church* is permissible here, however, then equally worrying potential instances of comparable abuse will abound. To be clear, *amici* do not assert that anyone working for the City of Fredericksburg acted maliciously or out of hostility to religion. To the contrary, there is no reason to suspect anything more than public servants' well-intentioned effort to do their job. But threats to religious liberty or to the governmental obligation to play no role in religious decisionmaking are just as real (and perhaps more dangerous over the long-term) despite their lack of animus.

This Court's review will send a strong and timely signal that there is no escape hatch either from the First Amendment or from this Court's own recent decisions vindicating religious autonomy.

ARGUMENT

Amici submit this brief to underscore the danger that the decision below poses to their own and to their members' interests. The demanded tax revenue at issue here may seem small, but the underlying principle is immense. The Constitution forbids any government—local, state, federal, or otherwise—from imposing its own interpretation of sound "religious doctrine and practice." *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. at 449. *Amici*, and the multitude of schools they represent,

depend on judicial protection against encroachment by government—even well-intentioned government—into what ultimately are religious matters. But what petitioners got here was judicial cooperation with such encroachment.

IF LOCAL GOVERNMENTS MAY CORRECT CHURCHES ON RELIGIOUS DOCTRINE, RELIGIOUS SCHOOLS ARE NOT FAR BEHIND

The Constitution protects a religious entity's "power to decide for [it]sel[f] * * * matters of * * * faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). This principle applies to *schools*, not just *churches*—indeed, the distinction is often ephemeral. "[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020). The First Amendment bars secular interference in the administration of religious schools in part because those schools advance the core religious mission of passing the faith "to the next generation." *Hosanna-Tabor*, 565 U.S. at 192.

A. Government may not second-guess a religious group's compliance with religious doctrine

Religious entities enjoy, as a matter of Constitutional law, "independence from secular control or manipulation * * * [and] from state interference[in] matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116 (1952) (citing *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871)). The Framers had good reason for this division, for in any such interference "the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Mary*

Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. at 449; see also, *e.g.*, *Serbian E. Orthodox Diocese for U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 713 (1976) ("[R]eligious controversies are not the proper subject of civil court inquiry, and *** a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.").

This principle, of course, is reflected in far earlier sources, with which the Framers were no doubt familiar:

> And when Gallio was the deputy of Achaia, the Jews made insurrection with one accord against Paul, and brought him to the judgment seat, saying, This fellow persuadeth men to worship God contrary to the law. And when Paul was now about to open his mouth, Gallio said unto the Jews, If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you: But if it be a question of words and names, and of your law, look ye to it; *for I will be no judge of such matters*.

The Holy Bible, Acts 18:12-15 (King James Version) (emphasis added).

What a church's religious rules mean, whether they have been followed, and whether exceptions are permissible are all ecclesiastical questions. And when those rules relate to whether someone is a religiously qualified minister, secular authorities should be all the more cautious. A "religious organization's right to choose its ministers"—or a Christian school's right to choose its own teachers and staff—"'would be hollow . . . if secular courts could second-guess' the group's sincere application of its religious tenets." *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2063 (quoting *Hosanna-Tabor*, 565 U.S. at 197 (Thomas, J., concurring)). Direct and obvious violations of this principle, such as the circumstances that the petition discusses,

are concerning, but so too is the prospect of government wielding doctrinal fidelity as a sword to compel compliance with otherwise objectionable administrative requirements.

Of course, no one is arguing that the authorities may never repudiate someone's assertion of ministerial status. One of literature's great detectives, himself a priest, made a revelation of that kind in his very first appearance. See G.K. Chesterton, *The Blue Cross*, *in* The Innocence of Father Brown 1 (1911). In that case—spoiler alert—Father Brown is talking with a (seemingly) fellow priest who was actually Flambeau, a world-famous thief. The impostor had dressed as a priest hoping to gain Father Brown's trust and then steal a valuable cross temporarily in Father Brown's possession. The reason the theft had failed, Father Brown dramatically tells Flambeau at the end, is that Father Brown long since had realized that, "as a matter of fact, * * * *you weren't a priest*" after all. *Id.* at 31 (emphasis added). Had the story's secular policeman unveiled the fraud—had *he* been the one to declare "you [a]ren't a priest"—praise would have been in order without any intrusion into religious affairs. Revealing that someone cloaked (literally) as a minister is in fact a notorious thief is no different from detecting any other kind of disguise.[2]

The decision below approves the same verbal formulation—announcing "you [a]ren't a priest" (or a "minister,"

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[2] It may be notable that, in Chesterton's story, it was actually a *real* priest who detected the pretender. The French policeman (operating on *British* soil!) had tracked the pair, but almost gave up. For to his ears, "the two priests were talking exactly like priests, piously, with learning and leisure, about the most aerial enigmas of theology. * * * [N]o more innocently clerical conversation could have been heard in any white Italian cloister or black Spanish cathedral." Chesterton, *supra*, at 24. In other words, even when a secular official is solely interested in identifying an objective impostor, caution may still be in order.

following the Presbyterian Church's usage). But Father Brown's use of those words to identify a thief whom *no one* thought was a minister is worlds apart from the power to decree that a fully-informed church has erred in its understanding of religious doctrines when it deemed someone a minister.

B. The decision below threatens the autonomy and viability of Christian schools

Many of the nation's Christian and religious schools, including hundreds that *amici* represent, operate under the direct authority of or in coordination with local churches. To the extent that the decision below threatens these churches' independence, it also threatens the independence of the schools that partner with them. But the decision also represents a more direct threat.

Christian schools, even while private, interact with government across multiple domains. They apply for tax exemptions, withhold federal income tax, and offer their employees tax-free tuition discounts. Indeed, according to the federal Internal Revenue Service, and depending on the school's relationship to the local church, "ministers of the gospel * * * who teach * * * in the parochial schools * * * are in the performance of their duties * * * and they may, therefore, exclude from their gross income" a portion of their compensation as a ministerial housing allowance. Rev. Rul. 62-171, 1962-2 C.B. 39, 41. Litigation involving the housing allowance has turned on whether an admitted non-minister could claim the allowance, *Kirk* v. *Comm'r*, 425 F.2d 492, 495 (D.C. Cir. 1970), or on whether a minister could claim the allowance for a second home, *Comm'r* v. *Driscoll*, 669 F.3d 1309, 1310 (11th Cir. 2012) (per curiam). But as far as *amici* can ascertain, such litigation never has turned on whether *the government's* interpretation of "minister" superseded a religious group's own decisions about who its ministers are.

Subjection to taxation is, of course, extremely important. But tax is far from the only domain in which religious schools interact with the government. They apply for accreditation from organizations like *amici*. They suspend classes during religious holidays. In some jurisdictions, religious schools are even exempt from the licensing and registration requirements that apply to private, nonreligious schools. See, *e.g.*, Ala. Code § 16-1-11; Md. Code Educ. § 2-206(e)(4); Wyo. Stat. §§ 21-2-401, 21-2-406. In Pennsylvania, for instance, secular private schools—but *not* "bona fide religious" schools—must submit to state requirements relating to teaching and administrative staff, courses of study, attendance, advertising, and other matters. 24 Pa. Stat. § 6705; see *id.* §§ 6701-6721 (enumerating requirements from which religious schools are exempt). And in the end, graduates of Christian schools often seek admission to state colleges based on coursework completed at such a school, relying on that coursework to satisfy admissions criteria.

Each of these interactions—and countless others—reinforce the wisdom of the Framers' decision to place the interpretation of religious doctrines beyond the civil government's reach. If it were otherwise, *i.e.*, if government actually enjoyed the power that respondent purported to exercise in this case, then Christian schools' autonomy and potentially even their existence would be at risk.

Autonomy is threatened if governments can, as the price of deeming a school sufficiently "religious," condition benefits on a school's acquiescence in policies that the political branches deem worthwhile. One fears a state office proclaiming that "No true Episcopalian School would insist upon abstinence-only sex-education," or that "No true Catholic School would teach that the Earth is fewer than 10,000 years old." The government cannot, like some studious cleric issuing an *imprimatur*, pass judgment on the doctrinal justification that a religious organization relies

on. Thus the total irrelevance of sentiments along the lines that "it would be great if we followed the teachings of Pope Francis." Brief for City Respondents 8, *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868 (2021) (No. 19-123).

Threats to religious autonomy—or to the government's own studious neutrality when it comes to defining religious teachings—need not include any malice on the government's part. *Amici* suggest none here. By all accounts, the City tax assessors in this case were performing their duties as they understood them according to their best abilities. *Amici* readily and sincerely credit the City's public servants with the most honorable of intentions. But invasions of the First Amendment are no less invasive because they were motivated by pure hearts. And precedents flow even more readily from seemingly benign actions—which later become tools for those less benign. Unfortunately, "religious hostility on the part of the State itself" is not unknown. *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 1724 (2018).

Regardless, if the government *can* make its own determination of whether a school is sufficiently religious, then many units of government across many domains will feel *compelled* to exercise that authority as part of their everyday function. Taxing authorities, in particular, may conclude that *not* scrutinizing the truth of a church's choice of minister amounts to giving an impermissible free pass to those who incorrectly claim an exemption, thus burdening other taxpayers.

Additional examples are readily identifiable. Consider, for instance, the admissions officers at public colleges. These officers typically must ensure that each admitted student graduated from an accredited high school. *Amici*, in turn, accredit hundreds of Christian high schools. In each instance, accreditation requires the

school and its personnel to affirm a set of religious beliefs.[3] Can an admissions officer reject an otherwise competitive student based on the officer's *own* judgment that the student's Christian high school "by its own definitions" does not adhere to the accrediting organization's statement of faith? See Pet. 8; Pet. App. 71a.

Surely not. But if such an officer *can* make that inquiry—as the decision below suggests is permissible—then many well-intentioned officers throughout the country may see no choice but to do so. Students from swaths of schools could be targeted for disfavor based on the very logic that respondent employed below.

Likewise consider statewide attendance policies that require Christian schools to adhere to the public-school calendar except for religious holidays. See, *e.g.*, Alaska Stat. § 14.45.110(b); N.C. Gen. Stat. § 115C-548. Do state officers have authority to determine whether a religious school's designated holidays are in conformance with the holidays that appear on the Church calendar? Again, one would never previously have imagined so. But if that power *does* exist, then even good-hearted public servants will attempt to exercise it; after all, children *should* be in school absent a proper religious reason not to be.

The petition deserves this Court's attention not only because the principle at stake is so vital to the operation of the many schools that *amici* represent—and to the hundreds of thousands of students who attend them—but also because the state's overreach is so blatant that it cannot but inspire other units of government to test the limits of

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[3] See AACS, *Standards for Accreditation* (2020), https://www.aacs.org/wp-content/uploads/2020/02/2020-Accd-Manual-4.-Standards-for-Accd.pdf; ACSI, *REACH* (2019), https://www.acsi.org/docs/default-source/website-publishing/school-services/accreditation/application-and-manuals/acsi-standards-checklist-final-18dd2a5f7d0114d1d8b98c2606acbe51f.pdf?sfvrsn=9fc3e8f5_19.

their own power. No court viewed it as necessary even to issue a written opinion in this case, suggesting something seriously awry—that this course of conduct will be deemed as not only permissible, but perhaps even obligatory in at least Virginia. After all, taxing authorities are duty-bound to pursue tax revenue using lawful means, and *this* tool now appears to be regarded there as *de rigueur*.

* * *

Ultimately, this case turns on a fairly simple principle: "[C]ourts should refrain from trolling through a person's or institution's religious beliefs." *Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000) (plurality op.). The trial court joined respondent's tax officials in literally doing so in this case. Those officials identified the denomination to which the New Life in Christ Church belongs; obtained that denomination's general rule book for the order of churches within the denomination; studied that book to identify what they regarded as the applicable rules; extracted what they deemed the accurate (and invariable) interpretation of those rules; and purported to apply their interpretation of those rules to the circumstance of the particular ministry at issue.

Christian schools—and many others—have much to fear if officials, high or low, may so inject themselves into religious self-governance and self-determination.

CONCLUSION

The Court should summarily reverse the decision below, or at minimum, grant the petition for a writ of certiorari and order full merits briefing.

Respectfully submitted.

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