Supreme Court of the State of New York
Appellate Division: First Judicial Department

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MARCUS ANDREWS,
Appellant-Defendant,

- against -

Appellate Division
Case No.: 2024-04456

LAMIA FUNTI,
Respondent-Plaintiff,

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COMBINED MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND PARTICIPATE IN ORAL ARGUMENT BY BISHOP ANBA DAVID, FATHER GREGORY SAROUFEEM, ST. MARY & ST. MARK COPTIC ORTHODOX CHURCH, AND THE COPTIC ORTHODOX DIOCESE OF NEW YORK AND NEW ENGLAND

PLEASE TAKE NOTICE, that pursuant to 22 NYCCRR § 1250.4(f) and upon the annexed affirmation of Barry Black, dated September 12, 2025, and the proposed brief of Amici Curiae attached hereto as Exhibit A, the undersigned will move this Court at 27 Madison Avenue, New York, New York, on Monday September 29, 2025, or as soon as is practicable, for an order granting leave for Bishop Anba David, Father Gregory Saroufeem, St. Mary & St. Mark Coptic Orthodox Church, and the Coptic Orthodox Diocese of New York and New England

to file with this Court an Amici Curiae brief in support of reversal and participate in oral argument.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering affidavits and cross-motions, if any, are to be served at least two (2) days prior to the return date of this motion.

Dated: September 12, 2025

Respectfully submitted,
/s/Barry Black

BARRY BLACK
NELSON MADDEN BLACK LLP
475 PARK AVENUE SOUTH, SUITE 2800
NEW YORK, NY 10016
(212) 382-4300

JOHN J. BURSCH*
TYLER W. SHANNON*
ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001
jbursch@ADFlegal.org
tshannon@ADFlegal.org

MATHEW W. HOFFMANN*
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
mhoffmann@ADFlegal.org

RORY T. GRAY*
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@ADFlegal.org

To:
Ankit Kapoor, Esq.
Harriet M. Cohen, Esq.
Cohen Stine Kapoor LLP
11 Times Square, 10th Floor
New York, New York 10016

Counsel for Appellant-Defendant

Bonnie E. Rabin, Esq.
Deidre L. Fletcher, Esq.
Rabin Pfeffer and Partners LLP
11 Times Square, 10th Floor
New York, New York 10036

Counsel for Respondent-Plaintiff

Counsel for Proposed Amici Curiae Bishop Anba David, Father Gregory Saroufeem, St. Mary & St. Mark Coptic Orthodox Church, and the Coptic Orthodox Diocese of New York and New England

*Motion for admission *pro hac vice* filed concurrently

AFFIRMATION OF BARRY BLACK IN SUPPORT OF COMBINED MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF REVERSAL AND PARTICIPATE IN ORAL ARGUMENT

Barry Black, an attorney duly admitted to the practice of law in the courts of this state, affirms under the penalties of perjury:

1. I am counsel for proposed Amici Curiae Bishop Anba David, Father Gregory Saroufeem, St. Mary & St. Mark Coptic Orthodox Church, and the Coptic Orthodox Diocese of New York and New England.

2. I submit this affirmation in support of my clients' combined motion for leave to file a brief in support of reversal, annexed hereto as Exhibit A, and participate in oral argument.

3. Under 22 NYCCRR § 1250.4(f), proposed Amici move the Court to grant this motion to file the attached proposed Amici Curiae brief. Additionally, proposed Amici move the Court to expand oral argument time by ten minutes—five minutes per side—and request five minutes of Mr. Andrews's oral argument time. Granting the combined motion would aid the Court's consideration of this appeal and provide Amici the opportunity to address unique constitutional harms inflicted on them by the proceedings below. In the alternative, proposed Amici request to share 5 minutes of Mr. Andrews's argument time. Mr. Andrews has consented to share his time under either scenario. Neither request would prejudice Respondent-Defendant, whose counsel can respond to Amici's presentation at oral argument.

4. Amicus Anba David is Bishop of the Coptic Orthodox Diocese of New York and New England, and the highest ecclesiastical authority in the Diocese. St. Mary

& St. Mark Coptic Orthodox Church is a church within the Diocese. Father Gregory is a priest at St. Mary & St. Mark Coptic Orthodox Church and Bishop David's subordinate.

5. This case concerns whether a July 2017 blessing conducted by Bishop David in the St. Mary & St. Mark Coptic Orthodox Church constituted a marriage solemnized under the "use[s]" and "practice[s]" of the Coptic Orthodox Church. N.Y. Dom. Rel. Law § 12. As religious officials and institutions within the Church, Amici hold several important First Amendment rights regarding marriage solemnization. *First*, Amici possess the exclusive right to determine Church doctrine surrounding marriage and the rules governing solemnization. *See Watson v. Jones*, 80 U.S. 679, 727 (1871). *Second*, when disputes arise regarding whether a marriage has been solemnized under the Church's uses and practices, the Constitution grants Amici exclusive power to resolve those disputes free from state interference and requires civil courts to accept a resolution by the Church's authoritative leader. *See Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 714, 722 (1976). *Third*, Amici retain the exclusive right to determine the religious meaning of acts and ceremonies conducted within the Church. *See United States v. Lee*, 455 U.S. 252, 257 (1982); *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of New York*, 55 N.Y.2d 512, 518 (1982). *Fourth*, the First Amendment grants Amici the right to be free from trial in civil court on the truth or falsity of their pronouncements regarding marriage solemnization. *See United States v. Ballard*, 322 U.S. 78, 87 (1944).

6. The proceedings below violated all four rights. *First*, the trial court second-guessed Amici's interpretation of religious doctrine and views on the importance of certain practices necessary to solemnization under Church doctrine. Worse, the court adopted a definition of Church solemnization that is at odds with the Church's own definition. *Second*, the court failed to respect Amici's authoritative resolution of whether a marriage was solemnized under Church doctrine and practice—a "distinctly religious" question reserved to the Church. *Madireddy v. Madireddy*, 886 N.Y.S.2d 495, 496 (2d Dep't 2009). *Third*, the court commandeered Amici's right to determine the religious meaning of acts and ceremonies conducted within the Church, declaring that the July 2017 blessing had a different religious meaning than what the Church itself ascribed to it. *Finally*, the trial court embarked on an extensive campaign to look behind Bishop David's ecclesiastical determination and probe Church officials on matters of religious doctrine and practice. In doing so, it undermined the Church's hierarchy and subjected Amici to a trial on the truth or falsity of their pronouncements regarding marriage solemnization, "with a civil factfinder sitting in ultimate judgment of what the ... church really believes." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 206 (2012) (Alito J., concurring).

7. Amici have unique interests in this appeal. Bishop David conducted the July 2017 blessing at issue, and Father Gregory was present. What's more, the trial court rejected Bishop David's voluntarily supplied affidavit ruling that he did not marry the parties in the religious ceremony, enforced a subpoena compelling his

testimony, and then subjected Bishop David to an extensive inquiry on matters of Church doctrine, undermined his ecclesiastical authority, and disregarded his religious judgments. The trial court likewise haled Father Gregory into court, subjected him to extensive inquiry on Church doctrine, and pitted him against his ecclesiastical superior, Bishop David. Additionally, the blessing occurred at St. Mary & St. Mark Coptic Orthodox Church, which is located within the Coptic Orthodox Diocese of New York and New England's jurisdiction. The issue on appeal also involves disputes over the practices of the Church and violations of its First Amendment right to church autonomy and association.

8. Amici challenged the validity of the subpoenas before the trial court, and then before this Court when the trial court enforced them.

9. This Court held that Amici's appeal was moot but recognized that "the use made of this evidence" provided by Amici under compulsion "in the matrimonial action remains subject to judicial review." *See Funti v. Andrews*, 232 N.Y.S.3d 158, 159 (1st Dep't 2025). The current appeal is a direct appeal of the matrimonial action. Consistent with this Court's prior ruling, Amici merely seek leave to present their arguments as to how the trial court's use of this evidence violated Amici's First Amendment rights.

10. Amici's proposed brief does not duplicate the parties' arguments. Instead, Amici addresses the independent constitutional harms inflicted on Amici by the trial court's conduct and resolution of this case.

11. This Court routinely grants motions for leave to file an amicus brief. *E.g.*, *Matter of R.*, No. 2024-06363, 2025 WL 2076702, at *6 (1st Dep't July 24, 2025); *Police Benevolent Ass'n of the City of N.Y., Inc. v. City of New York*, 185 N.Y.S.3d 679 (1st Dep't 2023); *Am. Empire Surplus Lines Ins. v. L&G Masonry Corp.*, 143 N.Y.S.3d 201, 202 (1st Dep't 2021). It should do likewise here.

12. Allowing Amici to participate in oral argument is also appropriate in these circumstances. The proceedings below exacted unique constitutional harms on Amici's First Amendment rights—harms that are separate and distinct from any claims raised by Appellant-Defendant. And because the trial court's ultimate judgment rested on repeated disregard of Amici's constitutionally protected religious judgments, Amici's participation will aid the Court in resolving the underlying appeal's merits.

13. My co-counsel, John J. Bursch of Alliance Defending Freedom (ADF), will argue on behalf of Amici, should the Court grant this motion and grant Mr. Bursch's motion to appear *pro hac vice*. ADF is a not-for-profit, public interest legal organization protecting religious freedom, free speech, the sanctity of life, parental rights, and marriage and family. ADF defends the First Amendment freedoms of churches, other religious organizations, and individuals in courts across the country, including before the United States Supreme Court. *See, e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017). Mr. Bursch is one of the country's leading advocates on religious freedom law. He has argued 13 United States Supreme Court cases and 36 state supreme court cases. Just this

year, he successfully argued *Medina v. Planned Parenthood South Atlantic*, 145 S. Ct. 2219 (2025) before the U.S. Supreme Court. Mr. Bursch's expertise on the First Amendment's fundamental rights will help the Court reach the right decision in this case. Due to previous commitments, Mr. Bursch is unavailable for oral argument September 30, October 6–8, October 13–14, October 17, and October 20–23.

14. Amici have sought the consent of all parties to this action in connection with the relief sought in this motion. Counsel for Appellant-Defendant do not oppose this motion. Counsel for Respondent-Plaintiff declined to consent to this motion without explanation.

For these reasons, proposed Amici respectfully request that the Court grant this motion to file the attached proposed Amici Curiae brief and accept it in the format and the time submitted. Proposed Amici also respectfully request that the Court grant this motion to participate in oral argument, enlarge each party's oral argument time by 5 minutes and grant Amici five minutes of Mr. Andrews's time. In the alternative, Amici request that this Court grant them five minutes of Mr. Andrews's argument time. Amici further request that this Court schedule argument in the October Term for a date other than September 30, October 6–8, October 13–14, October 17, and October 20–23.

Dated: September 12, 2025

Respectfully submitted,

/s/ Barry Black

BARRY BLACK
NELSON MADDEN BLACK LLP
475 PARK AVENUE SOUTH, SUITE 2800
NEW YORK, NY 10016
(212) 382-4300

Counsel for Proposed Amici Curiae Bishop Anba David, Father Gregory Saroufeem, St. Mary & St. Mark Coptic Orthodox Church, and the Coptic Orthodox Diocese of New York and New England

EXHIBIT A

TO BE ARGUED BY:
JOHN J. BURSCH
TIME REQUESTED: 5 MINUTES

Supreme Court of the State of New York
Appellate Division: First Department

LAMIA FUNTI,

Plaintiff-Respondent,

-against-

MARCUS ANDREWS,

Defendant-Appellant.

Appellate Division Docket No. 2024-04456

BRIEF OF AMICI CURIAE BISHOP ANBA DAVID, FATHER GREGORY SAROUFEEM, ST. MARY & ST. MARK COPTIC ORTHODOX CHURCH, AND THE COPTIC ORTHODOX DIOCESE OF NEW YORK AND NEW ENGLAND IN SUPPORT OF REVERSAL

NELSON MADDEN BLACK LLP
Attorneys for Amici Curiae
475 Park Avenue South, Suite 2800
New York, New York 10016
(212) 383-4300
bblack@nelsonmaddenblack.com

JOHN J. BURSCH
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
WASHINGTON, DC 20001
(480) 444-0020

Supreme Court, New York County, Index No. 365586/2021

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Amici Curiae Bishop Anba David ("Bishop" or "Bishop David"), Father Gregory Saroufeem ("Father Gregory"), St. Mary & St. Mark Coptic Orthodox Church ("Local Church"), and the Coptic Orthodox Diocese of New York and New England ("Diocese") (collectively, "Church"), by their attorneys, ALLIANCE DEFENDING FREEDOM and NELSON MADDEN BLACK LLP, submit this Amici Curiae Brief in Support of Reversal.

INTERESTS OF AMICI CURIAE

The Religion Clauses of the First Amendment to the United States Constitution guard the "boundary between two separate polities, the secular and the religious, and [ensure] the prerogatives of each in its own sphere." *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013); *accord Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 256–59 (2025) (Thomas, J., concurring). To preserve religious autonomy, the Clauses reserve to religious bodies alone—like the Coptic Orthodox Church—the exclusive right to determine and resolve controversies surrounding religious doctrine, belief, practice, and governance. And they "prohibit[ ] civil courts from resolving [secular] disputes on the basis of religious doctrine and practice" and require them to "defer to the resolution of issues of religious doctrine or polity by the highest [authority] of a hierarchical church organization." *Jones v. Wolf*, 443 U.S. 595, 602 (1979).

Amicus Anba David is Bishop of the Coptic Orthodox Diocese of New York and New England, and the highest ecclesiastical authority in the Diocese. In this appeal, the sole issue is whether Bishop David officiated a Coptic Orthodox wedding

between Respondent-Plaintiff Funti and Appellant-Defendant Andrews at St. Mary & St. Mark Coptic Orthodox Church, a New York City church within the Bishop's jurisdiction. Bishop David answered that religious question, filing an affidavit in the trial court that said he *blessed* Funti and Andrews but did not—and could not—marry them under the uses and practices of the Coptic Orthodox Church. That should have ended the matter.

Instead, the trial court (1) refused to credit the Bishop's answer; (2) allowed the parties to subpoena Bishop David, Father Gregory (the priest of the Local Church), the Diocese, and the Local Church; (3) subjected Coptic clergy to three days of interrogation into church doctrine, law, and practice; (4) pitted Father Gregory against his superior, Bishop David; (5) allowed "expert" testimony that contradicted the Bishop's religious ruling; (6) undertook an extensive analysis of whether laypeople thought a religious solemnization occurred; and (7) ruled that Bishop David officiated a wedding—contrary to his testimony. Those actions run roughshod over the Church's authoritative religious judgments. And the trial court's missteps conflict directly with two decisions of the Second Department, which hold that New York courts lack jurisdiction and competency to determine whether a religious marriage has occurred. *Bernstein v. Benchemoun*, 188 N.Y.S.3d 669, 669–70 (2d Dep't 2023); *Madireddy v. Madireddy*, 886 N.Y.S.2d 495, 496 (2d Dep't 2009).

To protect fundamental First Amendment freedoms, this Court should reverse and hold that Bishop David's authoritative statement that no religious marriage occurred is binding on the trial court.

BACKGROUND

For centuries, religious societies have solemnized marriages under an extensive body of religious doctrine, ritual, and practice. The Coptic Orthodox Church is no different.

Church doctrine requires a "strict protocol" of pre-solemnization requirements, including a post-engagement waiting period, participation in pre-marriage classes, attestations regarding prior marriages and relationships, and certifying that there are no impediments to a Church marriage. Def.'s Trial Ex. 12, R. at 66–68; June 13, 2023, Tr., R. at 4972.20–4974.2. Religious doctrine also heavily regulates the solemnization ceremony itself. A church solemnization requires specific prayers, declarations, readings, and rituals to occur at the ceremony—matters that take at least "one hour" to complete. June 13, 2023, Tr., R. at 4959.4–4959.15, 4972.20–4974.2, 4974.8–4974.17. This "whole process" is necessary for solemnization to occur under Church doctrine. June 13, 2023, Tr., R. at 4974.21–4975.2.

In July 2017, Bishop David baptized a child and his mother, Ms. Funti, at the Local Church. After the baptisms, the Bishop conducted a "prayer of blessing" to "encourage" Ms. Funti and the child's father, Mr. Andrews, and "make them feel welcome in the church." June 13, 2023, Tr., R. at 4958.15–4958.23, 5039.1–5039.2. Years later, Ms. Funti claimed the prayer of blessing constituted a marriage "solemnized in the manner heretofore used and practiced" by the Church, which, if true, would create a civil marriage under New York law. N.Y. Dom. Rel. Law § 12.

In the proceedings below, Bishop David—the highest ecclesiastical authority in the Diocese, and the officiant of the baptisms and blessing in question—provided a voluntary and authoritative pronouncement in an affidavit that the prayer of blessing was *not* a marriage solemnization under the uses and practices of the Coptic Orthodox Church. Def.'s Trial Ex. 12, R. at 66–68. There is no legal or ecclesiastical authority that can second-guess that pronouncement.

But rather than accept this quintessentially religious determination, the trial court launched its own extensive inquiry into the July 2017 blessing, as well as Church doctrine and practice surrounding solemnization. It subpoenaed Amici to give testimony so the *court* could inquire into the Church's religious doctrines, judgments, deliberations, and practices. The court subjected Bishop David and Father Gregory, over their objection, to extensive questioning in open court on pain of contempt and imprisonment. And it ordered the Diocese and Local Church to disclose any tithes and donations by Ms. Funti or Mr. Andrews.

Appearing in court but preserving his objection to the proceeding, Bishop David corroborated under oath his prior declaration that the July 2017 blessing was not a marriage under Church doctrine and practice. Yet the trial court charged on. It allowed cross-examination of Bishop David and his subordinate, Father Gregory, on Church doctrine and the Bishop's religious ruling. And the court received purported "expert testimony" on "Coptic Orthodox wedding customs, requirements, and rituals." Order, R. at 21–22.

Following these inquisitions, the trial court issued a written order that rejected Bishop David's religious ruling and concluded instead that "there was indeed a religious marriage ceremony" *under Church uses and practices*. *Id.* at 40. In doing so, the court rejected Bishop David's explanation of the religious meaning of the July 2017 ceremony and his explanation of the steps required to solemnize a marriage under existing Church practice. Instead, the court credited the purported "expert" testimony regarding Church practice, *id.* at 21–22, 33, and found proof of a Coptic solemnization in the observations and understanding of lay witnesses and attendees, *id.* at 18, 33–35, 39–40.

ARGUMENT

New York allows a solemnization under the Coptic Orthodox Church's "use[s]" and "practice[s]" to create a civil marriage. N.Y. Dom. Rel. Law § 12. But the First Amendment requires courts to accept a hierarchical church's determination of whether such a solemnization occurred, including a bishop's explanation of what uses and practices are necessary to solemnize a marriage under Church doctrine and whether they were satisfied in a particular case.

The trial court failed to follow this bedrock constitutional command. Instead, it embarked on its own inquiry into Church doctrine surrounding marriage solemnization, subjected church officials to wide-ranging questioning on their religious beliefs and judgments, pitted a priest against his religious superior, and rendered a merits decision that contradicted the Church's authoritative religious judgment. This Court should reverse that flagrant First Amendment violation.

Indeed, this Court's sister court, the Second Department, has twice so ruled in identical contexts. Both in *Bernstein v. Benchemoun*, 188 N.Y.S.3d 669, 669–70 (2d Dep't 2023), and *Madireddy v. Madireddy*, 886 N.Y.S.2d 495, 496 (2d Dep't 2009), the Second Department was similarly confronted with divorce actions where a Supreme Court tried to analyze a religious ceremony and determine whether it solemnized a marriage under that religion's laws and practices. In both cases, the appellate court held this was error and beyond the trial court's jurisdiction under New York and U.S. Supreme Court precedents interpreting the First Amendment's Religion Clauses. This Court should reach the same conclusion here and avoid creating an unnecessary split among Departments.

I. The First Amendment precludes second-guessing a bishop's determination of religious doctrine and practice.

The First Amendment's church-autonomy doctrine commits questions of religious doctrine, belief, practice, and governance exclusively to religious institutions, which are free to decide these questions without "state interference." *Serbian E. Orthodox Diocese for U.S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 714, 722 (1976). Accordingly, "First Amendment concerns … tower over [civil courts] when [they] face a case that is about religion." *Killinger v. Samford Univ.*, 113 F.3d 196, 201 (11th Cir. 1997). The Constitution "prohibits civil courts from resolving [secular] disputes on the basis of religious doctrine and practice." *Jones*, 443 U.S. at 602. And it requires courts to "defer to the resolution of issues of religious doctrine ... by the highest [authority] of a hierarchical church organization." *Id.*

The church-autonomy doctrine specifically precludes courts from determining the "religious meaning" of religious acts and ceremonies. *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977); *accord, e.g.*, *Holy Spirit Ass'n for Unification of World Christianity v. Tax Comm'n of New York*, 55 N.Y.2d 512, 518 (1982) (courts "must accept" a church leader's "characterization" of church "activities"). The power to determine religious meaning is the power to determine religious doctrine and belief—a power the First Amendment denies to civil government. *Milivojevich*, 426 U.S. at 710. Therefore, "[i]t is not within 'the judicial function and judicial competence' ... to determine" whether a private party or the Church "has the proper interpretation of" Church practice, belief, or the religious meaning ascribed thereto. *United States v. Lee*, 455 U.S. 252, 257 (1982) (quoting *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981)). Courts "must accept" a bishop's declaration of religious meaning. *Holy Spirit Ass'n*, 55 N.Y.2d at 518.

II. Whether a marriage was solemnized in accordance with Church uses and practices is a fundamentally religious question within the exclusive purview of Bishop David.

New York recognizes marriages solemnized under the "use[s]" and "practice[s]" of a religious society as valid civil marriages. N.Y. Dom. Rel. Law § 12. Having made that choice, the First Amendment required the trial court to accept Bishop David's explanation of what "use[s]" and "practice[s]" are necessary for solemnization under Church doctrine and whether those "use[s]" and "practice[s]"

were satisfied in a particular case.[1] Both questions require an "examin[ation] [of] the creed and theology of the Church," *Holy Spirit Ass'n*, 55 N.Y.2d at 527, an "interpretation of ecclesiastical doctrine," and a resolution of issues bound up in "religious principle[s]," *Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282, 286 (2007) (quotation omitted).

Start with defining what "use[s]" and "practice[s]" are necessary for religious solemnization. That question involves the determination of religious doctrine, belief, and practice, including what "rites, customs, and practices" the church requires to solemnize a marriage. *Madireddy*, 886 N.Y.S.2d at 496. The same issues arise when a court is asked to determine whether a church's "use[s]" and "practice[s]" were satisfied in a particular case. Answering that question requires the application of religious standards and a determination of the religious meaning of certain acts. Put simply, a civil court cannot *itself* resolve this issue without "interfering in or determining religious disputes." *First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S. of Am.*, 464 N.Y.2d 110, 116 (1984). And "the First Amendment does not allow civil litigation 'to turn on the resolution by civil courts of controversies over religious doctrine and practice.'" *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, No. 23-60494, __ F.4th __, 2025 WL 2602899, at *5 (5th Cir. Sept. 9, 2025) (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969)).

[1] Amici take no position on any other requirements for a religious solemnization (once established) to be recognized as a civil marriage under New York law. *See, e.g.*, N.Y. Dom. Rel. Law § 10 (requiring "consent of parties capable in law of making a contract"); *Devorah H. v. Steven S.*, 49 Misc. 3d 630, 641 (N.Y. Sup. Ct. 2015) (requiring proof of intent to marry).

The trial court did the opposite here. The First Amendment required the trial court to accept Bishop David's declaration in his affidavit that no marriage solemnization occurred under the uses and practices of the Coptic Orthodox Church. Def.'s Trial Ex. 12, R. at 66–68. Bishop David is the highest authority in the Diocese and officiant of the rite in question. When the "highest" authority in a hierarchical church has resolved "questions of discipline, or of faith, or ecclesiastical rule, custom, or law," civil courts "must accept such decisions as final, and as binding on them, in their application to the case before them." *Watson v. Jones*, 80 U.S. 679, 727 (1871); *accord Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952) (incorporating *Watson* into the First Amendment). Full stop. The First Amendment precluded the trial court from resolving the "quintessentially religious" question of whether a religious marriage occurred. *Milivojevich*, 426 U.S. at 720. That decision violated the First Amendment rights of Bishop David and the Coptic Orthodox Church.

III. The trial court's rejection of Bishop David's affidavit created a domino effect of constitutional violations in pre-trial and trial proceedings.

Bishop David provided a voluntary and authoritative pronouncement that no religious wedding occurred. That ended the matter. Courts "must accept" a church leader's "characterization" of church "beliefs and activities." *Holy Spirit Ass'n*, 55 N.Y.2d at 518. They "may not inquire into or classify the content of" the Church's religious practice or "dogma[ ]." *Id.* Nor may they "look behind" the Bishop's

"ecclesiastical determination." *Ming Tung v. China Buddhist Ass'n*, 996 N.Y.S.2d 236, 241 (1st Dep't 2014), *aff'd,* 28 N.Y.S.3d 355 (N.Y. 2016).

The trial court disregarded these clear constitutional commands. It looked behind the Bishop's ecclesiastical determination by subpoenaing him and Father Gregory, probing them on matters of religious doctrine and practice, and even asking about the litigants' private donation history. The court's inquiry violated the First Amendment in five key ways. *See Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion) ("[C]ourts should refrain from trolling through a[n] ... institution's religious beliefs.").

First, as explained, the court violated the First Amendment when it refused to take Bishop David's affidavit at face value and accept his religious ruling that no solemnization occurred under Church use and practice. Accepting Bishop David's authoritative pronouncement would have stopped many subsequent constitutional dominoes from falling.

Second, the court violated the First Amendment by subpoenaing Amici to inquire into the Church's religious doctrines, judgments, deliberations, and practices. Licensing discovery into a church's deliberations and "internal communications relating to church governance or matters of faith or doctrine" seriously undermines church autonomy. *McRaney*, 2025 WL 2602899, at *9. That's why the First Amendment prohibits courts from "inquir[ing] into" such "purely ecclesiastical" matters. *Watson*, 80 U.S. at 733; *accord, e.g.*, *Holy Spirit Ass'n*, 55 N.Y.2d at 527 (courts may not inquire into the creed, theology, and practices of the

church). And it certainly prevents the "detailed review" of the Church's beliefs, policies, practices, and decisions that the subpoenas required. *Milivojevich*, 426 U.S. at 718. The subpoenas issued to Bishop David and Father Gregory were particularly problematic. The First Amendment precludes public "examination" of clergy on religious positions they assert in good faith. *N.L.R.B. v. Cath. Bishop of Chi.*, 440 U.S. 490, 502 & n.10 (1979). Indeed, the "very process of [such] inquir[ies]" imperils the Church's "rights guaranteed by the Religion Clauses." *Id.* at 502.

Third, the court's interrogation of Bishop David and Father Gregory violated the First Amendment. The Religion Clauses contain a clear command: Courts may not "subject to trial" a church leader's religious judgment to determine its "truth or falsity." *United States v. Ballard*, 322 U.S. 78, 87 (1944). When "triers of fact undertake that task, they enter a forbidden domain." *Id.* In subjecting Bishop David and Father Gregory to compelled questioning, the trial court entered that forbidden domain. It created "grave problems for religious autonomy" by "calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the ... church really believes." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 205–06 (2012) (Alito J., concurring). The First Amendment tolerates no such conduct.

And make no mistake, the trial court embarked on this inquisition to determine the "truth or falsity" of Church doctrine surrounding solemnization and Bishop David's religious ruling. Despite Bishop David's religious ruling that no

solemnization occurred under the Church's "use[s]" and "practice[s]," the trial court determined "that there was indeed a religious marriage ceremony." Order, R. at 40. In effect, the court conducted a trial to examine the accuracy of Bishop David's religious ruling—whether it was true or false. *See Milivojevich*, 426 U.S. at 718 (courts may not conduct a "detailed review" of religious judgments, even when there is "conflicting testimony concerning internal church procedures").

Fourth, the trial court's enforcement of the subpoena on Father Gregory—a subordinate of Bishop David—interfered with the Church's ecclesiastical hierarchy. "Since at least the turn of the [last] century, courts have declined to interfere with ecclesiastical hierarchies[ ] [or] church administration." *Rweyemamu v. Cote*, 520 F.3d 198, 204–05 (2d Cir. 2008) (citation omitted). That makes sense. Interfering with church hierarchy strikes at a core aspect of church governance, a matter over which civil courts may not interfere. *See Kedroff*, 344 U.S. at 115–16.

The court's questioning of Father Gregory violated First Amendment principles in at least two ways. First, it undermined the First Amendment's command that courts must accept the religious pronouncements of a hierarchical church's leader; here, Bishop David. *See Milivojevich*, 426 U.S. at 709–10; *Watson*, 80 U.S. at 727. Second, the court subjected Father Gregory to questioning on whether Bishop David properly explained and acted consistently with Church practice regarding solemnization. The First Amendment prevents courts from "delv[ing] into the sensitive question" of whether a church official is acting in accordance with religious practices and principles. *Our Lady of Guadalupe Sch. v.*

Morrissey-Berru, 591 U.S. 732, 761 (2020); *accord, e.g.*, *Storfer v. Storfer*, 16 N.Y.S.3d 549, 550 (1st Dep't. 2015) (courts could not determine whether a parent raised a child in accordance with the Jewish faith because the question required "reference to religious doctrine" and "cannot be decided by neutral principles of law").

Fifth, the trial court violated the First Amendment by ordering the Diocese and Local Church to disclose any tithes and donations by Ms. Funti or Mr. Andrews. Because disclosure creates "[t]he risk of a chilling effect on [free] association," the First Amendment prevents states from making excessive demands for nonprofits' donor information. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618–19 (2021) (quotation omitted). It makes no difference that the Church's forced donor disclosure was not "to the general public" or that Ms. Funti and Mr. Andrews "might not mind … the disclosure." *Id.* at 616. Divulging church members' tithes and offerings to the government "creates an unnecessary risk of chilling" donations from other believers, *id.* (quotation omitted), especially those who do not wish to "let [their] left hand know what [their] right hand is doing." Matthew 6:3 (New King James Version).

Compelled disclosure of donor information is particularly sensitive in the context of churches, where financial giving is often inextricably bound up with religious doctrine and teaching. *Cf. Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 797 (9th Cir. 2025) (Bress, J., concurring in the judgment) (noting tithing is "a matter of core religious

significance"). Tithes and offerings are an act of worship. So the bar against "civil authorities … interposing themselves in matters of church organization and governance is directly violated by … financial … disclosures required of churches that solicit from members and the public." *Church of Scientology Flag Serv. Org. v. City of Clearwater*, 2 F.3d 1514, 1537 (11th Cir. 1993).

Such "official surveillance of church finances and activities" veers "toward establishing religion." *Id.* The State cannot "require churches to forego protected religious and speech activity like … solicitation" and accepting public donations "to avoid … entangle[ment] with civil authorities." *Id.* The trial court violated these First Amendment principles by compelling disclosure without even attempting to identify "a substantial relation between the disclosure [order] and a sufficiently important governmental interest." *Ams. for Prosperity Found.*, 594 U.S. at 607 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)).

IV. The trial court's merits decision exacerbated the First Amendment violations.

The trial court's merits decision deepened its intrusion on Bishop David's authoritative determination of Church custom, practice, and doctrine while pitting Father Gregory against his religious superior. And the court's intrusion on church autonomy cannot be justified by neutral principles of law or means-ends scrutiny.

A. The trial court's determination rested on repeated disregard of Bishop David's religious judgments.

The trial court maintained that it did not examine questions of religious doctrine or disregard Bishop David's religious judgments. Instead, it claimed to only

"evaluate Bishop David's testimony as a fact witness." Order, R. at 36. Not so. The court violated the First Amendment in five ways by second-guessing, undermining, and rejecting Bishop David's religious judgments.

First, the trial court rejected Bishop David's explanation of the religious meaning of the July 2017 ceremony under Church doctrine and practice. Bishop David's testimony was clear: The ceremony he performed was a "prayer of blessing" to "encourage" the couple and "make them feel welcome in the church." June 13, 2023, Tr., R. at 4958.15–4958.23, 5039.1–5039.2. It was not a marriage solemnization under Church doctrine and practice. June 13, 2023, Tr., R. at 5036.4–5036.17.

Yet the trial court squarely rejected this religious ruling and concluded "there was indeed a religious marriage ceremony" under Church uses and practices. Order, R. at 40. In doing so, the court credited its *own* interpretation of events and the understanding of lay attendees. But neither courts nor secular observers have the expertise—or, more importantly, the power—to determine the "religious meaning" of the ceremony Bishop David performed. *Cathedral Acad.*, 434 U.S. at 133. The Constitution leaves this "distinctly religious determination" to the Church and the Church alone. *Madireddy*, 886 N.Y.S.2d at 496; *see, e.g.*, *Bernstein*, 188 N.Y.S.3d at 669–70 (First Amendment precluded second-guessing rabbi's determination that a ceremony was not a solemnized marriage).

The Second Department's *Bernstein* decision is instructive. That case also involved a divorce action filed years after the parties' "Jewish religious ceremony" in Florida at which they "executed a religious marriage contract, known as a ketubah,

but they did not obtain a marriage license from the State of Florida." 188 N.Y.S.3d at 669. "The parties then came to New York, where they executed a second ketubah in the presence of a rabbi." *Id.* Because Florida requires a marriage license for a marriage to be valid, the question was whether the marriage had been solemnized in New York. *Id.* at 670.

The woman argued that executing the second ketubah under a rabbi's supervision was enough to prove the marriage had been solemnized in New York. *Id.* But "the rabbi who supervised the execution of the second ketubah testified that he never solemnized a marriage, and could not have solemnized a marriage." *Id.* That was enough for the Second Department. "A finding that there was a solemnized marriage would require an analysis of religious doctrine, which could offend the First Amendment of the United States Constitution." *Id.* (citing *First Presbyterian Church of Schenectady*, 476 N.Y.S.2d at 86; *Avitzur v. Avitzur*, 459 N.Y.S.2d 572 (N.Y. 1983); *Madireddy* 886 N.Y.S.2d at 495). In such circumstances, "the Supreme Court *could not determine* that there was a cognizable marriage in New York." *Id.* (emphasis added).

Madireddy is of a piece. There, in another action for a divorce, the question was whether the parties "were married in a valid Hindu ceremony in India." 886 N.Y.S.2d at 496. The Second Department held that "[s]uch a determination cannot be made on the basis of neutral principles of law." *Id.* (numerous citations omitted). That was because the marriage's validity could only be "determined by analyzing the various and customary rites, customs, and practices of the Hindu religion of a

particular caste in a particular region. This analysis is entrenched in religious doctrine and cannot be resolved by the application of neutral principles of law." *Id.* As a result, "the First Amendment to the United States Constitution prevents the court from resolving the issue." *Id.* (citations omitted).

The Second Department criticized the Supreme Court for making "a distinctly religious determination," i.e., "which ceremonies are sufficient and necessary for a valid Hindu marriage between members of the Reddy caste of Sudras in the region of Andhra Pradesh, India." *Id.* The appellate court recognized that New York courts are "without jurisdiction to consider this issue because to do so would require the court to review and interpret religious doctrine and resolve the parties' religious dispute, which the court is proscribed from doing under the First Amendment entanglement doctrine." *Id.* (citation omitted).

Ms. Funti apparently disagrees with these Second Department holdings and doubles down on the trial court's constitutional violations. She maintains that Bishop David's "religious ruling" is not an authoritative announcement of the Church at all because it does not follow what is—in her view—Church law. Pl.-Respondent.Br.15–17 & n.5. But courts may not place themselves "in the inappropriate role of deciding whether religious law has been [followed or] violated." *Lightman v. Flaum*, 97 N.Y.2d 128, 137 (2001); *accord Milivojevich*, 426 U.S. at 712–13. This Court should reject Ms. Funti's invitation to approve the trial court's decision to take on that unconstitutional role here. Bishop David's religious ruling that no solemnization occurred under Coptic usages and practices has "binding

effect upon the court." *Church of Holy Trinity v. Melish*, 164 N.Y.S.2d 843, 852 (2d Dep't 1957); *accord, e.g.*, *Jones*, 443 U.S. at 602.

Second, the trial court rejected Bishop David's explanation of the steps required to solemnize a marriage under existing Church "use[s]" and "practices." N.Y. Dom. Rel. Law § 12.[2] As Bishop David explained, Church doctrine requires a "strict protocol" of pre-solemnization requirements, including a post-engagement waiting period, participation in pre-marriage classes, attestations regarding prior marriages and relationships, and certifying that there are no impediments to a Church marriage. Def.'s Trial Ex. 12, R. at 66–68; June 13, 2023, Tr., R. at 4972.20–4974.2. Religious doctrine, according to the Bishop, also requires specific prayers, declarations, readings, and rituals to occur at the solemnization ceremony—matters that take at least "one hour" to complete. June 13, 2023, Tr., R. at 4959.4–4959.15, 4972.20–4974.2, 4974.8–4974.17.

Bishop David explained that this "whole process" is necessary for the solemnization of a marriage to occur under Church doctrine. June 13, 2023, Tr., R. at 4974.21–4975.2. None of that happened here. Bishop David declared that the failure to follow these strict protocols meant no religious marriage was possible under Church doctrine. *Id.* That was his "religious ruling on th[e] matter." *Id.*

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[2] To gain civil recognition, New York requires religious marriages to "be solemnized in the manner *heretofore* used and practiced" in the religious society. N.Y. Dom. Rel. Law § 12 (emphasis added). The "heretofore" requirement places the focus on the church's *preexisting* rules and customs—those used before the ceremony in question. *See Heretofore*, Black's Law Dictionary (12th ed. 2024) (defining term's meaning as "up to now" and "before this time"). That focus on prior practice makes the trial court's disregard of Bishop David's explanation of traditional Church solemnization even more egregious. The trial court appeared to conclude that Bishop David agreed to ignore the practices "heretofore used" and conduct a Church solemnization under new practices. Besides conflicting with Bishop David's express religious judgment, that conclusion is in serious tension with statutory text.

In reaching the opposite conclusion, the trial court necessarily rejected Bishop David's explanation of "the manner heretofore used and practiced" in the Church to solemnize a marriage. N.Y. Dom. Rel. Law § 12. In other words, it concluded that a solemnization occurs under Church practice in a manner different from what the Church itself believes. And it necessarily concluded that Bishop David's explanation of Church practice was false, or, at the very least, that he "misunderstands his own religion." *Ben-Levi v. Brown*, 136 S. Ct. 930, 933 (2016) (Alito, J., dissenting from the denial of certiorari). Put differently, the court second-guessed Bishop David's "interpretation" of religious doctrine and his view on the "importance" of certain practices necessary to solemnization under Church practice. *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 887 (1990). That violates the First Amendment. *See Ballard*, 322 U.S. at 87–88; *Lee*, 455 U.S. at 257.

Third, the trial court agreed with supposed "expert" testimony over Bishop David's explanation of the religious meaning of the burnoose (a ceremonial robe). As part of its improper, "extensive inquiry" into religious doctrine, *Milivojevich*, 426 U.S. at 709, the trial court "received" "expert testimony" on "Coptic Orthodox wedding customs, requirements, and rituals," Order, R. at 21–22. After extensive analysis, the court concluded that, under Coptic Orthodox practice, men "only" wore the burnoose for ordination or marriage. *Id.* And it determined that placing the burnoose on Mr. Andrews indicated that a solemnization occurred under Church practice, *id.* at 33—contradicting Bishop David's testimony that the garment can be used for other reasons, such as a blessing, and that placing the burnoose on Mr.

Andrews did not convey any matrimonial significance under Church practice. *See* June 13, 2023, Tr., R. at 5074.21–5075.3 (explaining he placed the burnoose and ribbons on Mr. Andrews as a "symbolic" way to make the couple "feel welcome").

The trial court's receipt of "expert testimony" on Coptic Orthodox practice and discussion of the religious meaning of the burnoose epitomizes the unconstitutional "extensive inquiry by civil courts into religious" doctrine. *Milivojevich*, 426 U.S. at 709. This was no evaluation of the Bishop's "present recollection of [past] events," Order, R. at 35; it was an evaluation of religious significance and meaning, something secular courts have no role in. *See Milivojevich*, 426 U.S. at 714, 722 (matters of church "usage[] and custom[]" are internal concerns that religious institutions may decide for themselves without "state interference"); *Holy Spirit Ass'n*, 55 N.Y.2d at 521 (courts may not "go behind the declared content of religious beliefs any more than they may examine into their validity").

Worse, the trial court's decision was an elevation of "expert" testimony over the express judgment of Bishop David—the true expert. The First Amendment does not authorize challenging "sincere," Order, R. at 35, religious judgments through expert testimony. *See Ballard*, 322 U.S. at 86 ("[Persons] may not be put to the proof of their religious doctrines or beliefs."); *Lee*, 455 U.S. at 257 (holding that sincere religious beliefs may not be challenged on the ground of whether the beliefs are "the proper interpretation of the [relevant] faith").

Fourth, the trial court violated the First Amendment by pitting Father Gregory against Bishop David and ultimately crediting Father Gregory's initial misapprehension over the Bishop's religious ruling. *See* Order, R. at 15–17, 40. The First Amendment is clear: Courts must respect church hierarchy and accept the religious rulings of the authoritative church figure. *Milivojevich*, 426 U.S. at 708–18. That's because interfering with church hierarchy strikes at a core aspect of church governance, a matter over which civil courts may not interfere. *Our Lady of Guadalupe*, 591 U.S. at 746–47; *Kedroff*, 344 U.S. at 115–16.

The trial court's order flouted these commands. It disregarded church hierarchy by looking behind Bishop David's ecclesiastical rulings to the initial misimpression of his subordinate, Father Gregory. It sowed religious strife by attempting to create a disagreement between Father Gregory and Bishop David. *See* Order, R. at 15–17. And it suggested that Father Gregory's change in understanding of the ceremony's meaning after he learned of Bishop David's ruling discredited the Bishop's testimony. *See* Order, R. at 17, 36–37. That adverse inference is antithetical to the First Amendment, which protects the church hierarchy's ability to supervise and correct subordinate officials on matters of "faith and doctrine" so that the church may ensure that all its officials follow "the church's tenets." *Our Lady of Guadalupe*, 591 U.S. at 747.

Fifth, the trial court violated the First Amendment by using the subjective understanding of lay witnesses to undermine Bishop David's religious ruling that no Coptic Orthodox solmization occurred. Rather than accept the Bishop's ruling,

the court relied on a non-Coptic lay attendee's observation that the ceremony "looked like a wedding" and "he understood" it to be a wedding. Order, R. at 18, 39. The court also relied on evidence that the parties subjectively thought a Coptic Orthodox solemnization occurred. *See* Order, R. at 33–35, 39–40. But if courts may not second-guess an authoritative religious leader's judgments, even where there is "conflicting testimony" from church figures, *Milivojevich*, 426 U.S. at 718, they certainly may not use the subjective perception of lay witnesses to answer the quintessentially religious question of whether a solemnization occurred under Church doctrine and practice.

The trial court's alternative conclusion rests on a misunderstanding of *T.I. v. R.I.*, 216 N.Y.S.3d 436 (Sup. Ct. Kings Co. 2024). The court read *T.I.* to hold that a marriage can be recognized under N.Y. Dom. Rel. Law § 12 based solely on the parties' *subjective belief* that a solemnization occurred, regardless of a religious leader's judgment to the contrary. *See* Order, R. at 12–13, 39–40. *T.I.* held no such thing. There, it was "undisputed" that a "religious solemnization ceremony" occurred under the uses and practices of the relevant religious denomination. *T.I.*, 216 N.Y.3d at 444, 453. The only question before the court was "whether the State of New York continues to recognize a marriage between the parties" after "a change to the status of the religious marriage." *Id.* at 449. *T.I.* merely recognized that § 12 creates a civil marriage upon a solemnization under the uses and practices of a religious society, even if the religious society *subsequently* terminates the religious marriage. *See id.*

But here, the entire dispute is whether religious solemnization occurred in the first place. Critically, *T.I.* differentiated the situation here, recognizing that civil courts cannot answer "a religious doctrine question" about whether a "valid" religious marriage ever occurred in New York. *Id.* at 448–49 (distinguishing *Bernstein*). Only the Church can.

B. The trial court's purported resort to "neutral principles of law" misunderstands bedrock First Amendment doctrine.

None of this is changed by the trial court's purported reliance on "neutral principles of law." True, courts may resolve certain disputes involving religious organizations if the resolution does not require "extensive inquiry by civil courts into religious" doctrine, custom, or practice. *Milivojevich*, 426 U.S. at 709. But a court departs from neutral principles when it delves into a "religious controversy" and rejects the "resolution" of religious questions by the church's "authoritative" leader. *Jones*, 443 U.S. at 604. That's what the trial court did here. *See supra* IV.A.

New York caselaw confirms this point. "[D]etermin[ing] which ceremonies are sufficient and necessary for a valid [religious] marriage" is "a distinctly religious determination" that "cannot be resolved by the application of neutral principles of law." *Madireddy*, 886 N.Y.S.2d at 496; *accord, e.g.*, *Bernstein*, 188 N.Y.S.3d at 670. Because "[t]he validity of the parties' alleged marriage" under Church practice "must be determined by analyzing the [Church's] various ... rites, customs, and practices," *Madireddy*, 886 N.Y.S.2d at 496, the court must defer to the "resolution" of these questions by the Church's "authoritative" leadership, *Jones*, 443 U.S. at 604. Neutral principles of law cannot be applied in a case like this.

C. Strict scrutiny cannot overcome church autonomy.

Finally, strict-scrutiny review cannot excuse the trial court's violation of church autonomy. *Contra* Pl.-Respondent.Br.24. The church-autonomy doctrine provides a categorical rule. *See McRaney*, 2025 WL 2602899, at *9 ("Where the church autonomy doctrine applies, its protection is total."). If a dispute falls within matters of internal church governance, doctrine, and practice, there is no follow-on judicial balancing. "[T]he First Amendment has struck the balance for us." *Hosanna-Tabor*, 565 U.S. at 196. And sensibly so. The doctrine's purpose is to separate "distinct spheres for secular and religious authorities," *Cath. Charities Bureau*, 605 U.S. at 258 (Thomas, J., concurring), and preclude "government intrusion" on a church's exclusive jurisdiction, *Our Lady of Guadalupe*, 591 U.S. at 746. *See Watson*, 80 U.S. at 733 ("civil courts exercise no jurisdiction" over "a matter which concerns theological controversy"). And jurisdictional limits are absolute, no matter the equities.

In any event, the trial court's bevy of constitutional violations can't survive strict scrutiny. Governments have no compelling interest in second-guessing religious judgments. Quite the opposite. The First Amendment enshrines a compelling interest in *avoiding* inquiry into religious judgments. Nor is such an inquiry the least restrictive means of achieving the "broadly formulated interests" Ms. Funti asserts, like a state policy favoring marriage or clear means of marriage verification. *See Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021). For example, New York could require a civil marriage license to receive civil marriage

benefits, like many other states do. *E.g.*, Fla. Stat. § 741.08; *see Hall v. Maal*, 32 So. 3d 682, 684–87 (Fla. Dist. Ct. App. 2010). Indeed, New York already makes civil marriage licenses available. *See* N.Y. Dom. Rel. Law § 13.

CONCLUSION

Because determining whether a marriage occurred under Church uses and practices turns on a series of fundamentally religious questions already decided by Bishop David, this Court should reverse and instruct the trial court to accept the Bishop's religious ruling that he did not solemnize a Coptic marriage.

Dated: September 12, 2025 By: */s/ Barry Black*

MATHEW W. HOFFMANN*
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
mhoffmann@ADFlegal.org

BARRY BLACK
NELSON MADDEN BLACK LLP
475 PARK AVENUE SOUTH, SUITE 2800
NEW YORK, NY 10016
(212) 382-4300

RORY T. GRAY*
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
rgray@ADFlegal.org

JOHN J. BURSCH*
TYLER W. SHANNON*
ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001
jbursch@ADFlegal.org
tshannon@ADFlegal.org

Counsel for Amici Curiae
**Motion for admission pro hac vice filed concurrently*

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