No. 24-530

IN THE

Supreme Court of the United States

BETHESDA UNIVERSITY, ET AL.,
Petitioners,

v.

SEUNGJE CHO, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Three

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BRIEF OF *AMICUS CURIAE* FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONERS

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Dec. 12, 2024

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Foundation for Moral Law ("the Foundation") is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God's moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files *amicus* briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case because the it believes the State of California, through its trial court and appellate court, is exercising control over churches by exercising control over the governing body of a theological institution that trains pastors. The Foundation believes that this is anathema to the First Amendment and an egregious violation of the Founders' original understanding of the separation of Church and State.

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[1] Counsel of record for all parties received notice at least ten days prior to the due date of amicus curiae's intention to file this brief. Pursuant to Rule 37.6, *amicus curiae* certifies that no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae,* its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The fundamental issue at stake in this case is this: Under the First Amendment which enshrines a jurisdictional separation of church and state, may the State control the Church by controlling the institutions that train church pastors?

Bethesda University, in its petition for writ of certiorari, has set forth the basic facts of this case. Simply stated, Bethesda is a Pentecostal university, founded by a South Korean Pentecostal megachurch and with a distinctly Pentecostal background and emphasis. Its Constitution and Bylaws require that the University commit the institution to a Pentecostal Evangelical perspective, with an "Evangelical and charismatic emphasis," and the Bylaws require members of the Board of Directors to espouse an "Evangelical and Charismatic understanding and style of life" and requires them to sign a 12-point Statement of Faith.

Apparently because he believed (erroneously) that the University's accrediting agency, the Transnational Association of Christian Schools (TRACS), required diversity on its Board, the president of Bethesda University forced the election of four non-Pentecostals to the governing board, in violation of the rules that govern the school and the mission statement. Adhering to the mission statement of the University, the Board's majority (referred to as the "Kim Board") removed the four non-Pentecostals from the Board and also terminated the employment of President Cho.

The non-Pentecostals (referred to as the "Cho Board") then sued the University. The trial court

and the appellate court treated the case as a dispute between two conflicting boards and purported to apply "neutral principles of law" to resolve the dispute. The trial court paid little attention to the mission statement of the University, calling it "poorly drafted." On this rationale, the California courts ruled that Bethesda University must retain on its Board of Directors four non-Pentecostal Presbyterians who have not signed the Statement of Faith and who do not hold to the Pentecostal and charismatic mission and worldview of Bethesda University. These members of the Board act as the governing body of the University and determine the University's direction. If this ruling stands, it constitutes nothing less than the takeover of a Pentecostal university by non-Pentecostals.

The Foundation fully endorses Petitioner's arguments concerning "ecclesiastical abstention," "ministerial exception," the lower courts' misuse of "neutral principles of law," and the split in lower court decisions.

But the issue goes deeper than that. Bethesda University has a School of Theology that trains pastors for Pentecostal churches, offering the Doctor of Ministry, the Master of Divinity, the Master of Arts in Biblical Studies, and a Bachelor of Arts in Religion.[2] In this way, Bethesda University's School of Theology trains pastors in how to interpret the Bible, how to think theologically, what to believe doctrinally, and what to preach from the pulpit.

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[2] Theology Programs, https://www.buc.edu/theology (last visited Dec. 11, 2024).

If the State wants to control the Church, the easiest way to do so is to control the pastors. And the easiest way to control pastors is to control the theological schools that train pastors. Throughout history, totalitarian governments have tried to control churches by controlling who serves in the pulpit.

ARGUMENT

I. The First Amendment requires church autonomy from government control.

Case law clearly recognizes a tradition of church autonomy from government control, and courts have also determined that seminaries are church institutions. *See Klouda v. Southwestern Baptist Theological Seminary,* 543 F. Supp. 2d 594 (2008). As church institutions they are entitled to ministerial exemptions from state regulation, because the state may not control the way a church educates and trains its ministers.

As the Fifth Circuit found in *EEOC v. Southwestern Baptist Theological Seminary,* 651 F.2d 277 (1981),

> The Seminary's role is vital to the Southern Baptist Church. No one would argue that excessive intrusion into the process of calling ministers to serve a local church is constitutionally permissible. The Convention's hiring of faculty and other personnel to train ministers for local churches is equally central to the religious mission and entitled to no less protection under the first amendment. *Id.* at 281.

> Clearly, the Seminary is an integral part of a church, essential to the paramount function of training ministers who will continue the faith. It is not intended to foster social or secular programs that may entertain the faithful or evangelize the unbelieving. Its purpose is to indoctrinate those who already believe, who have received a divine call, and who have expressed an intent to enter full-time ministry. The local congregation that regularly meets in a house of worship is not the only entity covered by our use of the word "church." That much is clear from *McClure.* In the Baptist denomination, the Convention is formed to serve all participating local congregations. The fact that those who choose to participate in the Convention do so voluntarily renders it no less deserving of the protection of McClure. Since the Seminary is principally supported and wholly controlled by the Convention for the avowed purpose of training ministers to serve the Baptist denomination, it too is entitled to the status of "church. *Id.* at 283.

Likewise, *Kirby v. Lexington Theological Seminary,* recognized that the "relationship between an organized church and its ministers is its lifeblood" because the minister "is the chief instrument by which the church seeks to fulfill its purpose." 426 S.W.3d 597, 605 (2014). And "law should not be construed to govern the relationship of a church and its ministers." *Id.* This proposition, ubiquitous in the case law, is the backbone of the ministerial exception. "The uncontroverted evidence

shows the Seminary is owned by the Southern Baptist Convention for the purpose of training ministers to serve the Baptist faith. Therefore, the Seminary is a religious organization entitled to protection under the First Amendment." *Patterson v. Southwestern Baptist Theological Seminary,* 858 S.W.2d 602, 605 (1993). The courts also recognize that, "a spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94, 116 (1952).

In 2007, the Supreme Court of Texas recognized that "The State of Texas goes to great lengths to ban 'diploma mills' ... to prevent deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees," the Court said seminaries are on a different footing entirely:

> Since the government cannot determine what a church should be, it cannot determine the qualifications a cleric should have or whether a particular person has them. Likewise, the government cannot set standards for religious education or training. ... [S]etting standards for a religious education is a religious exercise for which the State lacks not only authority but competence, and those deficits are not erased simply because the State concurrently undertakes to do what it is able to do—set standards for secular educational programs. The State cannot avoid the constitutional

> impediments to setting substantive standards for religious education by making the standards applicable to all educational institutions, secular and religious.

HEB Ministries, Inc. v. Texas Higher Education Coordinating Board, 235 S.W.3d 627 (2007).

HEB Ministries' principle that the state does not entangle itself in the internal workings of churches and their ministries (including seminaries) is reflected in *Gonzalez v. Roman Catholic Archbishop,* 280 U.S. 1, 16, (1929) ("[I]t is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them."); *see also Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, (1976) (reversing a court judgment reinstating a deposed bishop); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969).

In *Church of the Holy Trinity v. United States,* 143 U.S. 457 (1892), the Court held that U.S. immigration laws could not be allowed to infringe the free exercise right of Church of the Holy Trinity to call a priest from Ireland. Questions concerning whom a church will call as a pastor, how that pastor is to be trained, and who will conduct the training, are central to the identity and mission of a church, and the state has neither the jurisdiction nor the competence to inject itself into those decisions. *See also*, *Hosana-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission,* 565 U.S. 171 (2012) (recognizing a "ministerial exception" for ordained church school

teachers); *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979) (recognizing that schools operated by a church to teach religious and secular subjects are not within the jurisdiction granted by the National Labor Relations Act, and recognizing further that to interpret the Act otherwise would raise serious First Amendment implications that the Court had a duty to avoid if another construction of the statute was reasonable).

And seminaries are already accountable to:

- Their students and those who finance their students' education;
- Their donors;
- Their alumni;
- Their board of directors;
- The churches that call Bethesda graduates to be pastors; and
- Last but not least, God.

Let us next consider the high value the Framers of our Constitution placed upon religious freedom.

II. The Framers held a jurisdictional view of Church and State.

> *It is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution.*

James Madison, *A Memorial and Remonstrance*, 1785, Works 1:163.

As Jefferson recognized in the Declaration of Independence, this nation is founded on the "laws of nature and of nature's God," and the "unalienable" rights to "life, liberty, and the pursuit of happiness" are "endowed by [the] Creator."

The Framers viewed church and state as separate institutions with separate jurisdictions. When Jefferson spoke of a "wall of separation between church and state," he meant a jurisdictional separation.

A. The Framers derived their understanding of Church/State relations from the Bible and Judeo-Christian tradition.

The Framers did not view Church and State simply as man-made institutions. They did not accept Rousseau's notion that the State is above the Church and above all other institutions.[3] Like the people of their time and those of preceding generations, they understood Church and State as divinely-established institutions, each with distinctive authority and distinctive limitations.

This institutional separation goes back to the ancient Hebrews. Going back to the time of Moses and perhaps further back to the time of Jacob's sons

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[3] Dr. Donald S. Lutz, "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought," *American Political Science Review*, 189 (1984) 189-97, studied citations of European thinkers by American writers 1760-1805 and demonstrated that American writers most frequently cited Montesquieu (8.3%), Blackstone (7.9%), and Locke (2.9%), and cited much less frequently (0.9%).

Judah and Levi, the Levites (descendants of Levi, the Tribe of Levi) served as Israel's religious authority, the priests. From the time of King David onward, Israel's kings came out of the tribe of Judah. These were separate offices and separate jurisdictions, but both were subject to the will of God and the Law of God. On several occasions, God disciplined kings severely for usurping the functions of the priesthood. For example, when King Saul offered sacrifices instead of waiting for Samuel the priest, God cut off his descendants from the kingship forever. When King Uzziah tried to usurp the functions of the priesthood by burning incense on the altar in the Temple, eighty "valiant" priests withstood him, saying, "It appertaineth not to thee, Uzziah, to burn incense to the Lord, but to the priests the sons of Aaron, that are consecrated to burn incense: go out of the sanctuary; for thou hast trespassed." (II Chronicles 26:16-18). When Uzziah persisted, God smote him with leprosy, and he remained a leper all the days of his life (II Chron 2:19-23).

This institutional separation continued in the New Testament. When the Pharisees asked Jesus about paying taxes to the Roman government, He pointed to Caesar's image on a coin and answered, "Render therefore to Caesar the things which are Caesar's; and to God, the things that are God's." (Matthew 22:21). Lord Acton said of Christ's answer,

> It was left for Christianity to animate old truths, to make real the metaphysical barrier which philosophy had erected in the way of absolutism. The only thing Socrates could do in the way of a protest against tyranny was to

> die for his convictions. The Stoics could only advise the wise man to hold aloof from politics and keep faith with the unwritten law in his heart. But when Christ said "Render unto Caesar the things that are Caesar's and unto God the things that are God's," He gave to the State a legitimacy it had never before enjoyed, and set bounds to it that had never yet been acknowledged. And He not only delivered the precept but He also forged the instrument to execute it. To limit the power of the State ceased to be the hope of patient, ineffectual philosophers and became the perpetual charge of a universal Church.[4]

It is neither surprising nor unreasonable to conclude that the Framers derived their understanding of Church/State relations from religious sources. On October 4, 1982, Congress passed, and the President then signed, Public Law 97-280, declaring 1983 the "Year of the Bible." The opening clause of the bill reads:

> Whereas, Biblical teachings inspired concepts of civil government that are contained in our Declaration of Independence and the Constitution of the United States...

The Bible, coupled with Church and Jewish tradition, is therefore relevant to the Framers' understanding of Church and State.

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[4] Lord Acton, quoted by Gertrude Himmelfarb (London, 1955) p. 45; in ElL. Hebden Taylor, *The Christian Philosophy of Law, Politics, and the State* (Nutley, NJ: Craig Press, 1966) pp. 445-46.

From the beginning, Church scholars understood that Church and State were distinct kingdoms, but they sometimes differed as to the relationship between them. Some, like the North African lawyer and Church Father Tertullian (c. A.D. 200), asked, "What concord hath Athens with Jerusalem?" Augustine of Hippo (AD 356-430), whose Civitas Dei "set the very course of Western Civilization,"[5] wrote of the City of God and the City of Man, although he did not precisely identify the City of God as the Church or the City of Man as the State.

The Protestant Reformation took force in Northern Europe in the 1500s, a century before the settlement of the English colonies in North America. The Reformers' understanding of the Two Kingdoms of Church and State is therefore instrumental in understanding the views of the Framers. Most of them were children of the Reformation,[6] and as such

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[5] Martin Luther describes Augustine's masterpiece as "one of the most influential works of the Middle Ages" and says it " would be read in various ways, at some points virtually as a founding document for a political order of kings and popes that Augustine could hardly have imagined. Indeed, his famous theory that people need government because they are sinful served as a model for church-state relations in medieval times. He also influenced the work of St. Thomas Aquinas and John Calvin and many other theologians throughout the centuries." quoted at http://grantian.blogspot.com/2006/11/tale-of-two-men.html; James, O'Donnell, Encyclopedia Britannica, https://www.britannica.com/topic/The-City-of-God

[6] As Dr. M.E. Bradford established in *A Worthy Company: Brief Lives of the Framers of the United States Constitution* (Marlborough, ND: Plymouth Rock Foundation, 1982) pp. iv-v, the fifty-five delegates to the Constitutional Convention included 28 Episcopalians, 8 Presbyterians, 2 Lutherans, 2

they understood that God had established two kingdoms, Church and State, each with distinctive authority. As Luther said,

> ...these two kingdoms must be sharply distinguished, and both be permitted to remain; the one to produce piety, the other to bring about external peace and prevent evil deeds; neither is sufficient in the world without the other.

And as John Calvin stated in his Institutes of the Christian Religion,

> Let us first consider that there is a twofold government in man: one aspect is spiritual, whereby the conscience is instructed in piety and in reverencing God; the second is political, whereby man is educated for the duties of humanity and citizenship that must be maintained among men.[7]

This understanding of Church and State as two separate kingdoms, both established by God but with separate spheres of authority, shaped the legal and political thinking of the Reformers, of the colonists, and of the Framers of the Declaration of Independence, the Constitution, and the Bill of Rights. As Yale History Professor Sydney E. Ahlstrom has noted,

> No factor in the "Revolution of 1607-1760" was more significant to the ideals and thought

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Dutch Reformed, 2 Methodists, 2 Roman Catholics, one uncertain, and 3 who might be Deists.

[7] John Calvin, *Institutes of the Christian Religion,* 1537, III:19:15.

> of colonial Americans than the Reformed and Puritan character of their Protestantism; and no institution played a more prominent role in the molding of colonial culture than the church. Just as Protestant convictions were vitally related to the process of colonization and a spur to economic growth, so the churches laid the foundations of the educational system, and stimulated most of the creative intellectual endeavors, by nurturing the authors of most of the books and the faculties of most of the schools. The churches offered the best opportunity for architectural expression and inspired the most creative productions in poetry, philosophy, music, and history.[8]

B. The Framers held a jurisdictional understanding of Church/State relations.

Long before Jefferson would speak of the "wall of separation between church and state," Rhode Island founder Roger Williams wrote of a "gap in the hedge or wall of separation between the garden of the church and the wilderness of the world," and George Washington declared to the General Committee of United Baptist Churches in Virginia that "no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution."[9]

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[8] Sydney E. Ahlstrom, *A Religious History of the American People* (Doubleday, 1975), I:423.

[9] George Washington, May 1789; quoted by Paul F. Boller, Jr.,

Reflecting this same jurisdictional view of Church and State, James Madison as President vetoed "an Act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia":

> Because the bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions, and violates in particular the article of the Constitution of the United States which declares that "Congress shall make no law respecting a religious establishment." The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the minister of the same, so that no change could be made therein by the particular society or by the general church of which it is a member, and whose authority it recognizes.[10]

Madison's veto was consistent with his jurisdictional view of Church and State. In his "Memorial and Remonstrance Against Religious Assessments" (1785), he objected to a proposed tax for the support of Christian churches and pastors, not because he opposed the Church, but because

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George Washington and Religion (Dallas: Southern Methodist University Press, 1963) 169-70.

[10] James Madison, Veto Message, February 21, 1811, http://baptiststudiesonline.com/wp-content/uploads/2018/03/Madison-VetoMessageCongress.pdf

Christianity is "the Religion which we believe to be of divine origin." Christianity, he said, is a religion of "innate excellence" and a religion that enjoys the "patronage of its Author." Christianity therefore does not need the aid of the State.[11]

Jefferson's "wall of separation" must be viewed in this context, as a jurisdictional separation between the two kingdoms, Church and States. As he wrote in 1808,

> I consider the government of the United States as interdicted by the Constitution from intermeddling in religious institutions, their doctrines, discipline, or exercises. This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the states the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise or to assume authority in religious discipline has been delegated to the General Government. It must rest with the States, as far as it can be in any human authority.[12]

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[11] James Madison, "Memorial and Remonstrance Against Religious Assessments," 1785, reprinted in Norman Cousins, "*In God We Trust*" (New York: Harper & Brothers, 1958) 308-14. https://founders.archives.gov/documents/Madison/01-08-02-0163

[12] Thomas Jefferson, Letter to Samuel Miller, January 23, 1808; "Thomas Jefferson on Separation of Church and State," https://candst.tripod.com/tnppage/qjeffson.htm. Jefferson's closing statement that authority over churches "must rest with the States, as far as it can be in any human authority," reflects

The first Supreme Court Establishment Clause case, *Everson v. Board of Education*, 330 U.S. 1 (1947), is consistent with this jurisdictional understanding of the kingdoms of Church and State. As the Court explained at 18 (emphasis added):

> The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. *Neither can force nor influence a person to go to or to remain away from church against his will* or force him to profess a belief or disbelief in any religion. *No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance.* No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever from they may adopt to teach or practice religion. *Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.*

Everson did not address issues of strict scrutiny, compelling interest, or rational basis. Nor did the Court discuss specific types of state regulation of churches. Rather, the Court stated as an absolute that "neither a state nor the Federal Government"

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his belief that the First Amendment restricts only the federal government and not the States.

can "force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion."

After providing that "Congress shall make no law respecting an establishment of religion," the First Amendment adds an equally important clause, "or prohibiting the free exercise thereof."

Like the Establishment Clause, the Free Exercise Clause is also jurisdictional, because there is a jurisdiction—"our duty to God and the manner of discharging it"—that is beyond the jurisdiction of government.

C. This jurisdictional understanding of Church/State relations applies to the Free Exercise Clause.

The Framers held a jurisdictional understanding of Free Exercise. Certainly, foremost among the rights included in the term "liberty" in the Declaration of Independence is the right to free exercise of religion.

As the Declaration makes clear, this nation was founded upon Higher Law. The Supreme Court said in *Zorach v. Clauson,* 343 U.S. 306, 313 (1952), "We are a religious people whose institutions presuppose a Supreme Being." The Court found that recognition is completely compatible with statements such as "We guarantee the freedom to worship as one chooses" *id.* at 314, and "There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And so far as interference with the 'free exercise' of religion and an 'establishment' of religion

are concerned, the separation must be complete and unequivocal" *id.* at 312.

And in *McGowan v. Maryland* (1961), Justice Douglas, the author of the *Zorach* opinion, stated in dissent:

> The institutions of our society are founded on the belief that there is an authority higher than the authority of the State; that there is a moral law which the State is powerless to alter; that the individual possesses rights, conferred by the Creator, which government must respect.

This is entirely consistent with Madison's understanding of free exercise. As he said in the Remonstrance,

> We remonstrate against the said Bill,
>
> Because we hold it for a fundamental and undeniable truth, "that Religion or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence." [quoting from Article XVI of the Virginia Declaration of Rights of 1776]. The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.[13]

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[13] Madison, Remonstrance, https://founders.archives.gov/documents/Madison/01-08-02-0163.

Establishment and Free Exercise go together. In the term "free exercise thereof," the word "thereof" refers back to "religion" in the Establishment Clause. The very punctuation of the First Amendment sets these clauses apart from the rest. There are three parts to the First Amendment, separated by semicolons, and each of these parts consists of two clauses, separated by commas:

> "Congress shall make no law"
>
> (1) "respecting an establishment of religion, or prohibiting the free exercise thereof;"
>
> (2) "or abridging the freedom of speech, or of the press;
>
> (3) "or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Note, also, that the one verb "abridging" introduces the last two parts and sub-parts, thus further setting these last four cluses from the first two, the religion clauses which contain the verbs "respecting" and "prohibiting."

Jefferson's words, quoted earlier, pertain to both establishment and free exercise:

> I consider the government of the United States as interdicted by the Constitution from intermeddling in religious institutions, their doctrines, discipline, or *exercises.* This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that also which reserves to the states the powers not delegated to the United States. *Certainly, no*

> *power to prescribe any religious exercise or to assume authority in religious discipline has been delegated to the General Government.* It must rest with the States, as far as it can be in any human authority.

(Emphasis added).

Especially within the area of church doctrine, the Court has recognized a jurisdictional limit to the Free Exercise Clause. In *Unemployment Division v. Smith,* 494 U.S. 872 (1990), Justice Scalia recognized that jurisdictional limit in his majority opinion at 877-78:

> The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such."

(Internal citations omitted).

In 2020 and 2021, the Supreme Court decided three cases which involved the closure of churches because of COVID-19, and ruled in all three cases that the Governors of New York and California violated the free exercise clause: *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 63 (Nov. 25, 2020), *South Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 719 (Feb. 5, 2021), and *Tandon v. Newsom*, 141 S. Ct. 1294, 1294 (April 9, 2021). In each of these cases—two of which involved California—this Court ruled in favor of the church.

III. The trial court and appellate court erred in discounting Bethesda University's mission statement.

Bethesda was founded as a Pentecostal University. Its founders came from a Pentecostal background in South Korea, and its mission statement has consistently stated that Bethesda is committed to an "evangelical charismatic theology."

The Court of Appeals, quoting the trial court, said "the Bylaws were 'poorly drafted, duplicative in many respects, and do not provide the Board Members with the type of guidance one would expect."[14] But Bethesda's Bylaws do not lose First Amendment protection just because, in the opinion of the court, they could have been worded better. As this Court has held in *Thomas v. Review Board,* 450 US. 707 at 715 (1981),

> In reaching its conclusion, the Indiana court seems to have placed considerable reliance on the facts that Thomas was "struggling" with his beliefs, and that he was not able to "articulate" his belief precisely. It noted, for example, that Thomas admitted before the referee that he would not object to "working for United States Steel or Inland Steel . . .

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[14] The Court of Appeals also noted that the Bylaws use the word "Pentecostal" only once but ignores the fact that Pentecostal theology is evident throughout the Statement of Faith with such language as "the present ministry of the Holy Spirit," "the bestowal of spiritual gifts for service and the working of signs and wonders" and a belief in "divine healing." How many times must the term "Pentecostal" be used to make at in essential part of the University's worldview and mission?

> produc[ing] the raw product necessary for the production of any kind of tank . . . [because I] would not be a direct party to whoever they shipped it to [and] would not be . . . chargeable in . . . conscience. . . ."
>
> 271 Ind. at ___, 391 N.E.2d at 1131. The court found this position inconsistent with Thomas' stated opposition to participation in the production of armaments. But Thomas' statements reveal no more than that he found work in the roll foundry sufficiently insulated from producing weapons of war. We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

Furthermore, Bethesda University may have sound reasons for wording their Bylaws as they did, perhaps theological reasons that are beyond the competence and the jurisdiction of the courts to evaluate. It is highly presumptuous for a court to tell a religious institution that statements of faith in its Bylaws are "poorly worded."

Even if the statement could have been worded better, it is clear enough for anyone to conclude that Bethesda adheres to charismatic Pentecostal theology and practice, and Bethesda has established that the four non-Pentecostal board members are Presbyterian, do not share Pentecostal or

charismatic theology, and did not sign the Statement of Faith as they are required to do.[15] This Statement of Faith is sufficient to establish that Bethesda is a distinctively Pentecostal institution, and because the non-Pentecostals on its board do not share its theology or purpose, the Board was justified in removing them from their Board positions.

Those who serve on the governing board of an institution have the power to shape the mission of that institution and to shape the theology that will be taught to its students, many of whom will become pastors.

By controlling who will serve on Bethesda's Board, the lower court has taken control of the theology of Bethesda University, the theology of the

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[15] Besides serving as Senior Counsel and Resident Scholar for the Foundation for Moral Law and Professor of Constitutional Law for the Oak Brook College of Law and Government Policy (obcl.edu), the primary author of this brief also serves as pastor of two small Presbyterian churches, one affiliated with the Presbyterian Church of America (PCA) (woodlandpca.org) and the other with the Evangelical Presbyterian Church (EPC), and also as a visiting professor for many years for the Handong International Law School (lawschool.handong.edu) of Pohang, South Korea, an interdenominational Chirstian law school with considerable Presbyterian influence. He is therefore well aware that Presbyterian theology is generally neither Pentecostal nor charismatic. Despite this, he and the Foundation strongly support the right of Bethesda University to exclude Presbyterians and other non-Pentecostals from its governing board, just as he and the Foundation would support the right of a Presbyterian seminary to exclude Pentecostals from its governing board.

pastors who will graduate from Bethesda University, and therefore the theology of the churches those pastors will serve. It is difficult to imagine a more blatant attempt by the State to control the Church. And it is an utter anathema under the First Amendment.

CONCLUSION

The California courts' attempt to take control of a Pentecostal university and place it under a non-Pentecostal governing Board, is nothing less than state control over Christian education and pastoral training, which is State control over the Church itself.

The Foundation urges this Court to grant this petition for writ of certiorari and clearly recognize the independence of the Church and its institutions from State control.

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Dec. 12th, 2024