TO BE ARGUED BY:
BARRY BLACK
TIME REQUESTED: 10 MINUTES

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

LAMIA FUNTI,

Plaintiff-Respondent,

-against-

MARCUS ANDREWS,

Defendant-Respondent.

BISHOP ANBA DAVID, FR. GREGORY SAROUFEEM, ST. MARY & ST. MARK COPTIC ORTHODOX CHURCH and COPTIC ORTHODOX PATRIARCHATE DIOCESE OF NEW YORK AND NEW ENGLAND,

Nonparty-Appellants.

Appellate Division Docket No. 2023-00897 2023-04648

BRIEF FOR NONPARTY-APPELLANTS

NELSON MADDEN BLACK LLP
Attorneys for Nonparty Appellants
475 Park Avenue South, Suite 2800
New York, New York 10016
(212) 382-4300
bblack@nelsonmaddenblack.com

ALLIANCE DEFENDING FREEDOM
Attorneys for Nonparty Appellants
440 First Street, NW
Washington, D.C. 20001
(480) 444-0020
rgray@adflegal.org

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases *Page(s)*

Statutes/Regulations/Miscellaneous

Appellants 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 Appellants' Brief.

PRELIMINARY STATEMENT

"[T]he First Amendment prohibits civil courts from resolving [secular] disputes on the basis of religious doctrine and practice" and requires 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). Anba David is Bishop of the Coptic Orthodox Diocese of New York and New England, and the highest ecclesiastical authority in the Diocese. In the underlying matrimonial action, the sole issue is whether Bishop David officiated a Coptic marriage sacrament between Respondent-Plaintiff Funti ("Funti") and Respondent-Defendant Andrews ("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 under Coptic law—marry them.

Yet the trial court refused to credit the Bishop's answer; allowed the parties to subpoena Bishop David, Father Gregory (the priest of the Local Church), the Diocese, and the Local Church; and subjected Coptic clergy to three days of interrogation into church doctrine, law, and practice—with potentially more to come. In the process, the trial court violated the First Amendment in myriad ways, ignored precedent, and effectively repudiated the ecclesiastical abstention doctrine. Only this Court can safeguard the Church's religious liberty and prevent such unconstitutional proceedings from happening in the future. It should do so without delay.

FACTUAL BACKGROUND

This case concerns a matrimonial action brought by Funti against Andrews. Funti and Andrews engaged in a relationship and had a son together. Both parties agree they never obtained a civil marriage license or entered into a civil marriage. The parties dispute only whether Bishop David solemnized a religious marriage between them.

Appellants are third parties, subpoenaed below. The trial court forced Appellants—despite their repeated objections—to become deeply entrenched in the proceedings below, which focused on a single religious question: whether a sacred blessing bestowed by Bishop David at the Local Church constituted a "solemnize[d] marriage [ ]" under the "use[s] and practice[s]" of the Coptic

Orthodox Church. N.Y. Dom. Rel. Law § 12. New York recognizes such a religious marriage despite the general requirement of a civil marriage license. *Id.*

Andrews is a longstanding member of the Coptic Orthodox Church but did not regularly participate in church life; Funti was not a member. Funti and Andrews had a son, and Andrews met with Father Gregory to request that he baptize the son. Because Father Gregory was uncertain that the son would be raised in the Church, Father Gregory referred Andrews to Bishop David. Bishop David agreed to baptize the son in a 2017 ceremony at the Local Church (Transcript of Oct. 4 at 94-96nt). Before an audience of family and friends, Bishop David baptized the son and asked Funti whether she would also like to be baptized. Funti agreed, and, after a period of confession with Father Gregory, Bishop David baptized Funti, making her a member of the Coptic Orthodox Church. As Bishop David testified, he then bestowed a blessing upon the family in order to "encourage them [and] make them feel welcome in the church." R. at A267:1-3. He also testified that he bestowed the blessing to encourage them to "get married and be a family in the church." R. at A307:9-12. With that, the religious ceremony was concluded.

No issue was raised by either party regarding the religious events of that day for several years, until the filing of the matrimonial action, in which Funti claimed that the October 2017 was actually a marriage ceremony.

PROCEDUAL HISTORY

Funti filed for divorce in 2021. Andrews moved to dismiss the action on the grounds the couple were never married. Funti responded by citing a 2017 Coptic Orthodox marriage ceremony. The Bishop was subpoenaed to testify. Not wishing to be haled into a civil court in violation of the Church's prohibition of becoming embroiled in a dispute between religious brethren, he instead submitted an affidavit stating that he asked the parties "whether they would like me to bless their relationship as … parents during the service to which they both said yes." R. at A60.

Bishop David's affidavit said that he "did not solemnize any marriage between Ms. Funti and Mr. Andrews on said date, or at any other time." *Id.* In fact, the parties did not "sign [ ]" and "file[ ] any of the required documents with the Church to enable [the Bishop] or anyone else within the Church to marry them." *Id.* Additionally, no religious marriage was possible, the Bishop said, because Funti was divorced and the Church has "strict protocols" for marriage in that circumstance, including a "series of classes" that Funti never attended. R. at A61. Bishop David said the Diocese had "no record whatsoever of any marriage between Ms. Funti and Mr. Andrews" and that neither of them "received anything from the Church that would indicate that they were married … on July 30, 2017[,] or at any other time." *Id.*

Yet the trial court refused to take Bishop David—the officiant and highest authority in the Diocese of New York & New England—at his word. It granted Andrews' motion to dismiss only to the "extent of the court conducting an evidentiary hearing concerning whether or not the parties are legally married." R. at A63. This resulted in judicial subpoenas targeting Bishop David, Father Gregory, the Diocese, and St. Mary & St. Mark Coptic Orthodox Church. R. at A64-A78, A79-A83, A84-A89, A95-A101. The subpoenas demanded that the Bishop and Father Gregory testify about—and that St. Mary & St. Mark and the Diocese produce documents and records concerning—the religious rituals the Bishop performed in 2017. Failure to comply, the subpoenas said, was a violation of civil law punishable by contempt of court, fines, and damages.[1] R. at A53.

Initially, the parties' only valid subpoena was directed at Bishop David. The Church moved to quash that subpoena based on the Religious Clauses of the First Amendment. The trial court heard argument on that motion before denying it on February 6, 2023, for four principal reasons. R. at A10-A34. First, the trial court did not understand the Bishop's religious objection to becoming entrenched in a civil dispute between two church members and said only a religious objection from

[1] Due to procedural defects, the parties withdrew and reissued various subpoenas targeted at Bishop David, Father Gregory, St. Mary & St. Mark Coptic Orthodox Church, and the Diocese.

one of the members matters (*i.e.*, the Bishop's beliefs were irrelevant).[2] R. at A12-A15. Second, the trial court said that respecting church autonomy would not be "neutral in … enforcement of [the] subpoena power" and might violate the Establishment Clause, even though *both* parties were church members seeking to subpoena their Bishop. R. at A23, A24–A26. Third, the trial court said that enforcing the subpoena did not violate the First Amendment because it was religiously neutral (*i.e.*, treated the Bishop like everyone else). R. at A28-A30. Last, the trial court said New York had a compelling interest in forcing Bishop David to testify because it needed to "know [ ] whether the parties were [religiously] married" based on attendant "state rights and responsibilities," such as divorce, equitable distribution, and spousal maintenance. R. at A30, A31-A33. The result was a civil court order ordering "Bishop David … to testify on the next court date." R. at A33.

On February 17, 2023, the Church filed a notice of appeal and an order to show cause in this Court seeking immediate relief from the trial court's order. This Court denied immediate relief administratively on February 21, 2023. R. at A2-A9. Later, this Court also denied the motion for a stay of enforcement of the trial court's order— without oral argument—on March 21, 2023. R. at A102-A103.

---

[2] As the Bishop, Bishop David is "the father of fathers" and "the father of all people within his diocese" who wants "to show love" and "embrace[ ] [all] his children." R. at A303.

Back in the trial court, Bishop David filed a motion in limine on March 23, 2023, saying courts must defer to the Bishop's decree that no religious marriage occurred. The trial court denied that motion on April 27, 2023, for three principal reasons. R. at A104-A139. First, the trial court refused to apply the ecclesiastical abstention doctrine, indicating that civil courts can independently determine whether a facially valid religious wedding occurred. R. at A106–A113. Second, the trial court said it could decide whether Bishop David solemnized a marriage in keeping with Coptic religious practices under neutral principles of law. R. at A112. Last, the trial court claimed that Funti had a right to second-guess the Bishop's determination that no Coptic marriage occurred by "question[ing] his recollection," R. at A111, contesting whether his "ecclesiastical determination" followed the correct church "process," R. at A113, and challenging the scope of the evidence he considered, *id*.

In a March 27, 2023, supplemental order, the trial court again ordered Bishop David to testify. The court's order states in large, bold print:

> **WARNING – WITNESS BISHOP ANDA DAVID: YOUR FAILURE TO APPEAR IN COURT MAY RESULT IN YOUR IMMEDIATE ARREST AND IMPRISONMENT FOR CONTEMPT OF COURT**. [R. at A142]

Under the order, this civil court appearance must "take precedence over other activities or obligations," R. at A141, despite the Bishop's oversight of roughly 40 churches in several states, R. at A333:19–20.

Bishop David testified for a full day on June 13, 2023—even though "bishops don't come to court to testify"—to avoid arrest and imprisonment. R. at A170:25, A271:19. The Bishop said that marriage is a sacrament in the Coptic Orthodox Church, R. at A321:8–9, and neither he nor Father Gregory solemnized a wedding on July 29, 2017. R. at A180:5–25, A181:8. What the Bishop did was "[a] prayer of blessing" over Funti and Andrews. R. at A186:18, A214:7–9.[3] Further, the Bishop said a shell marriage certificate found in the Church's files was "not an official document because it's not signed by the priest, by the witnesses, and even by anyone else," R. at A231:7–9, and it lacked "the seal of the church," R. at A308:20.

Over counsel's objection, the trial court forced the Bishop to explain—among other things—what he said and which languages he used, R. at A187:16–25, A188:1–19, A189:1–11; what "liturgical vestment" he wore, R. at A190:6–7, A301:22–25, A302:1–4; why he placed a Coptic vestment on Andrews, R. at A191:1–25, A266:11–25, A267:1–17, A302:9–25, A303:1–6; and whether he performed "a crowning ceremony" for Funti and Andrews R. at A194:5–7; as well as the requirements for a religious wedding under Coptic law, R. at A200:8–25, A201:1–25, A202:1–20, "church rules" that the Bishop said he "cannot break, R. at A248:8. The trial court also allowed—again over counsel's objection—a

[3] Bishop David did not know whether Futi and Andrews were civilly married. R at A214:17–18, 23.

theological inquisition, forcing Bishop David to explain whether the Coptic Orthodox Church considers "living together outside of wedlock" or "[h]aving a child out of wedlock" a "sin." R. at 112:19–25, 113:1–24.

The court authorized this grilling so that Funti could attempt to undermine the Bishop's credibility or show undue influence. R. at A228:7–25, A229:1–6. Yet Bishop David's intentions were clear: he wanted "to baptize [Funti]" so that "she joins the church" and perform "a blessing for" Funti and Andrews so they would "hopefully … get married in the church and [be] a family in the church." R. at A307:9–12; A302:24–25, A303:1–3.

The capstone of the Bishop's testimony was his "religious ruling," as the officiant and hierarch of the Coptic Orthodox Church in New York, that there was no religious marriage. R. A203:1. Funti's counsel objected that it was not the Bishop's "purview … to make a ruling" on whether the Coptic sacrament of marriage occurred, R. at A206:2, and the trial court agreed, saying "[it] is the Court's purview to make this ruling" because "[t]his is a civil trial," *id.* at A206:4–5, 15–16. In other words, the trial court said it could hold that Bishop David performed a Coptic wedding, even though the Bishop—the officiant and highest religious authority in the Diocese—says he performed no marriage sacrament and the Coptic Orthodox Church has never recognized Funti and Andrews as religiously married. R. at A208:12–19.

Meanwhile in February 2023, Funti issued a new subpoena to Father Gregory and St. Mary & St. Mark Coptic Orthodox Church, seeking his testimony and church records. The Church objected on First Amendment grounds and moved to quash the subpoena. The trial court denied the motion and ordered Father Gregory to testify for three primary reasons. R. at A51. First, the trial court did not understand and dismissed Father Gregory's religious objection to testifying against two church members in civil court. R. at A49. Second, the trial court indicated the Establishment Clause and state law overrode the Coptic Church's religious autonomy: all that mattered was neutral enforcement of the parties' subpoena power. R. at A48-A49. Third, there was a compelling interest in enforcing the subpoena, the court said, because Father Gregory was the Local Church's "custodian of records" and "the second clergy present that day" (*i.e.*, he might contradict the Bishop's ruling that no marriage occurred). R. at A50.

The Church filed a notice of appeal and sought immediate relief from this Court, arguing that Father Gregory's vow of obedience to Bishop David precluded him from undermining the Bishop's definitive ruling that no religious marriage occurred. This Court denied immediate relief administratively on February 21, 2023. R. at A2-A9.

Father Gregory testified over two days in October 2023 to avoid arrest and imprisonment. Father Gregory confirmed that Bishop David was the officiant on

the day in question, R. at A428:9–25, A455:13–14; and said his "oath to the priesthood" required him to defer to the Bishop's decisions, R. at 406:13–17. Yet the trial court forced him to testify—over counsel's objection—so Funti could conduct a fishing expedition for evidence of collusion, R. at A397:10–25, A415:5–9, A417:8–9; stating "[t]his Court is not bound [to] automatically grant [ ] judgment to the defendant because of what Bishop David testified to," R. at A466:3–5.

Among other things, the trial court allowed counsel to question Father Gregory regarding the Church's marriage-certificate practices, R. at A429:1–18, A430:1–25, A431:1–15; his confession with Funti and what confession entails, R. at A473:13–25, A474:1–25, A475:1–21; baptism's religious significance, R. at A478:5–12, A549:14–19; the normal process and ordering of Coptic sacraments, R. at A490:4–25, A491:1–25, A492:1–14; what a crowning ceremony involves, A500:139–23–24, A499:1–25, A500:1–20, and the requirements for a Coptic sacrament of marriage, including whether Father Gregory heard any matrimonial prayers R. at A548:1–7, A566:16–18. In fact, the trial court asked Father Gregory *sua sponte* whether he "hear[d] the bishop say anything pertaining to wedding or marriage during that liturgy?"—he did not. R. at A545:18–20. Regarding the unsigned marriage certificate, Father Gregory said that he was not close to the proceedings, was engaged in the liturgy, wrongly assumed a marriage took place,

and that his request for the certificate was a mistake. R. at A504:12–25, A505:1–23, A542:4–25, A543:1–25, A544:1–2, A577:3–16.

Thus, the purpose of Father Gregory's compelled testimony became very clear—to undermine Bishop David's religious ruling already set forth in his affidavit and the Bishop's own testimony. This blatant interference with the relationship between an ecclesiastical superior and his subordinate put Father Gregory in an untenable position. Father Gregory declined to respond to one question posed during direct examination on the grounds that to respond would force him to violate the vows of subordination that he took to the Coptic Orthodox Church and to Bishop David. The trial court instructed Fr. Gregory to respond to that and similar questions by "pleading the First [Amendment to the United States Constitution]."

> THE COURT: [T]o the extent that Father Gregory says I cannot contradict a factual statement made by Bishop David, then I see this as somewhat analogous to the 5th and 14th Amendments by saying that one invokes one's right against self-incrimination. Here it's not the right against self-incrimination but this religious belief that he cannot contradict what the bishop has to say. In any specific-given circumstance, his answer would be that I cannot consistent with my religious belief contradict that which Bishop David said. I will hear that and I may accept that but I may draw whatever inference is appropriate from that statement.

R. at A466:24-25, A467, and A468:1-6.

The trial court put Father Gregory in this untenable position by continuing to probe the unsigned marriage certificate after Bishop David made an ecclesiastical ruling that there was no Coptic marriage and the shell certificate was invalid:

> MR. KAPOOR: Okay. So, there is no established way the marriage certificate
> would be addressed if it wasn't printed until after or the next day of the ceremony; correct?
> BISHOP DAVID: Yes. Now I understand what you're trying to say.
> MR. KAPOOR: Thank you.
> BISHOP DAVID: Well, it depends now and this only Father Gregory can answer that if it was printed on the day then why didn't he show it to me and I would have explained, father, this is not a wedding, why did you do it.

R. at A535:1-9.

The trial court wasted no time in clarifying the purpose of eliciting Father Gregory's testimony:

> THE COURT: You're welcome. So, it's clear, Mr. Labib, the good news is we finished Bishop David's testimony. Perhaps from your perspective the bad news is we're going to need Father Gregory to testify...We've gone through this run-through, hopefully it will be a lot shorter than today. *The reality is, even Bishop David raised questions at the end that only Father Gregory can answer*. So, I'm going to ask you this, rather than me having to send out another decision, another order, and so forth, can Father Gregory voluntarily testify? You know we didn't get into any theology, certainly not to any extent that you would have a meaningful objection to.

R. at A332:19-24, A333 1-6:

Compounding these errors, the trial court also directed counsel on the second day of this grueling testimony to inquire whether Funti or Andrews gave any donation or anything over $1.00 to the Diocese or the Local Church. R. at

A553:7–25, A554:10–18. Counsel raised church-autonomy and donor-privacy objections to providing this information. R. at A557:16–25, A558:1–25, A559:1–2. But the trial court overruled them because neither party objected. R. at A561:4–9. Counsel disclosed that no record of a donation from Funti or Andrews to the Church was found. R. at A562:3–4, A610:25, A611:1–2. In response, Funti's counsel requested the donor information of Andrews' family members, and the trial court indicated it would be happy to consider a motion on that score. R. at A563:6–25, A564:7–11.

The Church appealed the trial court's denial of its motions to quash the subpoenas directed towards Bishop David and the Diocese, and Father Gregory and St. Mary & St. Mark Coptic Orthodox Church. At the Church's request, this Court consolidated the timeline for briefing both appeals. R. at A155.

ARGUMENT

Bishop David and Father Gregory have already testified at trial, but there is no basis for concluding the Church's appeals are moot. The underlying matrimonial litigation continues, Funti's subpoenas and the trial court's orders are still in force, those orders have enduring consequences, Funti's counsel has expressed an interest in additional subpoenas, and the judicially recognized exception to mootness also applies. What's more, the trial court's orders violated the Church's First Amendment rights in eight different ways, any one of which

requires reversal. New York precedent makes these violations of the church autonomy doctrine plain. And none of the trial court's reasons for upholding the subpoenas withstand scrutiny. Consequently, this Court should reverse the trial court's orders and remand with instructions to credit the Bishop's affidavit, quash the subpoenas, and Order the trial court to accept Bishop David's definitive religious ruling that no marriage took place.

I. The Church's appeals are not moot.

To avoid arrest and imprisonment for contempt of court, Bishop David and Father Gregory testified at trial, and the Diocese and St. Mary & St. Mark Coptic Orthodox Church turned over records and donor information related to the parties. But that does not mean the appeals of the trial court's order refusing to quash subpoenas targeting the Church and its clergy are moot.[4]

Preliminarily, the subpoena to Father Gregory—which has not been withdrawn or quashed and is therefore still in force—imposes a continuing, open-ended obligations:

> The obligation to produce pursuant hereunder is a *continuing one* and you may be subsequently called upon to update your production of documents requested hereunder.

Subpoena of Father Gregory Saroufeem, R. at A53 (emphasis added).

[4] Respondent-Plaintiff has already argued mootness before this Court in opposition to Appellants' Motion for a Stay Pending Appeal. [App. Div. Case No. 2023-04648, NYSCEF Doc. 13 at 2-4.]

An appeal is not moot if the parties' rights "will be directly affected by the determination of the appeal and the interest of the parties is an immediate consequence of the judgment." *Matter of Gonzalez v. Annucci*, 32 N.Y.3d 461, 470 (2018) (quotation omitted). The Church and its clergy's First Amendment rights are directly affected by these appeals' outcome, and their interest in this matter is a direct result of the underlying judgments—the trial court's refusal to quash unconstitutional subpoenas targeting a bishop, diocese, priest, and church. Also, the underlying litigation is not over and the trial court's orders retain their force: Funti's expressed an interest in obtaining *more* donor information from the Church, R. at A563:6–8, and nothing prevents her from recalling clergy to testify again. Indeed, Funti's counsel has not "withdraw[n] the subpoena[s] or suppl[ied] an affidavit averring that no further enforcement measures would be undertaken." *Matter of Harris v. Seneca Promotions, Inc.*, 53 N.Y.S.3d 758, 761 (4th Dep't 2017).

Moreover, the trial court said it can declare that Bishop David officiated at a Coptic wedding when the Bishop said he officiated no marriage sacrament, posing potentially incalculable harm to the Bishop's professional and personal reputation. *Cf. Matter of N.Y. State Comm'n on Jud. Conduct v. Rubenstein*, 23 N.Y.3d 570, 577–78 (2014) (professional reputation); *Williams v. Cornelius*, 76 N.Y.2d 542, 546 (1990) (personal reputation). These "'enduring consequences' for [the

Bishop's] credibility and reputation" and "standing within the [church] and [Coptic] communit[y]" prevent mootness. *Matter of N.Y. State Comm'n on Jud. Conduct*, 23 N.Y.3d at 576–78.

Additionally, courts apply an "exception to mootness" in appeals involving "substantial and novel issues that are likely to be repeated and will typically evade review." *Matter of Gonzalez*, 32 N.Y.3d at 470. The trial court recognized the novelty and importance of the First Amendment issues presented in this appeal, citing "a gray area" of the law, R. at A193:6, and "other cases that depend on the outcome of this [one]," R. at A470:24–25. So those factors are foregone conclusions. *Accord Bezio v. Dorsey*, 21 N.Y.3d 93, 100 (N.Y. 2013); *In re Matter of Lucinda R.*, 924 N.Y.S.2d 403, 408–09 (2d Dep't 2011). Given that New York recognizes religious marriages performed by thousands of churches in the state, the constitutional issues are likely to be repeated. What's more, these issues are likely to evade appellate review because often (but not always) once a third party hastens to comply with a subpoena—to avoid contempt of court—a motion to quash that subpoena is moot. *Accord Cody ex rel. New Jersey v. Capital Cities Am. Broad. Corp.*, 82 N.Y.2d 521, 528 (1993); *Riker v. N.Y. State Com. on Gov't Integrity*, 550 N.Y.S.2d 459, 460 (3d Dep't 1990).

Finally, the Court of Appeals has held that even where a "proceeding is moot," an appeal may nonetheless survive because "when a predictably similar

situation arises, the need for prompt remedial action would likely deprive this court of an opportunity for meaningful review" and the court will instead "treat the [] proceeding as one seeking declaratory relief." *McCormick v. Axelrod*, 59 N.Y.2d 568, 571 (1983). This is a matter of substantial public interest, particularly to every church and clergyman in the State of New York. There is no means for appellate review of this weighty constitutional question in any future instance where, as here, a trial court forced a church or clergy member to produce evidence or testify upon threat of incarceration, and the matter was promptly rendered moot.

In short, there is a live controversy between the Church and Funti, and "the traditional exception to … mootness" applies regardless. *People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility*, 36 N.Y.3d 187, 196 (2020).

II. The First Amendment grants churches special solicitude and independence from state interference.

The First Amendment's Religion Clauses accord "special solicitude to the rights of religious organizations." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). There is a special body of law protecting religious organizations' freedom, which is often called the church autonomy doctrine. Under this doctrine, religious organizations have "independence in matters of faith and doctrine and in closely linked matters of internal government," *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020), and

the neutral-and-generally-applicable-law rubric laid down in *Emp. Div. v. Smith*, 494 U.S. 872 (1990), does not apply. *Hosanna-Tabor*, 494 U.S. at 190.

Religious organizations' freedom "'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine'" is deeply rooted in American law. *Id.* at 737 (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952)). Over 150 years ago, the Supreme Court affirmed believers' right to create "voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith …, and for the ecclesiastical government of all the individual members." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728–29 (1871). That principle stands today, as the U.S. Supreme Court bars "judicial intervention" that threatens a religious organization's "independence in a way that the First Amendment does not allow." *Our Lady of Guadalupe Sch.*, 591 U.S. at 762; *accord Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 720–21 (1976).

Simply put, the religious autonomy doctrine guards the "boundary between two separate polities, the secular and the religious, and [ensures] the prerogatives of each in its own sphere." *Korte v. Sebelius*, 735 F.3d 654, 677 (7th Cir. 2013). Matters of "doctrinal theology, … usages and customs, … written [ecclesiastical] laws, and fundamental organization" are internal concerns that religious

institutions are free to decide for themselves without "state interference." *Serbian E. Orthodox Diocese*, 426 U.S. at 714, 722; *accord* 1 Religious Organizations and the Law § 5:13 (2d).

Given this rule "against political interference with religious affairs," *Hosanna-Tabor*, 565 U.S. at 184 (quotation omitted), "First Amendment concerns … tower over [civil courts] when [they] face a case that is about religion," like this one. *Killinger v. Samford Univ.*, 113 F.3d 196, 201 (11th Cir. 1997). New York courts have long enforced these constitutional guardrails, stating that "[it] is for religious bodies themselves, rather than the courts …, to define, by their teachings and activities, what their religion is." *Matter of Holy Spirit Ass'n for Unification of Holy Spirit Ass'n for Unification of World Christianity v. Tax Com. of N.Y.*, 55 N.Y.2d 512, 527 (1982). Instead, "[r]eligious bodies are to be left free to decide church matters for themselves, uninhibited by state interference." *Eltingville Lutheran Church v. Rimbo*, 108 N.Y.S.3d 39, 42 (2d Dep't 2019).

Whether Funti and Andrews were married under Coptic law is for the church alone to decide, not a secular Court. The trial court was without jurisdiction to interfere with that determination.

III. The subpoenas violate the Church's First Amendment rights in eight different ways.

"[T]he First Amendment prohibits civil courts from resolving [secular] disputes on the basis of religious doctrine and practice . . . As a corollary to this

commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." *Jones*, 443 U.S. at 602. The subpoenas the trial court approved in this case violate these principles in eight different ways.

A. Civil courts cannot decide essentially religious questions, including whether Bishop David performed the Coptic sacrament of marriage.

The underlying litigation turns on a single question: whether Bishop David "solemnize[d] [a] marriage[ ]" between Funti and Andrews under the "use[s] and practice[s]" of the Coptic Orthodox Church. N.Y. Dom. Rel. Law § 12. That question is quintessentially religious in nature. In fact, New York's marriage statute explicitly appeals to a religious ceremony (a solemnization of marriage) under religious law and custom (the uses and practices of a particular church).

Yet the trial court said it could resolve the essentially religious question of whether Bishop David conducted the sacrament of marriage by analyzing the religious ceremony he conducted involving Funti and Andrews, and Coptic religious doctrines, traditions, and practices. R at A106-A113. New York is free to accept marriages conducted and recognized by a religious body, including the Coptic Orthodox Church, but it cannot reject that body's religious determination that no sacrament of marriage was ever conducted or recognized by the Church.

Any "dispute" between Funti and Andrews in that regard is "essentially religious," *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977), and civil courts are not theology boards or "arbiters of scriptural interpretation." *Thomas v. Review Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). Because "religious dispute[s]" are for "ecclesiastical and not civil tribunals" to decide, the trial court could not involve itself in "controversies over religious doctrine and practice," *Serbian E. Orthodox Diocese*, 426 U.S. at 709–10, including the "religious meaning" of the ritual Bishop David performed. *Cathedral Acad.*, 434 U.S. at 133.

These principles are firmly entrenched in New York precedent, which recognizes that civil courts cannot "interfere[e] in or determin[e] religious disputes," *First Presbyterian Church of Schenectady v. United Presbyterian Church in U.S. of Am.*, 462 N.Y.2d 110, 116 (1984), "examine the creed and theology of the Church," *Matter of Holy Spirit Ass'n for Unification of World Christianity*, 55 N.Y.2d at 527, "interpret[ ] … ecclesiastical doctrine" or resolve 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), or "decid[e] whether religious law has been violated," *Lightman v. Flaum*, 97 N.Y.2d 128, 137 (2001). The trial court's effort to do all four violates the First Amendment.

B. On essentially religious questions, civil courts must accept the decisions of the highest authority in a hierarchical church.

Whether Bishop David officiated the sacrament of marriage under Coptic law and practices is a religious question. Bishop David, the highest authority in the Diocese of New York and New England, answered that question in the negative—voluntarily in his affidavit and compulsorily at trial. R. at A60-A61. Yet the district court refused to accept the Bishop's ruling about the religious ritual *he* performed in *his own* church as authoritative. That was error.

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*, 80 U.S. at 727. The trial court could not resolve the "quintessentially religious" question of whether a Coptic marriage sacrament occurred: the First Amendment required it to "accept [the Bishop's] decision[ ] as binding." *Serbian E. Orthodox*, 426 U.S. at 709. *Accord Korte*, 735 F.3d at 677–78.

New York courts have acknowledged that churches' decisions on "ecclesiastical matter[s]" are "binding on the courts," *Congregation Yetev Lev*, 9 N.Y.3d at 287–88, and required civil magistrates to "accept [a religious] body's characterization of its own beliefs and activities and those of its adherents, so long as that characterization is made in good faith and is not sham," *Matter of Holy*

Spirit Ass'n for Unification of World Christianity, 55 N.Y.2d at 518. Bishop David made a religious ruling that no Coptic marriage occurred in good faith, voluntarily in an affidavit to prevent a subpoena, and involuntarily at trail to avoid arrest and imprisonment. And that religious ruling is definitive.

Forcing Bishop David and Father Gregory to testify at trial was both unlawful and unnecessary. The Bishop's "pronouncement" in his affidavit that no Coptic marriage occurred "constituted an ecclesiastical decision which … ha[d] binding effect upon the court." *Rector, Churchwardens & Vestrymen of the Church of the Holy Trinity v. Melish*, 163 N.Y.S.2d 843, 852 (N.Y. App. Div. 1957). The trial court's refusal to allow the Church to "assert[ ] [the affidavit] successfully" violated the Religion Clauses and had a bevy of unconstitutional results.

C. Civil courts cannot second-guess a church's answers to quintessentially religious questions.

New York's statute makes civil marriages turn on whether a religious ceremony constitutes a marriage under a church's law or practice. N.Y. Dom. Rel. Law § 12. The trial court wrongly said that it could second-guess the Bishop's judgment that his blessing of Funti and Andrews did not constitute a marriage under the Coptic Orthodox Church's rules and customs. R. at A206:4-5, A397:10-25, A415:5-9, A466:3-5.

Civil courts have no "business … evaluating the relative merits of … religious claims," questioning "the validity of particular litigant's' interpretations

of those creeds," or determining "the plausibility of a religious claim." *Smith*, 494 U.S. at 887 (quotations omitted). The Supreme Court rejects "inquir[ies] into the good faith of the position asserted by … clergy[ ] and its relationship to the [church's] religious mission." *NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979); *accord Colo. Christian Univ. v. Weaver*, 534 F.3d 1245, 1263–65 (10th Cir. 2008). Under the First Amendment, "religious controversies are not the proper subject of civil court inquiry, and … a civil court must accept the ecclesiastical decisions … as it finds them." *Serbian E. Orthodox*, 426 U.S. at 713.

The only possible exception is when "a religious entity engage[s] in a bad faith attempt to conceal a secular act behind a religious smokescreen." *Hyung Jin Moon v. Hak Ja Han Moon*, 833 F. App'x 876, 880 (2d Cir. 2020); *accord Serbian E. Orthodox Diocese*, 426 U.S. at 712–13 (possible exception when church authorities "act in bad faith for secular purposes"). But a religious ritual (*i.e.*, prayer of blessing) after two baptisms is not a secular act and has no secular purpose; the potential exception does not apply.

New York precedent also supports the Church. In *Lightman*, the Court of Appeals rejected (1) "conducting a trial to determine whether a cleric's [actions are] in accord with religious tenets," (2) allowing the "part[ies] to introduce evidence or offer experts to dispute [a cleric's] interpretation or application of religious requirements," and (3) placing civil courts "in the inappropriate role of

deciding whether religious law has been [followed or] violated." 97 N.Y.2d at 137. Yet all three resulted here after the trial court second-guessed the Bishop's sworn statement that no religious marriage occurred and refused to quash the subpoenas. *supra* pp. 4-13.

Likewise, in *Matter of Ming Tung v. China Buddhist Ass'n*, 124 A.D.3d 13 (1st Dep't 2014), the First Department said "[it] is impermissible for a court to look behind an ecclesiastical determination or act to examine the subjective reasons for which it was undertaken" because whether a quintessentially religious decision is "justified calls into question religious dogma, practices, and issues." *Id.* at 19. That is the First Amendment problem here: the trial court's extensive inquiry into the Bishop's actions and motives resulted in scrutiny of Coptic hierarchy, law, and traditions that have no place in a civil court. *Supra* pp. 8-10.

D. Civil courts cannot make intrusive inquiries into churches' religious beliefs, rituals, policies, or procedures.

The trial court's refusal to quash the subpoenas resulted in three days of trial (one for Bishop David and two for Father Gregory) in which the parties—and the court itself—made intrusive inquiries into the Coptic Orthodox Church's religious beliefs, rituals, policies, and procedures. *Supra* pp. 7-1. The Religion Clauses forbid such "trolling through a person's or institution's religious beliefs." *Mitchell v. Helms*, 530 U.S. 793, 828 (2000) (plurality opinion).

Civil courts may not "inquire into" matters that are "purely ecclesiastical in … character," including issues of "theological controversy, … ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson*, 80 U.S. at 733. The "very process of [such] inquir[ies]" imperils "rights guaranteed by the Religion Clauses." *Catholic Bishop of Chi.*, 440 U.S. at 502. Courts are barred from conducting "a detailed review" of church's religious beliefs, policies, or decisions, *Serbian E. Orthodox*, 426 U.S. at 718 (quotation omitted), or even probing religious terms and definitions, *Catholic Bishop of Chi,* 440 U.S. at 502 n.10, 507–08.

The trial court violated the First Amendment by "embarking on a sensitive evaluation" of religious matters, such as what is sinful, and attempting "to parse the content of [the Bishop's] particular prayer" over Funti and Andrews, *Marsh v. Chambers*, 464 U.S. 783, 795 (1983), examining church "policies" about weddings and "match[ing] them against the [court's] "understanding of … religious doctrine," *Colo. Christian Univ.*, 534 F.3d at 1263, and requiring Bishop David "to justify the method in which [he] teaches [and expresses religious] values" to his flock, *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (D.C. Cir. 2002). Such inquiries into "the creed[,] … theology[,]" and practices "of the [c]hurch" are constitutionally forbidden. *Matter of Holy Spirit*, 55 N.Y.2d at 527; *accord id.* at 527 n.5.

E. The state cannot interfere with ecclesiastical hierarchy or church government.

Father Gregory was forced to testify for one reason: Funti wanted him to undermine the Bishop's decision that no Coptic marriage occurred and that an unsigned and unsealed marriage certificate found in the Local Church's files was null and void. His compelled testimony over two days blatantly interfered with the relationship between an ecclesiastical superior and his subordinate, the *sine qua non* of church government. Father Gregory explicitly declined to respond to one question posed during direct examination on the grounds that to respond would force him to violate the vows of subordination that he took to the Coptic Orthodox Church and to Bishop David. The trial court instructed Fr. Gregory to respond to that and similar questions by "pleading the First [Amendment to the United States Constitution]," but added that the court could draw a negative inference from that objection.

The trial court put Father Gregory in this untenable position by continuing to probe after Bishop David put his ecclesiastical ruling on the record that the ceremony was not a marriage and the shell certificate was invalid. R. at A331:1-9.

The Church and its counsel explained that Coptic law and Father Gregory's priestly oaths forbade him from contradicting the Bishop's religious ruling. R. at A376:14-25, A377:1-20, A406:13-17. But to no avail: the trial court refused to quash the subpoena and insisted that Father Gregory continue to testify over the

course of two grueling days. This secular interference with ecclesiastical hierarchy or "church government" violates the First Amendment. *Kedroff*, 344 U.S. at 116.

"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). Rightly so, for matters "affecting the church hierarchy are at the core of ecclesiastical concern." *Jeong v. Cal. Pac. Annual Conf.*, 979 F.2d 855, 1992 WL 332160, at *1 (9th Cir. 1992) (quotation omitted). The trial court's "prob[ing]" into the Bishop's prayer and pitting of Father Gregory against his ecclesiastical superior "to decide [a matter of] religious law" (*i.e.*, whether a Coptic marriage sacrament occurred) is unconstitutional. *Serbian E. Orthodox*, 426 U.S. at 709 (cleaned up). The First Amendment "precludes governmental interference with ecclesiastical hierarchies[ ] [or] church administration." *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 463 (D.C. Cir. 1996) (cleaned up).

F. Members are bound by a church's religious decisions and cannot challenge them in secular courts.

Funti and Andrews are baptized members of the Coptic Orthodox Church. Yet the trial court allowed them to dispute whether they were joined in a Coptic marriage *after* the Bishop said no such marriage occurred. That violates the First Amendment. Those who join "voluntary religious associations," including church members, give "implied consent to [ecclesiastical] government, and are bound to

submit to" the church's decisions on religious matters, including whether they were married in the faith. *Serbian E. Orthodox Diocese*, 426 U.S. at 711 (quotation omitted); *accord Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring). Indeed, "it would be a vain consent and would lead to the total subversion of [] religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Watson v. Jones*, 13 Wall [80 US] 679, 729 (1871).

Funti may be "aggrieved by … [Bishop David's] decision" but she cannot "appeal [it] to [a] secular court[ ] and have [it] reversed." *Serbian E. Orthodox Diocese*, 426 U.S. at 711. Nor may Funti complain that "a spiritual leader," like the Bishop, "wields too much power or authority" in deciding there was no marriage in the eyes of the Church. *Matter of Ming Tung*, 996 N.Y.2d at 243. "By uniting with a [church] body, [an individual] consents to be bound by the ecclesiastical determinations of the [church] government, subject only to such appeals as the [church] itself provides …." *Eltingville Lutheran*, 108 N.Y.W.3d at 858. The trial court's decision to relieve Funti of that obligation "impermissibly … intervene[d] in matters of church governance," *Upstate N.Y. Synod of Evangelical Lutheran Church v. Christ Evangelical Lutheran Church*, 585 N.Y.S.2d 919, 921 (4th Dep't 1992), and gave Funti access to "relief" outside ecclesiastical channels that she has "no right to … demand[ ]," *Matter of Ming Tung*, 996 N.Y.S. 2d at 243.

G. Civil courts cannot demand that churches disclose their members' tithes or donations on a whim.

Over counsel's objections, the trial court ordered the Diocese and Local Church to report any tithes and donations by Funti or Andrews over $1.00 (there were not any) and contemplated forcing the Church to disclose Andrews' family members' offerings too. R. at A553:7-25, A561:4-9, A563:6-25, A564:7-11. Such compelled donor disclosure violates the First Amendment in multiple ways, especially as the court could requested the same information from Funti and Andrews, who likely would have provided it freely.

States cannot make excessive demands for nonprofits' donor information even in their capacity as charity regulators. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 612–17 (2021). The State is not wearing its regulatory cap here, so invading the Church's membership and contribution records is particularly difficult to justify. *Id.* at 613 (requiring a "means-end fit"). Where freedom of association is at stake, a civil court may "compel[ ] disclosure" of donors' gifts when it acts "with narrow specificity" for vital reasons. *Id.* at 610 (quotation omitted); *accord id.* at 611; *id* at 622–23 (Alito, J., concurring in part and in the judgment).

Because individual liberties "need breathing space to survive," the First Amendment protects against "[t]he risk of a chilling effect on [free] association." *Id.* at 618–19 (quotation omitted). It makes no difference that the Church's forced donor disclosure was not "to the general public" or that Funti and Andrews "might

not mind … the disclosure." *Id.* at 616. Divulging church members' tithes and offerings to the government sets a terrible precedent and "creates an unnecessary risk of chilling" donations from other believers, *id.* at 616 (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).

Tithes and offerings are also an act of worship. Forcing the Church to disclose these private acts of devotion on a court's whim risks "indirect coercion and penalties on … [members'] free exercise" of religion. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 463 (2017). Moreover, the bar against "civil authorities … interposing themselves in matters of church organization and government is directly violated by … financial … disclosures required of churches that solicit from members and the public." *Church of Scientology Flag Serv. 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.* But the Church faces that intolerable choice here because the trial court refused to quash the subpoenas.

IV. On point New York precedent demonstrates the Church's First Amendment claims prevail.

The Church's First Amendment claims are not novel. Three New York cases engage similar facts. Each of them supports reversing the trial court and quashing the subpoenas targeting Bishop David, the Diocese, Father Gregory, and St. Mary & St. Mark Coptic Orthodox Church.

Consider *Bernstein v. Benchemoun*, 188 N.Y.S.3d 669, 669–70 (2nd Dep't 2023), where the Fourth Department confronted a putative divorce action. There, a rabbi married the parties in Florida and they executed a religious marriage contract there, but the parties never obtained a civil marriage license—a requisite for marriage in Florida. *Id.* The parties later moved to New York and executed a second religious marriage contract. *Id.* at 669. Years later, Bernstein filed for divorce in New York, and Benchemoun moved to dismiss the complaint alleging that there was no valid marriage. *Id.* The trial court agreed with Benchemoun because Florida would not recognize the religious marriage there. *Id.* at 669–70. Bernstein appealed that decision based on the New York religious marriage contract. *Id.* at 670.

The appellate court rejected Bernstein's claim because the rabbi who oversaw the New York marriage contract said that "he never solemnized a marriage, and could not have solemnized a marriage since the parties were already married under Jewish law." *Id.* In these circumstances, the court said declaring "a

solemnized marriage would require an analysis of religious doctrine, which could offend the First Amendment." *Id.* So the trial court "*could not determine ... there was a cognizable marriage in New York*" and properly dismissed the complaint. *Id.* (emphasis added).

That is equally true here. Bishop David, the hierarch and officiant, said he did not solemnize a Coptic marriage between Funti and Andrews. R. at A60-A61. Attempting to show a religious marriage and overturn the Bishop's ruling would require a civil court to analyze Coptic doctrine, ritual, and tradition. Because the First Amendment allows none of this, the trial court could not gainsay the Bishop's ruling and was required to quash the subpoenas and dismiss the complaint.

Equally instructive is *Madireddy v. Madireddy*, 886 N.Y.2d 495, 496 (2nd Dep't 2009), a putative divorce action between parties allegedly married in a Hindu ceremony in India in 1952. The trial court held a nonjury trial and deemed the religious wedding valid. *Id.* at 647. But the Second Department reversed and ordered the complaint dismissed for three reasons. *Id.* First, whether the Indian Hindu wedding ceremony was valid is a quintessentially "religious matter" dependent on "analysis … entrenched in religious doctrine," including the "customary rites, customs, and practices of the Hindu religion of a particular caste in a particular region." *Id.* at 648. But civil courts cannot "review and interpret

religious doctrine" or resolve questions that turn on the application of "religious principles." *Id.*

Second, "neutral principles of law" could not resolve the "religious dispute" between the parties. *Id.* In that case, "the First Amendment … prevents [civil] court[s] from resolving" the "religious controversy" and, further still, deprives them of "jurisdiction to consider th[e] issue" *Id.*

Third, state courts' efforts to solve religious-marriage disputes inevitably "establish one religious belief as correct for the organization while interfering with the free exercise of the opposing faction's beliefs." *Id.* (quotation omitted). And that "violate[s] the First Amendment." *Id.* (quotation omitted).

The subpoenas in this case are unconstitutional for the same reasons. The trial court attempted to review and interpret Coptic doctrine to resolve a question about marriage that turns on religious standards. Neutral principles of law cannot answer that essentially religious inquiry. And the trial court's insistence that it—not the Bishop—gets to decide whether a religious marriage occurred will establish either the Bishop's or Funti's religious belief as correct for the Coptic Orthodox Church, thus demolishing the Church's religious autonomy.

Factually different but still helpful is *In re Weisberg*, 2014 N.Y. Slip Op. 30883, at *1 (Apr. 8, 2014) (N.Y. Surrogate's Court 2014), where competing petitions for administration were filed by the decedent's sister (Berkowitz) and his

putative wife (Geaney). Whereas Berkowitz claimed decedent was unmarried, Geaney said she married decedent in an Islamic ceremony at New York City Mosque. *Id.* at *1–*3. The court credited an affidavit by the mosque's president saying that he personally witnessed the decedent's conversion to Islam and Islamic marriage to Geaney. *Id.* at *3. But, in the court's view, this affidavit did not establish that decedent's Islamic marriage satisfied each of New York's statutory requirements. *Id.* at *4–*5. The court therefore scheduled a trial to figure that out.

At the same time, the court "reject[ed] Berkowitz's efforts to show that the marriage ceremony was invalid [under] Islamic law." *Id.* at *5. "Matters of religious doctrine and practice," the court said, "are outside the bounds of civil judicial review" because the First Amendment "prohibits the courts from resolving controversies over religious doctrine and practice." *Id.* (quotation omitted). Hence, the court refused to "consider … any evidence (such as the affidavit of an alleged expert in Islamic law offered by Berkowitz) that the purported marriage … violated Islamic religious law" based on "the doctrine of church autonomy." *Id.* That constitutional doctrine, the court said, "prohibits judicial involvement with internal church government, a determination of ecclesiastical questions, or inquiries or analysis of religious doctrine and practice." *Id.*

The ecclesiastical abstention doctrine applies here for identical reasons. Whether the Bishop officiated a Coptic wedding is a question of religious doctrine

and practice the trial court cannot solve. Nor may the court evade the Bishop's ruling that no religious marriage occurred by crediting Funti's expert, ascertaining Coptic doctrine itself, or deciding the ultimate religious issue. *Id.* The First Amendment compelled the trial court to take the Bishop's affidavit at face value and quash the subpoenas, not coopt ecclesiastical authority and impose civil litigation burdens.

V. The trial court's reasons for upholding the subpoenas do not withstand scrutiny.

The trial court gave seven reasons for upholding the subpoenas. None bear scrutiny. First, the trial court did not understand—and dismissed—Bishop David's and Father Gregory's religious objection to becoming deeply entrenched in a civil proceeding involving warring church members. R. at A123-A126. Yet the Bible disapproves Christians brothers and sisters "go[ing] to law before the unrighteous, and not before the saints." 1 Corinthians 6:1 (New King James Version). And "religious beliefs need not be acceptable, logical, consistent, or comprehensible to [civil courts] in order to merit First Amendment protection." *Thomas*, 450 U.S. at 714.

Second, the trial court was concerned that respecting church autonomy would not be neutral to religion and might violate the Establishment Clause. R. at A128-A131. Wrong. The First Amendment "gives special protection," *Thomas*, 450 U.S. at 713, or "special solicitude to the rights of religious organizations,"

Hosanna-Tabor, 565 U.S. 189. Staying neutral to religion is not enough; both the Free Exercise and Establishment Clauses require civil courts to respect church autonomy. *Id.* at 181, 184. The trial court's opposite view is grounded in outdated Establishment Clause precedent like *Lemon v. Kurtzman*, 403 U.S. 602, 618 (1971), which the Supreme Court "long ago abandoned," *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022), and has "now abrogated," *Groff v. DeJoy*, 600 U.S. 447, 460 (2023).

Third, trial court focused exclusively on Funti's and Andrews' state-law interests and invitation to secular court intrusion and disregarded the Church's autonomy and First Amendment objections. R. at A124-A126, A206:4-5, 15-16, A229:7-25, A230:1-6, A267:19-25, A268:1-24, A106-A113, A48-A49, A397:10-25, A415:5-9, A417:8-9, A561:4-9. Wrong again. Churches have the right to decide matters of church government, faith, and doctrine for themselves. *Kedroff*, 344 U.S. at 116. When churches exercise that right and make religious judgments, members cannot "appeal to … courts and have them reversed." *Serbian E. Orthodox Diocese*, 426 U.S. at 711 (quotation omitted). It does not matter if churches' decisions impact state-law rights: "civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation." *Id.* at 720. Put differently, "civil courts are bound by the Church's rule" even "where a temporal … right is affected as an incident of

the ecclesiastical decision." *Arneson v. Gen. Synod of Reformed Church*, 352 N.Y.S.2d 735, 736 (4th Dep't 1974); *accord Upstate N.Y. Synod*, 585 N.Y.S.2d at 921.

Fourth, the trial court said that enforcing the subpoenas was appropriate because it treated Bishop David and Father Gregory neutrally (*i.e.*, like everyone else). R. at A28-A30. But "not … any application of a valid and neutral law of general applicability is … constitutional under the Free Exercise Clause." *Trinity Lutheran*, 582 U.S. at 461 n.2. *Smith*'s neutral-and-generally-applicable-law framework applies to "outward physical acts," not "internal church decision[s] that affects the faith and mission of the church itself," *Hosanna-Tabor*, 565 U.S. at 190. Whether Bishop David officiated the Coptic sacrament of marriage is an internal church matter grounded in the Church's doctrine, laws, and mission. And the church autonomy doctrine protects such ecclesiastical decisions from secular interference.

Fifth, the trial court alluded to neutral principles of law. R. at A112. Yet a "dispute" about whether Bishop David officiated a valid Coptic marriage cannot "be resolved without extensive inquiry by civil courts into religious law and policy." *Serbian E. Orthodox Diocese*, 426 U.S. at 709. In that circumstance, neutral principles of law fail and "civil courts shall not disturb the decisions of the highest [authority] within a church of hierarchical polity"—here, Bishop David—

"but must accept such decisions as binding." *Id.* Courts cannot evade this rule "under the guise of 'minimal' [secular] review." *Id.* at 720. Whether Bishop David performed the Coptic sacrament of marriage "is an entirely ecclesiastical matter," so civil courts "are forbidden from such an inquiry." *Matter of Ming Tung*, 996 N.Y.2d at 240.

Sixth, the trial court said Funti could scrutinize the Bishop David's credibility and potential influences on his religious ruling that no Coptic marriage occurred. R. at A111, A228:7-25, A229:1-6, A51, A545:18-20, A553:7-25, A554:10-18, A563:6-25, A564:7-11. Not so. "It is impermissible for a court to look behind an ecclesiastical determination or act to examine the subjective reasons for which it was undertaken." *Ming Tung.* at 241. Challenging whether the Bishop's ruling "was justified calls into question religious dogma, [and] practices," *id.*, and "courts" may not "go behind the declared content of religious beliefs any more than they may examine into their validity." *Matter of Holy Spirit*, 55 N.Y.2d at 521.

Last, the trial court implied that enforcing the subpoenas met strict scrutiny, while addressing only the compelling-interest prong. R. at A30-A31, A50. That is a losing argument. In the underlying litigation, the key question is whether Bishop David joined Funti and Andrews in holy matrimony. Bishop David voluntarily filed an affidavit and answered that question in the negative. R. at A135-A136,

A138, A50. The State has no legitimate—let alone compelling—interest in seeking to change his answer, especially as Funti and Andrews are Church members who gave "implied consent to [Church] government." *Serbian E. Orthodox Diocese*, 426 U.S. at 711 (quotation omitted). Nor is enforcing the subpoenas "the least restrictive means" of furthering the State's interests in answering religious-marriage questions. *Thomas*, 450 U.S. at 718. Taking the Bishop's affidavit at face value and crediting his statement that no Coptic marriage occurred is a much less restrictive way of achieving the same interests.

CONCLUSION

Appellants Bishop David, Father Gregory, St. Mary & St. Mark Coptic Orthodox Church, and the Coptic Orthodox Diocese of New York and New England request that this Court reverse the trial court and remand with instructions to credit the Bishop's statement in his affidavit that he did not officiate a Coptic marriage between Funti and Andrews, quash the subpoenas, and dismiss the case.

Date: July 08, 2024

Dated: New York, New York
July 8, 2024

NELSON MADDEN BLACK LLP

/s/ Barry Black

_____

By: Barry Black
Christopher Byrnes (*admission to NYS Bar pending, pro hac vice pending*)
475 Park Avenue South, Suite 2800
New York, NY 10016
(212) 382-4300

ALLIANCE DEFENDING FREEDOM

_____

By: John J. Bursch (of the bar of the State of Michigan) by permission of the Court in Case No. 2023-04648, admission *pro hac vice* pending in Case No. 2023-00897
Rory T. Gray, Esq.(of the bar of the State of Georgia) by permission of the Court in Case No. 2023-04648, admission *pro hac vice* pending in Case No. 2023-00897
440 First Street, NW
Washington, DC 20001
(480) 444-0020

PRINTING SPECIFICATIONS STATEMENT
PURSUANT TO 22 NYCRR § 1250.8[j]

The foregoing brief was prepared on a computer. A proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules, regulations, etc., is 9,580.

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

LAMIA FUNTI,

Plaintiff-Respondent,

-against-

MARCUS ANDREWS,

Defendant-Respondent.

BISHOP ANBA DAVID, FR. GREGORY SAROUFEEM,
ST. MARY & ST. MARK COPTIC ORTHODOX CHURCH
and COPTIC ORTHODOX PATRIARCHATE DIOCESE OF NEW YORK AND NEW ENGLAND,

Nonparty-Appellants.

STATEMENT PURSUANT TO CPLR 5531

1. The index number for the above case originating in Supreme Court, New York County is 365586/2021.

2. The full names of the original parties are the same; there has been no change.

3. Action commenced in Supreme Court, New York County.

4. Action was commenced by the filing of a Summons, on or about December 20, 2021.

5. Nature of action: Domestic Relations.

6. This appeal is from the Decisions and Orders of the Hon. Douglas E. Hoffman, dated February 8, 2023, and August 11, 2023.

7. Appeal is on the Appendix method.