No. 15-1005

IN THE

Supreme Court of the United States

CHABAD-LUBAVITCH OF MICHIGAN,
Petitioner,
v.
DR. DOV SCHUCHMAN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, ANGLICAN CHURCH IN NORTH AMERICA, NATIONAL ASSOCIATION OF EVANGELICALS, NATIONAL HISPANIC CHRISTIAN LEADERSHIP CONFERENCE-CONEL, COUNCIL FOR CHRISTIAN COLLEGES AND UNIVERSITIES, INSTITUTIONAL RELIGIOUS FREEDOM ALLIANCE, PEACEMAKERS MINISTRIES, AND CONFLICT RESOLUTION AND CONCILIATION CENTER, INC., IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The interest of religious organizations to resolve disputes within their organization in accordance with their own governance, polity, ecclesiology, sacred writings, and traditions is not only a salutary one—it is constitutionally protected. The Michigan Supreme Court's ruling that statutes of limitation run notwithstanding that an internal church dispute resolution process is actively being pursued will spawn needless protective actions in civil courts to prevent the parties being foreclosed from enforcement of the church resolution (protective suits that themselves would often be in defiance of the religious organization's governing principles and doctrines for dispute resolution), defeating the very purpose of self-governance by religious organizations.

Amici are themselves religious organizations that have internal dispute resolution requirements based on their religious beliefs, are organizations that represent such religious organizations, or both. They all request this Court to recognize that the Church Autonomy Doctrine founded on the Religion Clauses of the First Amendment requires civil statutes of limitations to be tolled while religious organizations diligently pursue their internal disputes in accordance with their own polity and beliefs.

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[1] Pursuant to Rule 37.2(a), counsel for *amici* gave to all parties' counsel of record timely notice of the intent to file this brief *amici curiae* in support of petitioners and received the written consent of the parties' counsel of record. Pursuant to Rule 37.6, counsel for a party neither authored, in whole or in part, this brief, nor made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the *amici curiae*, their members, or their counsel made such a monetary contribution.

Christian Legal Society ("CLS") is a nonprofit, nondenominational association of Christian attorneys, law students, and law professors with chapters in many states and at numerous law schools. Throughout its fifty-four years, CLS has encouraged its members to engage in Christian conciliation "in order to promote justice, mercy, and unity." Christian Legal Society, Christian Conciliation, http://www.clsnet.org/page.aspx?pid=432. As CLS today explains, "[t]hrough the ministry of Christian conciliation, specially trained members of the Christian Legal Society provide biblical, professional, legally binding Alternative Dispute Resolution (ADR) services." *Id.* CLS's vision for Christian conciliation was explored as early as 1985, when two members of its staff, Lynn Buzzard and Laurence Eck, wrote their book, *Tell It to the Church: A Biblical Approach to Resolving Conflict Out of Court*.

CLS's legal advocacy arm, the Center for Law and Religious Freedom, works in state and federal courts to protect religious belief and practice, as well as to preserve the autonomy of religion and religious organizations from the government. CLS frequently files briefs in this Court, including in *Hosanna-Tabor Lutheran Church and School v. EEOC,* 132 S. Ct. 694 (2012), which addressed issues of church autonomy.

The **Anglican Church in North America** ("ACNA") unites some 100,000 Anglicans in nearly 1,000 congregations across the United States and Canada into a single Church. It is a Province in the Fellowship of Confessing Anglicans, initiated at the request of the Global Anglican Future Conference (GAFCon) and formally recognized by the GAFCon Primates, leaders of Anglican Churches representing 70 percent of active Anglicans globally. The ACNA is

determined with God's help to maintain the doctrine, discipline, and worship of Christ as the Anglican Way has received them and to defend the God-given, inalienable human right to free exercise of religion. The ACNA is committed to Biblical dispute-resolution processes in accordance with *I Corinthians* 6:1-11, *Matthew* 5:23-24, *Matthew* 18:15-20, and other pertinent Scriptures. The Constitution and Canons of the ACNA provide for the establishment of internal church tribunals at the provincial and diocesan levels for the resolution of a number of matters, including (without limitation) issues of ecclesiastical discipline and matters in dispute arising under the Constitution and Canons.

The **National Association of Evangelicals** ("NAE") is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 41 member denominations, as well as numerous evangelical societies, missions, nonprofits, colleges, seminaries, and independent churches. NAE serves as the collective voice of evangelical churches and other religious ministries. It believes that religious freedom is God-given and that the government does not create such freedom, but is charged to protect it. Its members are intentional about matters of organizational polity which is unfailingly derived from their biblical-centered ecclesiology. With reference to the facts here, that ecclesiology includes the internal resolution of disputes. NAE is grateful for the American legal tradition that recognizes state and church as different centers of authority and believes that this jurisprudential heritage should be maintained in this case.

The **National Hispanic Christian Leadership Conference-CONEL** ("NHCLC-CONEL") is the National Hispanic Evangelical Association. As the largest Latino Christian organization in America, it leads millions of Hispanic Born Again Christ followers via its 40,118 Evangelical congregations in the United States and 400,000 congregations throughout Latin America. It provides leadership, networking, fellowship, strategic partnerships, and public policy advocacy platforms to its seven directives: Life, Family, Great Commission, Stewardship, Education, Youth, and Justice. Its congregations practice Biblical dispute resolution, which requires initial use of internal church procedures.

The **Council for Christian Colleges and Universities** ("CCCU") is an association of Christian colleges and universities who incorporate Christian truth throughout all aspects of their institutions. The CCCU's mission is "[t]o advance the cause of Christ-centered higher education and to help member institutions transform lives by faithfully relating scholarship and service to biblical truth." CCCU, About CCCU, http://www.cccu.org/about.

The CCCU's member institutions are committed to applying Christian doctrine and belief to all areas of human endeavor and thus employ only other Christians who share the beliefs that guide their mission. In fact, this ability to hire only co-religionists and to govern the institution according to its religious beliefs is so fundamental that it is a membership requirement of the CCCU. Accordingly, Christian principles and beliefs are foundational to the relationship these institutions have with their employees. Thus, this case has significant implications for these institutions as well as all religious employers who

govern employment matters according to their faith, particularly for those whose theological beliefs require them to use internal dispute resolution procedures before pursuing any civil remedy in a court of law, as is the case at many CCCU institutions.

Headquartered in Washington, D.C., the CCCU represents 142 institutions in the United States across 34 states and another 38 institutions in 19 other countries. The CCCU's institutions have 450,000 students enrolled and almost two million alumni.

The **Institutional Religious Freedom Alliance** ("IRFA"), founded in 2008 and now a division of the Center for Public Justice, a nonpartisan Christian policy research and citizenship education organization, works to protect the religious freedom of faith-based service organizations through a multi-faith network of organizations by educating the public, training organizations and their lawyers, creating policy alternatives that better protect religious freedom, and advocating to the federal administration and Congress on behalf of the rights of faith-based services. Some of our member organizations, and many of our organizational allies, are committed to an internal, religion-based dispute-resolution process.

Peacemaker Ministries ("PM") is dedicated to assisting Christians and churches to respond to conflict biblically. PM provides conflict coaching, mediation, and arbitration services to help resolve conflicts, legal disputes, and church divisions, and has assisted thousands of people to find peace through conflict. PM was started over thirty years ago by lawyers who wanted to provide a Christian alternative to the legal process, in accordance with Chapter 6 of Paul's First Letter to the Corinthians. PM encourages and assists churches and denominations to adopt

dispute resolution procedures to resolve disputes among members internally, and offers congregational conflict intervention services. PM's intervention would be thwarted if churches, their leaders and/or members believed they had to file a lawsuit before or during the peacemaking process to prevent the civil statute of limitations from running to, in turn, protect their ability to enforce mediation and arbitration agreements that resulted from internal dispute-resolution processes.

Conflict Resolution and Conciliation Center, Inc., doing business as **Conflict to Peace** ("C†P"), is a not-for-profit, non-denominational, para-church organization that provides alternative dispute resolution services to individuals, families, churches and organizations in the greater Washington, D.C., area. Founded in 1995, C†P offers conflict coaching, mediation, arbitration, training and educational services. C†P assists those who are in conflict to resolve their dispute using Biblical principles in a way that honors God. In some cases we serve parties who, by contract, are bound to apply the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, which provide that "the Holy Scriptures (the Bible) shall be the supreme authority governing every aspect of the conciliation process." In that spirit, and with respect, *I Corinthians* 6:1-6 admonishes believers to submit disputes to the Church for resolution and, if necessary, binding decisions, and not secular tribunals. This being the basis on which C†P is founded, and acknowledging that the church and state operate under different governing principles, we believe that deference to ecclesiastical hierarchies should be given in this matter.

ARGUMENT

In the American rule of law, church and state are acknowledged to maintain separate centers of authority. Internal dispute resolution is a central aspect of a religious organization's governance, as *amici* confirm in their particular statements of interest above. As such, this Court has recognized that internal dispute resolution, a critical part of the Church Autonomy Doctrine rooted in both Religion Clauses,[2] requires signal respect by civil courts. The doctrine requires tolling of civil statutes of limitation until the ecclesial process has been completed. Only at that point may civil authorities be asked to enforce the decision or award at which the internal religious process has arrived.

In our civil justice system, the filing of a law suit satisfies the requirements of a statute of limitations. The institution of a religious internal dispute system should not be given lesser significance, as the same purposes are satisfied: the matter is being attended to in a timely manner and moving toward resolution, all within the governance and religious tenets of that religious organization. It would be strange, indeed, if

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[2] Both clauses are rightly understood to underlie the doctrine. *See Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S. Ct. 694, 706-07 (2012). The Free Exercise Clause recognizes a right not just to believe but also to practice a religion. The right runs in favor of individuals and groups that hold to a system of religious faith. The Establishment Clause operates differently but never in contradiction to free exercise. The Establishment Clause limits power otherwise delegated to the government so as to not "make law . . . respecting an establishment of religion." This structural restraint on power runs against the federal government and now, by virtue of the Fourteenth Amendment, also against the governments of the several States.

non-religious dispute resolution procedures, such as binding arbitration, have such a rule, but the same were not applied to religious dispute resolution to protect the church-state relationship mandated by the Religion Clauses.

I. INTERNAL DISPUTE RESOLUTION IS A CRITICAL ASPECT OF THE *AMICI*'S THEOLOGY AND GOVERNANCE

The parties agree that the Jewish organizations here have a defined dispute resolution process that their faith requires them to follow. The same is true for *amici*, who hail from the Christian faith.

The requirement of internal dispute resolution for Christians is rooted in the New Testament, and most specifically in the following passage:

> If any of you has a dispute with another, dare he take it before the ungodly for judgment instead of before the saints? Do you not know that God's people will judge the world? And if you are to judge the world, are you not competent to judge trivial cases? Do you not know that we will judge angels? How much more the things of this life! Therefore, if you have disputes about such matters, appoint as judges even men of little account in the church! I say this to shame you. Is it possible that there is nobody among you wise enough to judge a dispute between believers? But instead, one brother goes to law against another—and this in front of unbelievers.
>
> The very fact that you have lawsuits among you means you have been completely defeated already. Why not rather be wronged? Why

> not rather be cheated? Instead, you yourselves cheat and do wrong, and you do this to your brothers.

I Cor. 6:1-8 (New Int'l Version); *see also Matt*. 18:15-18; *Ex.* 21:1, 30-36.

John Calvin wrote, "For as no city or village can exist without a magistrate and government, so the Church of God . . . needs a kind of spiritual government. This is altogether distinct from civil government. . . . To this end, there were established in the Church from the first tribunals which might take cognisance of morals, animadvert on vices, and exercise the office of the keys." IV J. Calvin, *Institutes of the Christian Religion*, ch. 11, ¶ 1. Calvin related that, historically, "[e]cclesiastical causes, indeed, were brought before the episcopal court; as when a clergyman had offended, but not against the laws, he was only charged by the Canons; and instead of being cited before the civil court, had the bishop for his judge in that particular case." *Id*. ¶ 15. Calvin concluded with a citation from St. Ambrose, a Fourth Century Bishop of Milan:

> "If we attend to the Scriptures, or to ancient examples, who can deny that in a question of faith, a question of faith, I say, bishops are wont to judge Christian emperors not emperors to judge bishops?" . . . He maintains, indeed, that a spiritual cause, that is, one pertaining to religion, is not to be brought before the civil court, where worldly disputes are agitated. His firmness in this respect is justly praised by all.

Id.

These admonitions found in the Bible, and long practiced in church history, are worked out in varying ways in differing denominations and associations, with some having a multi-tiered, hierarchical structure (such as *amicus* Anglican Church of North America) and others handling disputes within each local church (such as members of *amici* National Association of Evangelicals and National Hispanic Christian Leadership Conference-CONEL) or with the assistance of parachurch dispute resolution ministries (such as *amici* Peacemaker Ministries and Conflict to Peace). Parachurch ministries unaffiliated with any particular denomination (such as Christian Legal Society, Council for Christian Colleges and Universities, and Institutional Religious Freedom Alliance) also provide services to resolve disputes between churches according to biblical dispute-resolution principles and without the involvement or interference of civil government.

II. INTERNAL RELIGIOUS DISPUTE RESOLUTION IS A CENTRAL ASPECT OF THIS COURT'S CHURCH AUTONOMY DOCTRINE

This Court most recently described the Church Autonomy Doctrine as insulating from government interference "an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 132 S. Ct. at 707. In that instance, the dispute involved the dismissal of a teacher at a church-related school who qualified as a minister, and her dismissal was prompted by her failure to follow the required internal church dispute-resolution procedures. *Id.* at 700, 709. The Court also gave another example, even closer to the facts here, in which the doctrine applies: in lawsuits over church property, the government

must not take sides on the question concerning the rightful ecclesiastical authority to resolve the property question. *Id*. at 704-05 (citing *Serbian E. Orthodox Diocese for U.S. and Can. v. Milivojevich*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872)).

This Court has established that civil authorities may not interfere with internal dispute resolution by a religious organization. In *Serbian*, this Court spoke to a hierarchical structure when holding that the First Amendment permits "religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." 426 U.S. at 724. However, the rule is no different for non-hierarchical churches, which also have the authority to set their own polity and governance. Justice Alito, concurring in *Hosanna-Tabor* with Justice Kagan, spoke more broadly when describing the Church Autonomy Doctrine:

> Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have "act[ed] as critical buffers between the individual and the power of the state." *Roberts v. United States Jaycees*, 468 U.S. 609, 619 (1984). . . . [T]he autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. The

> Constitution guarantees religious bodies "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* . . ., 344 U.S. [at] 116 . . . .

132 S. Ct. at 712 (Alito, J., concurring).

Dispute resolution is a central aspect of ecclesiastical self-governance. In *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), Justice Brennan observed exactly that: "[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: select their own leaders, define their own doctrines, *resolve their own disputes, and run their own institutions*." *Id.* at 341 (Brennan, J., concurring) (internal quotations and citation omitted) (emphasis added). And Justice Alito in *Hosanna-Tabor* elucidated that, while different denominations have different structures for internal dispute resolution, they are all protected by the First Amendment's Church Autonomy Doctrine:

> The Roman Catholic Church's insistence on clerical celibacy may be much better known than the Lutheran Church's doctrine of internal dispute resolution, but popular familiarity with a religious doctrine cannot be the determinative factor. What matters in the present case is that Hosanna-Tabor believes that the religious function that respondent performed made it essential that she abide by the doctrine of internal dispute resolution; and the civil courts are in no position to second-guess that assessment.

132 S. Ct. at 716 (Alito, J., concurring).

III. CHURCH AUTONOMY IS UNDERMINED WHEN STATUTES OF LIMITATIONS RUN BEFORE INTERNAL DISPUTE RESOLUTION IS CONCLUDED

It is an unfortunate truth that, even after internal dispute resolution has concluded, religious organizations must sometimes seek enforcement of the decision by the civil government. That is what occurred in this particular instance: Petitioner timely sought civil enforcement of the internal decision, once it had run its full course, but found the courtroom door locked by the statute of limitations.[3]

Amici will not belabor that which is more amply set out in the petition. If statutes of limitation run while the religious organization conducts its internal dispute-resolution process, then protective suits will multiply, directly contrary to the biblical injunction, quoted above and embodied in denominational doctrines and polities, that resort to civil courts to resolve disputes among church members be minimized. Saint Paul's admonition in *I Corinthians* 6 for church members to avoid resort to the civil courts before taking disputes among themselves to their church authorities will be frustrated if protective civil suits must be filed to guard against a party's potential refusal to adhere to the ultimate outcome of the religious organization's decision.[4] With parties

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[3] It is acknowledged in this action that Petitioner's suit for enforcement was filed within the time allotted by any applicable statute of limitation when measured from completion of the religious dispute-resolution process.

[4] This ecclesiastical polity is the same as that of the Jewish petitioner in this case. The twelfth-century codifier of Jewish Law, Moses Maimonides, wrote in his Code of Jewish Law,

rushing to court to avoid losing their civil enforcement mechanism, the internal ecclesiastical process may well be terminated before its conclusion, and the civil courts will often be needlessly involved.

Another basic goal of Christian dispute resolution is also threatened by the Michigan Supreme Court's ruling. For the Christian, it is even more important to reconcile the strained relationship than it is to resolve the particular disputed matter. *See I Cor.* 6:7 (quoted above). Forcing civil litigation prior to the completion of the religious dispute process harms the ability of members of the same faith to reconcile. *See Matt*. 5:23-24 ("Therefore, if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First go and be reconciled to your brother; then come and offer your gift.").

Finally, some parties may be incentivized to manipulate the internal religious disputes process. With a statute of limitation running, an insincere disputant might game the religious process by

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> When any person has a judgment adjudicated by gentile judges and their courts, he is considered a wicked person. It is as if he disgraced, blasphemed, and lifted up his hand against the Torah, of Moses." . . . [The following procedure should be carried out] if the gentiles have a powerful law enforcement system and the opposing litigant is a stubborn and powerful person from whom one cannot expropriate property through the judicial system of the Jewish people. One should summon him before the Jewish judges first. If he did not desire to come, one may receive license from the court and salvage [one's property] from the litigant by having the case tried in a gentile court.

Moses Maimonides, *Mishneh Torah*, *Laws of Sanhedrin* 26:7 (Moznaim Publ'g 2001).

unnecessarily protracting it, with the ultimate purpose to reject the process as soon as the statute runs and civil remedies are no longer available.

The way to avoid these troubling results is for statutes of limitation to be tolled while the internal, religious dispute-resolution process runs its course. The Religion Clauses of the First Amendment, as reflected in the Church Autonomy Doctrine, require no less. Otherwise, statutes of limitation will impermissibly infringe upon the ability of the church to self-govern.[5]

IV. IF LIMITATIONS ARE TOLLED FOR MANDATORY ARBITRATION, THEY CERTAINLY ARE FOR DISPUTES RESOLUTION COVERED BY THE FIRST AMENDMENT'S CHURCH AUTONOMY DOCTRINE

A fitting example of how this should work—indeed, must work—is given by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* (2012). Congress in that act overrode the hostility of the common law to arbitration agreements as reflected in many states at the time. *See generally EEOC v. Waffle House, Inc.*, 534 U.S. 279, 289 (2002); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). It provided that such agreements that touched maritime and interstate commerce were not disfavored, but enforceable. 9 U.S.C. §§ 1-4 (2012). And it provided that, once the arbitrators had concluded the process, the arbitral

[5] The Michigan courts referred to this as "equitable" tolling. More properly, it is viewed as mandatory, "constitutional" tolling that cannot be overridden by chancellor's discretion or other considerations. *See Hosanna-Tabor*, 132 S. Ct. at 710 ("the First Amendment has struck the balance for us").

award could be enforced in the federal courts within one year. *Id.* § 9. The point here is obvious: Congress, by providing a remedy for confirmation *after conclusion of the arbitration process*, overrode any contrary state statute of limitation defenses. If Congress had failed to override state statutes of limitation, it would, in many instances, have made its approval of private arbitration agreements to resolve disputes a hollow exercise.

Religious, internal dispute resolution stands on much more hallowed ground than the Federal Arbitration Act. It stands on the Church Autonomy Doctrine, enshrined not just in personal free exercise but also church-state separation. But just as with the Federal Arbitration Act, if state statutes of limitation are not tolled while the religious dispute-resolution process runs its course, that central aspect of church governance will become but a hollow right.

This Court explained in *Watson v. Jones*,

> The right to organize 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 within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association*, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

80 U.S. (13 Wall.) at 728-29. The Court continued, "But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one

aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Id*. at 729. Similarly here, it would be a vain resort to the Church Autonomy Doctrine if one aggrieved by the decision of a religious tribunal could frustrate its enforcement by the expedient of an applicable statute of limitation expiring during the religious organization's required dispute-resolution process.

CONCLUSION

The Michigan Supreme Court's refusal to toll the statute of limitation while the Chabad-Lubavitch dispute-resolution process ran its course treats that internal process as if it had never happened and as if it had not been required as a matter of religious polity, ecclesiology, theology, and governance. This threatens the autonomy of all religious societies that have such polity, including almost all Christian denominations and organizations. Because this is a matter of great importance under the First Amendment, the petition should be granted.

Respectfully submitted,

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