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

REPLY BRIEF FOR NONPARTY-APPELLANTS

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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' Reply Brief.

PRELIMINARY STATEMENT

The trial court's ruling that there was a religious marriage does not eliminate these appeals: it exacerbates the Church's harm. The trial court explicitly rejected Bishop David's *religious* ruling about the nature of a *religious* ritual he performed in his own church, even though the Bishop "was sincere in his testimony" about quintessentially *religious* matters that depend on Coptic doctrine and practice. RA-672–73. Instead, the trial court favored the testimony of a non-Coptic lawyer who sat in the audience and gave a toast at lunch. RA-676. But church leaders are not "subject to judicial review on core questions of religious belief." *Huntsman v. Corp. of President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784, 799 (9th Cir. 2025) (en banc) (Bress, J., concurring in the judgment).

The law is clear:

> A finding that there was a solemnized marriage would require an analysis of religious doctrine, which could offend the First Amendment of the United States Constitution. Thus, under the circumstances, the Supreme Court could not determine that there was a cognizable marriage in New York.

Bernstein v. Benchemoun, 216 AD3d 893, 894 (2d Dep't 2023) (internal citations omitted). The First Amendment requires reversal and dismissal of the complaint.

ARGUMENT

I. The Church's appeals are not moot.

Plaintiff-Respondent Funti claims that the Church's appeals are moot, Def.-Appellant Br. 3–4, 48–51, and that the Church cannot argue otherwise, *id.* at 53–54. She is wrong on both counts. Ms. Funti's primary mootness argument is that—subsequent to the Church's appeals—the trial court ruled that Bishop David married Ms. Funti and Respondent-Defendant Marcus Andrews in a religious ceremony, *id.* at 3, 48–49 & n.12; RA676–77, *contradicting* the Bishop's ruling that no Coptic marriage occurred, which he made (willingly) in an affidavit and (unwillingly) at a court hearing on pain of contempt and imprisonment, NonpartyAppellantsBr.4–9. But the lower court's dive into Coptic law

and overturning of the Bishop's ruling on a quintessentially religious question is the problem, not the solution to the First Amendment violation here. And none of Ms. Funti's cited authorities shows otherwise.

A. Ms. Funti's mootness argument is wrong six ways.

A controversy is live when the Court's "determination … with respect to the issuance of the subpoenas will … directly affect the rights of the parties or the nonparty appellant." *People v. Harris*, 971 N.Y.S.2d 73, *1 (1st Dep't 2013); *accord Parton v. Summit Children's Residence Ctr., Inc.*, 828 N.Y.S.2d 919 (2nd Dep't 2007). First, if the Church prevails and this Court holds that the trial court was constitutionally required to quash the subpoenas and accept the Bishop's affidavit ruling that no Coptic marriage occurred, then the trial court will dismiss Ms. Funti's putative divorce action as non-justiciable, Defendant-Respondent Andrews will prevail, the underlying case will end, and Mr. Andrews' appeal of the trial court's religious-marriage ruling will likely be rendered moot (No. 2024-04456). But if this Court upholds the subpoenas' constitutionality, Ms. Funti's divorce action will continue unless Mr. Andrews' separate appeal succeeds on non-constitutional grounds.

Either way, the outcome of the Church's appeals directly affects the parties' rights and obligations (*e.g.*, divorce, equitable distribution, and spousal maintenance). *Accord Matter of Utica Mut. Ins. Co.*, 813 N.Y.S.2d 547, 549 (3d Dep't 2006) ("Inasmuch as the parties' rights and liabilities will be directly affected by our resolution of this appeal, the dispute is justiciable and petitioners' motion [to dismiss] is therefore denied"). Mr. Andrews agreed with this assessment. Doc. No. 50. That both parties subpoenaed the Church after the trial court refused to credit the Bishop's affidavit changes nothing. *Contra* Pl.-Respondent.Br.49 n.13.

Second, the Church's appeals will directly affect Nonparty Appellants' rights. The Church's claim is that the First Amendment requires the trial court to accept Bishop's David statement in his sworn affidavit that he did not—and could not—perform a Coptic marriage between the parties. Nonparty-AppellantsBr.18–37. The remedy the Church seeks is an order from this Court quashing the subpoenas, disallowing any reliance on Bishop David's or Father Gregory's compelled testimony or productions, and reversing and remanding with instructions to dismiss the underlying case as non-justiciable. *Id.* at 34, 42. That relief is "available," *Romaro Corp. v. Sea & Sky Garden*, 757 N.Y.S.2d 771 (2d

Dep't 2003), and "meaningful," *Matter of Victor v. N.Y. City Off. of Trials & Hearings*, 102 N.Y.S.3d 431, 432 (1st Dep't 2019), because it partially remedies the Church's constitutional harms, *cf. Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992).

Third, only the Church's requested relief is capable of ensuring that Ms. Funi takes "no further enforcement measures" as to the subpoenas because (1) the subpoenas impose continuing obligations that only cease when the underlying case is over—and it is not; (2) this Court may reverse the trial court's religious-marriage ruling on non-constitutional grounds in Mr. Andrews' appeal and remand for further proceedings; and (3) nothing Ms. Funti avers on appeal about taking "no further enforcement measures" regarding the subpoenas is "an enforceable guarantee" on remand. *Matter of Harris v. Seneca Promotions, Inc.*, 53 N.Y.S.3d 758, 761 (4th Dep't 2017). *Contra* Pl.-Respondent.Br.48–49.

Fourth, Ms. Funti's mootness arguments presume that the trial court's religious-marriage order is final, and that Mr. Andrews' appeal has zero chance of prevailing. Def.-Appellant.Br.48. Yet Ms. Funti's efforts to prejudge Mr. Andrews' perfected appeal—and this Court's rulings—are improper and purely speculative.

Fifth, resolving the Church's appeals is necessary to vindicate Bishop David's ongoing interest in preserving his professional and personal reputation. Nonparty.Appellants.Br.16–17. The trial court's refusal to take the Bishop at his word that he performed a religious blessing—not a Coptic marriage ceremony—brands the highest authority in the Coptic Orthodox Diocese of New York and New England incompetent, prejudiced, or untrustworthy. Ongoing enforcement of the subpoenas below resulted in the trial court overruling the Bishop's religious determination that no marriage sacrament occurred because the trial court deemed the Bishop—who "oversees 40 churches in six or seven states"—"sincere in his testimony" but not "accurate[ly] … recollecting" what religious ceremony he performed. RA-672. This judicial blackmark "adversely impact[s] his professional reputation and standing within the [local] and greater [Coptic] communities, and constitute[s] enduring consequences." *Matter of N.Y. State Comm'n on Judicial Conduct v. Rubenstein*, 23 N.Y.3d 570, 577 (2014). And these ongoing professional consequences mean "the appeal[s] [are] not moot." *Id.* at 526.

The trial court's rejection of Bishop David's ruling that no Coptic marriage occurred is also "a continuing blot on [his] … [personal] reputation." *Matter of Williams v. Cornelius*, 76 N.Y.2d 542, 546 (1990). And the lower court's public ruling that the Bishop does not "accurate[ly] … recollect[ ]" the religious ceremony he performed in his own church, RA-672, will "no doubt be used to attack [his] credibility as a witness or party in a court of law" in other matters, *Matter of Williams*, 76 N.Y.2d at 546; *accord* Pl.-Respondent.Br.21. A reasonable person could interpret the trial court's ruling as effectively saying the Bishop committed or assisted perjury. Ms. Funti's brief suggests as much. Pl.-Respondent.Br.17–18, 21–22, 26–27. Accordingly, the Bishop needs this "opportunity to vacate the adjudication by the only judicial review afforded to" him, *i.e.*, these appeals of the trial court's failure to quash the subpoenas. *Matter of Williams*, 76 N.Y.2d at 546.

Finally, this is not a case where the Court's "determination would have no practical effect on the parties" or non-party appellants, *Berger v. Prospect Park Residence, L.L.C.*, 87 N.Y.S.3d 572, 574 (2d Dep't 2018); *accord Galicia v. Trump*, 142 N.Y.S.3d 819 (1st Dep't 2021); *Merenda v. Lisi*, 664 N.Y.S.2d 471, 471–72 (2d Dep't 1997), or where "[t]he issues …

became moot when the plaintiffs voluntarily opted to settle their claims," *Berger*, 87 N.Y.S.3d at 575; *accord Admiral Ins. Co. v. Joy Contractors, Inc.*, 136 N.Y.S.3d 732, 732–33 (1st Dep't 2021). Nor is this a situation where meaningful relief is impossible. *Matter of Victor*, 102 N.Y.S.3d at 432; *Matter of Aidin v. (Giorgio V.) v.*, 51 N.Y.S.3d 147, 148 (2d Dep't 2017); *Romaro Corp. v. Sea & Sky Garden*, 757 N.Y.S.2d 771 (2nd Dept 2003); *Niagara Mohawk Power Corp. v. N.Y. State Dep't of Env't Conserv.*, 564 N.Y.S.2d 839, 840 (3d Dep't 1991). And the Church has not "concede[d]" that its requested relief "would no longer serve a useful purpose." *Matter of Abidi v. Antohi*, 873 N.Y.S.2d 638, 639 (2d Dep't 2009). So Ms. Funti's cited authority is not on point.

B. The exception to mootness applies.

Ms. Funti admits there is a "mootness exception [for] recurring novel or substantial issues that are sufficiently evanescent to evade review otherwise." *Caraballo v. Art Students League of N.Y.*, 24 N.Y.S.3d 627, 629 (1st Dep't 2016) (cleaned up). She merely contends that exception does not apply. Pl.-Respondent.Br.51–52. That is incorrect.

The mootness exception depends on three factors: is an issue (1) "likely to recur, either between the parties or other members of the

public," (2) "substantial and novel," and (3) the sort that "typically evade[s] review in the courts." *Coleman ex rel. Coleman v. Daines*, 19 N.Y.3d 1087, 1090 (2012). Thousands of houses of worship in New York celebrate dozens of religious marriages each year. And, unfortunately, divorce is commonplace. Questions about whether a religious marriage occurred will persist between couples ending their relationships because other members of the public have strong incentives (monetary and otherwise) to establish a marriage by hailing clergy into civil court. So the issues presented here are likely to recur.

Nor is there doubt that the First Amendment issues presented here are substantial and novel. The trial court said so itself, 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. Neither statement would be true if the constitutional issues involved in these appeals were "not novel." Pl.-Respondent.Br.51–52. Nor would the Jewish Coalition for Religious Liberty file an amicus brief in these appeals if the Coptic Church's constitutional arguments were run-of-the-mill. Doc. No. 58.

Ms. Funti cites neutral-principles-of-law litigation to dispute the novelty here. Pl.-Respondent.Br.52. But that assumes Ms. Funti is

correct on the merits and neutral principles of law can resolve whether a Coptic marriage solemnization occurred (they cannot). What's more, "neutral principles of law" is a standard, not an issue. Ms. Funti cannot show the constitutional *issues* here lack novelty. None of the cases she cites are similar to this one. *E.g.*, *Avitzur v. Avitzur*, 58 N.Y.2d 108, 113–15 (1983) (religious contract forum selection); *T.I. v. R.I.*, 216 N.Y.S.3d 436, 456–57 (Sup. Ct. Kings Co. 2024) (religious divorce's effect on an established civil marriage); *Fischer v. Fischer*, 655 N.Y.S.2d 630, 630–31 (2d Dep't 1997) (contempt based on a settlement stipulation and civil divorce judgment); *Jones v. Wolf*, 443 U.S. 595, 602–04 (1979) (church property dispute).

Indeed, the Church is aware of no other secular court that has asserted the right to contradict a bishop's religious ruling about the nature and meaning of a sacred ritual *he performed in his own church*. Nonparty-Appellants.Br.21–26. The trial court's orders' total disregard of the Church's First Amendment rights—and the ecclesiastical abstention doctrine—places them in a league of their own. *Id.* at 2, 7, 20–32, 36–37. Previously, secular courts would not have dreamed of reviewing and reversing a quintessentially religious decision—

concededly made in good faith—by the highest authority in a hierarchical church. RA-672–77. If New York proceeds down this dangerous (and unconstitutional) path, it should be pursuant to an appellate decision, not a trial court's unreviewed decrees.

As Nonparty Appellants noted in their Memorandum of Law in Opposition to Ms. Funti's unsuccessful Motion to Dismiss this Appeal, the constitutional questions raised in the Church's appeals are also likely to evade judicial review because they result from refusals to quash the parties' subpoenas. *See* Non-Party Appellants Memorandum of Law in Opposition to Plt-Resp's Mot. Dismiss, NYSCEF Document 48, p.8. Those arguments are further supported and borne out by amicus support expressing a very real concern for ministers being dragooned to testify in similar situations.

C. Nothing prevents the Church from explaining why these appeals are live.

Ms. Funti argues that the Church cannot explain why these appeals are live because "the issue of mootness was never raised" below, "nor could that issue have been raised" in the trial court. Pl.-Respondent.Br.54. That is plainly wrong. By definition, mootness on appeal deals with "questions which although once live, have become moot

by *passage of time or change in circumstances*." *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714 (1980) (emphasis added). So a discussion of latter developments in the trial court, as well as this Court, is necessary and appropriate.

Mootness is a jurisdictional matter that may be raised "at any stage of the action." *Robinson v. Oceanic Steam Nav. Co.*, 112 N.Y. 315, 324 (1889). Importantly, this Court may raise mootness on its own motion, "refuse to proceed further," and dismiss the appeals. *Id.*; *accord* CPL 470.60(1). That places an affirmative obligation on the Church to "adequately … explain" why these appeals are "not moot." *Cadle Co.*, 823 N.Y.S.2d at 402. It is wrong for Ms. Funti to critique the Church for taking this responsibility seriously.

Plus, "[w]hat is sauce for the goose is sauce for the gander." *Haslett v. Haslett*, 268 N.Y.S.2d 809, 813 (3d Dep't 1966) (quotation omitted). If Ms. Funti can raise mootness on appeal, Pl.-Respondent.Br.54, the Church can too, Nonparty-Appellants.Br.15–18. A contrary stance is not just hypocritical, it would deprive the Church of another constitutional right—due process. *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 467 (2000) (acknowledging the right "to respond and be heard").

II. Ms. Funti agrees with the Church on key points regarding this case and church autonomy.

Ms. Funti agrees with the Church on several key points. Critically, she acknowledges that the key issue is whether "Bishop David … conducted a wedding ceremony for the two parties to this action." Pl.-Respondents.Br.4. So the question Ms. Funti wants a secular court to answer is "if there was a valid religious marriage" at a Coptic church, *id.* at 5, between two Coptic Church members (*i.e.*, Funti and Andrews), *id.* at 10, with the Coptic Bishop (*i.e.*, "Bishop David") as the "presiding officiant," *id.* at 6. In other words, the inquiry is whether "'Marcus Andrews and Lamia Funti were Lawfully Married on Saturday, July 29, 2017[,] According to the Rites of the Coptic Orthodox Church, and in conformity with the Laws of the State of New York,'" *id.* at 15 (quoting RA-247), which recognizes marriages solemnized under a religious denomination's "us[age] and practice." N.Y. Dom. Rel. Law § 12. *Accord* Pl.-Respondent.Br.25 (Ms. Funti claims "she is married by solemnization").

Ms. Funti also admits that "religious organizations and their disputes and decisions are substantially protected under the First Amendment." *Id.* at 36. Accordingly, Ms. Funti recognizes that, "in

certain situations," the First Amendment "curtails civil courts from interfering in or determining religious disputes, because there is substantial danger that the state will become entangled in essentially 'religious controversies or intervene on behalf of groups espousing particular doctrines or beliefs.'" *Id.* at 9 (quoting *Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 9 N.Y.3d 282, 286 (2007)). She also concedes that secular courts may not "become the arbiter of religious observance and practices," "resolve disputes over religious doctrine," "determine ecclesiastical matters," "resolv[e] controversies over religious doctrine and practice," meddle in "internal church governance," resolve "a religious dispute between the parties," or "investigate religious doctrine." *Id.* at 13–14, 32, 35 (quotations omitted). These are "non-justiciable religious" matters that Ms. Funti rightly says are for churches, not secular courts. *Id.* at 35.

Outside of situations like these, Ms. Funti and the Church agree that secular courts may generally "'preside over a dispute involving a religious body'" if they can do so using "neutral principles of law." *Id.* at 9 (quoting *Russian Orthodox Convent Novo-Diveevo, Inc. v. Sukharevskaya*, 91 N.Y.S.3d 101, 103 (2nd Dep't 2018). But as Ms. Funti

explains, "neutral principles of law could not be applied to determine the validity of a [religious] marriage, [as] such an inquiry would run afoul of the First Amendment." *Id.* at 42 (discussing *Madireddy v. Madireddy*, 886 N.Y.S.2d 495, 496 (2nd Dep't 2009)); *accord Bernstein*, 188 N.Y.S.3d at 670.

III. Where Ms. Funti and the Church disagree on church autonomy, Ms. Funti distorts the facts or the legal principles she affirmed.

Ms. Funti's and the Church's general positions on church autonomy are very close, if not essentially the same. Ms. Funti merely evades applying those principles to the Church's appeals by distorting the facts or the law.

A. Whether the Bishop solemnized a marriage between the parties according to the rites of the Coptic Church is a quintessentially religious question, not a secular one.

Ms. Funti engages in word play, not argument. She admits that the issue in the underlying case is whether Bishop David (the Coptic Bishop) solemnized a marriage between the parties (two Coptic Church members) at St. Mary & St. Mark (a Coptic Church) under Coptic law. Pl.-Respondent.Br.5–6, 10. But then Ms. Funti backtracks, insisting the

issue of whether "a valid religious marriage" occurred, *id.* at 5, is a secular question—not a religious one, *e.g.*, *id.* at 22.

Semantics is Ms. Funti's only support for this argument. She employs every euphemism in the book to justify a secular court, not Bishop David, deciding whether the Bishop solemnized a marriage between the parties under Coptic usage and practice: (1) referencing whether a "judicial subpoena issued to Bishop David was enforceable," *id.* at 19, or "the enforceability of judicial subpoenas served by the parties in a civil matter solely before the civil court," *id.* at 40; (2) invoking the trial court's "authority to determine [a] matrimonial dispute," *id.* at 19, or "civil matrimonial matter," *id.* at 20; (3) describing Bishop David "as a fact witness," *id.* at 21; and (4) characterizing the question as "a civil dispute under New York law," *id.* at 27, "a civil action under the civil laws of New York before a civil court," *id.* at 33, or a "civil matter before the trial court," *id.* at 34.

Such verbal gymnastics is irrelevant. The Church's First Amendment rights depend not on form but substance. *Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668, 679–80 (1996). Accordingly, "a State cannot foreclose the exercise of constitutional rights by mere labels."

NAACP v. Button, 371 U.S. 415, 429 (1963). The Court must examine what is really going on here, not the secular labels Ms. Funti ascribes to it. And the church autonomy problem is clear: Ms. Funti wants a secular court, not Bishop David to decide whether the Bishop solemnized a marriage between the parties under Coptic law, usage, and practice. Yet that is a religious dispute between two Coptic Church members over a quintessentially religious question that depends on Coptic beliefs, doctrine, and practice—matters strictly within the Coptic Church's authority. *Madireddy*, 886 NYS2d at 48–49. Because Ms. Funti's putative divorce action is nonjusticiable, this Court should reverse and remand with instructions to dismiss her complaint. *Id.*; *accord Bernstein*, 188 NYS3d at 670.

Ms. Funti wants "to indulge in the illusion that this is merely a secular lawsuit about civil [marriage]." *Huntsman*, 127 F.4th at 793 (Bress, J., concurring in the judgment). But this "challenge to the Church's understanding of [a religious ritual] is not susceptible to resolution in a court of law, lest the judiciary wrest control from religious authorities over matters of theological concern." *Id.*

B. Neutral principles of law cannot decide quintessentially religious issues, including whether Bishop David blessed or married the parties under Coptic law.

Ms. Funti treats "neutral principles of law" like a totem that keeps the First Amendment at bay. *E.g.*, Pl.-Respondent.Br.8, 18–19, 27, 33, 41,45. But that has never been the case. A court cannot merely say that it applied neutral principles of law: the question before the court must be *susceptible* to purely secular resolution and the court must *actually decide* the issue that way.

Mr. Funti's own cases make this rule plain. In *Avitzur*, the Court of Appeals explained that secular courts cannot involve themselves in issues "arising solely out of principles of religious law." 58 NY2d at 113. Nor may courts resolve "matters touching upon religious concerns … in a manner requiring consideration of religious doctrine" or "interfere[ ] with religious authority." *Id.* at 114–15. Accordingly, "the 'neutral principles of law' approach" only works when secular courts may "resolv[e] religious disputes" in "purely secular terms" without "consider[ing] … doctrinal matters," such as enforcing certain provisions of religious marriage contracts. *Id.* at 114–15. Those conditions are not present here: a secular court deciding whether the David performed a

blessing or marriage sacrament touches on religious concerns, depends on Coptic doctrine, and interferes with the Bishop's authority to establish whether the parties have ever been married in the eyes of the Coptic Church.

The Court of Appeals applied the same principles in *Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana*, 879 N.E.2d 282 (2007), which involved a religious congregation's election controversy. Simple notice and quorum challenges, the court said, are susceptible to neutral principles of law. *Id.* at 286–87. But "membership issues … are an ecclesiastical matter" that secular courts may not decide because they entangle courts "in essentially religious controversies" and "require interpretation of ecclesiastical doctrine." *Id.* at 286–87. Here, religious marriages are their own club, yet the trial court took it upon itself to troll through Coptic doctrine and decide a quintessentially religious matter to give Ms. Funti entry.

In *Storfer v. Storfer*, 16 N.Y.S.3d 549, 550 (1st Dep't 2015), this Court recognized that inherently religious questions "cannot be decided by neutral principles of law without reference to religious doctrine." Whether a mother was raising a child "in accordance with the tenets of

the Modern Orthodox Jewish faith" qualified as such a religious question. *Id.* (quotation omitted). So the trial court was "prohibited from entertaining the defendant father's enforcement application." *Id.* The same is true here, as the nature of the sacred ceremony Bishop David performed on the parties is an inherently religious question that depends on Coptic doctrine.

The Second Department reached a similar conclusion in *Sukharevskaya*. There, a convent sued to eject a defrocked nun. *Russian Orthodox Convent Novo-Diveevo, Inc. v. Sukharevskaya*, 91 N.Y.S.3d 101, 102–03 (2d Dep't 2018). The court ruled "the convent's claims … nonjusticiable, as any such resolution of them would involve an impermissible inquiry into religious doctrine or practice;" namely, "the propriety of the [nun's] defrockment in light of her allegations of sexual misconduct against a priest." *Id.* at 103. Because the Second Department could not review the convent's "ecclesiastical determination" via "neutral principles of law," the court affirmed dismissing the complaint, leaving the convent and defrocked nun "to resolve the issues" themselves. *Id.* at 104–05. Neither can a secular court settle the religious meaning (*i.e.*,

blessing or marriage) of the ritual Bishop David performed, which depends on Coptic doctrine and practice.

The trial court's decision in *T.I. v. R.I.*, 216 N.Y.S.3d 436 (Sup. Ct. Kings Co. 2024), adheres to the same principles. In that case, the parties *agreed* for years that their marriage was solemnized in a Jewish ceremony and that ritual was valid. *T.I.*, 216 N.Y.S.3d at 448, 451. Over eight years later, the husband went to a rabbinical court and had the religious marriage invalidated. *Id.* at 441, 446–47. The issue was whether New York "continue[d] to recognize a [civil] marriage between the parties separate and apart from … the religious marriage." *Id.* at 449. The court answered "yes" because it was "*undisputed*" that at the time of solemnization (and years later) "the parties" and their faith "understood them[ ] to be religiously married." *Id.* at 453 (emphasis added). Upon that valid solemnization, "two … separate yet equally recognizable marriages" came into existence: "the religious marriage recognized by the parties' religious community" and a civil marriage "recognized by the State of New York." *Id.* at 451. So the court could apply neutral principles of law to the civil marriage without touching upon the religious marriage. *Id.* at 448–49.

Critically, the *T.I.* court differentiated the situation here, recognizing that civil courts cannot answer "a religious doctrine question" about whether a "valid" religious marriage ever occurred in New York. *Id.* at 448 (distinguishing *Bernstein*); *accord id.* at 449 ("Under well-established Constitutional doctrine, this Court does not have jurisdiction to adjudicate any religious or ecclesiastic doctrine questions …."). And the court refused to "act as an appellate authority over the rabbinical court" and decide "religious question[s], such as the validity of the 'invalidation' of the religious marriage." *Id.* at 448. It relied on the parties' concessions regarding a valid solemnization and left other religious-marriage issues alone. *Id.* at 451, 453, 457.

That is a far cry from what the lower court did here. In this case, the trial court endeavored to (and ultimately did) resolve the question *Madireddy*, *Bernstein*, and *T.I.* put off limits: whether a valid religious marriage occurred. RA-676–77. The court showed no regard for the Church's First Amendment rights in the process, disregarding clergy's religious beliefs and objections; forcing clergy to testify in court on pain of contempt and imprisonment; elevating non-existent Establishment Clause concerns; pitting a bishop and subordinate priest against each

other; functioning as an appellate authority over the Bishop's intrinsically religious decisions; subjecting clergy to a three-day inquisition into Coptic beliefs, doctrines, and practices; and forcing the Church to disclose private information about members' tithes and offerings for no valid reason. Nonparty-Appellants.Br.4–32; Pl.-Respondent.Br.28.

The trial court in *Devorah H. v. Steven S.*, 12 N.Y.S.3d 858, 862 (Sup. Ct. N.Y. Cty. 2015), similarly erred in compelling a rabbi to testify in court. But at least that court attempted to rule in keeping with what the officiant testified, *id.* at 862–65, instead of blatantly contradicting the officiant, as the trial court did here.)

In short, the trial court *could* not and *did* not apply neutral principles of law. Nonparty-Appellants.Br.33–37, 39. That the court said the opposite is irrelevant.

C. Ms. Funti cannot gainsay Bishop David's religious ruling that the parties were never married in the Coptic Church.

Each time the parties have asked Bishop David whether they were ever married in the Coptic Church, the Bishop has given the same answer—"no." R. A59–61; A203:1. The Bishop described this conclusion

as a "religious ruling" at the hearing. R. A203:1. Ms. Funti's counsel then contested the Bishop's "purview … to make a ruling" on whether the Coptic sacrament of marriage occurred, but she clearly recognized that is what he did. R. at A206:2. And so did the trial court, which said the Bishop "added that this was his religious ruling—that they did not get married that day." RA-662. So imagine everyone's surprise to find out that "Bishop David did not and has never made any ecclesiastical ruling in this case." Pl.-Respondent.Br.10.

This claim is obviously false. Yet it is a cornerstone of Ms. Funti's position. Similar language features throughout her brief. *E.g.*, *id.* at 10, 16, 19, 23. This is just gaslighting. What Ms. Funti means is that Bishop David's decision does not meet *her vision* of what a religious ruling should look like. It is "mere say so of the Bishop," *id.* at 26, not the result of an elaborate process with "request[s]," "procedures," the "right to be heard," and appeals, *id.* at 16–17.

So Ms. Funti urges the Court to ignore the Bishop's religious rulings because she thinks they are too informal, not the outcome of a trial, or otherwise deficient. That is not an assessment Ms. Funti (as a church member) or this Court (as a state entity) can make. If church

autonomy means anything, it is that churches may govern themselves and rule on religious questions their own way. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952) (incorporating Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871), into the Free Exercise Clause).

What's more, it is hardly surprising that Bishop David—who presided over the parties' blessing—did not require a trial to determine a religious marriage had not occurred. The Bishop knows both Coptic law and what he did. And the sum of that knowledge is that the parties *were not* and *could not* be religiously married—they were blessed as the parents of a child the Bishop baptized and welcomed into the Coptic faith. Nonparty-Appellants.Br.4, 8–9. Of course, Bishop David *hoped* to see the parties join in Church life and become religiously married—hence, Ms. Funti's baptism. *Id.* at 3, 9. But the Bishop's consistent ruling, as a matter of Coptic law, is that no Coptic marriage sacrament *did* or *could* happen then. *Id.* at 4, 8–9.

It is disingenuous for Ms. Funti to paint Bishop David as corrupt or biased against her. *E.g.*, Pl.-Respondent.Br.16–18. The trial court, who bent over backwards to declare a religious marriage for Ms. Funti, found

no merit to these allegations. RA-672–73. And the Bishop merely told *the only party who asked* (Mr. Andrews) the truth—no Coptic marriage occurred. The Bishop signed an affidavit to that effect not to take sides, but to avoid being hailed into civil court and deeply enmeshed in a lawsuit between Church members. Nonparty-Appellants.Br.4.

Ms. Funti was welcome to speak with Bishop David at any time. If she had, the Bishop would have told her the same thing he told Mr. Andrews—there was no religious marriage. Perhaps then Ms. Funti would not have run to civil court, leading to years of litigation, forced interrogations of clergy, and rounds of appeals, as well as substantial harm to the Church's constitutional rights, ministry, and finances. Unfortunately, that is not what happened. Now the best this Court can do is defer to Bishop David's (*i.e.*, highest church authorities') ruling on quintessentially religious questions focused on Coptic doctrine, usage, and practice; and reverse and remand with instructions to dismiss the complaint. *Accord* Nonparty-Appellants.Br.23–24; *Rector, Churchwardens & Vestrymen of the Church of the Holy Trinity v. Melish*, 163 N.Y.S.2d 843, 852 (N.Y. App. Div. 1957).

D. An unsigned and unsealed marriage certificate is a non-record and irrelevant to whether religious solemnization occurred.

Ms. Funti puts great stock in the *unsigned* and *unsealed* marriage certificate that Father Gregory, who was distanced from the blessing ceremony, admitted he mistakenly had prepared and turned over during discovery years later. Pl.-Respondent.Br.5–6, 15, 17 21; Nonparty-Appellant.Br.11–12. But that position is untenable. An incomplete marriage certificate is a *non-record* that cannot possibly show solemnization. That is especially true here, as the Church delivered *signed* baptism certificates, but *no signed* marriage certificates to the parties. Pl.-Respondent.Br.5–6.

If Ms. Funti possessed a signed and sealed marriage certificate from the Coptic Church, this case would be different. Civil courts are free to credit facially valid religious documents, which shield churches from interference, clergy from compelled testimony, and courts from religious determinations. *Cf. T.I.*, 216 N.Y.S.3d at 446 (crediting a facially valid "rabbinical decision presented by the husband"). The same is not true for empty certificates, which are probative of nothing.

Ms. Funti feigns that Bishop David made the unsigned and unsealed certificate relevant to this case. Pl.-Respondent.Br.7, 17. He did not: the Bishop made abundantly clear that the unfinished certificate was invalid under Coptic law. Nonparty-Appellant.Br.8, 13. All Bishop David said was that if the parties wanted to know why an incomplete (and irrelevant) marriage certificate was created, they would have to ask Father Gregory, who was in charge of these records. *Id.* at 13.

Because the evidentiary value, if any, of an unsigned and unsealed marriage certificate is a purely religious question dependent on Coptic law, courts must defer to Bishop David's ruling that the certificate is immaterial. *Id.* at 21–24.

E. Church autonomy is not limited to church adjudications.

Ms. Funti advocates an exceedingly narrow scope for church autonomy that is essentially limited to churches with adjudicatory bodies and matters initiated in religious tribunals. Pl.-Respondent.Br.31–33. Nothing supports such a cramped view of the First Amendment. It is blackletter law that "one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244 (1982). Granting autonomy only to denominations with corporate

decisionmakers and denying autonomy to denominations with hierarch decisionmakers is plainly unconstitutional. Nor does it matter where a case originates, as church-autonomy decisions like *Congregation Yetev Lev*, *Berstein*, and *Madireddy* show.

F. Standing is no obstacle to dismissing the complaint.

Ms. Funti criticizes the Church for not intervening in the underlying case below and argues that the Church lacks standing to request dismissal of the complaint. Pl.-Respondent.Br.20 & n.11. Neither contention has merit. Based on its sincerely held religious beliefs against Church members suing one another in civil court, the Church has consistently sought to *avoid* becoming deeply entrenched in the underlying proceeding. Nonparty-Appellant.Br.37. So intervention is not an option.

Regardless, standing is no obstacle to dismissing the complaint. The church autonomy doctrine directly effects civil court's jurisdiction, which courts have an independent obligation to examine. CPL 470.60(1). So a mere amicus curia may request the Court dismiss a complaint. Indeed, New York case law is replete with examples of civil courts determining the religious autonomy doctrine applies, a case is

nonjusticiable, and the complaint must be dismissed—even when no one requests that relief. *E.g.*, *Congregation Yetev Lev*, 9 N.Y.3d at 288; *Berstein*, 188 N.Y.S.3d at 670; *Sukharevskaya*, 91 N.Y.S.3d at 105; *Madireddy*, 886 N.Y.S.2d at 496.

IV. Courts cannot casually force churches to reveal their members' tithes and donations.

Ms. Funti attacks a strawman, claiming the Church's position on tithes-and-donation disclosures means "no member of a church or nonprofit association could ever have their donations revealed." Pl.-Respondents.Br.47–48. That is false. The problem here is that the court allowed a casual fishing expedition into a non-party Church's membership files for religiously impelled tithes or donations. *Id.* at 46 (admitting as much). Circumstances may exist in which a limited search is justified. But this clearly was not one of them. Nonparty-Appellants.Br.31–32. For instance, Ms. Funti could have sought information *from Mr. Andrews* regarding his donations. There was no need to raid the Church's confidential membership files. *Id.* at 31.

Ms. Funti also faults the Church for not raising the tithes-and-donations issue in its "papers below on the motions to quash." Pl.-Respondent.Br.54. But she recognizes that doing so was impossible

because the court's inextricably linked demand for members' gifts had not yet occurred. *Id.* The Church cannot be penalized for making an argument it could not have raised in its motion papers and did raise at the earliest possible opportunity in the trial court. Moreover, Ms. Funti does not dispute that this claim concerns a legal issue appearing on "the face of the record" that the Church brought to the trial court's and parties' "attention at the proper juncture." *Block v. Magee*, 537 N.Y.2d 215, 218 (1989) (quotation omitted).

V. Nothing in the Church's brief or appendix is *dehors* the record.

Ms. Funti argues that certain material in the Church's brief and appendix is *dehors* the record. Pl.-Respondent.Br.52–54. That's wrong. Material is *dehors* the record when it constitutes "outside evidence," *Butler v. Christian*, 451 N.Y.S.2d 445, 446 (2d Dep't 1982), or "facts outside of the trial record," *People v. Bagarozy*, 582 N.Y.S.2d 424, 425 (1st Dep't 1992). The principle is "that appellate review is limited to the record made at nisi prius [or in the trial court] and, absent matters which may be judicially noticed, new facts may not be injected at the appellate level." *Ghaffari v. N. Rockland Cent. Sch. Dist.*, 804 N.Y.S.2d 752, 754 (2d Dep't 2005).

But Ms. Funti does not—and could not—claim that the Church cites evidence *outside the trial court record*. All the materials were filed in the trial court. Instead, Ms. Funti's argument is that the Church cannot address anything "which occurred subsequent to Justice Hoffman's determinations contained in his February 2023 and September 11, 2023 Orders." Pl.-Respondents.Br.52 (emphasis omitted).

Critically, Ms. Funti admits that the certified transcript of Bishop David's testimony isn't *dehors* the record in the second appeal. *Id.* at 52 n.14. So, her motion to strike necessarily fails as to that transcript, as there is no basis for criticizing the Church for "fil[ing] one brief and appendix on their respective appeals." *Id.*

Ms. Funti's arguments also fail on the merits. First, she cites no case supporting the notion that certified transcripts of trial court proceedings are *dehors* the record on appeal. They are, by definition, part of the trial court record.

Second, if the *dehors* the record principle was as broad as Ms. Funti claims, she could not attach or cite the trial court's order declaring the parties religiously married, which *postdates* the certified transcripts of

Bishop David's and Father Gregory's testimony in the trial court. Yet she did. RA-647–679.

If Ms. Funti can rely on evidence that postdates the trial court's orders denying the motions to quash, the Church can too. In fact, the Church *had* to append and cite the certified transcripts of Bishop David's and Father Gregory's trial court testimony to show that live controversies remain, as mootness concern a "*change in circumstances*," *i.e.*, events that postdate the only trial court orders the Church (as a non-party) may appeal. *Hearst Corp. v. Clyne*, 409 N.E.2d 876, 877–78 (N.Y. 1980) (emphasis added).

Third, the trial court's rejection of the Church's First Amendment arguments and denial of the Church's motions to quash were not a one-time event In denying the first motion, the trial court said that "Bishop Anba David's testimony is necessary to … determin[e] … whether or not the parties were married," but "[t]he Court remains prepared to accept reasonable requests for an accommodation." R. at A33. Ultimately, the trial court refused to accommodate Bishop David. Nonparty-Appellants.Br.7–9. But after denying the second motion to quash, the trial court allowed Father Gregory to engage in the "functional

equivalent" of "plead[ing] the 5th," by refusing to answer on First Amendment grounds, though the court said it might draw a negative "inference" as a result. R. at A467. Later, the trial compounded the Church's First Amendment injuries by forcing it to divulge private donation/tithe information. Nonparty-Appellants.Br.13–14.

These ongoing developments (and constitutional harms) were a direct result of—and inextricably intertwined with—the trial court's analysis on the motions to quash, which it relied on throughout the proceedings. R. at A375:10-12, A377:12-20, and A417:6-15. It is not just inappropriate but impossible to excise from the record on appeal anything that occurred after the Church's motions to quash were denied. Indeed, if the Church had omitted the transcripts from its appendix, the Court may have dismissed its appeals based "on an incomplete record." *Polyfusion Elecs., Inc. v. AirSep Corp.*, 816 N.Y.S.2d 783, 785 (4th Dep't 2006) (quotation omitted).

Moreover, Ms. Funti's broad theory of the *dehors* the record principle makes it impossible for a non-party witness to *ever* appeal what happened at a hearing after a motion to quash is denied. Yet here the

testimony is inextricably linked with the orders from which these appeals was taken, as the trial court conceded.

Fourth, there are numerous exceptions to the *dehors*-the-record principle, which apply as Ms. Funti concedes the accuracy of the certified transcripts of Bishop David's and Father Gregory's testimony. *Matter of O'Neill v. Bd. of Zoning Appeals of Harrison*, 639 N.Y.S.2d 961, 962 (2d Dep't 1996). Nor does Ms. Funti dispute the transcripts' reliability, as the trial court relied extensively on them in the religious-marriage order that Ms. Funti introduced.

Appellate courts may take "judicial notice" of "[t]he minutes of" or transcripts from other courts, *People v. Cont'l Cas. Co.*, 92 N.E.2d 898, 900 (N.Y. 1950), or "its own records," *Casson v. Casson*, 486 N.Y.S.2d 191, 193 (1st Dep't 1985) (quotation omitted). They also may "take judicial notice of the arguments [raised] … and the decision" in a "companion case." *Reed v. Wolff*, 661 N.Y.S.2d 996 (2d Dep't 1997). Those exceptions are dispositive here: Mr. Andrews introduced the hearing transcripts into the Church's appeal, Doc. No. 50, and a companion case, No. 2024-04456. So the transcripts are plainly subject to judicial notice.

VI. The Court has already addressed Ms. Funti's record arguments.

This Court has addressed Ms. Funti's record arguments. Doc. No. 60. Suffice it to say that Ms. Funti cites almost nothing in the record that is outside the Church's appendix, other than the trial court's religious-marriage order, which postdates it. And the entire trial court record is subject to judicial notice, *Casson*, 486 N.Y.S.2d at 193, so the record is adequate to decide these appeals. Moreover, 22 NYCRR 1250.7(d)(1) provides that, "[t]he appendix shall include those portions of the record necessary to permit the court to fully consider the issues which will be raised by the appellant and the respondent . . .." Nonparty Appellants have complied with this rule.

CONCLUSION

Appellants respectfully 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 the parties and quash the subpoenas as constitutionally impermissible.

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