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Brief of The Catholic University of America School of Canon Law, The Lutheran Church-Missouri Synod, The Queens Federation of Churches, and The Serbian Orthodox Church in North and South America, as Amici Curiae in Support of Petitioners

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Brief of The Catholic University of America School of Canon Law, The Lutheran Church-Missouri Synod, The Queens Federation of Churches, and The Serbian Orthodox Church in North and South America, as Amici Curiae in Support of Petitioners, Chabad-Lubavitch of Michigan v. Schuchman, (No.15-1005) (U.S. March 4, 2016).

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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 Supreme Court of Michigan

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BRIEF OF THE CATHOLIC UNIVERSITY OF AMERICA SCHOOL OF CANON LAW, THE LUTHERAN CHURCH—MISSOURI SYNOD, THE QUEENS FEDERATION OF CHURCHES, AND THE SERBIAN ORTHODOX CHURCH IN NORTH AND SOUTH AMERICA, AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

This brief addresses the importance of the principle of church autonomy and the protections provided by the First and Fourteenth Amendments and this Court's precedents regarding religious denominations' internal mandatory dispute-resolution procedures.

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INTEREST OF AMICI[1]

Amicus curiae The Catholic University of America is the national university of the Catholic Church in the United States, founded and sponsored by the bishops of the country with the approval of the Holy See. Located in Washington, D.C., it has around 3,700 undergraduate and over 3,000 graduate students from fifty states and eighty-six countries. These students do course work in one or more of its twelve schools, one of which is its School of Canon Law. The School of Canon Law along with two other ecclesiastical faculties (philosophy and theology) can grant licentiate and doctorate degrees authorized by the Holy See.

The School of Canon Law is the only school or faculty of canon law in the United States. The School's instruction, under the authority of the Congregation for Catholic Education, familiarizes students with the Catholic Church's 1983 Code of Canon Law and its development, interpretation, and application. Its courses prepare priests, nuns, and laypersons for the professional practice of canon law in diocesan and religious administration, in ecclesiastical tribunals, and in researching and teaching canon law. Catholic University's School of Canon Law awards two ecclesiastical degrees: the licentiate in canon law (J.C.L.) and doctor of canon law (J.C.D.). These degrees prepare the students to recognize that Catholics belong to two distinct legal systems: as citizens, they are subject to civil (secular) law; as

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[1] This brief was prepared entirely by amici and their counsel. No other person made any financial contribution to its preparation or submission. Counsel of record received timely notice of the intent to file this brief and have consented to its filing.

Catholics, they are subject to divine and ecclesiastical law. The distinctions between the two systems of law and the proper spheres of each are of great importance.

Graduates of Catholic University's School of Canon Law serve in a substantial percentage of the almost 200 diocesan tribunals in the United States and also in many of the over thirty appellate tribunals overseen by metropolitan archbishops in the United States. Because of the experience of educating these graduates and consulting with them regarding their work, few Catholic institutions are better situated to understand the critically important work of ecclesiastical tribunals in the administration of the Catholic Church in the United States.

The 1983 Code of Canon Law is the universal law for the entire Latin rite of the Roman Catholic Church. It is in force for dioceses and parishes in the United States. It is both a theological and a juridical discipline. It has drawn from Roman law, Sacred Scripture, and the experience of a society based on faith. Its primary purpose is to assist all members of the Church in the proclamation of the Gospel and the salvation of souls.

Accordingly, secular courts have neither the competence nor authority to dictate the administration or procedure for Catholic Church diocesan or appellate tribunals. These tribunals must adhere to procedures certain of which have historical roots going back centuries. Denominations must be free to oversee and direct their own tribunals in accordance with Scripture, tradition, and learned experience. Catholic University has joined this amicus brief to help protect this First Amendment freedom.

Amicus curiae The Lutheran Church – Missouri Synod ("The Synod"), a Missouri nonprofit corporation, has some 6,150 member congregations with 2,200,000 baptized members throughout the United States. The Synod steadfastly adheres to orthodox Lutheran theology and practice, and among its beliefs is the Biblical teaching that Christians should resolve their disputes promptly and internally without going to the secular courts for relief (*See, e.g.*, 1 Corinthians 6:1-8; Matthew 5:23-24; Ephesians 4:26-27; Philippians. 2:5). The Synod has emphasized the importance of this biblical teaching and over the years has developed detailed procedures for the resolution of controversies within the church. All member congregations, ordained and commissioned ministers, and certain others listed in the Synod Bylaws are subject to mandatory internal dispute resolution as the exclusive means of resolving their differences with one another, with a few exceptions. Disputes over property or contractual rights are considered purely temporal matters falling outside of the Synod's purview, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod. Thus, the Synod's dispute resolution practice is not like Petitioner's with respect to property disputes. Nonetheless, the Synod supports Petitioner's position because the Synod has a fervent interest in fully protecting and maintaining the religious freedom and liberties afforded under the United States Constitution and re-affirmed in this Court's recent decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. ___, 132 S. Ct. 694 (2012), which involved one of the Synod's member congregations.

Amicus curiae The Queens Federation Churches, Inc., was organized in 1931 and is an ecumenical association of Christian churches located in the Borough of Queens, City of New York. It is governed by a Board of Directors composed of equal number of clergy and lay members elected by the delegates of member congregations at an annual assembly meeting. It relates to over 900 local churches representing every major Christian denomination and many independent congregations in Queens County, many of which have internal judicial processes and would be adversely affected by an inability to enforce ecclesiastical judgments. The Queens Federation of Churches has appeared as *amicus curiae* previously in a variety of actions to serve the cause of justice. The Queens Federation of Churches and its member congregations are vitally concerned that religious liberty be protected.

Amicus curiae The Serbian Orthodox Church in North and South America (SOCNSA) is a geographic region of the Serbian Orthodox Church, which is one of the fourteen autocephalous/self-governing, hierarchical/episcopal churches which comprise the Orthodox Christian Church, commonly referred to as the Eastern Orthodox Church. Within the Eastern Orthodox Church, the Serbian Orthodox Church has the rank of Patriarchate, and its position of honor is sixth, following the Patriarchates of Constantinople, Antioch, Alexandria, Jerusalem, and Russia. The territory of the SOCNSA covers five Serbian Orthodox Dioceses, each headed by its own Bishop/Hierarch appointed by the Serbian Orthodox Patriarchate: New Gracanica-Midwestern America; Eastern America; Western America; Canada; and South and Central America. These dioceses together comprise over 200 parishes, 14 monasteries, a School of Theology in

Libertyville, Illinois, and other institutions which, led by the SOCNSA's local Episcopal/Bishop's Council, administer the Holy Mysteries/Sacraments and educate and minister to the over 750,000 persons of Serbian descent who live in the Western Hemisphere and to the other Orthodox Christians who have chosen to accept the omophorion/jurisdiction of the Serbian Orthodox Patriarchate.

The SOCNSA is submitting this *amicus* brief because the SOCNSA knows, through its own difficult experience, recounted in this Court's landmark decision, *Serbian Eastern Orthodox Diocese for USA and Canada v. Milivojevich*, 426 U.S. 696 (1976), how critically important it is for any church or denomination to exercise authority over those who minister in its name, the manner by which it resolves ecclesiastical disputes and administers its own tribunals, and the way in which it holds church property as part of the patrimony of the church.

SUMMARY OF ARGUMENT

In its particulars, this case is about a property dispute in Michigan and the application of that state's statute of limitations. However, it is also about the separation of church and state—an arrangement that is sometimes misunderstood and the details of which are debated but which is nevertheless a critical dimension of the religious freedom reflected in, and protected by, the First and Fourteenth Amendments to our Constitution.

Throughout the long tradition of Western constitutionalism, the project of protecting political freedom by marking the boundaries to the power of government has been assisted by the principled commitment to church-state separation, correctly

understood. *See generally, e.g.*, HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION (1983). A political community that respects – as ours does – the important distinction between the spheres of political and religious authority is one in which the fundamental rights of all are more secure; a government that acknowledges this distinction and the limits to its own reach is one that will more consistently protect and vindicate the liberties of both individuals and institutions. *See generally, e.g.*, Richard W. Garnett, *"The Freedom of the Church": (Toward) An Exposition, Translation, and Defense, in* MICAH SCHWARTZMAN, CHAD FLANDERS & ZOE ROBINSON, EDS., THE RISE OF CORPORATE RELIGIOUS LIBERTY (2016).

The religious-freedom-protecting principle of church -state separation has long meant, among other things, that religious communities and institutions enjoy meaningful autonomy and independence with respect to their governance, structures, rituals, and teachings. As Professor Douglas Laycock influentially put it thirty-five years ago, "churches have a constitutionally protected interest in managing their own institutions free of government interference." Douglas Laycock, *Toward a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1373 (1981). This autonomy has been recognized and vindicated in a long line and wide array of this Court's decisions and is entirely consistent with the appropriate exercise of the civil authorities' regulatory and other powers. Indeed, this Court recently and unanimously reaffirmed as much in the landmark *Hosanna-Tabor* case, which recalled the "spirit of freedom for religious organizations, an independence from secular control or manipulation—in short, power to decide for

themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 565 U.S. ___ (2012), 132 S. Ct. 694, 704 (2014) (quoting *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952)).

It is precisely this "power to decide" that is implicated in this case. The question presented by Petitioner—"whether the First and Fourteenth Amendments require tolling of a state statute of limitations while denomination members diligently pursue the denomination's mandatory dispute resolution procedure," Pet. at i—goes to the implications and demands of our constitutional commitment to the autonomy of and the "spirit of freedom for religious organizations." Justices Kagan and Alito, in their concurring opinion in *Hosanna-Tabor*, observed that "[t]o protect 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 accord with their own beliefs." *Hosanna-Tabor*, 132 S. Ct. at 712 (Alito & Kagan, JJ., concurring). However, religious communities are not truly and meaningfully "free to govern themselves" if their internal juridical and dispute-resolution procedures are not accorded reasonable respect and deference by the secular authorities. It is important for this Court to clarify the implications of its church-autonomy precedents—including *Hosanna-Tabor, supra; Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian East Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); and *Kedroff v. Saint*

Nicholas Cathedral, 344 U.S. 94 (1952)—for the interaction between religious denominations' dispute-resolution and disciplinary procedures and the application in civil litigation of statutes of limitations.

ARGUMENT

As Professor Gerard Bradley has observed, "church autonomy"—that is, the "issue that arises when legal principles displace religious communities' internal rules of interpersonal relations"—is the "flagship issue of church and state" and the "litmus test of a regime's commitment to genuine spiritual freedom." Gerard V. Bradley, *Forum Juridicum: Church Autonomy in the Constitutional Order*, 49 LA. L. REV. 1057, 1061 (1987). This "flagship issue" is implicated in this case and its importance warrants this Court's review.

I. THE RELIGIOUS FREEDOM PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS IS ENJOYED BY RELIGIOUS INSTITUTIONS, ASSOCIATIONS, COMMUNITIES, AND DENOMINATIONS

Petitioner Chabad-Lubavitch of Michigan is a religious society. And, notwithstanding the confusion sometimes on display in public debates about "corporations" and their rights, it is well established and beyond dispute that the constitutional right to freedom of religion belongs not only to individuals, but also to institutions, associations, communities, and congregations. *See generally, e.g., Hosanna-Tabor, supra*; Michael W. McConnell, *Reflections on* Hosanna-Tabor, 35 HARV. J. L. & PUB. POL'Y 821, 836 (2012). Just as every person has the right to seek religious truth and to cling to it when it is found, religious communities have the right to hold and teach

their own doctrines; just as every person ought to be free from official coercion when it comes to religious practices or professions, religious institutions are entitled to govern themselves, and to exercise appropriate authority, free from official interference; just as every person has the right to select the religious teachings he will embrace, churches have the right to select the ministers they will ordain.

Justice William Douglas observed in his dissenting opinion in *Wisconsin v. Yoder* that "religion is an individual experience." 406 U.S. 205, 243 (1972) (Douglas, J., dissenting in part). It certainly is, but it is not only that. After all, as Justice William Brennan reminded us, "[f]or many individuals, religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals." *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring). These "organic entities" are subjects, not just results or by-products, of religious liberty. And, by virtue of and through the exercise of their own religious-freedom rights, religious institutions play an important structural, checking role and provide added security to the rights and liberties of individual persons. *See generally*, Richard W. Garnett, *Religious Liberty, Church Autonomy, and the Structure of Freedom*, in JOHN WITTE, JR. & FRANK S. ALEXANDER, CHRISTIANITY AND HUMAN RIGHTS: AN INTRODUCTION (2010); *cf. Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) (observing that the rights of expressive associations are "especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority").

Accordingly, Petitioner is entitled to the full scope of religious freedom protected by the First and Fourteenth Amendments.

II. THE CONSTITUTIONAL RIGHT TO RELIGIOUS LIBERTY ENCOMPASSES THE INTERNAL DISPUTE-RESOLUTION PROCEDURES OF RELIGIOUS DENOMINATIONS

The principle of "separation of church and state" is, as was noted earlier, controversial in some of its applications, but there is a long tradition and broad consensus in favor of institutional separation between religious and political authority and jurisdiction. *See generally, e.g.*, Richard W. Garnett, *The Political (and Other) Safeguards of Religious Freedom*, 32 CARDOZO L. REV. 1815 (2011); Thomas C. Berg, Kimberlee Wood Colby, Carl H. Esbeck, & Richard W. Garnett, *Religious Freedom, Church-State Separation & the Ministerial Exception*, 106 NW. U. L. REV. COLLOQUY 175 (2011). That is, in our laws and traditions, the institutions of the state are distinct from the institutions of the church and neither can exercise the functions of the other. The concept of "separation of church and state," as it has developed and evolved in the United States, "denote[s] a structural arrangement involving institutions, a constitutional order in which the institutions of religion . . . are distinct from, other than, and meaningfully independent of, the institutions of government." Richard W. Garnett, *Religion and Group Rights: Are Churches (Just) Like the Boy Scouts?*, 22 ST. JOHN'S J. LEG. COMM. 515, 523 (2007).

Turning to the text of the First Amendment, the "establishment" of religion that is prohibited by that

provision refers not only to official sponsorship or financial support but also to "active involvement of the sovereign in religious activity." *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970). It is clear that the institutional separation of church and state means that the law may not delegate core governmental functions to churches, *see, e.g., Larkin v. Grendel's Den*, 459 U.S. 116, 126-27 (1982), and the complementary principle is equally clear: Government may not insert itself into controversies over the ecclesiastical decisions of religious organizations, either by second-guessing the substance of those decisions or by interfering with the processes by which those decisions are reached. As this Court has long recognized, a key component of religious freedom and church-state separation is the autonomy of religious organizations over matters of internal governance and dispute resolution. *See, e.g., Watson v. Jones*, 80 U.S. 679, 728-29 (1872) (noting "unquestioned" right in America of "voluntary religious associations" to decide "controverted questions of faith" and matters of "ecclesiastical government"); *Kedroff*, 344 U.S. at 116 (recognizing that the First Amendment respects religious organizations' "power to decide for themselves . . . matters of church government as well as those of faith and doctrine"); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449 (1969) (observing that the First Amendment does not permit civil courts to resolve disputes involving "controversies over religious doctrine and practice"); Carl H. Esbeck, *Dissent and Disestablishment: The Church-State Settlement in the Early American Republic*, 2004 BYU L. REV. 1385, 1389 (2004) (noting that "the doctrine of church autonomy" is a "recognition" that "the civil courts have no subject

matter jurisdiction over the internal affairs of religious organizations").

Chabad-Lubavitch of Michigan—like many other religious institutions and societies from a wide range of religious traditions—has, as a matter of religious commitment and obligation, an established, mandatory, internal dispute-resolution process. As the Court of Appeals observed below, "[t]he parties do not dispute that Chabad-Lubavitch religious doctrine and polity require internal dispute resolution by means of one of various rabbinic judicial panels or courts." Pet. App. 6. "Permission to file a lawsuit in a civic, secular court is required before a dispute may be taken outside the religious organization." *Ibid.* Therefore, an official rule, policy, or action that interferes with, undermines, revises, nullifies, or penalizes this dispute-resolution process at least implicates Petitioner's religious-freedom rights which are protected by the First and Fourteenth Amendments. *See generally, e.g.*, Michael A. Helfand, *Litigating Religion*, 93 B.U. L. REV. 493 (2013); Douglas Laycock, *Church Autonomy Revisited*, 7 GEO. J. L. & PUB. POL'Y 253 (2009).

Despite this clear implication of Petitioner's constitutional religious-freedom rights, the Michigan Supreme Court has in effect declared, without supporting analysis, that the Constitution of the United States provides no basis for equitably tolling that state's statute of limitations. Such a startling determination warrants this Court's review.

III. HONORING THE RELIGIOUS FREEDOM RIGHTS OF RELIGIOUS DENOMINATIONS CAN REQUIRE EQUITABLE TOLLING OF STATE STATUTES OF LIMITATIONS TO ACCOMMODATE INTERNAL DISPUTE-RESOLUTION PROCEDURES

Petitioner argued below that the application of the statute of limitations—specifically, a failure to apply equitable tolling in light of the religiously mandated internal dispute-resolution proceedings—undermines those proceedings, unduly and needlessly burdens the denomination's religious-freedom rights, and therefore violates the First and Fourteenth Amendments. The Court of Appeals addressed these arguments below; the Michigan Supreme Court, in its May 20, 2015 Order, did not. Instead, the latter court stated without explanation that "there are no grounds on which to equitably toll the statute of limitations" and observed that the relevant "statutory scheme is exclusive, and [does not] contain[] a provision to toll the period of limitations." Pet. App. 1-2.

However, as this Court recognized in *Hosanna-Tabor*, the Constitution extends and requires "special solicitude to the rights of religious organizations." 132 S. Ct. at 706. Just as the First Amendment requires, in some cases, exempting religious institutions' hiring and firing decisions from otherwise applicable non-discrimination and employment-related statutes, it should also be understood to require appropriate equitable tolling of a statute of limitations in order to permit the exhaustion of religiously mandated internal dispute-resolution proceedings. "In a lawsuit that strikes at the ability of the church to govern the church, any balancing of interests between a [sincere

secular interest or purpose], on the one hand, and institutional religious freedom, on the other, is a balance already struck." Carl H. Esbeck, *A Religious Organization's Autonomy in Matters of Self-Governance:* Hosanna-Tabor *and the First Amendment*, 13 Engage 114, 114 (2012). Indeed, as this Court put it in *Hosanna-Tabor*, "the First Amendment [strikes] the balance for us." 132 S. Ct. at 710. In order to prevent establishment and protect free exercise, the freedom of religious institutions will, in some cases, prevail over even the most "worthy" goals of government when those goals threaten to invade that sacred sphere. *Id.* at 712 (Alito, J., concurring).

Because "[a]ll who unite themselves to [a religious] body do so with an implied consent to [its] government and are bound to submit to it . . . [it] would lead to the total subversion of religious bodies, if any one aggrieved by one of their decisions" could have the decision reversed by a secular court. *Kedroff*, 344 U.S. at 114-15. In the same way, allowing a party to take advantage of ecclesiastical adjudication (both by initiating proceedings and agreeing to be bound by the decision)—knowing that a long enough period of nonconformity would be subject to a comprehensive review and eventually nullified by arbitrary application of civil procedure—would lead to the subversion of that religious autonomy which "the Religion Clauses guarantee." *Hosanna-Tabor*, 132 S. Ct. at 710 (Thomas, J., concurring). It is, after all, foundational that we should "not wish a plaintiff deprived of his rights when no policy underlying a statute of limitations is served in doing so[.]" *Burnett v. New York Cent. R.R. Co.*, 380 U.S. 424, 434 (1965).

This Court has seen fit to equitably toll state statutes of limitations when federal constitutional

rights are at stake. In this case, Petitioner is merely invoking a well-established and sound principle.

CONCLUSION

To borrow from Justice Frankfurter, "what is at stake here is the power to exercise religious authority." *Kedroff*, 344 U.S. at 121 (1952) (Frankfurter, J., concurring). Given the importance of the question presented, across the country and especially for the many religious communities and institutions whose doctrine mandates their internal dispute mechanisms be exhausted prior to pursuing civil remedies, this Court should grant the petition for writ of certiorari and reverse the judgment below.

Respectfully submitted,

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