No. 16-210

In the Supreme Court of the United States

LaVonne Pfeil,

Petitioner,

vs.

St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITIONER'S REPLY BRIEF

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INTRODUCTION

On August 10, 2016, Petitioner LaVonne Pfeil filed her Petition for Writ of Certiorari with this Court. On October 13, 2016, Respondents filed their Brief in Opposition to the Petition. Petitioner now respectfully submits this Reply Brief. For the reasons set forth below, as well as those set forth in Petitioner's opening Petition, this Court should grant this Petition to resolve an obvious and troubling split between numerous state supreme courts and to restore uniformity to the application of the First Amendment.

ARGUMENT

Respondents' primary argument in opposition to this Petition is that this Court's decision in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S.Ct. 694 (2012), already provides answers to the important First Amendment questions raised in this Petition. As explained below, *Hosanna-Tabor* deals with an entirely different issue and provides no guidance as to the specific question presented in this case—whether the First Amendment provides absolute immunity for defamatory statements made in a religious setting, even if the statements at issue are secular in nature and even if the person defamed is not a member of the religious organization being sued. In fact, this Court's decision to review and issue a ruling in *Hosanna-Tabor* provides even more compelling reasons to grant Ms. Pfeil's Petition in the present case.

First, *Hosanna-Tabor* does not provide any guidance or assistance for cases such as this one

involving secular defamatory statements made in a religious setting. The legal issue presented in *Hosanna-Tabor* was whether the First Amendment's Establishment and Free Exercise Clauses "bar the government from interfering with the decision of a religious group to fire one of its ministers." *Id.* at 702. This Court held that the First Amendment does bar such interference because the government cannot (1) force a religious organization to retain a certain minister or (2) punish a religious organization for firing one. *Id.* at 706. This Court's reasoning in *Hosanna-Tabor* is key:

> The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.

Id.

The present case, unlike *Hosanna-Tabor*, does not involve a minister or a religious organization's right to fire or hire one. Instead, the question presented in this case is whether a religious organization has the right to defame and falsely disparage both members and nonmembers without facing any risk of liability. Furthermore, unlike *Hosana-Tabor*, this case does not involve a religious organization's right to self-determination because Ms. Pfeil is not asking a court to review whether she was properly excommunicated, nor is she requesting to be reinstated as a member of the church. If this case involved a church member attempting to force his/her way back into a church after having been excommunicated (or attempting to recover damages for being wrongfully excommunicated), *Hosanna-Tabor* would clearly be dispositive, but the issue presented in this case is fundamentally different and unresolved by *Hosanna-Tabor*. Finally, and most importantly, *Hosanna-Tabor* does nothing to resolve the clear split in authority between numerous state supreme courts. Today, citizens of Minnesota enjoy completely different First Amendment protections than, for example, citizens of Pennsylvania and South Carolina, and *Hosanna-Tabor* does absolutely nothing to change this dire predicament.

Contrary to Respondents' suggestions, this Court has not addressed, in *Hosanna-Tabor* or elsewhere, the application of the ecclesiastical abstention doctrine to defamation claims arising from false and secular statements made in a religious setting. As explained in more detail in Petitioner's opening Petition, this case presents a direct conflict between two ideals which have been historically recognized and protected by this Court: the right of a citizen to practice his/her faith without government

intrusion and the right of a citizen to protect his/her good name and reputation from unjustified and destructive attacks. While the Minnesota Supreme Court majority and dissent in this case disagreed on just about everything else, both sides agreed that this Court has never addressed the specific First Amendment issues that have been raised in this case. (App. A-10, A-29.)

This Court granted review in *Hosanna-Tabor* to weigh in on an equally important conflict between the right to religious freedom and the right to make a living without facing unlawful discrimination: "The interest of society in the enforcement of employment discrimination statutes is undoubtedly important. But so too is the interest of religious groups on choosing who will preach their beliefs, teach their faith, and carry their mission." *Id.* at 710. Other cases cited in *Hosanna-Tabor* also demonstrate this Court's historic practice of accepting review and providing guidance in cases where First Amendment religious conflicts arise. *See id.* at 704-705 (discussing *Watson v. Jones*, 20 L.Ed. 666 (1872), *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), and *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696 (1976).)

As outlined in detail in Petitioner's opening Petition, and as demonstrated once again in *Hosanna-Tabor*, this Court has time after time granted review and provided needed guidance in cases involving clashes between the First Amendment and other important rights and values. Yet in this case, while state supreme courts around the country continue to twist and warp the religious rights and liberties protected by the First Amendment, Respondents want this Court to sit idle,

do nothing, and indefinitely wait for a better "vehicle" to arrive at the Court's front steps at some indeterminate time. (Br. Opp. 23.) While Respondents will certainly benefit from no longer being in the passenger seat of such a "vehicle," the rest of the country will continue to be subjected to the conflicting and inconsistent applications of the First Amendment crafted by various state supreme courts. For all of these reasons, granting review in this case will resolve the current split in authority between various state supreme courts and will restore uniformity to the application and interpretation of the First Amendment.

Petitioner would like to conclude by briefly addressing some other issues raised by the Respondents in their brief. Respondents argue that granting review in this case will not affect the outcome of the case because, even if the case is remanded to the district court, Respondents will start this process all over again by seeking immunity under the Minnesota Constitution. (Br. Opp. 25-26.) This argument is flawed for two reasons. First, there is no indication in this case that Respondents would prevail on this argument because, as Respondents admit, (Br. Opp. 25-26 n.7), this issue was not properly raised, briefed, or ruled upon below. Second, and most importantly, this Court grants certiorari petitions to resolve splits in authority as to federal law between state supreme courts. Currently, Respondents have only raised a federal First Amendment defense, the Minnesota Constitution is not at issue, this Court can resolve the split between the state supreme courts by granting this Petition, and, if this Court reverses the decisions below, Ms. Pfeil would be allowed to return to the district court and seek a trial on the merits. There is no risk of this

Court issuing an "advisory opinion" threatened by the Respondents. (Br. Opp. 25.)

Respondents also now claim that Petitioner "forfeited key arguments and failed to create an adequate record for this Court to consider and endorse the rule she advocates." (Br. Opp. 24.) This argument is completely baseless because Ms. Pfeil has, both at the Minnesota Court of Appeals and the Minnesota Supreme Court, identified the specific statements she claims are secular and defamatory, (A-18, A-46), and has argued that these statements are actionable because their truth/falsity can be adjudicated without interpretation of religious doctrine. Petitioner also finds it somewhat ironic that Respondents have found a way to accuse her of failing to preserve the record for appeal while, at the same time, trying to raise their defense under the Minnesota Constitution which Defendants failed to mention even once until they submitted their briefing to the Minnesota Supreme Court. (Br. Opp. 25-26 n.7.) Petitioner has properly preserved the record for the issues she has raised before this Court, and Respondents' arguments to the contrary are nothing but a distraction.

Finally, Respondents claim that there is no real split in authority on the issue presented here between the various state supreme courts. This argument was addressed in detail in Petitioner's opening Petition and those arguments need not be repeated. In short, if this case arose in the State of Pennsylvania, the First Amendment would not bar Ms. Pfeil from pursuing her defamation claim at least with respect to Pastor Behnke's false statement accusing the Pfeils of accusing him of stealing money from the church. On the other hand, just because this case arose in the State of Minnesota, Ms. Pfeil's case

is now barred under the First Amendment, all because Minnesota and Pennsylvania have established two fundamentally different interpretations of the First Amendment. Despite Respondents' refusal to admit it, there is an obvious split in authority on this issue between various state supreme courts and this Court should grant this Petition to resolve these conflicting state rulings and to restore uniformity to the application and interpretation of the First Amendment.

CONCLUSION

For the foregoing reasons, and for those set forth in Petitioner's opening Petition, Petitioner respectfully requests that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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