

No. E2024-00100-SC-R11-CV

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

Preston Garner, et al.,
Plaintiffs and Appellees,

v.

Southern Baptist Convention, et al.,
Defendants and Appellants

**REPLY BRIEF OF APPELLANTS EXECUTIVE COMMITTEE OF
THE SOUTHERN BAPTIST CONVENTION, CHRISTY PETERS,
SOUTHERN BAPTIST CONVENTION, AND CREDENTIALS
COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION**

On Application for Permission to Appeal from the Judgment of the
Court of Appeals, No. E2024-00100-COA-R3-CV
Blount County Circuit Court, No. L-21220
The Honorable David R. Duggan

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INTRODUCTION

This case lies at the center of the First Amendment’s protections. It concerns internal religious speech ensuring that churches adequately safeguarded against pastoral abuse. That speech was made by religious leaders, to religious leaders, and about religious leaders. And the sole purpose of the speech was to govern the internal affairs of a religious association by upholding its religious standards of affiliation. Such speech is doubly protected by the First Amendment’s guarantee of church autonomy and Tennessee law’s safeguards for speech and association.

Garner fails to defend the Court of Appeals’ contrary conclusion, which rested on three constitutional errors: that the First Amendment does not protect matters of internal church governance; that courts can second-guess church governance using “neutral principles” of defamation law; and that providing special legal protection for church governance violates the Establishment Clause. In its opening brief, the Southern Baptist Convention showed that these errors ran afoul of the Sixth Circuit’s decision in *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986), and the many cases by Tennessee courts and others applying it.

Yet Garner never mentions *Hutchison* or distinguishes its progeny. And the case he cites most often in response, *McRaney v. North American Mission Board*, has now been resolved against him on all three errors. There the Fifth Circuit concluded that the First Amendment protects church governance against defamation claims, is not subject to a “neutral principles” loophole, and requires special protection for religious bodies. ---F.4th---, 2025 WL 3012553 (5th Cir. 2025). The court accordingly rejected a Baptist minister’s defamation claim against an SBC entity.

The same result applies here, and even more clearly. The speech targeted here wasn't merely about concerns of pastoral misconduct, as in *McRaney*. It was primarily about matters of internal SBC governance—whether churches were abiding by the religious beliefs against pastoral abuse required to be a “cooperating” (i.e., affiliated) church of the SBC. That places this case firmly in church autonomy's heartland.

Garner also fails to defend the Court of Appeals' mistaken construction of the Tennessee Public Participation Act's standard of proof for claims that burden expression. Indeed, he concedes that the trial court wrongly conflated the TPPA's summary-judgment-like standard with the motion-to-dismiss standard. He then proceeds to argue that those two standards aren't meaningfully different anyway—contradicting his own concession. This Court should correct the Court of Appeals' watered-down version of the TPPA's protections, which is irreconcilable with *Charles v. McQueen*, 693 S.W.3d 262 (Tenn. 2024).

In the end, Garner turns repeatedly to policy arguments. Like many litigants before him, he makes “dire” “predict[ions],” *Hosanna-Tabor v. EEOC*, 565 U.S. 171, 196 (2012), that ruling for the SBC will place religious bodies “above the law,” Resp.6, 21, 34, 37. His fears are misplaced. Churches do not “enjoy a general immunity from secular laws.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020). But where, as here, a suit interferes in “matters of church government,” the “First Amendment has struck the balance” in favor of church autonomy. *Hosanna-Tabor*, 565 U.S. at 186, 196. To respect that balance is to *obey* the law, not flout it.

By contrast, as religious amici explain, the consequences of affirming the Court of Appeals are grave—undermining how religious bodies “protect[] [their] faithful from clergy who w[ould] take advantage of them.” *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 936 (Mass. 2002); Denominations Br.18–24; Jewish Coalition Br.21–22. That outcome serves neither Church nor State. This Court should reverse.

ARGUMENT

I. The First Amendment’s protections for church autonomy bar Garner’s suit.

Garner’s claims are barred by the First Amendment’s protections for church autonomy, which guarantee independence for religious groups in matters of faith, doctrine, and internal governance. As explained below, Garner fails to show otherwise. He never attempts to grapple with the overwhelming—and growing—authority against him, instead returning to the inapplicable “neutral principles” approach and repeating a now-defunct assertion that the First Amendment forbids giving special protection to religious liberty. And he does not dispute that this Court has authority to resolve the SBC’s church autonomy defenses on interlocutory appeal.

A. Garner’s claims violate the church autonomy doctrine’s protections for church governance.

As the SBC explained, Garner’s claims require (1) intrusion into the SBC’s internal governance, (2) discrimination against non-hierarchical polities like the SBC, and (3) church-state entanglement via adjudication of the claims’ elements. Br.37–48. Each defect alone warrants dismissal under the church autonomy doctrine. Garner fails to rebut even one.

1. Garner’s claims intrude into church governance.

Like the Court of Appeals below, Garner limits church autonomy’s protections to “religious disputes” and “religious doctrine” alone. Resp.20; see Br.45. But his own authorities, quoted in the introduction of his brief, confirm that’s wrong. Resp.6 (agreeing that courts are barred from “adjudicating issues involving ... the internal governance of religious bodies” (quoting *Redwing v. Catholic Bishop*, 363 S.W.3d 436, 446 (Tenn. 2012))). Garner cites no precedent to the contrary. And courts have repeatedly rejected his argument. Br.46; Tenn. Br.25–29. So have the nation’s leading scholars of the Religion Clauses. Scholars Br.12–24.¹

Similarly, Garner claims that church autonomy does not apply to questions of “personal rights,” such as defamation claims. Resp.6. But as the SBC explained at length, courts have repeatedly held that in appropriate circumstances the church autonomy doctrine can bar defamation claims. Br.31–36 (collecting cases).

¹ See, e.g., *Fulton v. City of Philadelphia*, 593 U.S. 522, 554 (2021) (Alito, J., concurring) (identifying Professors McConnell and Laycock as “some of the country’s most distinguished scholars of the Religion Clauses”). The scholar amici’s work has been cited by this Court and cited by justices of the U.S. Supreme Court in almost every major case touching on the Religion Clauses in the last 40 years. See, e.g., *Church of God in Christ, Inc. v. L.M. Haley Ministries*, 531 S.W.3d 146, 162–68 (Tenn. 2017) (“COGIC”); *Catholic Charities Bureau v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 257 (2025) (Thomas, J., concurring); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 n.5 (2022); *Our Lady*, 591 U.S. at 747 n.9; *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 50 n.15 (2019); *Hosanna-Tabor*, 565 U.S. at 183; *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 341–42 (1987) (Brennan, J., concurring).

That includes the leading case of *Hutchison v. Thomas*, which both Tennessee and federal courts have applied for decades to bar defamation claims. Br.33–36. Garner doesn’t even mention *Hutchison*. Nor does he ever grapple with the holdings of its extensive progeny or of other state supreme courts and federal appeals courts that have repeatedly reached the same result. *Id.*

Instead, Garner turns to a grab bag of district court rulings, unpublished decisions, and out-of-state cases. Resp.25–30. Some don’t even concern defamation, *id.* at 29–30 (citing *Destefano* and *Rashedi*); another actually applies church autonomy to bar a defamation claim, *id.* (citing *Mallette*). Still others concern external statements that are nothing like the internal church-affiliation inquiry at issue here. *Id.* at 25–27, 30–31 (citing *Hunt*, *Hocker*, and *Duncan*). And the case he cites most often—a district court decision in *McRaney v. North American Mission Board*, Resp.27–28, which that court itself later abandoned—has now been resolved to cut against him by the Fifth Circuit.

There, the Fifth Circuit ultimately held that defamation claims arising in the same “Baptist ecclesiology” as this case were barred by church autonomy. *McRaney*, 2025 WL 3012553, at *1. An ordained Baptist minister, McRaney, was terminated from a regional SBC-affiliated ministry and later denied employment opportunities at other regional SBC-affiliated ministries. *Id.* at *2, *19. He then sued a national SBC entity for defamation, claiming that its statements about him to his previous employer caused him to lose both current and future pastoral employment and inflicted severe emotional distress. *Id.* at *2. When the

defendant invoked the church autonomy doctrine, McRaney argued that the doctrine was not offended by his defamation claims. *Id.* at *17.

The Fifth Circuit disagreed. The church autonomy doctrine, *McRaney* held, is not limited solely to questions of faith and doctrine, nor is it inapplicable to common-law claims. Rather, it broadly protects “church governance, including church discipline and the church’s understanding of its own membership,” and bars a “wide variety of torts.” *Id.* at *6–7 (collecting cases), *8 (citing *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139–40 (1872)). This bar applies to defamation claims, such as those arising from “a church’s internal communications relating to church governance,” since a “church’s internal ecclesiastical dialogue”—even regarding deeply “offensive” statements about a plaintiff’s sexual conduct—falls “squarely within the areas of church governance and doctrine protected by the First Amendment.” *Id.* at *9 (quoting *Bryce v. Episcopal Church*, 289 F.3d 648, 658 (10th Cir. 2002)). First Amendment rights are unconstitutionally “chill[ed]” when defamation “litigation” is used to expose internal church “proceedings and their participants” to “the scrutiny of civil courts.” *Id.* (quoting *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 539 (Minn. 2016)).

And that was doubly true for McRaney’s claims, since they “use[d] the vehicle of a defamation ... claim to collaterally attack the outcome of a church discipline proceeding” and “would require a court to ‘interpose’ itself into a religious organization’s ‘decisions ... relating to how and by whom [it] spreads [its] message.’” *Id.* at *20 (quoting *Bell v. Presbyterian Church (USA)*, 126 F.3d 328, 332 (4th Cir. 1997)).

McRaney’s analysis applies here. Garner agrees he is an ordained Baptist minister who served in pastoral roles within churches and ministries affiliated with the SBC. Resp.9. His defamation claims arise from internal communications among the SBC and Southern Baptist religious leaders. Br.23–25. Adjudicating his claims would require civil judges and juries to second-guess the SBC’s religious-affiliation processes and question why his religious employers—past and future—made ministerial decisions. *See* Br.23–25, 37–39; Tenn. Br.25–26.

McRaney is also a cautionary tale. There, the pastor’s claims were allowed to proceed to merits discovery. *McRaney*, 2025 WL 3012553, at *3. The result was “protracted discovery” into both the SBC defendant *and* the religious employer on matters regarding “the selection of ... ministers,” with “multiple pastors” put under oath and “many sensitive internal ministry records” probed. *Id.* at *3, *21. All of this, the Fifth Circuit later regretfully recognized, had been an “unconstitutional violation of church autonomy,” inflicting an irreparable injury from which the church could never be “made whole by a take-nothing judgment” after “years” of litigation. *Id.* at *13 & n.5, *21; *see also Belya v. Kapral*, 775 F. Supp. 3d 766, 779 (S.D.N.Y. 2025) (concluding—after depositions of a dozen priests and bishops over a defamation claim—that “trying this case would be impossible without violating the church’s autonomy”). This Court should reverse the Court of Appeals to prevent similar irreparable harm here.

2. Garner’s claims discriminate among denominations.

Consistent with the ruling below, Garner argues that religious inquiries within nonhierarchical polities like the SBC have weaker church autonomy protection than do similar inquiries within “hierarchical authoritative” polities like those of “the Catholic or Lutheran faiths.” Appellees’ Memo. in Supp. of Mot. to Strike Appl. for Permission to Appeal at 8, 13; *see also* Br.48. As Garner would have it, hierarchical religions are protected when they make internal inquiries about sex abuse, while the nonhierarchical SBC must face litigation and liability for the same inquiry. But “the decision how to structure a religious institution is *itself* a religious decision.” *McRaney*, 2025 WL 3012553, at *18; *accord Catholic Charities*, 605 U.S. at 257 (Thomas, J., concurring) (“the polity of a religious institution is often itself a matter of faith”); Br.18–21. Thus, adopting Garner’s rule here would punish the SBC for its polity, pressuring it to make purely ecclesiastical decisions with a wary eye toward the entanglement of litigation. That is unconstitutional. *McRaney*, 2025 WL 3012553, at *18; *see* Tenn. Br.29–30. It also shows how Garner’s claims would ultimately burden not just church governance, but also “matters of faith.” *McRaney*, 2025 WL 3012553, at *17.²

² Garner continues insisting that the SBC show that the challenged statements were “rooted in religious belief.” Resp.34. But the SBC has *already* demonstrated that the statements arose “during the course of an ecclesiastical undertaking,” which satisfies its burden. *Anderson v. Watchtower Bible & Tract Soc. of NY, Inc.*, No. M2004-01066-COA-R9-

In *McRaney*, the Fifth Circuit “decline[d] to be the first court ever to hold [that] the church autonomy doctrine protects only hierarchically organized religious entities.” *Id.* at *15. Garner provides no reason for this Court to become the first.

3. Garner’s claims require entangling adjudication.

Finally, Garner has no real response to the SBC’s argument that adjudicating the elements of his claims will necessarily create church-state entanglement. Br.41–45; *see* Resp.31. He does not dispute, for instance, that resolving specific elements of his claims—such as publication, privilege, intent, and damages—will be unconstitutionally entangling. Br.41–45. That alone is enough to require dismissal of his claims. *See, e.g., McRaney*, 2025 WL 3012553, at *20 (adjudicating elements of defamation claim violated church autonomy); *Episcopal Diocese of S. Va. v. Marshall*, 903 S.E.2d 534, 543–45 (Va. Ct. App. 2024) (same); *see also Payne-Elliott v. Roman Catholic Archdiocese of Indianapolis*, 193 N.E.3d 1009, 1012–15 (Ind. 2022) (adjudicating elements of tort claims arising from “communications between church officials and members” about “church policy and administration” violated church autonomy).

CV, 2007 WL 161035, at *15, *26 (Tenn. Ct. App. 2007). Regardless, the statements here had an obvious religious motivation: obeying an “internal church directive” to inquire into SBC-affiliated churches’ compliance with religious standards about pastoral misconduct. *In re Diocese of Lubbock*, 624 S.W.3d 506, 516 (Tex. 2021); *see* Br.46 & n.6; *accord* Jewish Coalition Br.14. That is more than enough to show that the SBC’s speech was “rooted in religious belief” and not in “purely secular” matters. *Bryce*, 289 F.3d at 657.

In the one place Garner does respond to the SBC’s arguments on the entangling elements of his claims—defamatory meaning—he’s mistaken, forgetting that defamation claims are analyzed contextually. *See* Resp.31. While the question of defamatory meaning is not primarily a subjective question at this stage, it *is* context-dependent. *See, e.g., Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000). Here, the statements Garner challenges were directed to religious leaders in a specific religious context. So the issue becomes: How would a *reasonable* Southern Baptist pastor receiving the SBC’s inquiry letter have understood the letter, including its question about whether the church might have received any “allegation of sexual assault of a minor involving Preston Garner”? T.R. Vol. I at 21; *see* Br.42.

Answering that question in context would involve delving into not only the history of the SBC’s actions and beliefs regarding pastoral sex abuse, but also how Baptist polity preserves the autonomy of local Baptist churches while respecting SBC affiliation requirements. A civil court cannot fashion religiously neutral jury instructions in that context, nor can a civil jury constitutionally parse between Garner’s views and the SBC’s beliefs. *See McRaney*, 2025 WL 3012553, at *16; *Belya*, 775 F. Supp. 3d at 779.³

³ Nor does the involvement of Guidepost Solutions in initially fielding the abuse allegation change the analysis. Resp.25, 32–33. The relevant question is how a reasonable pastor would understand *the SBC’s statements*, not Guidepost’s background role. Br.37–39; *accord Diocese of Lubbock*, 624 S.W.3d at 510 (dioceses’ reliance on “a retired law

And to even get there, “[c]hurch personnel and records would inevitably become subject to subpoena, discovery, cross-examination, [and] the full panoply of legal process designed to probe the mind of the church” in ecclesiastical matters. *Rayburn v. Gen. Conf. of Seventh-day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985); accord *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 977–78, 983 (7th Cir. 2021) (“depositions of fellow ministers and the search for a subjective motive behind” their actions necessarily “cause[s] civil intrusion into, and excessive entanglement with, the religious sphere”); see also *Charles*, 693 S.W.3d at 280 (noting false-light claims require proof that the party “had knowledge of or acted in reckless disregard as to the falsity” of the statement).

As *McRaney* vividly illustrated, the church-state entanglement will run far and wide, affecting not only the SBC itself, but also likely the other religious bodies who deliberated and made ministerial decisions about Garner and his alleged misconduct. The discovery process could thus include Englewood Baptist Church (where the alleged abuse occurred), Everett Hills Baptist Church and the Tennessee Baptist Mission Board (the SBC-affiliated ministries that the SBC contacted about the allegation), The King’s Academy and Concord Baptist Church (the SBC-affiliated employers that Garner alleges terminated or withdrew his employment after learning about the allegations), and

enforcement professional and a private attorney” to assist with an internal sexual abuse investigation had no bearing on the diocese’s successful assertion of a church autonomy defense to a defamation claim over public statements regarding the abuse).

Black Oak Heights Baptist Church (Garner’s current employer). *See, e.g.,* Preston Garner, *About*, <https://perma.cc/9QUU-GRGK>. And that “religious thicket,” *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 719 (1976), threatens to be even more entangling than the one *McRaney* correctly deemed unconstitutional.

Nor do Garner’s claims ensnare just the Church: he also asks the State itself to veer from its “proper lane” and “exceed[its] authority.” *Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 326 (4th Cir. 2024). Like the separation of powers, church autonomy is “grounded” in “constitutional structure,” “confin[ing] the state and its civil courts to their proper roles.” *Id.* at 325; *accord McRaney*, 2025 WL 3012553, at *12 (“structural”); *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015) (same). Thus, a court “ha[s] an interest independent of party preference” to avoid “allow[ing] itself to get dragged into a religious controversy.” *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. at 194–95. Should this suit proceed, that interest will be permanently lost.

B. The “neutral principles” approach does not apply to questions of church governance like those here.

As the SBC has explained, the “neutral principles” approach developed for church property disputes does not apply here and was never meant to. Br.48–51. Accordingly, courts reviewing defamation claims have long agreed that “[t]he ‘neutral principles’ doctrine has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be.” *Hutchison*, 789 F.2d

at 396; Br.49 (collecting cases); *Crowder v. S. Baptist Convention*, 828 F.2d 718, 722, 725–26 (11th Cir. 1987) (holding that “civil courts may not use the guise of the ‘neutral principles’ approach to delve into issues concerning” internal church governance); *see also Gaddy v. Corp. of President of Church*, 148 F.4th 1202, 1211–16 (10th Cir. 2025) (rejecting argument that “the neutrality ... of fraud laws” could “thwart the church autonomy doctrine’s application”).

But, yet again, Garner simply fails to respond. He has, for instance, no answer to *Hutchison*, *Anderson*, *Milivojevich*, or *Hosanna-Tabor*. And he again fails to respond to *McRaney*’s recent rejection of using “neutral principles” to adjudicate a defamation claim against an SBC entity. As the Fifth Circuit explained, the Supreme Court developed the approach to *avoid* church autonomy problems in intrachurch property disputes, and accordingly “very clearly limited” its use of the approach. *McRaney*, 2025 WL 3012553, at *15. The approach is thus “endogenous to the church autonomy doctrine” and “not some freestanding exception to the doctrine that allows courts to tread on *terra sancta* in the name of ‘neutrality.’” *Id.* And even though *McRaney*’s claims were—as Garner argues here—“facially ‘neutral’ causes of action,” they were still barred because the “*application* of the neutral rules to [the] religious institutions” would result in “government interference with an internal church decision that affects the faith and mission of the church itself.” *Id.* at *18 (quoting *Hosanna-Tabor*, 565 U.S. at 190); *accord* Scholars Br.25–27; Denominations Br.17–18.

Garner’s answer is to simply repeat the Court of Appeals’ error, insisting *Redwing* resolves the issue his way. But that stretches *Redwing* far beyond its express limits. This Court was clear that it addressed only the “external affairs” of the church and expressly distinguished the “internal governance of religious bodies.” 363 S.W.3d at 446, 449. And it has since emphasized that limitation. *COGIC*, 531 S.W.3d at 169. This case, about internal religious communications about internal religious affiliation standards, falls into the latter category.

C. Protecting church autonomy here does not violate the Establishment Clause.

Finally, Garner relies heavily on *Redwing* for a different proposition: that the Establishment Clause bans placing religious bodies in a “preferred position” over secular entities when it comes to their internal governance. Resp.24. But that proposition relies on a now-defunct line of caselaw, and conflicts with the now-controlling (and more sensible) rule that the Free Exercise and Establishment guarantees “have complementary purposes, not warring ones.” *Kennedy*, 597 U.S. at 510 (cleaned up). Indeed, as both Justice Thomas and *McRaney* recently recalled, the unanimous U.S. Supreme Court has confirmed that “the text of the First Amendment ... gives special solicitude to the rights of religious organizations.” *McRaney*, 2025 WL 3012553, at *9 (quoting *Catholic Charities*, 605 U.S. at 257 (Thomas, J., concurring) (quoting *Hosanna-Tabor*, 565 U.S. at 189)). Yet again, Garner fails to offer any response to *Kennedy*, *Hosanna-Tabor*, *Catholic Charities*, or *McRaney*, exemplifying the need to clarify that *Redwing*’s contrary language is no longer good law.

Garner claims that this Court must overrule *Redwing* entirely to rule for the SBC. Resp.34–37. That is incorrect. Again, *Redwing* explained that it resolved alleged wrongdoing in a religious institution’s *external affairs*, which does not remotely resemble this case. *See supra* at 17–18. But while the judgment in *Redwing* is not in question here, aspects of its reasoning, as the SBC has explained, are. *See* Br.51–53.

D. This Court has jurisdiction over this interlocutory appeal.

No party disputes the Court of Appeals’ holding or this Court’s precedent holding that the church autonomy doctrine is jurisdictional, and thus that this Court has appellate jurisdiction to resolve the application of the church autonomy doctrine. *See COGIC*, 531 S.W.3d at 159; *accord Okla. Ann. Conf. of the United Methodist Church v. Timmons*, 538 P.3d 163 (Okla. 2023) (church autonomy is jurisdictional); *Rutland v. Nelson*, 857 F. App’x 627 (11th Cir. 2021) (same).⁴ Tennessee suggests that this Court should reconceptualize the doctrine as an immunity instead of a jurisdictional bar, but agrees that this Court still has appellate jurisdiction to resolve application of the immunity regardless. Tenn. Br.30–39; *see also McRaney*, 2025 WL 3012553, at *12–13 (because church autonomy is “a structural, threshold immunity from suit,” where “a district court denies the invocation of church autonomy, that denial is subject to immediate appellate review”).

⁴ In a single sentence in a footnote, Garner raises a possible consequence of the doctrine not being jurisdictional. Resp.27 n.3. But perfunctory observations in footnotes are not arguments, and even if they were, they are waived. *Charles*, 693 S.W.3d at 273.

Either way, everyone agrees this Court has jurisdiction to reach and determine the scope of the church autonomy doctrine’s protections here. *Compare Diocese of Lubbock*, 624 S.W.3d at 519 (interlocutory review available under jurisdictional theory), *with St. Joseph Catholic Orphan Soc’y v. Edwards*, 449 S.W.3d 727, 737 (Ky. 2014) (interlocutory review available under immunity theory); *see also Smith v. Supple*, 293 A.3d 851, 864 (Conn. 2023) (immunity); *Harris v. Matthews*, 643 S.E.2d 566, 570 (N.C. 2007) (immunity); *Heard v. Johnson*, 810 A.2d 871, 876–77 (D.C. 2002) (immunity). Failure to reach church autonomy here would cause both unfair hardship, Tenn. Br.39, and, more importantly, irreparable constitutional injury, *McRaney*, 2025 WL 3012553, at *13.

II. The TPPA sets an enhanced evidentiary standard at the prima facie stage.

As the SBC explained, the TPPA lessens burdens that litigation places on speech by establishing an early merits adjudication under an enhanced standard akin to summary judgment. Br.53 (citing *Charles*, 693 S.W.3d at 267, 280–81). Key to this standard is the TPPA’s textual command that courts base their decisions at the TPPA’s first and second stages exclusively on admissible evidence. *See Charles*, 693 S.W.3d at 281. Because the courts below did not hold Garner to this standard, this Court should reverse.

The TPPA permits a court to consider a limited universe of items which include “sworn affidavits stating admissible evidence” and “other admissible evidence presented by the parties.” Tenn. Code Ann. § 20-17-105(d); *see* Br.56. Nothing more. If a court considers anything else, it has gone beyond the bounds permitted by the TPPA. Here, the trial court

ignored those bounds when it accepted Garner’s allegations in his Complaint as true, and the Court of Appeals erroneously approved. Slip Op. at 17–18.

That error harms the TPPA’s heightened procedural protections against cases that would interfere with speech and associated rights. By requiring a court to limit its review at an early stage in the case to admissible evidence only, the TPPA raises the threshold for what a plaintiff must present to establish a prima facie case. *See Charles*, 693 S.W.3d at 280. Instead of considering whether the elements of a claim have been stated by mere allegations, as in a Rule 12.02 motion, the TPPA requires the parties to present in admissible form evidence sufficiently strong to establish each essential element of the claim. *See id.* On their face, these rigorous requirements make the TPPA’s prima facie standard more exacting than the Rule 12.02 standard.

Garner does little to contradict this. In fact, Garner now *agrees* with the SBC that the trial court “erroneously *applied the Rule 12.02(6) standard* on motions to dismiss and *improperly took all complaint allegations ‘as true.’*” Resp.38 (emphasis added). And he doesn’t dispute that the Court of Appeals treated the TPPA’s prima facie standard as the equivalent of the Rule 12.02 standard. *Id.* at 38–39. Instead, he contends that the Court of Appeals cured this fundamental error merely by reciting the correct standard from *Charles*. *See id.*

Quoting a legal standard is not the same as understanding and applying it. Far from correcting the trial court’s error, the Court of Appeals doubled down on it. After reciting the *Charles* standard, the

court proceeded to hold that the trial court did not err because the TPPA prima facie standard and the Rule 12.02 standard are “no[t] meaningful[ly] differen[t].” *See* Slip Op. at 18. Garner agrees that this was the lower court’s holding. Resp.38 (acknowledging the court “found no meaningful difference between [the TPPA] standard and the Rule 12 standard”). But, again, the standard required at the pleading stage is not the same as that required at summary judgment.

By ignoring these express and substantive differences, the Court of Appeals joined the trial court in failing to give effect to the TPPA’s textual command that a reviewing court consider only admissible evidence at the prima facie case stage. And by ratifying the “improper[.]” and “erroneous[.]” decision of the trial court, Resp.38, the Court of Appeals diminished these differences and, with them, the important role the TPPA plays in protecting freedom of expression and association.

Finally, Garner resorts to a red herring, suggesting that the SBC cannot challenge the incorrect *standard* because he doesn’t think the SBC challenged one aspect of the standard’s *application*. Resp.39 (arguing the SBC inadequately contested allegations regarding certain oral statements). That’s a non sequitur. The legal question on which this Court granted Rule 11 review is the content of the TPPA’s enhanced evidentiary standard to make out a prima facie case. The contested sufficiency of the SBC’s response to certain alleged oral statements cannot change the relevant legal question. And the SBC has undisputedly raised and preserved that legal question for review. T.R. Vol. IV, 571; Slip Op. at 17.

Because the Court of Appeals, like the trial court, erroneously adopted the Rule 12.02 motion to dismiss standard instead of the one the TPPA demands, this Court should reverse.

CONCLUSION

This Court should reverse and order dismissal of Garner's claims.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the requirements of Tennessee Rule of Appellate Procedure 30(e) because it is typed in fourteen-point Century Schoolbook font and, according to the word count feature of Microsoft Word, contains 4,692 words, exclusive of the elements exempted by the Rule.

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CERTIFICATE OF SERVICE

I certify that on November 3, 2025, a true and correct copy of this brief was served on all registered users participating in this case, including the following by operation of the Court's e-filing system:

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