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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

APPLICATION FOR PERMISSION TO APPEAL OF THE EXECUTIVE COMMITTEE OF THE SOUTHERN BAPTIST CONVENTION AND CHRISTY PETERS

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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JURISDICTIONAL STATEMENT

Pursuant to Tenn. R. App. P. 11, the Executive Committee of the Southern Baptist Convention and Christy Peters seek review of the decision of the Court of Appeals affirming in part and reversing in part the judgment of the trial court. The Court of Appeals filed its decision on January 8, 2025. Neither party filed a petition for rehearing. This application is filed within the time prescribed by Tenn. R. App. P. 11(b). A copy of the opinion of the Court of Appeals is attached to this application. *Garner v. S. Baptist Convention*, No. E2024-00100-COA-R3-CV ("Slip Op.").

QUESTIONS PRESENTED FOR REVIEW

1. Whether the First Amendment bars civil courts from exercising jurisdiction to adjudicate tort claims over a religious association's internal communications about a sensitive matter of church governance regarding ecclesiastical affiliation and church leadership.

2. Whether the Tennessee Public Participation Act sets an enhanced evidentiary standard at the prima facie stage.

3. Whether truth is an absolute defense to a defamation claim.

4. Whether Tennessee courts should, for the first time, import the "special relationship" exception to the publicity requirement of false light invasion of privacy.

STATEMENT OF THE CASE

This case presents questions of first impression for this Court on matters of constitutional importance. Those questions arise from the Court of Appeals' decision to allow civil courts to adjudicate defamation claims by religious leaders against ecclesiastical bodies over internal religious governance communications. Granting review would permit this Court to settle Tennessee law, align its First Amendment jurisprudence with the U.S. Supreme Court's, and correct a conflict between the decision below and those of numerous other courts.

Until now, Tennessee and most other jurisdictions to consider the issue have refused to adjudicate such defamation claims. And this case squarely fits within those precedents. It concerns an inquiry by an ecclesiastical body to an affiliated church to ensure that church satisfied the standards for religious affiliation by having an appropriate process to investigate an allegation of pastoral sexual abuse. That kind of internal religious speech about matters of church governance has never been the basis for defamation liability in Tennessee.

But the Court of Appeals for the first time allowed such claims to proceed, concluding that neither the First Amendment's protections for the independence of the church nor the Tennessee Public Participation Act's protections for freedom of speech and association barred the claims. In reaching that result, the Court of Appeals addressed—and resolved incorrectly—multiple issues of first impression.

It not only allowed defamation claims over internal religious communications, but found that those claims are analyzed under the "neutral principles" approach developed for fundamentally different types of disputes. And it determined that the TPPA protections for freedom of speech and association fall away when a false-light claim is based on statements made to an employer, triggering a heretofore-unrecognized "special relationship" exception.

This Court has not weighed in on these important questions of law. Others have, and they appropriately rejected the Court of Appeals' approach. For instance, courts have recognized that applying the "neutral principles" approach in cases like this one would create an end-run around the First Amendment's protections for church autonomy.[1] The U.S. Court of Appeals for the Sixth Circuit, for example, has long applied the church autonomy doctrine to bar defamation claims brought by church leaders. *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986). And it has explained that the "neutral principles" approach "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Id.*

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[1] While the Court of Appeals used the term "ecclesiastical abstention doctrine" to describe these constitutional protections, the doctrine is also "commonly known as the 'church autonomy' doctrine." *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 156 (Tenn. 2017) ("*COGIC*"). Appellants use the term "church autonomy" in this brief, consistent with the U.S. Supreme Court's recent usage. *See Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020).

This case presents overlapping interests in church autonomy. In the first place, the religious inquiry challenged here concerns the church's supervision of its religious leadership, an area of core ecclesiastical concern. *See Our Lady*, 591 U.S. at 746–47. And even more fundamentally, courts have long held that decisions about church membership are ecclesiastical issues left to the church alone. *See, e.g.*, *Bouldin v. Alexander*, 82 U.S. (15 Wall.) 131, 139 (1872) (civil courts "have no power" to entertain lawsuits challenging "ordinary acts of church discipline, or of excision from membership"). That principle applies with even greater force here, where the plaintiff seeks to hold an ecclesiastical association liable for inquiring into a church's compliance with religious standards for affiliation.

Yet the Court of Appeals felt compelled by this Court's precedent to narrow the "scope" of church autonomy protections to avoid "Establishment Clause" concerns with "placing religious institutions in a preferred position." Slip Op. at 13 (quoting *Redwing v. Catholic Bishop for Diocese of Memphis*, 363 S.W.3d 436, 451 (Tenn. 2012)). But in 2022, the U.S. Supreme Court rejected the use of such concerns over "phantom constitutional violations" to justify restricting First Amendment rights. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). This Court should take the opportunity to update its precedent accordingly.

The Court of Appeals also narrowed the scope of the TPPA's protections for freedom of speech and association. It reduced the standard

of proof necessary to overcome the TPPA's protections, confused the law on speech-related liability, and imported a glaring new loophole for speech with employers that doesn't fit with Tennessee law and will be particularly harmful to religious bodies.

The result of all this is to punish efforts by Southern Baptists to prevent sex abuse within their polity. Churches affiliated with the Southern Baptist Convention ("SBC") have made it an explicit condition of affiliation that churches must conduct themselves in accordance with their shared Baptist beliefs against sex abuse. And they empowered the SBC to inquire into affiliated churches to ensure they were remaining faithful to those beliefs. But when the SBC did just that and inquired with an affiliated Southern Baptist church in Maryville, the pastor mentioned in the inquiry sued in civil court. And now the Court of Appeals has allowed that suit to proceed, setting an example that will chill not only Southern Baptists but other faith groups and voluntary religious associations.

The public interest would be well-served by granting review. Courts benefit when they are not forced to referee religious governance. And everyone benefits—religious institutions and the public alike—when religious bodies have the freedom they need to protect their flocks from shepherds alleged to prey on them.

This Court should grant review.

STATEMENT OF RELEVANT FACTS

A. Baptist Polity and the Southern Baptist Convention

A fundamental tenet of Baptist polity is that each local Baptist church is an autonomous self-governed congregation that is ecclesiastically accountable to God alone. *See* The Baptist Faith & Message at VI (June 14, 2023), https://perma.cc/5GHC-U85X.[2] Baptist churches do not believe they are subject to either denominational hierarchies or the State in matters of religion. *Id.* at VI, XIV, XV, XVII. These beliefs reflect, among other things, hard experience. Baptists were "reviled" and "met with violence" in early America by established denominations and government officials, and "continued to be horsewhipped and jailed for their preaching until the Revolution." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1423 (1990).

But the Baptist commitment to the autonomy of local churches does not require the isolation of those churches. Rather, Baptists believe that their churches should organize voluntary associations that allow Christians to cooperate together in spreading their faith and serving God. *See* The Baptist Faith & Message at XIV. One example of this type of association is a state convention—such as the Tennessee Baptist Mission Board—which constitutes a voluntary network of local SBC churches

[2] Courts can take judicial notice of a religious institution's publicly available religious law. *See, e.g.*, *Our Lady*, 591 U.S. at 754 (relying on canon law and catechism).

within a particular state or geographic region. And while these associations have no authority over local churches, they must ensure that the associations themselves maintain their "loyalty to Christ and His Word as revealed in the New Testament." *Id.*

Appellant SBC was formed as an ecclesiastical association by thousands of independent Baptist churches nearly two hundred years ago, in 1845. [T.R. Vol. I, 17 ¶ 2, 108]. The SBC allows Baptists to cooperate together to promote sharing the Christian faith both domestically and internationally, providing advanced Christian education at Baptist seminaries, and demonstrating the love of Christ through services to at-risk children and families and in disaster relief efforts. [T.R. Vol. I, 108]. Today, over 47,000 churches with over 14 million people are associated with the SBC. *Id.*

Churches that associate with the SBC retain their full ecclesiastical autonomy, including the power to select and oversee their leaders. [T.R. Vol. I, 109]. To ensure that the SBC does not drift doctrinally and remains "loyal[] to Christ and His Word," *see* The Baptist Faith & Message at XIV, the SBC requires its member churches meet an ecclesiastical standard for being in religious affiliation with the SBC. [T.R. Vol. I, 109].

Being in good standing under this standard is known as "friendly cooperation." [T.R. Vol. I, 109]. For a church to be in friendly cooperation, it must formally approve affiliation with the SBC, support SBC ministry programs, have a faith and practice that closely follow the SBC's

statement of faith, not approve ethnic discrimination, and conduct itself in a manner consistent with the SBC's beliefs against sex abuse. [T.R. Vol. I, 109–10]; SBC Constitution Art. III.

Ensuring affiliated churches faithfully meet these requirements is the responsibility of Appellant Credentials Committee of the SBC. [T.R. Vol. I, 111–12, 114]; SBC Bylaws § 8(c). The Credentials Committee is charged with reviewing available information to determine friendly cooperation, including by "mak[ing] inquiries of a church." [T.R. Vol. I, 111]. Consistent with the autonomy of affiliated churches, the Credentials Committee does not have the power to compel compliance with its inquiries. *See* SBC Constitution Art. IV; *accord* SBC Bylaws § 8(c)(5); [T.R. Vol. II, 271–72]. It can only ask and, if the recipient church declines to answer, determine whether it can affirm that the church is in friendly cooperation based on the information available to it. [T.R. Vol. II, 271–72]. A determination of non-cooperation, if approved by Appellant Executive Committee of the SBC, can result in "disfellowshipp[ing]" the church, ending its affiliation with the SBC. [T.R. Vol. I, 111].

The Credentials Committee takes this religious obligation seriously. Several churches, including very large ones, have been disfellowshipped for failing to meet standards of friendly cooperation.[3]

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[3] *See*, *e.g.*, Michael Gryboski, *Southern Baptist Convention upholds decision to expel Rick Warren's Saddleback Church*, Christianity Today (June 15, 2023), https://perma.cc/Y4XB-ZWEV (discussing disfellowshipping over issues like pastoral selection and sexual abuse).

B. Case Background

In 2021, the SBC's member churches finalized the SBC's religious fellowship requirement against sexual abuse. [T.R. Vol. I, 110–11]. That same year, the Executive Committee engaged an independent firm, Guidepost Solutions LLC, to help with establishing a "reporting mechanism" to Guidepost that would "encourage all those with relevant information [concerning sexual abuse] to come forward." [T.R. Vol. III, 370 § 3.9]. To increase reporting, the SBC tasked Guidepost with managing the mechanism so that the identity of survivors is not reported to the SBC. [T.R. Vol. III, 371].

Guidepost created the reporting mechanism and manages it. [T.R. Vol. III, 370 § 3.9]. When Guidepost receives reports, it provides anonymous allegations to the SBC. [T.R. Vol. II, 271]. The SBC has since used that information to inquire into whether member churches are in compliance with the SBC's religious beliefs against sex abuse.

In appropriate situations where a report has been submitted, the Credentials Committee asks affiliated churches if they are aware of the report and what processes they have in place to adequately investigate such sex-abuse allegations to protect members of Baptist churches and the public. [T.R. Vol. II, 271–72]. Ensuring adequate accountability is especially important when it comes to the religious leadership of local SBC-affiliated churches, who are called by God to be "above reproach." *See* 1 *Timothy* 3:3–13; *see also On The Sexual Integrity of Ministers,* SBC

(June 1, 2002), https://perma.cc/Q4E4-GB67. Where the member churches decline to respond or fail to have adequate processes in place to respect SBC religious beliefs against sex abuse, that can result in disfellowshipping. [T.R. Vol. I, 111].[4]

Guidepost received an anonymous allegation through the reporting mechanism that Preston Garner, an ordained Baptist minister since 1999, engaged in the sexual assault of a minor in 2010 while he served at Englewood Baptist Church in Rocky Mount, North Carolina ("Englewood"). [T.R. Vol. I, 19 ¶ 10, 22 ¶¶ 20–22]. Guidepost forwarded the report to the SBC. [T.R. Vol. I, 22 ¶ 22, 26 ¶ 53].

The Credentials Committee then took steps to meet its religious duty to determine whether Garner's current employer, Everett Hills Baptist Church in Maryville, was in friendly cooperation with the SBC. Appellant Christy Peters spoke with Everett Hills's senior pastor, Douglas Hayes, and informed him that the Credentials Committee would soon be sending his church a letter about an allegation of possible sexual misconduct by someone associated with the church. [T.R. Vol. IV, 476–78]. On January 7, 2023, the Credentials Committee sent the letter to Everett Hills. [T.R. Vol. IV, 482–83; *see also* T.R. Vol. I, 21 ¶ 19, 111].

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[4] *See*, *e.g.*, Diana Chandler, *SBC Executive Committee disfellowships four churches*, Baptist Press (Feb. 23, 2021), https://perma.cc/8SSQ-YZTU (listing recently disfellowshipped churches).

The letter explained that the SBC "ha[d] received a concern regarding the relationship between Everett Hills . . . and the [SBC]" because Everett Hills "may employ an individual with an alleged history of abuse." [T.R. Vol. I, 21 ¶ 19]. It further explained that the Credentials Committee "is tasked with determining whether a church has a faith and practice which closely identifies with the [SBC's]," including "whether a church may be acting in a manner that is inconsistent with the [SBC's] beliefs regarding sexual abuse." [T.R. Vol. I, 21 ¶ 19]. The Credentials Committee noted that the SBC has a "responsibility to determine for itself the churches with which it will cooperate." [T.R. Vol. I, 21 ¶ 19]. And, "[f]or that reason, the [SBC] has tasked [the Credentials Committee] to assist in determining if a church should be deemed to be in friendly cooperation with the [SBC]." [T.R. Vol. I, 21 ¶ 19].

To help determine whether Everett Hills was in good standing, the letter inquired about: (1) Everett Hills's hiring practices; (2) Everett Hills's procedures for handling reports of abuse; (3) whether Preston Garner was then employed by Everett Hills; (4) whether Everett Hills had previously "received any allegations of sexual misconduct involving Preston Garner"; (5) whether Everett Hills was "aware of an allegation of sexual assault of a minor involving Preston Garner" from his previous ministry at Englewood; and (6) whether Everett Hills leaders would like a meeting with the Credentials Committee to discuss the matter. [T.R. Vol. I, 21 ¶ 19].

Peters forwarded the Credentials Committee's letter to Randy Davis, Executive Director of the Tennessee Baptist Mission Board, the ecclesiastical body through which Everett Hills and many other SBC churches in Tennessee affiliate with the SBC. [T.R. Vols. I, 22 ¶ 20; IV, 488 ¶ 3]. Davis later sent the letter to Jeremy Sandefur, president of The King's Academy, a Christian school affiliated with the Tennessee Baptist Convention where Garner also worked part-time as its music director. [T.R. Vols. I, 20 ¶¶ 13–16, 22 ¶ 20, and 24 ¶¶ 34–35; IV, 488 ¶¶ 3–4]. The King's Academy immediately suspended Garner. [T.R. Vol. I, 24 ¶ 36]. Sandefur and Hayes also discussed the allegations with the executive pastor at Concord Baptist Church, which had recently extended Garner an offer of employment. [T.R. Vol. IV, 489 ¶¶ 5–6]. Concord Baptist subsequently withdrew the offer of employment it had made to Garner. [T.R. Vol. IV, 489 ¶ 5].

C. Procedural History

Garner sued the SBC, the Executive Committee, the Credentials Committee, Guidepost, and Christy Peters and brought claims of defamation, defamation by implication, and false light. [T.R. Vol. I, 27–30]. His wife, Kellie Garner, also brought a claim for loss of consortium. [T.R. Vol. I, 30]. The primary basis of these claims is the January 7, 2023 letter from the Credentials Committee to Everett Hills.

Appellants moved to dismiss the Amended Complaint for lack of subject matter jurisdiction pursuant to the church autonomy doctrine.

[T.R. Vol. III, 410]. Appellants also moved for dismissal under the TPPA. [T.R. Vol. I, 61]. The SBC and Credentials Committee filed a similar motion on their own behalf; Guidepost did not file a motion. [T.R. Vol. I, 44]. The trial court denied the motions, concluding that (1) the church autonomy doctrine did not apply apart from four numbered paragraphs in the Amended Complaint (which it struck) and (2) the TPPA did not apply either, but even if it did, Plaintiffs carried their burden of establishing a prima facie case for their claims. [T.R. Vol. IV, 498–99]. The trial court did not address the third step of the TPPA analysis—whether Appellants had a valid defense.

On appeal, the Court of Appeals affirmed in part and reversed in part. Slip Op. at 1, 17. While the Court of Appeals disagreed with the trial court's conclusion that the TPPA did not apply, it found no other error. *Id.* at 1. Although the Court of Appeals agreed that Appellants could raise their church autonomy arguments on appeal, *id.* at 9, it concluded that the church autonomy doctrine did not apply to bar the claims, *id.* at 14–15. Civil courts, the Court of Appeals determined, could instead adjudicate Garner's claims based on neutral principles of law that did "not require the trial court to resolve any religious disputes or to rely on religious doctrine." *Id.* at 14. Any other rule would, on the Court of Appeals' telling, raise Establishment Clause concerns by "favoring religious institutions over secular" ones. *Id.* at 13.

Shifting to the TPPA, after concluding that the TPPA applies to this case, the Court of Appeals held that the trial court did not err when it stated that it was required to consider the facts in the Amended Complaint as true when ruling on the TPPA petition. *Id.* at 18. Applying that principle, the Court of Appeals held that Plaintiffs met their prima facie burden under the TPPA. *Id.* at 18–23. Finally, considering the third step of the TPPA framework, the court held that Appellants could not assert truth as a defense. *Id.* at 23.

This application for permission to appeal by the Executive Committee and Peters followed.

REASONS FOR GRANTING REVIEW

The Court of Appeals' decision misconstrues the law of the First Amendment and the law of and surrounding the TPPA. Both of those sets of fundamental legal issues merit review, which this Court performs *de novo*. *See Charles v. McQueen*, 693 S.W.3d 262, 273 (Tenn. 2024); *Redwing*, 363 S.W.3d at 446.

I. The First Amendment Question Presented Raises Important Issues of Constitutional Law for which Uniformity Is Needed.

The First Amendment question presents four reasons to grant the Rule 11 application. First, it raises important constitutional matters of first impression for this Court and an opportunity to align this Court's First Amendment precedent with recent decisions of the U.S. Supreme Court. Second, the resolution of those constitutional matters in the decision below is in sharp conflict with numerous decisions of the Tennessee Court of Appeals and other jurisdictions, including precedent from the U.S. Court of Appeals for the Sixth Circuit. Third, the decision below resolves the constitutional issues incorrectly. Fourth, this case concerns matters of significant public interest, both as it regards constitutional church-state relations and the resolution of sex abuse allegations.

A. This case presents important constitutional questions of first impression for this Court and an opportunity to correct a recent conflict with U.S. Supreme Court precedent.

The Court of Appeals found that courts can review defamation claims by religious leaders against their denominations under a weakened First Amendment standard, and did so to avoid Establishment Clause concerns with privileging religion. That conclusion presents important constitutional issues of first impression for this Court, and an opportunity to align this Court's First Amendment precedent with the U.S. Supreme Court's recent precedent. *Douglas v. State*, 921 S.W.2d 180, 183 (Tenn. 1996); *State v. McCoy*, 459 S.W.3d 1, 8 (Tenn. 2014) (resolving constitutional question that "presents an issue of first impression and provides the opportunity to resolve an important question of law").

First, the decision below raises First Amendment issues this Court has never addressed. The Court of Appeals determined that the First Amendment's church autonomy doctrine does not bar defamation and related tort claims by religious leaders against their own religious denomination over the content of internal communications about matters of church governance—here, ecclesiastical affiliation and church leadership. Slip Op. at 14. And it held that such claims must be evaluated under the "neutral legal principles" approach developed for the special and distinct context of church property disputes, instead of standard church autonomy principles. *Id.* at 13. Both determinations drastically

narrowed the First Amendment's church autonomy doctrine. This Court should take the opportunity to address both matters of first impression.

Second, granting review will also present this Court's first opportunity to correct a conflict with the U.S. Supreme Court's recent precedent. The Court of Appeals explained that it narrowly construed the "scope" of church autonomy rights because ruling otherwise "runs the risk of placing religious institutions in a preferred position," which would "give rise to Establishment Clause concerns." Slip Op. at 13 (quoting *Redwing*, 363 S.W.3d at 451). This animating concern was pulled directly from this Court's decision in *Redwing,* which in turn relied upon older Establishment Clause cases. 363 S.W.3d at 451 (citing *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 336 (5th Cir. 1998) (citing *County of Allegheny v. ACLU*, 492 U.S. 573 (1989))).

But the U.S. Supreme Court has now repudiated that "ahistorical approach to the Establishment Clause." *Kennedy*, 597 U.S. at 534 (recognizing *Allegheny* as "long ago abandoned"). And the U.S. Supreme Court has confirmed that the text and history of the First Amendment in fact "give[] special solicitude to the rights of religious organizations." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 189 (2012). Thus, far from avoiding an "expansive application" of church autonomy, Slip Op. at 13, the law now recognizes church autonomy as a "broad principle" that uniquely protects matters of faith, doctrine, and internal church government. *Our Lady*, 591 U.S. at 747.

This Court should take the opportunity to update its precedent accordingly.

B. The decision below conflicts with precedent from the Tennessee Court of Appeals and other state and federal appellate courts.

This Court often grants review when the decision below splits with decisions of the Tennessee Court of Appeals and with the precedent of other jurisdictions. *See, e.g.*, *State v. Albright*, 564 S.W.3d 809, 823 (Tenn. 2018); *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 573 (Tenn. 1999); *House v. State*, 911 S.W.2d 705, 713 (Tenn. 1995).

That is true here, twice over. The decision below conflicts with well-established precedent addressing each of the issues of first impression discussed above: in rejecting church autonomy's protection against defamation claims over internal church speech on matters of church governance, particularly as it regards church leadership and membership, and in its sweeping adoption of the "neutral principles" approach to govern such cases. All told, those two errors conflict with four decisions of the Tennessee Court of Appeals and the precedent of nine federal circuits and state supreme courts, as well as over ten other lower-court cases.

The leading case on both issues is from the Sixth Circuit, which this State and a number of other jurisdictions have followed. In *Hutchison v. Thomas*, the Sixth Circuit recognized that courts cannot decide a

religious leader's defamation claims against his church that "relate[] to [his] status and employment as a minister of the church," since such a case "concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law." 789 F.2d at 396. *Hutchison* also explained that the "neutral principles" approach was developed for church property disputes, and held that it "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Id.*

1. Defamation claims over internal church speech.

At least four times, Tennessee's Court of Appeals has likewise rejected defamation claims against religious bodies over internal communications concerning matters of church governance. This State's seminal case is *Anderson v. Watchtower Bible & Tract Society of New York, Inc.*, which performed a comprehensive review of previous caselaw, relied heavily on *Hutchison*, and concluded that the First Amendment bars judicial "inquiry and review" of defamation claims "related to disciplinary or employment decisions" or "arising out of church disciplinary or expulsion proceedings." No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *26 (Tenn. Ct. App. Jan. 19, 2007).

Later cases follow *Anderson* closely. *See Maize v. Friendship Cmty. Church, Inc.*, No. E2019-183-COA-R3-CV, 2020 WL 6130918, at *4–5 (Tenn. Ct. App. Oct. 19, 2020) (citing *Anderson*, finding allegedly "defamatory statements made in the context of a religious disciplinary

proceeding are not resolvable by the courts"); *Johnson v. Carnes*, No. M2008-2373-COA-R3-CV, 2009 WL 3518184, at *5 (Tenn. Ct. App. Oct. 29, 2009) (citing *Anderson*, concluding trial court could not "entertain claims of defamation" arising from letter that related to "the disciplinary or expulsion decision of the church"). And an earlier case is consistent with it. *Kersey v. Wilson*, No. M2005-2106-COA-R3-CV, 2006 WL 3952899, at *7 (Tenn. Ct. App. Dec. 29, 2006) ("Generally, disputes based on otherwise defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts."). The decision below is the first to chart a new course.

That decision is also irreconcilable with precedent of other jurisdictions. In addition to the Sixth Circuit, it conflicts with the First Circuit and the courts of last resort in Arkansas, Indiana, Massachusetts, Minnesota, Texas, and Virginia.

- *Natal v. Christian & Missionary All.*, 878 F.2d 1575, 1577 (1st Cir. 1989) (citing *Hutchison* and barring ministerial libel and slander claims; courts "look to the substance and effect of plaintiffs' complaint, not its emblemata");
- *In re Diocese of Lubbock*, 624 S.W.3d 506, 517 (Tex. 2021) ("Although tort law imposes a duty not to defame[,] . . . a civil suit that is inextricably intertwined with a church's directive to investigate its clergy cannot proceed in the courts[.]");
- *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 541 (Minn. 2016) (defamation claim over statements in church disciplinary proceeding "necessarily fosters an excessive entanglement with religion");

- *El-Farra v. Sayyed*, 226 S.W.3d 792, 796–97 (Ark. 2006) (barring defamation claim over "a dispute over appellant's suitability to remain as Imam");

- *Brazauskas v. Fort Wayne-S. Bend Diocese*, 796 N.E.2d 286, 294 (Ind. 2003) (dismissing defamation claim because applying "tort law to penalize communication and coordination among church officials . . . on a matter of internal church policy and administration" would violate church autonomy);

- *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 937 (Mass. 2002) (defamation claim that "arises out of the church-minister relationship in the religious discipline context" is "barred absolutely"); and

- *Cha v. Korean Presbyterian Church of Wash.*, 553 S.E.2d 511, 516 (Va. 2001) (citing *Hutchison* and collecting cases, concluding "most courts that have considered the question" have barred clergy defamation claims arising from internal church speech).

Numerous other lower courts have reached the same conclusion, including three times in just the past year alone.[5]

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[5] *See*, *e.g.*, *Episcopal Diocese of S. Va. v. Marshall*, 903 S.E.2d 534 (Va. Ct. App. 2024); *Gui v. First Baptist Church*, No. 24-cv-971, 2024 WL 5198700 (C.D. Cal. Oct. 30, 2024); *Esses v. Rosen*, No. 24-cv-3605, 2024 WL 4494086 (E.D.N.Y. Oct. 15, 2024); *Byrd v. DeVeaux*, No. 17-cv-3251, 2019 WL 1017602 (D. Md. Mar. 4, 2019) (false light); *Hubbard v. J Message Grp.*, 325 F. Supp. 3d 1198, 1214 (D.N.M. 2018); *Kavanagh v. Zwilling*, 997 F. Supp. 2d 241, 250 (S.D.N.Y. 2014); *Klouda v. Sw. Baptist Theological Seminary*, 543 F. Supp. 2d 594 (N.D. Tex. 2008); *Kraft v. Rector, Churchwardens & Vestry of Grace Church*, No. 1-cv-7871, 2004 WL 540327 (S.D.N.Y. Mar. 17, 2004); *Hartwig v. Albertus Magnus Coll.*, 93 F. Supp. 2d 200 (D. Conn. 2000); *Farley v. Wis. Evangelical Lutheran Synod*, 821 F. Supp. 1286, 1290 (D. Minn. 1993); *see also*, *e.g.*, *Ogle v. Church of God*, 153 F. App'x 371 (6th Cir. 2005) (following *Hutchison*); *Yaggie v. Ind.-Ky. Synod*, 64 F.3d 664 (6th Cir. 1995) (table) (same).

2. The "neutral principles" approach.

Similarly, before the decision below, neither this Court nor the Tennessee Court of Appeals had ever used the "neutral principles" approach to resolve a defamation claim against a religious body arising from internal church communications. Instead, as above, courts have routinely followed *Hutchison* in repeatedly refusing to adjudicate a case like this. Those courts include the Tennessee Court of Appeals and the supreme courts in Arkansas, Massachusetts, Minnesota, and Texas.

- *Anderson*, 2007 WL 161035, at *7 ("[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'" (quoting *Hutchison,* 789 F.2d at 396));
- *El-Farra*, 226 S.W.3d at 795–96 (rejecting "neutral principles" approach to resolve defamation claims regarding statements "over [plaintiff's] suitability to remain as Imam");
- *Hiles*, 773 N.E.2d at 935–37 (rejecting adjudicating church-minister defamation disputes under "the established rules of common law," since churches are "entitled to absolute protection" from such claims);
- *Pfeil*, 877 N.W.2d at 541 (claims arising from internal church disciplinary statements are not amenable to "the application of neutral principles of law"); and
- *Diocese of Lubbock*, 624 S.W.3d at 516 ("neutral principles" inapplicable to defamation claim over statement from intrachurch proceedings "regulat[ing] the character and conduct of [church] leaders").[6]

[6] *See also EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 465–66 (D.C. Cir. 1996) (rejecting the argument that a minister's Title VII claim "can be

To be sure, some courts have allowed the possibility that ministerial defamation cases arising from wholly external communications *may* be able to be resolved under the neutral principles approach in certain narrow circumstances. *See*, *e.g.*, *Belya v. Kapral*, 45 F.4th 621, 632–33 (2d Cir. 2022) (noting that alleged accusations of forgery posted on the internet may be actionable). But even in that distinct context, those decisions have been subject to sharp criticism. *See Belya v. Kapral*, 59 F.4th 570, 582 (2d Cir. 2023) (Park, J., joined by Livingston, C.J., and Sullivan, Nardini, and Menashi, J.J., dissenting from denial of rehearing en banc) ("Taken to its logical endpoint," application of the approach "would eviscerate the church autonomy doctrine.").[7] And those cases have

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resolved without entangling the Government 'in questions of religious doctrine, polity, and practice' by invoking 'neutral principles of law'"); *Huntsman v. Corp. of President of Church of Jesus Christ of Latter-day Saints*, 127 F.4th 784, 797–98 (9th Cir. 2025) (en banc) (Bress, J., concurring in judgment) (criticizing the use of the "neutral principles" approach to resolve internal church conflicts, since "[r]eligious disputes restated in the elements of a [tort] claim do not lose their inevitably religious character, just as employment disputes involving persons with religious duties cannot be regarded as purely secular, either").

[7] Nor are they the only view on the matter. Other courts have dismissed defamation claims implicating a church's internal governance even when the statements are made to the public. *See, e.g.*, *Diocese of Lubbock*, 624 S.W.3d at 516 (dismissing defamation claim predicated in part on statements made publicly); *Hartwig*, 93 F. Supp. 2d at 219 (similar); *Kyritsis v. Vieron*, 53 Tenn. App. 336, 339 (1964) (denying defrocked priest's motion to enjoin allegedly libelous letter to "parishioners and friends" "the press, and other persons completely disassociated with the Greek community"); *see also Esses*, 2024 WL 4494086, at *1, *4 (similar).

no application here, where the communications were entirely internal to the leadership of cooperating religious bodies within the SBC and concerned a substantial matter of internal church governance.

Similarly, the U.S. Supreme Court has repeatedly refused to apply the "neutral principles" approach outside of church property disputes. That court developed the "neutral principles" approach specifically for church property disputes. *See*, *e.g.*, *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). But those are "fundamentally different types of dispute[s]" because they involve situations where two competing religious bodies both claim to be the "true" church, thus making it impossible to defer to a single religious body. Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 316–19, 336 (2016).

That's not true where a single religious body is challenged over its internal governance. Accordingly, *Milivojevich* rejected "reli[ance] on purported 'neutral principles'" to review "a matter of internal church government," as such matters were "obviously" beyond the "competence" of "[c]ivil judges." *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 714–15, 714 n.8, 717, 721 (1976). And *Hosanna-Tabor* and *Our Lady* similarly refused to apply "neutral principles" to a religious organization's decision to terminate a minister, which is "more than a mere employment decision" but part of "the

internal governance of the church." *Hosanna-Tabor*, 565 U.S. at 188–90; *Our Lady*, 591 U.S. at 746–47. Indeed, the church autonomy doctrine's purpose is to *prevent* "neutral" laws from "interfer[ing] with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190.

C. The decision below wrongly resolves constitutional issues.

Finally, review is warranted because the decision below is wrong about important constitutional questions. This Court has emphasized "the importance of correctly resolving constitutional issues." *Keen v. State*, 398 S.W.3d 594, 607 (Tenn. 2012) (quotation marks omitted). The Court of Appeals' constitutional analysis errs in four ways: (1) it misunderstands the scope of the church autonomy doctrine; (2) it misapplies the neutral principles doctrine; (3) it misconstrues the Establishment Clause; and (4) it misses the church-state entanglement that its ruling guarantees.

1. The decision below misunderstands church autonomy.

The Court of Appeals treated church autonomy as though it protects against state interference *only* in matters of religious faith and doctrine. *See* Slip Op. at 14 (asking whether lawsuit would require court to "resolve any religious disputes or to rely on religious doctrine"). But while those are among the doctrine's protections, they are not its sum total.

Rather, church autonomy also protects matters of "church polity" and the "internal governance of religious organizations." *COGIC*, 531 S.W.3d at 156; *accord Our Lady*, 591 U.S. at 747 ("matters of internal government" protected). Indeed, "civil courts excise no jurisdiction" over a "matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Milivojevich*, 426 U.S. at 713–14 (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872)). This Court has long "strongly embraced" this broad principle of autonomy. *COGIC*, 531 S.W.3d at 157.

That broad principle is exactly why *Hutchison* rejected tort claims—including defamation—brought by a religious leader predicated on statements made about him during internal ecclesiastical proceedings. 789 F.2d at 392–94. The court explained that "the First Amendment's command" is that "secular authorities may not interfere with the internal ecclesiastical workings and disciplines of religious bodies." *Id.* at 393.

As shown above, other courts have repeatedly agreed, especially when it comes to protecting internal religious dialogue and proceedings about the membership and leadership of religious bodies. *See supra* at 30–32 (collecting cases); *see also Payne-Elliott v. Roman Catholic Archdiocese of Indianapolis, Inc.*, 193 N.E.3d 1009, 1014–15 (Ind. 2022) (rejecting tortious interference claim arising from internal church

governance); *Diocese of Lubbock*, 624 S.W.3d at 514–17 (protecting both internal and public communications from defamation claims). "As to internal disciplinary proceedings, courts will not dictate to a congregation or church officials that they may not freely speak their minds." *Kersey*, 2006 WL 3952899, at *7. After all, "[t]he church autonomy doctrine is rooted in protection of the First Amendment rights of the church to discuss church doctrine and policy freely." *Bryce v. Episcopal Church*, 289 F.3d 648, 658 (10th Cir. 2002).

The need for protection is especially strong in a case like this one, where the internal dialogue is about a church's supervision of its religious leadership, which inherently "concerns internal church discipline, faith, and organization." *Hutchison*, 789 F.2d at 396; *see also, e.g.*, *Our Lady*, 591 U.S. at 746–47; *Hiles*, 773 N.E.2d at 936–38. Here, whether a local church was meeting religious standards in supervising its pastor was integral to yet another critical ecclesiastical concern—whether that church remained in "friendly cooperation with," and was thus eligible to remain in religious affiliation with, the SBC. *See Milivojevich*, 426 U.S. at 709 (judicial interference in matters "governing church polity" would "violate the First Amendment in much the same manner as civil determination of religious doctrine"); *Anderson*, 2007 WL 161035, at *10 (recognizing "inherently ecclesiastical nature" of church "membership decisions").

Indeed, it would be crippling for Southern Baptist polity if civil courts could penalize the SBC for inquiring into whether affiliated churches are following agreed-upon religious standards for being in good standing with their shared ecclesiastical body. Southern Baptists would be unable to protect the terms of religious affiliation with the SBC, which includes inquiring to ensure that affiliated churches are serious about protecting their flocks from wayward shepherds. *See*, *e.g.*, SBC Constitution Art. III.1.4.

The Court of Appeals cast aside all these principles. Ignoring church autonomy's explicit protections for church governance, the court decided that there was no religious reason for making the challenged statements and thus no role for church autonomy to play. *See* Slip Op. at 11–12 (citing *Drevlow v. Lutheran Church*, 991 F.2d 468, 469–72 (8th Cir. 1993)).[8]

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[8] *Drevlow* is bad law. The case refused to dismiss a minister's lawsuit because the church hadn't offered a "religious explanation" for taking employment action against him. 991 F.2d at 472. But the U.S. Supreme Court subsequently squarely rejected that rule as "miss[ing] the point" since "[t]he purpose of the [ministerial] exception is not to safeguard a church's decision [about] a minister only when it is made for a religious reason" but instead to ensure ministerial decisions are "the church's alone." *Hosanna-Tabor*, 565 U.S. at 194–95. Thus, *Drevlow* does not survive *Hosanna-Tabor*. *See also Anderson*, 2007 WL 161035, at *15 ("A church need not proffer any religious justification for its employment decisions regarding ministers[.]").

But this was wrong. First, "regardless of assertions that the statements at issue are not based on religious doctrine or practice," church autonomy applies where they arise in the context of church governance. *Anderson*, 2007 WL 161035, at *26. And second, the challenged statements here were plainly motivated by religion: a religious inquiry about ecclesiastical affiliation and church leadership and compelled by the religious beliefs of the SBC. Those are precisely the kind of statements "made during the course of an ecclesiastical undertaking" that the Court of Appeals has repeatedly deemed protected. *Anderson*, 2007 WL 161035, at *26 (quoting *Ausley v. Shaw*, 193 S.W.3d 892, 895 (Tenn. Ct. App. 2005)); *accord Maize*, 2020 WL 6130918, at *5.

The Court of Appeals also thought that church autonomy couldn't apply because this wasn't a "pastoral disciplinary process" but rather an inquiry into "how the SBC church responded to sexual abuse allegations." Slip Op. at 14. But a rule like that undermines *all* forms of disciplinary proceedings: "[t]he First Amendment's protection of internal religious disciplinary proceedings would be meaningless if a parishioner's accusation that was *used to initiate those proceedings* could be tested in a civil court." *Hiles*, 773 N.E.2d at 937 (emphasis added). Further, the distinction lacks any constitutional significance. When courts protect church *disciplinary* proceedings, they do so precisely because the Constitution affords broad independence in matters of church *governance*. *Hosanna-Tabor*, 565 U.S. at 188.

And the Court of Appeals failed to account for Baptist polity. This case presents, at a minimum, an aspect of church governance closely related to judicial conceptions of church discipline: a religious inquiry designed to discern whether an affiliated church should be disfellowshipped for failing to hold its religious leaders to the "standard of morals required of them" within the SBC's "ecclesiastical government." *Milivojevich*, 426 U.S. at 714 (quoting *Watson*, 80 U.S. (13 Wall.) at 733). "Imposing tort liability" here would "have the same effect as prohibiting the practice and would compel the [SBC] to abandon part of its religious teachings." *Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 881–83 (9th Cir. 1987) (concluding that the Free Exercise Clause required rejecting defamation claim). Under the First Amendment, "religious activities which concern only members of the faith are and ought to be free—as nearly absolutely free as anything can be." *Id.* at 883 (cleaned up).

2. The decision below misapplies the neutral principles approach.

The Court of Appeals also erred by applying the "neutral principles" approach, which has no application here. As this Court has repeatedly explained, "the neutral-principles approach applies" to some church-property disputes and "with regard to *external affairs* of religious institutions." *COGIC*, 531 S.W.3d at 169 (cleaned up) (emphasis added); *see also Redwing*, 363 S.W.3d at 449 (same). But it does *not* apply to disputes about *internal* church governance, as the numerous other courts

listed above have held. *See Hutchison*, 789 F.2d at 396; *supra* at 33–36 (citing cases). And it certainly does not apply to "impose civil liability on a church that complies with its own internal governance" to inquire about "allegations of sexual abuse." *Diocese of Lubbock*, 624 S.W.3d at 516–17.

In the end, allowing the "neutral principles" approach to apply to an internal religious inquiry would swallow the Constitution's protections for religious autonomy. "The question here is not whether it is possible to recast [Garner's] argument in secular terms, without the religious trappings." *Huntsman*, 127 F.4th at 797 (Bress, J., concurring in judgment). Creative lawyers can always figure out a way to do that. Instead, the question is whether the suit seeks to penalize the church for the way it carried out its religious directive—in short, for the way it governed itself. *See, e.g.*, *Hutchison*, 789 F.2d at 396; *Diocese of Lubbock*, 624 S.W.3d at 513. The First Amendment bars that suit every time.

3. The decision below misconstrues the Establishment Clause.

As noted above, the Court of Appeals justified its narrow understanding of the "scope" of church autonomy as necessary to avoid offending the Establishment Clause by "favoring religious institutions over secular institutions." Slip Op. at 13. That was error.

Kennedy held that "a government entity's concerns about phantom constitutional violations" of the Establishment Clause cannot be used to "justify actual violations of . . . First Amendment rights." 597 U.S. at 543. And under the legal standard articulated in *Kennedy*, protecting religious

governance does not somehow create a religious establishment. *Id.* at 536–37, 537 n.5 (citing sources discussing historical hallmarks of religious establishments). In the end, there is no support for "the proposition that shielding religious leaders and organizations from tort liability for their actions in the course of a church disciplinary proceeding would violate the Establishment Clause." *Pfeil*, 877 N.W.2d at 540. To the contrary, both Religion Clauses together provide uniquely strong protection for "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady*, 591 U.S. at 747.

4. The decision below permits unlawful religious entanglement.

The Court of Appeals' final error was ignoring the religious entanglement that Garner's suit guarantees. *See Anderson*, 2007 WL 161035, at *11 (religious entanglement triggers church autonomy doctrine). Here, the elements of Garner's defamation claim inherently require inquiries into the reader's understanding, the speaker's intent, and the circumstances surrounding the communication. *See Sullivan*, 995 S.W.2d at 571; *Charles*, 693 S.W.3d at 281.

Under the context-specific standard required by Tennessee law, Garner will seek to prove that a reasonable Southern Baptist pastor receiving the Credentials Committee's letter as part of an internal religious inquiry would have understood the statements to imply that Garner was guilty of abuse. *See Revis v. McClean*, 31 S.W.3d 250, 253

(Tenn. Ct. App. 2000) ("Allegedly defamatory statements should be judged within the context in which they are made [and] . . . read as a person of ordinary intelligence would understand them in light of the surrounding circumstances."). This will require putting on evidence of the SBC's recent decisions involving the handling of abuse allegations, the role of religious committees, and the structure of Baptist polity. The trial court and a civil jury will be asked to probe the meaning of an SBC inquiry, the inner workings of how that inquiry is carried out, and the mind of a pastor within Southern Baptist fellowship. *See Anderson*, 2007 WL 161035, at *17 (stating "maintenance of the suit would entail an extensive and forbidden inquiry into religious law and practice, or ecclesiastical administration and government").

This type of discovery will inevitably probe the SBC's "internal deliberations and decision-making," despite "numerous" "Supreme Court decisions" that "protect[]" against such intrusive probes. *Whole Woman's Health v. Smith*, 896 F.3d 362, 374 (5th Cir. 2018) (protecting religious institution against entangling discovery under the First Amendment). Indeed, Garner's claims will be evaluated in light of the SBC's religious practices and policies and its religious intent in communicating with a local church about a sensitive matter of alleged pastoral misconduct. *See El-Farra*, 226 S.W.3d at 796–97 ("it is difficult to see how an inquiry can be made into these [allegedly defamatory] statements without an examination of religious doctrines, laws, procedures, and customs").

This very process of discovery, which "plunges an inquisitor into a maelstrom of Church policy, administration, and governance," violates the Religion Clauses. *Anderson*, 2007 WL 161035, at *11 (quoting *Natal*, 878 F.2d at 1578); *see NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 502–04 (1979) ("It is not only the conclusions that may be reached by the [government] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."); *Markel v. Union of Orthodox Jewish Congregations of Am.*, 124 F.4th 796, 808–10 (9th Cir. 2024) (explaining that, "given the coercive nature" of discovery, the "process of judicial inquiry itself" into religious matters creates impermissible entanglement). After all, in any case "[w]here the allegedly defamatory statements . . . are based upon . . . church governance, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance." *Anderson*, 2007 WL 161035, at *30. So too here.

* * *

In the end, the Court of Appeals, like the trial court, seemed focused on the propriety of the SBC's process for assessing ecclesiastical affiliation and religious leadership within its polity. But, as this Court has explained for well over a century, to apply church autonomy, a court need not place a stamp of judicial "approv[al]" on what some might

criticize as "irregular methods" or arbitrary decisions. *Nance v. Busby*, 18 S.W. 874, 879 (Tenn. 1892). Rather, courts need only recognize that questions about "the ecclesiastical constitution and government of the church, and the exercise of its internal affairs," are "question[s] for the ecclesiastical or church . . . authority, and not for the courts." *Travers v. Abbey*, 58 S.W. 247, 247–48 (Tenn. 1900).

D. The First Amendment question presented is of significant public interest.

This case also warrants review because the question presented—about the scope of religious institutions' protection from state interference—is of public interest. *See* Tenn. R. App. P. 11(a). Indeed, that is why this Court, other state courts of last resort, the Supreme Court of the United States, and en banc federal appeals courts have regularly agreed to hear cases involving church autonomy. *See, e.g.*, *COGIC*, 531 S.W.3d at 156; *Payne-Elliott*, 193 N.E.3d at 1014; *In re Lubbock*, 624 S.W.3d at 513; *Hosanna-Tabor*, 565 U.S. at 188; *Our Lady*, 591 U.S. at 747; *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 975–76 (7th Cir. 2021) (en banc); *Alcazar v. Corp. of the Catholic Archbishop of Seattle*, 627 F.3d 1288, 1291 (9th Cir. 2010) (en banc).

This Court, for its part, has not had as many occasions to explain the scope of church autonomy. As the Court of Appeals observed, there is a "dearth of Tennessee caselaw" on critical church autonomy issues. Slip Op. at 11. This case provides an ideal vehicle for the Court to provide

guidance to the State's courts and to affirm the independence of religious institutions in governing themselves.

Many parties would benefit from review. Start with Tennessee itself, which has a structural, constitutional interest in avoiding entanglement in religious disputes like this one. *See Billard v. Charlotte Catholic High Sch.*, 101 F.4th 316, 325–26 (4th Cir. 2024) (church autonomy "does not protect the church alone," but also safeguards "important institutional interests of the court" by "limiting courts to their proper sphere"); *accord, e.g.*, *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015); *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n.4 (3d Cir. 2018).

Or consider this State's courts, which have an important interest in avoiding a wave of litigation over religious disputes couched as defamation claims, which the Court of Appeals' approach permits. *See Cha*, 553 S.E.2d at 516 ("[I]f our civil courts enter upon disputes between bishops and priests because of allegations of defamation . . . it is difficult to conceive the termination case which could not result in a sustainable lawsuit."). As this Court has long warned, were an approach like that of the Court of Appeals to stand, "[a]ctions for libel and slander would crowd the dockets of the civil courts, which would, on that theory, be open to the complaint of every man expelled from a church." *Nance*, 18 S.W. at 880 (quoting *Landis v. Campbell*, 79 Mo. 433, 439 (1883)).

Society too has a strong interest in giving religious bodies the space they need to protect their congregations from shepherds alleged to prey on the flock. The public benefits when denominations take steps aimed at "protecting [the] faithful from clergy who will take advantage of them," *Hiles*, 773 N.E.2d at 936—and at evaluating whether member churches are taking sexual abuse complaints sufficiently seriously. But lawsuits like Garner's chill religious bodies from robust internal communication as they consider allegations of sexual abuse. *See, e.g.*, *Pfeil*, 877 N.W.2d at 539; *Hiles*, 773 N.E.2d at 936–37.

And that is not the only form of chill that would result. Religious institutions would also be disincentivized from rigorously supervising their leadership. Among other things, that would mean that "a wayward minister's" conduct could undermine his church's tenets and cause scandal in the community, thus leading people "away from the faith." *Our Lady*, 591 U.S. at 747; *Hosanna-Tabor*, 565 U.S. at 713 (Alito, J., joined by Kagan, J., concurring) ("both the content and credibility of a religion's message depend vitally on the character and conduct of its teachers"). That imposes its own harm.

The Constitution's deeply rooted protections for the independence of religious institutions are of vital importance. *See, e.g.*, *Watson*, 80 U.S. (13 Wall.) at 727. This case presents a clean factual vehicle for this Court to reaffirm those protections, resolve conflicts, and resolve the dearth of guidance that the Court of Appeals observed.

II. The TPPA Questions Presented Raise Important State Law Issues and Constitutional Interests for which Uniformity is Needed.

This Court should also grant the application for permission to appeal for three additional reasons related to the Court of Appeals' misinterpretation of the TPPA. First, because the Court of Appeals committed errors that threaten the important free speech and association interests that Tennessee law, primarily via the TPPA, seeks to protect—interests which are magnified in the religious context of this case. Second, the Court of Appeals misunderstood and misapplied Tennessee law, particularly the TPPA, implicating this Court's interest in securing uniformity of decision among Tennessee courts. Third, the Court of Appeals adopted a gaping exception to the TPPA that no Tennessee court has ever adopted, presenting an issue of first impression for this Court's review.

A. This case implicates the public's important interests in free speech and association.

The speech-and-association issues at stake in this case are replete with important constitutional considerations. The TPPA itself "safeguard[s] the constitutional rights of persons to petition, to speak freely, to associate freely, and to participate in government to the fullest extent permitted by law." Tenn. Code § 20-17-102; *Charles*, 693 S.W.3d at 267. The statute combats the chilling effect to those important First Amendment freedoms that would exist by subjecting a speaker to

litigation that is costly, frivolous, and—in the religious context—entangling. *Charles*, 693 S.W.3d at 267; *Palko v. Connecticut*, 302 U.S. 319, 327 (1937) (recognizing the "freedom of thought and speech" as "the indispensable condition" of "nearly every other form of freedom"), *overruled on other grounds by Benton v. Maryland*, 395 U.S. 784 (1969).

Similarly, courts have long construed defamation claims to protect First Amendment interests in speech and association against unconstitutional burdens. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

And underscoring the public importance of these issues are the religious associational interests implicated by the lower courts' decisions. By hindering religious bodies' ability to freely define their own ecclesiastical associations and select their own religious leadership, the lower courts have targeted freedoms of speech, religion, and association. *Hosanna-Tabor*, 565 U.S. at 200–01 (Alito, J., joined by Kagan, J., concurring) (recognizing overlap between religious expression and association because "religious groups['] . . . very existence is dedicated to the collective expression and propagation of shared religious ideals"); *Kennedy*, 597 U.S. at 523 (noting that religious speech is "doubly protect[ed]" by both the Free Speech and Free Exercise Clauses).

Because the decision below is inextricably intertwined with free speech and association, it raises utterly important constitutional public interests.

B. The decision below jeopardizes uniformity of decision on the TPPA and defamation-related causes of action.

This Court regularly grants applications for permission to appeal where the lower courts misstate and misapply legal standards. *See, e.g.*, *Magness v. B. Hitt Elec. Co.*, 604 S.W.2d 44, 45 (Tenn. 1980) (reviewing the effect of the Court of Appeals' "misunderstanding" of this Court's decision); *Seessel v. Seessel*, 748 S.W.2d 422, 423 (Tenn. 1988) (granting a Rule 11 application to "correct a misapprehension of the law in this State"), *overruled in part by Aaby v. Strange*, 924 S.W.2d 623 (Tenn. 1996). Here, the lower courts' decisions are rife with errors that materially misstate and confuse Tennessee law.

Two errors show the need for review. First, the Court of Appeals directly contradicted this Court's recent decision in *Charles*, weakening the legal standard applicable to a TPPA petition. Second, the Court of Appeals conflated defamation and defamation by implication, confusing the law and eviscerating the longstanding truth defense to defamation.

1. Conflicting with the TPPA legal standard.

By treating the allegations in the Amended Complaint as true when ruling on Defendants' TPPA petitions, the Court of Appeals contradicted *Charles v. McQueen*. After a party seeking dismissal of an action under the TPPA has made its prima facie case that the action is related to the party's exercise of the right to free speech, petition, or association, the burden shifts to the other party to "establish[] a prima facie case for each

essential element" of his claims. Tenn. Code § 20-17-105(a)–(b); *see also* Tenn. Code § 20-17-103(2)–(4); *Charles*, 693 S.W.3d at 279–80.

This Court stated in *Charles* that a party seeking to establish a prima facie case must actually present evidence to the reviewing court. 693 S.W.3d at 281. And "a party must present enough evidence to allow the jury to rule in his favor on that issue" to establish a prima facie case under the TPPA. *Id.* Importantly, "[t]his evidence may include 'sworn affidavits stating *admissible* evidence' and 'other *admissible* evidence.'" *Id.* (quoting Tenn. Code § 20-17-105(d)) (emphasis added). And, like a court ruling on a motion for summary judgment or for directed verdict, "the court should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence." *Id.*

Here, the trial court, admittedly not "familiar with the Public Participation Act," [T.R. Vol. IV, 566], incorrectly applied a motion-to-dismiss standard, "look[ing] at the allegations in the Complaint as true." [T.R. Vol. IV, 566–67]. The Court of Appeals approved, stating that "[t]here is no meaningful difference between [the TPPA] standard and the Rule 12 standard, which requires the trial court to treat the allegations in the complaint as true." Slip Op. at 18. These misstatements of law ignore the important differences between a Rule 12 motion to dismiss and the statutory framework of the TPPA, which was chosen by the legislature to enhance protections for speech and association.

The lower courts' approval of a Rule 12 motion to dismiss standard for review of the prima facie case under the TPPA directly contradicts this Court's statements in *Charles*. There, this Court likened a trial court's prima facie case determination to "when a court rules on a motion for summary judgment or motion for directed verdict." *Charles*, 693 S.W.3d at 281. *Charles* further recognized that, in enacting the TPPA, the legislature created a heightened standard requiring the actual presentation of evidence, which seeks to reduce the burdens on speech and associated rights. *Id.* at 267, 280–81. The statute does this by requiring an early identification of the merits of cases implicating public participation. *See id.* at 267. ("[T]he TPPA establishes a procedure for swift dismissal of non-meritorious claims."). To permit the application of a motion to dismiss standard at this stage necessarily degrades the TPPA's purposed protections.

Additionally, when ruling on a TPPA petition, the court may only consider *admissible* evidence. *Charles*, 693 S.W.3d at 268; *Charles v. McQueen*, No. M2021-00878-COA-R3-CV, 2022 WL 4490980, at *8 (Tenn. Ct. App. Sept. 28, 2022) ("[T]he TPPA clearly provides that, in consideration of a TPPA petition, the trial court is to rely upon 'admissible' evidence . . . ."), *overruled on other grounds by Charles*, 693 S.W.3d at 268. But a factual allegation in a complaint is often only supported by *inadmissible* evidence. If a court ruling on a TPPA petition must always take all allegations therein as true, courts will frequently

make the prima facie determination on the back of inadmissible evidence. The TPPA and *Charles* reject this result. *Charles*, 693 S.W.3d at 268, 281. The Court should grant this application to correct this important point of law applicable to all TPPA petitions.

2. Conflating defamation claims and denying the defense of truth.

Next, by conflating the claims of defamation and defamation by implication, the Court of Appeals generated substantial confusion on the law. It also improperly set a standard denying defendants the opportunity to assert the truth of their statement as a defense, as is explicitly recognized by Tennessee law.

This confusion generated by the Court of Appeals stems from its analysis of Garner's prima facie case for defamation and defamation by implication, claims which it considered together. Even though it is well established that truth is a defense to claims of defamation, the Court of Appeals broadly concluded that "truth is not available as an absolute defense to the Appellants in this case." Slip Op. at 19–20. In reaching that sweeping result, the court did not distinguish the defamation claim and the defamation by implication claim. The Court of Appeals principally cited and quoted defamation by implication cases in coming to its conclusion. *Id.* (quoting *Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978) and *Aegis Scis. Corp. v. Zelenik*, No. M2012-00898-COA-R3-CV, 2013 WL 175807, at *6 (Tenn. Ct. App. Jan. 16, 2013), among others).

The ability of a defendant to assert the truth of their statement as a defense is a fundamental aspect of defamation claims in Tennessee. Indeed, Tennessee courts have recognized that the truth of one's statements "is a nearly universal defense." *See, e.g.*, *Aegis Scis. Corp.*, 2013 WL 175807, at *5; *see also Brown v. Christian Bros. Univ*, 428 S.W.3d 38, 50 (Tenn. Ct. App. 2013) ("[O]nly statements that are false are actionable . . . ."). But in explaining the narrow band of situations where truth is purportedly not a defense, the Court of Appeals cited authorities discussing defamation by implication, not simple defamation. Slip Op. at 18–19. The court then broadly held that Appellants could not assert the truth of their statement as a defense to either the defamation or defamation by implication claim. *Id.* at 20, 23.

The Court of Appeals failed to properly direct its holding to defamation or defamation by implication, leaving the role of the truth in a defamation claim unclear where it was previously definite. This Court should grant this application to rectify the confusion necessarily generated by the Court of Appeals' conflation of the two causes of action.

C. The decision below adopted a new standard of law that raises a question of first impression and would devastate the public's interests in free speech and association.

Finally, the Court of Appeals has undermined the TPPA's free speech protections by introducing—for the first time in Tennessee—a vast exception for communications to employers. Whether to adopt this so-called "special relationship" exception to the publicity requirement of

false light invasion of privacy is a question of first impression not yet considered by this Court. And this Court often "grant[s] [an] application to address [an] issue of first impression." *See, e.g.*, *Douglas*, 921 S.W.2d at 183.

By adopting the special relationship exception, the Court of Appeals drove a gaping hole through the TPPA and false light as a cause of action. The consequences of this decision are monumental. The court created a rule that any communication to an employer meets the otherwise high bar for the publicity requirement of false light. Slip Op. at 22.

Such a decision is particularly problematic in the context of religion, where religious institutions have both a religious obligation to ensure their shepherd-employees are held to doctrinal standards and a constitutional right to be so scrutinizing. *Our Lady*, 591 U.S. at 746–47. And, as noted above, it threatens the public's related interest in not discouraging transparency within religious bodies investigating allegations of sexual abuse by religious leaders.

Tennessee courts have only considered the application of the special relationship exception to the publication element of false light in two instances prior to this case. Slip Op. at 21–22 (citing *Christian Bros.*, 428 S.W.3d at 53, *perm. app. denied* (Tenn. Jan. 15, 2014); *Brown v. Mapco Express, Inc.*, 393 S.W.3d 696 (Tenn. Ct. App. 2012), *perm. app. denied* (Tenn. Jan. 8, 2013)). Neither adopted the exception.

Now, without any explicit direction from a Tennessee court, the Court of Appeals applied the exception on the basis of of a single decision of an Illinois intermediate appellate court. Slip Op. at 21–22 (citing *Poulos v. Lutheran Soc. Servs. of Ill., Inc.*, 728 N.E.2d 547, 555 (Ill. App. Ct. 2000)). And it did so without wrestling with any of the key differences between Tennessee and Illinois law.

This Court is under no obligation to strictly adhere the decisions of other jurisdictions. *Pandharipande v. FSD Corp.*, 679 S.W.3d 610, 628 (Tenn. 2023). Instead, this Court should follow other high courts faced with a similar question and determine for itself whether Tennessee will reject the well-settled approach to the publication element of false light currently followed by Tennessee courts. *Christian Bros.*, 428 S.W.3d at 53; s*ee, e.g.*, *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 556 (Minn. 2003) (rejecting the special relationship exception for the tort of public disclosure of private facts). This will allow the Court to grapple with important downstream questions not considered by the Court of Appeals, like the exception's effect on free speech and association, the TPPA, and Tennessee's unique scheme of invasion of privacy torts.

CONCLUSION

For the reasons stated, the application for permission to appeal should be granted.

DATED: March 10, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the requirements of Tennessee Supreme Court Rule 46 § 3.02 because it is typed in fourteen-point Century Schoolbook font and, according to the word count feature of Microsoft Word, contains 10,826 words, exclusive of the elements exempted by Section 3.02(a)(1).

DATED: March 10, 2025 s/ *R. Brandon Bundren*

CERTIFICATE OF SERVICE

I certify that on March 10, 2025, a true and correct copy of this Application for Permission to Appeal was served on all registered users participating in this case, including counsel of record listed below, by email and by operation of the Court's e-filing system.

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APPENDIX

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 17, 2024 Session

PRESTON GARNER ET AL. v. SOUTHERN BAPTIST CONVENTION ET AL.

Appeal from the Circuit Court for Blount County
No. L-21220 David Reed Duggan, Judge

No. E2024-00100-COA-R3-CV

The appellees filed suit against the appellants for defamation, defamation by implication, false light invasion of privacy, and loss of consortium. The appellants moved to dismiss the case, arguing that the ecclesiastical abstention doctrine barred the trial court from exercising subject matter jurisdiction. They also filed petitions seeking to have the case dismissed pursuant to the Tennessee Public Participation Act ("TPPA"). The trial court denied in part the motions to dismiss for lack of subject matter jurisdiction, finding that the ecclesiastical abstention doctrine does not apply to this case. It also denied the TPPA petitions, finding that the TPPA does not apply to this case. Alternatively, it found that the appellees satisfied their prima facie burden under the TPPA burden-shifting framework. We conclude that the trial court erred in finding that the TPPA does not apply to this case and reverse that portion of the judgment. Finding no other error, we otherwise affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court for Blount County Reversed in Part, Affirmed in Part; Case Remanded

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which D. MICHAEL SWINEY, C.J., and THOMAS R. FRIERSON, II, J., joined.

L. Gino Marchetti, Jr. and Matthew C. Pietsch, Nashville, Tennessee, for the appellants, Southern Baptist Convention and the Credentials Committee of the Southern Baptist Convention.

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Bryan E. Delius and Bryce W. McKenzie, Sevierville, Tennessee; and Joseph E. Costner, Maryville, Tennessee, for the appellees, Preston Garner and Kellie Garner.

OPINION

BACKGROUND

The Southern Baptist Convention ("SBC") is a network of independent local churches. The SBC's Executive Committee ("Executive Committee") manages the day-to-day functioning of the SBC. The Executive Committee is a distinct legal entity from the SBC and is governed by a separate board of trustees. However, Executive Committee staff assist SBC committees in fulfilling their duties. One of these staff members, Christy Peters ("Ms. Peters"), is the Committee Relations Manager for the Executive Committee.

The SBC does not exercise any authority over local churches. Instead, each church within the SBC is autonomous and selects its own leaders, adopts its own bylaws, and determines its own policies. Despite this polity, the SBC has the right to determine whether churches are in "friendly cooperation" with the SBC.[1] The SBC's Credentials Committee ("Credentials Committee," together with the SBC, the Executive Committee, and Ms. Peters, the "Appellants") is a standing committee tasked with making inquiries of local churches to consider whether those churches are in friendly cooperation with the SBC. The Credentials Committee is not authorized to investigate sexual abuse allegations or to judge the culpability of the accused; instead, it merely reviews how the local SBC church responded to such allegation and makes recommendations as to whether the church's actions, or inactions, are consistent with the SBC's "beliefs regarding sexual abuse."

In 2021, the SBC created a Sexual Abuse Task Force to "oversee an independent investigation into the [Executive Committee's] handling of sexual abuse allegations." The Task Force hired Guidepost Solutions LLC ("Guidepost") to conduct the investigation and "to establish an 'independent, 24/7 reporting mechanism to facilitate communication either anonymously or otherwise'" regarding sexual abuse allegations against individuals involved in Baptist ministry.

Preston Garner was ordained as a minister in 1999. In December 2022, Mr. Garner was a worship pastor at Everett Hills Baptist Church ("Everett Hills") and was the music director at The King's Academy, a Baptist affiliated school. In early December 2022, a representative of the Credentials Committee called Everett Hills's Senior Pastor, Douglas

[1] The Executive Committee and Ms. Peters equate this as being in "good standing" with the SBC. To be in friendly cooperation with the SBC, a church must "(1) have a faith and practice which closely identifies with the SBC's adopted statement of faith; (2) formally approve its intention to cooperate with the SBC; (3) make financial contributions through the Cooperative Program [to] the SBC's Executive Committee for Convention causes or any other Convention entity during the fiscal year proceeding; (4) *not act in a manner inconsistent with the Convention's beliefs regarding sexual abuse*; and (5) not act to affirm, approve, or endorse discriminatory behavior on the basis of ethnicity." (Emphasis in original).

Hayes, and informed him that the Credentials Committee "would be sending Everett Hills a letter concerning an individual associated with Everett Hills." Mr. Hayes requested more information about the subject of the letter, but the representative stated that she could not give him any additional information. Mr. Hayes called the representative approximately a week later to follow up because he had not yet received any letter from the Credentials Committee. The representative again told him that she could not give him any more information and instead gave him Ms. Peters's phone number.

Over the course of approximately the next month, having still not received any letter, Mr. Hayes called Ms. Peters multiple times to request additional information. Eventually, Ms. Peters told Mr. Hayes that the allegation involved Mr. Garner. According to Mr. Hayes:

> In the second or third conversation with Ms. Peters, she informed me that the allegation was sexually related, but she told me she could not give me any more details. I asked if there was a public record for this allegation. She said she could not tell me. I asked if there was a charge made regarding this allegation. She said she could not tell me. I asked if legal proceedings had been initiated relating to this allegation. She said she could not tell me. I told her that this was a serious allegation, and I asked her if she was sure this was a legitimate claim and, further, if she was prepared to send something in writing supporting the credibility of the claim. She then told me that the Credentials Committee would not be bringing this to me if it was not credible, and she advised I would receive a letter soon. I told Ms. Peters that I wanted to help her get to the truth of the matter, but I could not help without more details. Ms. Peters said she could not give any more details. … I again told Ms. Peters I needed the letter concerning the details of this concern, and Ms. Peters again told me I would receive the letter soon.
>
> * * *
>
> [In early January 2023,] I again contacted [Ms.] Peters by telephone to inform her we still had not received the letter and to inquire again as to when we would receive it. I explained to her that it was Mr. Garner's last week of employment with Everett Hills [because he had accepted a ministry position at another Baptist church], and I wanted to have an opportunity to talk to him before he left Everett Hills. Ms. Peters responded that we would receive the letter soon. I told her this was unfair, and she finally told me that the concern involved contact with a minor. I again asked if there was a police report, and she said she could not tell me. I again asked if legal action had been taken, and she said she could not tell me. She told me that all she could say was that it occurred at another church in North Carolina a long time ago. I told her

> that she was not giving me much information, and I needed to have something in writing. I asked again if she was sure this was credible, and she again told me that they would not be sending me a letter if it was not credible.
>
> * * *
>
> At no time during any of my telephone conversations with representatives of the Credentials Committee or through written correspondence from the Credentials Committee was I advised or did I know that the allegation made against [Mr.] Garner was made by an anonymous accuser.

(Internal numbering omitted).

On January 7, 2023, Ms. Peters emailed a letter to Everett Hills (the "Letter"). The Letter notified Everett Hills that it "may employ an individual with an alleged history of abuse" and solicited Everett Hills's response to a series of questions, including, *inter alia*:

> 3. Is [Mr.] Garner currently serving in a leadership position … at [Everett Hills]? If yes, please provide details regarding the placement of Preston Garner in his current role. If no, is the church aware if [Mr.] Garner is currently serving at another church?
>
> 4. Prior to being contacted by our committee, has the church received any allegations of sexual misconduct involving [Mr.] Garner? . . .
>
> 5. Is the church aware of an allegation of sexual assault of a minor involving [Mr.] Garner during the time he served at Englewood Baptist Church, Rocky Mount, North Carolina?[2] Has Everett Hills [] had any communication with Englewood Baptist Church?

Notably, Mr. Garner is the only person named in the Letter. Ms. Peters also emailed the Letter to Randy Davis, president of the Tennessee Baptist Mission Board. Upon receipt of the Letter, Mr. Davis forwarded it to The King's Academy. The King's Academy immediately suspended Mr. Garner's employment and prohibited him from being on its campus. Ultimately, The King's Academy terminated his employment. Additionally, at the time the Letter was sent, Mr. Garner had already resigned from his position at Everett Hills and had accepted a position as Legacy Adult Pastor at First Baptist Church Concord ("Concord"). However, Concord withdrew its offer of employment upon learning of the inquiry by the Credentials Committee.

[2] The record reflects that Mr. Garner was last employed at Englewood Baptist Church in June 2010.

On May 12, 2023, Mr. Garner and his wife, Kellie Garner, filed a Complaint against the Appellants and Guidepost in the Blount County Circuit Court ("trial court"). They filed an Amended Complaint on June 6, 2023 asserting claims of defamation, defamation by implication, and false light invasion of privacy ("false light"). The Amended Complaint avers that both the Letter and Ms. Peters's oral statements to Mr. Hayes (the "Oral Statements," together with the Letter, the "Statements") were defamatory. It also avers that by "omitt[ing] material facts," the Statements "implied that [Mr.] Garner was guilty of sexual abuse." Finally, it avers that the Statements "painted [Mr. Garner's] character as something or someone he absolutely is not." The Amended Complaint also sets forth a cause of action for Mrs. Garner's loss of consortium with Mr. Garner.

The Appellants moved the trial court to dismiss the Amended Complaint pursuant to Tennessee Rule of Civil Procedure 12.02(1) ("Rule 12"). In their Rule 12 motions, the Appellants relied upon the ecclesiastical abstention doctrine and argued that the trial court lacked subject matter jurisdiction because the Amended Complaint impermissibly asked the trial court to entangle itself into an ecclesiastical question—specifically, whether Everett Hills was in friendly cooperation with the SBC.

The Appellants also filed petitions seeking to have the Amended Complaint dismissed pursuant to the TPPA. They argue that the Letter related to health and safety and/or the community's well-being and, therefore, was a matter of public concern. Specifically, the Executive Committee and Ms. Peters argue that the Letter "is an inquiry . . . into an allegation of sexual assault of a minor by [Mr.] Garner[.]"[3] The Appellants also argue that the TPPA applies because the Garners' claims are based on or in response to the SBC and the Credentials Committee's exercise of their right to free speech and/or the right of association. They next argue that Mr. Garner cannot establish a prima facie case for each essential element of his defamation claim because there is no dispute that the allegation of abuse referenced in the Statements was made; thus, they argue, the statements in the Letter are not false, and his defamation claim is subject to dismissal pursuant to Tennessee Code Annotated section 20-17-105(b). The SBC and the Credentials Committee further assert that Mr. Garner's defamation by implication and false light claims "are simply derivatives of the defamation claim" and therefore should also be dismissed. Additionally, the Executive Committee and Ms. Peters argue that Mr. Garner cannot establish a prima facie case for each essential element of his false light claim because the Appellants did not "give publicity" to the Letter. Alternatively, the Executive Committee and Ms. Peters argue that Mr. Garner cannot show that the Appellants acted with actual knowledge or reckless disregard as to the falsity of the light in which Mr. Garner was placed.

[3] Elsewhere in their TPPA petition, the Executive Committee and Ms. Peters argue that the Letter "is an inquiry into the hiring practices of Everett Hills and whether it knew anything about the 'allegations of sexual misconduct involving [Mr. Garner].'"

In response to the TPPA petition, the Garners argued that the TPPA does not apply to their claims because the subject matter of the Letter is not a matter of public concern. Alternatively, they argue that they have established a prima facie case for each essential element of their claim. Specifically, in support of his defamation claim, Mr. Garner argues that the Statements were made "based solely on an uncorroborated, anonymous report to a hotline" and that the Appellants "did absolutely nothing to verify this false statement before repeating the allegation as though it was fact." Alternatively, he argues that the Statements constitute defamation by implication because they "imply and suggest that [he] had actually committed such an assault" or that he "had been or was formerly accused of child sexual assault." Finally, Mr. Garner argues that the fact that the Statements were communicated to his employers brings his claim within the special relationship exception to the publicity element of his false light claim.

The trial court heard the Appellants' Rule 12 motions and TPPA petitions on December 8, 2023. On January 2, 2024, the trial court entered an order denying the Rule 12 motions in part[4] and denying the TPPA petitions in full, stating that it was denying them "[f]or the reasons set forth in the transcript, which is attached hereto as Exhibit A and incorporated herein by reference." Regarding the Rule 12 motions, the transcript includes the following statements by the trial court:

> . . . It has been suggested that the gravamen, the gravamen, as we say usually of this case, is that the [trial court] is being asked to step into the inquiry over whether Everett Hills [] is in friendly cooperation with the SBC. I don't think that is the gravamen of this Complaint.
>
> * * *
>
> . . . This is not something rooted in religious belief or religious doctrine. It can be resolved by applying neutral legal principles. The [trial court] doesn't have to rely on religious doctrine to adjudicate that claim.
>
> * * *
>
> But here, the gravamen of this Complaint is whether or not a tort was committed against [the Garners]. I don't think it involves religious doctrine at all. I don't think the issue before the [trial court] is whether or not Everett Hills is in friendly cooperation with the [SBC]. It is about whether the tort of defamation was committed.

[4] The trial court struck five paragraphs of the Amended Complaint, finding that those paragraphs ran afoul of the ecclesiastical abstention doctrine. However, it did not dismiss any of the Garners' claims. The Garners do not appeal the trial court's partial grant of the Rule 12 motions.

Regarding the TPPA petitions, in its written order, the trial court found that the TPPA "does not apply to this case. In the alternative, the [trial court found] that even if the [TPPA] did apply, [the Garners] have carried their burden of proving a prima facie case of each essential element of" their claims. The transcript attached thereto reflects the trial court's reasoning with respect to this finding regarding the Garners' prima facie case:

> Now, with respect to whether there has been a prima facie case made for defamation, whether there was a statement, yes, it is a true statement that there was an anonymous complaint, but I don't think that is all that statement does.
>
> * * *
>
> … There is clearly an implicit suggestion here that [Mr.] Garner has been accused of sexual abuse of a minor. Maybe the statement was not made publicly, but if I look at, was it sent to so many persons that the matter must be regarded to be substantially certain to become one of public knowledge …
>
> … the fact that it spread from A to B to C may work against the [Appellants] in terms of whether or not this communication was sent to so many persons that the matter must be regarded as to become substantially certain to become one of public knowledge.
>
> And at the same time, I am even more concerned, and I must take as true today, the allegations in this Complaint that this anonymous report under the allegations of the Complaint was not investigated at all. It's just relayed.
>
> * * *
>
> The allegation before me today is that there was no investigation at all. I think a prima facie case for false light had been made …
>
> I'm also, at this stage in the proceedings, I don't think [Mr. Garner] is a public official or a public figure, so we are looking at whether or not he inserted himself or involved himself in a matter of public concern.
>
> Well, there is no question there is a matter of public concern for the [SBC]. I mean, the sexual abuse news -- I mean, allegation controversy. It has been all over the news. It is a huge public controversy. But did [Mr. Garner] insert himself into that, in any way inject himself into that public controversy?

It seems to me he was injected. He didn't try to involve himself into that public controversy. He was drug into it through no action of his own. …

The Appellants appeal the trial court's partial denial of their Rule 12 motions and the denial of their TPPA petitions.

ISSUES

The Appellants raise five issues on appeal, which we restate slightly:

1. Whether the trial court erred in concluding that it had subject matter jurisdiction over claims concerning the Credentials Committee's inquiry into whether Everett Hills was in "friendly cooperation" with the SBC.

2. Whether the trial court erred in concluding that the TPPA does not apply to the Garners' claims.

3. Whether the trial court erred in concluding that the Garners established a prima facie case for each essential element of their claims.

4. Whether the trial court erred in failing to consider whether the Executive Committee and Ms. Peters established a valid defense.

5. Whether the Executive Committee and Ms. Peters are entitled to an award of their attorney's fees and costs incurred at the trial court, in this appeal, and on remand.

The Garners, in their posture as appellees, argue that the trial court's ruling on the Rule 12 motions is not properly before this Court.

DISCUSSION

I. Ecclesiastical Abstention Doctrine

a.

The Appellants argue that the trial court erred in concluding that it had subject matter jurisdiction over this matter and, thus, denying their Rule 12 motions. Generally, a party is entitled to an appeal as of right only after the trial court has entered a final judgment. Tenn. R. App. P. 3(a). It is well-settled that an order denying a motion to dismiss is not a final, appealable judgment. *Richardson v. Tenn. Bd. of Dentistry*, 913 S.W.2d 446, 460 (Tenn. 1995). The Garners argue that the trial court's denial of the Appellants' Rule 12 motions is not properly before this Court because the Appellants did

not seek an interlocutory or extraordinary appeal of that denial. The Garners acknowledge that the TPPA provides an exception to Appellate Rule 3, such that a trial court's order dismissing or refusing to dismiss a legal action pursuant to a TPPA petition is immediately appealable to this Court as a matter of right. Tenn. Code Ann. § 20-17-106. However, the Garners argue that the Appellants cannot use this statute to shoehorn their Rule 12 motions into this appeal.

The Garners are correct that only orders that dismiss or refuse to dismiss a legal action pursuant to a TPPA petition fall within the scope of section 20-17-106. *See Kent v. Glob. Vision Baptist, Inc.*, No. M2023-00267-COA-R3-CV, 2023 WL 8621102, at *2–3 (Tenn. Ct. App. Dec. 13, 2023), *perm. app. denied* (Tenn. Apr. 10, 2024) (holding that an order denying a motion to dismiss that is filed after, and is separate from, a TPPA petition falls outside the scope of section 20-17-106). And it is undisputed that the portion of the trial court's order denying the Appellants' Rule 12 motions does not "dismiss or refuse to dismiss a legal action pursuant to a TPPA petition"; therefore, that portion of the order does not fall within the scope of the TPPA. This limitation notwithstanding, a challenge to subject matter jurisdiction may be raised at any time. *Church of God in Christ, Inc. v. L. M. Haley Ministries, Inc.*, 531 S.W.3d 146, 157 (Tenn. 2017) ("*COGIC*") (citing *Johnson v. Hopkins*, 432 S.W.3d 840, 843–44 (Tenn. 2013); *In re Est. of Brown*, 402 S.W.3d 193, 199 (Tenn. 2013)). *See Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012) ("Challenges to a court's subject matter jurisdiction call into question the court's lawful authority to adjudicate a controversy brought before it, and, therefore, should be viewed as a threshold inquiry." (internal citations omitted)).

"[T]he ecclesiastical abstention doctrine, where it applies, functions as a subject matter jurisdictional bar that precludes civil courts from adjudicating disputes that are 'strictly and purely ecclesiastical' in character[.]" *COGIC*, 531 S.W.3d at 159 (citing *Watson v. Jones*, 80 U.S. 679, 733 (1871)). "As such, the ecclesiastical abstention doctrine may be raised at any time as a basis for dismissal of a lawsuit." *Id.* Because the Appellants' Rule 12 motions were premised upon the ecclesiastical abstention doctrine and challenged the trial court's authority to adjudicate this controversy, those motions may be raised at this time.

b.

"Litigants may take issue with a court's subject matter jurisdiction using either a facial challenge or a factual challenge." *Redwing*, 363 S.W.3d at 445 (citing *Schutte v. Johnson*, 337 S.W.3d 767, 769–70 (Tenn. Ct. App. 2010); *Staats v. McKinnon*, 206 S.W.3d 532, 542 (Tenn. Ct. App. 2006)). "A facial challenge attacks the complaint itself and asserts that the complaint, considered as a whole, fails to allege facts showing that the court has subject matter jurisdiction to hear the case." *COGIC*, 531 S.W.3d at 160 (citing *Redwing*, 363 S.W.3d at 445–46). "In contrast, factual challenges to subject matter

jurisdiction do not attack the allegations of the complaint as insufficient." *Id.* (citing *Staats*, 206 S.W.3d at 543). "Rather, a factual challenge admits that the alleged facts, if true, would establish subject matter jurisdiction, but it attacks the sufficiency of the evidence to prove the alleged jurisdictional facts." *Id.* (citing *Redwing*, 363 S.W.3d at 446; *Staats*, 206 S.W.3d at 543).

The Appellants do not argue that the alleged facts, if true, would establish subject matter jurisdiction. They instead argue that the subject matter of the dispute itself prohibits the courts from exercising jurisdiction over the Garners' claims. Accordingly, the Appellants' Rule 12 motions present a facial challenge to the trial court's subject matter jurisdiction in this case. When evaluating a facial challenge to subject matter jurisdiction,

> a court limits its consideration to the factual allegations of the complaint and considers nothing else. [*Redwing*, 363 S.W.3d at 445–46.] The court presumes the factual allegations of the complaint are true. If these factual allegations establish a basis for the court's exercise of subject matter jurisdiction, then the court must uncritically accept those facts, end its inquiry, and deny the motion to dismiss. *Id.*; *see also Staats v. McKinnon*, 206 S.W.3d 532, 542–43 (Tenn. Ct. App. 2006); *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). Thus, when evaluating facial challenges to subject matter jurisdiction, courts are to utilize the familiar analytical framework that applies to motions to dismiss for failure to state a claim. [*Staats*], 206 S.W.3d at 543.

COGIC, 531 S.W.3d at 160. "Our standard of review on appeal from a trial court's [disposition] of a motion to dismiss is *de novo*, with no presumption of correctness as to the trial court's legal conclusions, and all allegations of fact in the complaint below are taken as true." *Brown v. Ogle*, 46 S.W.3d 721, 726 (Tenn. Ct. App. 2000) (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716 (Tenn. 1997)).

The Appellants argue the trial court lacked subject matter jurisdiction because the Amended Complaint impermissibly asked the trial court to entangle itself into an ecclesiastical question—specifically, whether Everett Hills was in friendly cooperation with the SBC. When determining whether the ecclesiastical abstention doctrine bars a defamation claim made against a church official,

> Tennessee courts must look at whether the slanderous or libelous statements were made during the course of an ecclesiastical undertaking. If made during an ecclesiastical undertaking, such as the discipline or removal of a pastor, then such actions may be found "too close to the peculiarly religious aspects of the transactions to be segregated and treated separately—as simple civil wrongs." However, if done apart from any ecclesiastical undertaking, no

> protection may be afforded under the First Amendment, thus subjecting churches to civil liability.

Ausley v. Shaw, 193 S.W.3d 892, 895 (Tenn. Ct. App. 2005) (internal citations omitted).

Although there is a dearth of Tennessee caselaw defining what constitutes an ecclesiastical undertaking in this context, this Court has subsequently explained that the ultimate question is

> whether the defamation claims can be determined without running afoul of the First Amendment. That means, can the specific defamation claim alleged herein be adjudicated "without extensive inquiry . . . into religious law and polity" and "without resolving underlying controversies over religious doctrine," *O'Connor v. The Diocese of Honolulu*, 885 P.2d [361,]368[(Haw. 1994)], quoting [*Serbian E. Orthodox Diocese for U. S. of Am. & Canada v.*]*Milivojevich*, 426 U.S. [696,]709–10[(1976)]. That includes inquiry into religious law, court examination of religious belief, or court review of the correctness of the church tribunal's decision. If, to resolve the particular claim brought, a court would need to resolve underlying controversies over religious doctrine, then the claim is precluded. *Milivojevich*, 426 U.S. at 709–10.

Anderson v. Watchtower Bible & Tract Soc. of New York, Inc., No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *30 (Tenn. Ct. App. Jan. 19, 2007), *cert. denied*, 552 U.S. 891 (2007) (footnote omitted). As this Court further observed:

> Where defamation claims have survived dismissal when faced with claims of ecclesiastical abstention, the court has generally made a determination that resolution of the specific allegation would not risk prohibited entanglement. For example, [in] *Drevlow v. Lutheran Church Missouri Synod*, [991 F.2d 468 (8th Cir. 1993)], the court found that a minister's defamation claim based on allegations the church circulated a personal information file about him that contained false information about his wife was not precluded by the First Amendment because the church had not offered any religious reason for its actions regarding the file and, consequently, the court would not become entangled in religious controversy. *Drevlow*, 991 F.2d at 472.

Id. at *30 n.20.

In fact, this case is similar to both *Drevlow* and *Redwing*. The plaintiff in *Drevlow* brought claims of "libel, negligence, and intentional interference with his legitimate

expectancy of employment" against a synod.[5] *Drevlow*, 991 F.2d at 469. The plaintiff alleged that he was injured when the synod placed a document in his personal file that falsely stated that his spouse had previously been married; he further alleged that the synod did not consult with him or verify the accuracy of the information before placing the document in his file. *Id*. He claimed that "because churches within the [s]ynod automatically disqualify a minister if his personal file shows that his spouse has been divorced, the [s]ynod effectively excluded [the plaintiff] from consideration for employment as a pastor by circulating this false information." *Id.* at 470. The trial court dismissed the case for lack of subject matter jurisdiction, finding that the plaintiff's claim "that the [s]ynod suspended [him] from its list of eligible ministers in violation of its bylaws would require the court to construe [s]ynodical doctrine and to review an essentially religious decision in violation of the First Amendment" and that "any calculation of damages would necessitate a finding of [the plaintiff]'s marketability as a pastor, a matter strictly between the clergy and the church." *Id*. The Eighth Circuit Court of Appeals reversed the trial court, concluding that, although the trial court was barred from determining whether the synod violated its own bylaws by removing the plaintiff's name from its list of eligible ministers, it was unclear that the evidence offered at trial with respect to the remainder of the plaintiff's claims would "definitely involve the district court in an impermissible inquiry into the [s]ynod's bylaws or religious beliefs." *Id.* at 470–71. Importantly, the Circuit Court noted that the synod "ha[d] not offered any religious explanation for its actions which might entangle the court in a religious controversy in violation of the First Amendment." *Id*. at 472. As such, the Circuit Court concluded that the plaintiff was "entitled to an opportunity to prove his secular allegations at trial." *Id.*

Similarly, in *Redwing*, the plaintiff sued a Catholic diocese "for acts of child sexual abuse allegedly perpetrated by one of its priests[.]" *Redwing*, 363 S.W.3d at 441. The plaintiff "alleged that the [d]iocese breached its fiduciary duties and acted negligently with regard to the hiring, retention, and supervision of" the priest, "that the [d]iocese was aware or should have been aware that" the priest was "a dangerous sexual predator with a depraved sexual interest in young boys[,]" and that "[a]fter finding out about [the priest]'s abuse of minors, the [d]iocese actively took steps to protect [the priest], conceal the [d]iocese's own wrongdoing . . . , and prevent [the plaintiff] and other victims of [the priest] from filing civil lawsuits." *Id.* at 442–43. The diocese filed a motion to dismiss pursuant to Tennessee Rule of Civil Procedure 12.02(1) arguing that the ecclesiastical abstention doctrine barred the trial court from exercising subject matter jurisdiction over the case. *Id.* at 443. On appeal, when discussing the scope of the ecclesiastical abstention doctrine, the Tennessee Supreme Court noted:

> In civil cases, the ecclesiastical abstention doctrine is implicated only when the alleged improper conduct that gave rise to the lawsuit is rooted in

[5] A synod is "[a]n ecclesiastical council lawfully assembled to determine church matters[.]" *SYNOD*, *Black's Law Dictionary* (12th ed. 2024).

> religious belief. Adjudication of disputes by state courts is appropriate in matters involving religious institutions, as long as the court can resolve the dispute by applying neutral legal principles and is not required to employ or rely on religious doctrine to adjudicate the matter.
>
> Adopting a more expansive application of the ecclesiastical abstention doctrine runs the risk of placing religious institutions in a preferred position, and favoring religious institutions over secular institutions could give rise to Establishment Clause concerns. Employing the application of the neutral legal principles approach enables the courts to give no greater or lesser deference to tortious conduct committed on third parties by religious organizations than we do to tortious conduct committed on third parties by non-religious entities.

Id. at 450–51 (internal citations omitted). The High Court emphasized that the diocese "ha[d] not asserted any religious foundation for the alleged conduct upon which [the plaintiff]'s claims [were] based." *Id.* at 452. Accordingly, the Court concluded that the plaintiff would be able to pursue his claims "without asking the trial court to resolve any religious disputes or to rely on religious doctrine." *Id.* at 453. "In other words, [the plaintiff]'s claims [could] be pursued based upon breach of a secular duty by the [d]iocese without requiring the court to resolve disputes over religious questions." *Id*.

"While the correct path between the secular and the religious is narrow," *Redwing*, 363 S.W.3d at 445, contrasting these cases with *In re Lubbock*, 624 S.W.3d 506 (Tex. 2021), upon which the Executive Committee and Ms. Peters rely, helps illuminate that path. In *Lubbock*, "the Catholic Bishops of Texas decided to release the names of those clergy against whom credible allegations of sexual abuse of a minor ha[d] been raised." 624 S.W.3d at 510. "To prepare the list, the [local d]iocese's attorney engaged the services of a retired law enforcement professional and a private attorney to review all clergy files for any credible allegations of abuse of minors." *Id.* (internal quotation omitted). "The list, as originally published, did not include the canonical meaning of the term 'minor,' which the [d]iocese assert[ed]—under Canon Law—includes 'a person who habitually lacks the use of reason' and encompasse[d] any 'person deemed vulnerable due to a health or mental condition.'" *Id*. The plaintiff in *Lubbock* was a deacon of his local diocese and was reported to have committed "sexual misconduct" with "a woman with a history of mental and emotional disorders." *Id.* at 509. As a result, he was included on the diocese's list of clergy with a credible allegation of sexual abuse of a minor. *Id.* at 510. The plaintiff took issue with his inclusion on the list in part because the woman with whom he was alleged to have committed sexual misconduct was not a minor child, and he sued the diocese for defamation and intentional infliction of emotional distress. *Id.* at 511. On appeal, the Texas Supreme Court ultimately held that the ecclesiastical abstention doctrine barred the civil courts from exercising subject matter jurisdiction over the case because

> determining whether the [d]iocese incorrectly included [the plaintiff's] name on the list would require a court to evaluate whether the [d]iocese "falsely state[d] that [the plaintiff] was and had been 'credibly accused' of sexual misconduct [with] a minor." However, as the [d]iocese informed [the plaintiff], it based the scope of its investigation on the canonical meaning of minor: "a person who habitually lacks the use of reason," which includes "vulnerable adults." Thus, a court would have to evaluate whether the [d]iocese had credible allegations against [the plaintiff] under the canonical meaning of "minor." This would necessarily entail a secular investigation into the [d]iocese's understanding of the term "minor," whether a court agrees that the woman he allegedly sexually abused qualifies as a "minor" under Canon Law, and whether the allegations it possesses were sufficiently "credible."
>
> This inquiry would not only cause a court to evaluate whether the [d]iocese properly applied Canon Law but would also permit the same court to interlineate its own views of a Canonical term.

Id. at 515 (internal citation omitted).

The SBC and the Credentials Committee argue that the Garners' claims fall within the scope of the ecclesiastical abstention doctrine because they "necessarily involve the impermissible secular determination as to whether" the inquiry into whether Everett Hills was in friendly cooperation with the SBC "was proper." We do not agree. The conduct at issue is the Appellants' purported publication of written and oral statements that Mr. Garner was "an individual with an alleged history of abuse" and that the allegation was credible, while failing to also state that "the allegation[was] made through an anonymous online portal" and that the Appellants "had not made any inquiry into the veracity of the anonymous report, or that no evidence supported the anonymous report." Unlike the diocese in *Lubbock*, the Appellants in this case have not raised any argument that their conduct resulted from the application or interpretation of any religious canon. Moreover, any argument by the Appellants that the Letter was sent as part of a pastoral disciplinary process is undercut by the concession of the SBC and the Credentials Committee that "[t]he Credentials Committee does not 'investigate what occurred or judge the culpability of an accused individual,' but rather only reviews 'how the SBC church responded to sexual abuse allegations and make[s] recommendations as to whether those actions or inactions are consistent with the SBC's beliefs regarding sexual abuse.'"

Ultimately, whether Everett Hills was in friendly cooperation with the SBC has no bearing on the Garners' claims. Accordingly, considering the Garners' claims will not require the trial court to resolve any religious disputes or to rely on religious doctrine. The

ecclesiastical abstention doctrine does not apply to this case, and the trial court did not err in denying the Appellants' Rule 12 motions.

II. Tennessee Public Participation Act

a.

The remainder of the Appellants' issues require us to construe the TPPA, Tennessee Code Annotated section 20-17-101, *et seq*. "[W]hen an issue on appeal requires statutory interpretation, we review the trial court's decision de novo with no presumption of correctness." *Nationwide Mut. Fire Ins. Co. v. Memphis Light, Gas and Water*, 578 S.W.3d 26, 30 (Tenn. Ct. App. 2018) (citing *Wade v. Jackson-Madison Cnty. Gen. Hosp. Dist.*, 469 S.W.3d 54, 58 (Tenn. Ct. App. 2015)). The polestar of statutory interpretation is the intent and purpose of the legislature in enacting the statute. *Id.* We begin by "reading the words of the statutes using their plain and ordinary meaning in the context in which the words appear." *Id*. When the language is clear and unambiguous, we look no further than the language of the statute itself to determine its meaning. *Id.*

The TPPA sets forth a burden-shifting framework that must be applied by trial courts when disposing of TPPA petitions. First, "[t]he petitioning party has the burden of making a prima facie case that a legal action against the petitioning party is based on, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenn. Code Ann. § 20-17-105(a). When deciding a TPPA petition, a trial court "may base its decision on supporting and opposing sworn affidavits stating admissible evidence upon which the liability or defense is based and on other admissible evidence presented by the parties." Tenn. Code Ann. § 20-17-105(d).

b.

The Appellants argue that the trial court erred in concluding that the TPPA does not apply to the Garners' claims. They posit the TPPA applies to the Garners' claims because the claims involve a matter of public concern and relate to the Appellants' exercise of the right of free speech and right of association. Specifically, the Executive Committee and Ms. Peters argue that the Letter[6] "undoubtedly relates to health and safety and/or the

[6] For the purposes of this opinion, we concern ourselves only with the portion of the Garners' claims that arises out of the Letter. A review of the Appellants' principal appellate briefs reveals that they did not raise any issue or articulate any argument that the trial court erred in its rulings with respect to the Oral Statements made by Ms. Peters. In fact, none of the Appellants even mention the Oral Statements in their principal appellate briefs. The Appellants address the Oral Statements in their reply briefs; however, "[i]ssues raised for the first time in a reply brief are waived." *Hughes v. Tenn. Bd. of Prob. & Parole*, 514 S.W.3d 707, 724 (Tenn. 2017) (citing *State v. Banks*, No. W2014-02195-CCA-R3-CD, 2016 WL 369562, at *10 (Tenn. Crim. App. Jan. 29, 2016); *State v. Fitzpatrick*, No. E2014-01864-CCA-R3-CD, 2015 WL 5242915, at *8 (Tenn. Crim. App. Sept. 8, 2015)). Accordingly, the Appellants have waived any argument

community's well-being" because it "is an inquiry initiated out of an allegation of sexual assault of a minor by [Mr.] Garner, who was employed as a music minister at Everett Hills while concurrently serving as a children's music minister at The King's Academy." The Garners respond that the Statements "do[] not involve a public concern, but rather . . . a private concern among the associated entities of the SBC, the Executive Committee, and the affiliated churches."

For purposes of the TPPA, matters of public concern include issues related to: "(A) Health or safety; (B) Environmental, economic, or community well-being; (C) The government; (D) A public official or public figure; (E) A good, product, or service in the marketplace; (F) A literary, musical, artistic, political, theatrical, or audiovisual work; or (G) Any other matter deemed by a court to involve a matter of public concern[.]" Tenn. Code Ann. § 20-17-103(6). Although the Letter was, on its face, an inquiry into whether Everett Hills was in friendly cooperation with the SBC, the subject matter of the purportedly defamatory statements therein was an alleged sexual assault. "[S]exual assault is clearly an issue related to 'health or safety[.]'" *Doe v. Roe*, 638 S.W.3d 614, 622 (Tenn. Ct. App. 2021). Therefore, for TPPA purposes, the subject matter of the Letter was a matter of public concern. Because the Letter was "a communication made in connection with a matter of public concern," we agree with the Appellants that the Garners' claims relate to the Appellants' exercise of the right of free speech and fall within the scope of the TPPA. *See* Tenn. Code Ann. §§ 20-17-103(3), 20-17-105(a).[7]

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that the trial court erred in denying their TPPA petitions as they relate to Mr. Garner's claims arising out of the Oral Statements.

[7] The Appellants also argue that the claims relate to the Appellants' exercise of the right of association. For purposes of the TPPA, "'[e]xercise of the right of association' means exercise of the constitutional right to join together *to take collective action* on a matter of public concern[.]" Tenn. Code Ann. § 20-17-103(2) (emphasis added). The Appellants' briefing on this issue is skeletal and unsupported by legal authority as it is unclear what "collective action" they were taking. The SBC and the Credentials Committee do not make any attempt to explain what collective action was being taken. The Executive Committee and Ms. Peters simply argue:

> Second, the right of association is also implicated because the communication at issue here relates to the "constitutional right to join together to take collective action on a matter of public concern." Tenn. Code Ann. § 20-17-103(2). As referenced above, the purpose of the Credentials Committee is to review submissions from sexual abuse survivors and others alleging that specific churches are not in friendly cooperation with the SBC, a cooperative of almost 50,000 churches across the country with "over 14 million persons." The Credentials Committee must review all information available to it in making this determination, including "mak[ing] inquiries of a church." If the Credentials Committee finds that the church made the subject of the inquiry is not in friendly cooperation, the church is subject to disfellowship from the SBC. Therefore, there can be little question that the right of association fits within the TPPA's framework. *See* Tenn. Code Ann. § 20-17-103(2).

Accordingly, the trial court erred in finding that the TPPA "does not apply to this case." We reverse this portion of the trial court's order. Our analysis of the trial court's ruling does not end here, however, because it went on to find, alternatively, "that even if the [TPPA] did apply, [the Garners] have carried their burden of proving a prima facie case of each essential element of" their claims. We proceed to consider whether the Garners sufficiently met their burden under the TPPA's burden-shifting framework.

c.

Under the TPPA burden-shifting framework, the burden next shifts to the Garners to "establish[] a prima facie case for each essential element of the claim[s] in the legal action." Tenn. Code Ann. § 20-17-105(b). Despite its ultimate conclusion that the TPPA does not apply to this case, the hearing transcript, which the trial court incorporated by reference into its order denying the TPPA petitions, contains a lengthy recitation by the trial court of the reasons for its findings that the Garners established a prima facie case for each essential element of their claims. The Appellants argue these findings were in error.

The Appellants first argue that the trial court erroneously applied an incorrect legal standard throughout its analysis and ruling by treating the Garners' allegations as true. The hearing transcript reflects that at the beginning of its ruling on the TPPA petitions, the trial court stated: "[O]n a Motion to Dismiss, I have to look at the allegations in the Complaint as true." Later, it stated: "I must take as true today, the allegations in this Complaint that this anonymous report under the allegations of the Complaint was not investigated at all." The Appellants argue that this standard differs from the "prima facie" standard required by the TPPA. Shortly after the parties filed their briefs in this case, the Tennessee Supreme Court addressed this issue in *Charles v. McQueen*, 693 S.W.3d 262 (Tenn. 2024). As the High Court explained in *Charles*:

> To establish a "prima facie" case under the TPPA, a party must present enough evidence to allow the jury to rule in his favor on that issue. This evidence may include "sworn affidavits stating admissible evidence" and "other admissible evidence." Tenn. Code Ann. § 20-17-105(d). As is the case when a court rules on a motion for summary judgment or motion for directed verdict, the court should view the evidence in the light most

(Internal record citations omitted). Tennessee Rule of Appellate Procedure 27(a) requires that an appellant's brief contain an argument setting forth, *inter alia*, "the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities . . ." Where a party makes no argument or cites no authority in support of his issues, or "where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived." *Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). Because the Appellants failed to develop more than a skeletal argument as to what collective action they were taking, we cannot find that this matter relates to their exercise of the right to association.

> favorable to the party seeking to establish the prima facie case and disregard countervailing evidence. *See*, *e.g.*, *Griffis v. Davidson Cnty. Metro. Gov't*, 164 S.W.3d 267, 284 (Tenn. 2005) (summary judgment); *Conatser v. Clarksville Coca-Cola Bottling Co.*, 920 S.W.2d 646, 647 (Tenn. 1995) (directed verdict).
>
> In determining whether a rational jury could find in the party's favor on that issue, the court also must keep in mind the applicable standard of proof. Here, a jury could find in favor of [the plaintiff] on the actual malice element of his defamation and false light claims only if it were to conclude that [the plaintiff] had established that element by clear and convincing evidence. *Cf. Sanford v. Waugh & Co.*, 328 S.W.3d 836, 848 (Tenn. 2010) (explaining that, because punitive damages require proof by clear and convincing evidence, in reviewing a motion for directed verdict on punitive damages, "a court must determine whether there is sufficient evidence, using the clear and convincing evidence standard, to submit the punitive damage claim to the jury" (quoting *Duran v. Hyundai Motor Am., Inc.*, 271 S.W.3d 178, 207 (Tenn. Ct. App. 2008))).

Charles, 693 S.W.3d at 281. In short, when determining whether a party has met their prima facie burden under the TPPA, the trial court "should view the evidence in the light most favorable to the party seeking to establish the prima facie case and disregard countervailing evidence." *Id*. There is no meaningful difference between this standard and the Rule 12 standard, which requires the trial court to treat the allegations in the complaint as true.

i. Defamation and Defamation by Implication

"To establish a prima facie case, the plaintiff in a defamation action must establish '1) a party published a statement; 2) with knowledge that the statement is false and defaming to the other; or 3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement.'" *Aegis Scis. Corp. v. Zelenik*, No. M2012-00898-COA-R3-CV, 2013 WL 175807, at *5 (Tenn. Ct. App. Jan. 16, 2013) (quoting *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999)). "Only false statements are actionable, and truth is a nearly universal defense." *Id.* (citing *West v. Media Gen. Convergence, Inc.*, 53 S.W.3d 640, 645 (Tenn. 2001)). Truth is not always a defense, however:

> Defamation by implication is another mechanism by which plaintiffs may prove defamation. Tennessee law provides that a statement may be capable of defamatory meaning even if the words do not appear defamatory

> on their face, but instead imply or suggest a defamatory meaning. *See Pate v. Serv. Merck. Co.*, 959 S.W.2d 569 (Tenn. Ct. App. 1996).
>
> Defamation by implication occurs when statements that are true are nevertheless actionable if they imply facts that are not true. *Aegis Sciences*, No. M2012-00898-COA-R3-CV, 2013 WL 175807, at *11 (Tenn. Ct. App. Jan. 16, 2013).

Grant v. Commercial Appeal, No. W2015-00208-COA-R3-CV, 2015 WL 5772524, at *11–12 (Tenn. Ct. App. Sept. 18, 2015) (footnote omitted), *abrogated on other grounds by Funk v. Scripps Media, Inc.*, 570 S.W.3d 205 (Tenn. 2019).

The Appellants argue that the Garners cannot satisfy the second element of their defamation claim because the statements in the Letter – specifically, that an anonymous online complaint about Mr. Garner was made to Guidepost – are true. However, "[t]ruth is available as an absolute defense *only when the defamatory meaning conveyed by the words is true*." *Memphis Pub. Co. v. Nichols*, 569 S.W.2d 412, 420 (Tenn. 1978) (citing *Brown v. First National Bank*, 193 N.W.2d 547, 553 (Iowa 1972)).

"[W]hether a statement 'is capable of conveying a defamatory meaning' presents a question of law." *Aegis Scis.*, 2013 WL 175807, at *6 (quoting *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000)). As this Court explained in *Aegis Sciences*:

> A statement alleged to be defamatory must be judged within the context in which it was made. [*Revis*, 31 S.W.3d at 253]. Additionally, the statement "should be read as a person of ordinary intelligence would understand [it] in light of the surrounding circumstances." *Id.* (citations omitted). A trial court may determine that, as a matter of law, a statement is not defamatory *only when* "the statement is not reasonably capable of any defamatory meaning and cannot be reasonably understood in any defamatory sense." *Biltcliffe*[*v. Hailey's Harbor, Inc.*, No. M2003-02408-COA-R3-CV], 2005 WL 2860164, at *4[(Tenn. Ct. App. Oct. 27, 2005)] (citing *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990)).

Id. (emphasis added).

The Letter states that Everett Hills "may employ an individual with an alleged history of abuse." It then goes on to ask whether Everett Hills has "received any allegations of sexual misconduct involving [Mr.] Garner" prior to being contacted by the Credentials Committee and whether Everett Hills was "aware of an allegation of sexual assault of a minor involving [Mr.] Garner during the time he served at Englewood Baptist Church[.]" Read in context, a person of ordinary intelligence could understand these statements to

mean not that a single recent anonymous allegation had been made against Mr. Garner, but instead that Mr. Garner was "an individual with an alleged history of abuse" dating back to the time when Mr. Garner had been employed at Englewood Baptist Church, approximately a decade before the anonymous allegation at issue was made to Guidepost. The statements in the Letter as published "would have a different effect on the mind of the reader from that which" a full explanation of the facts known to the Appellants at the time the Letter was sent would have produced. *See Memphis Pub. Co.*, 569 S.W.2d at 420. Accordingly, truth is not available as an absolute defense to the Appellants in this case. The trial court did not err in finding that Mr. Garner established a prima facie case for the second element of his defamation and defamation by implication claims.

Despite not arguing it in their principal briefs, the Executive Committee and Ms. Peters argue in their reply brief that they did not "ma[k]e an actionable 'statement' to sustain either of the defamation claims" because the Statements "were inquiries and not 'statements.'" Because this issue was raised for the first time in their reply brief, it has been waived. *See Hughes v. Tenn. Bd. of Prob. & Parole*, 514 S.W.3d 707, 724 (Tenn. 2017).

ii. False Light

"[A]ctual malice is the appropriate standard for false light claims . . . when the claim is asserted by a private individual about a matter of public concern." *West*, 53 S.W.3d at 647. Actual malice requires "knowledge of the falsity of the statement or reckless disregard for the truth of the statement." *Id*. As such, to prevail on his false light claim, Mr. Garner "must prove that (1) a party gave publicity to a matter in a way that placed him in a false light; (2) 'the false light in which he was placed would be highly offensive to a reasonable person;' and (3) the [Appellants] 'had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which he would be placed.'" *Charles*, 693 S.W.3d at 280 (quoting *West*, 53 S.W.3d at 643–44). The Appellants suggest that the trial court applied an incorrect standard when analyzing Mr. Garner's false light claim because it noted:

> I don't think [Mr. Garner] is a public official or a public figure, so we are looking at whether or not he inserted himself or involved himself in a matter of public concern . . . It seems to me [Mr. Garner] was injected. He didn't try to involve himself into that public controversy. He was drug into it through no action of his own.

Despite this finding, however, the trial court applied the correct standard when it found that Mr. Garner established a prima facie case for false light

> because the false light that someone potentially abused a minor would be highly offensive to a reasonable person, certainly if there was no investigation. There would have been action and *reckless disregard*. There would be *reckless disregard* potentially in terms of holding someone up to contempt or ridicule, or putting someone in a position of disgrace.

(Emphasis added). Accordingly, the trial court did not apply an incorrect standard when analyzing Mr. Garner's false light claim.

The Executive Committee and Ms. Peters also argue that Mr. Garner cannot show that the Appellants gave "publicity" to a matter in a way that placed him in a false light because the Letter "was not a public communication." Publicity means

> that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication, which may be oral, written or by any other means. It is one of a communication that reaches, or is sure to reach, the public.

Brown v. Christian Bros. Univ., 428 S.W.3d 38, 53 (Tenn. Ct. App. 2013) (quoting *Secured Fin. Sols., LLC v. Winer*, No. M2009-00885-COA-R3-CV, 2010 WL 334644, at *4 (Tenn. Ct. App. Jan. 28, 2010)). Thus, the publicity requirement is not satisfied by the communication of "a fact concerning the plaintiff's private life to a single person or even to a small group of persons." *Id*.

Mr. Garner alleges that Ms. Peters emailed the Letter to Mr. Hayes and to Randy Davis, president of the Tennessee Baptist Mission Board. He argues that he was in a special relationship with these individuals because they could hire and fire him, and, thus, the special relationship exception should apply to satisfy the publicity requirement. This Court discussed the special relationship exception in *Christian Bros. Univ.*:

> In his brief, Mr. Brown cites a footnote from this Court's opinion in *Brown v. Mapco*, which states that "the publicity requirement for a false light claim may be satisfied by establishing that the false and highly offensive information was disclosed to a person or persons with whom the plaintiff has a special relationship." *Brown v. Mapco*[*Exp., Inc.*], 393 S.W.3d[696,] 707 n. 4[(Tenn. Ct. App. 2012)] (citing 62 A Am.Jur.2d *Privacy* § 141). The "special relationship" exception to the publicity requirement was explained in *Poulos v. Lutheran Social Services of Illinois, Inc.*, 312 Ill.App.3d 731, 245 Ill.Dec. 465, 728 N.E.2d 547 (2000), which was cited in 62A Am.Jur.2d *Privacy* § 141. In *Poulos*, the plaintiff, a school teacher, was investigated for sexual abuse of one of the foster children in plaintiff's care. *Id.* 245 Ill.Dec.

> 465, 728 N.E.2d at 552–53. The *Poulos* plaintiff alleged that the social worker, who was employed by the defendant, contacted the chairman of the board of the school where plaintiff was employed and advised the chairman of the allegations of sexual abuse that had been made against the plaintiff. *Id.* The plaintiff was subsequently fired by the school. *Id.* 245 Ill.Dec. 465, 728 N.E.2d at 552. The plaintiff was eventually cleared of all charges of sexual abuse. *Id.* The Illinois appellate court found that the plaintiff had a special relationship with the board chairman because he was responsible for hiring and firing decisions for the plaintiff's employer, the school. *Id.* 245 Ill.Dec. 465, 728 N.E.2d at 556.

Christian Bros. Univ., 428 S.W.3d at 53. Ultimately, this Court found that there was no special relationship between the relevant parties in those cases. *See id.* at 54 (finding no special relationship between the plaintiff and his friend to whom the statements at issue were made); *see also Mapco*, 393 S.W.3d at 707 n.4 (finding no special relationship between the plaintiff and unidentified store customers who may have overheard the statement at issue). Conversely, we are persuaded that the special relationship exception applies in this case.

The special relationship exception "is both justified and appropriate in that a disclosure to a limited number of persons may be just as devastating to a plaintiff as a disclosure to the general public." *Poulos*, 728 N.E.2d at 555. In this case, the subject matter of the Letter was an allegation of sexual assault of a minor against Mr. Garner, who was employed as a worship pastor at Everett Hills and was a music minister at a Baptist affiliated school. The Letter was sent to the senior pastor at Everett Hills, who was directly responsible for the hiring and firing of Mr. Garner, and to the president of the Tennessee Baptist Mission Board. Given the subject matter of the statements and the individuals to whom the Letter was sent, there is no doubt that the disclosure to these two individuals may be just as devastating to Mr. Garner as would be a disclosure to the general public. Accordingly, the special relationship exception applies in this case, and the trial court did not err in finding that Mr. Garner satisfied the publicity element of his false light claim.

d.

Finally, the last step of the TPPA burden-shifting framework provides that the trial court "shall dismiss the legal action if the petitioning party establishes a valid defense to the claims in the legal action." Tenn. Code Ann. § 20-17-105(c). The Executive Committee and Ms. Peters argue that the trial court erred in failing to consider whether they had a valid defense to the Garners' claims. They argue that "at a minimum, the trial court's order must be reversed and remanded so that it can complete step three of the TPPA analysis." They then go on to argue that their valid defense is that the statements were true. The truth or falsity of an allegedly defamatory statement is properly addressed in step two

of the burden-shifting framework, when the burden is on the plaintiff to establish a prima facie case for every essential element of their claim. *Garner v. Thomason, Hendrix, Harvey, Johnson & Mitchell, PLLC*, No. W2022-01636-COA-R3-CV, 2024 WL 1618897, at *10 (Tenn. Ct. App. Apr. 15, 2024), *perm. app. granted*, No. W2022-01636-SC-R11-CV, 2024 WL 4021932 (Tenn. Aug. 28, 2024). Moreover, as discussed at length above, because Mr. Garner has established a prima facie case of defamation by implication, the truth is not a defense in this case.

The Appellants have requested their attorney's fees incurred at the trial court, in this appeal, and on remand pursuant to Tennessee Code Annotated section 20-17-107. However, because the legal action has not been dismissed, the Appellants are not entitled to such fees.

CONCLUSION

For all these reasons, we reverse in part and affirm in part the judgment of the Circuit Court for Blount County. Costs of this appeal are taxed jointly and severally to the appellants, Southern Baptist Convention, the Credentials Committee of the Southern Baptist Convention, the Executive Committee of the Southern Baptist Convention, and Christy Peters, for which execution may issue if necessary. This case is remanded for further proceedings consistent with this Court's opinion.

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KRISTI M. DAVIS, JUDGE