

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

PRESTON GARNER, et al.,
Plaintiffs/Appellees,

v.

SOUTHERN BAPTIST CONVENTION, et al.,
Defendants/Appellants.

On Appeal from the Judgment of the Court of Appeals,
No. E2024-00100-COA-R3-CV
Circuit Court for Blount County,
Case No. L-21220, Judge David R. Duggan

BRIEF OF APPELLEES

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STATEMENT OF ISSUES

- I. **The First Amendment does not bar civil courts from adjudicating tort claims where such claims do not require civil courts to resolve any religious dispute or rely on any religious doctrine**
 - a. The underlying courts correctly ruled that the ecclesiastical abstention doctrine is inapplicable.
 - b. The Garners' claim does not require judicial entanglement with church rules, customs, or laws.
 - c. The Appellant's position would result in the overturning of *Redwing*.
- II. **The Tennessee Public Participation Act does not set an “enhanced evidentiary standard” at the *prima facie* stage.**

STATEMENT OF THE CASE

This case involves defamatory allegations of child sexual abuse against Preston Garner, causing him to lose two jobs and forever sully his otherwise impeccable reputation. The Southern Baptist Convention, in attempt to avoid liability for its reckless conduct, now claims its tortious conduct is protected by First Amendment principles. In contravention to well-established Tennessee law permitting the courts to hear cases involving religious institutions so long as neutral legal principles apply, the Southern Baptist Convention now asks that religious institutions be placed in a preferred position above the law.

The ecclesiastical abstention doctrine “reflects the principle that secular courts in the United States should normally ‘abstain’ from adjudicating issues involving *theological or spiritual judgment* or the internal governance of religious bodies and, instead, should leave these matters to appropriate religious tribunals.” *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 446 (Tenn. 2012) (citing Rodney A. Smolla, 1 *Rights and Liabilities in Media Content* § 6:25 (2d ed. 2011)) (emphasis added). However, the application of the ecclesiastical abstention doctrine has not been extended to questions of “property or personal rights.” *Id.* (citing *Travers v. Abbey*, 58 S.W. 247, 247 (Tenn. 1900)). Thus, with regard to the external affairs of religious institution, Tennessee’s Supreme Court has only applied the doctrine as a limit on the authority of civil courts to evaluate religious doctrine; however, it has permitted adjudications based upon neutral principles. *Id.* (citing *Book Agents of Methodist Episcopal Church, S. v. State Bd. of Equalization*, 513 S.W.2d 514, 524-25 (Tenn. 1974)).

On May 23, 2023, Plaintiffs filed a Complaint alleging that Defendants caused substantial injury to Preston Garner through defamation, defamation by implication, and false light/invasion of privacy based upon untrue statements by the Defendants that Plaintiff Preston Garner had been involved in the sexual abuse of a minor. (T.R.,

Vol. I, pp. 1-16.) The Plaintiffs amended the Complaint on June 6, 2023, with additional factual averments. (T.R., Vol. I, pp. 17-36.) On July 21, 2023, the Defendants Southern Baptist Convention and Credentials Committee of the Southern Baptist Convention (hereinafter “SBC Defendants”) filed a “Motion to Dismiss for Lack of Jurisdiction or, in the alternative, Petition to Dismiss Pursuant to the Tennessee Public Participation Act” with a supporting memorandum of law. (T.R., Vol. I, pp. 44-60.) The motion alleged that the trial court had no subject matter jurisdiction to hear the controversy pursuant to the ecclesiastical abstention doctrine and that, further, the suit should be dismissed pursuant to the Tennessee Public Participation Act (hereinafter “TPPA”). On the same date, the Defendants Executive Committee of the Southern Baptist Convention and Christy Peters (hereinafter “EC Defendants”) also filed a petition for dismissal pursuant to the Tennessee Public Participation Act. (T.R., Vol. I, pp. 61-120; Vol. II, pp. 121-300; Vol. III, pp. 301-395.) The EC Defendants filed a separate motion claiming lack of subject matter jurisdiction under the ecclesiastic abstention doctrine. (T.R., Vol. III, pp. 397-428.)

The Plaintiffs filed a consolidated response to the Defendants’ motions to dismiss for lack of subject matter jurisdiction. (T.R., Vol. III, pp. 441-50.) The Plaintiffs further filed a consolidated response to the Defendants’ petitions pursuant to the TPPA with multiple supporting sworn statements in support of the defamation allegations. (T.R., Vol. IV, pp. 451-497.)

The trial court conducted a hearing on the motions on December 8, 2023, in which it denied the Defendants’ motion to dismiss pursuant to the ecclesiastic abstention doctrine.¹ (T.R., Vol. IV, pp. 498-99.) The trial court also denied the Defendants’ TPPA petitions, finding that the TPPA did not apply to the case and, in

¹ The trial court did, however, strike paragraphs 80 through 84 of the Amended Complaint due to those paragraphs’ evocation of religious principles.

the alternative, the Plaintiffs carried their burden of proving a *prima facie* case of each essential element. (T.R. Vol. IV, p. 499.) The trial court incorporated into its order a transcript of the proceedings. (T.R., Vol. IV, pp. 503-73.) The order denying the motions to dismiss was entered on January 2, 2024. (T.R., Vol. IV, p. 498.) The Defendants appealed the denial of the Tennessee Public Participation Act petition and the trial court’s finding of subject matter jurisdiction and rejection of the Defendants’ claim of ecclesiastical abstention.

The Court of Appeals upheld the trial court’s ruling regarding the ecclesiastical abstention doctrine, holding that the Plaintiffs’ claims do not “raise[] any argument that [the Defendants’] conduct resulted from the application or interpretation of any religious canon.” Slip op. at 14. Citing *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436, 445 (Tenn. 2012), the Court of Appeals held that the state court could adjudicate the dispute by applying neutral legal principles. Slip op. at 12-14. The Court of Appeals found that the trial court erred, however, by holding that the TPPA did not apply to the case, but it nevertheless found that the Plaintiffs established a *prima facie* case of defamation. Slip op. at 17-22.

The Defendants appeal to this Court, arguing that the Court of Appeals erred in applying the “neutral principles” approach. In order to avoid liability, the Defendants overstate this straightforward defamation claim as “ensnaring the state’s courts in a religious thicket.” (EC Def. Br., p. 17.) Both the trial court and the appellate court were appropriately not swayed by this exaggerated legal claim. This Court should do the same.

The Defendants further take issue with the trial court’s finding—and the Court of Appeals’ agreement—that a *prima facie* case of defamation had been shown by the Plaintiffs. The Defendants now argue that an “enhanced” burden of proof applies to TPPA cases; however, this Court has recently set the standard in *Charles v.*

McQueen, 693 S.W.3d 262 (Tenn. 2024). The Court of Appeals appropriately applied this Court’s recent guidance, and its ruling should not be disturbed.

STATEMENT OF FACTS

I. Preston Garner’s Defamation and False Light Allegations

a. Complaint Allegations

Mr. Garner² was first ordained as a minister in 1999 by Sevier Heights Baptist Church in Knoxville, and he spent 24 years in the ministry. (T.R., Vol. 1, p. 19.) He has worked on staff with several churches affiliated with the Southern Baptist Convention and is an accomplished gospel musician. (T.R., Vol. I, p.20.) At the time of the defamation, Mr. Garner had been working at The King’s Academy, a Baptist affiliated school, for 11 years as music director. (T.R., Vol. I, p. 20.) During his tenure at The King’s Academy he was a beloved faculty member, and his professional record at the school was exemplary. (T.R., Vol. I, p. 20.) Mr. Garner’s fulltime employment was as a minister on staff at Everett Hills Baptist Church. (T.R., Vol. I, p. 20.)

On January 7, 2023, Defendant Christy Peters authored and delivered a letter to Everett Hills Baptist Church on behalf of the Defendant Credentials Committee of the Southern Baptist Convention in which she alleged that Mr. Garner had sexually assaulted a minor. (T.R., Vol. I, p. 20.) The communication inquired whether Everett Hills was aware that Mr. Garner was an accused child molester. (T.R., Vol. I, p. 21.) The letter read as follows:

² Although Kellie Garner has filed a claim for consortium damages, the factual section will refer to Mr. Garner only.

SOUTHERN BAPTIST CONVENTION
CREDENTIALS COMMITTEE

January 7, 2023

Dear Everett Hills Baptist Church,

We write to notify you that our committee has received a concern regarding the relationship between Everett Hills Baptist Church, Maryville, Tennessee, and the Southern Baptist Convention. Specifically, the concern is that the church may employ an individual with an alleged history of abuse. Our committee is tasked with determining whether a church "has a faith and practice which closely identifies with the Convention's adopted statement of faith," namely the Baptist Faith and Message 2000 and to determine whether a church may be acting in a manner that is "inconsistent with the Convention's beliefs regarding sexual abuse."

We recognize that neither the Southern Baptist Convention nor our committee has any investigative authority or power over Everett Hills Baptist Church or any other Baptist body. This is clearly stated in Article IV of the SBC Constitution. However, the Convention does have a responsibility to determine for itself the churches with which it will cooperate. For that reason, the Southern Baptist Convention has tasked our committee to assist in determining if a church should be deemed to be in friendly cooperation with the Convention. Our committee needs your help in resolving the concerns that have been raised.

In light of the information our committee has received, we ask that your church please provide any information which it would like for us to consider. In addition, our committee would particularly like the church's response to the following questions:

1. What are the hiring policies or practices that the church typically follows when installing staff members? For example, does the church utilize a search committee, run background checks, receive letters of recommendation, or check with previous employers during the hiring process? Please explain.
2. What are the church's policies or procedures for handling reports of abuse? If your church does not currently have procedures in place, is that something the church might consider developing in the future?
3. Is Preston Garner currently serving in a leadership position, either paid or volunteer, at Everett Hills Baptist Church? If yes, please provide details regarding the placement of Preston Garner in his current role. If no, is the church aware if Preston 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 Preston Garner? If yes, what steps did the church take, if any.
5. Is the church aware of an allegation of sexual assault of a minor involving Preston Garner during the time he served at Englewood Baptist Church, Rocky Mount, North Carolina? Has Everett Hills Baptist Church had any communication with Englewood Baptist Church?
6. Would a representative or church leaders like to request a meeting with the committee to discuss any of these questions further?

We are grateful for the partnership with Everett Hills Baptist Church in supporting the missions and ministries of the Southern Baptist Convention. We know that receiving a letter such as this can be difficult and we are sorry for any pain it may cause. We need your help to resolve the concerns that have been raised. We ask that you please respond to our letter within **thirty (30) days** of receipt. Declining to respond is often viewed as an indication that a church does not wish to be considered a cooperating church with the Convention. This is not our desire and if you have any questions during this process please feel free to email us at credentials@sbc.net.

Thank you for your attention to this matter. We look forward to hearing back from you at your earliest convenience.

Sincerely,
SBC Credentials Committee

(T.R., Vol. I, p. 21.) In a follow up conversation with Everett Hills Senior Pastor Doug Hayes, Defendant Peters stated that the EC Defendants would not have brought the allegation to his attention if there had not been any validity to it. (T.R., Vol. I, p. 21.) Defendant Peters further led Mr. Hayes to believe the allegation was substantiated by stating that she was not allowed to tell him about the allegation. (T.R., Vol. I, p. 21.)

Defendant Peters then communicated with Dr. Randy Davis, President of the Tennessee Baptist Mission Board, and told him that she "was able to provide him with some details the committee received regard an allegation of sexual assault of a

minor involving Preston Garner while he served at Englewood Baptist Church in Rocky Mount, North Carolina.” (T.R., Vol. I, p. 22.)

The “allegations” that were repeated as fact by Defendant Peters were the result of an anonymous online posting received by Guidepost Solutions on behalf of the Defendants. (T.R., Vol. I, p. 22.) No investigation whatsoever was conducted by any of the Defendants regarding the anonymous call. (T.R., Vol. I, p. 22.) The Defendants took no steps to contact Englewood Baptist Church in North Carolina or law enforcement to determine whether the anonymous tip had any credibility prior to disseminating the information to other churches. (T.R., Vol. I, p. 23.) The Defendants repeated the allegation as if true to the detriment of Mr. Garner. (T.R., Vol. I, p. 23.)

Mr. Garner, however, had never been accused of sexual misconduct while at Englewood Baptist Church. (T.R., Vol. I, p. 23.) No complaint regarding Mr. Garner was ever made to law enforcement in the area. (T.R., Vol. I, p. 23.) Mr. Garner has never had inappropriate contact with a minor, and he has never sexually abused anybody. (T.R., Vol. I, p. 25.) Mr. Garner submitted to a polygraph examination which verified his truthfulness. (T.R., Vol. I, p. 25.)

As a result of the defamatory actions of the Defendants, Mr. Garner lost his arranged employment to become Legacy Pastor with First Baptist Concord. (T.R., Vol. I, p. 24.) He also not only lost his position at King’s Academy, but he was prohibited from being on campus. (T.R., Vol. I, p. 24.) Mr. Garner’s daughter attended King’s Academy, and he was not allowed to go to her extracurricular events at the school. (T.R., Vol. I, p. 24.) On January 26, 2023, Mr. Garner sent a written request to the Southern Baptist Convention Credentials Committee and Christy Peters demanding retraction of all defamatory statements. (T.R., Vol. I, p. 26.) No retraction was ever made. (T.R., Vol. I, p. 26.)

b. Evidence Submitted by Sworn Declaration

The Plaintiffs appended sworn declarations in support of their *prima facie* case in responding to the Defendants' petitions pursuant to the TPPA. Douglas Hayes, the Senior Pastor at Everett Hills Baptist Church, had worked with Mr. Garner for 12 years where he knew Mr. Garner to "have an excellent reputation for his professionalism, strong work ethic, and character." (T.R., Vol. III, pp. 476-77.) Pastor Hayes explained that Christy Peters and the Credential Committee had communicated a "concern" regarding Mr. Garner. (T.R., Vol. III, p. 478.) Ms. Peters verbally informed Pastor Hayes that "the allegation was sexually related but she could not give [Pastor Hayes] any more details." (T.R., Vol. III, p. 478.) Pastor Hayes asked Ms. Peters (1) if there was a public record of the allegation, (2) if a criminal charge has been made regarding the allegation, and (3) whether legal proceedings had been initiated regarding the allegation. (T.R., Vol. III, p. 478.) Ms. Peters responded to all of these questions by merely stating she was not allowed to tell Pastor Hayes any details. (T.R., Vol. III, p. 478.) When Pastor Hayes asked if the allegations against Mr. Garner were credible, Ms. Peters responded "the Credentials Committee would not be bringing this to me if it was not credible." (T.R., Vol. III, p. 478.)

Pastor Hayes informed Ms. Peters that Mr. Garner would soon be accepting a position with Concord Baptist Church in Knoxville, and he "implored Ms. Peters not to contact Concord Baptist Church," explaining, "if she was not sure about the credibility of the accusation, she could not only destroy Mr. Garner's ability to take that job, but also his reputation and his livelihood altogether." (T.R., Vol. III, p. 478.)

In a subsequent conversation Ms. Peters told Pastor Hayes that "the concern involved contact with a minor" and she alleged that "it occurred at another church in North Carolina a long time ago." (T.R., Vol. III, pp. 479-80.) Again Ms. Peters repeated that the EC Defendants would not be informing Pastor Hayes "if it was not

credible.” (T.R., Vol. III, p. 480.) Pastor Hayes then received the January 7, 2023 letter from the Southern Baptist Convention Credential Committee. (T.R., Vol. III, p. 482.) At no time during any of the communication with Ms. Peters or the Credentials Committee was Pastor Hayes made aware that the complaint against Mr. Garner was anonymous. (T.R., Vol. III, p. 480.)

Jeremy Sandefur, the President of The King’s Academy where Mr. Garner worked for approximately 12 years, reported that he was “a beloved and highly valued educator in our music department.” (T.R., Vol. III, p. 488.) Mr. Sandefur became aware of allegations against Mr. Garner when Randy Davis, President of the Tennessee Baptist Mission Board, reached out via email and forwarded the original email from Christy Peters, the Committee Relations Manager for the Southern Baptist Convention. (T.R., Vol. III, p. 488.) “Based solely on the allegation from SBC of child sexual abuse Preston Garner was placed on immediate suspension from his position as Choral Instructor at TKA.” (T.R., Vol. III, p. 488.)

On January 10, 2023, Mr. Sandefur reached out to Dr. Chris Atken, the Pastor of Englewood Baptist Church where the allegation supposedly arose, and “[n]either himself or any previous Pastor at the church were aware of any allegations against Preston Garner and zero police intervention or investigation took place during or after Preston Garner’s tenure at said church.” (T.R., Vol. III, p. 489.) Law enforcement authorities in Rocky Mount, North Carolina had no information regarding any allegation against Mr. Garner. (T.R., Vol. III, p. 489.)

Ms. Peters told Mr. Sandefur that “the allegation came through the hotline and that the source would possibly be willing to be named.” (T.R., Vol. III, p. 489.) However, no one from the SBC Executive Committee or Credentials Committee would provide any information, making it impossible for The King’s Academy to independently investigate the veracity of the allegation. (T.R., Vol. III, p. 489.) On

March 29, 2023, Mr. Garner's position at TKA was terminated based upon these allegations. (T.R., Vol. III, p. 490.)

Dr. Michael Cloer, the Pastor Emeritus of Englewood Baptist Church in Rocky Mount, North Carolina, provided a declaration stating that Preston Garner served with him on staff in 2010. (T.R., Vol. III, p. 496.) In Dr. Cloer's role as Senior Pastor, any complaint or accusation against a staff member would be brought to his attention, and at no time during Mr. Garner's time on staff at Englewood nor since his departure had there been any complaint against him. (T.R., Vol. III, p. 496.) Dr. Cloer specified that "no one has ever alleged that [Mr. Garner] had inappropriate sexual contact with a minor." (T.R., Vol. III, p. 496.)

Preston Garner also submitted a declaration, explaining that he has been in Christian ministry as a worship pastor his entire adult life, including working at Englewood Baptist Church in Rocky Mount, North Carolina, in 2010 as the music minister. (T.R., Vol. III, pp. 491-92.) In December of 2023, Mr. Garner accepted a position as the Legacy Pastor at Concord First Baptist Church, a Southern Baptist Church in Knoxville, Tennessee. (T.R., Vol. III, p. 492.) Mr. Garner was scheduled to begin his employment on January 15, 2023, and he would receive a compensation package of approximately \$86,000 per year and insurance benefits. (T.R., Vol. III, p. 493.)

Mr. Garner has always been employed with churches affiliated with the Southern Baptist Convention, and he has no history of sexual abuse. (T.R., Vol. III, p. 493.) Prior to the allegations that are the subject matter of this lawsuit, Mr. Garner has never been accused of any sexual misconduct or impropriety against any adult or minor. (T.R., Vol. III, p. 493.) Mr. Garner has no criminal history and has never been charged with any crime whatsoever in any jurisdiction. (T.R., Vol. III, p. 493.) Further, no church has ever brought any disciplinary action or allegation against Mr.

Garner, and he never received anything other than positive feedback. (T.R., Vol. III, p. 493.)

Mr. Garner's livelihood is dependent upon his maintaining a high moral character, and he worked his entire career for that stellar reputation. (T.R., Vol. III, p. 493.) Prior to learning about the Defendants' allegations, nobody on behalf of the Defendants reached out to him to discuss the allegation or investigate the allegation. (T.R., Vol. III, p. 493.) Mr. Garner does not know who made the alleged accusation and does not know anything about the nature of the allegation. (T.R., Vol. III, pp. 493-94.)

Mr. Garner first learned of the allegation through Mr. Sanderfur at The King's Academy and then later through Pastor Hayes. (T.R., Vol. III, p. 494.) Mr. Garner was placed on administrative leave at The King's Academy, prohibited from the campus, and unable to inform his coworkers or students of the reason for his prohibition. (T.R., Vol. III, p. 494.) Mr. Garner was eventually terminated from The King's Academy. (T.R., Vol. III, p. 494.) Further, as a result of the allegations, Concord First Baptist Church withdrew its offer of employment. (T.R., Vol. III, p. 495.)

Mr. Garner was effectively unemployed from January through April 2023, receiving no income other than his part-time income from The Kings Academy until his termination. (T.R., Vol. III, p. 495.) In April 2023, Mr. Garner "started doing odd jobs to make ends meet for my family" including working landscaping jobs and working at the Rusty Wallace Kia service department. (T.R., Vol. III, p. 495.) The damage to his reputation was emotionally devastating to Mr. Garner and his wife, and they had to seek counseling to deal with the trauma. (T.R., Vol. III, p. 495.)

II. Defendants' Motions to Dismiss and Trial Court's Ruling.

The Defendants filed similar arguments alleging that the Complaint should be dismissed pursuant to the Tennessee Public Participation Act. The Defendants

argued that pursuant to Code section 20-17-105(a), the Plaintiffs' claims are "based on, related to, or in response to [the Defendants'] exercise of the right of free speech, right to petition, or right of association." (T.R., Vol. I, p. 55.) The Defendants argued that the communications in the Complaint dealt with "matters of public concern," which include any issue related to "[h]ealth or safety" or "community well-being." (T.R., Vol. I, p. 55.)

The EC Defendants additionally argued that the Plaintiffs could not establish a *prima facie* case for each element of the claims alleged and that the EC Defendants have a valid defense to the claims alleged in the Amended Complaint, arguing that the statement in the letter regarding the allegations was technically true because the Defendants did receive an anonymous complaint. (T.R., Vol. I, pp. 68-76.)

The trial court began its analysis by determining whether the Plaintiffs set forth a *prima facie* case for defamation. (Mot. Hr'g, p. 65.) Although the trial court acknowledged that "it is a true statement that there was an anonymous complaint," the court found that the letter "does more than just say we have had an anonymous complaint." (Mot. Hr'g, pp. 65-66.) The trial court found "clearly an implicit suggestion here that Preston Garner has been accused of sexual abuse of a minor." (Mot. Hr'g, p. 66.)

The trial court further found that the letter was sent to "so many persons that the matter must be regarded to be substantially certain to become one of public knowledge." (Mot. Hr'g, p. 66.) The trial court was disturbed that the anonymous complaint was not investigated at all. (Mot. Hr'g, p. 67.) The trial court found a "*prima facie* case for reckless disregard as to the falsity of the allegation" noting that the facts set forth in the Complaint establish "no . . . investigation whatsoever." (Mot. Hr'g, p. 67.) The Court further found a "*prima facie* case for false light had been made 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 potentially in terms of holding someone up to contempt or ridicule, or putting someone in a position of disgrace.” (Mot. Hr’g, pp. 67-68.)

While the trial court acknowledged that sexual abuse within Southern Baptist Convention affiliated churches was a “matter of public concern,” the trial court found that Mr. Garner did not inject himself into that public controversy. (Mot. Hr’g, p. 68.) The court observed, “He didn’t try to involve himself into that public controversy. He was drug into it through no action of his own.” (Mot. Hr’g, p. 68.) The Court further found that the declarations submitted by the Plaintiffs “suggest not only that no investigation was done” by the Defendants, “but they also suggest that with respect to the underlying anonymous complaint that, to the knowledge of the church where the Plaintiff was at the time, they know nothing about it.” (Mot. Hr’g, pp. 69-70.)

III. The Court of Appeals Holding

The Court of Appeals upheld the trial court’s denial of the Appellants’ motions to dismiss pursuant to the ecclesiastical abstention doctrine. The court found that the Garners’ claim did not fall within the scope of the ecclesiastical abstention doctrine because “[t]he 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 ‘that 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.’” Slip op. at 14. The Court of Appeals rejected the Appellants’ argument that the communications were part of a “pastoral disciplinary process,” noting that such argument was “undercut by the concession of the SBC and the Credential Committee that ‘[t]he Credentials Committee does not “investigate what occurred or judge the culpability of an

accused individual,” but that it 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.””” *Id.* The court held that “[u]ltimately, whether Everett Hills was in friendly cooperation with the SBC has no bearing on the Garners’ claims” and that the trial court, therefore, would not have to “resolve any religious disputes” or “rely on religious doctrine.” *Id.*

As relevant to this appeal, the Court of Appeals found that the trial court erred in finding that the TPPA did not apply to the Garners’ claim. *Id.* at 17. Nevertheless, the Court of Appeals found that the trial court found, in the alternative, that the Garners’ had made a showing of a *prima facie* case. *Id.* The Appellants argued that the trial court erroneously applied the Rule 12.02(6) standard on motions to dismiss and improperly took all complaint allegations “as true.” *Id.* The Court of Appeals, however, correctly noted that “*prima facie*” in the context of TPPA claims had been recently defined by this Court in *Charles v. McQueen*, 693 S.W.2d 262 (Tenn. 2024)). In doing so, this Court held that “[a]s in 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 more favorable to the party seeking to establish the *prima facie* case and disregard countervailing evidence.” *Id.* at 281. The intermediate appellate court found no meaningful difference between this standard and the Rule 12 standard, and the appellate court applied the correct standard in upholding the trial court’s denial of the Appellants’ TPPA petition.

SUMMARY OF ARGUMENT

The courts below appropriately denied the Appellants’ motions to dismiss under the ecclesiastical abstention doctrine and the TPPA petitions. With regard to the ecclesiastic abstention doctrine, the trial and appellate court correctly applied the

neutral principles test as adopted by this Court in *Redwing*. The trial and appellate court also correctly found that the Plaintiffs had established a *prima facie* case of defamation and false light based upon the affidavits set forth in the record.

ARGUMENT

- I. The First Amendment does not bar civil courts from adjudicating tort claims where such claims do not require civil courts to resolve any religious dispute or rely on any religious doctrine.**
 - a. The underlying courts correctly ruled that the ecclesiastical abstention doctrine is inapplicable.**

While the Appellants attempt to overcomplicate matters, the facts relevant to this Court’s review are straightforward: The Appellants made untrue statements—both in writing and orally—based upon uncorroborated, anonymous information from a third-party contractor and, as a result, Preston Garner lost two jobs and suffered tremendous humiliation and loss of his reputation as a minister. At the crux of this lawsuit are two communications by Ms. Peters on behalf of the Executive Committee: (1) a January 7, 2023 letter sent to Mr. Garner’s then-employer Everett Hills Baptist Church, alleging that Mr. Garner was a person with a history of sexual assault of a minor while he was employed at a prior church, and (2) verbal communication by Ms. Peters with Pastor Doug Hayes, where she responded to questions regarding the validity of the sexual abuse allegations by assuring that the SBC and Executive Committee would not have notified him had the allegation not been validated. (*See* T.R., Vol. I, p. 21.) Ms. Peters additionally spread misinformation to the President of the Baptist Mission board. (T.R., Vol. I, p. 22.) These communications were made by Ms. Peters, acting in her capacity on behalf of the Executive Committee for the SBC.

The Appellants overbroadly allege that, because the communications at issue involve church affairs, this Court has no jurisdiction to adjudicate their defamatory actions. The Court of Appeals disagreed, noting that “whether Everett Hills was in friendly cooperation with the SBC has no bearing on the Garners’ claims.” Slip op. at 14. The Appellants’ position wholly ignores established precedent from Tennessee’s Supreme Court explaining that the doctrine of ecclesiastical abstention only applies when Courts are asked to resolve religious disputes or to rely on religious doctrine. Such an inquiry is not required in this case.

The Purpose of the Establishment Clause

At issue in the case at bar is what is known as the “Establishment Clause” of the First Amendment to the United States Constitution, which provides in part “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [...].” (U.S. Const. amend. I). The drafters of the Bill of Rights were colonists having recently declared their independence from England due in large part to the heavy-handedness exercised by the Church of England in imposing arbitrary and excessive taxation on the colonies and openly suppressing religious freedoms, particularly targeting those who practiced dissenting faiths. These colonists rejected the idea, based on past experience, that a government and a religion should be so intertwined as to allow any religious institution to co-opt the power of the state. The Establishment Clause thus serves a dual purpose: protecting the free exercise of religion while also ensuring that no religious institution is able to wield the power of the federal government as a means to subvert the rights of the individual.

The Tennessee Constitution adopts broader language in its effort to protect the individual against the imposition of a particular school of religious thought and power of a church proper, providing that “[...] no preference shall ever be given, by law, to any religious establishment or mode of worship.” (Tenn. Const. art. I, §3).

Reflected in the language of our federal and state constitutions are the overarching ideas of protecting individual liberty from religious oppression and the principle that no church or religious establishment should operate “above the law.” *See, e.g., State ex rel. Swann v. Pack*, 527 S.W.2d 99, 111 (Tenn. 1975) (“Free exercise of religion does not include the right to violate statutory law.”). Yet, such action is exactly what the Appellants are asking this Court to authorize in attempting to frame the doctrine at issue as one of church autonomy rather than ecclesiastical abstention. Indeed, the Appellants are asking the Court to allow a religious institution to be placed not only in a preferred position, but in a wholly unaccountable position, a position that no one in society should hold.

Adopting the position of the Appellants and the Attorney General would establish that tortious speech, no matter how defamatory or injurious, would be unassailable so long as it is communicated in a pseudo-religious context. A religious institution, in particular, has an ability to communicate that is unparalleled in society, and this approach would give rise to the ability for those with the largest platforms to injure, defame, demoralize, and demonize anyone who disagrees with them without recourse. Tennessee has consistently and rightfully rejected this approach, instead choosing to allow our courts to analyze civil claims under a “neutral principles” approach where such an analysis can occur. The case at bar presents a claim of defamation which can be analyzed under a secular framework, and the Court should reject Appellants’ attempt to frame the Garners’ claims as entangled with religious doctrine or polity. This Court should continue Tennessee’s longstanding application of allowing civil claims to be examined on neutral principles of law that place individuals and institutions alike on common ground, because the alternative is to elevate religious institutions into a position of unaccountability that operates wholly outside the bounds of the law.

The Ecclesiastical Abstention Doctrine in Tennessee

In 2012, this Honorable Court specifically addressed the application of the ecclesiastical abstention doctrine in the context of tort claims regarding the negligent hiring, supervision, or retention of clergy. *Redwing v. Cath. Bishop for Diocese of Memphis*, 363 S.W.3d 436 (Tenn. 2012). In that case the plaintiff, Redwing, alleged that he was sexually abused as a young man by Father Guthrie, a priest at Holy Names Catholic Church in Memphis. *Id.* at 442. Redwing alleged that the Diocese “breached its fiduciary duties and acted negligently with regard to the hiring, retention, and supervision of Father Guthrie.” *Id.* Redwing specifically accused the Diocese of taking steps “to protect Father Guthrie [and] conceal the Diocese’s own wrongdoing in supervising Father Guthrie.” *Id.* The Diocese argued, as the Appellants argue in the instant case, that the trial court had no jurisdiction pursuant to the ecclesiastical abstention doctrine. *Id.*

The Redwing court began its analysis by tracing the roots of the ecclesiastical abstention doctrine, noting Tennessee’s recognition of the ecclesiastical abstention doctrine in *Nance v. Busby*, 18 S.W. 874, 879 (Tenn. 1892). *Nance* involved allegations that the plaintiffs had been excommunicated from the Regular Primitive Baptist Church of Nashville through “irregular and void” procedure which “constitute part of a scheme by which defendant sought to obtain control of the church.” *Id.* at 874. The supreme court found that no property right attaches to church membership, and it noted “[c]ivil courts deal only with civil and property rights” and have “no ecclesiastical jurisdiction.” *Id.* at 879. The high court did not disturb the judgment of the congregation of the Regular Primitive Baptist Church, noting that “[i]ts act was the act of the church. Complainants thereafter ceased to be members of this church. We cannot restore their names to the roll, or by mandamus compel recognition as members by the church which has repudiated them.” *Id.* at 881-82.

Thus, Tennessee's recognition of the ecclesiastical abstention doctrine was premised on restraining civil courts from sitting in judgment over adjudications made by churches which concerned church affairs. Indeed in quoting the United States Supreme Court's decision in *Watson v. Jones*, the court stated: "In this country, the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, *and which does not infringe personal rights*, is conceded to all." *Id.* at 879 (quoting *Watson v. Jones*, 80 U.S. 679, 721 (1871)) (emphasis added). Indeed, eight years after *Nance*, this Court again noted that the ecclesiastical abstention doctrine "has not been extended to 'questions of property or personal rights.'" See *Redwing*, 363 S.W.3d at 449 (quoting *Travers v. Abbey*, 58 S.W. 247, 247 (Tenn. 1900) (noting that applying the ecclesiastical abstention doctrine in the cases did not "involve any questions of property or personal rights."))).

The *Redwing* court further noted "[w]ith regard to the external affairs of religious institutions, this Court has applied the doctrine as a limit on the authority of civil courts to evaluate religious doctrine but has permitted adjudications based upon neutral principles." *Id.* (citing *Book Agents of Methodist Episcopal Church, S. v. State Bd. of Equalization*, 513 S.W.3d 514, 524-25 (Tenn. 1974)). The court aptly noted that "[a]pplying a 'secular standard to secular conduct that is tortious is not prohibited by the Constitution.'" *Id.* at 454 (citing *Moses v. Diocese of Colo.*, 863 P.2d 310, 320 (Colo. 1993)). The *Redwing* court rejected the Diocese's argument that adjudication of the church's hiring, supervision, and retentions polices would necessarily address church doctrine and practices, finding that such an argument "overreaches the bounds of the protections afforded the ecclesiastical abstention doctrine." *Id.* The court pointed to *Watson v. Jones* in its reasoning, which quoted Chancellor Johnston in observing that "[w]hen a civil right depends upon an ecclesiastical matter, . . . The civil tribunal tries the civil right, and no more, taking

the ecclesiastical decisions out of which the civil right arises as it finds them.”). *Id.*; *Watson*, 80 U.S. at 731 (quoting *Harmon v. Dreher*, 17 S.C.Eq. (Speers Eq.) 87 (1843) (Johnson, Ch.)). The *Redwing* court concluded:

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. This Court determined that *Redwing* could pursue his claims “without asking the trial court to resolve any religious disputes or to rely on religious doctrine.” *Id.* at 453.

Five years later, this Court approvingly relied upon *Redwing* in weighing into a church property dispute. *See Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d 146, 159 (Tenn. 2017) (“[T]he ecclesiastical abstention doctrine certainly does not apply in every legal dispute involving religious organizations. As this Court explained in *Redwing* . . . ‘Tennessee’s courts may address these claims, as long as they can do so using neutral principles of law and can refrain from resolving religious disputes and from relying on religious doctrine.’”) (quoting *Redwing*, 363 S.W.3d at 452) (emphasis in original).

The Court of Appeals understood and correctly applied this doctrine to the case *sub judice*, noting that the Plaintiffs’ lawsuit is not a religious dispute but rather a defamation case based on neutral tort principles.

b. The Garners' claim does not require judicial entanglement with church rules, customs, or laws.

Appellants argue that asking civil courts to adjudicate Mr. Garner's defamation claim amounts to an interference in church governance. In doing so, the Appellants turn the Garners' suit on its head, mischaracterizing it as an attack on the SBC and related entities' "religious disciplinary proceeding," when, instead, the suit complains of reckless defamatory allegations repeated from a third-party investigation by Guidepost Solutions. The lawsuit neither asks for a civil court to delve into SBC's rules for "friendly cooperation," nor does it require the courts to make any determination as to whether Everett Hills was in such cooperation with the SBC. The Appellants prop up a strawman argument that Mr. Garner's claim will entangle the courts with religious doctrine when the defamatory allegation against Mr. Garner resulted from an anonymous complaint obtained by Guidepost Solutions, a non-religious entity. (T.R. Vol. I, at 22.) Indeed, the reports and contracts covering the independent investigation by Guidepost Solutions were filed with the trial court by the Defendants. (T.R. Vol. I, at 78-150; T.R. Vol. II, at 151-300; T.R. Vol. III, at 301-396.) Thus, contrary to the Appellants objection, said communications are not part of an internal religious governance process but rather the result of a secular investigation by a third party.

A very similar issue was considered by United States District Court for the Middle District of Tennessee in *Hunt v. Southern Baptist Convention et al.*, No. 3:23-cv-00243, 2024 WL 1019276 (M.D. Tenn. Mar. 8, 2024). In that case Hunt sued the SBC, Guidepost Solutions LLC, and the Executive Committee of the SBC for defamation arising from the "Defendants' alleged decision to misleadingly feature him in a highly publicized report alongside child molesters, rapists, and sex criminals." *Id.* at *1. Like in this case, the defendants moved to dismiss the claim

based upon the ecclesiastical abstention doctrine. *Id.* at *2. In rejecting the defendant's argument, the District Court cited Sixth Circuit law:

While some of the defendants rely on *Ogle v. Church of God*, 153 F. App'x 371 (6th Cir. 2005) and *In re Lubbock*, 624 S.W.3d 506, 509 (Tex. 2021), neither are applicable in the present case because *Ogle* involved requested judicial review of church disciplinary proceedings and *Lubbock* concerned defamation claims resulting from an application of Canon law.

On the other hand, Defendants largely ignore the case of *Ogle v. Hocker*, [279 Fed. Appx. 391 (6th Cir. 2008)] which is more applicable to the claims alleged by Hunt. In *Hocker*, a church bishop sued a fellow pastor for defamation and intentional infliction of emotional distress for statements made in sermons and elsewhere. In analyzing the applicability of the ecclesiastical abstention doctrine, the *Hocker* court asked “[w]hether a secular court may hear a tort suit despite the church autonomy doctrine turns on the availability of secular standards and the ability of a court to resolve the controversy without reference to religious doctrine.” 279 Fed. Appx. at 395. The *Hocker* court went on to point out that “the relevant question ... is whether the court would interfere with any matter of church doctrine or practice by ruling on this case.” *Id.* at 396. The *Hocker* court declined to invoke the ecclesiastical abstention doctrine when: (1) the majority of the purportedly defamatory statements occurred “outside of the religious practice context,” and (2) no party identified “any doctrinal issues that will be involved.” *Id.* In contrast, in an earlier suit filed by Bishop Ogle – *Ogle v. Church of God*, cited *supra* – challenging internal church disciplinary proceedings against him, the Sixth Circuit applied the ecclesiastical abstention doctrine because “all of defendants’ actions of which Ogle complains were part of church disciplinary proceedings which were initiated precisely because Ogle’s actions violated the Church of God Minutes of the General Assembly.” *Ogle*, 153 F. App'x at 376.

Here, the complaint does not seek secular judicial review of a “theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.” [*Serbian E. Orthodox Diocese for U.S. of Am. and Can. v. Milivojevich*, 426 U.S. 696, 714 (1976)]. Rather,

according to the complaint, the Southern Baptist Convention hired a third party, Guidepost, to investigate how it handled matters involving sexual abuse. The fact that a church body was involved in the decision to hire Guidepost and that the resulting investigation and report involved a church entity does not prevent the court from resolving the claims asserted without reference to religious doctrine. Because it is not clear from the allegations that the ecclesiastical abstention doctrine bars this Court from presiding over the claims asserted, Defendants' motions to dismiss will not be granted on ecclesiastical abstention grounds.

Id. at *3.³

The Appellants in this case similarly ignore the Sixth Circuit's ruling in *Hocker* in advancing their overbroad version of "church autonomy." Indeed, several other United States District Courts and state courts of record have applied similar reasoning when analyzing the ecclesiastical abstention doctrine:

- In *McRaney v. North American Mission Board of Southern Baptist Convention*, the District Court for the Northern District of Mississippi held that neither the ministerial exception nor the ecclesiastical abstention doctrine barred the plaintiff's tort claims against the NAMB, which included a claim for defamation, for communications between the NAMB and the Baptist Convention for Maryland/Delaware. That court employed the neutral principles approach adopted by the court of

³ In federal court, the ecclesiastical abstention doctrine constitutes an affirmative defense as opposed to a jurisdictional bar; therefore, the Court reviewed the allegations in the complaint "to determine if the ecclesiastical doctrine affirmative defense clearly applies." *Id.* at *2. *See also COGIC*, 531 S.W.3d at 174 (J. Kirby, concurring) (doubting that the ecclesiastical abstention doctrine is a bar to subject matter jurisdiction). Notably, were this Court to determine to follow suit with federal authorities and categorize this doctrine as an affirmative defense, it would not have appellate jurisdiction due to the Appellants' failure to file for an interlocutory appeal. *See* Slip op. at 8-9 (acknowledging argument that the trial court's ruling was not a final appealable judgment but finding subject matter jurisdiction may be reviewed at any time).

appeals in this case in holding that the plaintiff's tort claims did not involve an impermissible inquiry into church polity:

As for the ecclesiastical abstention doctrine's potential application to McRaney's interference claims, the Court cannot rule at this juncture that resolving these claims will necessarily require the Court to decide "matters of religious doctrine." While this is a dispute between members of the same religious denomination, it is not one which, on the face of the complaint, involves a review of "internal policies, internal procedures, or internal decisions of the church." The claims of the complaint relate to the NAMB's external actions toward separate autonomous organizations, rather than internal decisions within the hierarchy of a single organization. Therefore, at this juncture the Court will decline to apply the ecclesiastical abstention doctrine to McRaney's claims for intentional interference with business relations, and those claims are not subject to dismissal based on this doctrine.

McRaney v. N. Am. Mission Bd. of S. Baptist Convention, Inc., 304 F.Supp.3d 514, 521 (N.D. Miss. 2018) (internal citations omitted).

With respect to the plaintiff's defamation claim, the court adopted that same neutral-principles approach:

In the case sub judice, however, McRaney has pled specific harm—that the alleged defamatory statements contributed to his termination. Accordingly, to determine whether McRaney's claim has merit, the Court need only decide whether the statements about McRaney were false and whether they caused his termination, neither of which will require the Court to delve into any religious practices or matters of internal church governance. Thus, on the face of the complaint, the Court can adjudicate this claim without delving into impermissible religious inquiries, the ecclesiastical exception therefore does not apply, and NAMB's motion to dismiss this claim on this basis is denied.

Id. at 522–523 (internal citations omitted).

- In *Mallette v. Church of God International*, the Mississippi Court of Appeals reasoned that a defamation claim could be evaluated by secular courts where, as here, it did not involve an analysis of a church's established disciplinary practices:

The disciplining of a minister is church-related and the doctrine of ecclesiastical abstention requires us to abstain from questioning the manner of Mallette's discipline. In *Mallette I*, we remanded because we did not know whether the church's disciplinary practice included an announcement to the congregation of a pastor's misdeeds. If it did not, then Mallette's defamation claim stemming from the reading of the letter may have been actionable in a civil court because dissemination of the letter to unprivileged third parties would have had no ecclesiastical justification.

Mallette v. Church of God Int'l, 789 So.2d 120, 124 (Miss. Ct. App. 2001).

- The Colorado Supreme Court held in *Destefano v. Grabrian* that a husband's tort claims could move forward against a priest who engaged in a sexual relationship with the plaintiff's wife during sacramental marriage counseling sessions, concluding that the First Amendment did not immunize defendants from liability because the priest's sexual activity was not conduct that "falls within the practices or beliefs of the Catholic church." *Destefano v. Grabrian*, 763 P.2d 275, 283-284 (Colo. 1988).
- The Arizona Court of Appeals cited the *Destefano* case with approval in *Rashedi v. General Board of Church of the Nazarene*, allowing claims of negligent hiring, firing, and supervision brought by the plaintiff to move forward against the Church of Nazarene where the plaintiff alleged that she was defrauded and seduced by her pastor. The

Court reasoned that a court may analyze the structure and documents of a religious organization so long as it is done in secular terms:

The Board contends that, even if neutral principles of tort law applied, the court would still have to examine the structure of the Church of the Nazarene to properly define the duties of the various defendants. Maybe so. But the court can examine the structure of a religious organization for such a purpose. A court may examine religious documents so long as it is done in purely secular terms. Any inquiry into the structure of the religious organization would not be undertaken to resolve any internal organizational dispute or the appropriateness of the conduct of the parties in relation to their religious beliefs or obligations. Inquiry into the organizational structure would be to factually determine the roles the parties played in the licensing and hiring of an employee

Rashedi v. Gen. Bd. of Church of Nazarene, 54 P.3d 349, 354-55 (Ariz. Ct. App. 2002) (internal citations omitted).

- The Illinois Court of Appeals held in *Duncan v. Peterson* that a plaintiff minister's claim for false light invasion of privacy was not barred by the ecclesiastical abstention doctrine where the plaintiff alleged that a senior pastor of the minister's former church sent a derogatory letter concerning the plaintiff to board members of the plaintiff's current church, holding that the claim must be evaluated based on the tortious conduct alleged in the complaint, which could be analyzed on neutral principles:

We determine that we do not need to inquire into or interpret religious matters to decide whether the May 9, 2000, letter was false and misleading and was a tortious invasion of privacy. We are not required to look at religious doctrine or the biblical underpinnings of The Moody Church's right to revoke an ordination to determine whether defendants' conduct invaded Duncan's privacy by publishing false information. While both sides of this case focus on the religious theory underlying

whether the Moody Church had the ability to revoke an ordination of a person who resigned his membership and pastoral position, that is not the harm alleged in the complaint. The harm alleged in the complaint resulted from the alleged conduct of defendants in placing Duncan in a false light when revoking that ordination. Even if the reasoning behind defendants' decision to revoke the ordination bestowed upon Duncan by The Moody Church is not reviewable because it is "steeped in matters of theological import," we may review defendants' conduct in carrying out the revocation.

Duncan v. Peterson, 835 N.E.2d 411, 421-422 (Ill. Ct. App. 2005).

Similarly, the instant case can be heard without reference to religious doctrine, as appropriately found by the Court of Appeals. The Appellants argue that the Court of Appeals decision somehow "inevitably insert civil courts into matters of internal church governance" and thus "entanglement is guaranteed." (EC Brief, p. 41.) However, this claim is a defamation claim, and the context-specific standard under Tennessee law is a "person of ordinary intelligence" standard, and not a subjective standard requiring inquiry into a particular minister. *See Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000). Further, because the defamatory information came from Guidepost, a third-party vendor with no religious affiliation, litigation would not necessitate any inquiry into church doctrine or polity. Indeed, the SBC's doctrine is wholly irrelevant as to whether a person of ordinary intelligence would understand the statements. As explained by the Court of Appeals:

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.

Slip op. at 19-18. Indeed, the Court of Appeals was able to review whether Mr. Garner had made a *prima facie* case of defamation and false light without making any inquiries whatsoever into the religious doctrine of the SBC by focusing on the content and circumstances surrounding the defamatory communication. An examination of the circumstances surrounding the defamatory statement reveals that the SBC initially received the anonymous allegation through Guidepost Solutions, a secular company who had entered into a contract with the SBC which **only** required Guidepost to gather the information and forward it to the SBC. (T.R., Vol. I, p. 22; T.R., Vol. III, p. 368-370). Thus, although the contract called for the establishment of an “independent 24/7 reporting mechanism” to facilitate the reporting of sexual abuse claims, Guidepost’s actual investigatory obligations were specifically limited under its contract with the SBC to the time period from January 1, 2000 to June 14, 2021. (T.R. Vol. III, p. 368-370). By entering into such an arrangement, the SBC intentionally elected not to establish an investigatory protocol for newly originated sexual abuse claims, but now seeks to allay blame for its lack of investigation into the claims against Mr. Garner by claiming that it simply forwarded information that it received from an outside secular organization to an affiliate church.

In truth, the SBC received this anonymous allegation from Guidepost, communicated the allegation to a third party, and then vouched for its veracity despite conducting no internal investigation regarding the source or truth of the claim and lacking any internal mechanism to do so. It is on this very basis that the Court

of Appeals concluded that a neutral-principles approach could be adopted when analyzing the case at bar. The appellate court noted, “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.’” *Id.* at 14. The Plaintiff’s claim has nothing to do with whether Everett Hills was in friendly cooperation with the SBC. *Id.*

The Appellants further make an overbroad allegation that the process of civil discovery will “plunge[] an inquisitor into a maelstrom of Church policy, administration, and governance.” (EC Brief, pp. 44-45) (citing *Anderson v. Watchtower*, 2007 WL 161035, 2007 WL 161035, *11 (Tenn. Ct. App. Jan. 19, 2007)). Such an argument seems disingenuous when the Appellants filed three volumes of documentation regarding the SBC’s work with Guidepost Solutions. Indeed, the religious beliefs of the SBC are wholly irrelevant to Mr. Garner’s claim of defamation or false light. The Plaintiffs do not ask this court to “substitute their judgment for that of a church governing bod[y] on issues of doctrine, belief, or practice. *Id.* at *6.

In order to support their position, the Appellants attempt to equate the Garners’ claim to that of an employment claim—it is not. Although Mr. Garner certainly lost employment as a result of the various defamatory communications at issue, his loss of employment was not based upon any “disciplinary process.” In other words, he did not lose his employment based upon any dictate or policy of the SBC. Mr. Garner lost his employment due to the defamatory statements that the SBC made to various entities with the unfounded and patently false allegation that he was involved

in sexual abuse of a minor. Although the Appellants try to frame it as so, this is not an employment or ministerial decision by the SBC and its entities.

c. The Appellant's position would result in the overturning of *Redwing*.

Without being explicit, the Defendants are requesting that this Court overrule its holding in *Redwing* and eschew the neutral principles approach and, indeed, place religious institutions in a preferred status in contravention of the Establishment Clause. In *Redwing*, this Court found that claims regarding a religious institution's negligent hiring of clergy members "do not inevitably enmesh the courts in religious doctrine or dogma." *Id.* at 452. The *Redwing* court held that it may look into the Catholic church's employment of clergy to assert jurisdiction over *Redwing*'s claim that the Diocese acted negligently with regard to the hiring, retention, and supervision of a priest who had sexually abused *Redwing* as a child. *Id.* at 442. In that case, the Diocese asserted that "even if the factual allegations in Mr. *Redwing*'s complaint are taken as true, the doctrine of ecclesiastical abstention deprives Tennessee's civil courts of subject matter jurisdiction over Mr. *Redwing*'s negligent hiring, retention, and supervision claims." *Id.* at 450.

This court noted that religious institutions "exist and function in the context of the broader secular community." *Id.* (citing *Debrota v. Free Serbian Orthodox Church St. Nicholas*, 952 P.2d 1190, 1195 (Ariz. Ct. App. 1998)). Thus, religious institutions cannot merely claim they are "above the law." *Id.* (citing *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238, 1244–45 (10th Cir. 2010) (quoting *Rayburn v. General Conference of Seventh–Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985)). As a result, the ecclesiastical abstention doctrine is *only* implicated when the alleged improper conduct is "rooted in religious belief." *Id.* (quoting *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657 (10th

Cir. 2002); *McKelvey v. Pierce*, 173 N.J. 26, 800 A.2d 840, 851 (2002)). “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.” *Id.* at 450-51 (citing *Jones v. Wolf*, 443 U.S. 595, 602-07 (1979)).

This Court held that “the ecclesiastical abstention doctrine does not necessarily immunize religious institutions from all claims for damages based on negligent hiring, supervision, or retention” and that courts “may address these claims, as long as they can do so using neutral principles of law and can refrain from resolving religious disputes and from relying on religious doctrine.” *Id.* at 452. The Diocese, much like the Appellants in the case *sub judice*, argued that sexual misconduct was directly contrary to Roman Catholic Church’s beliefs, teaching, and principles; however, the Court found this argument “overreaches the bounds of the protections afforded the ecclesiastical abstention doctrine.” *Id.*

The Appellants argue that the Garners’ claim, because it involves communications from employees of the Executive Committee to other pastors, somehow is intricately enmeshed in religious doctrine. However, this simple inquiry pales in comparison to *Redwing*, where this Court allowed a civil claim challenging the hiring, firing, and retention of clergy by the Roman Catholic Church. There is simply no way this Court can now adopt the Appellant’s overbroad position and allow *Redwing* to stand.

The State Attorney General takes the position that *Redwing* is—at least in part—no longer good law in light of the U.S. Supreme Court decision in *Hosanna-Tabor*. (A.G. Br., at 28.) This reasoning ignores *Hosanna-Tabor*’s well-defined, narrow holding: “The case before us is an employment discrimination suit brought on behalf of a minister, challenging her church’s decision to fire her. Today we hold only that the ministerial exception bars such a suit. We express *no view* on whether

the exception bars other types of suits, including actions by employees alleging breach of contract or *tortious conduct by their religious employers.*” *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 196 (2012) (emphasis added). It is difficult to see how the Court of Appeals’ opinion could possibly “conflict” with U.S. Supreme Court law that had specifically taken no position on such tortious actions and had specifically limited its holding to allow courts to continue to exercise jurisdiction over such claims. Further, this Court considered both *Redwing* and the import of *Hosanna-Tabor* in *Church of God in Christ, Inc. v. L.M. Haley Ministries, Inc.*, 531 S.W.3d at 158-59. In *COGIC*, this Court considered whether the trial court correctly dismissed a lawsuit involving a dispute over the use and control of church property pursuant to the ecclesiastical abstention doctrine. *Id.* at 149. The plaintiffs in that suit, a non-profit religious corporation, filed suit against a newly formed church and its members alleging that the defendants illegally assumed control over COGIC’s real property in violation of “The Official Manual” used by the denomination. *Id.* at 152. The Court of Appeals determined that the ecclesiastical abstention doctrine prevented jurisdiction in the matter, holding that the court had “no subject matter jurisdiction to declare . . . the lawful leader of [Temple COGIC].” *Id.* at 155.

This Court first determined whether the ecclesiastical abstention doctrine “operates as a bar to subject matter jurisdiction or is an affirmative defense” because “in 2012, the United States Supreme Court held that another doctrine derived from the Religion Clauses of the First Amendment—the ministerial exception—constitutes an affirmative defense.” *Id.* at 156-57 (citing *Hosanna-Tabor*, 565 U.S. at 195 n.4). This Court specifically found that *Hosanna-Tabor* “did not address the ecclesiastical abstention doctrine.” *Id.* at 157. This Court noted that “until and unless the United States Supreme Court declares otherwise, the 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 and which concern ‘theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of moral required of them.’” *Id.* at 159 (citing *Watson*, 80 U.S. at 733)) (emphasis added). This Court then noted that “the ecclesiastical abstention doctrine certainly does *not* apply in every legal dispute involving religious organizations,” citing to *Redwing* and noting that “Tennessee’s courts may address these claims, *as long as they can do so using neutral principles of law and can refrain from resolving religious disputes and from relying on religious doctrine.*” *Id.* (citing *Redwing*, 363 S.W.3d at 452) (emphasis in original). Thus, in 2017, when *COGIC* was decided, this Court certainly did not find any conflict between *Hosanna-Tabor* and *Redwing*. Indeed, this Court went on to reverse the lower courts’ application of the ecclesiastical abstention doctrine, finding that the church property dispute could be dealt with through a neutral-principles approach. *See id.* 172-73.

Were this Court to now reverse course and credit the overbroad application of the “church autonomy doctrine” as argued by the Appellants, the result could only be the reversal of *Redwing*, resulting in barring victims of sexual assault from the courts when complaining of the negligent employment and supervision of religious organizations. Such a result would truly place religious institutions in a position above the law.

II. The TPPA does not have an “enhanced evidentiary” standard at the *prima facie* stage

The Appellants claim that the Court of Appeals’ opinion contradicted this Court’s recent decision in *Charles v. McQueen*, 693 S.W.3d 262 (Tenn. 2024),

regarding the appropriate standard applicable to whether a plaintiff has made a prima facie case in a TPPA claim. The Appellants advocate that the TPPA requires an “enhanced” standard at the prima facie stage.

The First Amendment does not give one license to make false statements against an individual, even if those statements otherwise relate to an issue of public concern. *Garrison v. State of La.*, 379 U.S. 64, 75 (1964). The TPPA provides that, even if a court determines that the challenged lawsuit is based upon the exercise of the right to free speech, right to petition, or right of association, the court next determines whether the respondent has made a prima facie case for each essential element of his claim. *See* Tenn. Code Ann. § 20-17-105(a)-(b). In evaluating the Plaintiffs’ proof, the court may consider supporting sworn affidavits stating admissible evidence upon which the liability is based, or “other admissible evidence presented by the parties.” Tenn. Code Ann. § 20-17-105(d).

The trial court, when reviewing the Defendants petition to dismiss under the TPPA, erroneously applied the Rule 12.02(6) standard on motions to dismiss and improperly took all complaint allegations “as true.” *Id.* At the time of the trial court’s ruling, the standard as applied to the prima facie requirement in the TPPA was unsettled. The Court of Appeals, however, correctly noted that “prima facie” in the context of TPPA claims had been recently defined by this Court in *Charles v. McQueen*, 693 S.W.2d 262 (Tenn. 2024)). In doing so, this Court held that “[a]s in 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 favorable to the party seeking to establish the prima facie case and disregard countervailing evidence.” *Id.* at 281.

The intermediate appellate court found no meaningful difference between this standard and the Rule 12 standard, and the appellate court applied the correct standard in upholding the trial court’s denial of the Appellants’ TPPA petition. The

Court of Appeals directly cited *Charles* in quoting the appropriate standard, and nothing in the opinion below belies or undermines this standard. Indeed, in the instant case, multiple sworn declarations were submitted in response to the Appellants' TPPA petition, which were considered by the trial and intermediate appellate court. (T.R., Vol. III, pp. 476-495.)

Additionally, the Appellants have waived further appeal of this issue by failing to address the Garners' allegation that Ms. Peters' oral assertion that the allegations against Preston Garner were "credible" constituted defamation. As noted by the Court of Appeals, the issue was waived by Appellants upon intermediate appellate review. *See* Slip op. at 15, fn.6 ("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, issues raised for the first time in a reply brief are waived.") (internal quotations omitted). The Appellants cannot take issue with the trial court's review of this portion of the defamation claim when they themselves failed to address it on intermediate appeal.

CONCLUSION

The courts below correctly found that the First Amendment does not bar adjudication of the Plaintiffs' tort claims. The Appellants overbroadly assert religious immunity; however, the Plaintiffs' claim does not require entanglement with the SBC's religious policies or polity. Further, the courts below correctly finding that the Plaintiffs made out a *prima facie* case of defamation and false light invasion of privacy, and the underlying courts should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel hereby certifies that the foregoing brief complies with the type-volume limitation provided in Supreme Court Rule 46, Section 3, Rule 3.02. The relevant portions of the foregoing brief contain 11,625 words.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of October, 2025, a copy of the foregoing Appellee's Brief was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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