Nos. 07-19-00307-CV & 07-19-00280-CV

In the Seventh District Court of Appeals of Texas at Amarillo

IN RE DIOCESE OF LUBBOCK,
Relator.

DIOCESE OF LUBBOCK,
Appellant,
v.
JESUS GUERRERO,
Appellee.

On Appeal from Cause No. 2019-534,677
237th Judicial District Court—Lubbock County, Texas
Honorable Les Hatch, Judge Presiding

Brief of *Amicus Curiae* Texas Catholic Conference of Bishops in Support of Appellant and Reversal

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IDENTITY AND INTEREST OF THE *AMICUS CURIAE*

The Texas Catholic Conference of Bishops ("TCCB" or "the Bishops") is an unincorporated association consisting of the bishops of fifteen Catholic Dioceses in Texas and the Ordinariate of the Chair of St. Peter. CR:55, at ¶ 6. TCCB provides a means by which the various bishops of Texas can speak with one voice on issues that face the Catholic Church in Texas. CR:55, at ¶ 6.

The Bishops made the decision on September 30, 2018 to release the names of clergy credibly accused of sexually abusing a minor. CR:55, at ¶ 7. This decision is the result of the Bishops' internal church governance deliberations, their understanding of, and reliance upon, the law of the Catholic Church (known as "Canon Law"), and the Bishops' determination that they needed—consistent with the new universal norms on the reporting of sexual abuse set forth by Pope Francis—to speak openly and honestly with members of the Catholic faithful in Texas. *See* CR:55, at ¶ 8; CR:57, at ¶ 15; *see also* Andrea Tornielli, *New Norms for the Whole Church Against Those Who Abuse or Cover Up*, Vatican News (May 9, 2019), https://perma.cc/PF3P-XDRG (discussing the "new juridical instrument" issued by Pope Francis to report sexual

abuse claims in "*Vos estis lux mundi*," which is Latin for "You are the light of the world").

The Bishops' decision is at the core of Appellee Jesus Guerrero's tort claims here. Every Texas bishop therefore possesses a strong interest in this case's specific outcome. *See*, *e.g.*, Order, *Msgr. Michael Heras v. The Diocese of Corpus Christi, et al.*, Cause No. 2019DCV-1062-G (319th Dist. Ct., Nueces County Aug. 5, 2019) (dismissing, for lack of jurisdiction, a case substantially similar to Guerrero's); Order, *Fr. John Feminelli v. The Diocese of Corpus Christi, et al.*, Cause No. 2019DCV-1063-G (319th Dist. Ct., Nueces County Aug. 5, 2019) (same).

Moreover, the Bishops have a more general interest in preserving church autonomy rights in Texas. Resolving the claims in this case "would unconstitutionally impede the church's authority to manage its own affairs," a violation of both federal and Texas civil rights law. *Westbrook v. Penley*, 231 S.W.3d 389, 397 (Tex. 2007). Accordingly, the Bishops submit this *amicus* brief to explicate "the church-autonomy cases [that] govern the analysis in this case." *Id.* at 395.[1]

[1] The Bishops incorporate by reference Appellant Diocese of Lubbock's (the "Diocese") statement of the case, statement regarding oral argument, issue presented, and statement of facts. TCCB is paying all fees and costs related to the filing of this

ARGUMENT

The plaintiff here seeks to punish the Diocese of Lubbock for doing the right thing. Once the Diocese determined that Guerrero was credibly accused of sexual misconduct, it had the moral and legal duty to warn its members. Viewed solely in light of the facts of this case, the Court should reverse so that the Diocese's good deed is not punished.

But the stakes here are even higher than one former church official's claims against his diocese. They go to the very heart of the church-state relationship in the State of Texas. Can a religious organization freely interact with its clergy according to its own particular religious beliefs, or will the government and private litigants be empowered to rummage through churches' internal affairs? To ask the question is to answer it.

The reason why the answer is so obvious is rooted in deep-seated constitutional principles of church autonomy. The Texas Supreme Court and the Supreme Court of the United States have held that "the autonomy of a church in managing its affairs . . . has long been afforded broad constitutional protection." *Westbrook*, 231 S.W.3d at 397

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brief. Bishop Robert Coerver S.T.L, M.S. is one of twenty-two member bishops of the TCCB and his diocese, the Diocese of Lubbock, is assessed annual operating dues by the TCCB, along with the other 15 dioceses/archdioceses/ordinates in Texas, to help support the TCCB.

(discussing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872)). Indeed, the "the concept of church autonomy," *id.* at 395, is not simply in the First Amendment—it is a "rule of action . . . , founded in a broad and sound view of the relations of church and state under *our system of laws*, ..." *Watson*, 80 U.S. at 727 (emphasis added).[2] The "concept of church autonomy" explains why Guerrero's claims must fail under *both* the Texas Citizens Participation Act ("TCPA" or the "Anti-SLAPP statute") *and* the First Amendment. *See infra* pp. 5-17. As such, the District Court's taking of jurisdiction over the case—*and* its denial of the motion to dismiss Guerrero's tort claims under the TCPA—were equally erroneous. Guerrero's arguments reflect a fundamental misunderstanding of the "concept of church autonomy" explicated by Texas and federal courts that, if adopted, will chill religious free exercise.

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[2] While not all cases discussing the various doctrines encompassed by "church autonomy" use that phrase, the Texas Supreme Court used it to describe them all. *See Westbrook*, 231 S.W.3d at 395-96. Professor Douglas Laycock, a renowned expert on religious liberty jurisprudence and former University of Texas law professor, similarly uses the phrase. *See, e.g.*, Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373 (1981). "Church autonomy" cases present "situation[s] where the two clauses," that is, the First Amendment's Establishment Clause and the Free Exercise Clause, "work to the same end." Paul G. Kauper, *Church Autonomy and the First Amendment: The Presbyterian Church Case*, 1969 Sup. Ct. Rev. 347, 375 (1969); *see also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188-89 (2012) (explaining the ministerial exception's roots in both the Establishment Clause and the Free Exercise Clause).

I. Church autonomy principles require that Guerrero's claims be dismissed.

A. Church autonomy principles are embedded in both Texas and federal law.

Both Texas and federal law provide that the First Amendment's church autonomy principles apply to "many types of disputes." *Patton v. Jones*, 212 S.W.3d 541, 548 (Tex. App.–Austin 2006, pet. denied); *see also Watson*, 80 U.S. at 727 (church autonomy principles underlie "our system of laws").[3] These principles bar civil courts from entertaining *any* claim that requires an analysis of "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required." *Watson*, 80 U.S. at 733; *see also Westbrook*, 231 S.W.3d at 397-98.

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[3] For example, the Internal Revenue Code exempts religious organizations from income tax and considers contributions to religious organizations tax-deductible. *See, e.g.*, 26 U.S.C. § 501(c)(3); *id.* § 170. Bankruptcy law prohibits courts from considering, at the motion to dismiss stage, "whether a debtor has made, or continues to make, charitable contributions . . . to any qualified religious or charitable organization." 11 U.S.C. § 707. Title VII of the Civil Rights Act of 1964 exempts religious organizations from religious discrimination claims. 42 U.S.C. §§ 2000e-1(a), 2000e-2(a), 2000e-2(e)(2). Unions cannot interfere with a religious school's internal management. *See NLRB v. Catholic Bishop*, 440 U.S. 490, 507 (1979). Criminal law privileges from discovery communications between clergy and the penitent. *See, e.g.*, *Mockaitis v. Harcleroad*, 104 F.3d 1522 (9th Cir. 1997).

Tort law accounts for these principles too. *See* Victor Schwartz & Christopher Appel, *The Church Autonomy Doctrine: Where Tort Law Should Step Aside*, 80 U. Cin. L. Rev. 431, 454 (2012) ("Put simply, the law recognizes that compensating an injured party, preventing discrimination, deferring to local land use bodies, making creditors whole, and so forth are not the only legal values worth preserving."). For this reason, courts in Texas—and around the country—consistently shape tort-law duties around their effect on church autonomy.[4] Defamation claims are no exception—even when the communication at issue occurs with individuals who are non-church members that "voluntarily become part of [the church's] internal dialogue." *Bryce v. Episcopal Church in Diocese of Colorado*, 289 F.3d 648, 658 (10th Cir. 2002) ("The church autonomy doctrine" protects "the First Amendment rights . . . to discuss church doctrine and policy freely."). This protection

[4] *See, e.g.*, *Westbrook*, 321 S.W.2d at 391-98 (professional negligence claim rejected because, even if "we presume the counseling at issue was purely secular in nature[,] we cannot ignore Westbrook's role as Penley's pastor."); *Tilton v. Marshall*, 925 S.W.2d 672, 679 (Tex. 1996) (no fraud claim exists against a pastor where promises are based "on statement of religious doctrine or belief" but only cognizable when "promises to perform particular acts"); *In re Pleasant Glade Assembly of God*, 991 S.W.2d 85, 89 (Tex. App.–Fort Worth 1998) (holding it "is not a justiciable controversy" to decide whether a church was "negligent[] or intentionally misapplied church doctrine" in casting out demons).

extends to "ecclesiastical discussions with members *and non-members*." *Id.* (emphasis added); *see also Westbrook*, 231 S.W.3d at 396 ("defamation claim" was "abandoned;" it "would have required the court to delve into the religious question of whether Westbrook's statement about the biblical impropriety of Penley's behavior was true or false"). Unsurprisingly then, the 319th District Court in Nueces County recently dismissed, on jurisdictional grounds, substantially similar tort claims to Guerrero's against the Diocese of Corpus Christi. *See* Order, *Msgr. Michael Heras v. The Diocese of Corpus Christi, et al.*, Cause No. 2019DCV-1062-G (319th Dist. Ct., Nueces County Aug. 5, 2019); Order, *Fr. John Feminelli v. The Diocese of Corpus Christi, et al.*, Cause No. 2019DCV-1063-G (319th Dist. Ct., Nueces County Aug. 5, 2019).

In Texas, courts undertake this "broader analysis" of whether *any* church autonomy concept applies by "consider[ing] the substance and nature of the plaintiff's claims." *Patton*, 212 S.W.3d at 547-48. Importantly, this analysis does *not* turn on whether the plaintiff's claims ask the court to "resolve a theological question." *Westbrook*, 231 S.W.3d at 397. The analysis applies even when conduct the plaintiff alleges taken by the church is "purely nondoctrinal." *Combs v. Cent. Tex. Annual*

Conference of United Methodist Church, 173 F.3d 343, 350 (5th Cir. 1999). Rather, civil courts must refrain from adjudicating plaintiff's claims if the court "would unconstitutionally impede the church's authority to manage its own affairs." *Westbrook*, 231 S.W.3d at 397; *see also Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 107-08 (1952) ("regulat[ing] church administration, the operation of churches, [or] the appointment of clergy . . . prohibits the free exercise of religion");[5] *Hosanna-Tabor,* 565 U.S. at 205-06 (Alito and Kagan, JJ., concurring) ("grave problems for religious autonomy" if "a civil court—and perhaps a jury—would be required to make a judgment about church doctrine"). In such cases, there is no balancing of interests to determine whether a case may proceed. "[T]he First Amendment has struck the balance for us." *Id.* at 196 (unanimous opinion).

B. Church autonomy principles reflect religion's unique role in American life.

"[S]pecial solicitude to the rights of religious organizations" follows from American law's understanding of religious liberty. *See Hosanna-Tabor*, 565 U.S. at 189; *see also id.* at 182-88 (discussing the history of

[5] The Supreme Court extended *Kedroff* to judicial actions in *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960).

church autonomy considering the First Amendment's original public meaning). This unique status is rooted in the "prevailing understandings" of the founding generation, which appreciated "the difference between religious faith and other forms of human judgment." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1496 (1990).

Unlike any other form of human judgment, religious exercise is, as James Madison (the First Amendment's author) explained in his 1785 *Memorial and Remonstrance Against Religious Assessments*, the manifestation of "dut[ies]" owed "to the Universal Sovereign" that exist separate and apart from "Civil Society" (meaning civil government). *See* James Madison, *Memorial and Remonstrance Against Religious Assessments* 53 (Aspen 2011); *see also* Carl H. Esbeck, *The Establishment Clause as a Structural Restraint on Government Power*, 84 Iowa L. Rev. 1, 55 (1998) (religious institutions "preexisted the state, are transnational, and would continue to exist if the state were suddenly dissolved or destroyed."). "Solicitude for a church's ability to" determine "that certain activities are in furtherance of [its] religious mission" therefore "reflects the idea that furtherance of the autonomy of religious

organizations often furthers individual religious freedom as well." *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring).

"From colonial times," as American cultural observers from Alexis De Tocqueville onward recognize, the social space ensured by this solicitude allows religious organizations to provide "not only for the spiritual needs of their congregants and communities," but "their social welfare as well." *E.g.*, Ram Cnaan, *Our Hidden Safety Net: Social & Community Work by Urban American Religious Congregations*, 17 Brookings Rev. 50, 50-53 (1999); *see also* Alexis De Tocqueville, Democracy in America, 296-97, 310, 444-45, 543-44 (J.P. Mayer ed., George Lawrence trans., 2006) (by orienting man to transcendent truths "beyond worldly goods," religion makes man less likely to define society around either materialism or utopianism); W. Cole Durham, Jr. & Alexander Dushku, *Traditionalism, Secularism, and the Transformational Dimension of Religious Institutions*, 1993 BYU L. Rev. 421, 426 (1993) (discussing the "space and sensitive protection" religious organizations "need" to fulfill their religious obligations—and "the generative and regenerative contribution to social life that they (and in many respect, they alone) can make"). In

short, as Justices Alito and Kagan put it, "the autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, . . . the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs." *Hosanna-Tabor*, 565 U.S. at 199 (Alito and Kagan, JJ., concurring).

C. The claims here are barred by church autonomy principles.

Regardless of whether the Court analyzes church autonomy principles when assessing jurisdiction *or* when assessing Guerrero's claims under the TCPA/the Anti-SLAPP statute, their application is clear: Guerrero's tort claims require a civil court to adjudicate whether the Diocese correctly determined—in light of the Catholic Church's Canon Law, its own internal policy changes, and an internal decision to speak transparently with faithful Catholics in the area—to include him on a list of clergy credibly accused of sexually abusing a minor. Assessing that decision thus requires "the civil courts . . . to inquire into . . . doctrinal theology" and "the written laws" of the Catholic faith regarding who a

minor is under Canon Law,[6] as well as "the usages and customs" of a church's authority to change policies on abuse claims, and a bishop's authority to speak with his flock about those changes. *See Watson*, 80 U.S. at 733. As *Watson* and the foregoing principles confirm, *see supra* pp. 3-11, all such inquires by civil courts are prohibited.

Indeed, as Guerrero's arguments in this Court demonstrate, the only avenues he offers around church autonomy principles are fundamentally mistaken:

Reducing church autonomy principles solely to the "ministerial exception." Guerrero wrongly suggests that there is only one way in which church autonomy principles apply "to defamation claims." Guerrero Br. 25. He claims this sole way is set forth in case law involving the "ministerial exception," a type of church-autonomy dispute where "the sole jurisdictional inquiry is whether the employee is a member of the clergy or otherwise serves a 'ministerial' function." *Patton*, 212 S.W.3d at 548 (citation omitted). To be sure, "a church's selection of its

[6] As explained in the Diocese's brief (*see* p. 10), "Canon law prescribes the framework for governance of the Church" and "bishops are bound to follow" it. Br. of Appellant at 13, No. 07-19-00280 (Tex. App.–Amarillo Aug. 29, 2019).

ministers" is "an internal church decision that affects the faith and mission of the church." *Hosanna-Tabor*, 565 U.S. at 190.[7] But, as *Patton* specifies, the ministerial exception is "narrowly" focused on an employee's ministerial status—there is a "broader analysis" for other kinds of church autonomy principles. *See* 212 S.W.3d at 548. Numerous courts recognize this distinction.[8] Guerrero's attempt to cabin church

[7] It is from the ministerial exception line of church autonomy cases that Guerrero argues that church autonomy principles are, *in general*, inapplicable to "publications made outside the church or to publication made within the church if there are unusual or egregious circumstances." Guerrero Br. at 23. Set aside for a moment that rules regarding the ministerial exception do not govern *all* church autonomy principles (discussed *supra*). As *Patton* itself confirms, there is "not a bright-line rule . . . between defamatory remarks published to members of the church versus communications with third parties." 212 S.W. 3d at 555 n.12. This is for good reason. Visitors (i.e., non-church members) attend church services all the time. A communication at Sunday mass, for example, can thus be (and often is) heard by members and non-members alike. *Cf. Bryce*, 289 F.3d at 658 (churches have a "right[] . . . to engage freely in ecclesiastical discussions with members and non-members," and civil liability does not follow from "a third party who is not subject to internal church disciplinary procedures" being apart of that communication when that third party "voluntarily became apart of [the church's] internal dialogue" on the matter at hand).

[8] *See Hosanna-Tabor*, 565 U.S. at 185 (distinguishing ministerial exception issues from "disputes over church property" that raise a similar, but different, question of church autonomy); *Westbrook*, 231 S.W.3d at 395-400 (characterizing the ministerial exception as "closely analogous" to "the church autonomy cases," but not treating them as co-extensive); *Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 172 (5th Cir. 2012) (explaining that "the right of religious organizations to control their internal affairs" "*includes* the freedom to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine, *and* the right of religious organizations to select their own leaders.") (internal quotation marks and citation omitted) (emphasis added).

autonomy principles here solely to how the ministerial exception works is therefore inappropriate.

Suggesting that church autonomy principles cannot apply to defamation claims. Guerrero argues that it is "striking[ly]" "iron[ic]" to apply church autonomy principles to the tort of defamation, which requires analysis of whether "the [Church's speech] was related to a matter of public concern." Guerrero Br. 6. But the application of church autonomy principles does not turn on whether the *content* of the Church's speech is a matter of public concern. Rather, church autonomy principles bar this suit if the suit's claims require the Court to analyze, in assessing that content's truthfulness—as must be done in any defamation tort claim—"theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required." *Watson*, 80 U.S. at 733; *see also Westbrook*, 231 S.W.3d at 396 ("abandoned" "defamation claim" "would have required the court to delve into the religious question of whether Westbrook's statement about the biblical impropriety of Penley's behavior was true or false"). There is, therefore, no inconsistency in a statement being *both* a matter of public concern *and* a matter of "church

doctrine and policy" that a church has a "right[] . . . to discuss . . . freely" with willing listeners. *Bryce*, 289 F.3d at 658.

Inviting prohibited inquiry into internal church policy decisions and governing law. Ultimately, Guerrero all but admits that he desires the forbidden inquiry. When defending his defamation claims from the TCPA, Guerrero contends that the only reason why the Diocese did not publicize the allegation against him before the list was released was because of a recent change "to the Church's prior position of keeping the matter only within the church." Guerrero Br. 14. He further defends his defamation claims by arguing that the Catholic Church's understanding of a "minor" in Canon Law is not "a reasonable person's perception" of the term, and thus no bar to his claim. Guerrero Br. 17. When Guerrero turns to church autonomy principles directly, he wants the Court to hold that the "three-fold purpose" for which the Diocese released the list—"transparency, healing and trust"—"do[ ] not remotely deal with internal governance or discipline" within the Catholic Church. *Id.* at 29. These claims directly contradict the principles of church autonomy.

Ignoring his remedy within the Catholic Church. As the *Charter for Protection of Children and Young People* evidences at length, the United

States Conference of Catholic Bishops possesses a Vatican-recognized process for handling sexual abuse claims. *See* CR:56, at ¶ 10 (Charter received recognition by Holy See on December 2, 2002). Article 5 provides that

> [a] priest or deacon who is accused of sexual abuse of a minor is to be accorded the presumption of innocence during the investigation of the allegation and all appropriate steps are to be taken to protect his reputation. He is to be encouraged to retain the assistance of civil and canonical counsel. *If the allegation is deemed not substantiated, every step possible is to be taken to restore his good name, should it have been harmed.*
>
> *In fulfilling this article, dioceses/eparchies are to follow the requirements of the universal law of the Church and of the Essential Norms approved for the United States.*

United States Conference of Catholic Bishops, *Charter for Protection of Children and Young People*, Article 5, 10-11, (June, 2018) https://perma.cc/D9FN-JU9J (emphasis added). If Guerrero were truly interested in challenging the Diocese's investigation, its conclusion regarding his conduct, or its sharing of that information with parishioners, Article 5 gives Guerrero every right to "restore his good name" via the Catholic Church's centuries-old Canon Law procedures. Yet at no point does Guerrero allege that he did so. Instead, Guerrero brought a civil action seeking money damages. Circumventing "internal

dispute resolution" on the ground that the Church's "religious reasons" for opposing civil litigation are "pretextual"—as Guerrero does (*see* Guerrero Br. 3, 6-8)—is not a tactic the First Amendment permits. *See Hosanna-Tabor*, 565 U.S. at 194-95, 205 (Lutheran commissioned minister disciplined for evading Lutheran church courts).

II. Bishop Coerver's exercise of his First Amendment right to speak to the members of his diocese is a "public concern" under Texas Anti-SLAPP law.

Church autonomy principles reinforce that Guerrero's claims are barred by the TCPA (also known as the "Anti-SLAPP" statute). Tex. Civ. Prac. & Rem. Code §§ 27.001-27.011.

The Anti-SLAPP statute in effect at the time of the publication defined free speech as a "communication made in connection with a matter of public concern." *Id.* § 27.001(3). A "[c]ommunication" is the making or submitting of a statement or document in any form or medium including "oral," "written," or "electronic." *Id.* § 27.001(1). Here, the Diocese's acts of publishing the letter, the list, and the revised list—along with the subsequent oral discussion of the same—all constituted protected "communications" on a matter of public concern under the Anti-SLAPP statute. *See Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S.

749, 761 (1985) (examining whether speech is of public concern depends on its "content, form, and context") (internal quotation marks and citation omitted) (opinion of Powell, J.).

A matter of public concern is defined under the Anti-SLAPP statute as including, among other things, an issue related to health, safety, or community well-being. Tex. Civ. Prac. & Rem. Code § 27.001(7)(B)-(C). Whether a communication is of a public concern is a question of law. *Connick v. Myers*, 461 U.S. 138, 148 n.7 (1983); *Klentzman v. Brady*, 456 S.W.3d 239, 257 (Tex. App.–Houston [1st Dist.] 2014), *aff'd*, 515 S.W.3d 878 (Tex. 2017). The issue of whether a matter is of "public concern" is preserved if the party filing the Anti-SLAPP statute motion to dismiss claims the statements are protected free speech. *Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 896-897 (Tex. 2018) (movant preserves error by claiming statements related to right to free speech, and it is not necessary to specify which particular subsection of Tex. Civ. Prac. & Rem. Code § 27.001(7) allegedly applies to make statements "matter of public concern"). Whether a communication is of a public concern can be raised for the first-time during appeal as the standard of review is *de novo*. *Id.* at 897.

Here, the purpose for the communications at issue was Bishop Coerver's "good faith," (along with the other bishops of Texas) attempts at (1) increasing transparency about credible allegations of sexual misconduct in the Diocese, (2) restoring trust among the ranks of the faithful, and (3) showing the Diocese's parishioners and the public that Texas dioceses are serious about ending the cycle of abuse in the Catholic Church. CR:55, at ¶ 7; CR:57, at ¶ 15; *see also id.* (noting the Diocese's desiring to promote the healing for sexual-abuse victims and protecting minors from sexual abuse, while restoring trust in the Catholic Church).

Indeed, there can be no doubt that the communications at issue are a matter of public concern. The disclosure and publication of the lists of clergy credibly accused of sexual abuse of minors (as defined by Catholic Canon law) serves multiple public purposes:

A. Ensures that potential crimes under Texas law are disclosed for the benefit to the public. This promotes safety and community well-being in Texas for both the church and the public at large;

B. Acts as a deterrent against others committing sexual abuse since clergy abusers know their names may be publicly disclosed. This ultimately benefits the health and safety of children and the community's well-being for both the church and public at large;

C. Promotes healthy communities in knowing that the Bishops are free to discuss publicly church governance issues which is

for the benefit of both churches and the public at large's benefit;

D. Reaffirms the right of the Bishops to interpret their own church law free from outside second guessing by civil courts. This promotes community well-being for churches and the public at large in knowing government will not interfere with Church matters;

E. Promotes church explanations of their religion and internal decisions to the public at large, thus promoting well-being of the community outside of the church in understanding how the church is administered and operated. By contrast, not allowing these communications creates suspicion and fear that churches are not operating for the communities' well-being;

F. Supports a church's ability to discipline its clerics as it determines without second guessing by civil courts, which serves the well-being of the church communities and public at large;

G. Promotes the public at large's understanding of church administration which is for the well-being of community at large, both the religious community and the public at large;

H. Affirms past minor victims of child sexual abuse by clergy by showing their claims are treated seriously. This promotes their health and the well-being of the community;

I. Serves as an example for other religious entities to address and disclose these types of credible claims, knowing that such disclosures are protected free speech and of public concern; and

J. Promotes collegiality and association among religious leaders to address important public safety issues together rather than piece meal. This benefits the well-being of the religious community and public at large. It also helps protect the safety of children.

As such, the Diocese has clearly met its initial burden in establishing the Anti-SLAPP statute applies. Indeed, concluding otherwise portends pernicious effects for church autonomy.

III. Allowing lawsuits against religious organizations for telling their members about those credibly accused of sexually abusing those who habitually lack the use of reason will chill transparency and religious liberty.

The Bishops are deeply concerned that affirming the District Court's rulings here "would clearly have a 'chilling effect' on churches[,]" "depriv[ing] [them] of their right to construe and administer church laws," and effectively "compel[ling] the Church to abandon part of its religious teachings." *Westbrook*, 231 S.W.3d at 400 (internal quotation marks and citations omitted). There are several reasons why.

First, imposing civil liability for revealing those credibly accused of sexual abuse will put more people in danger of abuse. As Pope Francis recently exhorted Catholic Bishops around the world, new, "universally adopted" reporting procedures that expand transparency must be "adopted to prevent and combat these crimes that betray the trust of the faithful." Pope Francis, Apostolic Letter Issued Motu Proprio, *Vos estis lux mundi*, (May 7, 2019), https://perma.cc/FHY8-SG6J. Other religious

denominations, too, have considered enhanced transparency regarding the "handling of sexual abuse" critical to the prevention of further abuse. *Cf.* Phillip Bethancourt, *A guide to understanding the Credentials Committee proposal*, Ethics and Religious Liberty Commission of the Southern Baptist Convention, May 30, 2019, https://perma.cc/9HF6-L3TX. If religious organizations must fear that a civil court will second-guess their determinations of credible sexual abuse allegations, those organizations may shy away from sharing any allegations with their flocks at all. Important information about known abusers will therefore be kept concealed from those who could use it to avoid abuse.

In fact, such a result would run directly counter to recently-enacted Texas law. The Texas Legislature enacted legislation that provides civil immunity to charitable organizations acting in good faith when acting to disclose, to an individual's current or prospective employer, information that the charitable organization reasonably believed to be true regarding an allegation that an individual who was employed by, volunteering for, or an independent contractor of, the charitable organization (or its associated organizations) committed various sexual offenses—including

sexually abusing a minor. *See* Tex. Civ. Prac. & Rem. Code §84.0066(A) (effective Sept. 1, 2019).

Second, imposing civil liability for revealing those credibly accused of sexual abuse would harm the reputation of churches in the eyes of the community as being unfit environments—especially for children or other vulnerable members of society. Efforts to make amends and regain the trust of a religious community, as the Diocese sought to do by releasing this list, cannot be punished without chilling the effort altogether.

Third and fourth, imposing civil liability in this case would *both* chill the speech of religious organizations *and* disrupt their internal governance. The Establishment Clause in particular was designed to prevent "the power of the state" from "narrow[ing] the acceptable range of clerical opinion within the Church." Michael W. McConnell, *Establishment and Disestablishment at the Founding*, *Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2133 (2003). Such opinions include "what they stand for and how big a tent they should erect" in engaging with the secular world. *Id.*

Here, affirming the District Court would authorize civil courts to determine the "correct" opinion a religious organization should have

about its internal laws (*i.e.*, whether its understanding of a minor is "reasonable" in the eyes of others, *see* Guerrero Br. 17), the "correct" purposes for speaking with their faithful followers (*see* Guerrero Br. 29), and the "correct" courses of action it can take when making internal policy changes (*see* Guerrero Br. at 14). Such a threat harms all religions—not only the Catholic Church.

Judaism, for example, is a numerically smaller religion in America without a central authority defining "true" Judaism or resolving such disputes. Different groups within Judaism (Sephardi, Ashkenazi, and Yemeni, for example) thus maintain different traditions—on all sorts of issues and practices impacting the secular world (from how to eat, how to work, how to groom, how to wear clothes, or how to celebrate holidays). If church autonomy principles were no barrier to a civil court effectively deciding, through the imposition of civil liability, the "proper" understanding of Judaism to a given circumstance considering other public policy considerations, then civil courts would be free to "compel" some Jews "to abandon part of [their] religious teachings." *Westbrook*, 231 S.W.3d at 400 (internal quotation marks and citations omitted). The First Amendment renders that result untenable. *See, e.g.*, *Paul v.*

Watchtower Bible and Tract Soc. of New York, Inc., 819 F.2d 875, 881 (9th Cir. 1987) ("Were we to permit recovery" in tort, "'the pressure . . . to forego that practice [would be] unmistakable'") (quoting *Thomas v. Review Board*, 450 U.S. 707, 717 (1981)) (alteration in *Paul*).

Fifth and finally, for the same reason, civil courts cannot impose punitive damages on the Diocese without violating church autonomy principles. Nevertheless, Guerrero requests "exemplary" damages here—specifically asking that "[a] jury of Lubbock county" "punish[]" the Diocese for including him on the list of credibly-accused clergy. *See* Plaintiff's Original Petition ¶ 44. This decision, as detailed above, was made because of the Catholic Church's Canon Law understanding of a "minor," and internal policy changes regarding the need to disclose sexual abuse allegations to lay Catholics. Even if "churches and religious bodies" may not possess "a categorical exemption from liability for punitive damages," "imposing punitive damages on a church to force it to abandon teaching" its tenets "is simply too great" an intrusion "upon the forbidden field of religious freedom." *Lundman v. McKown*, 530 N.W.2d 807, 816 (Minn. Ct. App. 1995), *cert. denied sub. nom. Lundman v. First Church of Christ, Scientist*, 516 U.S. 1092 (1996) (reversing award of

$9 million in punitive damages against a church based on a minor's death from the denial of medical care for juvenile diabetes).

CONCLUSION & PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the principles of church autonomy underlie both Texas and federal law. Guerrero's claims directly contradict those principles. Accordingly, the District Court's decision should be reversed and remanded with instructions to dismiss.

Respectfully submitted,

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I certify that a true and correct copy of the foregoing *amicus curiae* brief was this 25th day of September, 2019, served electronically through eFile.TXCourts.gov record in accordance with the Texas Rules of Appellate Procedure on all known counsel of, listed below:

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