

No. 20-0127

In the Supreme Court of Texas

IN RE DIOCESE OF LUBBOCK,
Relator.

On Petition for Writ of Mandamus from the 237th Judicial District Court, Lubbock County Courthouse, the Honorable Les Hatch, Cause No. 2019-534,677, and the Seventh District Court of Appeals at Amarillo, No. 07-19-00307-CV

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STATEMENT OF THE CASE

Nature of case: This petition arises from a suit for defamation brought by Jesus Guerrero, a Deacon within the Diocese of Lubbock, after the Diocese published his name on a list of clergy credibly accused of sexually abusing “minors” within the meaning of Catholic canon law.

Respondent: Respondent is the Honorable Les Hatch of the 237th Judicial District in Lubbock County, Texas.

Relief sought: The Diocese seeks an order vacating Respondent’s denial of the Diocese’s plea to the jurisdiction, which argued that the “religious autonomy” doctrine bars Respondent from interfering in the Diocese’s communications with members about the status of clergy.¹

Appellate Disposition: A petition for writ of mandamus was filed in the Court of Appeals for the Seventh District of Texas on August 29, 2019. A panel comprising the Honorable Brian Quinn, Patrick Pirtle, and Judy Parker unanimously denied mandamus. The opinion was authored by Chief Justice Quinn and issued, with a judgment, on December 6, 2019. *See In re Diocese of Lubbock*, – S.W.3d –, 2019 WL 6693765 (Tex. App.—Amarillo 2019, pet. denied) (A:3).²

¹ This doctrine is called “ecclesiastical abstention.” The Diocese uses “religious autonomy” throughout, in keeping with this Court, the U.S. Supreme Court, and leading scholars.

² Record cites will be designated by “CR:___” while appendix cites will be designated by “A:___”

STATEMENT OF JURISDICTION

This Court has jurisdiction to grant mandamus under Article V, § 3 of the Texas Constitution and Section 22.002(b) of the Texas Government Code. “Mandamus relief is an appropriate remedy when the trial court acts without subject-matter jurisdiction.” *In re Alief Vietnamese All. Church*, 576 S.W.3d 421, 428 (Tex. App.—Houston [1st dist.] 2019, orig. proceeding). Here, mandamus relief is proper because the district court lacked jurisdiction over the Diocese’s communications with its members about the discipline of clergy. *See id.* at 427 (“A party may raise lack of subject-matter jurisdiction via a plea to the jurisdiction when religious-liberty grounds form the basis for the jurisdictional challenge.”) (internal citation and quotation marks omitted).

ISSUE PRESENTED

Do the First Amendment’s Religion Clauses bar claims by a clergyman arising solely from an internal church decision to announce the results of an investigation into clergy credibly accused of sexually abusing minors, conducted in accordance with church law and as part of a broader suite of policy reforms announced to church members?

STATEMENT OF FACTS

The origins of this case lie in a 2002 decision by the United States Conference of Catholic Bishops, an association of all the Catholic bishops serving in the United States, to modernize church policies in the wake of rampant allegations of sexual abuse of minors by Catholic clergy. CR:56

¶ 10. That policy was last revised by the bishops in 2018. In response to the revised policy, in 2019, the Diocese of Lubbock (the “Diocese”) published a list of all diocesan clergy who had ever credibly been accused of sexually abusing a minor as defined by canon law. Deacon Jesus Guerrero (“Deacon Guerrero”) sued after his name was included on the list.

The Catholic Church’s Policy

The 2002 policy had wide-ranging implications:

First, the bishops commanded all dioceses “to inform[] parish and other church communities directly affected by sexual abuse of a minor” in an “open and transparent” manner. USCCB, *Charter for the Protection of Children and Young People* 12 (last revised June 2018), (the “*Charter*”) (A:46).

Second, the *Charter* instructed dioceses to understand “sexual abuse of a minor” in accord with the Catholic Church’s canon law.³ A:51. Canon law defines “minor” as *both* someone “below the age of eighteen years” and “a person who habitually lacks the use of reason” *Id.* (quoting article 6 § 1 of *Sacramentorum sanctitatis tutela*); CR:56 ¶ 9. The *Charter* recognized that “the entire Catholic community in this country has suffered because of this scandal” and hoped that “the bonds of trust that unite” Catholics can be “restore[d]” through transparency. A:38.

³ Canon law is the Catholic Church’s body of law, and bishops are bound to follow it. CR:55-56 ¶ 8.

Third, the *Charter* authorized “diocesan and eparchial review boards” to assist bishops in “mak[ing] the decisions needed to fulfill the *Charter*.” A:41. These boards would enable transparent communication by evaluating sexual abuse claims. And they would help ensure “every step possible is to be taken to restore” the “good name” of any clergy member when an investigated allegation is “deemed not substantiated.” A:45.

Fourth, every diocese’s compliance with the *Charter* would be assessed by a national review board. A:41.

Deacon Guerrero

One year after the *Charter* took effect, the Diocese received an allegation that Deacon Guerrero committed sexual misconduct with a woman known to have mental and emotional challenges. CR:56 ¶ 12.⁴ The misconduct allegedly occurred at the very parish where Deacon Guerrero served and was reported by two eyewitnesses, including a parish employee. CR:153; CR: 56 ¶ 12.

Consistent with the *Charter*, the Diocese formed a review board and invited Deacon Guerrero to respond. CR:153-54. After the investigation, the bishop suspended Deacon Guerrero’s diaconal faculties and requested that he withdraw from public diaconal functions. CR:56 ¶ 12.

⁴ Catholic deacons are ordained ministers, with authority to preach and conduct rites. CR:55 ¶ 5. Like priests, they promise obedience to their diocesan bishop and are expected, as clergy, to embody the Catholic faith. CR:55 ¶ 5.

Deacon Guerrero was later reinstated and assigned to a different parish. CR:56-57 ¶ 12. Despite this, six months later, he was again alleged to have engaged in sexual misconduct with the same woman. CR:57 ¶ 12. Following a second investigation, also subject to internal review, the bishop permanently suspended Deacon Guerrero's faculties. *Id.* Suspension under canon law, however, is not removal ("laicization"). Deacon Guerrero thus remains a Deacon subject to canon law.

Texas Diocesan Action

With new accusations of sexual abuse being made against the Catholic Church in 2018, the *Charter* was updated that summer and the bishops of the 15 Texas dioceses acted on its command of "open and transparent" communication. *See* A:46; CR:123-24. To that end, they would investigate and release to lay Catholics the names of all clergy within their respective dioceses credibly accused of sexually abusing a minor. CR:124.

As the revised *Charter* directed, the Texas bishops applied canon law's definition of a "minor." CR:154-55; CR:55 ¶ 7; Code of Canon Law, canon 97 § 2. This meant that the internal church review of allegations and resultant communication to Catholics would encompass not only those credibly accused of abusing children, but also those credibly accused of abusing any "person deemed vulnerable due to a health or mental condition." CR:154.

The allegations against Deacon Guerrero were reviewed under this standard and deemed credible by those conducting the Diocese's internal

review. CR:56 ¶¶ 11-12. He was therefore included on the list. CR:57 ¶ 13.

The Diocese’s Initial and Revised Lists

The list was published on the Diocese’s website, *www.catholiclubbock.org*, the ordinary means by which the Diocese communicates with the over 136,000 Catholics in its jurisdiction (which spans 25 counties). CR:55 ¶ 7; CR:57 ¶ 13. The Diocese’s only reference to Deacon Guerrero was on the list—nowhere else. CR:57 ¶¶ 13-14.

Claiming he never sexually abused a *child*, Deacon Guerrero demanded that his name be retracted from the initial list. CR:57 ¶ 14. Diocesan counsel responded by giving Deacon Guerrero the documents the Diocese relied upon in including him on the list. CR:153-54. These included:

- letters to the Bishop of Lubbock from the parish priest where the alleged misconduct occurred;
- two eyewitness statements about the alleged misconduct;
- correspondence with Deacon Guerrero about the Diocesan Review Board investigation and the subsequent suspension of his diaconal faculties; and
- statements from the alleged victim.

CR:153-54. An accompanying letter also explained the canon law’s definition of “minor.” CR:154.

After corresponding with Deacon Guerrero, the Diocese updated the list to detail the canon law understanding of “minor” and to note that a Diocesan finding is “not equivalent to a finding by a Judge or Jury that

the cleric is liable for sexual abuse of a minor” under civil or criminal law. CR:145-46. The revised list was also published on the Diocese’s website—nowhere else—and no other substantive changes were made.

The Statements at Issue

Including the two lists, there are seven publications in the court record.⁵ They have three things in common: (1) each indicates that the lists were directed to lay Catholics; (2) each refers to the credible accusations of sexual abuse as abuse of “minors”; and (3) each identifies the lists as part of a broader change in Diocesan policy on processing and reporting sexual abuse claims.

The original list (CR:140-41), a letter Bishop Coerver wrote to accompany the original list (CR:142-43), the revised list (CR:145-46), and the interview with Bishop Coerver reported by KCBD (CR:131-32) all refer exclusively to “minors.”

The Diocese’s press release (CR:123-24) and two media interviews about the list and related Diocesan policy changes (CR 113-14; CR:119) use the word “children,” but only in the broader “context” of church reforms. *See* CR:123-24 (Diocesan press release: “The bishops’ decision was made in the context of their ongoing work to protect children from sexual abuse, and their efforts to promote healing and a restoration of

⁵ These publications are attached exhibits to Deacon Guerrero’s trial court filings. One of his attached news articles, CR:136-38, was objected to, and that objection was sustained, CR:236. It is therefore not at issue.

trust in the Catholic Church.”); CR:119 (FOX34 interview with Diocesan Chancellor⁶ Marty Martin, explaining the Diocese’s “safe environment program” in the context of the Diocese being safe for “children”). Indeed, in one media interview with Chancellor Martin, the reporter noted that “the Chancellor for the Diocese says all the individuals abused were minors.” A:32. No reference to “children” was made regarding the list.

Media Statements

Media outlets opined about the list in their own way. For example, FOX34’s news anchor characterized the list as one of “credible allegations . . . of sexual abuse against children.” CR:117. And as mentioned above, while some KAMC reporting characterized the list similarly, a reporter noted that Chancellor Martin “sa[id]” those on the list were credibly accused of sexually abusing “minors.” A:32.

The Litigation

Deacon Guerrero sued the Diocese, claiming defamation and intentional infliction of emotional distress. CR:8-11 ¶¶ 19-40. He did not sue any media outlets.

The Diocese brought both a plea to the jurisdiction and a motion to dismiss under the Texas Citizens Participation Act, arguing that religious autonomy barred both of Deacon Guerrero’s causes of action.

⁶ A diocesan chancellor is a bishop’s assistant.

CR:14-21. After a hearing, the trial court denied both the motion to dismiss and the plea to the jurisdiction. CR:232; CR:233.

The Diocese sought mandamus on the plea of jurisdiction and appealed the denial of the motion to dismiss. The court of appeals denied mandamus, holding that religious autonomy did not bar Deacon Guerrero's claims because of a "pivotal nuance": The "matters," even if "historically deemed ecclesiastical" were "expos[ed] . . . to the public eye." A:11. In other words, because the Diocese "posted [the list] on its website accessible by the general public," *id.*, "accompanied its internet post with a press release," A:12, "[n]ews coverage followed," *id.*, and some of the Diocese's statements made reference to "society," *id.*, there was no religious autonomy protection. *See also* A:14. Indeed, because the statement was publicly released, the court of appeals imputed to the Diocese statements about the list *made by the media*. *See* A:10-11.⁷

SUMMARY OF ARGUMENT

Deacon Guerrero's claims require a civil court to judge an announcement of internal church policy and clergy status that is directed to church members and based in part on church laws. But doing so would violate *both* principles of religious autonomy set forth in *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007): namely, that courts cannot (1) "resolve a religious question" or (2) "impede the church's authority to

⁷ The decision on the motion to dismiss is subject to a separate appeal. *See* Cause No. 20-0005.

manage its own affairs.” *Id.* at 397-98. As a result, Deacon Guerrero’s claims are jurisdictionally barred by the religious autonomy doctrine.

Contrary to the court of appeals, whether the statements at issue went outside “the confines of the church” is of no moment. A:16. If it were, courts would be entangled in a denomination-by-denomination determination of “proper” communications to members about church policy and clergy status. Because this is exactly what religious autonomy seeks to avoid, review and reversal are warranted.

ARGUMENT

I. The district court lacked subject-matter jurisdiction.

A church possesses “broad constitutional protection” in “managing its affairs.” *Westbrook*, 231 S.W.3d at 397 (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872)). Thus, courts lack jurisdiction to adjudicate claims that would (1) require them to “resolve a religious question” or (2) “impede the church’s authority to manage its own affairs.” *Id.* If allowed to proceed, Deacon Guerrero’s claims would violate both principles. First, they would require the court to second-guess whether the Diocese properly concluded that Deacon Guerrero had been “credibly accused of sexually abusing a minor” within the meaning of Catholic canon law—an inherently religious question. Second, they would impede the Diocese’s ability to carry out the *Charter*—that is, “to inform[] parish and other church communities directly affected by sexual abuse of a

minor” in an “open and transparent” manner, and adopt internal review policies that effectuate this directive. A:46. The Court should grant mandamus to bar the district court from exercising jurisdiction on these issues and infringing the Diocese’s religious autonomy.

A. Jurisdiction is barred because Deacon Guerrero’s claims implicate an inherently religious question.

The Diocese’s conclusions about Deacon Guerrero’s abuse of a “minor” within the meaning of Catholic canon law is doubtlessly a religious matter beyond judicial reach. *Westbrook* itself approved abandonment of a defamation claim because it “would have required the court to delve into the religious question” of whether the plaintiff’s alleged “biblical impropriety” was “true or false.” 231 S.W.3d at 396. And in *Torravia v. Peloquin*, the court refused to address an accusation of pornography distribution, because doing so would require “an analysis” of the plaintiff’s conformity “to the standard of morals required.” 399 S.W.3d 690, 692, 696 (Tex. App.— Corpus Christi 2013, pet. denied). Other courts similarly decline to address such claims. *See, e.g., Klagsbrun v. Va’ad Harabonim*, 53 F. Supp. 2d 732, 741 (D.N.J. 1999), *aff’d*, 263 F.3d 158 (3d Cir. 2001) (no jurisdiction for defamation claim over whether plaintiff engaged in “bigamy *within the meaning of the Orthodox Jewish faith*”); *Kavanagh v. Zwilling*, 997 F. Supp. 2d 241, 252 (S.D.N.Y. 2014) (no jurisdiction to question church finding of “sexual abuse of a minor,” even after accuser changed critical portion of testimony) (citing cases). Thus

here, even the court of appeals expressly disclaimed any intent to second-guess “the decision of the Diocese to discipline” Deacon Guerrero. A:11.

Instead, the court found jurisdiction to hear Deacon Guerrero’s claims because the Diocese used the word “children” in ways supposedly suggesting that Deacon Guerrero was credibly accused of not just “minor” abuse, but “child” abuse. A:12-13, A:15. Because “children” has no uniquely religious connotation, the court concluded that canon law was “not in play.” A:15. For several reasons, this argument fails.

First, it is untrue that the Diocese used “children” in connection with Deacon Guerrero. Whenever the Diocese referred to what Deacon Guerrero was credibly accused of, it was always sexual abuse of a “minor,” not a child. *Supra* p.7.

Second, the only discussion of “credible allegations . . . of sexual abuse against children” came from the media—not the Diocese. *See* CR:117. The court of appeals wrongly imputed the media’s use of “children” to the Diocese, A:12-13.; A:24-25; *supra* p.8. The Diocese is not liable for others’ misstatements. *Bentley v. Bunton*, 94 S.W.3d 561, 586 (Tex. 2002) (“We do not suggest for a moment that a talk show host is liable for a guest’s statements to which the host does not voice objection.”). Indeed, notwithstanding media misstatements, the Diocese “sa[id] all the individuals abused were minors.” A:31 (KLBK/KMAC reporter). And after Deacon Guerrero complained about the list, the Diocese revised it to explicitly explain that “minor” as defined by canon law includes adults

lacking full mental capacity and that a Diocesan finding of “credible allegation” did not comport with any findings by a civil or criminal court. CR:146.

Finally, whenever the Diocese referred to “children,” it was discussing broader policy reforms, not Deacon Guerrero. As the *Charter* explains, “open and transparent” communication about the sexual abuse of “minors” by clergy, A:46, is only one part of a broader suite of policy reforms, some of which—like the “safe environment” program discussed by the Diocese on television, CR:119—pertain only to “child and youth protection programs,” not “minors,” A:46.

The court of appeals erred by isolating the Diocese’s use of “children” in the context of its broader policy, conflating that use with the media’s use of “children,” and then narrowly construed it as defamatory to Deacon Guerrero. Religious autonomy prohibits this out-of-context maneuvering.

Take, for example, *Thiagarajan v. Tadeipalli*. The plaintiff there was on the board of directors of his Hindu temple and sued the board secretary for defamation after being accused of using the temple library to circulate x-rated movies. 430 S.W.3d 589, 591-93 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The plaintiff seized on a statement that the secretary was acting only as a “member” of the temple, and not as “secretary,” in order to claim that the dispute was thus “outside the confines of the temple.” *Id.* at 595. But the court “reject[ed]” this approach, holding that the allegedly defamatory statements “must be

viewed in the larger context” of the “religious issues and considerations” at play. *Id.* at 595-596. Because that context “unavoidably would lead a civil court into the forbidden territory of litigating ‘conformity of the members of a church to the standard of morals required of them,’” jurisdiction was foreclosed. *Id.* at 596 (citation omitted).

Similarly, in *Kavanagh*, the plaintiff insisted that the court need look “no further” than a church press release acknowledging a victim’s recanted testimony to analyze whether the plaintiff had sexually abused a minor under canon law; no “analysis of church doctrine” was required. 997 F. Supp. 2d at 252. Again, the myopic lens was rejected. Rather, the court emphasized that the defamation had to be viewed within the full context of the “canonical court decisions,” “canonical law,” and “church doctrine” surrounding the recanted testimony announced by the press release. *Id.* Because this would have required the court to “make pronouncements about Catholic doctrine that it [was] neither competent nor permitted to make,” the court, like the others, declined jurisdiction. *Id.* at 253.

So too here. The Diocese’s occasional references to “children” were not statements targeted at Deacon Guerrero and must be considered within the much larger and more accurate context of the Diocese implementing the *Charter* and related policies on transparency and openness. The Religion Clauses prohibit the “significant burden” of a church having to “predict which of its activities a secular court will consider religious.”

Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 336 (1987). By crafting its own understanding of “context,” the court of appeals did just that.

B. Jurisdiction is barred because Deacon Guerrero’s claims impede church policy.

Second-guessing internal church decision-making is also barred by the religious autonomy doctrine—even if questions of religious doctrine are not at issue—because it “encroach[es] on the church’s ability to manage its internal affairs.” *Westbrook*, 231 S.W.3d at 395; *see also id.* at 396-97 (prohibition on “resolv[ing] religious question” “goes to only one area of constitutional concern”); *In re Thomas High School*, 495 S.W.3d 500, 509-10 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). “It is not only the conclusions” a civil court may reach that may “impinge rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions.” *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). Thus, courts must take a “light touch” with matters of religious belief and practice” lest the “sorting task itself invades the religious body’s integrity.” *Whole Woman’s Health v. Smith*, 896 F.3d 362, 370, 372 (5th Cir. 2018) (citation omitted), *cert denied*, 139 S. Ct. 1170 (2019).

Here, there are three principal reasons why adjudicating Deacon Guerrero’s defamation claims would unconstitutionally impinge on church governance. The court of appeals ignored all of them.

First, although the court of appeals assumed that Deacon Guerrero's disciplinary proceedings themselves are not in issue, A:11, Deacon Guerrero himself challenges both the allegations leading to his disciplinary process and the decisions resulting from it. CR:148-49 (Guerrero affidavit). But just as it is clear that a court cannot second-guess the canonical meaning of "minor," it is equally clear that "courts generally do not permit tort claims arising from internal processes by which religious organizations discipline their members." *Hubbard v. J Message Group Corp.*, 325 F. Supp.3d 1198, 1214 (D.N.M. 2018). Counsel is aware of no case to the contrary. *Cf. Whole Woman's Health*, 896 F.3d at 370 ("no case" authorizing discovery into religious body's communications concerning "activities in the public square to advance and protect its position on serious moral or political issues").

Second, church governance includes "informing members of the Catholic Church of the status of its clergy." *Tran v. Fiorenza*, 934 S.W.2d 740, 744 (Tex. App.—Houston [1st Dist.] 1996). And "the manner in which the Diocese formally executes and adopts a policy . . . delves into the Diocese's governance of its internal affairs which the [religious autonomy] doctrine precludes." *In re Vida*, No. 04-14-00636-CV, 2015 WL 82717, at *3 (Tex. App.—San Antonio Jan 7, 2015, orig. proceeding). Here, however, Deacon Guerrero seeks to interfere in that process, demanding that a civil court ignore the *Charter's* directive that every

diocese in the United States transparently investigate and discuss credible allegations of clergy sexual abuse of minors with lay Catholics.

Finally, if Deacon Guerrero's claims proceed and subject the Diocese to punitive damages, all Texas dioceses—and perhaps others nationwide—would be chilled from carrying out the *Charter*. This “would clearly have a ‘chilling effect’ on churches’ ability to discipline [clergy], and deprive churches of their right to construe and administer church laws.” *Westbrook*, 231 S.W.3d at 400 (citations omitted).

II. The Diocese's religious autonomy was not lost simply because its communications left its buildings.

Despite acknowledging that Deacon Guerrero's claims implicate “internal church discipline,” A:13, “historically ecclesiastical activity,” A:10-11, and “a religious term imbedded in canon law,” A:15, the court of appeals upheld jurisdiction. What was “pivotal,” the court determined, was that the Diocese's communication “left the confines of the church.” A:11, A:16. This is not the law.

There is *no case* that lets the breadth of a statement's publication strip religious autonomy from defamation claims that require a court to either sit in judgment of religious doctrine or chill the application of church laws. Courts *may* consider the scope of publication when “treading on—or wading into—religious doctrine” is unnecessary. *Kliebenstein v. Iowa Conf. of United Methodist Church*, 663 N.W.2d 404, 407 (Iowa 2003). And, a statement being discussed only among members of a particular church

can “strengthen[]” the reasons to apply religious autonomy. *Hubbard*, 325 F. Supp.3d at 1219. But no court holds as the court of appeals did, that “ecclesiastical activity” becomes justiciable just because it “left the confines of the church.” A:10, A:16.

Rather, dozens of cases have ignored the scope of publication when religious doctrine or church law is at issue. This is true of a church press release, *Kavanagh*, 997 F. Supp. 2d at 244-53; announcements on “social media,” *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 660 (Fla. Dist. Ct. App. 2018), *cert. denied*, 139 S. Ct. 1601 (2019); publications in the *San Antonio Express-News*, *In re Godwin*, 293 S.W.3d 742, 746-49 (Tex. App.— San Antonio 2009, orig. proceeding); “shunning” announcements in newspapers, *Sands v. Living Word Fellowship*, 34 P.3d 955, 959-60 (Alaska 2001); and “disfellowshipping” on “mass media” television, *Anderson v. Watchtower Bible & Tract Soc’y of N.Y., Inc.*, No. M2004-01066-COA-R9-CV, 2007 WL 161035, at *32 (Tenn. Ct. App. Jan. 19, 2007). The First Amendment guarantees “the right of the church to engage freely in ecclesiastical discussions with members *and non-members*.” *Bryce v. Episcopal Church in Diocese of Colorado*, 289 F.3d 648, 658 (10th Cir. 2002) (emphasis added). When “ecclesiastical discussions” are at issue, that ends the matter.

The court of appeals’ new rule portends serious religious entanglement over what, exactly, it means to leave “the confines of the church.” Here, the Diocese’s statements confirm that it was directing its message to lay

Catholics. *See supra* pp.7-8. Indeed, even some media coverage described the Diocese’s effort as one “to improve the safety of all Catholics within the state.” CR:131 (KCBD news article). The court of appeals did not explain why a message directed to members of the Catholic Church is not within that church’s “confines.” It is artificial to conclude that the Diocese’s “confines” can be no broader than a particular church building’s four walls, especially when the Diocese itself includes 61 churches, over 136,000 Catholics, and spans 25 counties. And a hard rule restricting communications to members only would force courts to slice-and-dice what it means to be a “member” of a “church”—an inquiry that would itself run afoul of religious autonomy. *Cf. Ambellu v. Re’ese Adbarat Debre Selam Kidst Mariam*, 387 F. Supp. 3d 71, 80 (D.D.C. 2019) (discussing problem with court efforts to define “membership rights in the Church” when they lack secularly defined rules).

Further, the lower court’s novel rule is simply unadministrable. There is always a possibility that non-church members hear a message to church members, even when that message is said from the pulpit. Non-members may be in the pews. They may end up watching a mass or service on television or online. *See supra* p.18 (identifying diverse ways churches communicate with their members). Indeed, some of the most important messages in Western history—including arguably defamatory statements—were distributed to church members and accessible to non-members. *See, e.g.,* Pope Leo X, *Papal Bull of Excommunication of Martin*

Luther and his followers (1521), reproduced in *A Reformation Reader* 384 (Denis R. Janz ed.) (2d ed. 2008). <https://perma.cc/SAJ4-HNFW> (worldwide announcement, primarily to Catholics, that Martin Luther is “the slave of a depraved mind” and is excommunicated, a critical event in the Protestant Reformation). Despite claiming to “parse” the “nuances” of religious autonomy, the court of appeals confronted none of this complexity. Rather, its new rule entails denomination-by-denomination assessments “membership” and the “confines of the church.” *Westbrook’s* two scenarios for religious autonomy will be meaningless if these “nuances” are “pivotal.”

Because the Diocese published the lists to its members via its traditional means of communicating with them—its website, and only spoke to the media about its broader policy of transparency, the religious autonomy protections remain intact.

III. Without mandamus, transparency and accountability toward clergy sexual abuse claims may be chilled.

Time and again, this Court and Texas appellate courts grant mandamus “when religious-liberty grounds form the basis for the jurisdictional challenge.” *Westbrook*, 231 S.W.3d at 394 (citation omitted); *see also In re Alief Vietnamese Alliance Church*, 576 S.W.3d at 427-28 (same); *In re St. Thomas High Sch.*, 495 S.W.3d at 506 (trial court must dismiss when it lacks subject-matter jurisdiction, and mandamus is an appropriate remedy when trial court acts without subject-matter

jurisdiction). Religious liberty is at stake here. If this Court does not grant mandamus here or grant the Diocese's companion Petition for Review, there is a real risk that the transparency and accountability exhibited by religious organizations toward allegations of clergy sexual abuse will be chilled.

Right now, orders in two related cases are pending in the Thirteenth District Court of Appeals presenting a substantially similar question. *See, Order, Heras v. Diocese of Corpus Christi*, Cause No. 2019DCV-1062-G (319th Dist. Ct. Nueces County Aug. 5, 2019); *Order, Feminelli v. Diocese of Corpus Christi*, Cause No. 2019DCV-1063-G (319th Dist. Ct., Nueces County Aug. 5, 2019).

Similar cases are also being filed throughout the country. *See, e.g., Hamilton v. Roman Catholic Church of the Archdiocese of New Orleans*, Case 2:19-cv-14665-BWA-JVM (E.D. La. Dec. 17, 2019); *Toohey v. Diocese of St. Louis*, 19SL-CC05055 (St. Louis Cir. Ct. Nov. 3, 2019); *Compl., Smalls v. Catholic Diocese of Richmond*, 2019 WL 3552618 (Va. Cir. Ct. July 29, 2019) (No. CL-2019-10321). This Court should correct the court of appeals before its errors are compounded.

PRAYER

Relator respectfully prays that the Court grant the Petition for Writ of Mandamus, vacate the trial court's denial of its plea to the jurisdiction, and order the trial court to enter a new order granting the plea to the

jurisdiction. Relator prays for all other relief, whether at law or in equity,
to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Petition complies with Rule 9 of the Texas Rules of Appellate Procedure and the word count of this document is 4439. The word processing software used to prepare this filing and calculate the word count is Microsoft Word for Office 365.

Date: February 20, 2020

/s/*Eric C. Rassbach*
Eric C. Rassbach

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition was filed and served this twentieth day of February 20, 2020, served electronically through eFile.TXCourts.gov on all known counsel of record, listed below:

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CERTIFICATION

Pursuant to Texas Rule of Appellate Procedure 52.3(j), I hereby certify that I have reviewed the petition and conclude that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/*Eric C. Rassbach*
Eric C. Rassbach

No. _____

In the Supreme Court of Texas

**IN RE DIOCESE OF LUBBOCK,
*Relator.***

On Petition for Writ of Mandamus from the 237th Judicial District
Court, Lubbock County Courthouse, the Honorable Les Hatch, Cause
No. 2019-534,677, and the Seventh District Court of Appeals at
Amarillo, No. 07-19-00307-CV

APPENDIX

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A35	USCCB Charter for the Protection of Children and Young People (June 2018)

NO. 2019-534,677

JESUS GUERRERO
Plaintiff,

V.

DIOCESE OF LUBBOCK
Defendant.

§ IN THE DISTRICT COURT
§
§
§ 237TH JUDICIAL DISTRICT
§
§
§ OF LUBBOCK COUNTY, TEXAS

ORDER DENYING DEFENDANT'S PLEA TO THE JURISDICTION

CAME TO BE HEARD on the 25th day of June 2019, Defendant's Plea to the Jurisdiction this case. After considering the motions, briefs and arguments of counsel, the court finds that above referenced motions shall be denied.

IT IS THEREFORE ordered, adjudged and decreed that Defendant's Plea to the Jurisdiction is **DENIED**.

Signed on the 16th day of July, 2019.



DISTRICT JUDGE

No. 07-19-00307-CV

In re Diocese of Lubbock, Relator	§	Original Proceeding
	§	December 6, 2019
	§	Opinion by Chief Justice Quinn
	§	

J U D G M E N T

Pursuant to the opinion of the Court dated December 6, 2019, it is ordered, adjudged and decreed that relator's petition for writ of mandamus is hereby denied.

It is further ordered that Relator pay all costs in this behalf expended for which let execution issue.

o O o



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-19-00307-CV

IN RE DIOCESE OF LUBBOCK, RELATOR

ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

December 6, 2019

OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

“Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.”¹ The biblical verse captures the inherent conflict long existent between civil and religious authority. We now address an aspect of that conflict raised through the ecclesiastical abstention doctrine.

Jesus Guerrero sued the Diocese of Lubbock for allegedly defaming and intentionally inflicting emotional distress upon him. The accusations underlying both causes of action concern the Diocese’s publication of a list entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor.” Guerrero, a former deacon with the Diocese, found his name on the list. The Diocese moved to dismiss the action under § 27.001 *et seq.* of the Texas Civil Practice and Remedies Code. So too did it file a plea to the jurisdiction of the 237th District Court, Lubbock County. Both motions were denied.

¹ *Matthew* 22:21.

That resulted in the Diocese asking us to review the motion to dismiss via a separate interlocutory appeal and the plea to the jurisdiction through a petition for writ of mandamus. We address the latter here. In it, the Diocese asks us to issue the equitable writ to direct the Honorable Les Hatch, presiding judge of 237th Judicial District Court, to “vacate the trial court’s denial of its plea to the jurisdiction, and reverse and render judgment granting the plea to the jurisdiction.”² We deny the petition.

Abstention Doctrine and Subject-Matter Jurisdiction

Mandamus is an extraordinary remedy available only in limited situations. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding); *In re Talley*, No. 07-15-00198-CV, 2015 Tex. App. LEXIS 6268, at *3–4 (Tex. App.—Amarillo June 22, 2015, orig. proceeding) (mem. op.). Its small umbrella, though, extends over jurisdictional disputes. *In re Torres*, No. 07-19-00220-CV, 2019 Tex. App. LEXIS 6516, at *2-3 (Tex. App.—Amarillo July 30, 2019, orig. proceeding) (mem. op.); *In re Alief Vietnamese Alliance*, 576 S.W.3d 421, 428 (Tex. App.—Houston [1st. Dist.] 2019, orig. proceeding). Within such disputes lie questions about the effect certain religious liberties have upon a trial court’s subject-matter jurisdiction. See, e.g., *Westbrook v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007) (stating that a lack of jurisdiction may be raised through a plea to a court’s jurisdiction when religious-liberty grounds form the basis of the jurisdictional challenge); *In re Torres*, 2019 Tex. App. LEXIS 6516, at *3. And, such is the dispute here. The Diocese posits that the ecclesiastical abstention doctrine bars the trial court from adjudicating Guerrero’s lawsuit. In refusing to dismiss it, the trial court allegedly abused

² We interpret the request as one asking that we direct the trial court to 1) vacate its order and 2) enter another dismissing the suit. Through a writ of mandamus, we do not substitute our order for that of the trial court. Instead, we assess the accuracy of the trial court’s decision and, if inaccurate, direct it to enter the order it should have.

its discretion. See *In re Navajo Nation*, ___ S.W.3d ___, ___, 2019 Tex. App. LEXIS 8224, at *9-10 (Tex. App.—Amarillo Sept. 10, 2019, orig. proceeding) (stating that mandamus is appropriate when the relator shows that the trial court clearly abused its discretion and lacked an adequate legal remedy).³

We recognized in *In re Torres*, 2019 Tex. App. LEXIS 6516, that the doctrine may indeed deprive trial courts of jurisdiction to adjudicate certain civil actions and entitle an ecclesiastical entity to a writ of mandamus. See *id.* at *6-7. It all depends upon whether the factual circumstances underlying the causes of action fall within the doctrine's scope.

Generally speaking, the ecclesiastical abstention doctrine bars civil courts from adjudicating matters concerning theology, theological controversy, church discipline, ecclesiastical government, and compliance with church moral doctrine. *Reese v. Gen. Assembly of Faith Cumberland Presbyterian Church in Am.*, 425 S.W.3d 625, 629 (Tex. App.—Dallas 2014, no pet.). Though easily described, its application and scope are the source of debate. This is so because the doctrine does not necessarily bar civil courts from adjudicating all controversies touching sectarian interests. *In re First Christian Methodist Evangelistic Church*, No. 05-18-01533-CV, 2019 Tex. App. LEXIS 8045, at *12 (Tex. App.—Dallas Aug. 30, 2019, orig. proceeding) (mem. op.); *In re St. Thomas High Sch.*, 495 S.W.3d 500, 507 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). After all, religious entities, like the coins of Caesar, co-exist within the secular world.

Several years ago, our Texas Supreme Court provided a framework to utilize when parsing through the debate. We were told, in *Masterson v. Diocese of Nw. Tex.*, 422

³A relator need not illustrate that he lacks an adequate legal remedy if the trial court lacks jurisdiction over the suit. *In re Alief Vietnamese Alliance*, 576 S.W.3d at 428.

S.W.3d 594 (Tex. 2013), to apply the neutral principles methodology. *Id.* at 596; *In re Torres*, 2019 Tex. App. LEXIS 6516, at *3 (so acknowledging). It better conforms to a court's constitutional duty to decide disputes within their jurisdiction while respecting limitations imposed by those provisions in the First Amendment of the United States Constitution concerning religion. *Masterson*, 422 S.W.3d at 596. Per that methodology, courts have the jurisdiction to determine non-ecclesiastical issues based on the neutral principles of law applicable to other entities. *Id.* Falling outside that jurisdiction, though, are decisions by religious entities on ecclesiastical and church polity questions; those we leave to the ecclesiastical authority making them. *Id.* However, this is another test more easily described than applied. As acknowledged in *Masterson*, the difference between ecclesiastical and non-ecclesiastical issues will not always be distinct. *Id.* at 606. Indeed, the resolution of non-ecclesiastical matters may sometimes impinge on church operations to some degree. *See id.* (stating that many disputes of the type there before the court, i.e., property ownership after a church schism, will require courts to analyze church documents and organizational structures to some degree).

Normally, matters of religion or theology, church discipline, church governance, church membership, and the conformity of those members to church precepts are ecclesiastical in nature and outside the jurisdiction of civil courts. *See Westbrook v. Penley*, 231 S.W.3d at 397-98; *Jennison v. Prasifka*, 391 S.W.3d 660, 665 (Tex. App.—Dallas 2013, no pet.); *accord In re Torres*, 2019 Tex. App. LEXIS 6516, at *5-6 (listing the areas deemed ecclesiastical by our sister courts). Yet, as said in *Hubbard v. J Message Grp. Corp.*, 325 F.Supp.3d 1198 (D.N.M. 2018), “nuances,” “context and . . . subtle distinctions in the context” play an important role, as well. *Id.* at 1213-14. For instance, in *Westbrook*, a pastor directed his congregation, via letter, to 1) shun Penley for engaging

in a “biblically inappropriate” relationship and 2) “treat the matter as a ‘members-only’ issue, not to be shared with those outside [the congregation].” *Westbrook*, 231 S.W.3d at 393. The revelation about the “inappropriate” relationship occurred when Penley told Pastor Westbrook of same during a counseling session. *Id.* The pastor’s letter resulted in Penley suing Westbrook for defamation and professional negligence. All but the professional negligence claims were dismissed by the trial court. Ultimately, our Supreme Court held that the negligence claim also had to be dismissed. This was so because “[a]ny civil liability that might attach for Westbrook’s violation of a secular duty of confidentiality in this context would in effect impose a fine for his decision to follow the religious disciplinary procedures that his role as pastor required and have a concomitant chilling effect on churches’ autonomy to manage their own affairs.” *Id.* at 402.

The court observed that Westbrook’s disclosure was grounded in religious doctrine concerning a three-step disciplinary process. *Id.* at 404. An “integral part” of that doctrine required disclosure to church elders, that is, “to ‘tell it to the church.’” *Id.* Furthermore, “[t]he letter itself was disseminated to the congregation as the final step in the process,” that process being “[t]hrough their continuing sin, they forfeit their membership in the church, and members of the church are to break fellowship with them.” *Id.* That Westbrook’s action was founded upon church tenet obligating church members to respond in a particular way to the discovery of a particular act was incremental to the decision by the Supreme Court.

Then, we have *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877 (Tex. App.—Dallas 2000, pet. denied). It involved a missionary trip by Turner undertaken as part of his religious duty. The church ended it early due to Turner purportedly encountering emotional or mental problems. Turner sued the church alleging

multiple causes of action including defamation. But since the facts underlying those claims implicated church practice and procedure, most were dismissed for want of jurisdiction. The defamation claim was not, though. It arose from the disclosure of medical records to Turner's grandparents. In explaining why it survived, the court initially observed that while "the First Amendment prohibits government regulation of the information a religious organization chooses to record concerning its members, the government may regulate the organization's use of that information if the regulation would not actively involve the government in the organization's internal affairs, religious practice, or religious doctrine." *Id.* at 896. Then, it noted that the church failed to explain how the disclosure of Turner's medical records to his grandparents "concern[ed] the internal policies of the Church or matters of faith or ecclesiastical doctrine." *Id.* Also absent was any explanation about "how resolution of the claim would actively involve the government in the Church's religious activities or excessively entangle the government with religion." *Id.* Consequently, the First Amendment of the United States Constitution did not bar the defamation claim. *Id.* What we see from *Turner* is the importance of indicia such as the reason for the disclosure and the interrelationship between that reason and the church's internal affairs, religious practice, and doctrine.

The *Turner* court is not alone in assigning weight to the identity of those told information and their relationship to the church. In *Jennison*, 391 S.W.3d at 668, the reviewing court held that the facts underlying the claim of defamation concerned discipline imposed by the church upon a priest for inadequate performance. Their adjudication necessarily required inquiry into canon law, the application of church policy, and the church's assessment of the complainant's fitness to perform his religious duties. *Id.* Thus, the ecclesiastical abstention doctrine applied to the claims. Yet, before so holding,

the court took care to mention that “[t]he only defamatory statements allegedly made . . . were made to the church itself in connection with the church’s disciplinary process.” *Id.* Jennison made “no allegation the allegedly defamatory statements were made in any other forum.” *Id.* In other words, the injurious act arose from historically ecclesiastical conduct, namely engaging in the internal discipline of clergy, that remained internal.

Similarly, in *Patton v. Jones*, 212 S.W.3d 541 (Tex. App.—Austin 2006, pet denied), the reviewing court held the abstention doctrine barred the defamation suit Patton commenced against the church and various of its clergy. He was the director of youth ministries and was terminated from the job due to allegedly inappropriate conduct. *Id.* at 545-46. In holding as it did, the court applied a three-prong test first announced in *Heard v. Johnson*, 810 A.2d 871 (D.C. App. 2002). *Id.* at 554-55. Those prongs consisted of whether 1) the claim flowed entirely from an employment dispute between the church and its pastor rendering it impractical to separate the claim from the church’s decision as to its pastor, 2) the publication was confined within the church, and 3) there existed unusual or egregious circumstances. *Id.* (quoting *Heard*, 810 A.2d at 885). Patton’s claim 1) flowed entirely from an internal employment dispute between the church and its pastor, 2) involved a publication confined within the church, and 3) implicated no unusual or egregious circumstances surrounding the comments. So, as in *Jennison*, the source of Patton’s claim emanated from historically ecclesiastical conduct confined within the body having the duty to undertake that conduct. The civil courts were barred for entertaining it.

Kelly v. St. Luke Comm. United Methodist Church, No. 05-16-01171-CV, 2018 Tex. App. LEXIS 962 (Tex. App.—Dallas Feb. 1, 2018, pet. denied) (mem. op.), also involved a suit filed by a terminated church employee. So too was the ecclesiastical doctrine the

reason why all but one cause of action was dismissed; the one claim retained was that of defamation. *Id.* at *2. The injurious act underlying the claims consisted not only of statements to church members but also communications to “persons outside the church” and non-church members witnessing the injurious act. *Id.* at *25. Those circumstances led the court to hold that “the ecclesiastical abstention doctrine applie[d] to all of Kelly’s claims other than the portion of her defamation claim in which she asserts she was defamed by the alleged publication of the statements described above to persons outside the church.” *Id.* at *26-27. So, like *Turner*, while the injurious act arose from historically ecclesiastical activity, it lost protection when it escaped the internal confines of the religious entity performing it. *See also, Hubbard*, 325 F.Supp.3d at 1219 (holding that because the alleged defamations were published exclusively to the church membership, “this fact strengthens the [Court’s] conclusion that Plaintiff’s claims, having occurred in the context of an ecclesiastical dispute . . . are barred by the First Amendment”); *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528, 541 (Minn. 2016) (involving statements made by pastors during a formal church disciplinary proceeding and stating that “on the facts before us—where ministers made largely religious and doctrinal allegations as part of an excommunication proceeding and only disseminated those statements to members of the congregation—the First Amendment has struck the balance for us”); *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404, 407 (Iowa 2003) (stating that 1) “[t]he fact that Swinton’s communication about Jane was published outside the congregation weakens this ecclesiastical shield,” 2) “otherwise privileged communications may be lost upon proof of excess publication or publication ‘beyond the group interest,’” and 3) “if publication solely to church members justifies ecclesiastical status for otherwise defamatory communications, proof of publication to

non-church members arguably supports the opposite conclusion”) (emphasis in original); *Ex parte Bole*, 103 So. 3d 40, 59-60 (Ala. 2012) (in barring prosecution of the claim, the court observed that 1) the “statement of which [Trice] complained related to the ostensible reason for his termination, conveyed from the pastor to a member of the congregation concerning the conduct of another member” and 2) “[a]t least one court has specifically held that statements by and between church members ‘relat[ing] to the Church’s reasons and motives for terminating [parishioners’] membership’ ‘require an impermissible inquiry into Church disciplinary matters’”).

A common thread runs through the authority just cited. A religious body exposing matters historically deemed ecclesiastical to the public eye has consequences. The action leaves the area of deference generally afforded those bodies and enters the civil realm. This is not to say that such a publication alone is always enough, but it is a pivotal nuance. Indeed, arguing that a dispute remains an internal ecclesiastical or church polity issue after that body chooses to expose it publicly rings hollow. And, that is the situation here.

Guerrero’s claims arise not from the decision of the Diocese to discipline a deacon for engaging in inappropriate sexual activity. That had been done years earlier with its most recent effort having culminated in 2009. Instead, they arise from a decision made some nine to ten years later “to release the names of clergy who have been credibly accused of sexual abuse of a minor.” A list was developed containing those names, and Guerrero’s name appeared on it. The Diocese not only incorporated the list into a message describing its purpose and inviting those who may have suffered from such abuse to contact the Diocese but also posted it on its website accessible by the general public. The posting occurred on January 31, 2019.

The Diocese then accompanied its internet post with a press release. Through the press release dated January 31, 2019, the body announced to local media that it joined other Catholic Dioceses in Texas in “releas[ing] names of clergy who have been credibly accused of sexually abusing a minor.” It continued with: “[t]he bishops’ decision was made in the context of their ongoing work **to protect children** from sexual abuse, and their efforts to promote healing and a restoration of trust in the Catholic Church.” (Emphasis added). Also referred to within the release was a letter from the bishop of the Lubbock Diocese. In the letter, the bishop said that “the administrations of our dioceses are serious about ending the cycle of abuse in the Church **and in society at large**, which has been allowed to exist for decades.” (Emphasis added). “The scourge of abuse must be stopped,” wrote the bishop.

News coverage followed. In one instance, a local television station aired a segment announcing that “four priests . . . and one deacon have credible allegations against them . . . of sexual abuse against **children** . . . according to the Lubbock Diocese.” (Emphasis added). Guerrero again was mentioned as one of the group. Following that pronouncement were snippets from a chancellor of the Diocese. The snippets included the chancellor 1) explaining that the reason the names were not released “sooner” was “bishops at the time wanted to keep church issues . . . within the church,” 2) saying that “we felt that whatever was handled within the church as far as church punishment was concerned needed to remain in the church,” and 3) revealing that though relevant names initially were disclosed to church members, “they weren’t made public.” The same church

representative also sought to assure that “the church *is* safe **for children**.”⁴ (Emphasis added).

Another media outlet reported on the release as well. It alluded to an interview held with the bishop of the Lubbock Diocese several months earlier, in October of 2018. The bishop was quoted as saying in that earlier interview: “[i]t’s time we need to be honest about these kinds of matters and **society** hasn’t always been open and honest about those.” (Emphasis added). He also conceded that the church itself had “maybe done some concealing of such things,” too.

As can be seen, what began years earlier as an exercise in internal church discipline evolved into an effort at transparency broadcast worldwide through the media and internet. Though somewhat confessional in tone, the event was utilized by the Diocese, according to one or more church representatives, as opportunity to address sexual abuse against “children,” help victims of sexual abuse, assuage public concern about the safety of “children” in the church, and criticize both the church and “society” for not “always [being] open and honest about” the topic of sexual abuse.

What we have before us is not an incidental public disclosure of internal church disciplinary matter. Nor was the information leaked to the public via the media by individuals lacking permission to do so. See *In re Godwin*, 293 S.W.3d 742, 745-46 (Tex. App.—San Antonio 2009, orig. proceeding) (wherein an ex-employee of the church gave a local newspaper the church’s financial information without permission of the church). Nor did it involve reiteration outside the church of purported statements uttered within

⁴ In the interview with the local station, the Chancellor also alluded to “the age of the victim” and families not wanting “the embarrassment for themselves and their children” when explaining why “parents” do not want information released and why legal action is not commenced in the “court system.”

church confines, such as in a sermon or message directed to church members. See *id.* at 746 (where the utterance at issue was made to those attending church services and from the pulpit).⁵ That the Diocese posted the list on a website accessible by the public at-large and brought attention to the list and its accessibility through use of local news media distinguishes the circumstances at bar from *Penley*, *Jennison*, *Patton*, and every other judicial opinion we encountered (or the Diocese cited) that imposed the ecclesiastical abstention doctrine as a bar.

There is also another bit of nuance distinguishing our situation from the foregoing authority. It is the interjection into the discussion of more than simply the misconduct of those related to the church. The church's statements that 1) "our dioceses are serious about ending the cycle of abuse in the Church and ***in society at large***, which has been allowed to exist for decades" and 2) "[i]t's time we need to be honest about these kinds of matters ***and society hasn't always been open and honest*** about those." (Emphasis added). They reveal 1) an acknowledgement that the issue necessitating attention (i.e., sexual abuse) is more than a church matter but rather one of society at-large, 2) an intent to induce society at-large to address the issue, and 3) an intent to join society at-large in the effort. So, admonishing, inducing, and joining society at-large is telling. Those indicia provide further basis dispelling any nexus between the Diocese's conduct and any theological, dogmatic, or doctrinal reason for engaging in it. The same is also true

⁵ Even the court in *Godwin* hesitated when it came to holding that everything said from the pulpit is insulated from consideration by civil courts. *In re Godwin*, 293 S.W.3d at 749 (stating that "[c]ase law instructs us that there are indeed limits to what can be said by church officials from the pulpit" and "an accusation of inappropriate sexual behavior would likely not be protected").

regarding any nexus between the decision to go public and the internal management of the church.

Finally, underlying Guerrero's claim of defamation and infliction of emotional distress is more than simply a disagreement about the meaning of a religious term imbedded in canon law, as the Diocese would have us conclude.⁶ He avers that the church labelled him a "child molester," given the context of the publication. That context is not the definition of "minor" printed in a retraction posted months later. It is the Diocese using the word "minor" at the same time 1) its chancellor tells the media and public that "the church *is* safe for **children**" and 2) it represents in a press release that disclosing the names was made "in the context of . . . ongoing work to protect **children** from sexual abuse." (Emphasis added). And, the Diocese has not cited us to, nor does it argue that, those of its representatives invoking the word "children" were relying on, at the time, some bit of canon law or theological tenet that includes adults within the category.

Whether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it. See *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019) (directing the use of context); *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017) (directing consideration of the surrounding circumstances). Canon law is not in play.

What is in play is how a person of ordinary intelligence would perceive the accusation that Guerrero sexually abused a "minor" when the church accompanied the word with references to abuse involving "children" and the safety of children. For

⁶ Apparently, canon law defines "minor" as including all people lacking the ability to reason. The individual Guerrero supposedly abused was an adult allegedly within that description.

instance, it mattered not that the name “Satan” and the phrase “in the spirit of Satan” may have had sectarian meaning in *Kliebenstein*. Because both also had secular meaning, the court in *Kliebenstein* held that it was improper to dismiss Kliebenstein’s defamation suit when the comparisons of her with Satan left the confines of the church. *Kliebenstein*, 663 N.W.2d at 408. Both “minor” and “child” have secular meaning to a person of ordinary intelligence. That either may have sectarian meaning, as well, does not mandate application of the ecclesiastical abstention doctrine.

To quote from *Westbrook*, “the First Amendment does not necessarily bar all claims that may touch upon religious conduct.” *Westbrook*, 231 S.W.3d at 396. Secular courts are not barred from adjudicating all controversies touching sectarian interests. That is the situation here. The Diocese, like the churches in *Kliebenstein*, *Kelly*, and *Turner*, placed the controversy in the realm of Caesar or the secular world by opting to leave the confines of the church. Thus, the secular court in which Guerrero sued is not barred from adjudicating the matter.

We deny the petition for writ of mandamus.

Brian Quinn
Chief Justice

Amendment 1 - Freedom of Religion, Press, Expression

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

No. 07-19-00280-CV

Diocese of Lubbock	§	From the 237th District Court
Appellant		of Lubbock County
	§	
v.		December 6, 2019
	§	
Jesus Guerrero		Opinion by Chief Justice Quinn
Appellee	§	

J U D G M E N T

Pursuant to the opinion of the Court dated December 6, 2019, it is ordered, adjudged and decreed that the order of the trial court be affirmed to the extent that it did not dismiss the cause of action for defamation but be reversed to the extent that it retained the cause of action for intentional infliction of emotional distress. The cause of action for intentional infliction of emotional distress is dismissed, with prejudice. The remaining claim of defamation is remanded to the trial court for further proceedings as is the determination of attorney's fees and sanctions awardable to the Diocese of Lubbock under Section 27.009 of the Texas Civil Practice and Remedies Code in connection with the dismissed cause of action.

It is further ordered that all costs incurred are adjudged against the party incurring the same, for which let execution issue

It is further ordered that this decision be certified below for observance.

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**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-19-00280-CV

DIOCESE OF LUBBOCK, APPELLANT

V.

JESUS GUERRERO, APPELLEE

On Appeal from the 237th District Court, Lubbock County, Texas
Trial Court No. 2019-534,677, Honorable Les Hatch, Presiding

December 6, 2019

OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

This appeal is a companion case to the petition for writ of mandamus filed by the Diocese of Lubbock. Our opinion in that cause is styled *In re Diocese of Lubbock*, No. 07-19-00307-CV. We address, now, the appeal perfected by the Diocese of Lubbock from the order denying its motion to dismiss. The Diocese so moved under § 27.001 of the Texas Civil Practice and Remedies Code (TCPA).¹ TEX. CIV. PRAC. & REM. CODE ANN. § 27.001 *et seq.* (West 2015). We affirm in part and reverse in part.

¹ Because Guerrero sued prior to September 1, 2019, the legislative amendments to the TCPA that took effect on September 1, 2019 have no application here. See *City of Port Aransas v. Shodrok*, No. 13-18-00011-CV, 2019 Tex. App. LEXIS 10063, at *2 n.2 (Tex. App.—Corpus Christi Nov. 21, 2019, no pet. h.) (mem. op.) (stating that Chapter 27 of the Civil Practice and Remedies Code, as amended by H.B. 2730, apply only to an action filed on or after the effective date of this Act which was September 1, 2019).

Our opinion in *In re Diocese of Lubbock* describes the general background from which this appeal arose. We see no need to reiterate it and, instead, incorporate the opinion into this one. Suffice it to say that Guerrero sued the Diocese for defamation and intentional infliction of emotional distress after the Diocese published a list entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor” (i.e., the List).² The list included Guerrero’s name. According to the Diocese, his suit is subject to dismissal because the underlying claims fell within the scope of § 27.003(a) of the TCPA. It also contends that the trial court lacked jurisdiction to entertain the cause due to the ecclesiastical abstention doctrine. We addressed the latter issue via our opinion in Cause No. 07-19-00307-CV and again reject the jurisdictional claim for the reasons stated in that opinion. Now we turn to the TCPA and whether it mandated dismissal.

TCPA

The provisions of the TCPA act like a pendulum; they impose burdens on the parties that swing back and forth. How they swing was described in *Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 706-08 (Tex. App.—Amarillo 2018, pet. denied), and *Castleman v. Internet Money Ltd.*, No. 07-16-00320-CV, 2018 Tex. App. LEXIS 8559, at *5-7 (Tex. App.—Amarillo Oct. 18, 2018, pet. denied) (mem. op.). We apply that pendulum here. Yet, before doing so, it is appropriate to note that the standard of review is *de novo*, and the pleadings, affidavits and other evidence of record are viewed in a light most favorable to the non-movant. *Batra*, 562 S.W.3d at 707-08; *Castleman*, 2018 Tex. App. LEXIS 8559, at *5-6.

² This list was first published on January 31, 2019, and is not the retraction and clarification published in April of 2019.

The Diocese's Burden

The first question is whether the causes of action fall within the ambit of the TCPA. The net cast by the statute encompasses “a legal action . . . based on, relates to, or is in response to a party’s exercise of the right of free speech, right to petition, or right of association.”³ TEX. CIV. PRAC. & REM. CODE ANN. § 27.003(a). Legal actions within that scope are subject to dismissal, *id.* § 27.005(b), unless the complainant tenders “clear and specific” evidence establishing “a prima facie case” for each element of his claim. *Id.* § 27.005(c). That said, we turn to the pendulum of burdens.

The first burden lies with the movant to show that the action falls within § 27.003(a). *Greer v. Abraham*, 489 S.W.3d 440, 442-43 (Tex. 2016); *Batra*, 562 S.W.3d at 706. That Guerrero sued because the Diocese publicized the List on the internet and through the media is undisputed. Similarly undisputed is that the publication purported to reveal the identity of clergy against whom a “credible” allegation of sexual abuse involving minors was made. This satisfied a prong of the TCPA’s definition of “free speech,” as we now explain.

The “right of free speech” encompasses a “communication made in connection with a matter of public concern.” See TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(3). A “communication” includes the “making or submitting of a statement or document in any form or medium.” *Id.* § 27.001(1). The List is a statement made by the Diocese and, thus, a communication.

As for the statement involving “a matter of public concern,” we note that our Texas Supreme Court held the “commission of crime” such a concern. *Brady v. Klentzman*,

³ “Legal action” is a lawsuit, cause of action, petition, complaint, cross-claim, counterclaim, or any other judicial pleading or filing that requests relief. TEX. CIV. PRAC. & REM. CODE ANN. § 27.001(6) (West 2015).

515 S.W.3d 878, 884 (Tex. 2017). Sexually abusing “minors” is a criminal offense.⁴ See, e.g., TEX. PENAL CODE ANN. § 21.11(a) (West 2019) (stating that a person commits an offense by engaging in sexual contact with a child younger than seventeen); *id.* § 22.011(a)(2)(A) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of a child); *id.* § 22.011(a)(1)(A), (b)(4) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person’s consent and it is without the others consent if the actor knew that the person was incapable either of resisting or appraising the act due to a mental disease or defect); *id.* § 22.011(a)(1)(A), (b)(10) (stating that a person commits an offense by intentionally or knowingly causing the penetration of the anus or sexual organ of another person without the person’s consent and it is without the other’s consent if the actor was a clergyman and exploited the other person’s emotional dependency on the clergyman in the clergyman’s position as a spiritual adviser). Since the List described potential sexual abuse of minors and that is a criminal offense, it also involved a matter of public concern. See *Crews v. Galvan*, No. 13-19-00110-CV, 2019 Tex. App. LEXIS 8962, at *11 (Tex. App.—Corpus Christi Oct. 10, 2019, no pet.) (mem. op.) (involving statements about a clergyman inducing a seventeen-year-old to engage in sexual conduct). Thus, the Diocese satisfied its initial burden, and the pendulum swung in the direction of Guerrero.

Guerrero’s Burden

The next burden lies with the complainant, Guerrero, and required him to present “clear and specific evidence” establishing a prima facie case of each element of his claims. *Batra*, 562 S.W.3d at 706-07; *Castleman*, 2018 Tex. App. LEXIS 8559, at *6.

⁴ The purported definition of “minor” used by the Diocese in deriving the List includes children and adults who “habitually lack the use of reason.”

The burden is met through tendering the minimum amount of evidence needed to support a rational inference that each element of his claims is true. *Castleman*, 2018 Tex. App. LEXIS 8559, at *7 (quoting *In re Lipsky*, 460 S.W.3d 579, 591 (Tex. 2015) (orig. proceeding)).

Defamation

We begin with the claim of defamation. Its elements consist of a false statement published by the defendant with the requisite degree of fault that defames the plaintiff and causes him damage. *Bedford v. Spassoff*, 520 S.W.3d 901, 904 (Tex. 2017); *Castleman*, 2018 Tex. App. LEXIS 8559, at *8. Damages need not be proved, though, where the statement is defamatory *per se*. *Bedford*, 520 S.W.3d at 904; *Castleman*, 2018 Tex. App. LEXIS 8559, at *8.

Guerrero contended that the Diocese falsely defamed him “by publishing his name on a list of alleged child molesters” and confirming those representations through its interviews with the local media. This suggests the presence of a defamation occurring through a series of events. They include not only what was said in the List but also said through a press release and ensuing interviews. As for the List, it was entitled “Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor.” Therein, the Diocese 1) apologized to “all the victims of abuse, especially minors”; 2) iterated that “this list includes the names of priests or deacons against whom a credible allegation has been made since the Diocese . . . was created”; 3) represented that “a priest or deacon’s name only appears on the list if the diocese possesses in its files evidence of a credible allegation; and 4) explained that a “credible allegation” was “one that, after review of reasonably available, relevant information in consultation with the Diocesan Review

Board or other professionals, there is reason to believe is true.” As previously mentioned, the document included Guerrero’s name and assignments with the Diocese as a deacon.

As for the press release issued by the Diocese, local media were told that the Diocese joined other Texas Catholic Dioceses in “releas[ing] names of clergy who have been credibly accused of sexually abusing a minor.” So too did it mention that “[t]he bishops’ decision was made in the context of their ongoing work to protect **children from sexual abuse**, and their efforts to promote healing and a restoration of trust in the Catholic Church.” (Emphasis added). Media interviews and coverage followed. One broadcast began with the announcement that “four priests . . . and one deacon have credible allegations against them . . . of **sexual abuse against children** . . . according to the Lubbock Diocese.” (Emphasis added). Guerrero was mentioned as one of the group. Elsewhere in the broadcast the Diocese’s chancellor sought to assure the public that “the church **is** **safe for children**.” (Emphasis added).

As we said in *In re Diocese of Lubbock*, “[w]hether one is defamed depends on evaluating not only the statement uttered but also its context or surrounding circumstances based upon how a person of ordinary intelligence would perceive it.” *In re Diocese of Lubbock*, No. 07-19-00307-CV, slip op. at 14 (Tex. App.—Amarillo Dec. 6, 2019, orig. proceeding) (citing *Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 794-95 (Tex. 2019), and *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 439 (Tex. 2017)); accord *In re Lipsky*, 460 S.W.3d at 594 (stating that whether a publication is false and defamatory depends on a reasonable person’s perception of the entirety of a publication and not merely on individual statements). That context or those surrounding circumstances may include a series of writings or events. See *Scripps NP Operating, LLC*, 573 S.W.3d at 791 (holding that “[t]he court of appeals could not make a proper

assessment of the alleged defamatory material in this case without looking at the ‘surrounding circumstances’ encapsulated in this series” of articles). So, our review is not restricted to simply the List but rather encompasses the List, the related press release from the Diocese, as well as interviews given by church representatives about the List and why it was developed and published. From that context and those events, we conclude that a person of ordinary prudence would perceive those named in the List as clergy who may have sexually abused children or those under the age of consent.

Admittedly, the List used the term “minor,” not “child” or “children.” Yet, neither the List, press release, nor explanations from those representing the Diocese explained what it meant by “minor.”⁵ Moreover, our common parlance tends to assign a definition to “minor” based upon age, much like the common understanding of the words “child” and “children.” In reference to human beings, “minors” are commonly understood to be under-age people or those below the age of majority or legal responsibility. See *Minor*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 791 (11th ed. 2003) (defining minor as “not having reached majority”); *Minor*, BLACK’S LAW DICTIONARY (6th ed. 1990) (defining minor as “[a]n infant or person who is under the age of legal competence”). In the everyday mind, they are those who are too young to legally vote, buy cigarettes, buy alcohol, or consent to sex, for instance. That common perception of the term generally does not include adults older than 17 or 21 depending upon the law involved. As for the words, “child” or “children,” they not only have a meaning similar to “minor” in our everyday parlance but often are interpreted as describing those of very young age, such as infants, toddlers, and pre-teens. See *Child*, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 214

⁵ This definition came several months later.

(11th ed. 2003) (defining child as “a young person especially between infancy and youth” and “a person not yet of age”).

We find little difficulty in concluding that one who intermixes all those terms while speaking can readily and reasonably lead the listener to believe that the subject being discussed encompasses people under the legal age. Doing such can reasonably lead others to think the speaker is discussing infants, toddlers, pre-teens and even teenagers, not adults. So, the entire context of the conversation initiated by the Diocese about sexual assault upon “minors” by clergy would lead “a person of ordinary intelligence . . . [to] perceive” that those clergy assaulted not adults but kids, youths, and other people under the age of majority. And, the Diocese named Guerrero as one of those clergy against whom there existed a “credible allegation” of abusing “minors.”⁶

As for whether the publication was reasonably susceptible to a defamatory meaning, that implicates a question of law. *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 631-32 (Tex. 2018). Its answer depends on the tendency of the statement to injure a person’s reputation, expose him or her to public hatred, contempt, or ridicule, or impeach the person’s honesty, integrity, virtue, or reputation. See TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2017) (defining libel as “a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends

⁶ We are aware of the Diocese’s contention that “the statements made by representatives of the Diocese to the media were not defamatory concerning Guerrero” and “[t]here [was] no indication in any of the evidence concerning the media that either Bishop Coerver or Chancellor Martin specifically discussed Guerrero in any of the interviews.” That neither church representative said his name is inconsequential, though, under the facts at bar. The defamed person need not be expressly mentioned so long as he or she is otherwise identifiable. *Scarborough v. Purser*, No. 03-13-00025-CV, 2016 Tex. App. LEXIS 13863, at *13 (Tex. App.—Austin Dec. 30, 2016, pet. denied) (mem. op.). And, whether the identity is ascertainable, per *Scripps, D Magazine, and Lipsky*, depends upon viewing the entire picture, not simply one corner of it. The entire picture here consists of the List, posting it for public view on the internet, the press release sending the List to the media, conversations about the List and its purpose between church representatives and the media, and the inclusion of Guerrero’s name on the List. Together, they made Guerrero’s identity as one of the clergy in question identifiable. Just as a mime can identify a wall through his actions, the Diocese and its representatives identified Guerrero through theirs.

to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury"). Accusing one of sexually abusing children can reasonably be perceived as having the aforementioned effect; thus, the publication here is reasonably susceptible to a defamatory meaning. And, the purported falsity of the accusation finds evidentiary support in Guerrero's sworn denial about having engaged in such conduct and in the Diocese's later admission that it had no evidence that he sexually assaulted someone under 18 years of age.

That leaves us with the two remaining elements of defamation, which elements are the statement's utterance with the requisite fault and damages. Regarding the latter, authority tells us that falsely accusing one of committing a crime is defamatory *per se*, *Dallas Morning News, Inc.*, 554 S.W.3d at 638, as is accusing one of engaging in serious sexual misconduct. See, e.g., *Miranda v. Byles*, 390 S.W.3d 543, 552 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (holding as defamatory *per se* an accusation about the sexual molestation of a child). The accusation at bar comes within both categories. Not only is it a factual statement subject to objective verification but also an accusation about criminal and serious sexual misconduct. Thus, Guerrero need not prove damages.

As for the requisite fault, the standard is negligence where the plaintiff is a private, as opposed to public, figure. *Bedford*, 520 S.W.3d at 904; *D Magazine Partners, L.P.*, 529 S.W.3d at 440. In what category Guerrero falls is a question of law. *Klentzman v. Brady*, 312 S.W.3d 886, 904 (Tex. App.—Houston [1st Dist.] 2009, no pet.). No one suggests that he was anything other than a private individual when the alleged defamation occurred. Nor does the record contain evidence placing him into the category of a public

figure. See *id.* (defining the two classes of “public figures”). So, our legal conclusion is that he was a private figure at the time, and the negligence standard controls.

Under the standard of negligence, a defendant acts unreasonably if he knew or should have known that the defamatory statement was false. *D Magazine Partners, L.P.*, 529 S.W.3d at 440. The record before us contains sufficient evidence to make a prima facie case of the Diocese’s negligence in publishing the purportedly false defamation. We find that evidence in its own invocation of the meaning of “minor.” The List itself used the word “minor” when alluding to a credible allegation of sexual abuse. And, in so using the word, the Diocese allegedly intended to assign it the definition accorded under canon law, as revealed through the affidavit of the Diocese’s bishop. Again, that definition described a “minor” as “a person who habitually lacks the use of reason.” Arguably, then, a “minor” encompasses not only those under the age of majority but also adults who habitually lack the use of reason. Knowing this definition, the Diocese nonetheless incorporated the term “children” into its public rhetoric about the List. Again, one media outlet announced that “according to the Lubbock Diocese,” “four priests . . . and one deacon have credible allegations against them . . . of sexual abuse against **children**.” (Emphasis added). Additionally, a Diocese representative also told the outlet that the church was “safe for **children**.” (Emphasis added). So too did the Diocese declare in its January 31st press release that it was working “to protect **children** from sexual abuse.” (Emphasis added). While all “children” may be minors within the canon law’s definition of “minor,” not all “minors” are children per that same definition.⁷ Yet, the purported “credible allegation” against Guerrero involved an adult around 41 years old.

⁷ The Diocese does not argue that canon law or other religious tenet also defines “child” or “children” as including certain adults.

Given our earlier discussion about the general public perception of the word “children,” the Diocese’s multiple references to “children” while discussing the List, and its knowledge that Guerrero’s supposed victim was an adult, there is some evidence of record from which a fact-finder could reasonably infer that the Diocese was negligent. There is evidence that the Diocese knew or should have known 1) the difference between “minors” and “children” while referring to “children” and 2) that by speaking about sexual abuse of “children” the public could reasonably perceive the discussion to be about clerics who sexually abuse infants, pre-teens, and those under the age of majority, not adults. Thus, evidence exists of record from which one could reasonably infer that the Diocese publicly portrayed Guerrero as having abused “children” or people under the age of majority.

In short, Guerrero carried his burden imposed by the TCPA. The record contains clear and specific evidence creating a prima facie case on each element of defamation.

Intentional Infliction of Emotional Distress

Regarding the claim of intentional infliction of emotional distress, we need not dwell upon it for long. In lieu of our engaging in an extended explanation regarding its components and whether the record contains evidence of each, we simply focus on one elemental aspect of the claim. That aspect is the mens rea. It requires proof that the defendant acted intentionally or recklessly. *Hersh v. Tatum*, 526 S.W.3d 462, 468 (Tex. 2017). And, to establish it, the plaintiff must proffer evidence illustrating the emotional distress was the intended or primary consequence of the conduct. *Standard Fruit & Veg. Co. v. Johnson*, 985 S.W.2d 62, 67 (Tex. 1998); accord *Fishman v. C.O.D. Capital Corp.*, No. 05-16-00581-CV, 2017 Tex. App. LEXIS 6661, at *14 (Tex. App.—Dallas July 18, 2017, no pet.) (mem. op.) (stating the same); *Vaughn v. Drennon*, 372 S.W.3d 726, 732

(Tex. App.—Tyler 2012, no pet.) (stating the same). That is, recovery is available when the defendant desired or anticipated that the plaintiff would suffer severe emotional distress. *Standard Fruit & Veg. Co.*, 985 S.W.2d at 67. It is not enough that the emotional distress emanates from, is derivative of, or “incidental to the intended or most likely consequence of the” defendant’s conduct. *Id.*; *Vaughn*, 372 S.W.3d at 732. In the latter situations, the distress is the consequence of some conduct, it is not the reason for the conduct. And, because it is the consequence of, as opposed to the reason for, the conduct, the claim of intentional infliction of emotional distress is unavailable. As said by our Supreme Court in *Hoffman-La Roche, Inc. v. Zeltwanger*, 144 S.W.3d 438 (Tex. 2004), “[w]here the gravamen of a plaintiff’s complaint is really another tort, intentional infliction of emotional distress should not be available. *Id.* at 447-48; see *Warner Bros. Entm’t, Inc. v. Jones*, 538 S.W.3d 781, 814 (Tex. App.—Austin 2017, pet. granted) (holding that Jones did not establish a prima facie case of intentional infliction of emotional distress because the facts underlying that claim were the same facts upon which he based his claim of defamation); *Bilbrey v. Williams*, No. 02-13-00332-CV, 2015 Tex. App. LEXIS 2359, at *39-40 (Tex. App.—Fort Worth Mar. 12, 2015, no pet.) (mem. op.) (holding the same). Instead, there must be proof that the defendant wanted the plaintiff to suffer or anticipated that he would suffer severe emotional distress. In that situation, the distress is not merely derivative from some other tort; it is the tort’s aim.

Here, neither party cited us to any evidence indicating that the Diocese intended for Guerrero to experience emotional distress or anticipated that such distress would be the primary consequence of the alleged defamation. Nor did our own search of the record uncover any. What it did reveal, though, was that the facts underlying the allegation of severe emotional distress were the very same ones forming the basis of Guerrero’s

defamation claim. In other words, his alleged distress derived from being defamed. So, like *Bilbrey* and *Warner Bros.*, the record before us lacks prima facie evidence of an element to Guerrero's chose in action sounding in the intentional infliction of emotional distress.

The Diocese's Defense

Having found that one of Guerrero's causes of action survives dismissal, we now determine if the Diocese raised some defense or other basis barring recovery. It attempted to do so by asserting the doctrine of ecclesiastical abstention. But, as we explained in our earlier opinion in Cause No. 07-19-00307-CV, the doctrine does not apply to the circumstances at bar.

Conclusion

In ordering that the motion to dismiss be denied, the trial court did not address individually the two causes of action Guerrero averred. Nevertheless, we affirm its order to the extent that it retained the claim of defamation but reverse it to the extent that it retained the cause sounding in the intentional infliction of emotional distress. We also dismiss, with prejudice, the latter claim and "remand the case to the trial court for further proceedings consistent with this opinion, including consideration of the defamation . . . claim[] and determination of the attorneys' fees and sanctions that must be awarded under Section 27.009 in connection with the dismissal of the other claim[]." *Warner Bros. Entm't., Inc.* 538 S.W.3d at 818.

Brian Quinn
Chief Justice

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

KAMC News:

January 31, 2019: KAMC 6 P.M.

FS/VO/SOTVO/SOT

I MON
BRYAN

AVERY, THE 'CATHOLIC DIOCESE OF LUBBOCK' AND AMARILLO.. TODAY RELEASED THE NAMES OF CLERGY IN THE AREA..

WHO HAVE EVER BEEN *CREDIBLY ACCUSED OF SEXUAL MISCONDUCT.

TAKE BOXES

KAMC'S 'TORI LARNED' JOINS US LIVE FROM THE DIOCESE TONIGHT.
AND TORI, HOW MANY PEOPLE MADE THE LIST?

TAKE LIVE
TORI

BRYAN,
FIVE CLERGY MEMBERS OF THE LUBBOCK DIOCESE HAVE BEEN 'CREDIBLY ACCUSED' OF SEXUAL ABUSE OF A MINOR.
THEY SAY A FEW OF THEM WERE ALSO CHARGED OR ARRESTED.

(Priests Names Reveal VO)

TAKE FS

CLERGY ON THE LIST INCLUDE *ALPHONSE BOARDWAY AND *PATRICK HOFFMAN WHO'VE BOTH DIED.
OMAR QUEZADA, JESUS GUERRERO, AND NELSON DIAZ ---WHO WAS THE LAST TO BE REMOVED FROM THE MINISTRY IN

2011.

TAKE VO

THE CHANCELLOR FOR THE DIOCESE SAYS ALL THE INDIVIDUALS ABUSED WERE MINORS.
HE DESCRIBED 'CREDIBLY ACCUSED' AS SOMEONE WHO ADMITTED TO THE ABUSE, ARE FOUND GUILTY BY THE COURT,
OR WHO WERE WITNESSED COMMITTING THE CRIME.
LAWYERS HIRED BY THE DIOCESE INVESTIGATED THESE CASES AND TURNED THEM OVER TO AUTHORITIES.
IN A STATEMENT, THE DIOCESE SAYS, 'THE SCOURGE OF ABUSE MUST BE STOPPED.'
HOWEVER, OUT OF RESPECT TO THE VICTIMS AND SURVIVORS, THEY HAVE TO HANDLE THE CASES WITH CARE.

(Priests Names Reveal SOTVO)

TAKE SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: You have to keep in mind, sometimes the authorities are involved but because of the age of the victims, the parents don't want anything released and the only way to ensure that is to not proceed with any legal court system or situation because then something is going to leak out and they don't want the embarrassment for themselves or their children.

TRAILING VO

THE LUBBOCK DIOCESE IS ONE OF 15 ACROSS THE STATE RELASING NAMES OF CLERGY WHO'VE BEEN CREDIBLY ACCUSED.

LUBBOCK BISHOP REVEREND ROBERT COERVER, RELEASED A STATEMENT SAYING HE KNOWS THIS WILL BE A 'SOURCE OF PAIN' FOR VICTIMS, SURVIVORS AND THEIR FAMILIES...

BUT HOPES THIS WILL HELP VICTIMS COME FORWARD,
AND 'PROMOTE HEALING AND A RESTORATION OF TRUST IN THE CATHOLIC CHURCH.'
WHEN WE SPOKE WITH CHANCELLOR MARTIN, HE ECHOED THAT FEELING.

(Priests Name Reveal)

TAKE SOT

Marty Martin, Chancellor, Catholic Diocese of Lubbock: I certainly want people to know that the Diocese of Lubbock extend an apology to all victims. Especially to minors but to all victims. Not just because of what happened to them, but also for the fact that in the past the church needed them they failed them. That's not something we want to do or will be tolerated anymore

TAKE LIVE
TORI

THE BISHOP ENCOURAGES ANYONE WHO HAS BEEN ABUSED BY SOMEONE IN THE CATHOLIC CHURCH--
TO REPORT IT LOCAL LAW ENFORCEMENT.
SOME CLERGY MEMBERS ACCUSED IN AMARILLO, ALSO USED TO WORK IN LUBBOCK.
WE HAVE THE FULL LIST OF THOSE INDIVIDUALS ON OUR WEBSITE EVERYTHINGLUBBOCK DOT COM.
REPORTING FROM THE CATHOLIC DIOCESE OF LUBBOCK, I'M TORI LARNED KAMC NEWS.

January 31, 2019: KAMC 10 P.M.

PKG

TRAILING VO/LAUREN

DIOCESE ACROSS TEXAS NAMING CLERGY IN THEIR MINISTRY ACCUSED OF SEXUALLY ABUSING CHILDREN.

LAUREN

GOOD EVENING, I'M LAUREN MATTER.

BRYAN

I'M BRYAN MUDD.

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

KLBK News:

January 31, 2019: KLBK 6 P.M.

VO/SOT/FS

TERRI

GOOD EVENING, I'M TERRI FURMAN.

THE CATHOLIC DIOCESE OF LUBBOCK RELEASED NAMES OF PRIESTS TODAY WHO ARE *CREDIBLY* ACCUSED OF SEXUAL ABUSE..

THE DIOCESE HAS BEEN CREATING THIS LIST FOR US SINCE OCTOBER.

OUR MARI SALAZAR HAS THE NAMES ON THE LIST FOR US TONIGHT.

TAKE BOXES

SHE JOINS US FROM THE DIOCESE.

MARI, THESE MEN WERE ALL PERMANENTLY REMOVED FROM MINISTRY.

TAKE LIVE

MARI

TERRI,

THEY WERE..

AND SOME OF THE CASES DATE BACK TO THE 80'S.

BUT NO ONE MATTER THE CIRCUMSTANCE..

THE DIOCESE REVIEWED ANY ACCUSATION AGAINST A CHURCH MEMBER.

(Priest Allegations VO)

TAKE VO

THIS IS THE LIST OF PRIEST* NAMES RELEASED HERE IN LUBBOCK--

'ALPHONSE BOARDWAY' IS THE FIRST NAME.

HIS LAST ASSIGNMENT WAS 'SAINT ANN CATHOLIC CHURCH' IN STAMFORD -- TEXAS..

HE WAS REMOVED FROM MINISTRY IN 19-89..AND HE PASSED AWAY IN 19-97.

SECOND IS 'NELSON DIAZ'.

HIS LAST ASSIGNMENT WAS 'SAN RAMON' IN WOODROW.

HE WAS REMOVED FROM MINISTRY IN 20-11.

NEXT - 'PATRICK HOFFMAN'.

HIS LAST ASSIGNMENT WAS SACRED HEART IN PLAINVIEW.

HE WAS REMOVED FROM MINISTRY IN 19-87..AND HE DIED IN 2005.

FOURTH -- 'OMAR QUEZADA'.

HIS LAST ASSIGNMENT WAS 'OUR LADY OF GRACE' IN LUBBOCK'...THE RELEASE SAYS HE NEVER SERVED..

BUT WAS PERMANENTLY REMOVED FROM MINISTRY IN 2003.

LASTLY -- 'JESUS GUERRERO'..HE WAS A DEACON.

HIS LAST ASSIGNMENT WAS ALSO 'OUR LADY OF GRACE'.

HE WAS REMOVED FROM MINISTRY IN 2008.

THE CHANCELLOR WITH THE DIOCESE TOLD ME THIS AFTERNOON..

HE WANTS VICTIMS TO KNOW THE DIOCESE WON'T ALLOW THIS BEHAVIOR.

(Priest Allegations SOT)

TAKE SOT

MARTY MARTIN/DIOCESE OF LUBBOCK CHANCELLOR: "The Diocese of Lubbock extends an apology to all victims. Especially the minors, but to all victims. Not just of what happened to them, but also for the fact in the past many times, the church leaders have failed them and that's not something we want to do and that's something that won't be tolerated anymore."

TAKE FS

BISHOP COERVER SAYS HE'S OUT OF THE COUNTRY RIGHT NOW..

BUT SAYS IN A STATEMENT IN PART QUOTE..

HE CONTINUES TO PRAY FOR THE VICTIMS AND SURVIVORS OF ABUSE OF ANY KIND..

ESPECIALLY FOR THOSE FAMILIES WHOSE TRUST IN THE CHURCH HAS BEEN BROKEN.

HIS FULL STATEMENT IS ON OUR WEBSITE.

TAKE LIVE

MARI

SOME OF THE MEN LISTED HAVE BEEN CHARGED OR ARRESTED FOR THE CRIMES.

THE AMARILLO DIOCESE ALSO RELEASED A LIST OF NAMES IN THEIR AREA...

SEVERAL ALSO SERVED IN THE LUBBOCK AREA AT SOME POINT IN TIME.

YOU CAN FIND THAT LIST ON OUR WEBSITE EVERYTHING LUBBOCK DOT COM.

FOR NOW REPORTING LIVE FROM THE DIOCESE OF LUBBOCK.

I'M MARI SALAZAR, KLBK NEWS.

FS= Full Screen | VO= Video Over | SOT= Sound Bite | PKG= Package

THEY "ARE CURRENTLY SEARCHING THROUGH RECORDS.

AT THIS TIME, LPD DOES NOT APPEAR TO HAVE ANY PAST OR CURRENT INVESTIGATIONS OF ABUSE OCCURRING WITHIN THE CITY OF LUBBOCK BY THESE INDIVIDUALS."

HUGE

MARI

THE DIOCESE SAYS IF YOU OR ANYONE YOU KNOW HAS BEEN ABUSED BY SOMEONE ACTING IN THE NAME OF THE CATHOLIC CHURCH..

REPORT THEM TO THE VICTIM'S ASSISTANCE COORDINATOR OF THE DIOCESE.

March 25, 2019 KLBK 10 P.M.

FS/VO

(Diocese FSVO)

TAKE FS

TERRI

A LUBBOCK MAN IS SUING THE CATHOLIC DIOCESE OF LUBBOCK--

JESUS GUERRERO SAYS THE CHURCH FALSELY ACCUSED HIM OF SEXUAL ABUSE.

TAKE VO

ALL OF THE TEXAS DIOCESES WERE ORDERED TO RELEASE THE NAMES OF "CREDIBLY ACCUSED" CLERGY.

GUERRERO WAS ON THE LIST.

HE WAS LISTED AS A DEACON THAT WAS REMOVED FROM MINISTRY.

ONE PART OF THE LAWSUIT SAID GUERRERO WAS NEVER ACCUSED OF SEXUAL ABUSE OR BEEN INVESTIGATED IN ANY WAY FOR MISCONDUCT AGAINST A MINOR.

THE LAWSUIT SEEKS 1-MILLION DOLLARS OR MORE.

PROMISE TO PROTECT



PLEDGE TO HEAL

Charter for the Protection of Children and Young People

**Essential Norms for Diocesan/ Eparchial Policies Dealing with Allegations of
Sexual Abuse of Minors by Priests or Deacons**

A Statement of Episcopal Commitment

• *Revised June 2018* •

United States Conference of Catholic Bishops

The revised *Charter for the Protection of Children and Young People* was developed by the Ad Hoc Committee for Sexual Abuse of the United States Conference of Catholic Bishops (USCCB). It was approved by the full body of U.S. Catholic bishops at its June 2005 Plenary Assembly, and this third revision was approved at the June 2018 Plenary Assembly. The revised *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* was developed by the Ad Hoc Committee on Sexual Abuse of the USCCB and by the Vatican-U.S. Bishops' Mixed Commission on Sex Abuse Norms. They were approved by the full body of bishops at its June 2005 General Meeting, received the subsequent *recognitio* of the Holy See on January 1, 2006, and were promulgated May 5, 2006. The revised *Statement of Episcopal Commitment* was developed by the Ad Hoc Committee on Bishops' Life and Ministry of the USCCB. It was approved by the full body of U.S. Catholic bishops at its November 2005 Plenary Assembly and then again in 2011 and 2018. This revised edition, containing all three documents, is authorized for publication by the undersigned.

Msgr. J. Brian Bransfield
General Secretary, USCCB

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Charter for the Protection of Children and Young People

Preamble

Since 2002, the Church in the United States has experienced a crisis without precedent in our times. The sexual abuse¹ of children and young people by some deacons, priests, and bishops, and the ways in which these crimes and sins were addressed, have caused enormous pain, anger, and confusion for victims, their families, and the entire Church. As bishops, we have acknowledged our mistakes and our roles in that suffering, and we apologize and take responsibility again for too often failing victims and the Catholic people in the past. From the depths of our hearts, we bishops express great sorrow and profound regret for what the Catholic people have endured.

We share Pope Francis' "conviction that everything possible must be done to rid the Church of the scourge of the sexual abuse of minors and to open pathways of reconciliation and healing for those who were abused" (Letter of His Holiness Pope Francis to the Presidents of the Episcopal Conferences and Superiors of Institutes of Consecrated Life and Societies of Apostolic Life Concerning the Pontifical Commission for the Protection of Minors, February 2, 2015).

Again, with this 2018 revision of the *Charter for the Protection of Children and Young People*, we re-affirm our deep commitment to sustain and strengthen a safe environment within the Church for children and youth. We have listened to the profound pain and suffering of those victimized by sexual abuse and will continue to respond to their cries. We have agonized over the sinfulness, the criminality, and the breach of trust perpetrated by some members of the clergy. We have determined as best we can the extent of the problem of this abuse of minors by clergy in our country, as well as its causes and context. We will use what we have learned to strengthen the protection given to the children and young people in our care.

We continue to have a special care for and a commitment to reaching out to the victims of sexual abuse and their families. The damage caused by sexual abuse of minors is devastating and long-lasting. We apologize to each victim for the grave harm that has been inflicted on him or her, and we offer our help now and for the future. The loss of trust that is often the consequence of such abuse becomes even more tragic when it leads to a loss of the faith that we have a sacred duty to foster. We make our own the words of St. John Paul II: that the sexual abuse of young people is “by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God” (Address to the Cardinals of the United States and Conference Officers, April 23, 2002). We will continue to help victims recover from these crimes and strive to prevent these tragedies from occurring.

Along with the victims and their families, the entire Catholic community in this country has suffered because of this scandal and its consequences. The intense public scrutiny of the minority of the ordained who have betrayed their calling has caused the vast majority of faithful priests and deacons to experience enormous vulnerability to being misunderstood in their ministry and often casts over them an undeserved air of suspicion. We share with all priests and deacons a firm commitment to renewing the integrity of the vocation to Holy Orders so that it will continue to be perceived as a life of service to others after the example of Christ our Lord.

We, who have been given the responsibility of shepherding God’s people, will, with his help and in full collaboration with all the faithful, continue to work to restore the bonds of trust that unite us. We have seen that words alone cannot accomplish this goal. We will continue to take action in our Plenary Assembly and at home in our dioceses and eparchies.

We feel a particular responsibility for “the ministry of reconciliation” (2 Cor 5:18) which God, who reconciled us to himself through Christ, has given us. The love of Christ impels us to ask forgiveness for our own faults but also to appeal to all—to those who have been victimized, to those who have offended, and to all who have felt the wound of this scandal—to be reconciled to God and one another.

Perhaps in a way never before experienced, we feel the power of sin touch our entire Church family in this country; but as St. Paul boldly says, God made Christ “to be sin who did not know sin, so that we might become the righteousness of God in him” (2 Cor 5:21). May we who have known sin experience as well, through a spirit of reconciliation, God’s own righteousness. We know that after such profound hurt, healing and reconciliation are beyond human capacity alone. It is God’s grace and mercy that will lead us forward, trusting Christ’s promise: “for God all things are possible” (Mt 19:26).

In working toward fulfilling this responsibility, we rely, first of all, on Almighty God to sustain us in faith and in the discernment of the right course to take.

We receive fraternal guidance and support from the Holy See that sustains us in this time of trial. In solidarity with Pope Francis, we express heartfelt love and sorrow for the victims of abuse.

We rely on the Catholic faithful of the United States. Nationally and in each diocese/eparchy, the wisdom and expertise of clergy, religious, and laity contribute immensely to confronting the effects of the crisis and taking steps to resolve it. We are filled with gratitude for their great faith, for their generosity, and for the spiritual and moral support that we receive from them.

We acknowledge and re-affirm the faithful service of the vast majority of our priests and deacons and the love that people have for them. They deservedly have our esteem and that of the Catholic people for their good work. It is regrettable that their committed ministerial witness has been overshadowed by this crisis.

In a special way, we acknowledge and thank victims of clergy sexual abuse and their families who have trusted us enough to share their stories and to help us understand more fully the consequences of this reprehensible violation of sacred trust. With Pope Francis, we praise the courage of those who speak out about their abuse; their actions are “a service of love, since for us it sheds light on a terrible darkness in the life of the Church.” We pray that “the remnants of the darkness which touch them may be healed” (Address to Victims of Sexual Abuse, July 7, 2014).

Let there now be no doubt or confusion on anyone's part: For us, your bishops, our obligation to protect children and young people and to prevent sexual abuse flows from the mission and example given to us by Jesus Christ himself, in whose name we serve.

As we work to restore trust, we are reminded how Jesus showed constant care for the vulnerable. He inaugurated his ministry with these words of the Prophet Isaiah:

The Spirit of the Lord is upon me,
because he has anointed me
to bring glad tidings to the poor.
He has sent me to proclaim liberty to captives
and recovery of sight to the blind,
to let the oppressed go free,
and to proclaim a year acceptable to the Lord. (Lk 4:18-19)

In Matthew 25, the Lord, in his commission to his apostles and disciples, told them that whenever they show mercy and compassion to the least ones, they show it to him.

Jesus extended this care in a tender and urgent way to children, rebuking his disciples for keeping them away from him: "Let the children come to me" (Mt 19:14). And he uttered a grave warning that for anyone who would lead the little ones astray, it would be better for such a person "to have a great millstone hung around his neck and to be drowned in the depths of the sea" (Mt 18:6).

We hear these words of the Lord as prophetic for this moment. With a firm determination to restore the bonds of trust, we bishops recommit ourselves to a continual pastoral outreach to repair the breach with those who have suffered sexual abuse and with all the people of the Church.

In this spirit, over the last sixteen years, the principles and procedures of the *Charter* have been integrated into church life.

- The Secretariat of Child and Youth Protection provides the focus for a consistent, ongoing, and comprehensive approach to creating a safe environment for young people throughout the Church in the United States.
- The Secretariat also provides the means for us to be accountable for achieving the goals of the *Charter*, as demonstrated by its annual reports on the implementation of the *Charter* based on independent compliance audits.
- The National Review Board is carrying on its responsibility to assist in the assessment of diocesan/eparchial compliance with the *Charter for the Protection of Children and Young People*.
- The descriptive study of the nature and scope of sexual abuse of minors by Catholic clergy in the United States, commissioned by the National Review Board, was completed in February 2004. The resulting study, examining the historical period 1950-2002, by the John Jay College of Criminal Justice provides us with a powerful tool not only to examine our past but also to secure our future against such misconduct.
- The U.S. bishops charged the National Review Board to oversee the completion of the *Causes and Context* study. The Study, which calls for ongoing education, situational prevention, and oversight and accountability, was completed in 2011.
- Victims' assistance coordinators are in place throughout our nation to assist dioceses and eparchies in responding to the pastoral needs of the abused.
- Diocesan/eparchial bishops in every diocese/eparchy are advised and greatly assisted by diocesan and eparchial review boards as the bishops make the decisions needed to fulfill the *Charter*.

- Safe environment programs are in place to assist parents and children—and those who work with children—in preventing harm to young people. These programs continually seek to incorporate the most useful developments in the field of child protection.

Through these steps and many others, we remain committed to the safety of our children and young people.

While the number of reported cases of sexual abuse has decreased over the last sixteen years, the harmful effects of this abuse continue to be experienced both by victims and dioceses/eparchies.

Thus it is with a vivid sense of the effort which is still needed to confront the effects of this crisis fully and with the wisdom gained by the experience of the last sixteen years that we have reviewed and revised the *Charter for the Protection of Children and Young People*. We now reaffirm that we will assist in the healing of those who have been injured, will do all in our power to protect children and young people, and will work with our clergy, religious, and laity to restore trust and harmony in our faith communities, as we pray for the Kingdom of God to come, here on earth, as it is in heaven.

To make effective our goals of a safe environment within the Church for children and young people and of preventing sexual abuse of minors by clergy in the future, we, the members of the United States Conference of Catholic Bishops, have outlined in this *Charter* a series of practical and pastoral steps, and we commit ourselves to taking them in our dioceses and eparchies.

To Promote Healing and Reconciliation with Victims/Survivors of Sexual Abuse of Minors

ARTICLE 1. Dioceses/eparchies are to reach out to victims/survivors and their families and demonstrate a sincere commitment to their spiritual and emotional well-being. The first obligation of the Church with regard to the victims is for healing and reconciliation. Each

diocese/eparchy is to continue its outreach to every person who has been the victim of sexual abuse as a minor by anyone in church service, whether the abuse was recent or occurred many years in the past. This outreach may include provision of counseling, spiritual assistance, support groups, and other social services agreed upon by the victim and the diocese/eparchy.

Through pastoral outreach to victims and their families, the diocesan/eparchial bishop or his representative is to offer to meet with them, to listen with patience and compassion to their experiences and concerns, and to share the “profound sense of solidarity and concern” expressed by St. John Paul II, in his Address to the Cardinals of the United States and Conference Officers (April 23, 2002). Pope Benedict XVI, too, in his address to the U.S. bishops in 2008 said of the clergy sexual abuse crisis, “It is your God-given responsibility as pastors to bind up the wounds caused by every breach of trust, to foster healing, to promote reconciliation and to reach out with loving concern to those so seriously wronged.”

We bishops and eparchs commit ourselves to work as one with our brother priests and deacons to foster reconciliation among all people in our dioceses/eparchies. We especially commit ourselves to work with those individuals who were themselves abused and the communities that have suffered because of the sexual abuse of minors that occurred in their midst.

ARTICLE 2. Dioceses/eparchies are to have policies and procedures in place to respond promptly to any allegation where there is reason to believe that sexual abuse of a minor has occurred. Dioceses/eparchies are to have a competent person or persons to coordinate assistance for the immediate pastoral care of persons who report having been sexually abused as minors by clergy or other church personnel. The procedures for those making a complaint are to be readily available in printed form and other media in the principal languages in which the liturgy is celebrated in the diocese/eparchy and be the subject of public announcements at least annually.

Dioceses/eparchies are also to have a review board that functions as a confidential consultative body to the bishop/eparch. The majority of its members are to be lay persons not in the employ of the diocese/eparchy (see Norm 5 in *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, 2006). This board is to advise

the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry. It is regularly to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors. Also, the board can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases.

ARTICLE 3. Dioceses/eparchies are not to enter into settlements which bind the parties to confidentiality, unless the victim/survivor requests confidentiality and this request is noted in the text of the agreement.

To Guarantee an Effective Response to Allegations of Sexual Abuse of Minors

ARTICLE 4. Dioceses/eparchies are to report an allegation of sexual abuse of a person who is a minor to the public authorities with due regard for the seal of the Sacrament of Penance. Diocesan/eparchial personnel are to comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and cooperate in their investigation in accord with the law of the jurisdiction in question.

Dioceses/eparchies are to cooperate with public authorities about reporting cases even when the person is no longer a minor.

In every instance, dioceses/eparchies are to advise victims of their right to make a report to public authorities and support this right.

ARTICLE 5. We affirm the words of St. John Paul II, in his Address to the Cardinals of the United States and Conference Officers: "There is no place in the priesthood or religious life for those who would harm the young." Pope Francis has consistently reiterated this with victims of clergy sexual abuse.

Sexual abuse of a minor by a cleric is a crime in the universal law of the Church (CIC, c. 1395 §2; CCEO, c. 1453 §1). Because of the seriousness of this matter, jurisdiction has been reserved to the Congregation for the Doctrine of the Faith (*Motu proprio Sacramentorum sanctitatis tutela*, AAS 93, 2001). Sexual abuse of a minor is also a crime in all civil jurisdictions in the United States.

Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor—whenever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state. In keeping with the stated purpose of this *Charter*, an offending priest or deacon is to be offered therapeutic professional assistance both for the purpose of prevention and also for his own healing and well-being.

The diocesan/eparchial bishop is to exercise his power of governance, within the parameters of the universal law of the Church, to ensure that any priest or deacon subject to his governance who has committed even one act of sexual abuse of a minor as described below (see notes) shall not continue in ministry.

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.

ARTICLE 6. There are to be clear and well publicized diocesan/eparchial standards of ministerial behavior and appropriate boundaries for clergy and for any other paid personnel and volunteers of the Church with regard to their contact with minors.

ARTICLE 7. Dioceses/eparchies are to be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish and other church communities directly affected by sexual abuse of a minor.

To Ensure the Accountability of Our Procedures

ARTICLE 8. The Committee on the Protection of Children and Young People is a standing committee of the United States Conference of Catholic Bishops. Its membership is to include representation from all the episcopal regions of the country, with new appointments staggered to maintain continuity in the effort to protect children and youth.

The Committee is to advise the USCCB on all matters related to child and youth protection and is to oversee the development of the plans, programs, and budget of the Secretariat of Child and Youth Protection. It is to provide the USCCB with comprehensive planning and recommendations concerning child and youth protection by coordinating the efforts of the Secretariat and the National Review Board.

ARTICLE 9. The Secretariat of Child and Youth Protection, established by the Conference of Catholic Bishops, is to staff the Committee on the Protection of Children and Young People and be a resource for dioceses/eparchies for the implementation of “safe environment” programs and for suggested training and development of diocesan personnel responsible for child and youth protection programs, taking into account the financial and other resources, as well as the population, area, and demographics of the diocese/eparchy.

The Secretariat is to produce an annual public report on the progress made in implementing and maintaining the standards in this *Charter*. The report is to be based on an annual audit process whose method, scope, and cost are to be approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. This public report is to include the names of those dioceses/eparchies which the audit shows are not in compliance with the provisions and expectations of the *Charter*. The audit method refers to the

process and techniques used to determine compliance with the *Charter*. The audit scope relates to the focus, parameters, and time period for the matters to be examined during an individual audit.

As a member of the Conference staff, the Executive Director of the Secretariat is appointed by and reports to the General Secretary. The Executive Director is to provide the Committee on the Protection of Children and Young People and the National Review Board with regular reports of the Secretariat's activities.

ARTICLE 10. The whole Church, at both the diocesan/eparchial and national levels, must be engaged in maintaining safe environments in the Church for children and young people.

The Committee on the Protection of Children and Young People is to be assisted by the National Review Board, a consultative body established in 2002 by the USCCB. The Board will review the annual report of the Secretariat of Child and Youth Protection on the implementation of this *Charter* in each diocese/eparchy and any recommendations that emerge from it, and offer its own assessment regarding its approval and publication to the Conference President.

The Board will also advise the Conference President on future members. The Board members are appointed by the Conference President in consultation with the Administrative Committee and are accountable to him and to the USCCB Executive Committee. Before a candidate is contacted, the Conference President is to seek and obtain, in writing, the endorsement of the candidate's diocesan bishop. The Board is to operate in accord with the statutes and bylaws of the USCCB and within procedural guidelines developed by the Board in consultation with the Committee on the Protection of Children and Young People and approved by the USCCB Administrative Committee. These guidelines set forth such matters as the Board's purpose and responsibility, officers, terms of office, and frequency of reports to the Conference President on its activities.

The Board will offer its advice as it collaborates with the Committee on the Protection of Children and Young People on matters of child and youth protection, specifically on policies and best practices. For example, the Board will continue to monitor the recommendations derived

from the *Causes and Context* study. The Board and Committee on the Protection of Children and Young People will meet jointly every year.

The Board will review the work of the Secretariat of Child and Youth Protection and make recommendations to the Executive Director. It will assist the Executive Director in the development of resources for dioceses.

ARTICLE 11. The President of the Conference is to inform the Holy See of this revised *Charter* to indicate the manner in which we, the Catholic bishops, together with the entire Church in the United States, intend to continue our commitment to the protection of children and young people. The President is also to share with the Holy See the annual reports on the implementation of the *Charter*.

To Protect the Faithful in the Future

ARTICLE 12. Dioceses/eparchies are to maintain “safe environment” programs which the diocesan/eparchial bishop deems to be in accord with Catholic moral principles. They are to be conducted cooperatively with parents, civil authorities, educators, and community organizations to provide education and training for minors, parents, ministers, employees, volunteers, and others about ways to sustain and foster a safe environment for minors. Dioceses/eparchies are to make clear to clergy and all members of the community the standards of conduct for clergy and other persons with regard to their contact with minors.

ARTICLE 13. The diocesan/eparchial bishop is to evaluate the background of all incardinated priests and deacons. When a priest or deacon, not incardinated in the diocese/eparchy, is to engage in ministry in the diocese/eparchy, regardless of the length of time, the evaluation of his background may be satisfied through a written attestation of suitability for ministry supplied by his proper ordinary/major superior to the diocese/eparchy. Dioceses/eparchies are to evaluate the background of all their respective diocesan/eparchial and parish/school or other paid personnel

and volunteers whose duties include contact with minors. Specifically, they are to utilize the resources of law enforcement and other community agencies. Each diocese/eparchy is to determine the application/renewal of background checks according to local practice. In addition, they are to employ adequate screening and evaluative techniques in deciding the fitness of candidates for ordination (see USCCB, *Program of Priestly Formation* [Fifth Edition], 2006, no. 39 and the *National Directory for the Formation, Ministry and Life of Permanent Deacons in the United States*, n.178 j).²

ARTICLE 14. Transfers of all priests and deacons who have committed an act of sexual abuse against a minor for residence, including retirement, shall be in accord with Norm 12 of the Essential Norms (see *Proposed Guidelines on the Transfer or Assignment of Clergy and Religious*, adopted by the USCCB, the Conference of Major Superiors of Men [CMSM], the Leadership Conference of Women Religious [LCWR], and the Council of Major Superiors of Women Religious [CMSWR] in 1993).

ARTICLE 15. To ensure continuing collaboration and mutuality of effort in the protection of children and young people on the part of the bishops and religious ordinaries, two representatives of the Conference of Major Superiors of Men are to serve as consultants to the Committee on the Protection of Children and Young People. At the invitation of the Major Superiors, the Committee will designate two of its members to consult with its counterpart at CMSM. Diocesan/eparchial bishops and major superiors of clerical institutes or their delegates are to meet periodically to coordinate their roles concerning the issue of allegations made against a cleric member of a religious institute ministering in a diocese/eparchy.

ARTICLE 16. Given the extent of the problem of the sexual abuse of minors in our society, we are willing to cooperate with other churches and ecclesial communities, other religious bodies, institutions of learning, and other interested organizations in conducting research in this area.

ARTICLE 17. We commit ourselves to work individually in our dioceses/eparchies and together as a Conference, through the appropriate committees, to strengthen our programs both for initial priestly and diaconal formation and their ongoing formation. With renewed urgency, we will

promote programs of human formation for chastity and celibacy for both seminarians and priests based upon the criteria found in *Pastores dabo vobis*, no. 50, the *Program of Priestly Formation*, and the *Basic Plan for the Ongoing Formation of Priests*, as well as similar, appropriate programs for deacons based upon the criteria found in the *National Directory for the Formation, Ministry and Life of Permanent Deacons in the United States*. We will continue to assist priests, deacons, and seminarians in living out their vocation in faithful and integral ways.

Conclusion

As we wrote in 2002, “It is within this context of the essential soundness of the priesthood and of the deep faith of our brothers and sisters in the Church that we know that we can meet and resolve this crisis for now and the future.”

We reaffirm that the vast majority of priests and deacons serve their people faithfully and that they have their esteem and affection. They also have our respect and support and our commitment to their good names and well-being.

An essential means of dealing with the crisis is prayer for healing and reconciliation, and acts of reparation for the grave offense to God and the deep wound inflicted upon his holy people. Closely connected to prayer and acts of reparation is the call to holiness of life and the care of the diocesan/eparchial bishop to ensure that he and his priests and deacons avail themselves of the proven ways of avoiding sin and growing in holiness of life.

It is with reliance on the grace of God and in a spirit of prayer and penance that we renew the pledges which we made in the 2002 *Charter*:

We pledge most solemnly to one another and to you, God’s people, that we will work to our utmost for the protection of children and youth.

We pledge that we will devote to this goal the resources and personnel necessary to accomplish it.

We pledge that we will do our best to ordain to the diaconate and priesthood and put into positions of trust only those who share this commitment to protecting children and youth.

We pledge that we will work toward healing and reconciliation for those sexually abused by clerics.

Much has been done to honor these pledges. We devoutly pray that God who has begun this good work in us will bring it to fulfillment.

This *Charter* is published for the dioceses/eparchies of the United States. It is to be reviewed again after seven years by the Committee on the Protection of Children and Young People with the advice of the National Review Board. The results of this review are to be presented to the full Conference of Bishops for confirmation. Authoritative interpretations of its provisions are reserved to the Conference of Bishops.

NOTES

- 1 For purposes of this *Charter*, the offense of sexual abuse of a minor will be understood in accord with the provisions of *Sacramentorum sanctitatis tutela* (SST), article 6, which reads:

§1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;

§2. A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

In view of the Circular Letter from the Congregation for the Doctrine of the Faith, dated May 3, 2011, which calls for “mak[ing] allowance for the legislation of the country where the Conference is located,” Section III(g), we will apply the federal legal age for defining child pornography, which includes pornographic images of minors under the age of eighteen, for assessing a cleric’s suitability for ministry and for complying with civil reporting statutes.

If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (*Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, 1995, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.

- 2 In 2009, after consultation with members of the USCCB Committee on the Protection of Children and Young People and the Conference of Major Superiors of Men and approval from the USCCB Committee on Canonical Affairs and Church Governance, additional Model Letters of Suitability, now available on the USCCB website, were agreed upon and published for use by bishops and major superiors in situations which involve both temporary and extended ministry for clerics.

Essential Norms for Diocesan/ Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons

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Most Reverend William S. Skylstad, D.D.

Bishop of Spokane

May 5, 2006

THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

DECREE OF PROMULGATION

On November 13, 2002, the members of the United States Conference of Catholic Bishops approved as particular law the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*. Following the grant of the required *recognitio* by the Congregation for Bishops on December 8, 2002, the *Essential Norms* were promulgated by the President of the same Conference on December 12, 2002.

Thereafter, on June 17, 2005, the members of the United States Conference of Catholic Bishops approved a revised text of the *Essential Norms*. By a decree dated January 1, 2006, and signed by His Eminence, Giovanni Battista Cardinal Re, Prefect of the Congregation for Bishops, and His Excellency, the Most Reverend Francesco Monterisi, Secretary of the same Congregation, the

recognitio originally granted to the *Essential Norms* of 2002 was extended to the revised version *donec aliter provideatur*.

As President of the United States Conference of Catholic Bishops, I therefore decree the promulgation of the *Essential Norms* of June 17, 2005. These *Norms* shall obtain force on May 15, 2006, and so shall from that day bind as particular law all Dioceses and Eparchies of the United States Conference of Catholic Bishops.

Most Reverend William S. Skylstad
Bishop of Spokane
President, USCCB

Reverend Monsignor David J. Malloy
General Secretary

Preamble

On June 14, 2002, the United States Conference of Catholic Bishops approved a Charter for the Protection of Children and Young People. The charter addresses the Church's commitment to deal appropriately and effectively with cases of sexual abuse of minors by priests, deacons, and other church personnel (i.e., employees and volunteers). The bishops of the United States have promised to reach out to those who have been sexually abused as minors by anyone serving the Church in ministry, employment, or a volunteer position, whether the sexual abuse was recent or occurred many years ago. They stated that they would be as open as possible with the people in parishes and communities about instances of sexual abuse of minors, with respect always for the privacy and the reputation of the individuals involved. They have committed themselves to the pastoral and spiritual care and emotional well-being of those who have been sexually abused and of their families.

In addition, the bishops will work with parents, civil authorities, educators, and various organizations in the community to make and maintain the safest environment for minors. In the same way, the bishops have pledged to evaluate the background of seminary applicants as well as all church personnel who have responsibility for the care and supervision of children and young people.

Therefore, to ensure that each diocese/eparchy in the United States of America will have procedures in place to respond promptly to all allegations of sexual abuse of minors, the United States Conference of Catholic Bishops decrees these norms for diocesan/eparchial policies dealing with allegations of sexual abuse of minors by diocesan and religious priests or deacons.¹ These norms are complementary to the universal law of the Church and are to be interpreted in accordance with that law. The Church has traditionally considered the sexual abuse of minors a grave delict and punishes the offender with penalties, not excluding dismissal from the clerical state if the case so warrants.

For purposes of these Norms, sexual abuse shall include any offense by a cleric against the Sixth Commandment of the Decalogue with a minor as understood in CIC, canon 1395 §2, and CCEO, canon 1453 §1 (*Sacramentorum sanctitatis tutela*, article 6 §1).²

Norms

1. These Essential Norms have been granted *recognitio* by the Holy See. Having been legitimately promulgated in accordance with the practice of the United States Conference of Catholic Bishops on May 5, 2006, they constitute particular law for all the dioceses/eparchies of the United States of America.³

2. Each diocese/eparchy will have a written policy on the sexual abuse of minors by priests and deacons, as well as by other church personnel. This policy is to comply fully with, and is to specify in more detail, the steps to be taken in implementing the requirements of canon law, particularly CIC, canons 1717-1719, and CCEO, canons 1468-1470. A copy of this policy will be filed with the United States Conference of Catholic Bishops within three months of the effective date of these norms. Copies of any eventual revisions of the written diocesan/eparchial policy are also to be filed with the United States Conference of Catholic Bishops within three months of such modifications.

3. Each diocese/eparchy will designate a competent person to coordinate assistance for the immediate pastoral care of persons who claim to have been sexually abused when they were minors by priests or deacons.

4. To assist diocesan/eparchial bishops, each diocese/eparchy will also have a review board which will function as a confidential consultative body to the bishop/eparch in discharging his responsibilities. The functions of this board may include

- a.** advising the diocesan bishop/eparch in his assessment of allegations of sexual abuse of minors and in his determination of suitability for ministry;
 - b.** reviewing diocesan/eparchial policies for dealing with sexual abuse of minors;
- and

- c. offering advice on all aspects of these cases, whether retrospectively or prospectively.

5. The review board, established by the diocesan/eparchial bishop, will be composed of at least five persons of outstanding integrity and good judgment in full communion with the Church. The majority of the review board members will be lay persons who are not in the employ of the diocese/eparchy; but at least one member should be a priest who is an experienced and respected pastor of the diocese/eparchy in question, and at least one member should have particular expertise in the treatment of the sexual abuse of minors. The members will be appointed for a term of five years, which can be renewed. It is desirable that the Promoter of Justice participate in the meetings of the review board.

6. When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively (CIC, c. 1717; CCEO, c. 1468). During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the results of the investigation. When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified. The bishop/eparch shall then apply the precautionary measures mentioned in CIC, canon 1722, or CCEO, canon 1473—i.e., withdraw the accused from exercising the sacred ministry or any ecclesiastical office or function, impose or prohibit residence in a given place or territory, and prohibit public participation in the Most Holy Eucharist pending the outcome of the process.⁴

7. The alleged offender may be requested to seek, and may be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the diocese/eparchy and to the accused.

8. When even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed

permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants (SST, Art. 6; CIC, c. 1395 §2; CCEO, c. 1453 §1).⁵

- a.** In every case involving canonical penalties, the processes provided for in canon law must be observed, and the various provisions of canon law must be considered (cf. *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, 1995; Letter from the Congregation for the Doctrine of the Faith, May 18, 2001). Unless the Congregation for the Doctrine of the Faith, having been notified, calls the case to itself because of special circumstances, it will direct the diocesan bishop/eparch to proceed (Article 13, “Procedural Norms” for *Motu proprio Sacramentorum sanctitatis tutela*, AAS, 93, 2001, p. 787). If the case would otherwise be barred by prescription, because sexual abuse of a minor is a grave offense, the bishop/eparch may apply to the Congregation for the Doctrine of the Faith for a derogation from the prescription, while indicating relevant grave reasons. For the sake of canonical due process, the accused is to be encouraged to retain the assistance of civil and canonical counsel. When necessary, the diocese/eparchy will supply canonical counsel to a priest. The provisions of CIC, canon 1722, or CCEO, canon 1473, shall be implemented during the pendency of the penal process.
- b.** If the penalty of dismissal from the clerical state has not been applied (e.g., for reasons of advanced age or infirmity), the offender ought to lead a life of prayer and penance. He will not be permitted to celebrate Mass publicly or to administer the sacraments. He is to be instructed not to wear clerical garb, or to present himself publicly as a priest.

9. At all times, the diocesan bishop/eparch has the executive power of governance, within the parameters of the universal law of the Church, through an administrative act, to remove an offending cleric from office, to remove or restrict his faculties, and to limit his exercise of priestly ministry.⁶ Because sexual abuse of a minor by a cleric is a crime in the universal law of the Church (CIC, c. 1395 §2; CCEO, c. 1453 §1) and is a crime in all civil jurisdictions in the United States, for the sake of the common good and observing the provisions of canon law, the

diocesan bishop/eparch shall exercise this power of governance to ensure that any priest or deacon who has committed even one act of sexual abuse of a minor as described above shall not continue in active ministry.⁷

10. The priest or deacon may at any time request a dispensation from the obligations of the clerical state. In exceptional cases, the bishop/eparch may request of the Holy Father the dismissal of the priest or deacon from the clerical state *ex officio*, even without the consent of the priest or deacon.

11. The diocese/eparchy will comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and will cooperate in their investigation. In every instance, the diocese/eparchy will advise and support a person's right to make a report to public authorities.⁸

12. No priest or deacon who has committed an act of sexual abuse of a minor may be transferred for a ministerial assignment in another diocese/eparchy. Every bishop/eparch who receives a priest or deacon from outside his jurisdiction will obtain the necessary information regarding any past act of sexual abuse of a minor by the priest or deacon in question.

Before such a diocesan/eparchial priest or deacon can be transferred for residence to another diocese/eparchy, his diocesan/eparchial bishop shall forward, in a confidential manner, to the bishop of the proposed place of residence any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people.

In the case of the assignment for residence of such a clerical member of an institute or a society into a local community within a diocese/eparchy, the major superior shall inform the diocesan/eparchial bishop and share with him in a manner respecting the limitations of confidentiality found in canon and civil law all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people so that the bishop/eparch can make an informed judgment that suitable

safeguards are in place for the protection of children and young people. This will be done with due recognition of the legitimate authority of the bishop/eparch; of the provisions of CIC, canon 678 (CCEO, canons 415 §1 and 554 §2), and of CIC, canon 679; and of the autonomy of the religious life (CIC, c. 586).

13. Care will always be taken to protect the rights of all parties involved, particularly those of the person claiming to have been sexually abused and of the person against whom the charge has been made. When an accusation has been shown to be unfounded, every step possible will be taken to restore the good name of the person falsely accused.

NOTES

- 1 These Norms constitute particular law for the dioceses, eparchies, clerical religious institutes, and societies of apostolic life of the United States with respect to all priests and deacons in the ecclesiastical ministry of the Church in the United States. When a major superior of a clerical religious institute or society of apostolic life applies and interprets them for the internal life and governance of the institute or society, he has the obligation to do so according to the universal law of the Church and the proper law of the institute or society.
- 2 If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized moral theologians should be consulted, and the opinions of recognized experts should be appropriately obtained (*Canonical Delicts*, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.
- 3 Due regard must be given to the proper legislative authority of each Eastern Catholic Church.
- 4 Article 19 *Sacramentorum sanctitatis tutela* states, “With due regard for the right of the Ordinary to impose from the outset of the preliminary investigation those measures which are established in can. 1722 of the Code of Canon Law, or in can. 1473 of the Code of Canons of the Eastern Churches, the respective presiding judge may, at the request of the Promoter of Justice, exercise the same power under the same conditions determined in the canons themselves.”

- 5 Removal from ministry is required whether or not the cleric is diagnosed by qualified experts as a pedophile or as suffering from a related sexual disorder that requires professional treatment. With regard to the use of the phrase “ecclesiastical ministry,” by clerical members of institutes of consecrated life and societies of apostolic life, the provisions of canons 678 and 738 also apply, with due regard for canons 586 and 732.
- 6 Cf. CIC, cc. 35-58, 149, 157, 187-189, 192-195, 277 §3, 381 §1, 383, 391, 1348, and 1740-1747. Cf. also CCEO, cc. 1510 §1 and 2, 1°-2°, 1511, 1512 §§1-2, 1513 §§2-3 and 5, 1514-1516, 1517 §1, 1518, 1519 §2, 1520 §§1-3, 1521, 1522 §1, 1523-1526, 940, 946, 967-971, 974-977, 374, 178, 192 §§1-3, 193 §2, 191, and 1389-1396.
- 7 The diocesan bishop/eparch may exercise his executive power of governance to take one or more of the following administrative actions (CIC, cc. 381, 129ff.; CCEO, cc. 178, 979ff.):
- a. He may request that the accused freely resign from any currently held ecclesiastical office (CIC, cc. 187-189; CCEO, cc. 967-971).
 - b. Should the accused decline to resign and should the diocesan bishop/eparch judge the accused to be truly not suitable (CIC, c. 149 §1; CCEO, c. 940) at this time for holding an office previously freely conferred (CIC, c. 157), then he may remove that person from office observing the required canonical procedures (CIC, cc. 192-195, 1740-1747; CCEO, cc. 974-977, 1389-1396).
 - c. For a cleric who holds no office in the diocese/eparchy, any previously delegated faculties may be administratively removed (CIC, cc. 391 §1 and 142 §1; CCEO, cc. 191 §1 and 992 §1), while any *de iure* faculties may be removed or restricted by the competent authority as provided in law (e.g., CIC, c. 764; CCEO, c. 610 §§2-3).
 - d. The diocesan bishop/eparch may also determine that circumstances surrounding a particular case constitute the just and reasonable cause for a priest to celebrate the Eucharist with no member of the faithful present (CIC, c. 906). The bishop may forbid the priest to celebrate the Eucharist publicly and to administer the sacraments, for the good of the Church and for his own good.
 - e. Depending on the gravity of the case, the diocesan bishop/eparch may also dispense (CIC, cc. 85-88; CCEO, cc. 1536 §1–1538) the cleric from the obligation

of wearing clerical attire (CIC, c. 284; CCEO, c. 387) and may urge that he not do so, for the good of the Church and for his own good.

These administrative actions shall be taken in writing and by means of decrees (CIC, cc. 47-58; CCEO, cc. 1510 §2, 1°-2°, 1511, 1513 §§2-3 and 5, 1514, 1517 §1, 1518, 1519 §2, 1520) so that the cleric affected is afforded the opportunity of recourse against them in accord with canon law (CIC, cc. 1734ff.; CCEO, cc. 999ff.).

- 8 The necessary observance of the canonical norms internal to the Church is not intended in any way to hinder the course of any civil action that may be operative. At the same time, the Church reaffirms her right to enact legislation binding on all her members concerning the ecclesiastical dimensions of the delict of sexual abuse of minors.

A Statement of Episcopal Commitment

We bishops pledge again to respond to the demands of the *Charter* in a way that manifests our accountability to God, to God's people, and to one another. Individually and together, we acknowledge mistakes in the past when some bishops transferred, from one assignment to another, priests who abused minors. We recognize our roles in the suffering this has caused, and we continue to ask forgiveness for it.

Without at all diminishing the importance of broader accountability, this statement focuses on the accountability which flows from our episcopal communion and fraternal solidarity, a moral responsibility we have with and for each other.

While bishops are ordained primarily for their diocese or eparchy, we are called as well to protect the unity and to promote the common discipline of the whole Church (CIC, c. 392; CCEO, c. 201). Participating in the college of bishops, each bishop is responsible to act in a manner that reflects both effective and affective collegiality.

Respecting the legitimate rights of bishops who are directly accountable to the Holy See, in a spirit of collegiality and fraternity we renew our commitment to the following:

1. Within each of our provinces, we will assist each other to interpret correctly and implement the *Charter for the Protection of Children and Young People*, always respecting Church law and striving to reflect the Gospel.
2. We will apply the requirements of the *Charter* also to ourselves, respecting always Church law as it applies to bishops. Therefore, if a bishop is accused of the sexual abuse of a minor, the accused bishop is obliged to inform the Apostolic Nuncio. If another bishop becomes aware of the sexual abuse of a minor by another bishop or of an allegation of the sexual abuse of a minor by a bishop, he too is obliged to inform the Apostolic Nuncio and comply with applicable civil laws.

3. In cases of financial demands for settlements involving allegations of any sexual misconduct by a bishop, he, or any of us who become aware of it, is obliged to inform the Apostolic Nuncio.

4. Within each of our provinces, as an expression of collegiality, including fraternal support, fraternal challenge and fraternal correction, we will engage in ongoing mutual reflection upon our commitment to holiness of life and upon the exercise of our episcopal ministry.

In making this statement, we firmly uphold the dignity of every human being and renew our commitment to live and promote the chastity required of all followers of Christ and especially of deacons, priests and bishops.

This Statement of Episcopal Commitment will be reviewed by the Committee on Clergy, Consecrated Life and Vocations upon the next review of the *Charter*.

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