IN THE SUPREME COURT OF INDIANA

Cause No. 20S-OR-00520

STATE OF INDIANA on the relation of ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC.,	)	
Relator,	)	Original Action from the Marion County Superior Court
vs.	)	Lower Court Cause No. 49D01-1907-PL-27728
THE MARION COUNTY SUPERIOR COURT and THE HONORABLE STEPHEN R. HEIMANN, as Special Judge thereof,	)	
Respondents.		

CONSOLIDATED REPLY BRIEF IN SUPPORT OF RELATOR'S VERIFIED PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

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INTRODUCTION

This Court has long recognized that civil courts "hav[e] no … jurisdiction" over questions of "church government and discipline." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888). Accordingly, Indiana courts have repeatedly dismissed tort and contract claims, like this one, that would penalize Church officials for exercising ecclesiastical authority over whom to employ in Catholic institutions or whom to recognize as Catholic. *Id.*; *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 796 N.E.2d 286, 294 (Ind. 2003), *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 336 (Ind. Ct. App. 1999). Such claims are also barred under the overlapping First Amendment doctrines of expressive association and the ministerial exception. These controlling cases imposed on the trial court an absolute duty to refrain from exercising jurisdiction and to dismiss this case.

On these controlling cases, Plaintiff and the trial judge have little to say. Rather than defend his reasoning, the trial judge has now recused. And Plaintiff doesn't defend the trial judge's reasoning either. Instead, he offers his own handful of attempted distinctions, none of which has merit, and pretends that this is a "garden variety" "business tort case" (at 6)—all while seeking invasive discovery into the religious relationship between the Archdiocese and Cathedral and proposing a jury trial on whether the Archdiocese has applied its religious teaching "equally" to different types of sins. What Plaintiff doesn't do, because he can't, is cite a single case—from any jurisdiction, anywhere, ever—allowing a claim like his to proceed. That alone underscores the propriety of mandamus.

Lacking any serious argument about the trial court's duty to dismiss the case, Plaintiff and his *amici* fall back on procedural arguments—claiming the petition was "delayed," that it doesn't fit the "purpose" of the original action rules, or that it would open the "floodgates" to more original actions. But Plaintiff's procedural arguments fare no better than his jurisdictional ones.

First, the petition was timely. The Archdiocese requested the certified record just *six* business days after the trial judge denied certification, cutting off the only potential remedy by appeal. And it filed this original action just *one* business day after the record was certified.

Second, for all Plaintiff's paeans to the "purpose" of the original action rules, the *purpose* of the rules is most evident from their *text*, which Plaintiff and his *amici* remarkably avoid quoting. The rules do not, as Plaintiff wishes, bar the resolution of "substantive" or "merits" issues—terms that appear nowhere in the rules. Instead, they provide a remedy when the respondent court "has exceeded its jurisdiction" or "failed to act when it was under a duty to act," when "denial of the application will result in extreme hardship," and when "the remedy available by appeal will be wholly inadequate." Orig. Act. R. 3(A). That is just what the Archdiocese has shown here. Under binding authority, the trial judge had an absolute duty to dismiss this ecclesiastical dispute. And by speeding ahead with discovery and cutting off any possibility of immediate appeal, the trial judge is imposing extreme, irreparable harm—including denial of the Archdiocese's First Amendment immunity from suit, denial of First Amendment protection against discovery, and unconstitutional entanglement of courts in ecclesiastical questions. Indeed, this is a quintessential example of when relief by mandamus is needed, as evidenced by the many decisions from other jurisdictions granting mandamus in similar church autonomy cases.

Third, far from opening the "floodgates" to original actions, a grant of mandamus here is naturally limited by the fact that this case involves a well-recognized First Amendment immunity treated as mandamus-worthy in other jurisdictions. Few cases outside the church autonomy context can make such a claim. By contrast, the only real "floodgates" concern here cuts the opposite way—that *denial* of mandamus would greenlight any number of frivolous lawsuits against religious organizations, all

seeking intrusive discovery and threatening church-state entanglement, and all allowed to proceed by any judge who wants to ignore binding precedent and deny certification.

At bottom, though important and closely watched, established precedent makes this an easy case. This Court said over a century ago that "no power save that of the church can rightfully declare who is a Catholic." *Dwenger*, 14 N.E. at 908. The trial court was bound to follow that principle and dismiss this case.

ARGUMENT

I. The trial court had an absolute duty to refrain from exercising jurisdiction and to dismiss this ecclesiastical dispute.

Three overlapping constitutional doctrines—church autonomy, expressive association, and the ministerial exception—mandated dismissal of this ecclesiastical dispute. Plaintiff says these "three distinct arguments" suggest a "lack of clear authority for an unquestioned right to relief." P-E Br.24. But the opposite is true: the convergence of all three doctrines on the same result shows that the trial court was triply bound to dismiss the case.

A. Dismissal was required under the church autonomy doctrine.

As noted in our opening brief (at 16-24), this Court has long recognized that civil courts "hav[e] no … jurisdiction" over matters of "church government and discipline." *Dwenger*, 14 N.E. at 908. Several cases applying this principle are controlling here:

(1) *Dwenger* rejected a contract claim against a diocese that declared a decedent to be non-Catholic and therefore refused burial in a Catholic cemetery, reasoning that the Catholic Church has a right to establish "rules [for] the government" of its institutions, and that "[t]he court [has] no ecclesiastical jurisdiction" to question who is "rightfully declare[d] … Catholic." *Id.* at 908-09.

(2) *Brazauskas* barred a tortious interference claim against a bishop who prevented the plaintiff from getting a job at Notre Dame, reasoning that applying "tort law to penalize communication and coordination among church officials" "would violate the church autonomy doctrine." 796 N.E.2d at 294.

(3) *McEnroy* barred a tortious interference claim against an archabbot who directed the firing of a Catholic teacher, reasoning that deciding "whether [the] Archabbot … properly exercised his jurisdiction" would "clearly and excessively entangle[]" the trial court "in religious affairs." 713 N.E.2d at 336-37.

All three cases—like this one—involved a decision by Catholic institutions about whom to employ or whom to declare Catholic. All three cases—like this one—involved tortious interference or contract claims seeking to impose liability on Church officials for the exercise of their ecclesiastical authority. And all three cases resulted in a ruling that the court lacked "ecclesiastical jurisdiction," *Dwenger*, 14 N.E. 903 at 908, to interfere "in matters of church discipline, faith, practice and religious law," *McEnroy*, 713 N.E.2d at 336, and that the case had to be dismissed under "the church autonomy doctrine," *Brazauskas*, 796 N.E.2d at 294. This is precisely the sort of "clear, on-point authority" that justifies mandamus. *Cf.* P-E Br.6; *State ex rel. Crawford v. Del. Circuit Court*, 655 N.E.2d 499, 500-01 (Ind. 1995); *State ex rel. Meade v. Marshall Superior Court II*, 644 N.E.2d 87, 88-89 (Ind. 1994).

In response, Plaintiff doesn't point to a single case—from any jurisdiction, anywhere, ever—that allowed a similar tortious interference claim against a religious body to proceed. Nor does Plaintiff disagree that the trial judge failed to address these cases. Br.21. Instead, he tries to offer his own responses, but without success.

First, Plaintiff offers no argument on *Dwenger* at all—failing to cite it even once in 43 pages of argument. That is a glaring omission for Supreme Court authority that not only provides the controlling principle of law, but also applies that principle to the same sort of claim (relating to contract) and the same religious determination (who can be "Catholic") at issue here.

Next, Plaintiff tries to offer a few facts to differentiate his case from *Brazauskas*—such as that he "did not sue the Archdiocese before he got fired," and that he had a different teaching role. P-E Br.36. But he doesn't explain why any of these facts *matter* under *Brazauskas*'s analysis. That's because they don't. *Brazauskas* didn't turn

on the nature of the plaintiff's teaching role or the fact that she previously sued the archdiocese; it turned on the fact that her tortious interference claim would "penalize communication and coordination among church officials" on "a matter of internal church policy and administration." *Brazauskas*, 796 N.E.2d at 294. That is precisely what Plaintiff's lawsuit would do here.

Recognizing that he can't distinguish *Brazauskas*, Plaintiff criticizes it, citing the single-Justice *dissent*. P-E Br.36-37. But no matter how much Plaintiff disagrees with *Brazauskas*, it was binding on the trial court.

Finally, on *McEnroy*, Plaintiff purports to identify three factual differences—that he taught "social studies" instead of "religion," that he "did not publicly advocate against Church teachings," and that there was no "handbook policy that subjected his employment status to the discretion of the Archbishop." P-E Br.36. But again, none of these facts made a difference in *McEnroy*. Instead, what mattered in *McEnroy* was that the plaintiff's tortious interference claim would require the court to determine whether her conduct rendered her "seriously deficient" under canon law, and whether the Archabbot "properly exercised his jurisdiction" over the seminary. 713 N.E.2d at 337. That is precisely what Plaintiff asks the court to decide here: whether his same-sex marriage rendered him "seriously deficient" under canon law (or was instead treated too severely compared with other violations of Church teaching), and whether the Archbishop "properly exercised his jurisdiction" over Cathedral. Thus, *McEnroy* is on all fours. In any event, Plaintiff's distinctions also fail on the facts: Plaintiff *has* "publicly advocated against Church teachings," in the eyes of the Church, by entering a public union in violation of his contract; and he *did* agree to Cathedral's Handbook, which expressly made any decision about compliance with the morals clause subject to "the discretion of the … Archbishop." (R.50-51)

Unable to distinguish binding Indiana law, Plaintiff grasps at dicta from a recent Seventh Circuit decision—*Demkovich v. St. Andrew the Apostle Parish*, No. 19-2142,

2020 WL 5105147 (7th Cir. Aug. 31, 2020), *en banc petition forthcoming*, ECF 30, No. 19-2142 (7th Cir. Sept. 4, 2020)—even though he admits *Demkovich* is "not binding" and involved "different types of claims than Payne-Elliott's." P-E Br.38. No matter. *Demkovich* only *supports* the Archdiocese.

Demkovich involved a parish music director dismissed for entering a same-sex union. He sued, challenging his termination as discriminatory. *Demkovich v. St. Andrew the Apostle Parish*, 343 F. Supp. 3d 772, 775-76 (N.D. Ill. 2018). The trial court dismissed *all* of his wrongful termination claims as "barred by the First Amendment[]." *Id.* at 776. But it allowed him to amend his complaint to challenge not "the firing itself," but only "the *hostile work environment*" created by "insults and remarks." *Id.* Because of the important First Amendment rights at stake, the Seventh Circuit allowed an interlocutory appeal. *Demkovich*, 2020 WL 5105147 at *3.

On appeal, the Seventh Circuit held that the court was *correct* to bar *all* claims "challenging tangible employment actions"—such as "hiring, firing, promoting, deciding compensation, job assignments, and the like"—because the First Amendment protects religious organizations' right to "select and control" their ministers. *Id.* at *1, *8. Thus, "[t]he Church was free to decide whether to retain plaintiff as a minister or fire him," and "[t]he government may not interfere with that decision." *Id.* at *14. But the court allowed the "hostile work environment" claims to proceed, because they challenged "only his treatment by his supervisor," not "his firing," and would thus not interfere with the church's ability to "select and control" its leaders. *Id.* at *3, *5.[1]

This "line" drawn by *Demkovich*—between claims challenging "tangible employment actions" like firing, and those challenging only a "hostile environment," *id.* at

[1] Most federal circuits go further, also barring hostile work environment claims. *See, e.g.*, *Skrzypczak v. Roman Catholic Diocese of Tulsa*, 611 F.3d 1238 (10th Cir. 2010) (hostile work environment claim barred by ministerial exception); *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299, 1301, 1304 (11th Cir. 2000) (entirety of "Title VII is not applicable" to ministers); *Combs v. Cent. Tex. Annual Conf. of United Methodist Church*, 173 F.3d 343, 345 (5th Cir. 1999) (same).

*7—supports the Archdiocese. Payne-Elliott has not alleged a "campaign of verbal abuse" by his supervisor or anyone else. *Id.* at *9. Instead, his claim arises from the termination of his employment—a tangible employment action—pursuant to the Archbishop's ecclesiastical directive. Compl. ¶¶ 13-24. That is plainly a challenge to the Archdiocese's "power to … select and control" its representatives—a power *Demkovich* recognizes must be free from "judicial review or government interference." 2020 WL 5105147, at *9.

And even for claims that *don't* challenge a tangible employment action—as Payne-Elliott's does—*Demkovich* emphasized that such claims would *still* be barred if they "entangle courts excessively in substantive religious decision-making." *Id.* at *14-15. Here, Payne-Elliott's claims do just that. Specifically, he admits that he wants a "court or jury" to decide whether the Archdiocese enforced its religious teachings "equally to heterosexuals and homosexual alike"—such as by treating a same-sex marriage the same as "divorce and re-marriage without annulment, unmarried cohabitation, marriage without the sacrament, or other practices." P-E Br.39-40. This, Payne-Elliott says, "does not require the Court to decide questions of Church doctrine." *Id.* But of course it does. Every violation of Church teaching is different. And whether two violations of Church teaching are sufficiently "similar" that the Church should treat them "alike" is fundamentally a religious question. Thus, courts have repeatedly held that "[i]f a particular religious community wishes to differentiate between the severity of violating two tenets of its faith, it is not the province of the federal courts to say that such differentiation is discriminatory." *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 626-27 (6th Cir. 2000); *Curay-Cramer v. Ursuline Acad. of Wilmington*, 450 F.3d 130, 139 (3d Cir. 2006) (It "would violate the First Amendment" to have a civil court "assess the relative severity of offenses.").

And if a jury trial weighing the severity of different sins were not entangling enough, Plaintiff (and his lay Catholic *amici*) push for yet *another* entangling inquiry:

whether the Archbishop was *wrong* about what is "required" under "the Church's teachings on marriage." P-E Br.39. According to Plaintiff, the fact that it "took almost two years" for the Archbishop to issue the directive to Cathedral, and that a different decree against "Brebeuf Jesuit" was "stayed" by the Vatican, should allow a court (or jury) to decide that the Archbishop was wrong as a matter of Catholic doctrine. P-E Br.39; Lay Catholics Br.8-10. This is, of course, precisely the inquiry invited by the trial judge's ruling. It is also dead wrong under the First Amendment—which bars courts from "prob[ing] deeply enough into the allocation of power within a (hierarchical) church" to decide "religious law," *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976), as well as from "interpret[ing] … particular church doctrines and the importance of those doctrines to the religion," *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Presbyterian Church*, 393 U.S. 440, 450 (1969); Br.23 (collecting cases). And that is why *Dwenger*, *Brazauskas*, and *McEnroy* held that examining whether a church official "properly exercised [its] jurisdiction," or whether "canon law required" removal of a teacher, are questions over which civil courts have no "jurisdiction." *McEnroy*, 713 N.E.2d at 337; *see* Indiana Br.15.

That may also be why Plaintiff doesn't even attempt to defend the trial judge's reasoning on the church autonomy defense—namely, that the judge needed discovery on who was "the highest ecclesiastical authority regarding this matter." (R.555) That reasoning is contrary to Plaintiff's own theory of the case, which is that the Archdiocese has "control" over "recognition of Cathedral as a Catholic school." (R.2); *see* U.S. Br.21 ("[t]hat admission should be the end"); Indiana Br.10. It is contrary to the undisputed canon-law evidence, which demonstrates that the Archbishop is, in fact, the highest authority in this matter. (R.585-88) And it is contrary to controlling First Amendment precedent, which asks not who is the highest authority in general, but who is the highest authority "to which the matter has been carried"—which, given Cathedral's acquiescence in the Archbishop's directive, is indisputably the

Archbishop. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185-86 (2012) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1871)); *accord Ramsey v. Hicks*, 91 N.E. 344, 349 (Ind. 1910). Plaintiff says nothing about any of this. His failure to defend the trial judge's ruling—and failure to distinguish controlling authority—demonstrates the need for mandamus.

B. Dismissal was required under the First Amendment right of expressive association.

The trial court was likewise duty-bound to dismiss this case under the First Amendment right of expressive association. Br.24-25. Even more than in *Boy Scouts v. Dale*, 530 U.S. 640 (2000), the Archdiocese expresses a clear message on the nature of marriage, as it has for millennia. Br.26. And punishing the Archdiocese for disassociating from teachers or schools who undermine that message would obviously impair the Archdiocese's ability to communicate that message. Br.26-27; *see* U.S. Br.16-17 ("Supreme Court's conclusion in *Boy Scouts*" bars complaint). Neither Plaintiff nor the trial judge disputes either of these elements of the expressive-association analysis. (R.561-62); P-E Br.41-43.

Instead, Plaintiff tries to distinguish his tortious interference claim by saying that the Archdiocese's expressive association cases were "either brought by the State to enforce one of its laws" or by a party "asserting that the organization was violating a state law by not allowing the [party] to participate in that organization." P-E Br.42 (quoting R.562). But Plaintiff simply ignores multiple authorities holding that the right of expressive association *also* bars private tort claims—including claims for tortious interference. Br.27-28 (citing *Snyder v. Phelps*, 562 U.S. 443, 451 (2011); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 907-08 (1982)).

Alternatively, Plaintiff says the expressive association defense doesn't apply here because he is not "attempt[ing] to associate" with "the Archdiocese" but with "*Cathedral*." P-E Br.42. But he cites no authority for this argument—because there is none.

Plaintiff was plainly associated with the Archdiocese by teaching at a school that derives its "Catholic identity" from the Archdiocese and is subject to the Archdiocese in "faith and morals." (R.16). And legally, what matters under *Boy Scouts* is not what level or type of organization is forced to include the plaintiff, but whether the forced inclusion the plaintiff seeks would "significantly affect the [organization's] ability to advocate public or private viewpoints"—which is obvious and undisputed here. 530 U.S. at 641, 650.

Lastly, Plaintiff claims that the "Archdiocese cannot use the freedom of association defense to bar Payne-Elliott's claims if it has applied its policies inconsistently." P-E Br.43. But Plaintiff's lone citation for this is dictum from a case that *upheld* an expressive-association challenge. *See Our Lady's Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 822 (E.D. Mo. 2018). More importantly, *Boy Scouts* already closed the "inconsistency" door. There, the plaintiff claimed that the Boy Scouts couldn't invoke expressive association because they didn't also "revoke the membership of *heterosexual* Scout leaders that openly disagree with the Boy Scouts' policy on sexual orientation." 530 U.S. at 655 (emphasis added). The Supreme Court rejected this inconsistency as "irrelevant," emphasizing that "it is not the role of the courts to reject a group's expressed values because they ... find them internally inconsistent." *Id.* at 655, 651. So too here. And even if consistency mattered, Plaintiff's Complaint itself alleges *consistent* application of the policy against affiliation with schools employing teachers in same-sex relationships. (R.2-4, 14, 16-17 (Brebeuf)).[2]

C. Dismissal was required under the ministerial exception.

The First Amendment's "ministerial exception" also required dismissal of Plaintiffs' suit. The ministerial exception bars any judicial interference with the church's

[2] Plaintiff's passing assertion that there can be no "absolute duty" to dismiss a complaint on expressive-association grounds is mistaken. P-E Br.41. Because the facts taken as true on the motion to dismiss establish all factors relevant to the "balancing" in *Dale*, *id.*, the absolute duty has been established.

"authority to select, supervise, and if necessary, remove a minister." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). Plaintiffs' claims here intrude on the Archdiocese's authority to supervise not only a minister (Plaintiff) but also an entire ministry (Cathedral), both of which were responsible for "educating young people in their faith, inculcating its teachings, and training them to live their faith." *Id.* at 2064. The claims are therefore barred.

Plaintiff resists this conclusion on two grounds, both meritless. First, Plaintiff says *Our Lady helps* his case because it "turned on the fact that the plaintiffs taught religion to their students." P-E Br.44. But Plaintiff is mistaken; *Our Lady* covers not just religion teachers but all roles "educating young people in their faith, inculcating its teachings, and training them to live their faith." 140 S. Ct. at 2064. And the Court found the *Our Lady* plaintiffs qualified because their "employment agreements and faculty handbooks specified in no uncertain terms that they were expected to help" discharge these duties. 140 S. Ct. at 2064-66. Plaintiff's contract and employee handbook specify the same, Br.30-31, and he's never disputed—even now, in his lengthy opposition—that he had these duties or denied that he discharged them. So *Our Lady* shows that he was a minister. *See* U.S. Br.26-30 (ministerial exception applies not because "any and every [Catholic school] employee" is a minister, but because Payne-Elliott had specific undisputed responsibilities "to inculcate the faith among his students, including on … the Church's teaching on marriage").

Second, Plaintiff again reaches for *Demkovich*, arguing that *Demkovich* "makes clear" that the ministerial exception doesn't apply to state tort claims. Not so. As Plaintiff acknowledges, no tort claims were "at issue in *Demkovich*." P-E Br.45. And *Demkovich* merely suggested *some* tort claims can go forward—like the "battery" example raised at oral argument, *see* P-E Br.45—when they have nothing to do with who can serve as a minister. 2020 WL 5105147 at *4-5, *11. Claims that challenge a minister's "firing"—such as wrongful discharge or tortious interference—are still

barred. *Id.* at *3; U.S.Br.31 n.5 (*Demkovich* "supports application of the ministerial exemption" here). Thus, nothing in *Demkovich* casts any doubt on the many jurisdictions (including Indiana) applying the ministerial exception to bar tort claims, *e.g.*, *Ind. Area Found. of United Methodist Church, Inc. v. Snyder*, 953 N.E.2d 1174, 1180 (Ind. Ct. App. 2011), much less on the fundamental principle that the First Amendment applies to state court enforcement of state tort claims, *e.g., Phelps*, 562 U.S. at 451; *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964); Br.28.

Finally, Plaintiff ignores entirely the Archdiocese's broader point—that whatever *Plaintiffs'* duties, *Cathedral* of course was charged with "educating young people in their faith, inculcating its teachings, and training them to live their faith," *Our Lady*, 140 S. Ct. at 2064, and Plaintiffs' claims directly challenge the Archdiocese's decision to set the terms of its affiliation with *Cathedral*. Br.32-33. If the ministerial exception protects a church's freedom to choose teachers, it must, *a fortiori*, protect its decision to choose entire schools. The ministerial exception imposed on the trial judge an absolute duty to dismiss this case—whether under Plaintiff's status as a minister or Cathedral's status as a ministry.

II. Plaintiff's procedural objections are meritless.

Recognizing his weakness on the merits, Plaintiff proposes three procedural impediments to this Court's review—that the petition was "delayed," that it does not fit the "purpose" of the original action rules, or that it does not demonstrate irreparable hardship. None have merit. Rather, they reflect the case Plaintiff *wishes* he was litigating (a "garden variety" "business tort case") instead of the ecclesiastical dispute he brought.

A. The petition was not delayed.

First, Plaintiff accuses the Archdiocese of "wait[ing]" "49 days" or "108 days" before filing the petition. P-E Br.30. But this argument simply misunderstands the original action rules. An original action can't be filed until the trial court's lack of

jurisdiction or duty to act is "raised … by written motion" and the motion is "denied or not ruled on timely." Orig. Act. R. 2(A). It can't be filed if there remains an adequate remedy by appeal. Orig. Act. R. 3(A)(6). And it can't be filed until the relator obtains a certified record and any relevant transcript from the trial court. Orig. Act. R. 3(C).

Here, the Archdiocese promptly filed a motion to dismiss, raising the trial court's lack of jurisdiction and duty to dismiss, on August 21, 2019, just four business days after the special judge was qualified to serve on the case. When that motion was denied on May 1, 2020, the Archdiocese timely sought certification of that order for interlocutory appeal, which was denied on June 29, 2020. It was only then that the Archdiocese was denied all possible "remedy … by appeal" for the irreparable harms giving rise to its petition. Orig. Act. R. 3(A)(6). Six business days later—on July 7, 2020—the Archdiocese requested the certified record so it could file this original action. Due to the trial court's delay, the record and transcript were not certified until August 12 and 13, respectively. Then, because the trial judge issued a new order the day he certified the transcript, the record was recertified August 14. The Archdiocese filed this original action the next business day. *See* Br.13-14.

Thus, Plaintiff's accusation of a "year-long delay" (P-E Br.25), collapses to precisely seven business days—six days from denial of certification to requesting the certified record, and one day from certification of the record to filing the petition. That is "expeditious[]" by any measure. Orig. Act. R. 3(A)(2).

In one last reach, Plaintiff questions whether the Archdiocese *really* "requested the certified record" on July 7, and whether the clerk *really* waited "until August 12" to certify the record. P-E Br.30. But the certification dates are reflected on the certified record and transcript, and the Archdiocese's July 7 email to the clerk requesting the certified record is submitted with this brief as Exhibit A.

B. The petition properly raises matters within the original-action rules.

Next, Plaintiff and his *amici* say the petition doesn't fit the "purpose[]" of the original action rules—which they say prevents the Court from addressing "substantive" or "merits" issues. P-E Br.25-27. But this argument proposes a standard unmoored from the text of the original action rules and controlling precedent.

Original actions are proper to assert "the absence of jurisdiction of the respondent court" or "the failure of the respondent court to act when it was under a duty to act." Orig. Act. R. 3(A)(3)-(4). The Archdiocese asserts both: the trial court had a clear duty to dismiss the case under multiple, binding precedents, and controlling precedent establishes that the court lacked "jurisdiction" over this ecclesiastical dispute. Pet. 3, 10-14; *see, e.g.*, *Dwenger*, 14 N.E. at 908-09 ("'[t]he court, having no ecclesiastical jurisdiction, cannot review or question ordinary acts of church discipline'"); *Stewart v. McCray*, 135 N.E.3d 1012, 1029 (Ind. Ct. App. 2019) ("trial court lacked subject matter jurisdiction" to review matters of "church procedure"); *McEnroy*, 713 N.E.2d at 336-37 (court lacked "jurisdiction" to entertain case "excessively entangl[ing it] in religious affairs"). It therefore raises matters proper for an original action.

Plaintiff tries to avoid this conclusion only by substituting for Rule 3(A) a rule of his own making, asserting that the Court cannot address in an original action "substantive, disputed issues of federal constitutional law." P-E Br.26. But this Court has often decided substantive issues of law—including constitutional law—in original actions. *See, e.g.*, *State ex rel. Wilson v. Monroe Superior Court*, 444 N.E.2d 1178, 1180 (Ind. 1983) (resolving scope of Ind. Const. Art. 1, § 22); *State ex rel. Camden v. Gibson Circuit Court*, 640 N.E.2d 696, 700 (Ind. 1994) (resolving jurisdictional conflict by analyzing statutes in tension); *Crawford*, 655 N.E.2d at 500 (applying statutes and precedent to resolve conflict over change of judge rights); *see also* Br.15 (collecting cases).

Amici Appellate Lawyers' echo Plaintiff's assertion that original actions may never reach "substantive legal issues." Lawyers Br.10. But they likewise fail to ground their claim in rule or precedent, instead simply observing that many recent actions *haven't* reached such issues. *See id. Amici* also fail to distinguish the many original actions, noted above, that *have* reached such issues. They mischaracterize authority they do cite. *See S.L. v. Elkhart Superior Court No. 3*, 969 N.E.2d 590 (Ind. 2012) (case cited by *amici* as presenting a "narrow issue of jurisdiction," Lawyers Br.10, but resolving disputed application of Criminal Rule 4(A) to free defendant pending trial); *Logan v. State*, 16 N.E.3d 953, 956 (Ind. 2014) (subsequent appeal explicating the legal question posed in the original action). And they acknowledge at least one recent action that contradicts their theory. Lawyers Br.9 n.2 (calling *State ex rel. Commons v. Pera*, 987 N.E.2d 1074 (Ind. 2013), "unique among recent cases").

Amici say this case is different because it can be "resolved by the appellate process." *Id.* But besides ignoring the Archdiocese's argument on the inadequacy of appeal here, *see infra* Part II.C, that claim only underscores that the *actual* constraints on original actions are those contained in Original Action Rule 3(A), not new ones invented by Plaintiff and *amici*. Tellingly, *amici* never even cite Rule 3(A), instead divining their novel constraints from the penumbras of various procedural rules, as though there were not already a rule setting them out. Lawyers Br.6-7. This Court should apply the rules as written.

Pivoting, Plaintiff claims that this original action breaches a principle against "reach[ing] the merits of the case." P-E Br.25 (quoting *State ex rel. Ely v. Allen Circuit Court*, 304 N.E.2d 777, 780 (Ind. 1973)). But this gets things backward: The Archdiocese filed this original action precisely to *avoid* adjudication of the merits of Plaintiff's claims, on the ground that the court lacks jurisdiction to reach them. A threshold bar like that is plainly appropriate for original action. For example, in Plaintiff's lead case, *Ely*, this Court issued writs on the threshold issue of personal jurisdiction,

distinguishing that from the "merits" issue of the plaintiff's rights *if* jurisdiction existed. 304 N.E.2d at 779-80. Plaintiff's other authorities likewise indicate that original actions may resolve legal principles where no additional factfinding is relevant. *See, e.g.*, *State ex rel. State Election Bd. v. Superior Court of Marion County*, 519 N.E.2d 1214 (Ind. 1988) (Shepard and Dickson, JJ., concurring) (resolving legal questions regarding scope of judicial and administrative authority, but deferring on fact-bound residency question).

Next, Plaintiff argues that original actions aren't available just because the trial court's "ruling is based, in part, on subject matter jurisdiction"—but his citations confirm (consistent with Orig. Act. R. 3(A)) that original actions *are* available when the trial court in fact acts outside its "limits of jurisdiction," which is the issue here. *Compare* P-E Br.26-27 *with State ex rel. Durham v. Marion Circuit Court*, 162 N.E.2d 505, 508 (Ind. 1959); *cf.* Lawyers Br.7 (quoting *Durham* and conceding original actions may reach jurisdictional questions).

Alternatively, Plaintiff notes that not all of a trial court's errors "deprive it of jurisdiction." P-E Br.25 (quoting *State ex rel. Nineteenth Hole, Inc. v. Marion Superior Court*, 189 N.E.2d 421, 423, 424 (Ind. 1963)). But that is beside the point here, where the issue is not only lack of jurisdiction but also the flouting of a clear "duty" to dismiss this case under binding precedent, independently justifying mandamus. Orig. Act. R. 3(A)(3)-(4); *see, e.g., State ex rel. Bramley v. Tipton Circuit Court*, 835 N.E.2d 479 (Ind. 2005) (duty to release defendant from jail); *State ex rel. Bishop v. Madison Circuit Court*, 690 N.E.2d 1173, 1173-74 (Ind. 1998) (duty to dismiss charges). *Cf. Nineteenth Hole*, 189 N.E.2d at 423, 424 (relator requested writ solely on jurisdictional grounds); *Durham*, 162 N.E.2d at 506 (same).

In any event, Plaintiff (like his *amici*) fails to address that this Court has understood "jurisdiction" under Orig. Act. R. 3(A)(3)-(4) to include constitutional bars on a trial court's actions like those the Archdiocese has identified here. *Cf.* Br.24 n.1 (citing

Fort Bend Cty v. Davis, 139 S. Ct. 1843, 1848 (2019)). For example, in *Wilson*, this Court determined that the Indiana Constitution's bar on imprisonment for debt created an "absence of jurisdiction" for the trial court to issue such a penalty, justifying an original action. 444 N.E.2d at 1179. Likewise, the constitutional bars the Archdiocese has identified here create an "absence of jurisdiction" for the trial court to adjudicate Plaintiff's claims, *id.*, independently supporting the Archdiocese's petition even aside from that court's clear duty to dismiss. Orig. Act. R. 3(A)-(4).

The arguments of *amici* Indiana Professors, putatively in support of Plaintiff, only underscore the Archdiocese's position on these points. *Amici* concede that mandamus is appropriate to give a party the "benefit of an established rule of practice" or to provide a remedy where a lower court "disdained normal process, abdicated its responsibilities or exceeded its rightful jurisdiction." Ind. Profs. Br.8, 10 (citation omitted). And they further concede mandamus is appropriate when allowing ongoing trial proceedings would lead to important harms, such as unwarranted "intrusion" into "a delicate area of federal-state relations." Ind. Profs. Br.9 n.4 (citation omitted). Those concessions cover this case: the petition demonstrates that the trial court disregarded "established rules of practice" from binding precedent, and continued proceedings would unconstitutionally intrude upon church–state separation. Ultimately, *amici*'s concern turns out to be less about original actions and more about the First Amendment—they believe the trial court had "no clear duty to rule one way or another" and that no "immunity" exists for religious organizations worthy of serious respect. Ind. Profs. Br.10-11. But *amici* never engage or cite *Dwenger*, *Brazauskas*, *McEnroy*, or any of the Archdiocese's other cases establishing the clear duty to dismiss.

Despite Plaintiff and *amici*'s attempt to rewrite the original-action rules, both the rules and this Court's precedent show that the writ requested here is proper. Indeed, as explained below, the extreme, irreparable harms imposed by the trial court make this case a quintessential example of when relief by mandamus is required.

C. Denial of the petition would result in extreme hardship that cannot be remedied by appeal.

The key requirement under the text of the original-action rules—aside from showing that the trial court exceeded its jurisdiction or flouted a duty to act—is that "the denial of the application will result in extreme hardship" and "the remedy available by appeal will be wholly inadequate." Orig. Act. R. 3(A). That requirement strikes a necessary balance. It prevents the use of original actions for errors imposing ordinary hardship that can be unwound by appeal—the typical case—but allows this Court to intervene in the rare case that an extreme and irreparable harm is being imposed by a lower court flouting the law. Eliminating *any* safety valve for the latter circumstance would allow any trial judge—by denying certification—to strip away any immunity without review, no matter how flagrantly contrary to law.

Here, the Archdiocese has demonstrated three severe and irremediable hardships that will result if the trial court is permitted to proceed: (1) irreparable loss of immunity from suit; (2) irreparable loss of First Amendment protections for internal church communications; and (3) irreparable entanglement of a civil court in ecclesiastical questions. Br.33-38. This Court properly granted an emergency writ to prevent these hardships while this original action proceeds. Plaintiff's response only confirms that resolving his claim would impose these irreparable harms.

1. Irreparable loss of First Amendment immunity from suit.

Without this Court's intervention, the Archdiocese will lose the immunity from adjudication of ecclesiastical disputes that church-autonomy doctrine guarantees. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952); Br.33-34. A defendant without means to challenge an erroneous denial of that immunity "has been irrevocably deprived of one of the benefits—freedom from having to undergo a trial—that his immunity was intended to give him." *McCarthy v. Fuller*, 714 F.3d 971, 975 (7th Cir. 2013). Allowing the Church to be "deposed, interrogated,

and haled into court" over its internal religious decisions causes irreparable damage via "impermissible entanglement" and its "inevitabl[e] affect" on ecclesiastical choices. *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 467 (D.C. Cir. 1996).

As the Archdiocese and *amici* explain, church-autonomy immunity thus "must be reviewed pretrial or it can never be reviewed at all." *United Methodist Church v. White*, 571 A.2d 790, 792, 793 (D.C. 1990) ("immunity" extends to both "civil discovery and trial"); *Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (same); *see* Indiana Br.15-17 (collecting cases); Const. Profs. Br.15-16 ("process of inquiry" itself impinges "immunity" (citation omitted)). And such early review serves efficiency for all parties and the judiciary. As former U.S. Court of Appeals Judge and First Amendment scholar Michael McConnell has noted, pretrial review of denials of church-autonomy defenses "quickly and cheaply sorts out potentially meritorious suits from those barred by the Constitution, and thus minimizes the chilling effect that the fear of potential liability, or of a nuisance suit, has on the way" religious organizations carry out their mission. Br. for InterVarsity Christian Fellowship/USA et al. as Amici Curiae at 13, *Our Lady of Guadalupe*, Nos. 19-267, 19-348, 2020 WL 635296 (Feb. 10, 2020) (alterations and internal quotation marks omitted).

Plaintiff doesn't dispute that proceeding with this lawsuit would irreparably deny immunity from suit. Instead, he simply denies that any First Amendment immunity exists. P-E Br.28. But that ignores the many cases recognizing this immunity. Indeed, *Brazauskas* itself relied on federal precedent recognizing the "church autonomy doctrine" as akin to "immunity" that must be resolved "early in litigation … [to] avoid excessive entanglement." *Bryce v. Episcopal Church*, 289 F.3d 648, 654 & n.1 (10th Cir. 2002); *see Brazauskas*, 796 N.E.2d at 293.

Alternatively, Plaintiff says no irreparable hardship exists because "[c]ivil courts regularly decide cases involving religious organizations." P-E Br.28-29. But that is a strawman. Nobody thinks religious organizations are immune from *all* litigation. *See*

U.S. Br.19-20 (describing limits). But suits like this one—which Plaintiff admits will require a civil court to determine whether the Archdiocese's terms for recognizing a school as "Catholic" were "unjustified," P-E Br.39-40—run afoul of *Dwenger*, *Brazauskas*, *McEnroy*, and the other First Amendment precedents already cited.[3]

The First Amendment immunity at issue here also rebuts Plaintiff's far-fetched claim that granting mandamus here would open the "floodgates" to original actions. P-E Br.26. In most civil cases, the only harm is financial loss, which can be remedied on appeal. *See* P-E Br.27 (citing, *e.g.*, *State ex rel. Janesville Auto Transport Co. v. Superior Court of Porter County*, 387 N.E.2d 1330 (Ind. 1979) (collision case)). Here, however, the trial court is trampling a well-recognized First Amendment immunity already treated as mandamus-worthy in other jurisdictions, and is doing so in the teeth of multiple on-point precedents. Experience from other jurisdictions shows that such cases are "rar[e]." *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1156 (9th Cir. 2010) (mandamus appropriate to address First Amendment privilege issue; such privileges are "rarely invoked" and "do[] not implicate" judicial resource concerns). By contrast, Plaintiff's position would allow any trial judge in the State to deny a core First Amendment immunity, no matter how frivolous the lawsuit, and then insulate that ruling from any meaningful appellate review by denying certification. That is precisely the sort of scenario for which original actions exist.

2. Irreparable loss of First Amendment protection from discovery.

Beyond denying immunity from suit, the trial court's ruling would also irreparably violate First Amendment protections for internal church communications. As

[3] Plaintiff cites *Ohio Civil Rights Commission v. Dayton Christian School* to argue that the "mere exercise of jurisdiction" over a religious party can never implicate an immunity. P-E Br.28 (quoting 477 U.S. 619, 628 (1986)). But *Dayton Christian* was about the requirements of *Younger* abstention in the federal courts. And the law is clear both that religious autonomy defenses confer an immunity, *McCarthy*, 714 F.3d at 975, and that investigations into ecclesiastical decisions *beyond* what is necessary to resolve the immunity question are "forbidden by the First Amendment," *Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184, 187 (7th Cir. 1994).

explained in our opening brief (at 34-36), multiple courts have held that the "structural protection afforded religious organizations" under the First Amendment limits discovery into the "internal communications" of a church. *Whole Woman's Health v. Smith*, 896 F.3d 362, 373 (5th Cir. 2018), *cert denied sub nom. Whole Woman's Health v. Tex. Conf. of Catholic Bishops*, 139 S. Ct. 1170 (2019); *see also*, *e.g.*, *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 401-02 (1st Cir. 1985) (Breyer, J., concurring) (Religion Clauses forbid inquiry into "confidential communications among church officials"). And courts have not hesitated to grant mandamus to stop violations of that protection. *Whole Woman's Health*, 896 F.3d 362; *cf. Perry*, 591 F.3d at 1156 (granting mandamus to protect First Amendment privilege).

In response, Plaintiff doesn't deny that he wants to use the Indiana judiciary to "probe the mind of the church." *Rayburn v. Gen. Conf. of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985); P-E Br.39-40 (laying out planned discovery from the Archdiocese and third party). Instead, he says no hardship exists because the relevant documents have already been "produced" to the Respondent Court. P-E Br.29. But this argument is doubly flawed. First, the Archdiocese didn't voluntarily give the documents to the Respondent court; it was compelled to do so by court order, which itself violates the First Amendment. *See Whole Woman's Health*, 896 F.3d at 373 (*in camera* review designed "to parse the internal communications" "seems tantamount to judicially creating an ecclesiastical test in violation of the Establishment Clause."). Second, Plaintiff conflates the harm of being forced to produce the documents to the court in sealed boxes (which has already happened) with the much greater harm of the trial judge analyzing them, ruling on their religious content, and disclosing them to the Plaintiff (which hasn't yet happened—but only because this Court properly granted the Archdiocese's emergency writ). *See* Indiana Br.17 (citing *Harris v. Matthews*, 643 S.E.2d 566, 570 (N.C. 2007)). And while Plaintiff asserts that the Archdiocese's ability "to [later] appeal on a complete record" preserves its rights, he fails to

explain how that appeal could possibly remedy harms suffered by virtue of the document exposure itself. P-E Br.27.

At base, Plaintiff simply cannot bring himself to acknowledge *any* constitutional limit on discovery into internal church communications—declining to distinguish, address, or even cite *Milivojevich*, *Whole Woman's Health*, *Bayamon*, or any of the Archdiocese's other on-point authorities. And indeed, Plaintiff's extreme position demonstrates that it is *Plaintiff*'s position in this case—not the Archdiocese's—that would open the "floodgates" to future litigation. *Cf.* P-E Br.26. The judiciary has thus far stood firmly against secular courts' "detailed review of the evidence" regarding internal church procedures as "impermissible under the First [Amendment]." *Milivojevich*, 426 U.S. at 717-18. Yet Plaintiff's position would discard such First Amendment limitations on church discovery, opening the Indiana judiciary to a flood of litigation designed to harass churches and triggering a concomitant flood of entangling discovery disputes. Fortunately, Plaintiff's position isn't the law.

3. Irreparable entanglement of the court in religious questions.

Finally, absent this Court's intervention, both the Archdiocese and the judiciary itself will suffer irreparable harm from the civil-court entanglement in religious questions resulting from Plaintiff's lawsuit. As the Archdiocese has explained, barring judicial entanglement in ecclesiastical matters benefits both court and church—it protects churches' space to decide their own religious affairs, and protects the government from becoming "entangled in essentially religious controversies." *Milivojevich*, 426 U.S. at 709; Br.35-36. But Plaintiff's suit explicitly invites the trial court to make a judicial determination as to the "justifiable" interpretation of canon law defining a "Catholic school"—just the sort of "governmental intrusion into religious affairs" that causes "irreparable" harm. *McCarthy*, 714 F.3d at 976. Indeed, as courts have long recognized, judicial inquiries into internal ecclesiastical decisions are *"in themselves*" an impermissibly "'extensive inquiry' into religious law and practice, and

hence forbidden by the First Amendment." *Catholic Univ.*, 83 F.3d at 466-67 (quoting *Young*, 21 F.3d at 187 (emphasis in original)); *see* Indiana Br.12-13 (adjudicating religious issues undermines the "respect for the courts" necessary for a functional judiciary); Const. Profs. Br.21 ("the harm is not just to the religious entity … [but] also to state").

Plaintiff nowhere disputes the Archdiocese's argument that entanglement in religious questions is irreparable harm sufficient to support an original action. Nor does Plaintiff's response do anything to dispel the notion that this lawsuit will in fact result in such entanglement; to the contrary, he injects still more religious questions into the case—asking the court to probe the canon-law relationship between the Archdiocese and Cathedral, assess the relative severity of various sins, and find that the Archbishop was wrong about the requirements of Church teaching. *Supra* Part I.A.

The brief from Plaintiff's lay Catholic *amici* further illustrates how inseparable this case is from religious questions. They say Plaintiff needs "additional discovery" so he can prove that the Archdiocese has "contravene[d] Catholic Social Teaching," that its actions are "theologically flawed," and that "the Pope would not have demanded Payne-Elliott's firing." Lay Catholics Br.6, 10, 14-16. But this is bad theology, as it is widely understood that Catholic schools require their teachers to "model" "Catholic … morals." *Our Lady of Guadalupe*, 140 S. Ct. at 2056-57 (internal quotation marks omitted); Br.4. And it is equally bad First Amendment law, as second-guessing the Archbishop's application of Catholic theology is simply "not within the judicial ken." *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989); *see United States v. Ballard*, 322 U.S. 78, 86 (1944) ("Heresy trials are foreign to our Constitution.").

Also mistaken is *amici's* claim that it would somehow violate the Establishment Clause to protect the Archdiocese's religious views, simply because some lay Catholics disagree. Lay Catholics Br.18. This gets the law backwards. As the U.S. Supreme Court explained nearly forty years ago, "the guarantee of free exercise is not limited

to beliefs which are shared by all" a faith's members. *Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981). And the Constitution prohibits a court from attempting to determine whether a religious party or others "more correctly perceived the commands of their common faith." *Id.* This is exactly the analysis and discovery Plaintiff seeks—to have a court assess whether the Archdiocese's treatment of same-sex unions is theologically "unjustified," based in part on the actions of other church bodies (like Brebeuf and Notre Dame). P-E Br.39-40 & n.5.

By explaining his claim and "needed" discovery in greater detail, *id.*, Plaintiff and his *amici* only underscore why mandamus is required to prevent extreme and irreparable hardship. Though the immunity raised by the Archdiocese will be properly invoked only in rare cases, the gratuitous intrusion posed by Plaintiff's novel claim illustrates why this Court must take these constitutional hardships seriously.

III. The trial judge's recusal highlights the danger of allowing civil courts to resolve ecclesiastical disputes.

Now that the trial judge has recused himself, the Archdiocese's alternative request for a writ ordering disqualification is moot. Heimann Br.10. However, the recusal has no effect on the Archdiocese's request for a writ ordering dismissal, which is still required under the rules, and which can be directed to the respondent court and replacement judge. *See State ex rel. Ind. State Bar Ass'n v. Northouse*, 848 N.E.2d 668, 673-74 (Ind. 2006) (as with all cases, original action not moot where "effective relief" remains available). And the trial judge's recusal only highlights the danger of allowing civil judges to resolve ecclesiastical disputes.[4]

[4] The trial judge suggests there was "no need to burden the Special Judge or this Court with addressing a recusal motion" because "it ha[d] been clear for some time that the Special Judge would recuse." Heimann Br.9-10. But the judge never mentioned recusal until his August 13 Order—*after* the Archdiocese moved for recusal and requested the certified record. (R.834) Even then, the judge scheduled an August 24 discovery hearing, threatening to hand over internal Church documents to Plaintiff, and said on August 21 that he "still ha[d] jurisdiction" to decide discovery disputes and "has not recused himself from this case." Supp. R.45. Only after this Court's emergency writ did the trial judge cease discovery proceedings.

The trial judge concedes that he "proposed" conditioning "the Archdiocese's liability for damages" on a "decision of the Vatican" regarding a different ecclesiastical dispute. Heimann Br.5. He concedes that he brought up the Church's alleged history regarding "slavery" and "Galileo" to communicate his view that "the Church has changed its position over time on some important issues" and that "jurors might look at the church's history and not consider the Church's authority as persuasive." *Id.* at 8-9. He admits that he injected into the case his "personal memory" of the treatment of a priest with whom he "serv[ed] on a board or a committee," that he "refreshed his memory" by outside research, *id.* at 7, and that he encouraged Plaintiff to seek discovery into "[w]hat has happened with [the priest]" (R.692) because it "may well be relevant" to the case. (R.691-93 & n.i). And he simply declines to address his statement that the theological difference between living in celibacy and living in a same-sex union "does not appear to be great." (R.692-93)

All of this underscores the First Amendment problems with this case. Under Plaintiff's theory, it is fine for a court or jury to decide that the Catholic Church's theological distinctions "do[] not appear to be great." It is fine for a court or jury to compare the gravity of different sins and tell the Catholic Church which ones must be treated "similarly." And it is fine for a court or jury to decide that "the Church has changed its position over time on some important issues," and so "the Church's authority" on this issue is no longer "persuasive." That may be what Plaintiff and the trial judge want. But the First Amendment does not allow it: "No power save that of the church can rightfully declare who is a Catholic." *Dwenger*, 14 N.E. at 908.

CONCLUSION

The Archdiocese respectfully requests that this Court issue writs of mandamus and prohibition ordering the trial court to dismiss this case.

Respectfully submitted,

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I certify that on October 2, 2020, I electronically filed the foregoing document using the Indiana E-Filing System ("IEFS") and that service of the foregoing was made by IEFS on the following:

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