

Nos. 20-0005, 20-0127

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*In the Supreme Court of Texas*

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DIOCESE OF LUBBOCK,

Petitioner,

v.

JESUS GUERRERO

Respondent.

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On Petition for Review from the Seventh Court of Appeals, Amarillo, Texas  
Cause No. 07-19-00307-CV

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**BRIEF OF AMICI CURIAE  
THE BAPTIST GENERAL CONVENTION OF TEXAS, THE  
ETHICS AND RELIGIOUS LIBERTY COMMISSION OF THE  
SOUTHERN BAPTIST CONVENTION, AND THE TEXAS  
ETHICS AND RELIGIOUS LIBERTY COMMITTEE OF THE  
SOUTHERN BAPTISTS OF TEXAS CONVENTION**

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## IDENTITY OF AMICI CURIAE

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## **STATEMENT OF INTEREST**

The Baptist General Convention of Texas (“BGCT”) is the oldest surviving Baptist convention in Texas. It is an association of over 5,200 local church congregations across Texas. The BGCT serves the role of encouraging, facilitating, and connecting churches in their work to fulfill God’s mission to reconcile the world to God, and it is active in cooperative evangelistic, educational, and benevolent endeavors on behalf of member congregations toward achieving this mission. As member congregations are self-governing, the BGCT provides a means for member congregations to communicate with one voice on matters of collective interest.

The Texas Ethics and Religious Liberty Committee of the Southern Baptists of Texas Convention (“SBTC”) is a standing committee of the SBTC made up of pastors and laypeople. The committee’s task is to represent the expressed views of SBTC churches regarding public policy and the common good. The SBTC is a fellowship of 2,760 autonomous churches joined to reach Texas with the gospel and to impact the world with the love of Christ and the good works of God’s people.

The Ethics and Religious Liberty Commission of the Southern Baptist Convention is the arm of the Southern Baptist Convention (“SBC”) charged with assisting member congregations in understanding the moral demands of the gospel, applying Christian principles to moral and social problems and questions of public policy, and promoting religious liberty in cooperation with member churches and

other arms of the SBC. The SBC is the world's largest Baptist denomination and the largest Protestant denomination in the United States. It is a fellowship of over 47,000 independent Baptist churches with over 15.2 million members. Thousands of Baptist churches in Texas are cooperating churches of the SBC, including most member churches of the BGCT and SBTC, as churches commonly cooperate with both a state convention and the SBC.

Religious freedom is an indispensable, bedrock value for Baptists of the BGCT, SBTC and the SBC. The Constitution's guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which Baptists and adherents of other faith traditions depend as they follow the dictates of their conscience in the practice of their faith.

No fee was paid or incurred in preparing this brief.

## ARGUMENT

As this Court has recognized, the ecclesiastical abstention (or religious autonomy) doctrine operates to ensure that courts do not violate the First Amendment's Religion Clauses in two important respects: (1) by interfering with the observance or practice of a particular faith; or (2) by encroaching on the ability of religious organizations to manage their internal affairs. *Westbrook v. Penley*, 231 S.W.3d 389, 395 (2007) (citations omitted).

The court of appeals denied the Diocese of Lubbock's plea to the jurisdiction based on this doctrine, finding that the Diocese forfeited its protections when news of its plainly ecclesiastical acts and determinations "le[ft] the confines of the church." (A31;<sup>1</sup> *see also* A26.) In so doing, the court of appeals violated objectives of the ecclesiastical abstention doctrine in important respects of great concern to Amici.

First, the court's rationale ignores the public mission of the Christian church and, therefore, what it means to observe and practice the Christian faith. Second, by apparently misconstruing what is meant by "internal affairs" of the church, and interpreting to mean affairs kept secret within the church body, the court used the public revelation of a church's internal management decisions as grounds to interfere

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<sup>1</sup> For record citation purposes, "A" refers to the Appendix accompanying the Diocese's Petition for Review. "CR" refers to the Clerk's Record.

directly with a church's internal affairs by allowing courts to sit in judgment of those decisions. Third, the court of appeals authorizes a civil defamation claim against the Diocese premised on the meaning of words in the "common parlance" when it is beyond dispute that the Diocese acted according to the Catholic Church's canon law.

Because Amici strongly believe the appellate court's opinion infringes upon the First Amendment free exercise rights of the Diocese and other religious organizations, such as Baptist congregations represented by the Amici, Amici urge this Court to overturn the court of appeals' opinions and reaffirm the scope of the ecclesiastical abstention doctrine as it has been articulated by this Court and understood in the State of Texas to date.

**I. The protections of the First Amendment are not limited to the confines of the church.**

The court of appeals' rulings demonstrate a startling disregard for the public, evangelical mission of the church. Providing a good illustration of the perils of entanglements between the courts and the church, the court of appeals opens its opinion that addresses the Diocese's plea to the jurisdiction with a quotation of Jesus' well-known statement to the Pharisees concerning whether a Jew ought to pay taxes to Caesar—"Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." (A18 (citing *Matthew* 22:21).) How Jesus' advice in this context applies to the issues presented by this case is unclear. No one has argued in this case that persons of faith should be free from secular laws of



general application that do not pertain to the practice of their faith. Here the question is whether civil law may hold a church or its clergy liable for the manner in which they discipline their members or clergy or the manner in which they communicate such discipline to their members or those outside the church.

A more apt biblical reference would be Jesus' exhortation to his followers in the Sermon on the Mount: "You are the light of the world. A town built on a hill cannot be hidden. Neither do people light a lamp and put it under a bowl. Instead they put it on its stand, and it gives light to everyone in the house. In the same way, let your light shine before others, that they may see your good deeds and glorify your Father in heaven." *Matthew* 5:14-16 (NIV). Indeed, this direction is taken by congregations represented by Amici to be a charge to the worldwide church.

In addition to sharing their faith, Christians are called by scripture to live by a higher standard and to conduct themselves not by the standards of this world, but by the standards of God. *Romans* 12:2 ("Do not conform to the pattern of this world, but be transformed by the renewing of your mind. Then you will be able to test and approve what God's will is—his good, pleasing and perfect will.") (NIV). Beyond living by such a higher standard, Christians are also called to confess when they have strayed from it. *1 John* 1:8-10 ("If we claim to be without sin, we deceive ourselves and the truth is not in us. If we confess our sins, he is faithful and just and

will forgive us our sins and purify us from all unrighteousness. If we claim we have not sinned, we make him out to be a liar and his word is not in us.”) (NIV).

But how can the church be a light to the world if it fails to hold itself accountable to the very standards it espouses? The church’s confession of its sins and the sins of its clergy, not only to its own members, but also at times to the public that the church seeks to reach, is central to living out its religious mission.

The protections of the First Amendment’s free exercise clause do not end at the church’s doors. *See, e.g., Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877, 889 (Tex. App.—Dallas 2000, pet denied) (holding that the “Free Exercise Clause prohibits ‘all governmental regulation of religious beliefs as such’” and “also protects acts for religious purposes, including proselytizing.”) (citing *Employment Div. v. Smith*, 494 U.S. 472, 877, 110 S.Ct. 1595 (1990) (other citations omitted)).

The substance and manner of the Diocese’s communications concerning clergy who had been credibly accused of sexual misconduct with a minor as defined by canon law were undeniably confessional and pastoral in nature. The court of appeals itself acknowledges that the communications “joined other Catholic Dioceses in Texas” and were “made in the context of [the Diocese’s] ongoing work *to protect children* from sexual abuse, and [the Diocese’s] efforts to promote healing and restoration of trust in the Catholic Church.” (A27 (emphasis in original).)

Evidence submitted by the Diocese also establishes that the communications were made in response to a directive from the United States Conference of Catholic Bishops to all Catholic dioceses to “inform[] parish and other church communities directly affected by sexual abuse of a minor” in an “open and transparent manner.” (A46.) And, further, that the bishops of Texas’s fifteen dioceses collectively agreed that this directive should be implemented by all dioceses through the communication to all lay Catholics of the names of clergy within each diocese who had been credibly accused of sexual abuse of a minor as defined by canon law. (CR125.)

The purpose of the communications included “increasing transparency” by the church, “restoring confidence among the ranks of the Faithful,” and providing “an occasion for more victims to come forward and to be appropriately ministered to.” (*Id.*) Communications made for such reasons are inextricably tied to the church’s observance and practice of its faith. *Westbrook*, 231 S.W.3d at 395 (holding that government action impermissibly interferes with the free exercise of religion when it interferes with an individual’s observance or practice of a particular faith).

The court of appeals simply ignores this in holding that the Diocese loses the protection of the ecclesiastical abstention doctrine simply by having communicated the results of discipline of clergy within the Diocese in a manner that reached not only the church’s members but also was accessible by the general public. For this

reason, Amici urge the court to take this opportunity to clarify that the protections of the First Amendment are not limited to the church's actions behind closed doors.

**II. Communication of clergy discipline to the church does not cease to be a matter of the church's internal affairs simply because communication is made in a manner that reaches outside the confines of the church.**

Although Guerrero argues that the court of appeals did not enunciate a categorical rule that communications outside the confines of the church are actionable, he would be at great pains to articulate when they would not be under the court's opinion as written. The court of appeals' holding is subject to no reasonable limiting principle.

As noted above, the ecclesiastical abstention doctrine serves the further purpose of protecting the First Amendment rights of religious organizations by preventing the government from "encroaching on the church's ability to manage its internal affairs." *Id.* The actions of the Diocese did not become any less a matter of the internal management of the Catholic Church's affairs merely because those actions were communicated in a manner that could be observed by persons outside the confines of the church.

In *Westbrook*, this Court reversed the appellate court's conclusion that the courts had jurisdiction over Penley's professional negligence claim against her former pastor, Westbrook, over his disclosure to the church of her confidential revelations in the context of professional counseling. Because Westbrook made

these disclosures to the church as part of the church's biblically-based policy of announcing to the church the biblical misconduct of unrepentant members who had been counseled and asked to repent by church elders, this Court concluded that allowing the courts to entertain Penley's claim would unconstitutionally impinge on the church's "ability to manage its internal affairs and hinder adherence to the church disciplinary process that its constitution requires." *Id.* at 400. Both the trial court and the appellate court had previously concluded that the courts lacked jurisdiction over Penley's related defamation claim, which this Court agreed "would have required the court to delve into the religious question of whether Westbrook's statement about the biblical impropriety of Penley's behavior was true or false." *Id.* at 396.

Nowhere in the Court's opinion in *Westbrook* did the Court suggest that its holding would differ if the Court had concluded that Westbrook's communications were made by means that would result in their dissemination outside the "confines of the church." And for good reason. The publication of the communications outside the confines of the church would not have altered their fundamentally religious character or the fact that allowing civil claims over them would interfere with the church's management of its internal affairs.

As an example of the unconstitutional interference to which the court of appeals' opinion taken at face value might lead, consider the many Baptist

congregations represented by Amici that televise their services so that they reach sick and shut-in members. Of course, these broadcasts may also, like a posting on a church website, be seen by non-members. And Amici's churches hope that they are. At the same time, many Baptist churches employ principles of church discipline nearly identical to those discussed at length by this Court in *Westbrook*. Under the court of appeals' ruling here, a church could be subject to a civil defamation claim by communicating its discipline of a pastor or member for sexual misconduct from the pulpit if, for example, by televising that service it caused the message to "leave[] the confines of the church," as it obviously would. But neither the disciplinary process nor the communication of its results to the church are any less acts of management of the church's internal affairs because persons outside the church learn of them, even if persons outside the church are intentionally and directly told. Accordingly, the court of appeals' reasoning is inconsistent with the Free Exercise Clause of the First Amendment and with this Court's jurisprudence regarding the ecclesiastical abstention doctrine.

The court of appeals' conclusion that a church loses the protections of the ecclesiastical abstention doctrine when it publishes statements outside the confines of the church relies heavily on two opinions of the Dallas Court of Appeals—one published and one unpublished. (A22-26 & 31.) The published opinion, *Turner*, is easily distinguishable. There the plaintiff's claim did not turn on publication the

results of any ecclesiastical determination but on disclosure of the plaintiff's confidential medical records to persons outside the plaintiff's immediate family. *Turner*, 18 S.W.3d at 896. The church in that case, unlike the Diocese in this case, did not even explain how the publication of these records related to the management of the church's affairs or involved application of church doctrine. *Id.*

And although the facts of the unpublished case, *Kelly v. St. Luke Comm. United Methodist Church*, No. 05-16-01171-CV, 2018 WL 654907 (Tex. App.—Dallas Feb. 1, 2018, pet. denied), were tangentially connected to the firing of a church employee, the defamation claim that was allowed to proceed was not based on the rationale for her termination or any theological position of the church but on the allegation that, after the plaintiff's termination, church leaders communicated to persons inside and outside the church that a police officer was required to escort the plaintiff from church premises because she was “volatile.” 2018 WL 654907, at \*7-8. Accordingly, *Kelly* should, at a minimum, be limited to its specific facts, which did not involve communications for a religious purpose or challenge the church's decisions about internal affairs, but instead involved tangential communications after the termination that were unrelated to the grounds for it. *Id.*<sup>2</sup>

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<sup>2</sup> The court of appeals also discussed *Jennison v. Prasifka*, 391 S.W.3d 660, 665 (Tex. App.—Dallas 2013, no pet.) and *Patton v. Jones*, 212 S.W.3d 541 (Tex. App.—Austin 2006, pet. denied), two cases in which Texas courts concluded that the ecclesiastical abstention doctrine barred defamation claims. (A23-24.) Although the court of appeals notes that these decisions referenced the fact that publication of the allegedly defamatory statements was only within the church, it is

The instant case is distinct from *Turner* and *Kelly* in that the allegedly defamatory statements are tied to a classically internal matter of church discipline of clergy and the challenged communications by the Diocese were made as part of an ecclesiastical directive with a confessional and pastoral purpose.

Aside from *Turner* and *Kelly*, the court of appeals relies heavily on a decision of the Iowa Supreme Court, *Kliebenstein v. Iowa Conf. of the United Methodist Church*, 663 N.W.2d 404 (Iowa 2003). (A8 &31.) In *Patton v. Jones*, the Austin Court of Appeals noted, citing *Kliebenstein*, that only “some courts” had drawn a distinction between statements published only within the church as opposed to persons outside it and that this distinction did not establish a “bright line rule” regarding applicability of the ecclesiastical abstention doctrine. 212 S.W.3d at 555 n.12.

Indeed, the court of appeals simply ignored the many other decisions, including from other Texas courts of appeals, in which a church’s publication of allegedly defamatory statements by means that could reach outside the confines of the church did not preclude application of the ecclesiastical abstention doctrine. *See, e.g., In re Godwin*, 293 S.W.3d 742, 746-49 (Tex. App.—San Antonio 2009, orig. proceeding) (holding that defamation claim based on statements made from a

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not clear that this fact was considered dispositive in either case and, therefore, reference to this fact in both cases could be read as dicta.



megachurch pulpit were barred by the ecclesiastical abstention doctrine when representatives of the San Antonio Express-News were acknowledged as likely to be present); *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So.3d 657, 660-663 (Fla. 4th DCA 2018) (holding that defamation claim based on allegedly defamatory statements made at masses, on diocese's webpage, and in postings on diocese personnel's social media accounts was barred by ecclesiastical abstention doctrine).

Fundamentally, where allegedly defamatory communications are published for a religious purpose or as part of a religious organization's management of its internal affairs, there is no reasonable basis for denying First Amendment protections to such communications based on the breadth of their publication because the breadth of their publication has no impact on their basic religious character.

Accordingly, in view of the conflicting authority nationally on the relevance of publication of a church's ecclesiastical acts outside the confines of the church to the applicability of the ecclesiastical abstention doctrine, Amici urge this Court to clarify that, regardless of the extent of publication of allegedly defamatory statements, civil courts are without jurisdiction to entertain a claim related to a religious organization's communications that are made for a religious purpose or that are otherwise inextricably intertwined with the church's management of its internal affairs.

**III. The court of appeals' evaluation of the Diocese's conduct by secular standards plainly interferes with the Diocese's religious freedom and its ability to manage its internal affairs.**

As noted above, in *Westbrook*, this Court agreed that entertaining a civil defamation claim against a church related to findings made and published about the discipline of a church member or clergy would require a court “to delve into the religious question of whether [statements] about the biblical impropriety of [the plaintiff’s] behavior was true or false.” *Westbrook*, 231 S.W.3d at 396. However, in this case, after determining that the Diocese’s website publication of a list of clergy credibly accused of sexual misconduct with a minor removed the Diocese’s actions from the protection of the ecclesiastical abstention doctrine, the court of appeals circumvented such religious questions only by proceeding to evaluate the Diocese’s conduct by secular standards—specifically, by assessing how the meaning of the Diocese’s ecclesiastical verdict would be construed in the “common parlance.” (A9-10.)

It is difficult to say whether it is worse for a court to attempt to delve into the religious questions of whether Guerrero engaged in sexual misconduct with a minor as defined by the Catholic Church’s canon law or to simply ignore the basis of the Diocese’s conclusion altogether and evaluate the truth of the Diocese’s conclusion according to secular standards. On the one hand, courts would unduly entangle themselves with the religious affairs of the church as this Court recognized in

*Westbrook*. On the other hand, courts would interfere with the ability of a religious organization to manage its internal affairs by denying it the ability to assess the conduct of its members and clergy according to its own theological standards. Both scenarios offend the First Amendment and the fundamental freedom of religious organizations of all kinds to observe and practice their particular faith.

For this reason, the approach taken by the court of appeals is deeply concerning to Amici. Although churches represented by Amici lack the formal canon law of the Catholic Church, they hold their clergy and members to a biblical standard of conduct that is frequently different from secular standards. For example, what constitutes “sexual misconduct” in the “common parlance” almost certainly is not the same as “sexual misconduct” by the standards of Amici’s churches or other church-related organizations, such as universities and camps. Countless other examples of differences between Amici’s churches’ commonly-accepted moral standards and secular standards could be listed. The court of appeals’ rulings here prescribe no reasonable limitation on the ability of the courts to apply their own standards in evaluating the lawfulness of the church’s ecclesiastical acts.

## CONCLUSION

For the foregoing reasons, Amici urge the Court to reaffirm the authority of religious organizations to observe and practice their particular faith and manage their internal affairs without interference from the courts by overturning the court of appeals' rulings in this case.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that this brief contains 3,567 words, as calculated according to Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Michael B. Bennett  
Michael B. Bennett

## **CERTIFICATE OF SERVICE**

I certify that a copy of this brief was electronically served on counsel of record for all parties to this petition on April 21, 2020, as indicated below:

/s/ *Michael B. Bennett*  
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