Nos. 20-0005 & 20-0127

IN THE SUPREME COURT OF TEXAS

DIOCESE OF LUBBOCK,
***Petitioner*,**

v.

JESUS GUERRERO,
***Respondent*.**

On Appeal from the Seventh District Court of Appeals of Texas at Amarillo, Nos. 07-19-00307-CV & 07-19-00280-CV

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

BRIEF ON THE MERITS

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STATEMENT OF THE CASE

Nature of case: A suit for defamation brought by Jesus Guerrero, a Catholic deacon, against the Diocese of Lubbock, after the Diocese published Guerrero's name on a list of clergy credibly accused of sexual abuse.

Respondent/ordering judge and trial court designation: Hon. Les Hatch of the 237th Judicial District in Lubbock County, Texas.

Trial court: The trial court denied the Diocese's plea to the jurisdiction and the Diocese's motion to dismiss under the Texas Citizens Participation Act ("TCPA"), Tex. Civ. Prac. & Rem. Code Ann. § 27.002.

Court of appeals: A petition for writ of mandamus, and a separate appeal, were 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, heard argument on both petitions. On December 6, 2019, in two separate opinions authored by Chief Justice Quinn, the panel unanimously affirmed the trial court's rulings except as to Guerrero's intentional infliction of emotional distress claim. *Diocese of Lubbock v. Guerrero*, 591 S.W.3d 244 (Tex. App.—Amarillo 2019, pet. filed) (A:18-32). The opinion unanimously denying mandamus relief was incorporated by reference into the opinion on the TCPA motion to dismiss. *See In re Diocese of Lubbock*, 592 S.W.3d 196 (Tex. App.—Amarillo 2019 orig. proceeding [mand. pending]) (A:3-18; A:31).

STATEMENT OF JURISDICTION

This Court has jurisdiction to grant mandamus relief under Article V, § 3 of the Texas Constitution and Section 22.002(a) 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 about the status of its 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.'") (quoting *Westbrook v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007)).

This Court also possesses appellate jurisdiction to review the judgment and opinion of the court of appeals pursuant to Texas Government Code § 22.001(a).

ISSUES PRESENTED

Issue One: Do the First Amendment's Religion Clauses bar civil suits by a clergyman arising solely from an internal church decision to announce the results of an investigation into clergy credibly accused of sexual abuse, conducted in accordance with church law, and announced as part of a broader suite of church policy reforms?

Issue Two: Did the Court of Appeals err in finding that Guerrero presented clear and specific evidence establishing a prima facie case of each element of his defamation claims?

Issue Three: Does the religious autonomy guaranteed by the First Amendment's Religion Clauses cease to operate simply because that activity purportedly leaves what the Court of Appeals considered the "confines of the church?"

INTRODUCTION

A member of the Catholic clergy has brought a defamation lawsuit against his church in the Texas courts. He is suing because his diocese followed the Catholic Church's religious commitment to transparently investigate and disclose clergymen credibly accused of sexual abuse. Contrary to a long line of religious autonomy precedent in both this Court and the United States Supreme Court, the Seventh District Court of Appeals held that civil courts can adjudicate such cases. According to the Court of Appeals, civil court jurisdiction existed here even though these claims are rooted in "internal church discipline," activity "historically deemed ecclesiastical," and "a religious term imbedded in canon law." In the Court of Appeals' view, the "pivotal nuance" is whether the allegedly defamatory statements "left the confines of the church."

This holding is as unprecedented as it is unwise. If left unchanged, the decision below will severely inhibit religious exercise. Every Catholic diocese in Texas, most Catholic dioceses nationwide, and many other religious denominations throughout the country have done exactly what the Diocese of Lubbock is being sued for doing here. Absent correction of the Court of Appeals' ruling, every Catholic diocese in Texas will suffer financially crippling defamation liability simply for following church directives.

Equally disturbing are the religious entanglement problems. Unless the decision below is reversed, religious autonomy will be conditioned on

how a civil court decides to define a church's "confines"—always a fraught inquiry, but especially so in an era of livestreamed church services. In the Court of Appeals' view, once the civil court decides the church has gone beyond its "confines," the court will be free to resolve religious questions and impede church governance. This severe threat to religious autonomy has unsurprisingly spurred Texas legislators, First Amendment scholars, Jewish and Baptist organizations, and others to file *amicus* briefs urging this Court to protect religious autonomy.

The Court should uphold religious autonomy protections in Texas, reverse the Court of Appeals, and dismiss this case for lack of jurisdiction.[1]

[1] The "religious autonomy" doctrine is sometimes called "church autonomy" or "ecclesiastical abstention." *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., concurring) ("religious autonomy"); *Westbrook*, 231 S.W.3d at 395 ("church autonomy"); *St. John Missionary Baptist Church v. Flakes*, 595 S.W.3d 211, 214 (Tex. 2020) ("ecclesiastical abstention"). The Diocese uses "religious autonomy" in this brief.

STATEMENT OF FACTS

A. The Catholic Church expands transparency policies to prevent and remedy clergy sexual abuse.

The worldwide Roman Catholic Church is engaged in a decades-long, ongoing shift in religious practice to speak transparently about past sexual abuse, restore trust, promote healing, and protect the vulnerable. *See, e.g.*, Stephen M. Bainbridge, *Enhanced Accountability: The Catholic Church's Unfinished Business*, 53 U.S.F. L. Rev. 165, 165-77 (2019) (discussing history of sexual abuse revelations from January 2002 to 2019, and the Catholic Church's efforts to prevent further abuse) (hereinafter "*Unfinished Business*"). This case arises from this ongoing shift. *See, e.g.*, CR:55-56 ¶¶ 8-10[2] (affidavit from Bishop Coerver); *see also Head of US bishops after Vatican abuse summit: 'Intensify the Dallas Charter',* Catholic News Agency (Feb. 24, 2019), https://perma.cc/AE6U-6ZX8 (then-head of U.S. Conference of Catholic Bishops explaining that U.S. bishops are exploring steps to "intensify[ ] the 2002 Charter for the Protection of Young People – known as the Dallas Charter – which currently governs how U.S. dioceses are to handle sexual abuse allegations against priests").[3] But, as discussed below, these shifts in

[2] The record on appeal was filed along with the Diocese's Petition for Writ of Mandamus and will be referred to as "CR:__" throughout. Appendix citations to this Brief on the Merits will be designated as "A:__."

[3] The Court may take judicial notice of church law documents. *See Bethel Conservative Mennonite Church v. Comm'r*, 746 F.2d 388, 392 (7th Cir.

religious practice extend far beyond this case. There is, as one scholar described it, "unfinished business" in transforming church law and governance around "enhanced accountability" to vindicate the Catholic Church's longstanding opposition to the evil of sexual abuse by anyone, against anyone. *See* Bainbridge, *Unfinished Business*, 53 U.S.F. L. Rev. at 165.

Canon law. As Bishop Coerver has explained, "[c]anon law is the body of law of the Catholic Church. Canon law is a series of rules and regulations rooted in the theology and doctrine of the Church that prescribes the organization, operations, and governance of the Diocese, which are all written communications, by and to leaders and members of the Catholic Church, which its leaders, the bishops, are bound to follow." CR:55-56 ¶ 8. Canon law's origins lie in "various papal and conciliar decrees" promulgated over many centuries. Bainbridge, *Unfinished Business*, 53 U.S.F. L. Rev. at 181-82. It was first codified in 1917 and was recodified in 1983. The ultimate authority for its promulgation rests with the Pope. *See id.*

Various canon law provisions, all contained in the 1983 Code of Canon Law, are relevant here.[4] For example, the 1983 Code prohibits the sexual

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1984) ("these church documents" "are clearly the kind for which judicial notice by an appellate court is appropriate").

[4] The official English translation of the entire Code of Canon Law is available online at https://perma.cc/BNG5-QA3Y.

abuse of children. *See Corpus Iuris Canonici* ("1983 Code") c.1395 § 2 (characterizing this as "an offense against the sixth commandment of the Decalogue"). The 1983 Code also recognizes that "[w]hoever habitually lacks the use of reason is considered not responsible for oneself (*non sui compos*) and is equated with infants." *Id.*, c.99. Further, canon law prohibits "harm[ing] illegitimately the good reputation which a person possesses." *Id.*, c.220; *see also id.*, c.1717 § 2. Should reputational injuries occur from an unsubstantiated allegation, canon law provides a "competent ecclesiastical forum" and authorizes "a contentious action to repair damages incurred personally" from any "delict," including harm to reputation. *Id.*, cc.221, 1729 § 1.

While canon law does contemplate penal investigations conducted by bishops, *see, e.g.*, *id.*, cc.1717-19, canon law does not contemplate any particular process for handling sexual abuse allegations. *See* Bainbridge, *Unfinished Business*, 53 U.S.F. L. Rev. at 195-96. As large numbers of sexual abuse allegations began being unearthed, both the Pope and the U.S. bishops took subsequent action to expand transparency.

Sacramentorum Sanctitatis Tutela. One of the first "new law[s]" "promulgated" in the wake of sexual abuse allegations—"sent to all the Roman Catholic Bishops on 18 May 2001"—is "*Sacramentorum Sanctitatis Tutela*," or *SST*, a *motu proprio* promulgated by then-Pope John Paul II. *See The Norms of the Motu Proprio "Sacramentorum Sanctitatis Tutela" (2001) Historical Introduction,*

https://perma.cc/WM85-Z4CP ("*SST*"). *SST* established "special procedural norms to be followed" to identify, investigate, and if necessary, punish clergy misconduct. *See id.* For example, given the gravity of sexual abuse allegations, *SST* put the Vatican's Congregation for the Doctrine of the Faith[5] in charge of handling allegations of clergy sexual abuse of "minors." *See SST, Part One: Substantive Norms,* Art. 6 § 1, https://perma.cc/KSN3-XZ43. Twenty-three articles of *SST* are devoted entirely to setting forth an adjudicatory process to handle sexual abuse allegations (and others also reserved to the Congregation). *See id.* at *Part Two: Procedural Norms*.

SST also introduced another important change. Rather than solely penalize the sexual abuse of children under the age of 16 (as canon law already did),[6] *SST* employed the term "minor." That is, *SST* understands "the delict against the sixth commandment of the Decalogue committed by a cleric with a minor" to also include "a person who habitually has the imperfect use of reason." *SST, Part One,* Art. 6 § 1. In effect, *SST* directly

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[5] Formerly known as the "Holy Office," this special department within the Vatican is charged by the Pope with "the responsibility to watch over the profession of the true faith and guide all activities of the Church related to that faith." *See* Congregation for the Doctrine of the Faith, *To Promote and Safeguard the Faith: From the Holy Office to the Congregation for the Doctrine of the Faith*, https://perma.cc/G3AD-X2Y8.

[6] *SST* also explains that "[i]n 1994 the Holy See granted an indult to the Bishops of the United States: the age for the canonical crime of sexual abuse of a minor was raised to 18." *Id.*

linked canon law's recognition of "minor" status with its penalizing of clergy sexual abuse. 1983 Code cc.99; 1395 § 2. Thus, "minor" in this context is not simply understood by the Catholic Church to mean those under the age of 18 years. Rather, it can refer to anyone—regardless of age—that "habitually" lacks reason.

***The USCCB* Charter for the Protection of Young People (the "*Charter*").** "In the wake of" more sexual abuse allegations published by the *Boston Globe* in January 2002, the United States Conference of Catholic Bishops ("USCCB")[7] "commissioned . . . a comprehensive study" of sexual abuse in the Catholic Church with an eye toward overhauling church governance in the United States. *See* Bainbridge, *Unfinished Business*, 53 U.S.F. L. Rev. at 167-68. The study confirmed that, among other issues, "[m]any" of the now-public sexual abuse "cases were reported to the Church hierarchy but were frequently swept under the rug," sometimes out of confidentiality concerns and other times due to

[7] The USCCB is an assembly of the Catholic hierarchy in the United States. The bishops, who are the members of USCCB, use the conference "to unify, coordinate, encourage, promote and carry on Catholic activities in the United States." *See* USCCB, *About USCCB*, https://perma.cc/6EMW-TZGC. As Bishop Coerver has explained, bishops in the Catholic Church possess "the powers to sanctify, teach, and govern . . . . A bishop shepherds the faithful in his particular diocese with the assistance of other clergy (i.e., priests and deacons), religious (i.e., brothers and sisters), and the laity (i.e., baptized members of the Christian faithful who are not clergy, religious brothers or religious sisters)." CR:54-55 ¶ 4. Every individual bishop possesses his own "governance authority in the Catholic Church." CR:55 ¶ 7.

cover-up. *Id* at 168. Nor did the previously narrow understanding of sexual abuse of only those under the age of 18 capture the full problem. *See, e.g.*, *id.* at 165 (discussing the sexual misconduct of former Archbishop of Washington, D.C., and former Cardinal Theodore McCarrick—defrocked in 2019—who used his power to sexually abuse "adult seminarians" as well as children).

"Amazingly, the essence of the crisis was not the repeated acts of sexual abuse by clergy, but the repeated failure of the bishops to act decisively to recognize credible accusations, make offenders accountable, and prevent further abuse." Rev. Raymond C. O'Brien, *Clergy, Sex and the American Way*, 31 Pepp. L. Rev. 363, 374 (2004) (hereinafter "*the American Way*"). The U.S. bishops thus concluded that church governance on clergy sexual abuse could no longer be focused on centralization and confidentiality, but transparency and accountability. *See id.* The *Charter* embodies this change.

Crafted by the bishops in response to this comprehensive study, the *Charter* represents "a bureaucratic openness to clerical-lay cooperation never before present in the supervision of clergy." *Id.* Multiple aspects of the *Charter* are relevant here.

"First, the Charter stresses the duty of the bishops towards victims and families, a reversal of past practice of rehabilitation and reassignment." *Id.* at 407. The *Charter* commits all U.S. bishops to being "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." A:47 (Article 7); *see also* A:56 (preamble to "Essential Norms" stating that bishops promised to "be as open as possible with the people in parishes and communities about instances of sexual abuse of minors").[8] This commitment expects that such communication will include "informing parish and other church communities directly affected by sexual abuse of a minor." A:47. And, following the expanded breadth of "minor" from *SST*, the *Charter* specifically quotes *SST*'s understanding of "minor" to explain how "the offense of sexual abuse of a minor will be understood" "[f]or purposes of this *Charter*." A:52; *see also* CR:56 ¶ 10 (Bishop Coerver affidavit).

The *Charter*'s commitment to "open and transparent" communication is not limited to the "sexual abuse of minors by clergy." "In addition" to communicating about the sexual abuse of *minors* as canon law understands the term, dioceses are to also possess programs "for suggested training and development of diocesan personnel responsible

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[8] The *Charter*, as it explains, consists of "goals" for each bishop to implement. A:43. The U.S. bishops sent the *Charter* to the Vatican for approval so to become binding law. *See* O'Brien, *the American Way*, 31 Pepp. L. Rev. at 408. Some of the *Charter*'s commitments—what are referred to as "Essential Norms"—"have been granted *recognitio* by the Holy See." A:57. "Having been legitimately promulgated in accordance with the practice of the [USCCB] on May 5, 2006, they constitute particular law for all the dioceses/eparchies of the United States of America." *Id.* Those aspects of the *Charter* that are not "Essential Norms" nevertheless remain goals to which all U.S. bishops are committed. A:56.

for *child* and youth protection programs." A:47 (Article 9) (emphasis added). Like the goal of "open and transparent" communication on the sexual abuse of minors, the *Charter* commands that dioceses "are to make" these "safe environment" programs "clear to clergy and *all members of the community*." A:49. (emphasis added).

Second, as part of the mandated "Essential Norms," the *Charter* establishes new internal review boards to evaluate the credibility of allegations against clergy. A:44-45; *see also* A:57-58 (Essential Norms 4-5). Specifically, these boards provide "advice" to the diocesan bishop "in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry." A:45. These boards "can review these matters both retrospectively and prospectively and give advice on all aspects of responses in connection with these cases." A:45. These boards include lay members, including "at least one member" that has "particular expertise in the treatment of the sexual abuse of minors." A:58. Even as lay members must constitute the "majority" of board members, there must also be "at least one" "experienced and respected pastor of the diocese/eparchy in question," and the final decisions from the boards' inquiries always rest with the applicable diocesan bishop. *Id.*

Third, even with this new internal scrutiny and increased public transparency, the *Charter* admonishes dioceses to afford due process to accused clergy. Any "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." A:46. In addition to being able to employ "civil and canonical counsel" during the internal church review, *id.*, "every step possible is to be taken to restore his good name, should it have been harmed" by an "allegation . . . deemed not substantiated." *Id.* This, too, is part of the *Charter*'s mandated "Essential Norms." A:58.

To ensure that canonical processes would be followed—rather than inspire civil litigation between clergy and their church[9]—the Vatican required that the *Charter* conform with canon law, including its protections against reputational injury. *See* O'Brien, *the American Way*, 31 Pepp. L. Rev. at 425-26. These protections prohibit "harm[ing] illegitimately the good reputation which a person possesses." 1983 Code c.220; *see also* c.1717 § 2 (protecting "good name" of any individual being subjected to internal church investigation). They also authorize a "competent ecclesiastical forum" and "a contentious action to repair damages incurred personally" from any "delict," including reputational harm. *Id.*, cc.221 § 1; 1729 § 1. Indeed, "[t]here have been priests who have been accused of sexual abuse and removed from active ministry

[9] *Cf.* 1 *Corinthians* 6:5-6 ("I say this to shame you. Can it be that there is not one among you wise enough to be able to settle a case between brothers? But rather brother goes to court against brother, and that before unbelievers?").

and . . . [have] appeal[ed] to the Vatican for vindication." O'Brien, *the American Way*, 31 Pepp. L. Rev. at 395.

Finally, to confirm that the *Charter* is a directive to all diocesan bishops, it creates an annual audit process. A:47. The audit results in "an annual public report on the progress made in implementing and maintaining the standards in this *Charter*." *Id*.

While the *Charter* applies only to the Catholic Church in the United States, Pope Francis is similarly reforming the global Catholic Church around transparency and accountability toward all manner of clergy sexual abuse. Last year, for example, Pope Francis reaffirmed the worldwide reliance on the canon law understanding of "minor" when evaluating sexual abuse allegations in May 2019. *See* The Supreme Pontiff Francis, *Apostolic Letter Issued Motu Proprio "Vox Estis Lux Mundi*," Art. 1 § 2(a), https://perma.cc/UJC3-ZNEU. Later last year, he eliminated the code of confidentiality on certain Church matters (known as the doctrine of "pontifical secret") on accusations and canonical trials on the sexual abuse of minors. *See* Holy See Press Office, *Rescriptum Ex Audientia SS.MI: Rescriptum of the Holy Father Francis to promulgate the Instruction on the confidentiality of legal proceedings*, (Dec. 17, 2019), https://perma.cc/6RFH-FTZB.

B. The Catholic bishops in Texas decide to announce all clergy credibly accused of sexually abusing minors.

Confronted with new sexual abuse allegations throughout 2018—and a 2017 *Charter* audit report finding "general complacency" in many dioceses toward implementing the *Charter*'s goals[10]—most U.S. dioceses felt compelled to act on the *Charter*'s commitment to transparency and accountability. They did so by releasing lists of those clergy within their diocese that, consistent with the *Charter*'s mandatory "Essential Norms," were credibly accused of sexually abusing minors. *See* Lexi Churchill et al., *Sins of Omission*, Houston Chronicle (Jan. 28, 2020) (explaining that "the majority of U.S. dioceses" began this practice over a year and a half ago given new revelations). The bishops of all 15 Texas dioceses[11]—including Bishop Coerver on behalf of the Diocese here—joined in this decision together on September 30, 2018. CR:55 ¶ 7. Because "it would take time for each diocese to review its files and compile a list, the bishops agreed to publish their lists on January 31, 2019." *See id.*

As the *Charter* directed, the Texas bishops were required to follow *SST* and apply canon law's definition of a "minor." CR:154-55; CR:55 ¶ 7; A:52; 1983 Code c.97 § 2. This meant that the internal church review of

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[10] Secretariat of Child and Youth Protection et al., *2017 Annual Report Findings and Recommendations: Report on the Implementation of the Charter for the Protection of Young People* vii (May 2018), https://perma.cc/Q9VR-32N6.

[11] "A diocese is a portion of the people of God which is entrusted to a bishop for him to shepherd . . . ." 1983 Code c.369.

allegations and resultant communications would encompass those credibly accused of abusing any "person deemed vulnerable due to a health or mental condition." CR:154.

Diocesan review of credible allegations would involve the review boards set forth in the *Charter* and other professional investigators, with the diocesan bishop always possessing final authority. *See* A:57-58 (these review boards, and final authority resting with the bishop, are mandated "Essential Norms"). As the *Charter* required, these boards have the power to "retrospectively or prospectively" evaluate abuse allegations. *See* A:58. "[T]he files of all bishops, priests, and deacons who have served in the Diocese" were reviewed. CR:56 ¶ 11. In order to fulfill the *Charter*'s commitment of "open and transparent" communication, A:47, after each bishop concluded his review, "[e]ach bishop released his own statement and list on their respective diocesan website as an ordinary means of communicating with the Catholic faithful of his diocese." CR:55 ¶ 7.

Like other American dioceses, the Diocese's list was published on the Diocese's website, www.catholiclubbock.org. As in other American dioceses, this is the ordinary means by which the Diocese communicates with the Catholics in its jurisdiction—which, in Lubbock's case, constitute over 136,000 lay Catholics spread over 25 Texas counties. CR:55 ¶ 7; CR:57 ¶ 13. And, as the *Charter* committed U.S. bishops to communicate about these issues with "parishes and communities," there

was no "members-only" paywall blocking access to the list. A:8; A:56. Indeed, such a feature does not ordinarily exist on the Diocese's website.

C. The allegations against Guerrero.

As a deacon in the Catholic Church, Guerrero is obligated to embody the Catholic faith. CR:55 ¶ 5 (affidavit of Bishop Coerver); *see also* 1 *Timothy* 3:8-9 ("Similarly, deacons must be dignified, not deceitful, not addicted to drink, not greedy for sordid gain, holding fast to the mystery of the faith with a clear conscience."). "The ministry of deacons originated in the early church," CR:55 ¶ 5, and, in the Catholic faith, encompasses responsibilities akin to that of a priest. Like priests, they are ordained ministers, given authority by the Church to preach the Gospel at mass, conduct baptisms, weddings, and funerals, and promise obedience to their respective bishop. CR:55 ¶ 5. Thus, unlike many other Christian traditions, within the Catholic faith deacons are ordained clergy. *See* 1983 Code cc.1027-32 (discussing the ordination requirements for those called to the diaconate).

Six years after Guerrero was ordained a deacon, the Diocese received the first of two allegations that Guerrero engaged in sexual misconduct. *See* CR:56 ¶ 12 (Guerrero ordained a deacon in 1997; first allegation in 2003). The first allegation claimed that Guerrero committed sexual misconduct with a woman "deemed vulnerable due to a health or mental condition." CR:154; CR:56 ¶ 12. The misconduct allegedly occurred at the very parish where Guerrero served and was reported to the Diocese's

victim assistance coordinator by two eyewitnesses, including a parish employee. CR:153; CR:56 ¶ 12.

Following the *Charter*'s mandated Essential Norms, the Diocese submitted the allegation to the Diocesan Review Board. CR:153-54. After the investigation, the bishop suspended Guerrero from exercising any public diaconal functions. CR:56 ¶ 12.

In late 2005, Guerrero requested reinstatement. CR:56 ¶ 12. The bishop at the time gave him a second chance starting in July 2006, though he reassigned Guerrero to a different parish. CR:56-57 ¶ 12. Six months after this second chance (in January 2007), Guerrero was again alleged to have engaged in sexual misconduct with the same woman involved in the first allegation. CR:57 ¶ 12. Following a second investigation, also subject to internal review per the Essential Norms, the bishop permanently suspended Guerrero's "faculties" in 2008, meaning he could no longer his carry out clerical functions (like celebrating baptisms, weddings, or funerals) or hold himself out publicly as a deacon. *Id.*; *see also* 1983 Code c.1333 § 1 (describing clerical suspension as "prohibit[ing]" "the exercise of either all or some of the rights or functions attached to an office"). Permanent suspension under canon law, however, is not removal ("laicization") or excommunication from the Catholic Church. *See id.*, c.290 (explaining that the "sacred ordination never becomes invalid" except for certain "judicial" or "administrative" sentences, or "by rescript of the Apostolic see," none of

which are mere suspension). Guerrero thus remains an ordained Catholic deacon, but may not perform any sacramental functions.

Following the *Charter*'s Essential Norms and commitments, Bishop Coerver found the accusations against Guerrero credible. CR:56 ¶¶ 11-12; CR:153-54.

D. The Diocese posts and discusses its list of credibly accused clergy.

The Diocese's list of "Credible Allegation[s] of Sexual Abuse of a Minor" included ten clergymen. CR:141.[12] Given the Diocese's conclusion that Guerrero was credibly accused, he was on the list. CR:56-57 ¶¶ 11-13; CR:141. On January 31, 2019, as part of the coordinated release with all 15 Texas dioceses, the Diocese posted its list on its website. The Diocese did not otherwise publish it. *See* CR:57 ¶ 13 (affidavit of Bishop Coerver, swearing that "Guerrero's name was not published by the Diocese in any other manner"); *see also, e.g.*, CR:123 (Diocesan news release, directing media to "the diocese's website," not re-publishing the list). The list itself noted that the list was published by "Bishop Coerver, in his role as chief shepherd of the diocese, ..." CR:140; The list also noted that the *Charter*-created Diocesan Review Boards were involved in assessing credible allegations. *See, e.g.*, CR:140.

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[12] Five of the names were clergy within the Diocese of Lubbock. The other five were clergy in the Diocese of Amarillo (and are listed on that Diocese's website), of which the Diocese of Lubbock was a part until 1983. *See* CR:141.

Both the Diocese and others made statements about the list at the time of its publication:

Statements by the Diocese. On January 31, 2019, Bishop Coerver wrote a letter to the 136,000 members of the Catholic Church in the Diocese of Lubbock. CR:142. The letter was addressed to "My Dear People of the Diocese of Lubbock" CR:142. In his letter, Bishop Coerver explained that the Diocese's list, and the lists released by all Texas dioceses, were part of a broader "effort . . . to increase transparency and help to restore some confidence *among the ranks of the Faithful*, 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." CR:142 (emphasis added). The letter was sent with the purpose of "promot[ing] healing of victims of sexual abuse, and to restore trust in the Diocese and Church." CR:57 ¶ 15.

The Diocese also issued a press release about the list that linked to the Diocese's website. CR:123-24. The release tracked Bishop Coerver's letter. That is, it repeated the purpose of the list's release ("restore some confidence among the ranks of the Faithful"), explained it was released along with lists from the other 15 Texas dioceses, and hoped it would allow victims "to come forward and to be appropriately ministered to." CR:124.

Finally, in response to a press inquiry, the Chancellor of the Diocese, Marty Martin, gave one media interview about the list.[13] *See* CR:7 ¶ 13; CR:96; CR:119.[14]

The Diocese and Chancellor Martin were careful not to use the words "child" or "children" in discussing the list of credibly-accused clergy. The Diocese used the word "children" only once, in its press release, to note the "context" of the bishops' other church reforms of which the list release is but one part. *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 trust in the Catholic Church."); *see also* CR:119 (Chancellor Martin attributed as saying "the Church *is* safe for children" because "[e]verybody that volunteers or works in any church function has to be compliant with the safe environment program . . . ."). The *Charter* itself uses similar phrasing. For example, Article 9 of the *Charter* uses the word

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[13] A diocesan chancellor is an assistant to the diocesan bishop.

[14] Guerrero put a transcript of the FOX34 interview into the record. *See* CR:115-20. Guerrero also provided electronic video clips of KAMC and KLBK running Martin's interview. *See* CR:113-114. One of Guerrero's attached news articles, CR:136-38, was objected to, and that objection was sustained as unauthenticated and hearsay, CR:236. It is therefore not at issue here. Bishop Coerver also gave an interview to television station KCBD in October 2018, well before the list was posted in January 2019. CR:131-32.

"children" when describing the "safe environment program," while Article 7 of the *Charter* uses "minor" when discussing sexual abuse. *See* A:47.

Statements by others. Press outlets also made statements about the list and the Diocese's subsequent statements. These press outlets sometimes wrongly conflated "minors" with children. For example, a FOX34 news anchor characterized the list as one of "credible allegations . . . of sexual abuse against children." CR:117. Others, however, like a KAMC reporter, noted that Chancellor Martin "sa[id]" those on the list were credibly accused of sexually abusing "minors." A:33.

E. Guerrero's response.

Guerrero did not respond to the list's publication by using any of the dispute resolution procedures available to him under Catholic Church law. The Vatican ensured that one of the *Charter*'s mandated "Essential Norms" would be its commitment "to restore" the "good name" of any clergyman "harmed" by an "allegation . . . deemed not substantiated." *See* A:46; A:58; *see also* Bainbridge, *Unfinished Business*, 53 U.S.F. L. Rev. at 208 n.173 ("the Vatican insisted that the charter assert the primacy of Church run tribunals on the basis that [otherwise] the bishops' proposal would violate canon law") (internal quotation marks and citation omitted). The well-established canon law process to contest alleged reputational injury through a damages action—even for reputational injury from an internal church investigation—provides a "competent ecclesiastical forum." 1983 Code cc.220-21; 1717 § 2; 1729; *see also*

O'Brien, *the American Way*, 31 Pepp. L. Rev. at 395 (citing priests who used this internal church process).

Rather than avail himself of these procedures, Guerrero directed his attorney to write to the Diocese threatening *civil* litigation and demanding that his name be removed from the list. *See* CR:57 ¶ 14; *see also* A:66.

Counsel for the Diocese responded to Guerrero's demands by giving him 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 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 Diocese's canon-law definition of "minor." CR:154.

After corresponding with Guerrero, the Diocese revised the list to confirm what the *Charter* made clear: the Diocese was relying upon the canon law understanding of "minor," rather than referring to "children"—a term the list never used. CR:145-46. The updated list also noted that a

Diocesan finding that an accusation is "credible" 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:64. Like the prior list, the revised list was published only on the Diocese's website, and no other substantive changes were made.

F. The proceedings below.

On March 22, 2019, Guerrero sued the Diocese, claiming defamation and intentional infliction of emotional distress. CR:8-11 ¶¶ 19-40. Guerrero seeks over $1 million in damages. CR:7 ¶ 6. Guerrero does not deny that sexual misconduct occurred, just that he abused a child. *See* CR:8 ¶¶ 17-18. Guerrero has not sued any media outlets.

On April 18, 2019, the Diocese submitted a plea to the jurisdiction and, on May 22, 2019, a motion to dismiss under the TCPA, arguing that religious autonomy barred both of Guerrero's causes of action. CR:80 (plea to jurisdiction); CR:158 (motion to dismiss). After a hearing, on July 16, 2019, the trial court denied both the motion to dismiss and the plea to the jurisdiction. CR:232-33. The Diocese sought mandamus relief on the plea to the jurisdiction, and separately appealed the denial of the motion to dismiss under the TCPA.

On December 6, 2019, the Seventh District Court of Appeals denied mandamus relief. While it doubted that claims of sexual misconduct could be protected even if said from the pulpit, A:15, it explained that a "pivotal nuance" produced an even broader holding: The "matters," even

if "historically deemed ecclesiastical" were "expos[ed] . . . to the public eye." A:12. This conclusion apparently followed from the "neutral principles" doctrine. A:6-7 (citing *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594 (Tex. 2013)). 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:12-13, "[n]ews coverage followed," *id.*, and some of the Diocese's statements made reference to "society," *id.,* there was no religious autonomy protection. *See* A:13-17. Because the list was made public on the Diocese's website, statements about the list made by members of the press were effectively imputed to the Diocese. *See* A:24; A:28; A:14 (court attributing FOX34 anchor quote to Diocese; "the event was utilized by the Diocese, according to one or more church representatives, as opportunity to address sexual abuse against 'children'").

In the interlocutory TCPA appeal, the Court of Appeals agreed that the Diocese's speech was on a "matter of public concern," A:22, and that Guerrero's intentional infliction of emotional distress claim should be dismissed. The Court of Appeals affirmed the remainder of the trial court's decision, however. The court held that the Diocese defamed Guerrero because "common perception" understands "minor" as synonymous with "children." A:25. As in its mandamus opinion, the court effectively imputed to the Diocese a statement about the list from a FOX34 news anchor. A:28.

Because the Court of Appeals had already rejected the Diocese's religious autonomy defense, the court incorporated its mandamus opinion by reference and held "the doctrine does not apply." A:31.

On February 22, 2020, the Diocese filed a Petition for Writ of Mandamus and a Petition for Review in this Court. Thirty-four members of the Texas legislature, First Amendment scholars, and Jewish, Baptist, and Catholic organizations filed *amicus* briefs supporting the Diocese's request for dismissal. The Court granted further briefing on June 5, 2020. The Petitions were consolidated by this Court for briefing on June 19, 2020.

SUMMARY OF ARGUMENT

Under well-established principles of religious autonomy, this case should have been dismissed. Guerrero's claims put civil courts in the unconstitutional position of potentially imposing liability on a church, because the church's competent authorities adjudicated the status of a member of the clergy and then communicated that status to its members. Civil court interference in the Diocese's internal affairs would thus violate *both* religious autonomy principles enunciated in *Westbrook*: namely, that courts can neither (1) "resolve a religious question" nor (2) "impede the church's authority to manage its own affairs." *Id.* at 397-98. Moreover, allowing a civil court to decide and potentially impose liability for defamation would also violate the religious autonomy long afforded churches under the United States Constitution. Civil courts

simply cannot decide "'matters of faith, discipline, and doctrine[.]'" *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 732 (1872) (quoting *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282, 291 (Pa. 1846)). Indeed, civil courts have "no power to revise or question ordinary acts of church discipline, or of excision from membership." *Bouldin v. Alexander*, 82 U.S. 131, 139 (1872). Guerrero's claims are thus jurisdictionally barred and must be dismissed.

For similar reasons, Guerrero did not and cannot set forth a prima facie case of defamation under the TCPA. There is simply no way he can identify the requisite clear and specific evidence without (1) a court holding that it is unreasonable for the Diocese to use its religious terms in public or (2) taking discovery on internal church deliberations about his inclusion on the list. Neither action is permissible, and would be crosswise with the TCPA, a statute specifically designed to protect, not ensnare, speech and association, including religious speech and association, protected by the First Amendment.

Instead of applying these principles, the Court of Appeals invented a new one. To the Court of Appeals, the "pivotal nuance" is that the Diocese's communications left "the confines of the church." A:12; A:17. But neither the court below nor Guerrero has identified a single case—anywhere—where the scope of publication authorized jurisdiction over claims based in, as the lower court admitted, "internal church discipline,"

activity "historically deemed ecclesiastical," and "a religious term imbedded in canon law." A:14; A:12; A:16.

Nor could there be. Were that the law, scope of publication would not simply be the "pivotal nuance"—it would be all that matters. The mere showing that a "non-member" could have heard the church's communication would render everything actionable—even if it punishes religious decisions, chills religious exercise, or second-guesses church governance. That is not how the First Amendment works.

The Court of Appeals' rule invites religious entanglement. Discussing church policies and clergy status with "members and non-members" is protected by the First Amendment. *E.g.*, *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 658 (10th Cir. 2002). But requiring a court to assess whether a message "left" a church's "confines" will necessarily require denomination-by-denomination assessments of church membership, acceptable means of communicating to them, and how a church may speak to lapsed or potential members. This will subject well-established religious activity to defamation liability—including statements made during online worship services (now very common due to coronavirus), announcements on church websites, public warnings about activities that conflict with religious teachings, and evangelization messages. As *amicus* briefs from Texas legislators, leading First Amendment scholars, and diverse religious traditions confirm, such entanglement undermines "the importance of securing religious groups'

institutional autonomy, while allowing them to enter the public square," which "cannot be understated and reflects consistent prior case law." *Whole Woman's Health v. Smith*, 896 F.3d 362, 374 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 1170 (2019). Turning judges into commissars of religious communications is as unnecessary as it is unconstitutional.

Adjudicating whether the Diocese correctly applied its canon law understanding of "minor" to Guerrero's conduct, and whether it was wrong to follow the *Charter*'s transparency commitments on clergy sexual abuse, constitutes "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. Since civil court jurisdiction is barred over such communications, the Court of Appeals must be reversed and the case dismissed.

ARGUMENT

I. The district court lacked jurisdiction over the content of the Diocese's communications regarding its clergy.

For over a century, courts have recognized that "our system of laws" affords religious organizations an autonomy with "far-reaching influence." *Watson*, 80 U.S. (13 Wall.) at 727, 733-34. That autonomy includes a separate "sphere[] of sovereignty" for all matters relating to religious governance. *Westbrook*, 231 S.W.3d at 395. Texas courts thus consistently recognize that even if "wrongs may exist in the ecclesiastical setting," "the preservation of the free exercise of religion is deemed so important a principle it overshadows the inequities that may result from

its liberal application." *Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Alief*, 576 S.W.3d at 428-29. Or, as the Supreme Court of the United States put it, when matters of religious governance are at issue, "the First Amendment has struck the balance for us." *Hosanna-Tabor*, 565 U.S. at 196.

Guerrero's claims encroach on the religious sphere of sovereignty. As this Court said in *Westbrook*, Texas courts lack jurisdiction over any claim that *either* (1) requires "resolv[ing] a religious question" *or* (2) "impede[s] the church's authority to manage its own affairs." *Westbrook*, 231 S.W.3d at 397. Both principles doom Guerrero's claims. For the first principle, his defamation claims necessarily require adjudicating whether the Diocese's canon-law based understanding of "minor" is true as to Guerrero's alleged conduct. *See* CR:9 ¶ 24; CR:10 ¶ 31. For the second principle, Guerrero's defamation claims require interfering with—and if successful, would chill the application of—the Diocese's investigation and communication policies regarding clergy sex abuse. *See id.* (second-guessing the Diocese's internal credibility determination); *see also* CR:106 (Guerrero disputing Diocese's application of "minor" standard). Failing only one principle demands dismissal. *See Westbrook*, 231 S.W.3d at 396-97 (two prohibitions are separate "area[s] of constitutional concern"). Failing both—as Guerrero's claims do—confirms this case has no business being in civil court. The Court of Appeals should be reversed.

A. Under the First Amendment and *Westbrook*, the district court lacked jurisdiction over Guerrero's claims because adjudicating them would require the court to resolve inherently religious questions.

In order to decide Guerrero's defamation claims, a civil court would have to decide whether the Diocese's conclusion about Guerrero's abuse of a "minor" within the meaning of Catholic canon law is true as applied to the accusations against him. Put another way, his claims require a civil court to sit in judgment of whether the Catholic Church is correct to believe that sexual abuse of the mentally vulnerable should receive the same level of protection and solicitude as the sexual abuse of children. Because any "claim" that "require[s] the court to resolve a religious question" "run[s] afoul of the First Amendment," *Westbrook* and the First Amendment require that Guerrero's defamation claims be dismissed. *See* 231 S.W.3d at 396-97.

Indeed, the need to dismiss defamation claims like Guerrero's was so obvious in *Westbrook* that the plaintiff there "did not contest the dismissal of her defamation claim in the supreme court." *Alief*, 576 S.W.3d at 431; *see also Westbrook*, 231 S.W.3d at 396 (defamation claim was "abandoned" before this Court). *Westbrook* explains why: The plaintiff's defamation claim "would have required the court to delve into the religious question" of whether the plaintiff's alleged "biblical impropriety" was "true or false." *Id.* The same problem plagues Guerrero's defamation claims.

"True statements cannot form the basis of a defamation complaint," *Double Diamond, Inc. v. Van Tyne*, 109 S.W.3d 848, 855 (Tex. App.—Dallas 2003, no pet.) (citing *Randall's Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 646 (Tex. 1995)), and the "burden" of proving what the Diocese said is false rests with Guerrero, *see D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 441 (Tex. 2017); *see also Van Der Linden v. Khan*, 535 S.W.3d 179, 198-99 (Tex. App.—Fort Worth 2017, pet. denied).

Here, Guerrero contends that the Diocese's "statements constitute defamation per se" because they "falsely state that Jesus Guerrero was and had been 'credibly accused' of sexual misconduct of a minor." CR:9 ¶ 24 (libel claim); *see also* CR:10 ¶ 31 (slander claim). Guerrero's defamation claims necessarily turn on whether the Diocese correctly characterized the accusation against him as "credibl[e]." *Id.* But the Diocese's credibility determination turns on the canon law understanding of "minor," because that is—undisputedly—the standard it used to assess the allegations against Guerrero (and the other listed clergy). *See* CR:56 ¶ 10 (affidavit of Bishop Coerver); A:47 (Article 7 of *Charter*); A:52 (*Charter*'s reliance on *SST* to define "minor," which applies the canon law understanding); 1983 Code c.99. Accordingly, a civil court would have to evaluate whether the Diocese correctly understood Guerrero's conduct to involve a "minor" as recognized in canon law—a definition that encompasses those whose mental capacity compromises their ability to

protect themselves. But, as one of the leading defamation cases in this context put it, a civil court "cannot" "review the determinations of an ecclesiastical body applying its own . . . rules." *Dermody v. Presbyterian Church*, 530 S.W.3d 467, 474 (Ky. Ct. App. 2017); *see also Westbrook*, 231 S.W.3d at 403. Guerrero's claims must be dismissed.

Where courts evaluate the interplay between government and religious duties, it is "plain that context matters." *Croft v. Perry*, 624 F.3d 157, 168 (5th Cir. 2010) (citation omitted); *see also Westbrook*, 231 S.W.3d at 400 ("breach of secular duty by disclosing Penley's confidential information" "cannot be isolated from the church-disciplinary process in which it occurred"). And here, that context is clear: Guerrero is ordained clergy in the Catholic Church, which is engaged in a decades-long struggle to expand transparency, accountability, and restore trust in the wake of sexual abuse allegations. Like most U.S. Catholic dioceses, every single Texas diocese acted on the commitment of all U.S. bishops to "open and transparent" communication by investigating clergy credibly accused of sexually abusing minors in accordance with canon law and publicly announcing the results. A:47.

Guerrero's claims, by contrast, depend on severing what the Diocese said from the religious context in which it originated. He ignores canon law, conflating "minor" with a word the Diocese never used in discussing the accused ("children"), and accuses the Diocese of pursuing a vendetta against Guerrero, not an internal church investigation based in church

laws and policies. *See* CR:99. When confronted with the context, he claims the list is no different than any other public accusation simply because it is public. *Id.* This defies common sense. "[T]he man who pushes an old lady into the path of a hurtling bus" and "the man who pushes an old lady out of the path of a hurtling bus" are not the same simply because "in both cases someone is pushing old ladies around." Edward M. Whelan, *The Presumption of Constitutionality*, 42 Harv. J.L. & Pub. Pol'y 17, 21 (2019) (quoting William F. Buckley, Jr.). Context matters.

The Court of Appeals could not dispute the context of the list's origins, conceding that the Diocese's statements implicate "internal church discipline," are based on actions "historically deemed ecclesiastical," and utilize "a religious term imbedded in canon law." A:14; A:12; A:16. Instead, it committed a different error—recharacterizing the relevant context altogether.

To the Court of Appeals, the Diocese used the word "children" in ways supposedly suggesting that Guerrero was credibly accused not of "minor" abuse, but of "child" abuse. A:14. As such, the Diocese said something that, in the Court of Appeals' view, churches may not say, even from the pulpit. *Id.* Applying the "neutral principles" doctrine, the Court of Appeals concluded that "children" has no uniquely religious connotation and canon law is therefore "not in play." A:6-7; A:16. For five reasons, these conclusions were error.

First, the Diocese simply did not use the words "children" or "child" when discussing the list in general, or Guerrero in particular. To be sure, the Diocese occasionally used the words "children" or "child" to discuss *other* church policy changes. *See* CR:123-24 (Diocesan press release); CR:119 (Chancellor Martin discussing safe environment program). But that just proves the Diocese was adhering to the Catholic Church's broader church reforms in the *Charter* and other Vatican documents. Those documents, like the Diocese's communications here, refer to sexual abuse of a *minor* when discussing transparent communication about clergy, while referring to "children" or "child" regarding other policy reforms. *Compare* A:47 (Article 7 of the *Charter*, requiring "open and transparent" communication about the sexual abuse of a minor) *with* A:47 (Article 9 of the *Charter*, which requires public communication about "safe environment" programs for children). The Diocese cannot lack religious autonomy for doing the very thing religious autonomy permits: following church directives. *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 because the challenged "notice" of "alleged bigamy, . . . was plainly made in the context of the Orthodox Jewish faith."); *Dermody*, 530 S.W.3d at 475 ("religious institutions are free to set forth policies that align with their respective mission") (internal quotation marks and citation omitted).

Second, courts (in Texas and nationwide) reject what the Court of Appeals did here: recharacterize the Diocese's statements to evade the underlying religious question. This maneuver has been rejected when a plaintiff seeks to avoid a religious question by adjudicating truth from "the average reader" perspective instead of the proper vantage point: "the truth or falsity of the actual statements which form the basis of [the plaintiff's] claim." *See Dermody*, 530 S.W.3d at 473. It has been rejected "[e]ven if there is a dispute over [the religious speaker's] motivation in making the statements." *Alief*, 576 S.W.3d at 435. And it has been rejected where a plaintiff attempts to isolate the statements at issue from the religious "context of the dispute." *El-Farra v. Sayyed*, 226 S.W.3d 792, 796 (Ark. 2006) ("Appellant argues that these false accusations against him . . . allege merely secular conflicts with the Executive Committee. We disagree. . . . [T]hese statements were made in the context of a dispute over appellant's suitability to remain as Imam."); *see also Thiagarajan v. Tadepalli*, 430 S.W.3d 589, 591-96 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (rejecting argument that defamation claims were not covered by religious autonomy because pornography distribution allegation dealt with conduct "outside the confines of the temple." Rather, statements "must be viewed in the larger context" of the "religious issues and considerations" at play). There is a reason why this "context" recharacterization maneuver is always rejected. Indulging it would permit what the Texas and federal constitutions prohibit: exposing

religious organizations to the "significant burden" of having to "predict which of its activities a secular court will consider religious." *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987).

Third, the only discussion of "credible allegations . . . of sexual abuse against children" came from the media—not the Diocese. *See* CR:117 (FOX34 anchor statement). Indeed, notwithstanding media misstatements, the Diocese "sa[id]" all the individuals abused were "minors." A:33 (KLBK/KAMC reporter). The Court of Appeals, however, attributed the FOX34 anchor's statement to the Diocese. *See* A:14 (claiming "one or more church representatives" used the list's release "as opportunity to address sexual abuse against 'children.'"). This attribution was simply wrong. And in any event, the Diocese cannot be held liable for press mischaracterizations. *See 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.").

Fourth, the Court of Appeals' presumption that the "neutral principles" doctrine bypasses any religious autonomy here, A:6-7, has no basis in this Court's precedent. Over and over, this Court, like the United States Supreme Court and others nationwide, confirmed that the "neutral principles" doctrine is "narrowly drawn" to church-property disputes. *Westbrook*, 231 S.W.3d at 398; *see also Masterson*, 422 S.W.3d

at 607; Law Professors Amicus Br. 24-27; *Hutchison v. Thomas*, 789 F.2d 392, 396 (6th Cir. 1986) (neutral principles "applies only to cases involving disputes over church property"). As *Westbrook* teaches, it is not enough that "elements of [a tort] claim can be *defined* by neutral principles without regard to religion." 231 S.W.3d at 400 (emphasis in original). The question, rather, is whether "the *application* of those principles," will "impinge" a church's "ability to manage its internal affairs" or "hinder adherence to the church disciplinary process." *Id.* (same).

Confining the "neutral principles" doctrine to church property disputes makes good sense. Church property disputes involve a debate "between two church entities over what the church's decision was in the first place." Michael McConnell & Luke Goodrich, *On Resolving Church Property Disputes*, 58 Ariz. L. Rev. 307, 336 (2016). By contrast, defamation lawsuits like this one are "fundamentally different"—they involve "a conflict between the civil law and an internal church decision." *Id.* The Court should decline to extend the neutral principles doctrine beyond the church-property context, where it originated and where it coheres.

Even if this Court were inclined to extend the "neutral principles" doctrine to tort lawsuits, this case would be a poor guinea pig. There are no "neutral principles" for a civil court to determine whether Catholic canon law's definition of "minor" applies to Guerrero's conduct, or to

penalize the Diocese for implementing the Catholic Church's reforms. Yet a civil court must do both to resolve Guerrero's claims. It is hard to imagine a worse candidate for fashioning new precedent.

Fifth and finally, the Court of Appeals' terse suggestion that religious autonomy does not cover even pulpit statements about sexual misconduct, A:15, construes the law "too broadly." *Alief*, 576 S.W.3d at 436. For one matter, Texas law contains no "blanket statement that allegations of 'inappropriate sexual behavior' made by church officials can never be protected under" religious autonomy. *Id.* (discussing *In re Godwin*, 293 S.W.3d 742 (Tex. App.—San Antonio, 2009, orig. proceeding [mand. denied])). If it did, that would undermine a litany of decisions allowing churches to announce clergy disciplinary actions. For another matter, throughout the nation, courts have been able to distinguish claims that redress sexual misconduct from defamation claims brought by clergy.

A particularly apt case proves the point. In *Kavanagh v. Zwilling*, the Southern District of New York held that it lacked jurisdiction over a diocesan press release that the Catholic Church found a priest guilty of "sexual abuse of a minor." 997 F. Supp. 2d 241, 252-54 (S.D.N.Y. 2014), *aff'd* 578 F. App'x 24 (2d Cir. 2014). The decision is on all fours with this case. And not only because it rejects Guerrero's argument that a court need look "no further" than a diocesan press release to analyze whether religious autonomy is at issue. *See id.* at 252-53.

Kavanagh reached this conclusion by distinguishing cases redressing sexual misconduct because, in such cases, the church "point[ed] to" no "disputed religious issue." *Id.* at 254 (quotation omitted). By contrast, resolving a "libel *per se* claim"—just like both of Guerrero's defamation *per se* claims—requires resolving "the truth or falsity of the Catholic Church's characterization of its own law and doctrine. The First Amendment bars this Court from addressing that issue." *Id.* It does here, too.

B. Under the First Amendment and *Westbrook*, the district court lacked jurisdiction over Guerrero's claims because adjudicating them would impede the church's authority to manage its internal affairs.

A judgment on the merits in favor of Guerrero's defamation claims would necessarily require a civil court to determine that the Diocese should not follow the *Charter*'s directives. This will impose crippling financial liability on a church simply for following its principles. It will also tell every other Catholic diocese in the United States—along with any other religious organization that speaks transparently about its clergy—that it will be punished for discussing allegations of clergy sexual abuse that its religious laws find credible. The imposition on, and chilling of, church governance is obvious.

To avoid this "enchroach[ment] on the church's ability to manage its internal affairs," *Westbrook* confirms that second-guessing internal church decision-making is barred, even if questions of religious doctrine

are not at issue. 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 St. Thomas High Sch.*, 495 S.W.3d 500, 509-10 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). The United States Supreme Court cogently explained why: "It is not only the conclusions" a civil court may reach that may "impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB v. Catholic Bishop of Chi.*, 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*, 896 F.3d at 372 (citation omitted).

Unfortunately, the Court of Appeals did exactly what *Westbrook* condemned: It "ignore[d]" this dispositive "area of constitutional concern" and focused solely on whether it must evaluate canon law. 231 S.W.3d at 397. But impeding church governance violates religious autonomy *regardless* of whether a civil court must resolve the application of religious doctrine. The Court of Appeals' failure even to consider the effect of a judicial resolution on internal church governance is, per *Westbrook*, reason alone to reverse and dismiss.

Here, there are four reasons why adjudicating 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 Guerrero's disciplinary proceedings themselves are not in issue, A:12, Guerrero himself challenges both the allegations leading to his disciplinary process and the decisions resulting from it. CR:148-49 (Guerrero affidavit). He also invites the court to second-guess the Diocese's application of canon law to the individual Guerrero is accused of abusing. *See* CR:106. But just as a court cannot second-guess the canonical meaning of "minor," it is equally clear that "subjecting [a church] to tort liability for engaging in the disciplinary process that the church requires would clearly have a 'chilling effect' on churches' ability to discipline their members, and deprive churches of their right to construe and administer church laws." *Westbrook*, 231 S.W.3d at 400 (citations omitted); *see also Hubbard v. J Message Grp. Corp.*, 325 F. Supp.3d 1198, 1214 (D.N.M. 2018) ("courts generally do not permit tort claims arising from internal processes by which religious organizations discipline their members"). 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, no writ). 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) (mem. op.). Here, however, Guerrero seeks to enlist the government in that process, demanding that a civil court ignore directives from the *Charter* and the Vatican. Demanding that a church not follow its own policies—here, the directive that every diocese in the United States transparently investigate and discuss credible allegations of clergy sexual abuse of minors—obviously impedes church governance.

Third, allowing Guerrero's tort lawsuit lets him evade the means provided within the Catholic Church to redress unjust reputational injury. *See* A:46; A:58 (*Charter* commitment to internal church process for restoring injured reputation): 1983 Code cc.220-21; 1717 § 2; 1729 (authorizing "competent ecclesiastical forum" for cause of action based on reputational damages, even if arising in an internal church investigation). Exercising jurisdiction over this dispute will reward forum-shopping, creating a moral hazard in both senses of the phrase. Indeed, the United States Supreme Court has made clear that bringing disputes to civil court is no justification for evading a church's "internal dispute resolution." *See Hosanna-Tabor*, 565 U.S. at 194. And this Court has similarly prohibited "disgruntled parishioners" from "circumvent[ing] ecclesiastical immunity" based on whom they sue. *See*

Westbrook, 231 S.W.3d at 398. The same reasoning should bar Guerrero's lawsuit.

Fourth and finally, if Guerrero's claims proceed and subject the Diocese to millions in civil and punitive damages, all Texas dioceses—and perhaps others nationwide—would be chilled from carrying out the *Charter* and other church policies commanding transparency on clergy sex abuse. Indeed, Guerrero seeks 20% of the Diocese's annual operating budget in damages. *See* CR:7 ¶ 6; CR:12 ¶ 44 ("over $1,000,000" in damages requested; civil and punitive damages requested); *Witnesses of God's Love, Diocesan Catholic Appeal (2018-2019), Leadership Manual*, 46, https://perma.cc/F88C-T8RG ("$4.802 million annual budget"). Threatening the Diocese's solvency compels the Catholic Church to abandon the *Charter* and the decades'-long efforts to reform its policies regarding clergy sexual abuse. This is unconstitutional. *See Westbrook*, 231 S.W.3d at 400.

Because the Court of Appeals completely failed to consider this independent basis for religious autonomy—and Guerrero's claims cannot account for it either—the Court of Appeals must be reversed and his claims must be dismissed.

II. The Court of Appeals erred in finding that Guerrero presented clear and specific evidence establishing a prima facie case for each element of his defamation claim.

Guerrero cannot make out a prima facie case of defamation with clear and specific evidence because doing so would require violating the

Diocese's religious autonomy. That deprives civil courts of subject-matter jurisdiction. And when "religious-liberty grounds form the basis for the jurisdictional challenge," mandamus is the proper remedy. *Westbrook*, 231 S.W.3d at 394 (citation omitted). Accordingly, the Court should first resolve the religious autonomy issues as a jurisdictional matter. However, as set out below, the TCPA separately bars Guerrero's defamation claims.

A. Constitutional issues aside, the TCPA requires dismissal because Guerrero has not brought forth clear and specific evidence of each element of his claim for defamation.

This Court reviews issues regarding interpretation of the TCPA *de novo*. *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). The determination of a TCPA motion to dismiss is a three-step analysis. *Id.* at 679. First, the Diocese was required to show the TCPA applied. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(b)[15]; *Youngkin*, 546 S.W.3d at 679. The TCPA applies if the legal action is based on, relates to, or is in response to the movant's exercise of the right of free speech. Tex. Civ. Prac. & Rem. Code Ann. § 27.005(b). The "exercise of the right of free speech" is defined as a "communication made in connection with a matter of public concern." Tex. Civ. Prac. & Rem. Code Ann. § 27.001(3).

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[15] The TCPA was amended effective September 1, 2019. *See* H.B. 2730, 86th Leg., Reg. Sess. (Tex. Jun. 2, 2019). Because Guerrero filed suit before the effective date, the amendments do not apply to this case. *See id.*, §§ 11-12. For ease of reference, TCPA citations are to the version of the statute in effect at the time Guerrero filed suit.

The Court of Appeals correctly found that the first TCPA step was satisfied, that is, the list and the related statements to the media were "communications" under the statute. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.001(1) ("communication" is the making of a statement in any form or medium, including oral, visual, written, audiovisual, or electronic); A:21.

Moreover, an allegation of abuse by a clergy member is a matter of public concern because it relates to safety and community well-being. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.001(7). The Court of Appeals therefore correctly found the communications here were made in connection with a matter of public concern. A:22. Thus Guerrero's defamation lawsuit is based on, relates to, and was in response to the Diocese's exercise of the right of free speech. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.001(3) and § 27.005(b).

Once a court determines the TCPA is applicable, the burden shifts to the nonmovant to establish by "clear and specific evidence a prima facie case for each essential element of the claim in question." Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c); *Youngkin*, 546 S.W.3d at 679. "Clear" means "unambiguous," "sure," or "free from doubt." *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (orig. proceeding). "Specific" means "explicit" or "relating to a particular named thing." *Id.* A "prima facie case" refers to evidence that is sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted. *Id.* It is the minimum quantum of

evidence needed to support a rational inference that an allegation of fact is true. *Id*. Guerrero has the burden of identifying this "clear and specific evidence" with "element-by-element, claim-by-claim exactitude" as to each element of his defamation claims. *See Elite Auto Body LLC. v. Autocraft Bodywerks, Inc.*, 520 S.W.3d 191, 206 (Tex. App.—Austin 2017, pet. dismissed); Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c).

Here, Guerrero brought claims against the Diocese for defamation based on slander and libel. The elements of a claim for defamation are: "(1) a publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases." *In re Lipsky*, 460 S.W.3d at 593. A private individual need only prove the statement was made negligently. *Id*. A true statement cannot be the basis of a defamation complaint. *Double Diamond*, 109 S.W.3d at 855.

To determine whether a publication is defamatory, courts analyze the gist of the publication in light of the surrounding circumstances, based on how a person of ordinary intelligence would perceive it. *Scripps NP Operating, LLC v.* Carter, 573 S.W.3d 781, 790 (Tex. 2019). A person of ordinary intelligence is one who exercises care and prudence, but not omniscience, when evaluating an allegedly defamatory publication. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157 (Tex. 2004). The reasonable reader is no "dullard"; he represents "reasonable intelligence and

learning," not "the lowest common denominator." *Id.* (internal quotation marks and citation omitted).

Here, Guerrero set forth no evidence whatsoever, much less clear and unambiguous evidence, to conclude that a reasonable observer would presume that the Diocese, when directing a communication about its clergy to its members, would be using something other than its religious terms and definitions. This should have doomed his claims. Instead, the Court of Appeals found the Diocese "intermix[ed]" the terms "child," "children," and "minor" in discussing the list, thereby leading a listener to believe Guerrero abused a child rather than an adult. A:25-26. But the Court of Appeals inappropriately assessed the surrounding circumstances of the allegedly defamatory statement.

The evidence demonstrates that the applicable context of the Diocese's publication of the list was to combat all sexual abuse by clergy, not just the abuse of children. In his letter, Bishop Coerver said the dioceses in Texas were serious about ending the "cycle of *abuse*" in the Church. CR:142 (emphasis added); *see also*, CR:124; CR:125. "The scourge of *abuse* must be stopped!" he said. CR:125 (emphasis added). He assured victims of "abuse of any kind" that the Church continued to pray for them. CR:142; *see also*, CR:124; CR:125. He urged "anyone" who had been abused by Catholic clergy to report that abuse. CR:142; *see also*, CR:124; CR:125. He offered hope that the "cycle of abuse might finally be broken." CR:126. Bishop Coerver's letter accompanying the release of the list did

not limit the Diocese's goal to only stopping the abuse of children. Rather, it is clear the Diocese sought to holistically end all abuse by Catholic clergy. *See* CR:131 (reporting that the list was "an effort to improve the safety of all Catholics within the state"). And while stopping the abuse of children was clearly one part of that goal, *see supra* p.11, the goal of ending all abuse was far broader. A reasonable observer (and maybe even a dullard) would be aware of this context.

And as with the *Charter*, whenever the Diocese referred to "children," it was in the context of broad policy reforms, not Guerrero specifically. *See* CR:124 (referring to the church's ongoing work to protect children from sexual abuse). As the *Charter* explains, "open and transparent" communication about the sexual abuse of minors by clergy is only one part of a broader suite of policy reforms. A:47; *see also* A:52 (directing that offense of sexual abuse of a minor will be understood to include a person who habitually lacks the use of reason). For instance, when Chancellor Martin said the church is safe for "children," he was discussing the safe environment program and the training that church volunteers receive. CR:119. The safe environment program does pertain only to "child and youth protection programs." A:47. But the discussion of that program had nothing to do with Guerrero.

The "conversation initiated" by the Diocese was to implement broad reform to stop all abuse by members of the clergy. With that proper context in mind, the record demonstrates Guerrero failed to establish a

prima facie case by clear and specific evidence of each of the elements of his defamation claim. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c).

First, Guerrero has not pointed to a false statement made by the Diocese. The Diocese's *only* reference to Guerrero was on its own website, and it was true: a credible allegation does exist that Guerrero sexually abused a minor (defined by canon law as including one who habitually lacks the use of reason). CR:56, ¶¶ 9-10; CR:60-61. Accordingly, the statement is not false.

Second, Guerrero did not meet his burden to bring forward clear and specific evidence that the statements made by representatives of the Diocese to the media were defamatory concerning him. *See In re Lipsky*, 460 S.W.3d at 593. There is no evidence that either Bishop Coerver or Chancellor Martin mentioned Guerrero in any of the media interviews or statements. *See* CR:113-35. Rather, they discussed the list and the reasons for its release in general terms. Because the Diocese's statements to the media are not defamatory concerning Guerrero, he failed to bring forward clear and specific evidence of the second element of his claim for defamation. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c).

Third, Guerrero did not bring forth clear and specific evidence that the Diocese acted negligently. The only time the Diocese ever mentioned Guerrero, it used the term "minor," not "child" or "children." *Supra* pp. 24-25. No party disputes that under canon law, a "minor" includes an adult who habitually lacks the use of reason. The court below found

negligence only by erroneously grafting a secular definition onto the word "minor" when the word was used in an ecclesiastical context.

The Court of Appeals faulted the Diocese for not explicitly stating it intended to use the canonical definition of "minor" when the Diocese posted the list on the Diocese's website. A:25. But this requires presuming that, in its ordinary communications, a religious organization is *not* using its own religious terms and definitions. Left uncorrected, this conclusion will create rampant confusion. A "prayer," for example, means one thing in church, and something else in a legal brief. A court cannot conclude that a church is negligent for speaking like a church, or force a church to speculate how others will understand its religious terms. These reasons reinforce why religious autonomy is so central to this case.

Moreover, as explained above, the context in which the Diocese allegedly made the defamatory statement was not a secular context. Rather, the communication was directed to Catholics, by Catholic leadership, on the Diocese's website. As set out above, *supra* pp. 23, 38, that press outlets may have misunderstood the canonical context of that word does not make the *Diocese* negligent. The only mention of "credible allegations . . . of sexual abuse against children" came from the media—not the Diocese. CR:117. The Diocese is not liable for others' misstatements. *Bentley*, 94 S.W.3d at 586 ("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.").

The Court of Appeals erred by subjectively re-characterizing both the context in which the Diocese made the allegedly defamatory statement and the meaning of the word "minor." It failed to analyze the publication as a whole and failed to approach the ordinary person as one with the reasonable intelligence and learning to grasp that a religious organization will direct a communication to its members about its own clergy in a manner consistent with its own religious laws and teachings. Guerrero, therefore, failed to bring forth clear and specific evidence of the element of negligence. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005(c). The Court of Appeals erred by finding to the contrary. Accordingly, Guerrero's claims for defamation should have been dismissed under the TCPA. *See* Tex. Civ. Prac. & Rem. Code Ann. § 27.005.

B. The case should be remanded to the trial court for a determination of reasonable attorneys' fees, costs, expenses, and sanctions.

Upon granting a motion to dismiss, the TCPA requires a court to award court costs, reasonable attorneys' fees, and other expenses incurred in defending the action as justice and equity may require. Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a). The reasonableness of attorneys' fees rests within the trial court's discretion. *Sullivan v. Abraham*, 488 S.W.3d 294, 299 (Tex. 2016).

Although lack of subject-matter jurisdiction generally bars a court from doing anything other than dismissing the suit, courts have nevertheless permitted TCPA awards of reasonable attorneys' fees, costs,

and other expenses given that the TCPA itself makes such awards mandatory. *Holcomb v. Waller Cty.*, 546 S.W.3d 833, 838-39 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (applied in the context of a declaratory judgment action). Therefore, upon dismissal for lack of subject matter jurisdiction, a court is still required to award attorneys' fees and costs under the TCPA. *Id.* at 839, 840.

Finally, section 27.009 instructs the trial court to determine the amount of sanctions sufficient to deter the claimant from bringing similar actions in the future. *Cox Media Grp., LLC v. Joselevitz*, 524 S.W.3d 850, 864 (Tex. App.—Houston [14th Dist.] 2017, no pet.); Tex. Civ. Prac. & Rem. Code Ann. § 27.009(a)(2). Like the reasonableness of attorneys' fees allowed by the statute, the appropriate amount of sanctions is a question of fact resting within the trial court's discretion. *See Cox Media Grp., LLC*, 524 S.W.3d at 859, 865. Sanctions are particularly appropriate here to deter future invasions of religious autonomy.

Accordingly, upon dismissal of Guerrero's lawsuit, the Diocese respectfully requests that this Court remand this case to the trial court for the sole purpose of allowing the Diocese to put on evidence of its costs, expenses, and reasonable attorneys' fees, as well as evidence of an amount of sanctions appropriate to deter further actions.[16]

[16] The Court of Appeals correctly remanded to the trial court for further proceedings on the determination of the attorneys' fees, costs, and

III. Restricting religious autonomy to the "confines of the church" would lead to a host of church-state conflicts.

Despite all the spilled ink, neither Guerrero nor the Court of Appeals ultimately dispute that the Diocese's statements satisfy *Westbrook*, or that the Diocese's statement is true as a matter of canon law. Indeed, the Court of Appeals acknowledged that the Diocese's statements implicate "internal church discipline," are based on activity "historically deemed ecclesiastical," and possess "a religious term imbedded in canon law" A:14; A:12; A:16. And Guerrero admitted that religious autonomy *would* protect the Diocese's statements if they were "limited to [C]atholic parishioners at an internal service/meeting," Mand. Resp. 12, or in an online format "exclusive" to members using a "login/password," Resp. Pet. Rev. 9 & n.3. The issue that underlies both petitions, or, as the Court of Appeals put it, the "pivotal nuance," is whether religious autonomy can be stripped from such statements, and secular standards can be applied, simply because the statement left "the confines of the church." A:12; A:17. If not reversed, this unprecedented result will undermine well-established free exercise protections under both the Texas and federal Constitutions.

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sanctions that must be awarded in connection with the dismissal of the claim for intentional infliction of emotional distress. A:18.

A. Restricting religious autonomy protections to "internal" or "password-protected" actions would chill all manner of religious exercise.

The Court of Appeals' rule is untenable. On the mere showing that a statement "left" what the court defines as a church's "confines," courts will be required to (1) ignore their incompetence to decide religious questions; (2) second-guess internal church processes; and (3) ignore the impact of civil litigation on internal church governance. In effect, Texas courts will require religious organizations to "predict which of [their] activities a secular court will consider religious," even though that is prohibited. *Amos*, 483 U.S. at 336. In response, religious organizations will either refrain from speaking altogether, or will refrain from implementing directives that require transparent communication with church members and the broader community—like the *Charter* and Vatican pronouncements on clergy sex abuse. *See supra* pp. 11-12. This, too, is prohibited. *See, e.g.*, *Westbrook*, 231 S.W.3d at 400. The First Amendment guarantees "the right of the church to engage freely in ecclesiastical discussions with members *and non-members*." *Bryce*, 289 F.3d at 658 (emphasis added). The Court of Appeals' rule will take that freedom away.

Unsurprisingly then, the Court of Appeals' decision to turn scope of publication into a "pivotal nuance" is unprecedented. *See Patton v. Jones*, 212 S.W.3d 541, 555 n.12 (Tex. App.—Austin 2006, no pet.) (scope of publication "not a bright-line rule"). There is *no case* that lets the breadth

of a statement's publication strip religious autonomy from defamation claims that require adjudicating religious doctrine or chilling the application of church laws. To be sure, some courts have considered the scope of publication when "the dispositive question" is answered negatively: That is, a civil court can resolve the case "without treading on—or wading into—religious doctrine," and the statement was not the product of an internal church governance process. *See Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W.2d 404, 405-7 (Iowa 2003); *see also Kelly v. St. Luke Cmty. United Methodist Church,* No. 05-16-01171-CV, 2018 WL 654907 (Tex. App.—Dallas 2018, pet. denied); *Turner v. Church of Jesus Christ of Latter-Day Saints*, 18 S.W.3d 877, 896 (Tex. App.—Dallas 2000, pet. denied). And surely, when a church can show a civil court that it limited communication to its defined members, that can "strengthen[]" the reasons to apply religious autonomy. *See Hubbard*, 325 F. Supp.3d at 1219. But neither scenario justifies stripping religious autonomy from communications that are rooted in "internal church discipline," A:14, "historically deemed ecclesiastical" activity, A:12, and "a religious term imbedded in canon law," A:16. Yet that is exactly what the Court of Appeals said it was doing here. *See, e.g.*, A:12 ("arguing that a dispute remains an internal ecclesiastical or church polity issue after that body choses to expose it publicly rings hollow. And, that is the situation here.").

The Court of Appeals' rule creates a needless conflict with countless cases nationwide that simply ignore a publication's scope when religious doctrine or church law is at issue. These cases include statements made in a church press release, on "social media," directing an admittedly non-church-member to a statement on a church's website, speaking to members of the press, posting "shunning" announcements in newspapers, and "disfellowshipping" members on "mass media" television.[17] The results in all of these cases are based on the correct premise: When "ecclesiastical discussions" are at issue, a church can "freely" discuss them "with members and non-members" without incurring defamation liability. *Bryce*, 289 F.3d at 658.

Any other conclusion would hopelessly entangle church and state. For example, governments are actively encouraging churches to livestream their worship services in response to coronavirus. *See, e.g.*, Office of Attorney General, *Guidance for Houses of Worship During the COVID-19 Crisis* (Mar. 31, 2020), https://perma.cc/6LFB-EK2L. More than that,

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[17] *See Kavanagh*, 997 F. Supp. 2d at 244-53 (church press release); *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 660 (Fla. Dist. Ct. App. 2018), *cert. denied* 139 S. Ct. 1601 (2019) (social media); *Dermody*, 530 S.W.3d at 473-74 (statement on church's website); *In re Godwin*, 293 S.W.3d at 746-49 (speaking to the press); *Sands v. Living Word Fellowship*, 34 P.3d 955, 959-60 (Alaska 2001) (shunning announcements); *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) (disfellowshipping members).

some courts have upheld restrictions on in-person worship in part *because* the opportunity to livestream worship services exists. *See, e.g.*, *Legacy Church v. Kunkel*, No: 20-0327, 2020 WL 1905586, at *36 (D.N.M. Apr. 17, 2020) (finding mass gathering order "narrowly tailored" because it "allow[s] religious organizations like Legacy Church to broadcast their services to followers via the internet and over television."). Even outside coronavirus, livestream worship is a common means of conducting religious services. Encouraging religious organizations to speak through media that can reach the entire world, while also subjecting them to defamation liability because they can speak to the entire world, is logically incoherent.

Other entanglement problems abound. The Diocese here, for example, spans 61 parishes, 25 Texas counties, contains over 136,000 members, and is part of a world-wide church containing over 1 billion members (with more than 8.5 million in Texas alone). *See, e.g.*, CR:131-32 (8.5 million Catholics in Texas); *Parishes: Diocese of Lubbock [Established 1983],* https://perma.cc/R29B-LQWB (61 parishes, 136,000 members, 25 counties); Rome Reports, *Vatican Report: Number of Catholics Worldwide Rises to 1.3 Billion,* https://perma.cc/R5MM-2ECT (1.3 billion Catholics according to 2016 Vatican statistics). Being "catholic" (in the universal sense), the Catholic Church has a long history of worldwide pronouncements directed to members in public formats, including some that might be considered defamatory. *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) (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). Similarly here, the press release and the letter from Bishop Coerver were intended for Catholics. *See, e.g.*, CR:131 (KCBD news article: the list "is in an effort to improve the safety of all Catholics within the state, which is estimated to be around 8.5 million people"). And Chancellor Martin spoke on TV about the new change in Church policy in the handling of sex abuse allegations within the Church. CR:119. Whatever the "confines" of such a church may be, artificially limiting them to "login/password" communications, or those within a given parish's four walls, does not reflect the present (or historical) reality of a church with a broad, geographically dispersed membership. The Court of Appeals' rule would punish the Catholic Church for being a catholic church.

Nor does the Court of Appeals' novel rule make sense for smaller, more localized, or less understood religious groups, or for outreach efforts to future or former members that necessarily entail non-member communication. For example, Jewish synagogues in Texas now risk defamation actions brought by restaurant or grocery store owners that "claim to be kosher while blatantly violating *kashrut* standards [and] have shut down based upon rabbis issuing" warnings to congregants not

to patronize them. Jewish Coalition for Religious Liberty Br. 7. And as members of the Texas Legislature have submitted to this Court, the Court of Appeals' rule would "intrude on the means churches use to communicate with members, requiring secure channels of communication regardless of the cost, feasibility, or limitations on access that would impose." Texas Legislators Br. 6. Such an imposition would be disparately felt by religious organizations with the least means.

The Court of Appeals made no effort to answer these concerns. Rather, its new rule entails denomination-by-denomination assessments of the "confines of the church." *Westbrook*'s two scenarios for religious autonomy will be meaningless if these "nuances" are "pivotal."

B. Under *Hosanna-Tabor*, religious autonomy must extend to all internal church decisions that affect the faith and mission of the church, even when those decisions are made known to non-adherents.

While the scope of publication cannot eliminate religious autonomy protections, it can indicate whether the communication at issue pertains to a religious organization's faith and mission (and thereby comes within religious autonomy protections). *Hosanna-Tabor* prohibits "government interference with an internal church decision that affects the faith and mission of the church itself." 565 U.S. at 190; *see also Dermody*, 530 S.W.3d at 475 ("religious institutions are free to set forth policies that align with their respective mission") (citation omitted). Accordingly, when a religious organization's publication pertains to a church's "faith

and mission," it is free to share that publication with non-adherents. But when the publication does *not* pertain to the organization's faith and mission, the publication's broader scope can be an indication that religious autonomy does not apply. *Cf. Westbrook*, 231 S.W.3d at 403 (distinguishing case where religious autonomy did not apply because the "intentional tort" at issue "formed no part of . . . church's religious beliefs or practices") (citation omitted).

In addition to following *Hosanna-Tabor*'s logic, this rule conforms with the cases discussed above. *See supra* pp. 57-58. Numerous cases (like *Kavanagh* or *Gallagher*) upheld potentially broad publications regarding the status of clergy because, as *Hosanna-Tabor* confirms, decisions about the status of ministers "affect[ ] the faith and mission of the church itself." 565 U.S. at 190. The same is true here. *See Tran*, 934 S.W.3d at 744 ("informing members of the Catholic Church of the status of its clergy" is part of church governance); *In re Vida*, 2015 WL 82717, at *3 ("the manner in which the Diocese formally executes and adopts a policy . . . delves into the Diocese's governance of its internal affairs").

The Diocese, as part of broader church policy reforms to address clergy sexual abuse, investigated whether any of its clergy were credibly accused—applying Catholic canon law—of sexually abusing a minor. *See* CR:55-56 ¶¶ 8-10. It then announced the results of that investigation alongside discussing broader church reforms. The First Amendment protects the Diocese's space to both draw such conclusions and share

them consistent with its faith and mission. *See, e.g.*, *Whole Woman's Health*, 896 F.3d at 373-74. By contrast, the Court of Appeals' "pivotal nuance" approach is premised upon there being something fundamentally wrong with religious organizations speaking in relation to their faith and mission in public life.

Finally, the Court of Appeals should be reversed because its rule, left in place, would severely inhibit religious organizations from adopting and effectuating policies that treat sexual abuse claims by clergy with transparency and accountability. *See* CR:125-26 (Bishop Coerver observing that list's release is an "occasion for more victims . . . to be appropriately ministered to" and restore lost trust in the Catholic Church). This rule allows "suit[s] against a church for doing exactly what the Legislature has required by law in other circumstances." Texas Legislators Br.12. Left to stand, the Court of Appeals' errors will be compounded in Texas and across the nation where similar cases are being filed.[18] If this Court does not correct the lower court, there is a real risk

[18] *See*, *e.g.*, 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); Compl., *Hamilton v. Roman Catholic Church of the Archdiocese of New Orleans*, No. 2:19-cv-14665 (E.D. La. Dec. 17, 2019), ECF No. 1; *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).

that the transparency and accountability exhibited by religious organizations toward allegations of clergy sexual abuse will be slowed or stopped—in Texas and across the nation.

PRAYER

The Diocese 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 and thereby dismiss the case. The Diocese prays for all other relief, whether at law or in equity, to which it is entitled, including the granting of its Petition for Review and remanding to the trial court for appropriate proceedings under the TCPA on attorney's fees, costs, and sanctions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing motion was filed and served this 6th day of July 2020, served electronically through eFile.TXCourts.gov on all known counsel of record, listed below:

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Eric C. Rassbach

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with Rule 9 of the Texas Rules of Appellate Procedure and the word count of this document is 14,406. The word processing software used to prepare this filing and calculate the word count is Microsoft Word for Office 365.

Date: July 6, 2020.

/s/Eric C. Rassbach
Eric C. Rassbach

Nos. 20-0005 & 20-0127

IN THE SUPREME COURT OF TEXAS

DIOCESE OF LUBBOCK,
***Petitioner*,**

v.

JESUS GUERRERO,
***Respondent*.**

On Appeal from the Seventh District Court of Appeals of Texas at Amarillo, Nos. 07-19-00307-CV & 07-19-00280-CV

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

TABLE OF CONTENTS

Filed 7/16/2019 11:30 AM
Barbara Sucsy
District Clerk
Lubbock County, Texas
dm

NO. 2019-534,677

JESUS GUERRERO Plaintiff,	§	IN THE DISTRICT COURT
V.	§	237TH JUDICIAL DISTRICT
DIOCESE OF LUBBOCK Defendant.	§	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

Filed 7/16/2019 11:31 AM
Barbara Sucsy
District Clerk
Lubbock County, Texas
dm

NO. 2019-534,677

JESUS GUERRERO	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	237TH JUDICIAL DISTRICT
	§	
DIOCESE OF LUBBOCK	§	
Defendant.	§	OF LUBBOCK COUNTY, TEXAS

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

CAME TO BE HEARD on the 25th day of June 2019, Defendant's Motion to Dismiss this case under the Texas Citizens Participation Act (hereafter "TCPA"). 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 Motion to Dismiss based on the TCPA 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

[3]A 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

No. 07-19-00280-CV

Diocese of Lubbock Appellant	§	From the 237th District Court of Lubbock County
v.	§	December 6, 2019
Jesus Guerrero Appellee	§	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 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. *Scarbrough 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 has 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 in 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

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.

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

KAMC News:

January 31, 2019: KAMC 6 P.M.

FS/VO/SOTVO/SOT

1 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 INVESTGIATED 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 "CREIDBLY 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.

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

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 abuse[1] 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 re-affirm 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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February 13, 2019

Catholic Dioceses of Lubbock
Attn: Bishop Robert M. Coerver, S.T.L., M.S.
PO Box 98700
Lubbock, TX 79499

Re: ***Jesus Guerrero***

Dear Bishop Coerver:

Kindly be advised that I have been retained by Jesus Guerrero in connection with his name being included in a published list of clergy members that "were credibly accused of sexual abuse of a minor." In that regard, please direct ALL further communication to my attention.

Enclosed, please find an authorization that allows you to release all records relating to Jesus Guerrero. I am specifically requesting all records that you relied upon as the basis to included Mr. Guerrero on the above referenced list of alleged child molesters. In addition, please provide copies of any and all documents pertaining to Mr. Guerrero's employment, complaints made against him, including but not limited to allegations of misconduct, any investigation notes, reports, and/or findings relating to Jesus Guerrero.

We ask that all records be furnished to us, no later than February 22, 2018 at 5:00 p.m. or we will be forced to file suit in order to obtain those documents. If there is a cost associated with this production, please let us know and we will immediately remit payment.

Thank you for your time and attention to this matter.

Very truly yours,

Nick L. Olguin

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Associated Case Party: Jesus Guerrero

Name

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