FILED
20-0005
8/24/2020 2:43 PM
tex-45643913
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

Nos. 20-0005 & 20-0127

In the Supreme Court of Texas

DIOCESE OF LUBBOCK,
Petitioner,

v.

JESUS GUERRERO,
Respondent.

IN RE DIOCESE OF LUBBOCK,
Relator.

On Petition for Review
from the Seventh Court of appeals, Amarillo
and for Writ of Mandamus
to the 237th District Court, Lubbock County
Nos. 07-19-00280-CV & 07-19-00307-CV

BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITIONER-RELATOR

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant
Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

KYLE D. HAWKINS
Solicitor General

NATALIE D. THOMPSON
Assistant Solicitor General
State Bar No. 24088529
Natalie.Thompson@oag.texas.gov

Counsel for the State of Texas

Identity of Parties, Amicus, and Counsel

The parties and their counsel are correctly identified in the parties' briefs on the merits. Amicus curiae the State of Texas is represented by the following counsel:

Ken Paxton
Jeffrey C. Mateer
Ryan L. Bangert
Kyle D. Hawkins
Natalie D. Thompson (lead counsel)
Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Natalie.Thompson@oag.texas.gov

Table of Contents

Page

Identity of Parties, Amicus, and Counsel i

Index of Authorities iii

Statement of Interest of Amicus Curiae v

Introduction 1

Summary of the Argument 3

Argument 4

I. The Court of Appeals Ignored the First Amendment's Presumption of Church Autonomy. 4

II. Limiting Religious Autonomy to the Church's "Internal Confines" is Incorrect as a Matter of First Amendment Law and Unworkable as a Matter of Practice. 6

III. The Neutral Principles Methodology Has No Place in this Defamation Lawsuit 9

A. The court of appeals' opinion misstates this Court's precedent on the "neutral principles" methodology for resolving church property disputes. 9

B. The court of appeals' opinion improperly relies on its own judicial judgment about matters of faith and doctrine. 12

Prayer 15

Certificate of Service 16

Certificate of Compliance 16

Index of Authorities

Page(s)

Cases:

Babb v. Wilkie,
140 S. Ct. 1168 (2020) 6
Diocese of Lubbock v. Guerrero,
591 S.W.3d 244 (Tex. App.—Amarillo 2019, pet. filed) 5
In re Diocese of Lubbock,
592 S.W.3d 196 (Tex. App.—Amarillo 2019, orig. proceeding) 5, 6, 9, 13
Episcopal Diocese of Fort Worth v. Episcopal Church,
422 S.W.3d 646, 647 (Tex. 2013) 10
Episcopal Diocese of Fort Worth v. Episcopal Church,
602 S.W.3d 417 (Tex. 2020) 10
Feminelli v. Diocese of Corpus Christi,
Cause No. 2019DCV-1063-G (319th Dist. Ct., Nueces County) 2
Heras v. Diocese of Corpus Christi,
Cause No. 2019DCV-1062-G (319th Dist. Ct. Nueces County) 2
Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C.,
565 U.S. 171 (2012) ..... *passim*
Jones v. Wolf,
443 U.S. 595 (1979) 10, 11
Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.,
344 U.S. 94 (1952) 6
Kelly v. Saint Luke Cmty. United Methodist Church,
No. 05-16-01171-CV, 2018 WL 654907 (Tex. App.—Dallas Feb. 1,
2018, pet. denied) (mem. op.) 8
Masterson v. Diocese of Nw. Texas,
422 S.W.3d 594 (Tex. 2013) 9, 10, 11
Our Lady of Guadalupe Sch. v. Morrissey-Berru,
140 S. Ct. 2049 (2020) 4, 5, 6, 7
Patton v. Jones,
212 S.W.3d 541 (Tex. App.—Austin 2006, pet. denied) 5
Serbian E. Orthodox Diocese for U.S. and Canada v. Milivojevich,
426 U.S. (1976) 10

In re Torres,
No. 07-19-00220-CV, 2019 WL 3437758 (Tex. App.—Amarillo July 30, 2019, no pet.) (mem. op.) 10
Westbrook v. Penley,
231 S.W.3d 389 (Tex. 2007) ..... *passim*
Whole Woman's Health v. Smith,
896 F.3d 362 (5th Cir. 2018) 7

Statutes:

U.S. Const.:
amend. I ..... *passim*
amend. XIV 3

Other Authorities:

1983 Code of Canon Law, cc.96, 204–05 8
Catechism of the Catholic Church 2d ed. (United States Catholic Conference, 2000) 8
Diocese of Lubbock Statement of Mission and Vision 2020, available at https://catholiclubbock.org/OurDiocese.html 13
Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409 (1990) 7
Rev. Raymond C. O'Brien, *Clergy, Sex and the American Way*, 31 Pepp. L. Rev. 363 (2004) 13
United States Conference of Catholic Bishops, *Charter for the Protection of Children and Young People* (rev. 2018), available at https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf 14
United States Conference of Catholic Bishops, *Teaching the Spirit of Mission* Ad Gentes*: Continuing Pentecost Today* (June 2005), available at https://www.usccb.org/beliefs-and-teachings/what-we-believe/teaching-the-spirit-of-mission-ad-gentes-continuing-pentecost-today 8, 13

Statement of Interest of Amicus Curiae

The State of Texas is profoundly interested in protecting Texas citizens and maintaining the integrity of its courts. The court of appeals' decision harms both. First, the State is responsible for preventing sexual abuse and protecting victims—both of which are furthered by the Diocese's laudable revelation of past wrongdoing and efforts to facilitate healing. Second, the First Amendment's church autonomy doctrine protects both religious organizations and the State from entanglement. Requiring the State's courts to adjudicate religious controversies—including disputes over church governance—would offend the First Amendment by embroiling the State in religious matters and requiring its courts to interfere in churches' internal governance. No fee has been or will be paid for the preparation of this brief.

To the Honorable Supreme Court of Texas:

The First Amendment bars civil courts from adjudicating any claim implicating either faith and doctrine or church governance. The court of appeals' decision interferes with both doctrine and governance. By subjecting the Diocese to civil liability based on how it chose to manage its internal affairs, the court of appeals interfered with Church governance: A judgment against the Diocese "would depend on a determination that [the Diocese] was wrong to" address allegations of sexual assault by clergy though disclosure, rather than secrecy. *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C.*, 565 U.S. 171, 194 (2012). And by making judgments about the Diocese's role in society and interpretation of the Charter, *see infra* at 12–13, the court of appeals interfered with the Diocese's faith and mission.

This case arises from a laudable effort by the Roman Catholic Church to heal long-festering wounds caused by sexual abuse within the church. On January 1, 2019, after conducting internal investigations, every diocese in Texas revealed the names of clergy who had been credibly accused of sexually abusing a minor, meaning, as defined by canon law, a child or any person who habitually lacks the use of reason. As the Diocese has explained, *see* BOM at 6–18, the Texas dioceses did so in furtherance of a new church policy regarding allegations of sexual abuse by clergy. Instead of sweeping accusations "under the rug," such as by transferring the accused cleric to another parish without revealing the accusations, the American church's policy is now one of "transparency and accountability." BOM at 10–11. This is precisely the sort of church governance that the First Amendment protects from court interference. Yet, in the court of appeals' view, Texas courts may impose

penalties on religious entities if their policy decisions or interpretation of doctrine results in any violation of civil law. That is contrary to binding precedent from this Court and the United States Supreme Court.

This Court's intervention is needed to prevent widespread interference with religious bodies in general and the Roman Catholic Church in particular. The court of appeals' decision threatens religious autonomy by sowing confusion as to governing First Amendment jurisprudence. And it threatens the Roman Catholic Church specifically by setting precedent for defamation claims arising from the Texas dioceses' joint decision to reveal the identities of clergy credibly accused of abuse of a minor. Guerrero's claim is not the only one of its kind. Already, at least two other clerics have sued the Diocese of Corpus Christi for defamation arising from its own January 1, 2019, revelation of credible accusations.[1] If the court of appeals' approach is followed, more lawsuits will follow—resulting in ever more interference with the Catholic Church's efforts to heal the wounds of the past and prevent further abuse. This Court should step in to prevent widespread misunderstanding and misapplication of the First Amendment's church autonomy principle.

---

[1] *See Heras v. Diocese of Corpus Christi*, Cause No. 2019DCV-1062-G (319th Dist. Ct. Nueces County); *Feminelli v. Diocese of Corpus Christi*, Cause No. 2019DCV-1063-G (319th Dist. Ct., Nueces County).

Summary of the Argument

The First Amendment, applicable to the States through the Fourteenth Amendment, "severely circumscribes the role civil courts may play" in suits touching on matters of church governance or faith and doctrine. *Westbrook v. Penley*, 231 S.W.3d 389, 399 (Tex. 2007). This broad principle of church autonomy bars Texas's courts from adjudicating Guerrero's lawsuit against the Diocese of Lubbock. Because Texas courts cannot hear Guerrero's defamation claim without wading into matters of doctrine or interfering with church governance, Guerrero's suit must be dismissed.

The court of appeals' contrary conclusion threatens to confuse Texas law and First Amendment principles in several ways. The court of appeals disregarded the presumption in favor of church autonomy, placed artificial and unworkable limits on that autonomy, and mischaracterized this Court's precedent on the "neutral principles methodology"—which applies in certain church property disputes—as if it governs all cases against a church.

And even if the neutral principles methodology has a place in tort suits like Guerrero's, this was not an appropriate case to expand it (as the court of appeals did). The court of appeals twisted the concept of neutral principles by rendering its own judgment as to the proper role of the Roman Catholic Church in society. The court of appeals declared that because the Diocese's statements included reference to sexual abuse as a societal problem, as well as a church problem, the Diocese's revelation of credibly alleged abuse lacks any "nexus" to faith or doctrine. That conclusion necessarily rests on a judicial assessment of the role a church should play

in society—to reach it, the court had to conclude that religious doctrine can have nothing to say about society at large, much less about confronting societal ills such as hunger, sickness, and abuse. That pronouncement would come as a surprise to Texans everywhere—Texas churches have been working to heal such ills since before the Republic. And, right or wrong, Texas courts cannot undertake such judgments.

ARGUMENT

I. The Court of Appeals Ignored the First Amendment's Presumption of Church Autonomy.

"[O]ur Constitution affords churches" "broad autonomy . . . in deciding matters that touch upon religious doctrine." *Westbrook*, 231 S.W.3d at 399; *see also Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020) (explaining that the Constitution sets out a "general principle of church autonomy," namely "independence in matters of faith and doctrine and in closely linked matters of internal government"). That principle "requires" that churches retain "the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities" because "[w]ithout that power, a wayward minister's preaching, teaching, and counseling could contradict the church's tenets and lead the congregation away from the faith." *Our Lady of Guadalupe*, 140 S. Ct. at 2060.[2]

---

[2] Decisions governing the "ministerial exception" apply to the broader church-autonomy doctrine of which that exception is a part. *See Hosanna-Tabor*, 565 U.S. at 196–97 (Thomas, J., concurring) (explaining that "the Religion Clauses guarantee

The court of appeals suggested Guerrero's claim would only be barred by the First Amendment if the church had doctrinal reasons for acting. *See In re Diocese of Lubbock*, 592 S.W.3d 196, 199–200 (Tex. App.—Amarillo 2019, orig. proceeding) (citing *Westbrook*, 231 S.W.3d at 404); *see also Diocese of Lubbock v. Guerrero*, 591 S.W.3d 244, 248 (Tex. App.—Amarillo 2019, pet. filed). That misapplies First Amendment doctrine.

Religious autonomy does not depend on the church having a doctrinal reason for its actions. To the contrary, the church "need not cite or possess a religious reason at all." *Our Lady of Guadalupe*, 140 S. Ct. at 2072 (Sotomayor, J., dissenting); *see id.* at 2058–59, 2068 (majority op.) (holding that the ministerial exception applied to Catholic elementary school teachers who were terminated for poor performance as educators); *Hosanna-Tabor*, 565 U.S. at 194 (holding the First Amendment does not "safeguard a church's decision to fire a minister only when it is made for a religious reason"). That applies to defamation claims as well as challenges to official church discipline. *See, e.g.*, *Patton v. Jones*, 212 S.W.3d 541, 552 (Tex. App.—Austin 2006, pet. denied) (explaining "allegedly defamatory statements made in connection with a church's decision to terminate a minister's employment are protected from secular review, even if the statements do not expressly involve religious doctrine").

---

religious organizations autonomy in matters of internal governance, including the selection of those who will minister the faith."). So even if the ministerial exception itself did not apply to this case, as Guerrero argues (at RBOM 48–49), the principles set out in ministerial exception cases apply to the broader doctrine.

As this Court has emphasized, a plaintiff must overcome "the strong constitutional presumption that favors preserving the church's interest in managing its affairs." *Westbrook*, 231 S.W.3d at 402; *see also Our Lady of Guadalupe*, 140 S. Ct. at 2055 ("'The First Amendment protects the right of religious institutions 'to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" (quoting *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)). That means a civil court can adjudicate a claim only if its resolution would be *free from* both doctrinal and church governance matters. *See Westbrook*, 231 S.W.3d at 402; *cf. Babb v. Wilkie*, 140 S. Ct. 1168, 1173 (2020) ("'The phrase 'free from' means 'untainted' or '[c]lear of (something which is regarded as objectionable)'").

II. Limiting Religious Autonomy to the Church's "Internal Confines" is Incorrect as a Matter of First Amendment Law and Unworkable as a Matter of Practice.

The court of appeals' decision rests on a new, untenable rule: A church loses autonomy when its speech or action leaves "the internal confines of the religious entity." *Diocese of Lubbock*, 592 S.W.3d at 202. According to the court of appeals, when "[a] religious body expos[es] matters historically deemed ecclesiastical to the public eye . . . [its] action leaves the area of deference generally afforded those bodies and enters the civil realm." *Id.* In its view, church autonomy is not implicated unless the church's actions were purely internal. Under that logic, any interaction with society at large subjects the church to civil liability (and the government control it portends).

This "internal confines" rule is inconsistent with the original public meaning of the First Amendment's religion clauses. The Founding generation understood religious liberty to extend beyond the internal confines of the church because "duties to God extend beyond the four walls of the church." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1460 (1990). Limiting church autonomy to communications with church members or within church walls is anathema to that understanding. To the contrary, a religious organization's First Amendment protection remains intact "when it engages in activity in the public square." *Whole Woman's Health v. Smith*, 896 F.3d 362, 372 (5th Cir. 2018). A doctrine of church autonomy that falls away whenever the church reaches outside its membership would be unrecognizable to the Founders.

It would also be unworkable. As the Supreme Court explained just last term, distinguishing between members and nonmembers or practicing and nonpracticing adherents—and even identifying coreligionists in the first place—is a problematic inquiry for civil courts. *See Our Lady of Guadalupe*, 140 S. Ct. at 2068–69. The Court explained that "[d]eciding such questions would risk judicial entanglement in religious issues." *Id.* at 2069; *cf. Whole Woman's Health*, 896 F.3d at 372 (noting that courts are not "institutionally competent to discern which [of a religious body's] communications merely bear on the 'facts' and which communications interfere with a religious body's free exercise").

Indeed, this case illustrates the troubling implications of an "internal confines" inquiry. The Diocese of Lubbock is the governing body for over 100,000 baptized

Catholics in twenty-five Texas counties. *Cf.* 1983 Code of Canon Law, c.96, 204–05. If the Diocese cannot post information on its public website or make it available to the press, it's hard to see how the Diocese could effectively communicate, even with its members. Moreover, one of the Catholic Church's core aims is to minister and spread the faith to those outside its church body.[3] (Indeed, it shares this mission with many other religious groups.) If the law stops treating a church as a church whenever it interacts with outsiders, the law will interfere with this core mission—something the First Amendment prohibits.

Such misapplication of the First Amendment's church autonomy doctrine is not isolated to this case. In reaching its conclusion, the court below relied on *Kelly v. Saint Luke Community United Methodist Church*, No. 05-16-01171-CV, 2018 WL 654907 (Tex. App.—Dallas Feb. 1, 2018, pet. denied) (mem. op.), in which the Fifth Court of Appeals concluded (without analysis) that statements made "to persons outside the church" are not protected by church autonomy. *Id.* at *8. That cramped view of the doctrine is anathema to the broad protections of the First Amendment, which "gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189; *see also Westbrook*, 231 S.W.3d at 399. This Court's

[3] *See, e.g.*, *Catechism of the Catholic Church* 2d ed. § 849 (United States Catholic Conference, 2000); United States Conference of Catholic Bishops, *Teaching the Spirit of Mission* Ad Gentes*: Continuing Pentecost Today* (June 2005), available at https://www.usccb.org/beliefs-and-teachings/what-we-believe/teaching-the-spirit-of-mission-ad-gentes-continuing-pentecost-today.

intervention is needed to correct the lower courts' misunderstanding of the church autonomy doctrine.

III. The Neutral Principles Methodology Has No Place in this Defamation Lawsuit.

The court of appeals misunderstood governing First Amendment doctrine and misread *Masterson v. Diocese of Northwest Texas*, 422 S.W.3d 594 (Tex. 2013). Contrary to the court of appeals' characterization, this Court has never instructed Texas courts to apply the "neutral principles methodology" to defamation claims, tort claims, or *any* claims outside the narrow category of church property disputes that can be resolved without touching on religious doctrine. And even if the methodology could be applied to tort suits, the court of appeals' decision here rests not on neutral principles, but implicit judgments about religious doctrine and practice.

A. The court of appeals' opinion misstates this Court's precedent on the "neutral principles" methodology for resolving church property disputes.

"[W]e were told, in *Masterson* . . . ," the court of appeals declared, "to apply the neutral principles methodology" because Guerrero's case "touch[es] sectarian interests." *Diocese of Lubbock*, 592 S.W.3d at 199. With this, the court of appeals claimed this Court's precedent requires Texas courts to apply the neutral principles methodology to any and all claims touching on church autonomy, whether they arise from tort, contract, or property law. But that's not what *Masterson* said. In fact, this Court has never said that.

"Neutral principles" is a term of art referring to one of the constitutionally proper methods for resolving disputes over church property. The Supreme Court explained in 1979 that "a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters." *Jones v. Wolf*, 443 U.S. 595, 602 (1979) (internal quotation marks omitted). In *Masterson*, this Court held that Texas courts should apply the "neutral principles" approach to such cases. 422 S.W.3d at 607 ("We hold that Texas courts should use the neutral principles methodology to determine *property interests* when religious organizations are involved." (emphasis added)); *see also Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417, 424 (Tex. 2020) (explaining "Texas courts must use neutral principles of law to determine 'which faction is entitled to a religious organization's property following a split or schism'" (quoting *Episcopal Diocese of Fort Worth v. Episcopal Church*, 422 S.W.3d 646, 647 (Tex. 2013))); *Westbrook*, 231 S.W.3d at 398 (neutral principles methodology applies in suits "to resolve disputes over ownership of church property"); *In re Torres*, No. 07-19-00220-CV, 2019 WL 3437758, at *2 (Tex. App.—Amarillo July 30, 2019, no pet.) (mem. op.) (explaining the "neutral principles methodology . . . extends to disputes about *property ownership*" (emphasis added)).

Even in church property cases, the neutral principles methodology has a narrow role to play. If the dispute "involve[s] underlying questions of religious doctrine," the neutral principles methodology cannot be used. *Westbrook*, 231 S.W.3d at 399 (citing *Serbian E. Orthodox Diocese for U.S. and Canada v. Milivojevich*, 426 U.S. at 696, 709–10 (1976) ("First Amendment values are plainly jeopardized when church

property litigation [turns] on the resolution by civil courts of controversies over religious doctrine and practice.")); *see also Jones*, 443 U.S. at 602 ("the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice"). So neutral principles matter only if the court could resolve a property claim without addressing any matter of church doctrine. Consequently, this Court has explained that neutral principles is a "narrowly drawn" exception to the church autonomy principle. *Westbrook*, 231 S.W.3d at 398.[4]

And this Court has never applied the neutral principles methodology outside of a church property dispute. *Masterson* itself involved a dispute between two factions of a church's members. *See* 422 S.W.3d at 608. Although Texas courts could not resolve questions of ecclesiastical polity implicated by the lawsuit, the court explained, they could determine property ownership based on the church corporation's "secular existence derived from applicable Texas law and the corporation's articles of incorporation and bylaws." *Id.*; *see* BOM 11–15.

The court of appeals' sub silentio expansion of "neutral principles" threatens to mislead lower courts and litigants. In *Westbrook*, the Court emphasized that it's not enough to say the elements of a claim can be "defined by neutral principles." That is often true of claims that are barred by the church autonomy doctrine. *See,*

---

[4] Guerrero's assertion (at RBOM 19) that it "is false" to say the neutral principles exception is "narrowly drawn" is baffling—this Court used that precise terminology in *Westbrook*.

e.g., *Hosanna-Tabor*, 565 U.S. at 180 (Americans With Disabilities Act claim); *Westbrook*, 231 S.W.3d 397 (professional negligence claim premised on breach of confidentiality).

Rather, even if "the elements of" a claim can be "defined by neutral principles without regard to religion," church autonomy controls wherever the "the application of those principles to impose civil tort liability" would "impinge upon [the church's] ability to manage its internal affairs." *Westbrook*, 231 S.W.3d at 400. For this reason, neutral principles matter only if a plaintiff can "override the strong constitutional presumption that favors preserving the church's interest in managing its affairs." *Id.* at 402; *see, e.g.*, *id.* ("Any civil liability that might attach for [a pastor's] violation of a secular duty of confidentiality . . . 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.").

B. The court of appeals' opinion improperly relies on its own judicial judgment about matters of faith and doctrine.

Even if the neutral principles methodology has a place outside of property disputes, it has no place here. Far from applying neutral principles, the court of appeals made its own judgments about religious doctrine—precisely what the First Amendment forbids. Two such judgments are particularly troubling.[5]

---

[5] These are not necessarily the only judgments regarding religious doctrine underlying the court of appeals' decision. Each, however, is sufficient on its own to warrant this Court's intervention.

First, according to the court of appeals, releasing the names of accused clergy has no "nexus" to any "theological, dogmatic, or doctrinal [rationale]" because the Diocese observed that sexual abuse is a problem in "society at large." *In re Diocese of Lubbock*, 592 S.W.3d at 204. The court of appeals could not have reached that conclusion without a doctrinal judgment about the proper role of the church in society—a question central to the church's very "faith and mission." *Hosanna-Tabor*, 565 U.S. at 188. In short, by declaring the Diocese's public-facing communications unrelated to any "theological, dogmatic, or doctrinal" question, the court of appeals made a doctrinal judgment of its own: That the Roman Catholic Church's faith and mission has nothing to do with "society at large."

The Church, however, views itself as intimately involved in "society at large." *See, e.g.*, Rev. Raymond C. O'Brien, *Clergy, Sex and the American Way*, 31 Pepp. L. Rev. 363, 371 (2004) ("The Church takes pride in its ability to voice concern over topics such as welfare reform, world peace, hunger, homelessness, and AIDS."). Its self-described mission is to minister to both the faithful and to society more broadly.[6] Granting Guerrero relief against the Diocese would necessarily involve a judgment that the Catholic Church is wrong to involve itself in societal issues outside its "four walls." *See Hosanna-Tabor*, 565 U.S. at 194 (adjudication is improper when civil

---

[6] *See Diocese of Lubbock Statement of Mission and Vision 2020*, available at https://catholiclubbock.org/OurDiocese.html ("We strive always to be advocates for justice, especially for the oppressed [and] the disadvantaged"); *Teaching the Spirit of Mission* Ad Gentes, *supra* n.3.

liability "would depend on a determination that [a church] was wrong to have [acted as it did]").

Second, the court of appeals interpreted Church policy—another exercise that the First Amendment forbids. The Charter, based on Church doctrine, requires all diocese 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."[7] Guerrero does not dispute that in releasing the names of credibly accused clergy, the Diocese was implementing that policy. But the court of appeals declared its actions have nothing to do with doctrine; that depends on a judicial judgment that releasing the names of accused clergy—based on the canon law definition of "minor"—is not a proper way to carry out the Charter's mandates and the church's mission.[8] The First Amendment forbids civil courts from making such judgments. *See Hosanna-Tabor*, 565 U.S. at 194 (adjudication is improper when civil liability "would depend on a determination that [a church] was wrong to have [governed itself as it did]"). Guerrero disagrees with

---

[7] United States Conference of Catholic Bishops, *Charter for the Protection of Children and Young People* art. 7 (rev. 2018), available at https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf.

[8] Such a judgment is prohibited by the First Amendment even if Guerrero's claim does not depend on deciding whether a vulnerable adult is properly considered a "minor" under canon law. *See* RBOM at 13–14. Even assuming the courts need not answer that question, adjudicating Guerrero's defamation claim would require an inquiry into and interference with the Diocese's implementation of the Charter.

how the Church applied the Charter to him. But Texas courts cannot be involved in deciding whether the Diocese correctly interpreted or implemented its policy of transparency.

This Court should intervene to clarify the scope of the First Amendment's church autonomy doctrine and the proper role of the "neutral principles methodology" in that doctrine.

PRAYER

The State urges the court to grant the Diocese of Lubbock's petitions and render judgment dismissing Guerrero's claims under the First Amendment's church autonomy doctrine.

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant
Attorney General

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Tel.: (512) 936-1700
Fax: (512) 474-2697

KYLE D. HAWKINS
Solicitor General

/s/ Natalie D. Thompson
NATALIE D. THOMPSON
Assistant Solicitor General
State Bar No. 24088529
Natalie.Thompson@oag.texas.gov

Counsel for the State of Texas

Certificate of Service

On August 24, 2020, this document was served electronically on Eric Rassbach, lead counsel for Relator, via erassbach@becketlaw.org, and Nick Olguin, lead counsel for the Real Party in Interest, via nick@olguinandprice.com.

/s/ Natalie D. Thompson
Natalie D. Thompson

Certificate of Compliance

Microsoft Word reports that this document contains 3,827 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

/s/ Natalie D. Thompson
Natalie D. Thompson

Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Hollis Duncan on behalf of Natalie Thompson
Bar No. 24088529
hollis.duncan@oag.texas.gov
Envelope ID: 45643913
Status as of 8/24/2020 2:45 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Steven CLevatino		slevatino@levatinopace.com	8/24/2020 2:43:02 PM	SENT
Denise Stilz		denise.stilz@haynesboone.com	8/24/2020 2:43:02 PM	SENT
Lee E.Roberts		lee@lpfirm.com	8/24/2020 2:43:02 PM	SENT
Robin Hart		robin.hart@haynesboone.com	8/24/2020 2:43:02 PM	SENT
Allen Paulsen	24060397	ryan.paulsen@haynesboone.com	8/24/2020 2:43:02 PM	SENT
Ryan Gardner	24101790	ryan.gardner@haynesboone.com	8/24/2020 2:43:02 PM	SENT
Scott A.Brister		scottbrister@huntonak.com	8/24/2020 2:43:02 PM	SENT
Cameron L.Davis		cdavis@huntonak.com	8/24/2020 2:43:02 PM	SENT
Kathryn Boatman		kathrynboatman@huntonak.com	8/24/2020 2:43:02 PM	SENT
Lauren Womack		lwomack@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Eric CRassbach		erassbach@becketlaw.org	8/24/2020 2:43:02 PM	SENT
Thomas CRiney		triney@rineymayfield.com	8/24/2020 2:43:02 PM	SENT
Vic Wanjura		vwanjura@hkwwlaw.com	8/24/2020 2:43:02 PM	SENT
Natalie Thompson	24088529	natalie.thompson@oag.texas.gov	8/24/2020 2:43:02 PM	SENT

Associated Case Party: Diocese of Lubbock

Name	BarNumber	Email	TimestampSubmitted	Status
Kerri L Stampes	24032170	kstampes@rineymayfield.com	8/24/2020 2:43:02 PM	SENT
Alex Yarbrough	24079615	ayarbrough@rineymayfield.com	8/24/2020 2:43:02 PM	SENT
Eric Rassbach		erassbach@becketlaw.org	8/24/2020 2:43:02 PM	SENT
Eric Baxter		ebaxter@becketlaw.org	8/24/2020 2:43:02 PM	SENT
William Haun		whaun@becketlaw.org	8/24/2020 2:43:02 PM	SENT

Associated Case Party: Douglas Laycock

Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Hollis Duncan on behalf of Natalie Thompson
Bar No. 24088529
hollis.duncan@oag.texas.gov
Envelope ID: 45643913
Status as of 8/24/2020 2:45 PM CST

Associated Case Party: Douglas Laycock

Name	BarNumber	Email	TimestampSubmitted	Status
Bryan Clegg		bclegg@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Frederick R.Yarger		fyarger@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Timmothy M.Zimmerman		tzimmerman@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Anthony J.Moreno		amoreno@gibsondunn.com	8/24/2020 2:43:02 PM	SENT

Associated Case Party: MichaelS.Ariens

Name	BarNumber	Email	TimestampSubmitted	Status
Bryan Clegg		bclegg@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Anthony J.Moreno		amoreno@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Timmothy M.Zimmerman		tzimmerman@gibsondunn.com	8/24/2020 2:43:02 PM	SENT
Frederick R.Yarger		fyarger@gibsondunn.com	8/24/2020 2:43:02 PM	SENT

Associated Case Party: Jesus Guerrero

Name	BarNumber	Email	TimestampSubmitted	Status
Ryan Price		ryan@woodwardattorney.com	8/24/2020 2:43:02 PM	SENT
Nick L.Olguin		nick@olguinandprice.com	8/24/2020 2:43:02 PM	SENT

Associated Case Party: The Baptist General Convention of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Michael ByronBennett		michaelbennett@eversheds-sutherland.com	8/24/2020 2:43:02 PM	SENT