

Nos. 20-0127, 20-0005

IN THE SUPREME COURT OF TEXAS

DIOCESE OF LUBBOCK

Petitioner

v.

JESUS GUERRERO

Respondent

On Petition for Review from Cause Nos. 07-19-00280-CV & 07-19-00307-CV
in the Seventh Court of Appeals, Amarillo, Texas

**BRIEF OF AMICI CURIAE
MEMBERS OF THE TEXAS LEGISLATURE**

HUNTON ANDREWS KURTH LLP

Scott A. Brister
State Bar No. 00000024
sbrister@huntonak.com
Cameron L. Davis
State Bar No. 24045751
cdavis@huntonak.com
500 W. 5th Street, Ste. 1350
Austin, TX 78701
Tel: 512-320-9220
Fax: 512-542-5049

Kathryn E. Boatman
State Bar No. 24062624
kboatman@huntonak.com
600 Travis, Ste. 4200
Houston, TX 77002
Tel: 713-220-4181
Fax: 713-220-4285

**ATTORNEYS FOR AMICI CURIAE
MEMBERS OF THE TEXAS LEGISLATURE**

IDENTITY OF AMICI

AMICI CURIAE MEMBERS OF THE TEXAS LEGISLATURE

Sen. Paul Bettencourt, Texas Senate District 7
Sen. Lois Kolkhorst, Texas Senate District 18
Sen. Dawn Buckingham, Texas Senate District 24
Sen. Donna Campbell, Texas Senate District 25
Sen. Eddie Lucio, Jr., Texas Senate District 27

Rep. Dan Flynn, Texas House of Representatives District 2
Rep. Kyle Kacal, Texas House of Representatives District 12
Rep. Ben Leman, Texas House of Representatives District 13
Rep. James White, Texas House of Representatives District 19
Rep. Greg Bonnen, Texas House of Representatives District 24
Rep. Dennis Bonnen, Texas House of Representatives District 25
Rep. Geanie Morrison, Texas House of Representatives District 30
Rep. Armando Martinez, Texas House of Representatives District 39
Rep. Terry Canales, Texas House of Representatives District 40
Rep. Vikki Goodwin, Texas House of Representatives District 47
Rep. Donna Howard, Texas House of Representatives District 48
Rep. Tan Parker, Texas House of Representatives District 63
Rep. Jeff Leach, Texas House of Representatives District 67
Rep. Drew Springer, Texas House of Representatives District 68
Rep. James Frank, Texas House of Representatives District 69
Rep. Mary Gonzalez, Texas House of Representatives District 75
Rep. Joe Moody, Texas House of Representatives District 78
Rep. Ken King, Texas House of Representatives District 88
Rep. Giovanni Capriglione, Texas House of Representatives District 98
Rep. Terry Meza, Texas House of Representatives District 105
Rep. Jared Patterson, Texas House of Representatives District 106
Rep. Roland Gutierrez, Texas House of Representatives District 119
Rep. Steve Allison, Texas House of Representatives District 121
Rep. Diego Bernal, Texas House of Representatives District 123
Rep. Dan Huberty, Texas House of Representatives District 127

Rep. Dennis Paul, Texas House of Representatives District 129
Rep. Jim Murphy, Texas House of Representatives District 133
Rep. Dwayne Bohac, Texas House of Representatives District 138
Rep. Christina Morales, Texas House of Representatives District 145

TABLE OF CONTENTS

Statement of Interest.....	viii
Introduction.....	1
Argument.....	2
I. The Legislature’s policy supporting religious autonomy.....	2
II. The Legislature’s policies granting immunity for those who report abuse, and registries listing abusers.....	7
Conclusion	12

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Cramer v. Sheppard</i> , 167 S.W.2d 147 (Tex. 1942).....	6
<i>Dallas Morning News, Inc. v. Tatum</i> , 554 S.W.3d 614 (Tex. 2018).....	11
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.</i> , 565 U.S. 171 (2012)	7
<i>In re McAllen Md. Ctr., Ind.</i> , 275 S.W.3d 458 (Tex. 2008).....	vii
<i>Janvey v. GMAG, L.L.C.</i> , 592 S.W.3d 125 (Tex. 2019).....	9
<i>Randall’s Food Markets, Inc. v. Johnson</i> , 891 S.W.2d 640 (Tex. 1995).....	9
<i>Williams v. Patton</i> , 821 S.W.2d 141 (Tex. 1991).....	7

Statutes

TEX. ALCO. BEV. CODE § 109.51.....	3
TEX. BUS. ORGS. CODE §§ 22.156(a), 22.233	3
TEX. BUS. ORGS. CODE § 22.222	5
TEX. BUS. ORGS. CODE §§ 22.355(4), 22.409	4
TEX. CIV. PRAC. & REM. CODE ch. 27	11
TEX. CIV. PRAC. & REM. CODE § 84.0066(a).....	10
TEX. CODE. CRIM. PROC. ch. 62.....	10

TEX. EDUC. CODE §§ 22.092(a), (c)(5), 22.093(c)(1)(A), (B)	11
TEX. EDUC. CODE §§ 37.015(a)(7), (f), 51.252(a), 51.254(a)(1).....	9
TEX. FAM. CODE § 153.001(a)(2).....	7
TEX. FAM. CODE §§ 261.101(a), (c), 261.103, 261.106(a), 261.109	8
TEX. FAM. CODE § 261.002(a)	10
TEX. HEALTH & SAFETY CODE §§ 325.001(2), 325.004, 325.005.....	9
TEX. HEALTH & SAFETY CODE § 712.002(3)	3
TEX. HUM. RES. CODE §§ 48.051(a), (c), 48.052(a)	8
TEX. HUM. RES. CODE § 48.054.....	9
TEX. LABOR CODE § 62.152(2).....	5
TEX. LABOR CODE § 201.066(1).....	4
TEX. LOC. GOV'T CODE § 215.006(b)	4
TEX. OCC. CODE § 104.006	5
TEX. OCC. CODE §§ 1702.333(b), 202.003(a)(3).....	4
TEX. PENAL CODE § 22.04(a).....	7
TEX. TAX. CODE §§ 11.20(a)(1), (2), 151.314(d)(2).....	3
TEX. REV. CIV. STAT. art. 4006	4
Act of May 28, 2017, 85th Leg., R.S., ch. 967, § 11.001, 2017 Tex. Gen. Laws 3912, 3933	4
Act of May 22, 2015, 84th Leg., R.S., ch. 533, § 1, 2015 Tex. Gen. Laws 1916, 1916	4
Act of May 24, 1993, 73rd Leg., R.S., ch. 733, § 16, 1993 Tex. Gen. Laws 2873, 2880-81.....	5

Act of May 30, 1987, 70th Leg., R.S., ch. 963, § 8, 1987 Tex. Gen. Laws 3280, 3281	4
Act of May 26, 1977, 65th Leg., R.S., ch. 773, § 1, 1977 Tex. Gen. Laws 1947, 1948	4
Act of May 30, 1971, 62nd Leg., R.S., ch. 892, § 10(g)(5)(E), 1971 Tex. Gen. Laws 2733, 2747	4
Act of May 20, 1971, 62nd Leg., R.S., ch. 911, § 1, 1971 Tex. Gen. Laws 2808-09	7
Act of May 31, 1969, 61st Leg., R.S., ch. 796, § 4(b)(1), 1969 Tex. Gen. Laws 2348, 2350	5
Act of May 2, 1963, 58th Leg., R.S., ch. 138, § 1, art. 20.04(D)(2), 1963 Tex. Gen. Laws 371, 383	3
Act of Apr. 27, 1959, 56th Leg., R.S., ch. 162, art. 2.20(D), 1959 Tex. Gen. Laws 286, 296-97	3
Act of Apr. 27, 1959, 56th Leg., R.S., ch. 162, art. 2.11(A), 1959 Tex. Gen. Laws 286, 293	3
Act of May 1, 1951, 52nd Leg., R.S., ch. 154, § 1, 1951 Tex. Gen. Laws 265, 265	5
Act of Apr. 23, 1951, 52nd Leg., R.S., ch. 132, § 6, 1951 Tex. Gen. Laws 219, 222-23	4
Act of June 4, 1945, 49th Leg., R.S., ch. 340, § 2, 1945 Tex. Gen. Laws 569, 561-62	3
Act of Nov. 14, 1935, 44th Leg., 2d C.S., ch. 467, art. 1, § 15a, 1935 Tex. Gen. Laws 1795, 1812	3
Act effective Aug. 13, 1923, 38th Leg., 2d C.S., ch. 46, §§ 1-2, 1923 Tex. Gen. Laws 100, 100	4
Act approved Aug. 21, 1876, 15th Leg., R.S., ch. 157, § 5, 1876 Tex. Gen. Laws 275, 276	3

Act of Aug. 28, 1856, 6th Leg., Adj. S., art. 488(5)	7
--	---

Other Authorities

<i>Good Faith</i> , BLACK’S LAW DICTIONARY 836 (11th ed. 2019).....	9
40 TEX. ADMIN. CODE § 700.511(b)(1).....	10
TEX. CONST. art. I, § 6	1, 2
TEX. CONST. art. III, § 51-a,	1
TEX. CONST. art. VIII, §§ 1-b, 2(b)	2
TEX. CONST. art. XVI, § 1	1
TEX. CONST. art. XVI, § 6	2
TEX. CONST. of 1845, art. I, § 4	2
<i>Worship</i> , Black’s Law Dictionary 1927 (11th ed. 2019).....	1

STATEMENT OF INTEREST

Amici Members of the Texas Legislature are current members of the Senate or House of Representatives of the State of Texas. In that capacity, their constitutional duties include the preservation of religious freedom and the protection of children and the disabled from abuse. The issues in this appeal impinge on those duties.

The Amici Members respect the Court's role in a separate branch of government, and would not encroach on its selection or decision of any case. But as this Court has said, it must "consider also the priorities of the other branches of Texas government." *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 461 (Tex. 2008). Numerous laws show two of those priorities are (1) limiting secular intrusion in church government, and (2) limiting liability for reporting abuse of a child or disabled person.

Amici cannot speak for the entire Legislature, but the laws passed by the Legislature can and do. Given the unlikelihood of a special session during the current election year, an amicus brief listing the laws that reflect relevant legislative priorities and policies presented the best vehicle for informing the Court of those concerns.

No fee was paid or incurred in preparing this brief.

INTRODUCTION

Officials in every branch of Texas government take an oath to “preserve, protect, and defend the Constitution and laws of the United States and of this State.” TEX. CONST. art. XVI, § 1. Those constitutions and laws preserve freedom for churches to operate as they wish, and freedom for children and the disabled from physical or sexual abuse. The Seventh Court of Appeals’ two opinions appear to infringe both.

The Freedom of Worship Clause in the Texas Constitution requires the Legislature to pass laws protecting every church “in the peaceable enjoyment of its own mode of public worship.” TEX. CONST. art. I, § 6. Nothing in that clause limits “worship” to matters within the confines of a church building.¹

The Texas Constitution also empowers the Legislature to make special provision for children and the disabled. *See, e.g.*, TEX. CONST. art.

¹ See Matthew 4:20 (KJV) (“Thou shalt worship the Lord thy God, and him only shalt thou serve.”); Matthew 15:9 (KJV) (“But in vain they do worship me, teaching for doctrines the commandments of men.”); John 4:24 (KJV) (“God is a Spirit: and they that worship him must worship him in spirit and in truth.”); John 9:31 (KJV) (“Now we know that God heareth not sinners: but if any man be a worshipper of God, and doeth his will, him he heareth.”); *see also Worship*, Black’s Law Dictionary 1927 (11th ed. 2019) (“Any form of religious devotion, ritual, or service showing reverence, esp. for a divine being or supernatural power.”).

III, § 51-a; art. VIII, §§ 1-b, 2(b); art. XVI, § 6. Two of the tools frequently used by the Legislature to deter abuse against them are (1) granting immunity to those who report abuse, and (2) establishing registries listing past abusers so others can take precautions. By allowing a suit for damages to go forward against a church precisely because it employed the second tool and denying any benefit from the first, the court below infringed on those policies.

ARGUMENT

I. The Legislature’s policy supporting religious autonomy

“[I]t shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.”

TEXAS CONSTITUTION, Article I, § 6

The Texas Constitution imposes a duty on the Legislature to pass laws that protect “every religious denomination in the peaceable enjoyment of its own mode of public worship.” TEX. CONST. art. I, § 6. This duty is as old as the State of Texas itself; it appears almost verbatim in the Constitution adopted in 1845 when Texas first became a state. *See* TEX. CONST. of 1845, art. I, § 4.

One of the most frequent ways the Legislature has exercised that duty is by exempting churches from laws that would otherwise direct or restrict how they conduct their affairs. Statutes expressly exempting churches were enacted as long ago as 1876 and as recently as 2017:

- **1876**: religious organizations exempt from taxes on real or personal property;²
- **1935**: sacramental wine for churches exempt from regulations and taxes on alcoholic beverages;³
- **1945**: churches exempt from perpetual care cemetery laws;⁴
- **1959**: churches exempt from notice requirements for corporate meetings;⁵
- **1959**: churches exempt from required corporate officers;⁶
- **1963**: churches exempt from sales taxes on food;⁷
- **1971**: churches exempt from unemployment compensation

² See Act approved Aug. 21, 1876, 15th Leg., R.S., ch. 157, § 5, 1876 Tex. Gen. Laws 275, 276 (current version at TEX. TAX. CODE § 11.20(a)(1), (2)).

³ See Act of Nov. 14, 1935, 44th Leg., 2d C.S., ch. 467, art. 1, § 15a, 1935 Tex. Gen. Laws 1795, 1812 (current version at TEX. ALCO. BEV. CODE § 109.51).

⁴ See Act of June 4, 1945, 49th Leg., R.S., ch. 340, § 2, 1945 Tex. Gen. Laws 569, 561–62 (current version at Tex. HEALTH & SAFETY CODE § 712.002(3)).

⁵ See Act of Apr. 27, 1959, 56th Leg., R.S., ch. 162, art. 2.11(A), 1959 Tex. Gen. Laws 286, 293 (current version at TEX. BUS. ORGS. CODE § 22.156(a)).

⁶ See Act of Apr. 27, 1959, 56th Leg., R.S., ch. 162, art. 2.20(D), 1959 Tex. Gen. Laws 286, 296–97 (current version at TEX. BUS. ORGS. CODE § 22.233).

⁷ See Act of May 2, 1963, 58th Leg., R.S., ch. 138, § 1, art. 20.04(D)(2), 1963 Tex. Gen. Laws 371, 383 (current version at TEX. TAX. CODE § 151.314(d)(2)).

laws;⁸

- **1977**: churches exempt from corporate annual reporting;⁹
- **1987**: churches exempt from certain statutes governing benefits plans;¹⁰
- **2015**: prohibiting local ordinances barring churches from providing overnight shelter for children;¹¹ and
- **2017**: churches exempt from regulations on private security services.¹²

Similarly, the Legislature has exempted pastors and ministers from law and regulations that might otherwise apply since at least 1923:

- **1923**: ministers exempt from prohibition against free passes on railways;¹³
- **1951**: ministers exempt from regulations governing podiatrists;¹⁴

⁸ See Act of May 30, 1971, 62nd Leg., R.S., ch. 892, § 10(g)(5)(E), 1971 Tex. Gen. Laws 2733, 2747 (current version at TEX. LABOR CODE § 201.066(1)).

⁹ See Act of May 26, 1977, 65th Leg., R.S., ch. 773, § 1, 1977 Tex. Gen. Laws 1947, 1948 (current version at TEX. BUS. ORGS. CODE § 22.355(4)).

¹⁰ See Act of May 30, 1987, 70th Leg., R.S., ch. 963, § 8, 1987 Tex. Gen. Laws 3280, 3281 (current version at TEX. BUS. ORGS. CODE § 22.409).

¹¹ See Act of May 22, 2015, 84th Leg., R.S., ch. 533, § 1, 2015 Tex. Gen. Laws 1916, 1916 (current version at TEX. LOC. GOV'T CODE § 215.006(b)).

¹² See Act of May 28, 2017, 85th Leg., R.S., ch. 967, § 11.001, 2017 Tex. Gen. Laws 3912, 3933 (current version at TEX. OCC. CODE § 1702.333(b)).

¹³ See Act effective Aug. 13, 1923, 38th Leg., 2d C.S., ch. 46, §§ 1–2, 1923 Tex. Gen. Laws 100, 100 (current version at TEX. REV. CIV. STAT. art. 4006).

¹⁴ See Act of Apr. 23, 1951, 52nd Leg., R.S., ch. 132, § 6, 1951 Tex. Gen. Laws 219, 222–23 (current version at TEX. OCC. CODE § 202.003(a)(3)).

- **1951**: ministering to the sick by prayer exempt from identification requirements for health care professionals;¹⁵
- **1969**: clergy exempt from minimum wage laws;¹⁶ and
- **1993**: church directors exempt from errors caused by reliance on a minister, priest, or rabbi.¹⁷

Several important policy concerns are reflected in these exemptions. Some are clearly aimed at avoiding government entanglement in religious affairs by exempting particular practices from general laws. Others avoid intrusion into the organizational form, administration, or governance that churches choose. Others limit the financial burdens that might hobble the spiritual and charitable services churches freely provide. The number and breadth of these statutory exemptions show the Legislature has decided that state policy justifies exempting religious practice and practitioners from many general laws that would otherwise apply.

¹⁵ See Act of May 1, 1951, 52nd Leg., R.S., ch. 154, § 1, 1951 Tex. Gen. Laws 265, 265 (current version at TEX. OCC. CODE § 104.006).

¹⁶ See Act of May 31, 1969, 61st Leg., R.S., ch. 796, § 4(b)(1), 1969 Tex. Gen. Laws 2348, 2350 (current version at TEX. LABOR CODE § 62.152(2)).

¹⁷ See Act of May 24, 1993, 73rd Leg., R.S., ch. 733, § 16, 1993 Tex. Gen. Laws 2873, 2880-81 (current version at TEX. BUS. ORGS. CODE § 22.222).

The Seventh Court of Appeals' opinions appear to violate these policy concerns in several ways. First, they impose potential liability on churches for policies, practices, and beliefs about how to handle church discipline. Second, they 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.

Third, the opinions appear to discourage churches from confessing their errors and showing the specific actions taken to rectify them. When a church is punished publicly in the press and courts for pastoral failings, that cannot be remedied by limiting all statements to the confines of the church. The opinions below imply that churches that attempt to do so may be punished a second time in lawsuits by the very clergy who created the problem.

Critics may point out these laws were passed by the Legislature, which has not spoken on whether churches are exempt from liability if notice of a disciplinary action escapes the confines of the church. But no legislature can write laws that "will meet every conceivable contingency." *Cramer v. Sheppard*, 167 S.W.2d 147, 155 (Tex. 1942). When

the United States Supreme Court appended a ministerial exception to the Americans with Disabilities Act in 2012, it did so on constitutional grounds; it did not defer to Congress to amend the Act to comply with the First Amendment.¹⁸ Every branch of Texas government has a nondelegable duty to ensure compliance with the state and federal constitutions; no branch can defer that duty to another branch.

II. The Legislature’s policies granting immunity for those who report abuse, and registries listing abusers

This case includes a second area of vital interest to the Texas Legislature: the safety and welfare of those who are vulnerable to abuse, neglect, or maltreatment.¹⁹

Abusing children or the disabled is and has long been a crime in Texas.²⁰ But abuse is hard to stop if it is never reported. Children, the

¹⁸ See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 188 (2012).

¹⁹ See *Williams v. Patton*, 821 S.W.2d 141, 145 (Tex. 1991) (“It is a strong, long-standing policy of this state to protect the interests of its children.”); see also TEX. FAM. CODE § 153.001(a)(2) (“The public policy of this state is to provide a safe, stable, and nonviolent environment for the child.”).

²⁰ See Act of Aug. 28, 1856, 6th Leg., Adj. S., art. 488(5) (aggravated assault involving a child); see also Act of May 20, 1971, 62nd Leg., R.S., ch. 911, § 1, 1971 Tex. Gen. Laws 2808-09 (current version at TEX. PENAL CODE § 22.04(a) (injury to a child)).

disabled, and the elderly are vulnerable partly because they are too often unable or unwilling to report it. The Legislature has addressed this problem in several ways.

Mandatory reporting. First, the Legislature has mandated that *anyone* who has cause to believe a child has been abused or neglected must report it to the appropriate authorities.²¹ It imposed the same duty on *anyone* who has cause to believe an elderly or disabled person has been abused, neglected, or exploited.²² The Legislature put teeth in these laws by making any failure to report abuse a criminal offense.²³ This duty applies even to attorneys, clergy, physicians, or others who learn of such abuse in what are otherwise privileged communications.²⁴

Immunity for reporting abuse. The Legislature also employed positive measures to encourage reports of abuse. It granted immunity from civil or criminal liability to those who report child abuse in good faith,²⁵ and the same immunity to those who report abuse of the

²¹ TEX. FAM. CODE §§ 261.101(a), 261.103.

²² TEX. HUM. RES. CODE § 48.051(a).

²³ TEX. FAM. CODE § 261.109; TEX. HUM. RES. CODE § 48.052(a).

²⁴ TEX. FAM. CODE § 261.101(c); TEX. HUM. RES. CODE § 48.051(c).

²⁵ TEX. FAM. CODE § 261.106(a).

disabled or elderly.²⁶ A report based on credible allegations of abuse would meet the good faith test.²⁷ Several statutes encourage reporting of abuse by granting immunity to those who do:

- **abuse at group homes:** A group home director who notifies residents that a new resident is a registered sex offender “is not liable under any law for damages”;²⁸
- **abuse at schools:** A school principal who notifies law officers of reasonable grounds to believe a student has committed sexual assault, abuse, or other listed crimes “is not liable in civil damages for reporting in good faith as required”;²⁹
- **abuse at colleges:** A college employee who reports to a Title IX coordinator an incident of probable sexual harassment or sexual assault “is immune from civil liability ... that might otherwise be incurred or imposed as a result of those actions”;³⁰ and
- **abuse by former charitable worker:** A charity that reasonably

²⁶ TEX. HUM. RES. CODE § 48.054.

²⁷ See, e.g., *Janvey v. GMAG, L.L.C.*, 592 S.W.3d 125 (Tex. 2019) (concluding that “good faith” under Fraudulent Transfer Act consists of conduct that “was honest in fact, reasonable in light of known facts, and free from willful ignorance of fraud”); *Good Faith*, BLACK’S LAW DICTIONARY 836 (11th ed. 2019) (“A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, ...”); see also *Randall’s Food Markets, Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995) (“Employers act within their legal rights in investigating reasonably credible allegations of dishonesty of their employees.”).

²⁸ TEX. HEALTH & SAFETY CODE §§ 325.004, 325.005. A “group home” includes an assisted living facility, a boarding home facility, and certain supportive and transitional housing facilities. *Id.* § 325.001(2).

²⁹ TEX. EDUC. CODE § 37.015(a)(7), (f).

³⁰ *Id.* §§ 51.252(a), 51.254(a)(1). The Code also provides immunity from criminal liability for offenses punishable by fine only. *Id.* § 51.254(a)(1).

believes a former worker committed sexual abuse “is immune from civil liability” for reporting it to that person’s current or prospective employer.³¹

Absent immunity in these cases, those with knowledge of an abuse might think the probability of retaliation from an abuser is greater than that of prosecution by the state. Grants of immunity are intended to overcome that reluctance.

Offender registries. Third, the Legislature provided several means for the public to be forewarned of persons with a history of abuse. The first was the registry for sex offenders.³² But there are others that do not require a conviction or adjudication to make the list. The Texas Department of Family and Protective Services must maintain a central registry of persons reasonably believed to have abused or neglected a child.³³ The Texas Education Agency must maintain a registry of persons ineligible to teach, including those who were fired or resigned

³¹ See TEX. CIV. PRAC. & REM. CODE § 84.0066(a).

³² See TEX. CODE. CRIM. PROC. ch. 62.

³³ See TEX. FAM. CODE § 261.002(a); 40 TEX. ADMIN. CODE § 700.511(b)(1).

when there was evidence of abuse or sexual contact with a student or child.³⁴

Prompt dismissal under the TCPA. While not aimed solely at abuse, the Texas Citizens Participation Act also protects those who report abuse by ensuring early dismissal of suits filed against them for speaking up.³⁵ Here, for example, if the plaintiff's complaint is that he was listed for abusing a child when he actually abused a mentally disabled adult, the TCPA would require prompt dismissal based on the affirmative defense of substantial truth. *See Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 640 (Tex. 2018) (holding statements not defamatory if no more damaging to reputation than the truth).

This brief survey of legislation shows that the Legislature has actively encouraged reporting any acts of abuse, rather than just punishing those who have been caught. A central part of this policy has been providing immunity for those who report abuse that protects them from retaliatory lawsuits filed by an abuser. The Legislature has also

³⁴ See TEX. EDUC. CODE §§ 22.092(a), (c)(5); 22.093(c)(1)(A), (B).

³⁵ See TEX. CIV. PRAC. & REM. CODE ch. 27.

sought to prevent future abuse by providing registries where employers, schools, and neighborhoods can be forewarned about those whose history may suggest a higher risk. The Seventh Court of Appeals' opinions again appear to frustrate these policy approaches by allowing suit against a church for doing exactly what the Legislature has required by law in other circumstances.

CONCLUSION

As shown by the many statutes noted above, protecting churches in the "peaceable enjoyment" of their own affairs, and protecting children and the disabled in all aspects of life, are priorities the Legislature has established in statutes enacted over and over. The Amici Members respectfully bring these legislative policy priorities to the Court's attention in its consideration.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

By: /s/ Scott A. Brister

Scott A. Brister – SBN 00000024

sbrister@huntonak.com

Cameron L. Davis – SBN 24045751

cdavis@huntonak.com

500 W. 5th Street, Ste. 1350

Austin, TX 78701

Tel: 512-320-9220

Fax: 512-542-5049

Kathryn E. Boatman – SBN 24062624

kboatman@huntonak.com

600 Travis, Ste. 4200

Houston, TX 77002

Tel: 713-220-4181

Fax: 713-220-4285

**ATTORNEYS FOR AMICI CURIAE
MEMBERS OF THE TEXAS LEGISLATURE**

CERTIFICATE OF COMPLIANCE

I certify that this Amici Brief contains 2,834 words as calculated per Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Scott A. Brister
Scott A. Brister

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Amici Brief was served on the following counsel of record via electronic transmission on March 19, 2020.

Eric C. Rassbach – *erassbach@becketlaw.org*
Eric S. Baxter – *ebaxter@becketlaw.org*
William J. Haun – *whaun@becketlaw.org*
THE BECKET FUND FOR RELIGIOUS LIBERTY
1200 New Hampshire Avenue NW
Washington, D.C. 200036

Thomas C. Riney – *triney@rineymayfield.com*
Kerri Stampes – *kstampes@rineymayfield.com*
Alex L. Yarbrough – *ayarbrough@rineymayfield.com*
RINEY & MAYFIELD, LLP
320 South Polk Street, Suite 600
Amarillo, Texas 79101

Vic Wanjura – *vwanjura@hkwlaw.com*
HUND, KRIER, WILKERSON & WRIGHT, P.C.
3217 34th Street
Lubbock, Texas 79410
Attorneys for Diocese of Lubbock

Nick L. Olguin – *nick@olguinandprice.com*

OLGUIN LAW FIRM

808 ½ Main Street

Lubbock, Texas 79401

Attorney for Jesus Guerrero

Steven C. Levatino – *steven@lpfirm.com*

LEVITANO | PACE PLLC

1101 S. Capital of Texas Hwy.

Building K, Suite 125

Austin, Texas 78746

Attorney for Amicus Curiae Texas Catholic Conference of Bishops

Ryan Paulsen – *Ryan.Paulsen@haynesboone.com*

Ryan N. Gardner – *Ryan.Gardner@haynesboone.com*

Haynes and Boone, LLP

2323 Victory Avenue, Suite 700

Dallas, Texas 75219

Attorneys for Amicus Curiae Jewish Coalition for Religious Liberty

Hon. Les Hatch – *lhatch@lubbockcounty.gov*

237th Judicial District Court

Lubbock County Courthouse

904 Broadway, Suite 606

Lubbock, Texas 79401

Trial Judge Presiding

/s/ Scott A. Brister

Scott A. Brister