THE LORD IS MY STRENGTH AND MY SHIELD: THE ECCLESIASTICAL ABSTENTION DOCTRINE IN *IN RE DIOCESE OF LUBBOCK*

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What we are called to respect in each person is first of all his life, his physical integrity, his dignity and the rights deriving from that dignity, his reputation, his property, his ethnic and cultural identity, his ideas and his political choices. We are therefore called to think, speak and write respectfully of the other, not only in his presence, but always and everywhere, avoiding unfair criticism or defamation.[1]

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1 Pope Francis, Message of Pope Francis to Muslims Throughout the World for the End of Ramadan ('Id Al-Fitr) (July 10, 2013), https://www.vatican.va/content/francesco/en/messages/pont-messages/2013/documents/papa-francesco_20130710_musulmani-ramadan.html [https://perma.cc/NWR9-P9BK]; U.S. CONF. OF CATH. BISHOPS DEP'T OF JUST., PEACE, & HUM. DEV., SELECTED QUOTES OF POPE FRANCIS BY SUBJECT 122 (2018), https://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/upload/pope-francis-quotes1.pdf [https://perma.cc/C3U3-RDCR] (quoting Pope Francis from July 10, 2013).

INTRODUCTION

In January 2002, *The Boston Globe* swept the nation with a report about child sexual abuse allegations in the Roman Catholic Church, specifically in the Archdiocese of Boston.[2] Since the mid-1990s, more than 130 individuals had made sexual abuse allegations against John J. Geoghan; however, and perhaps even more disturbing, the Roman Catholic Church knew about the abuse and chose not to remove the former priest but simply reassigned him across numerous parishes prior to his defrocking.[3] The report caused mass outrage and resulted in states amending their civil and criminal child sexual abuse statutes in an attempt to prevent further abuses.[4] The United States Conference of

2 Gabriela Hidalgo, *Recurring Cardinal Sins: How the Holy See and Canon Law Have Perpetuated Child Sexual Abuse by Clergy Members*, 39 CHILD.'S LEGAL RTS. J. 145, 145–46 (2019); Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOS. GLOBE (Jan. 6, 2002, 5:50 PM), https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html [https://perma.cc/4P9U-9ACH].

3 *See* Rezendes, *supra* note 2.

4 Hidalgo, *supra* note 2, at 146. This "mass outrage" eventually culminated in the creation of "Spotlight," a film based on *The Boston Globe* team that investigated and reported on the child sexual abuse scandal in the Archdiocese of Boston. *See* SPOTLIGHT (Open Road Films 2015); *see also Spotlight*, IMDB, https://www.imdb.com/title/tt1895587 [https://perma.cc/6QY2-9HNV]; Elizabeth B. Ludwin King, *Transitional Justice and the Legacy of Child Sexual Abuse in the Catholic Church*, 81 ALB. L. REV. 121, 141–42 (2018) (noting that the film focused on the child sexual abuse scandal in the Archdiocese of Boston, but also listing 206 cities around the globe "in which there have been allegations of child sexual abuse by Catholic Church officials"). Spotlight won Best Picture and Best Original Screenplay at the 88th Academy Awards. *Id.* at 142 n.175; Ty Burr, *'Spotlight' Triumphs with Best Picture Oscar*, BOS. GLOBE (Feb. 28, 2016, 10:15 PM), https://www.bostonglobe.com/arts/movies/2016/02/28/oscarsawards/laA2QbfA2rTnWWk7qhp4yM/story.html [https://perma.cc/W8K6-YJP6]; Benjamin Lee, *Spotlight Wins Best Picture Oscar*, GUARDIAN (Feb. 29, 2016, 12:00 AM),

Catholic Bishops also created *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (*Essential Norms*), which sought to provide guidelines and policies on investigating and reporting sexual abuse allegations and protecting the rights of the accusers and accused.[5] The Holy See even reviewed and expressed its support for the *Essential Norms* in December 2002.[6] Nevertheless, the abuses only continued.[7]

In response to another report of over one thousand victims of sexual abuse, and the cover-up of those abuses by over three hundred priests over a period of seventy years in Pennsylvania, Pope Francis admitted that the Roman Catholic Church "showed no care for the little ones" and needed to acknowledge, condemn, and combat the atrocities perpetrated by clergymen.[8] However, many remain pessimistic about the Roman

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https://www.theguardian.com/film/2016/feb/29/spotlight-wins-best-picture-oscar [https://perma.cc/M4UR-SVTT].

5 U.S. CONF. OF CATH. BISHOPS, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (2006), *reprinted in* CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE 19 (2018), https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final(1).pdf [https://perma.cc/4BWA-VB56]. The United States Conference of Catholic Bishops is a 501(c)(3) nonprofit organization and "an assembly of the hierarchy of bishops who jointly exercise pastoral functions on behalf of the Christian faithful of the United States and the U.S. Virgin Islands." *About USCCB*, U.S. CONF. OF CATH. BISHOPS, https://www.usccb.org/about [https://perma.cc/3SG3-PULK].

6 At the time, the Holy See asserted that it:

> is fully supportive of the bishops' efforts to combat and to prevent such evil. The universal law of the Church has always recognized [sexual abuse of minors] as one of the most serious offenses which sacred ministers can commit, and has determined that they be punished with the most severe penalties, not excluding—if the case so requires—dismissal from the clerical state.

See Giovanni Battista Card. Re, *Letter of the Prefect Congregation for Bishops*, *in* "*RECOGNITIO*" OF THE HOLY SEE FOR THE "*ESSENTIAL NORMS*" APPROVED BY THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS (2002), https://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20021216_recognitio-usa_en.html [https://perma.cc/8RJK-GBN5]. The Holy See, or "the seat of the bishop of Rome," is the Episcopal jurisdiction of the Roman Catholic Church in Rome. Hidalgo, *supra* note 2, at 148 (footnote omitted). The Holy See "is the universal government of the Roman Catholic Church[,]" which operates from the Vatican City, and the Pope is the head of the universal government and the Holy See. *Id.*

7 From 2004–2018, the United States Conference of Catholic Bishops, which, in 2004, commissioned the Center for Applied Research in the Apostolate (CARA) at Georgetown University to start collecting annual data on child sexual abuse allegations and settlements, counted 2,610 clerics credibly accused of sexual abuse of minors and 9,385 survivors of sexual abuse in the United States. *Collated USCCB Data: On the Number of U.S. Priests Accused of Sexually Abusing Children and the Numbers of Persons Alleging Abuse: 1950–2018*, BISHOPACCOUNTABILITY.ORG, https://www.bishop-accountability.org/AtAGlance/USCCB_Yearly_Data_on_Accused_Priests.htm [https://perma.cc/ZH4S-PY65] (Feb. 16, 2020).

8 Letter of His Holiness Pope Francis to the People of God (Aug. 20, 2018), https://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html [https://perma.cc/5J6X-JXMQ] ("May the Holy Spirit grant

Catholic Church's dedication to investigating and reporting sexual abuse allegations and protecting victims of sexual abuse, particularly "minors."[9]

But who is a "minor"? In the State of Texas, a "child" or "minor" is a person under eighteen years of age.[10] Furthermore, a "child" is not an "adult."[11] Under the Code of Canon Law of the Roman Catholic Church, the meaning of "minor" is similar: "A person who has completed the eighteenth year of age has reached majority; below this age, a person is a minor."[12] However, the Code of Canon Law also provides that "[w]hoever

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us the grace of conversion and the interior anointing needed to express before these crimes of abuse our compunction and our resolve courageously to combat them."); *see also* Hidalgo, *supra* note 2, at 145 (quoting Sheena McKenzie, Barbie Nadeau & Livia Borghese, *Pope Francis on Pennsylvania Sex Abuse Report: 'We Abandoned the Little Ones'*, CBS BOS. (Aug. 20, 2018, 8:35 AM), https://www.cbsnews.com/boston/news/pope-francis-pennsylvania-sex-abuse-report-letter [https://perma.cc/Z6V6-RLXP]); UNIFIED JUD. SYS. OF PA., 40TH STATEWIDE INVESTIGATING GRAND JURY INTERIM REDACTED REPORT AND RESPONSES (2018), http://media-downloads.pacourts.us/InterimRedactedReportandResponses.pdf?cb=42148 [https://perma.cc/K9YQ-B4R6]; Laurie Goodstein & Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, N.Y. TIMES (Aug. 14, 2018), https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html [https://perma.cc/C883-2ZLD].

9 *See, e.g.*, Hidalgo, *supra* note 2, at 146–47 ("[T]here are other factors that have allowed child sexual abuse by clergymen to continue: the Holy See and the Code of Canon Law. Both the Holy See and the Code of Canon Law seem to be preoccupied with maintaining the image of the Church more than protecting victims who have suffered at the hands of clergy members." (footnotes omitted)); Ludwin King, *supra* note 4, at 122 ("From transferring priests to other parishes, therapy, and out-of-court settlements with the families of victims, the Catholic Church's response has largely focused on the Church itself, while the victims are swept under the rug."). Even in its *Letter of the Prefect Congregation for Bishops*, the Holy See chose to state its support for the "overwhelming majority of priests and deacons who are and have always been exemplary in their fidelity to the demands of their vocation but have been offended or unjustly slandered by association." Re, *supra* note 6 ("As the Holy Father has said, we cannot forget 'the immense spiritual, human and social good that the vast majority of priests and religious in the United States have done and are still doing'. Indeed, it appears necessary to devote every available resource to restoring the public image of the Catholic priesthood as a worthy and noble vocation of generous and often sacrificial service to the People of God.").

10 TEX. FAM. CODE ANN. § 101.003(a) (West 2021). Specifically, a "'child' or 'minor' means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." *Id.* Under the Texas Family Code,

> (a) A minor may petition to have the disabilities of minority removed for limited or general purposes if the minor is:
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> (1) a resident of this state;
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> (2) 17 years of age, or at least 16 years of age and living separate and apart from the minor's parents, managing conservator, or guardian; and
>
> (3) self-supporting and managing the minor's own financial affairs.
>
> (b) A minor may file suit under this chapter in the minor's own name. The minor need not be represented by next friend.

Id. § 31.001.

11 *Id.* § 101.003(c).

12 1983 CODE c.97, § 1.

habitually lacks the use of reason is considered not responsible for oneself . . . and is equated with infants," and "a minor before the completion of the seventh year is called an infant."[13] Therefore, in the Roman Catholic Church, a "minor" means a person under eighteen years of age or a person older than eighteen years of age who "lacks the use of reason."[14] The meaning of "minor," the implications of interpreting the term, as well as fears of interfering in the internal affairs of the Roman Catholic Church, played significant roles in a recent defamation suit brought before the civil courts in the State of Texas.[15] This was due in no small part to the ecclesiastical abstention doctrine, which is a court-created doctrine designed to protect religious organizations from secular judicial interference in their internal affairs.[16]

This Case Note will address the ecclesiastical abstention doctrine in *In re Diocese of Lubbock*.[17] In *In re Diocese of Lubbock*, the Supreme Court of Texas held that the ecclesiastical abstention doctrine applied and barred the 237th District Court from hearing and ruling upon a defamation suit that involved Deacon Jesus Guerrero and the Diocese of Lubbock: "[T]he substance and nature of [Deacon Jesus Guerrero's] claims against [the Diocese of Lubbock] will necessarily require the trial court to evaluate whether the Diocese properly applied Canon Law and are inextricably intertwined with the Diocese's internal directive to

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13 *Id.* c.97, § 2, c.99.

14 *Id.* c.97, § 1–2, c.99.

15 *See generally In re* Diocese of Lubbock, 624 S.W.3d 506 (Tex. 2021).

16 *See* Alexander J. Lindvall, *Forgive Me, Your Honor, For I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices*, 72 S.C. L. REV. 25, 29 (2020) ("The ecclesiastical abstention rule, of course, cannot be found in the First Amendment's text; it is a court-created doctrine meant to prevent the judiciary from inserting itself into religious affairs."); Michael Henningsen, *Autonomy Protections or Religious For-Profits: Foreseeable Consequences*, 21 RUTGERS J.L. & RELIGION 185, 190 (2020) ("The autonomy doctrine, also known as the 'church autonomy doctrine,' 'church autonomy principle,' and the 'ecclesiastical abstention doctrine,' is derived from the Free Exercise Clause and the Establishment Clause of the First Amendment. An essential theme of the autonomy doctrine is to protect churches and nonprofits from secular judicial interference in religious matters . . . ." (footnote omitted)); Kelly W.G. Clark, Kristian Spencer Roggendorf & Peter B. Janci, *Of Compelling Interest: The Intersection of Religious Freedom and Civil Liability in the Portland Priest Sex Abuse Cases*, 85 OR. L. REV. 481, 512 (2006) ("The religious autonomy or ecclesiastical abstention doctrine under the First Amendment asserts that secular courts should not resolve disputes about religious dogma or custom."). The cases cited in this Case Note pertaining to the ecclesiastical abstention doctrine are not exhaustive. There are additional cases pertaining to the ecclesiastical abstention doctrine, including those cases that involve the ministerial exception doctrine; however, those cases reach beyond the scope of this Case Note. *See, e.g.*, Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171 (2012); Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049 (2020).

17 *See generally In re Diocese of Lubbock*, 624 S.W.3d 506.

investigate its clergy."[18] In effect, the Supreme Court of Texas showed deference to the Diocese of Lubbock and the Roman Catholic Church in the suit.[19]

The Supreme Court of Texas wrongly decided *In re Diocese of Lubbock* because it failed to permit the application of neutral principles of law, or secular, objective, well-established legal concepts, to a defamation suit.[20] By failing to permit the application of neutral principles to a defamation suit, the Supreme Court of Texas expanded the bounds of the ecclesiastical abstention doctrine and elevated the status of religious organizations in the State of Texas at the expense of the long-recognized right of an individual to the protection of their own reputation and interest in human dignity.[21]

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18 *Id.* at 509.

19 *See id.*

20 *See* Jones v. Wolf, 443 U.S. 595, 603 (1979) ("The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties."); Mark A. Hicks, Comment, *The Art of Ecclesiastical War: Using the Legal System to Resolve Church Disputes*, 6 LIBERTY U. L. REV. 531, 557 (2012) ("Neutral principles can be defined quite simply as *any matter that does not ask the court to decide a question of religious doctrine*. Unfortunately, this definition, by its very nature, is ambiguous."). Although Professor Herbert Wechsler coined the term "neutral principles of law" in *Toward Neutral Principles of Constitutional Law*, providing influence for the principles' subsequent development, there seems to be no direct connection between Professor Wechsler's "neutral principles of law" and "neutral principles of law" as they pertain to the ecclesiastical abstention doctrine. Kelly H. Sheridan, Comment, *Staying Neutral: How Washington State Courts Should Approach Negligent Supervision Claims Against Religious Organizations*, 85 WASH. L. REV. 517, 529 n.89 (2010) (confirming that Professor Wechsler coined the term "neutral principles of law" and "[t]hough Professor Wechsler's view was premised on the anachronistic view that Article III's jurisdictional grants imposed a mandatory duty on courts to hear certain claims, it has continued to be extremely influential in both the derivation and application of constitutional principles"); *see* John H. Garvey, *Churches and the Free Exercise of Religion*, 4 NOTRE DAME J.L. ETHICS & PUB. POL'Y 567, 568 & n.3 (1990) (stating that the United States Supreme Court "developed" the "neutral principles rule" in *Jones v. Wolf*); Robert Joseph Renaud & Lael Daniel Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67, 101 (2008) ("The Supreme Court has introduced . . . 'neutral principles' analysis in which the civil courts can adjudicate the property dispute under legal principles of general applicability, 'so long as it involves no consideration of doctrinal matters.'" (quoting *Jones*, 443 U.S. at 602)). *See generally* Hicks, *supra* note 20 (discussing neutral principles of law without reference to Professor Wechsler); *Jones*, 443 U.S. 595 (same).

21 Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring); *see also* David A. Logan, *Tort Law and the Central Meaning of the First Amendment*, 51 U. PITT. L. REV. 493, 498 (1990). An action for defamation has been recognized for hundreds of years in the common law courts of England and the United States. *Id.*; *see also* Cristina Carmody Tilley, *Rescuing Dignitary Torts from the Constitution*, 78 BROOK. L. REV. 65, 65 (2012) ("[T]he past fifty years of robust Speech and Press

Part I of this Case Note provides some background information on the application of the ecclesiastical abstention doctrine and neutral principles in prior case law.[22] Parts II and III review the factual background, procedural history, and holding of *In re Diocese of Lubbock* and emphasize the dissent from Justice Boyd.[23] Part IV discusses why the Supreme Court of Texas should have permitted the application of neutral principles to the defamation suit; not only could the civil courts have made a judgment secular in nature, but they also could have done so without any entanglement in religious doctrine, faith, or the internal affairs of the Diocese of Lubbock.[24] Finally, the Conclusion reiterates the consequences of civil courts failing to apply secular, objective, well-established legal concepts to disputes involving religious organizations and appeals to such courts to say "what the law is."[25]

I. BACKGROUND AND PRIOR LAW

A. *The Separation of Church and State and the Ecclesiastical Abstention Doctrine*

Under the First Amendment of the United States Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[26] The Establishment Clause and the Free Exercise Clause of the Constitution, which "prohibit[] the government from 'establishing' a religion" and "protect[] citizens' right

Clause jurisprudence threatens to eliminate the rights of individuals seeking recourse for dignitary injuries[, including defamation,] imposed by speakers. That result is normatively inconsistent with social values in even the earliest legal systems."); *In re Diocese of Lubbock*, 624 S.W.3d at 522 (Boyd, J., dissenting) ("But the rule the Court announces today—which no other court has ever announced before—is as unwise as it is unsupported by the constitutional provisions on which the Court relies. . . . However desirable the outcome of today's decision may be in this particular case, the precedential effect of the Court's holding will apply to every group that asserts a religious identity and will immunize defamatory statements publicized under far less sympathetic circumstances."). *But see* Van Vechten Veeder, *The History and Theory of the Law of Defamation*, 3 COLUM. L. REV. 546, 550 (1903) (emphasizing that the Roman Catholic Church originally claimed and exercised jurisdiction over both ecclesiastical matters and matters pertaining to the "correction of the sinner for his soul's health," which, "along with the whole province of sexual morality, usury, and perjury came defamation").

22 *See infra* Part I.

23 *See infra* Parts II–III.

24 *See infra* Part IV; *see also* Mark P. Strasser, *A Constitutional Balancing in Need of Adjustment: On Defamation, Breaches of Confidentiality, and the Church*, 12 FIRST AMEND. L. REV. 325, 331–32 (2013). *See generally* Hicks, *supra* note 20.

25 *See infra* Conclusion; Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

26 U.S. CONST. amend. I.

to practice their religion" unless the practice violates "public morals" or "a 'compelling' government interest," respectively, form the basis of the ecclesiastical abstention doctrine.[27] Under the ecclesiastical abstention doctrine, religious organizations are given the power to decide, "free from state interference," matters that pertain to their government, faith, and doctrine.[28] If a civil court must decide a dispute "strictly and purely ecclesiastical in its character," as opposed to a dispute only theoretically or tangentially touching on religion, the claim is barred from civil court review.[29] In several early cases, the United States Supreme Court specifically addressed the Establishment Clause and the Free Exercise Clause, and it also provided the basis for the ecclesiastical abstention doctrine.[30]

1. The Origins of the Doctrine

The origins of the ecclesiastical abstention doctrine are found in cases pertaining to church property disputes.[31] In those early church property dispute cases, namely *Watson v. Jones* and *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, the United States Supreme Court employed a "deferential" or "hands-off" approach

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27 *First Amendment and Religion*, U.S. CTS., https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion [https://perma.cc/TDW8-CDNW]; *see* U.S. CONST. amend. I; *see also* David J. Young & Steven W. Tigges, *Into the Religious Thicket—Constitutional Limits on Civil Court Jurisdiction over Ecclesiastical Disputes*, 47 OHIO ST. L.J. 475, 481 n.36 (1986) ("Although the entanglement principle[, including the ecclesiastical abstention doctrine,] is normally associated with the establishment clause, it actually reflects values common to both of the religion clauses. . . . Entanglement between church and state implicates both values—it clearly defeats separatism and, in many if not all instances, has a coercive effect on matters of belief by promoting one belief to the inescapable prejudice of others." (citations omitted)).

28 Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1952).

29 *See* Marjorie A. Shields, Annotation, *Construction and Application of Church Autonomy Doctrine*, 123 A.L.R.5TH 385, § 17 (2004); *see also* Watson v. Jones, 80 U.S. 679, 733 (1871); 66 AM. JUR. 2D *Religious Societies* § 16 (2022) ("Ecclesiastical limits on civil jurisdiction apply to church decisions regarding internal affairs, internal organization, matters of faith, belief, doctrine, and church governance. Ecclesiastical matters go beyond church scripture or texts, including creeds, form of worship, rules, customs, or laws, modes of exercising belief, theological controversy, church discipline, membership admission and exclusion or expulsion, and conformity to the standard of morals required of church members. However, exceptions apply when civil or property rights are involved." (footnotes omitted)); *id.* § 18 ("Civil courts, in considering an issue that is dependent on an ecclesiastical matter, will accept as conclusive the decision of a legally constituted ecclesiastical tribunal having jurisdiction of the matter absent fraud or collusion. Under the doctrine, secular courts defer to the church for the church's decisions in ecclesiastical matters and accept the ecclesiastical decisions of church tribunals as binding." (footnotes omitted)).

30 *See* Young & Tigges, *supra* note 27, at 477–78; Lindvall, *supra* note 16.

31 *See, e.g.*, *Watson*, 80 U.S. 679; *Kedroff*, 344 U.S. 94.

to matters involving religious organizations.[32] Under this approach, the Supreme Court deferred to the decisions of religious organizations and refused to apply any conflicting legislative or judicial principles in an attempt to protect religious autonomy.[33]

The *Watson* Court confirmed that the highest church judicatories' decisions pertaining to ecclesiastical rule, custom, or law should bind the civil courts; however, the Supreme Court also established that when a civil right depends upon an ecclesiastical matter, the civil court is the ultimate decisionmaker.[34] In *Watson*, the Supreme Court encountered a church property dispute between two religious factions formed after a schism in the Presbyterian Church.[35] The factions included an anti-slavery faction and a minority pro-slavery faction, the latter of which held title to the church property.[36] The anti-slavery faction and the pro-slavery faction filed claims in court, each "claiming to be the true church and therefore entitled to use" the church property.[37] Although the Supreme Court admitted that civil court judges lack the requisite expertise to decide ecclesiastical matters and—in the interest of promoting religious liberty and preventing entanglement with religious institutions—should not interfere in such matters, the Court ultimately determined that it could decide this church property dispute.[38] In *Watson*, because the minority pro-slavery faction separated from the church before the property dispute commenced and denied that church's authority, denounced its action, and refused to abide by its judgments, the Supreme Court found that the property dispute at issue did not implicate ecclesiastical matters.[39]

Thereafter, in *Kedroff*, the Supreme Court constitutionalized the framework of church-state relations promulgated in *Watson*.[40] Like

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32 Zoë Robinson, *What is a "Religious Institution"?*, 55 B.C. L. REV. 181, 197 (2014).

33 *Id.*; *see also* Hicks, *supra* note 20, at 552.

34 *Watson*, 80 U.S. at 727, 729, 731.

35 *Id.* at 717; *see also* Robinson, *supra* note 32, at 194.

36 Robinson, *supra* note 35, at 194.

37 *Id.*

38 *Watson*, 80 U.S. at 730, 733–34 ("Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church." (quoting Shannon v. Frost, 42 Ky. 253, 258 (1842))).

39 *Id.* at 734–35.

40 *See* Robinson, *supra* note 35, at 196; *see also* Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 115–16 (1952) ("Watson v. Jones, although it contains a reference to the relations of church and state under our system of laws, was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1872 [sic], before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. . . . The opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or

Watson, *Kedroff* concerned the right to use and occupy church property or, specifically, St. Nicholas Cathedral in New York City.[41] Unlike *Watson*, however, the right to use and occupy church property centered on the Archbishop of the Archdiocese of North America and the Aleutian Islands and whether (1) appointment by the Patriarch of Moscow and All Russia and its Holy Synod or (2) election by a sobor of the American churches affiliated with the Russian Orthodox Church validly selected the ruling hierarch for the American churches.[42] This church property dispute interwove matters of ecclesiastical government with the constitutionality of a state statute, Article 5-C of the New York Religious Corporations Law, which effectively transferred control of the New York churches of the Russian Orthodox Church from the Patriarch of the Russian Orthodox Church to the Russian Orthodox Church in North America.[43] While the Court of Appeals of New York denied Benjamin Fedchenkoff, the Patriarch's appointed Archbishop, and the Russian Orthodox Church use and occupancy of St. Nicholas Cathedral based on Article 5-C of the New York Religious Corporations Law, the Supreme Court determined that Article 5-C violated the First Amendment of the United States Constitution, which applied to the states through the Fourteenth Amendment.[44] According to the Supreme Court, Article 5-C not only legislatively transferred control over churches, which violated the principle of separation of church and state, but also unconstitutionally prohibited the free exercise of religion.[45] Pulling from *Watson*, the Supreme Court confirmed that religious organizations require independence from secular control or manipulation and,

manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." (footnotes omitted)).

41 *Kedroff*, 344 U.S. at 95.

42 *Id.* at 95–97, 107. For additional context, "[a] sobor is a convention of bishops, clergymen and laymen with superior powers, with the assistance of which the church officials rule their dioceses or districts." *Id.* at 96 n.1.

43 *Id.* at 95–97, 107.

44 *Id.* at 96, 106–07, 115–16.

45 *Id.* at 107–10 & n.3 ("It prohibits in this country the free exercise of religion. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to church statutes 'adopted at a general convention (sobor) held in the City [sic] of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto,' prohibits the free exercise of religion. Although this statute requires the New York churches to 'in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church),' their conformity is by legislative fiat and subject to legislative will. Should the state assert power to change the statute requiring conformity to ancient faith and doctrine to one establishing a different doctrine, the invalidity would be unmistakable." (quoting N.Y. RELIG. CORP. LAW § 107(1) (McKinney 1945))).

therefore, have the power to decide for themselves matters of church government as well as those of faith and doctrine.[46] Because the church property dispute in *Kedroff* turned strictly on matters of ecclesiastical government, and Article 5-C of the Religious Corporations Law was deemed unconstitutional, the Supreme Court held that control over the property lay with the Russian Orthodox Church.[47]

The cases of *Watson* and *Kedroff* illustrate the Supreme Court's deference to religious organizations, at least as that deference pertains to matters "strictly and purely ecclesiastical in [their] character."[48] Nevertheless, the Supreme Court eventually offered an alternative approach to matters involving religious organizations: the application of neutral principles of law.[49]

2. The Application of Neutral Principles of Law

The United States Supreme Court has accepted and supported the application of neutral principles of law, or secular, objective, well-established legal concepts, to church property disputes.[50] First mentioned in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, the Supreme Court noted that neutral principles exist in all property disputes, and civil courts could apply those principles to property disputes involving religious organizations.[51] Nevertheless, civil courts could not apply those principles if the church property dispute required the resolution of religious doctrine or practice.[52] The Supreme Court also referenced neutral principles of law in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* and *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*; however, in the latter case, the United States Supreme Court ultimately determined that the Supreme Court of Illinois impermissibly applied neutral principles to resolve the dispute and, therefore, deferred to the

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46 *Id.* at 116.

47 *Id.* at 120–21. However, the Court reconfirmed that "[t]here are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property." *Id.* at 120.

48 Watson v. Jones, 80 U.S. 679, 733 (1871). *See generally id.*; *Kedroff*, 344 U.S. 94.

49 *See* Renaud & Weinberger, *supra* note 20, at 91–92. *See generally* Hicks, *supra* note 20.

50 *See, e.g.*, Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440 (1969); Jones v. Wolf, 443 U.S. 595 (1979).

51 *Presbyterian Church*, 393 U.S. at 449; *see also Jones*, 443 U.S. at 599, 602; Hicks, *supra* note 20, at 542–44.

52 *Presbyterian Church*, 393 U.S. at 449.

Serbian Eastern Orthodox Diocese for the United States of America and Canada.[53]

Like in *Kedroff*, where the Supreme Court determined that the right to the use of church property centered on matters of ecclesiastical government,[54] in *Serbian Eastern Orthodox Diocese*, the Court held that control over church property and the structure and administration of the American-Canadian Diocese of the Serbian Eastern Orthodox Church hinged on resolving matters of internal church discipline and government.[55] Comprising that internal church discipline and government were decisions pertaining to the defrocking of Bishop Dionisije of the American-Canadian Diocese of the Serbian Orthodox Church and the reorganization of the American-Canadian Diocese into three Dioceses.[56] The United States Supreme Court found that the Supreme Court of Illinois (1) improperly invalidated the decisions of the Holy Synod of the Serbian Orthodox Church to defrock Bishop Dionisije and reorganize the American-Canadian Diocese into three Dioceses and (2) impermissibly relied on neutral principles to substitute its own interpretation of the constitutions of the American-Canadian Diocese and the Holy Synod of the Serbian Orthodox Church.[57] In doing so, the Supreme Court of Illinois interfered in a matter "at the core of ecclesiastical affairs"—internal church government.[58] Because the

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53 Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 698–99 (1976); *see also* Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970) (Brennan, J., concurring) ("'(N)eutral principles of law, developed for use in all property disputes,' provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues." (alteration in original) (citation omitted) (quoting *Presbyterian Church*, 393 U.S. at 449)).

54 *See supra* notes 40–48 and accompanying text. *See generally* Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94 (1952).

55 *Serbian E. Orthodox Diocese*, 426 U.S. at 697–98, 709, 714–15 ("[T]his case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. . . . Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance." (footnote omitted)).

56 *Id.* at 697–98, 709.

57 *Id.* at 717–19.

58 *Id.* at 721. Nevertheless,

> the Mother Church decisions defrocking Dionisije and reorganizing the Diocese in no way change[d] formal title to all Diocesan property, which continue[d] to be in the

resolution of the aforementioned disputes entangled the civil courts in, essentially, religious controversies, the ecclesiastical abstention doctrine barred the Supreme Court of Illinois from hearing the case and required it to accept the decisions of the highest ecclesiastical tribunals as binding.[59]

Albeit frowned upon in *Serbian Eastern Orthodox Diocese*,[60] the Supreme Court accepted and supported the adoption of secular, objective, well-established legal concepts in *Jones v. Wolf*, since doing so never entangled the civil courts in theological or doctrinal matters.[61] In *Jones*, the primary dispute concerned ownership of church property following a schism in a local church affiliated with the Presbyterian Church of the United States.[62] To determine ownership over the church property or, specifically, the Vineville Presbyterian Church, the Supreme Court of Georgia applied neutral principles and examined the deeds, the corporate charter of the Vineville church, and the Book of Church Order.[63] After its examination, the Supreme Court of Georgia held that legal title to the church property vested in the local congregation; moreover, the Supreme Court of Georgia determined that the majority faction represented the local congregation.[64] The United States Supreme Court confirmed that neutral principles of law are consistent with the First Amendment, which prohibits civil courts from interpreting religious doctrine and practice but does not require states "to adopt a rule of compulsory deference to religious authority in resolving church property disputes."[65] Yet, the United States Supreme Court warned civil courts to take special care when applying those neutral principles and

> respondent property-holding corporations in trust for all members of the reorganized Dioceses; only the identity of the trustees [was] altered by the Mother Church's ecclesiastical determinations.

Id. at 723 n.15.

59 *Id.* at 709, 724.

60 *Id.* at 721.

61 Jones v. Wolf, 443 U.S. 595, 604 (1979) ("We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute."); Chad Olsen, Comment, *In the Twenty-First Century's Marketplace of Ideas, Will Religious Speech Continue to Be Welcome?: Religious Speech as Grounds for Defamation*, 37 TEX. TECH L. REV. 497, 509 (2005). After the Supreme Court remanded to the Supreme Court of Georgia in *Jones*, which adopted neutral principles of law and analyzed property deeds, state statutes, and the Book of Church Order, the Supreme Court of Georgia determined that no trust existed in favor of a general church, and thus, the court awarded the property based on legal title. *Jones*, 443 U.S. at 600. *See generally* Jones v. Wolf, 260 S.E.2d 84 (Ga. 1979).

62 *Jones*, 443 U.S. at 597.

63 *Id.* at 600. The Book of Church Order is the constitution of the Presbyterian Church of the United States. *Id.* at 601.

64 *Id.* at 601.

65 *Id.* at 602, 604–05.

scrutinizing particular church documents: if the application of neutral principles of law or the interpretation of any such document requires a civil court to resolve a religious controversy, it must defer to the authoritative ecclesiastical organization.[66] Despite its acceptance of the application of neutral principles of law, the United States Supreme Court vacated the judgment of the Supreme Court of Georgia and remanded for further proceedings.[67] The United States Supreme Court decided that the lower courts needed to determine whether the law of Georgia provided for a presumptive rule of majority representation (and, if so, neutral principles could be applied to confirm which faction held title to the church property), or whether the Presbyterian Church of the United States determined the church property holders according to its laws and regulations (and, if so, neutral principles could not be applied because the dispute would require the court to resolve matters of religious doctrine and polity).[68]

Consequently, civil courts can apply secular, objective, well-established legal concepts to matters involving religious organizations, as long as such matters are not ecclesiastical in nature.[69] Although neutral principles are available to adopt, absent any clear guidance from the Supreme Court on their application, particularly beyond church property disputes, state civil courts have largely split on whether to apply a deferential or a neutral-principles-of-law approach.[70]

3. The Ecclesiastical Abstention Doctrine in Texas

In its earliest application in *Brown v. Clark*, the Supreme Court of Texas concluded that the civil courts could not decide disputes pertaining to ecclesiastical matters but could decide church property disputes.[71]

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66 *Id.* at 604.

67 *Id.* at 606, 610.

68 *Id.* at 608–09.

69 *See id.* at 604, 608–09; Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church, 393 U.S. 440, 449 (1969); Md. & Va. Eldership of the Churches of God v. Church of God at Sharpsburg, Inc., 396 U.S. 367, 370 (1970) (Brennan, J., concurring).

70 Hicks, *supra* note 20, at 552.

71 Brown v. Clark, 116 S.W. 360, 364 (Tex. 1909) ("What effect did the union between the two churches have upon the property which is here in controversy? This is perhaps the only question in the case of which this court has jurisdiction."). Unfortunately, the Supreme Court of Texas did not explain *why* it had the jurisdiction to decide the dispute. *See id.* Nevertheless, the Supreme Court of Texas appeared to apply what the United States Supreme Court eventually accepted as "neutral principles of law." *See supra* Section I.A.2. As previously discussed, the ecclesiastical abstention doctrine applies to the states through the Fourteenth Amendment of the United States Constitution and, therefore, applies to the State of Texas. *See supra* Sections I.A.1–2; Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich, 426 U.S. 696, 697 (1976).

First, the Supreme Court of Texas analyzed the Constitution of the General Assembly of the Cumberland Presbyterian Church and cited to *Watson* when it determined that the action of the General Assembly of the Cumberland Presbyterian Church to reunite and unify with the Presbyterian Church of the United States was valid and binding on the civil courts.[72] Next, to determine whether the Presbyterian Church in the United States could possess and use the property previously possessed and used by the Cumberland Presbyterian Church at Jefferson, which was a member of and under the control of the Cumberland Presbyterian Church, the Supreme Court of Texas examined the property deed.[73] In finding that (1) no trust or limitation existed on the title and (2) the proper union of the Cumberland Presbyterian Church to the Presbyterian Church in the United States incorporated the Cumberland Presbyterian Church at Jefferson into the Presbyterian Church in the United States, the Supreme Court of Texas decided that the Presbyterian Church in the United States was entitled to possess and use the church property.[74]

In addition to church property disputes, the Supreme Court of Texas has considered the ecclesiastical abstention doctrine in relation to claims for intentional infliction of emotional distress, fraud, conspiracy, and defamation.[75] However, like the United States Supreme Court, the

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[72] *Brown*, 116 S.W. at 364 ("The General Assembly had authority to adjudicate and determine all matters which concern the whole church and was the court of last resort with appellate jurisdiction over all others. It had the authority to dissolve any one of the other judicatories in order to enforce the discipline of the church. It was declared by the constitution that the General Assembly represents 'in one body all the particular churches thereof,' and again, it is said that it constitutes 'the bond of union, peace, correspondence and mutual confidence among all its churches and courts.' . . . The General Assembly of the Cumberland Church had authority to determine from the provisions of the constitution whether it had the power to enter into the union with the Presbyterian Church and having decided that it had such authority and having acted upon that decision the civil courts have no power to review that action."). The opinion also notes that those members who objected to the reunion and unification of the Cumberland Presbyterian Church with the Presbyterian Church, objected to the elimination of all practical differences between the rules and regulations of the Cumberland Presbyterian Church and the Presbyterian Church—the latter of which admitted Black people, under certain circumstances, to participate in its courts and public meetings. *Id.* However, the Supreme Court of Texas confirmed that "[t]his was also a question exclusively for the consideration of the General Assembly of the Cumberland Presbyterian Church, and having been adjusted by that court according to its judgment in manner to the best interest of the church it is likewise beyond the power of this court to revise." *Id.*

[73] *Id.* at 364–65.

[74] *Id.*

[75] *See, e.g.*, Tilton v. Marshall, 925 S.W.2d 672 (Tex. 1996); Westbrook v. Penley, 231 S.W.3d 389 (Tex. 2007).

Supreme Court of Texas has addressed, but not officially applied, neutral principles to matters outside church property.[76]

For example, in *Tilton v. Marshall*, the Supreme Court of Texas considered a petition for mandamus to determine whether the plaintiffs could sue Robert Tilton, the principal pastor of Word of Faith World Outreach Center Church; Word of Faith World Outreach Center Church, Inc.; and Word of Faith World Outreach Center Church, for fraud, conspiracy, and intentional infliction of emotional distress.[77] The Supreme Court of Texas determined that the intentional infliction of emotional distress and related conspiracy claims, as well as certain fraud claims, involved an unconstitutional inquiry into the truth or falsity of religious beliefs or doctrine.[78] For instance, inquiring into certain representations, such as those urging individuals to send $100 because "[a]ll through the Bible, men and women consistently worshipped God by giving offerings and sacrificial gifts," would require the civil courts to entangle themselves in ecclesiastical matters; therefore, the ecclesiastical abstention doctrine barred the civil courts from hearing such claims.[79] In

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[76] *In re* Diocese of Lubbock, 624 S.W.3d 506, 513 (Tex. 2021); *see infra* notes 77–82 and accompanying text (applying secular principles to fraud claims involving a religious organization and its congregants, but not officially speaking to "neutral principles of law"); Masterson v. Diocese of Nw. Tex., 422 S.W.3d 594, 596–97 (Tex. 2013) ("The question before us is what happens to the property when a majority of the membership of a local church votes to withdraw from the larger religious body of which it has been a part. . . . Under the neutral principles methodology, courts decide non-ecclesiastical issues such as property ownership based on the same neutral principles of law applicable to other entities, while deferring to religious entities' decisions on ecclesiastical and church polity questions. Applying neutral principles of law to the record before us, we conclude that the trial court erred by granting summary judgment [to the parishioners loyal to the Episcopal Diocese of Northwest Texas and the Episcopal Church of the United States and seeking title to and possession of the property of the local church] and the court of appeals erred by affirming." (citations omitted)).

[77] Tilton, 925 S.W.2d at 675; *see id.* at 696 (Enoch, J., concurring in part and dissenting in part) ("My colleagues on this Court, in granting the extraordinary remedy of mandamus, rush to vindicate religious liberty, a liberty that exists only in balance with other liberties we enjoy. In the process, they ignore the Court's role as arbiter and run roughshod over other vital rights."). Interestingly, in his dissent in *In re Diocese of Lubbock*, Justice Boyd also questioned granting the extraordinary remedy of mandamus. 624 S.W.3d at 523 n.9 (Boyd, J., dissenting).

[78] *Tilton*, 925 S.W.2d at 679, 681–82.

[79] *Id.* at 679, 682. Specifically, in terms of the intentional infliction of emotional distress claims, the Supreme Court of Texas stated, "[r]esolving whether Tilton has intentionally inflicted emotional distress through the making of insincere religious representations would inevitably require an inquiry into whether Tilton's religious beliefs are true or false." *Id.* at 681. In terms of certain of the fraud claims lodged against the defendants, the Supreme Court of Texas provided:

> For instance, plaintiffs complain of Tilton's requests for funds, which repeatedly emphasize that the Bible commands adherents to tithe. Citing numerous quotes from the Bible, Tilton states in a mailing typical of the ones plaintiffs received:
>
> I feel the Holy Spirit prompting me to challenge you in the name of Jesus to send $100 right now. . . . This is your day to prove God for your miracle. . . . When God says to

regard to some other fraud claims, however, the Supreme Court of Texas found that the ecclesiastical abstention doctrine did not bar the trial court from hearing such claims.[80] Because Tilton alleged representations, such as personally reading, touching, and praying over plaintiffs' prayer requests, based not on statements of religious doctrine or belief but promises to perform particular acts, the civil court could hear those claims.[81] In its analysis of the claims, the Supreme Court of Texas noted that Article I, Section 6 of the Texas Constitution protects freedom of worship; nevertheless, the free exercise of religion does not protect actions that violate social duties or subvert good order.[82]

In comparison with *Tilton*, in *Westbrook v. Penley*, the Supreme Court of Texas decided that the ecclesiastical abstention doctrine barred the civil court from hearing all defamation, negligence, breach of fiduciary duty, and intentional infliction of emotional distress claims.[83] Peggy Lee Penley told Pastor and Licensed Professional Counselor C.L. "Buddy" Westbrook, Jr. of CrossLand Community Bible Church that she had engaged in an extramarital sexual relationship and decided to divorce

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> prove Him, it's time to prove Him. I challenge you to prove Him now with a $100 offering to seed into the work of God and help us carry this anointed Elijah ministry to the four corners of the earth. . . . Jesus said, "Freely you have received, freely give" (Mt. 10:8 NIV). . . . All through the Bible, men and women consistently worshipped God by giving offerings and sacrificial gifts. God always manifested Himself in their lives and He will do the same for you when you worship him with sacrificial offerings. . . .
>
> Whether or not made sincerely, such representations are statements of religious doctrine or belief.

Id. at 679.

80 *Id.* at 679.

81 *Id.* ("Although the trier of fact must determine whether Tilton made these promises and failed to perform them, plaintiffs may satisfy the falsity element of a fraud claim by proving that Tilton had no intention of personally reading, touching, and praying over their prayer requests at the time he said he would do so.").

82 *Id.* at 677 ("Although freedom to believe may be said to be absolute, freedom of conduct is not and conduct even under religious guise remains subject to regulation for the protection of society." (quoting TEX. CONST. art. I, § 6 cmt. 2018 main vol.)). Article I, Section 6 of the Texas Constitution provides:

> All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it 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.

TEX. CONST. art. I, § 6.

83 Westbrook v. Penley, 231 S.W.3d 389, 394, 405 (Tex. 2007).

her husband.[84] Penley allegedly divulged this information in a counseling session with Pastor Westbrook; Pastor Westbrook then recommended a family lawyer and mentioned church discipline, to which Penley allegedly confirmed her plans to resign from the Church.[85] Shortly thereafter, Pastor Westbrook and church elders composed a letter to the congregation members of CrossLand Community Bible Church.[86] In the letter, Pastor Westbrook and church elders described a three-step disciplinary process, explained that Penley intended to divorce her husband and that the divorce lacked any biblical basis, confirmed that Penley had engaged in a "biblically inappropriate relationship," and recommended that the congregation shun Penley.[87] The Supreme Court of Texas held that the ecclesiastical abstention doctrine barred the civil court from hearing the dispute because doing so would infringe on the internal affairs of the CrossLand Community Bible Church, including its decision to enforce disciplinary measures against a member of its congregation.[88] Furthermore, the Supreme Court of Texas refused to expand the application of neutral principles to the claims in *Westbrook* because it deemed church discipline an "inherently religious function."[89] If the civil court subjected Pastor Westbrook to tort liability for disciplining a congregation member, the Supreme Court of Texas contended that the result could chill other religious organizations' activities and, in effect, infringe on those organizations' internal affairs.[90]

Accordingly, absent the application of neutral principles of law to matters outside of church property, such as matters involving religious organizations and defamation, the Supreme Court of Texas can actively

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84 *Id.* at 391–93.

85 *Id.* The Constitution of CrossLand Community Bible Church stated:

> We believe that one of the primary responsibilities of the church is to maintain the purity of the Body. We are directed by God to be holy. In recognition of the importance of this obligation, the elders will biblically and lovingly utilize every appropriate means to restore members who find themselves in patterns of serious misconduct. When efforts at restoration fail, the elders will apply the Biblical teaching on church discipline, which could include revocation of membership, along with an appropriate announcement made to the membership (Matt 18:15–17; I Cor 5:1–5; Gal 6:1, 2; 2 Thes 3:6).

Id. at 392.

86 *Id.* at 393.

87 *Id.*

88 *Id.* at 397.

89 *Id.* at 399.

90 *Id.* at 400 ("In sum, while the elements of Penley's professional-negligence claim can be *defined* by neutral principles without regard to religion, the *application* of those principles to impose civil tort liability on Westbrook would impinge upon CrossLand's ability to manage its internal affairs and hinder adherence to the church disciplinary process that its constitution requires.").

defer to the decisions of religious organizations at an individual's expense.[91] This proved to be the case in *In re Diocese of Lubbock*.[92]

II. FACTS AND PROCEDURAL HISTORY OF *IN RE DIOCESE OF LUBBOCK*

A. *Background*

The Diocese of Lubbock ordained Deacon Jesus Guerrero in 1997,[93] and he started his assignment at Our Lady of Grace Catholic Church in Lubbock, Texas.[94] However, in 2003, the Diocese of Lubbock temporarily, and later indefinitely, suspended Deacon Guerrero after it received an allegation that he sexually assaulted an adult woman.[95] That adult woman allegedly suffered from a history of mental and emotional disorders.[96] Upon Deacon Guerrero's request, the Diocese of Lubbock eventually reinstated him in July 2006.[97] However, Deacon Guerrero did not return to Our Lady of Grace Catholic Church in Lubbock; rather, the Diocese of Lubbock reassigned him to San Ramon Catholic Church in Woodrow, Texas.[98]

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91 *See, e.g.*, *id.* at 399–400.

92 *See generally In re* Diocese of Lubbock, 624 S.W.3d 506 (Tex. 2021).

93 *Id.* at 509. In the Roman Catholic Church, deacons baptize, preach and teach the Gospel, witness marriages, and conduct wake and funeral services. *Frequently Asked Questions About Deacons*, U.S. CONF. OF CATH. BISHOPS, https://www.usccb.org/beliefs-and-teachings/vocations/diaconate/faqs [https://perma.cc/8HRB-NBMN].

94 *See Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor*, DIOCESE OF LUBBOCK [hereinafter *Names of All Clergy*], https://www.catholiclubbock.org/List.pdf [https://perma.cc/9AH5-NAE2].

95 *In re Diocese of Lubbock*, 624 S.W.3d at 509.

96 *Id.* at 509–11 ("[T]he Diocese sent Guerrero a letter . . . . [that] detailed some of the separate reports of sexual assault that the Lubbock Diocese had received against Guerrero. It went on to state that '[t]he adult female involved in these incidents . . . is severely bi-polar, is not allowed to drive, and may not have been on her medications at the time of the various instances which were witnessed.'" (second alteration in original)); *see also* Response to Brief on the Merits at 5, Diocese of Lubbock v. Guerrero, 624 S.W.3d 563 (Tex. 2021) (Nos. 20-0005, 20-0127), 2020 WL 4484833 ("In 2003, Guerrero was made aware of an allegation of sexual misconduct against him involving a forty (40) year old female. Guerrero denied then, and continues to deny now, that any inappropriate relations occurred with her and/or that they engaged in any physical sexual conduct whatsoever. . . . In 2008, there was another allegation involving the same female. Neither the 2003, nor the 2008 allegations, were made by the forty (40) year old female herself." (citations omitted)); Brief on the Merits at 18–19, *Guerrero*, 624 S.W.3d 563 (Nos. 20-0005, 20-0127), 2020 WL 4274136 ("The first allegation claimed that Guerrero committed sexual misconduct with a woman 'deemed vulnerable due to a health or mental condition.' 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." (citations omitted)).

97 *In re Diocese of Lubbock*, 624 S.W.3d at 509.

98 *See Names of All Clergy*, *supra* note 94.

Subsequently, the Diocese of Lubbock received a second allegation of sexual assault against Deacon Guerrero from the same woman, and thereafter, Bishop Placido Rodriguez permanently withdrew Deacon Guerrero's diaconal faculties in November 2008.[99] Despite the withdrawal of his diaconal faculties, Deacon Guerrero remains an ordained deacon of the Roman Catholic Church.[100]

In September 2018, approximately ten years after the Diocese of Lubbock withdrew Deacon Guerrero's diaconal faculties, the Catholic Bishops of Texas agreed to release the names of clergy accused of sexual abuse of a minor.[101] The Catholic Bishops of Texas sought to increase transparency and assist victims of sexual abuse throughout the fifteen dioceses of the Texas Catholic Church.[102] Following a review of its files, on January 31, 2019, the Diocese of Lubbock compiled and released *Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor* (*Names of All Clergy*), a list that included the name of any priest or clergy against whom a "credible allegation" of sexual abuse of a minor had been raised since June 1983.[103] The statement accompanying the list included

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99 *In re Diocese of Lubbock*, 624 S.W.3d at 509; *see Names of All Clergy*, *supra* note 94; *cf.* U.S. CONF. OF CATH. BISHOPS, NATIONAL DIRECTORY FOR THE FORMATION, MINISTRY, AND LIFE OF PERMANENT DEACONS IN THE UNITED STATES 42 (2005) ("100. Bishops are reminded that if the ministry of a permanent deacon becomes ineffective or even harmful due to some personal difficulties or irresponsible behavior, his ministerial assignment and faculties are to be withdrawn by the diocesan bishop in accord with Canon Law.").

100 *In re Diocese of Lubbock*, 624 S.W.3d at 509–10; Brief on the Merits, *supra* note 96, at 19 ("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 [sic] clerical functions (like celebrating baptisms, weddings, or funerals) or hold himself out publicly as a deacon. Permanent suspension under canon law, however, is not removal ('laicization') or excommunication from the Catholic Church." (citations omitted)); *see also* U.S. CONF. OF CATH. BISHOPS, *supra* note 99 ("99. A deacon can be returned to the lay state by canonical dismissal or because of a dispensation granted by the Holy See. Once dismissed or dispensed, he no longer enjoys any rights or privileges accorded clerics by the law of the Church. Any responsibility, financial or liability, ceases on the part of the diocese." (footnote omitted)).

101 *In re Diocese of Lubbock*, 624 S.W.3d at 510.

102 *Id.* This decision coincides with a rash of sexual abuse allegations against clergy in the Roman Catholic Church and the meeting between the United States Conference of Catholic Bishops and Pope Francis in 2018. *See* Daniel Burke, *How 2018 Became the Catholic Church's Year from Hell*, CNN (Dec. 29, 2018, 12:40 AM), https://www.cnn.com/2018/12/28/world/catholic-church-2018/index.html [https://perma.cc/JCY7-ANHL]; *see also supra* note 8 and accompanying text; Virginia Alvino Young, *For the Catholic Church, A Year of Unending Clergy Abuse Revelations*, NPR: MORNING EDITION (Dec. 26, 2018, 5:01 AM), https://www.npr.org/2018/12/26/679493754/for-the-catholic-church-a-year-of-unending-clergy-abuse-revelations [https://perma.cc/CZ8T-GUE7]; Sharon Otterman, *Brooklyn Diocese Is Part of $27.5 Million Settlement in 4 Sex Abuse Cases*, N.Y. TIMES (Sept. 18, 2018), https://www.nytimes.com/2018/09/18/nyregion/catholic-church-sex-abuse-settlement-brooklyn.html [https://perma.cc/DN5X-4Z2J].

103 *In re Diocese of Lubbock*, 624 S.W.3d at 510. The Diocese of Lubbock published the list on its website, along with an accompanying statement. *Id.*; *see also Names of All Clergy*, *supra* note 94.

"an apology to all of the abuse victims, especially minors," confirmation that the Diocese of Lubbock enlisted "a retired law enforcement professional and a private attorney to review all clergy files," and a definition for a "credible allegation" of sexual abuse of a minor.[104] Nevertheless, the statement accompanying the list did not include any definition of "minor."[105]

After the Diocese of Lubbock released the *Names of All Clergy*, it issued a press release.[106] Furthermore, Chancellor Marty Martin, the Principal Notary and Administrative Manager for the Diocese of Lubbock, spoke to a local news station.[107] In each of the aforementioned instances, as well as in instances preceding the list's publication, the Diocese of Lubbock referenced "child" or "children" in place of, or in the same breath as, "minor" or "minors."[108]

The Diocese of Lubbock included Deacon Guerrero on the *Names of All Clergy* because it received "credible allegations" of sexual abuse of a "minor" against him or, otherwise, "credible allegations" of sexual abuse of an adult and, allegedly, a severely bipolar woman in the early to mid-2000s.[109] Absent any definition for "minor" on the list, and following associations made between "child" and "minor," Deacon Guerrero demanded that the Diocese of Lubbock retract his name from the *Names of All Clergy*.[110] The Diocese of Lubbock then responded in a letter to

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104 *Names of All Clergy*, *supra* note 94 ("A 'credible allegation' is 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."); *see also In re Diocese of Lubbock*, 624 S.W.3d at 510.

105 *In re Diocese of Lubbock*, 624 S.W.3d at 510; *see also supra* notes 10–14 and accompanying text; *Names of All Clergy*, *supra* note 94.

106 *In re Diocese of Lubbock*, 624 S.W.3d at 510; *see also Lubbock Diocese Releases Names of Priests Accused of Sexual Abuse*, KAMC NEWS (Feb. 1, 2019, 6:02 PM), https://www.everythinglubbock.com/news/kamc-news/lubbock-diocese-releases-names-of-priests-accused-of-sexual-abuse [https://perma.cc/V84W-699F] ("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." (emphasis added)).

107 *In re Diocese of Lubbock*, 624 S.W.3d at 510. Chancellor Martin stated in the report that "the [C]hurch is safe for *children*." *Id.* (alteration in original) (emphasis added).

108 *See id.* at 510; *see also* Response to Brief on the Merits, *supra* note 96, at 4–5, 7–8, 57. Furthermore, in its response to the Diocese of Lubbock, counsel for Deacon Guerrero stated:

> Of equal importance, is the undisputed fact that [the Diocese of Lubbock], in its January 31, 2019 release of the List or in any interviews did not say—that the word "minor" had an alternative meaning under canon law that included a vulnerable adult. (CR:92-93). [The Diocese of Lubbock] never qualified its statements, nor explained to the general public, that its accusations were to be read or heard "within the meaning of Catholic canon law."

Id. at 8.

109 *In re Diocese of Lubbock*, 624 S.W.3d at 509–11.

110 *Id.* at 510; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 73.055 (West 2021).

Deacon Guerrero, stating that it published the list in accordance with the Charter for the Protection of Children and Young People (the Charter), which encourages additional transparency around allegations of sexual abuse and defines "minor" as an individual who "habitually lacks the use of reason."[111] While the Diocese of Lubbock refused to retract Deacon Guerrero from the *Names of All Clergy*, it published a revised list and clarification of the appropriate definition for "minor" on April 10, 2019.[112]

B. *Procedural History*

After the Diocese of Lubbock refused to retract his name from the *Names of All Clergy*, Deacon Guerrero filed suit against the Diocese of Lubbock for defamation and intentional infliction of emotional distress.[113] In response, the Diocese of Lubbock filed a motion to dismiss under the Texas Citizens Participation Act (TCPA), stating that Deacon Guerrero's suit pertained to its exercise of the right of free speech.[114] In addition, the Diocese of Lubbock filed a plea to the jurisdiction, claiming

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111 *In re Diocese of Lubbock*, 624 S.W.3d at 510–11; *see also* U.S. CONF. OF CATH. BISHOPS, *supra* note 5, at 17; 1983 CODE c.99.

112 *In re Diocese of Lubbock*, 624 S.W.3d at 515; *see also Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor or a Vulnerable Adult:* Revised April 10, 2019, DIOCESE OF LUBBOCK (Apr. 10, 2019) [hereinafter *Revised Names of All Clergy*], https://catholiclubbock.org/Revised%20List_041019.pdf [https://perma.cc/3KDK-U2D2]. In the *Revised Names of All Clergy*, the Diocese of Lubbock provided the following "clarification":

> Under canon law (Article 6 of the Substantive Norms of *Sacramentorum sanctitatis tutela*) a person who habitually lacks the use of reason is considered equivalent to a minor. Canon law, in addition to civil law, is binding on the Diocese of Lubbock and its clerics.
>
> The January 31 list included Jesus Guerrero, a deacon who was suspended from ministry in 2003 and permanently removed from ministry in 2008. The Diocese of Lubbock has no information of a credible allegation of sexual abuse of a minor below the age of eighteen (18) by Jesus Guerrero.
>
> The Diocese of Lubbock has concluded there is a credible allegation against Jesus Guerrero of sexual abuse of a person who habitually lacks the use of reason.
>
> The Diocese of Lubbock regrets any misunderstanding that may have arisen from the January 31 posting.

Id.

113 *In re Diocese of Lubbock*, 624 S.W.3d at 511; *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2021).

114 *In re Diocese of Lubbock*, 624 S.W.3d at 511 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 27.003 (West 2021)). Under § 27.001, the "'[e]xercise of the right of free speech' means a communication made in connection with a matter of public concern." *Id.* § 27.001(3). "If a legal action is based on or is in response to a party's exercise of the right of free speech, . . . that party may file a motion to dismiss the legal action." *Id.* § 27.003(a).

that the ecclesiastical abstention doctrine barred the 237th District Court from exercising jurisdiction over the suit.[115] The 237th District Court denied the motion to dismiss and the plea to the jurisdiction.[116]

Thereafter, the Diocese of Lubbock appealed the interlocutory order denying the motion to dismiss under the TCPA and filed an original petition for mandamus on the plea to the jurisdiction.[117] The Seventh Court of Appeals in Amarillo affirmed in part and reversed in part the motion to dismiss under the TCPA.[118] Furthermore, the court of appeals denied the petition for mandamus.[119] According to the court, because the Diocese of Lubbock released the *Names of All Clergy* to the public, and thus, the dispute extended beyond the confines and no longer concerned the internal affairs of the Diocese of Lubbock but society-at-large, the ecclesiastical abstention doctrine did not apply to the defamation suit.[120] Additionally, a defamation claim required knowing the perception of a person of ordinary intelligence.[121] Since the Diocese of Lubbock referenced "child" or "children" both before and after publication of the list, and "minor" and "child" have a secular meaning to a person of ordinary intelligence, the court of appeals never needed to evaluate the meaning of "minor" under the Code of Canon Law.[122]

In the Supreme Court of Texas, the Diocese of Lubbock then petitioned for review of (1) the court of appeals' retention of the defamation claim under the TCPA and (2) the court of appeals' denial of the petition for mandamus on the plea to the jurisdiction.[123] The Supreme Court of Texas reversed the court of appeals's decision and conditionally granted the Diocese of Lubbock's petition for mandamus on the plea to the jurisdiction.[124] Because the jurisdictional question was dispositive, the

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115 *In re Diocese of Lubbock*, 624 S.W.3d at 511.

116 *Id.*

117 *Id.*

118 *Id.*; *see also* Diocese of Lubbock v. Guerrero, 591 S.W.3d 244, 253–55 (Tex. App. 2019) (retaining the claim for defamation but dismissing the claim for intentional infliction of emotional distress), *vacated*, 624 S.W.3d 563 (Tex. 2021).

119 *In re Diocese of Lubbock*, 624 S.W.3d at 511.

120 *Id.*; *see also In re Diocese of Lubbock*, 592 S.W.3d 196, 202 (Tex. App. 2019) ("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.").

121 *In re Diocese of Lubbock*, 592 S.W.3d at 204–05 ("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.").

122 *Id.*; *see also In re Diocese of Lubbock*, 624 S.W.3d at 511–12.

123 *In re Diocese of Lubbock*, 624 S.W.3d at 511–12.

124 *Id.* at 512.

Supreme Court of Texas directed the 237th District Court to dismiss the claims under the TCPA.[125] Deacon Guerrero proceeded to file a petition for certiorari with the United States Supreme Court, which was ultimately denied on November 1, 2021.[126]

III. HOLDING AND THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW

A. *Holding*

The majority held that the ecclesiastical abstention doctrine barred the 237th District Court from hearing and ruling upon the suit because "the substance and nature of the deacon's claims against his church [would] necessarily require the trial court to evaluate whether the Diocese properly applied Canon Law and [were] inextricably intertwined with the Diocese's internal directive to investigate its clergy."[127] Because true statements cannot form the basis of a defamation claim, to resolve Deacon Guerrero's defamation claims against the Diocese of Lubbock, the civil court would need to determine whether the diocese received a "credible allegation" of sexual abuse of a "minor."[128] The Diocese of Lubbock explained in its letter to Deacon Guerrero and in its *Names of All Clergy with a Credible Allegation of Sexual Abuse of a Minor or a Vulnerable Adult:* Revised April 10, 2019 that it based the scope of its investigation on the canonical meaning of "minor," as provided in the Charter and the Code of Canon Law.[129] Consequently, the majority found that whether the Diocese of Lubbock correctly included Deacon Guerrero on the list would require a civil court to evaluate the "canonical meaning of 'minor'" and, therefore, would entail a secular investigation into the meaning of "minor," and into the adult woman, including whether she met the requisite qualifications for a "minor" and made "credible" allegations against Deacon Guerrero.[130] If required to do so, the civil court would interfere with the internal affairs of the Diocese of Lubbock and thus "reach behind the ecclesiastical curtain."[131]

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125 *Id.* at 512, 519; *see also* Diocese of Lubbock v. Guerrero, 624 S.W.3d 563, 564 (Tex. 2021).

126 Petition for a Writ of Certiorari, Guerrero v. Diocese of Lubbock, 142 S. Ct. 434 (2021) (No. 21-398), 2021 WL 4173594; *Guerrero*, 142 S. Ct. 434.

127 *In re Diocese of Lubbock*, 624 S.W.3d at 509.

128 *Id.* at 515.

129 *Id.* at 510–11, 515; *Revised Names of All Clergy*, *supra* note 112.

130 *In re Diocese of Lubbock*, 624 S.W.3d at 515.

131 *Id.* at 515–16 ("Indeed, any investigation would necessarily put to question the internal decision making of a church judicatory body. . . . But courts may not investigate and resolve the application of religious doctrine and practice. . . . Thus, to the extent Guerrero's suit directly

The majority focused not on the publication of the *Names of All Clergy*, but rather on the substance and nature of the claims and whether those claims implicated ecclesiastical matters.[132] The Diocese of Lubbock conducted investigations into clergymen, published the list in accordance with the Charter, and applied the Code of Canon Law or otherwise engaged in internal management decisions based on directives from the Roman Catholic Church.[133] Because the claims "inextricably intertwined" with the Diocese of Lubbock's directive to investigate its clergy for credible allegations of sexual abuse of minors, and because investigations that relate to the conduct of clergymen are inherently ecclesiastical and pertain to the internal affairs, governance, or administration of a Church, the ecclesiastical abstention doctrine barred the suit from proceeding in the civil courts.[134] In that same regard, the majority denied the application of neutral principles of law, or otherwise secular, objective, well-established legal concepts, to resolve the dispute.[135]

Since the claims "inextricably intertwined" with the investigation and the decision to include Deacon Guerrero on the *Names of All Clergy*, which would, in turn, "encroach[] on the [Diocese of Lubbock's] ability to manage its internal affairs," the majority determined that a civil court could not apply secular concepts to decide the dispute.[136] Although the Diocese of Lubbock published and made public statements about the list, activities "rooted in broader church governance decisions" were shielded under the ecclesiastical abstention doctrine.[137] If the Supreme Court of Texas curtailed the protections of the First Amendment because, for example, the Diocese of Lubbock chose to "shape its own faith and mission" and disclose to the public its plans to handle sexual abuse allegations, it would not only risk entanglement in a religious dispute, but would also permit the civil courts to secularize canonical terms and

challenges the Diocese's application of Canon Law in its internal governance process, the court lacks jurisdiction.").

132 *Id.* at 516.

133 *Id.* at 517.

134 *Id.* at 516–17.

135 *Id.* at 518.

136 *Id.* (alteration in original) (quoting Westbrook v. Penley, 231 S.W.3d 389, 395 (Tex. 2007)). Interestingly, the majority affirmed that, "even assuming the dissent is correct that a court could apply neutral principles to interpret a Canonical term, . . . doing so would invade a religious institution's 'autonomy with respect to internal management decisions that are essential to the institution's central mission.'" *Id.* (quoting Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060 (2020)).

137 *Id.* at 518–19.

thwart religious organizations in establishing rules and regulations to investigate its clergy.[138]

B. *Dissent*

Justice Boyd, the lone dissenter in *In re Diocese of Lubbock*, disagreed with the majority, contending that the defamation claims "involve[d] statements made to the general public and [the] court [could] resolve the claim[s] on strictly secular grounds."[139] Justice Boyd acknowledged that the United States Supreme Court and the Supreme Court of Texas never previously addressed whether or when the ecclesiastical abstention doctrine applied to defamation claims; however, other state supreme courts decided not to apply the ecclesiastical abstention doctrine when the religious organization made statements to the general public and thus made statements outside the confines of that organization.[140] Justice Boyd concluded that, once the Diocese of Lubbock broadcasted and published the statements to the general public through its website, a press release, and an interview with local media, the Supreme Court of Texas could no longer consider the conduct of the Diocese of Lubbock "strictly and purely ecclesiastical in its character" or "inherently ecclesiastical" as a matter of internal governance or discipline.[141]

Deacon Guerrero never complained about the decision of the Diocese of Lubbock to investigate its clergy or disclose the *Names of All Clergy*; nor did he complain about the directive the Diocese of Lubbock

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138 *Id.* at 519. Justice Blacklock concurred in the judgment and emphasized the sovereignty of religious organizations in our government system, and, specifically, the lines drawn in that system to protect religion in the United States. *Id.* at 520 (Blacklock, J., concurring) ("The intractable imperfection of human judgment is one of many reasons our Constitutions deny government authorities—including courts—any power over churches. Both the Texas Constitution and the United States Constitution compel judges to acknowledge that there are places where our imperfect judicial system does not belong, places where earthly judges have no power."). Rather than mention the application of neutral principles to the dispute, Justice Blacklock advocated for a highly deferential approach in the handling of ecclesiastical matters. *Id.* at 520–21 ("Like all of us, the Diocese of Lubbock will have to answer to God for the words it chooses. Because of our Constitutions, however, it does not have to answer to earthly judges. A robust rule of ecclesiastical abstention prevents the judgments of courts from influencing the words or actions of churches, whose mission is to seek conformity with God's perfect judgment, not with man's imperfect variety. . . . When a church makes public statements on ecclesiastical or spiritual matters, it is not for courts to apply the earthly standards of defamation law to the church's words. Our Constitutions prohibit courts from imposing imperfect human justice on words spoken in pursuit of God's perfect justice." (footnote omitted)).

139 *Id.* at 522 (Boyd, J., dissenting).

140 *Id.* at 526; *see infra* Section IV.A.

141 *In re Diocese of Lubbock*, 624 S.W.3d at 529 (Boyd, J., dissenting) (quoting Watson v. Jones, 80 U.S. 679, 733 (1871)); *see also id.* at 517 (majority opinion).

received to internally investigate its clergy.[142] Rather, Deacon Guerrero complained about the inclusion of his name on the list, asserting that, in doing so, and in repeatedly referencing the sexual abuse of "children," the Diocese of Lubbock defamed him and hurt his reputation.[143] According to Justice Boyd, permitting religious organizations to make false and defamatory statements about its clergymen or congregation members in the name of internal governance or discipline provides such organizations the "unfettered right" to make such unsubstantiated claims without consequence.[144]

Furthermore, Justice Boyd confirmed that other state supreme courts decided not to apply the ecclesiastical abstention doctrine because the courts could resolve defamation claims through the application of neutral principles of law, even if the claim arose in a religious context.[145] In *In re Diocese of Lubbock*, the Supreme Court of Texas should have permitted the application of these secular, objective, well-established legal concepts; when such concepts are applied, "a publication is defamatory (or libelous) if it 'tends 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.'"[146] Moreover, whether a statement is defamatory depends on "'how a person of ordinary intelligence . . . perceive[s]' the statement, in light of all the surrounding circumstances."[147]

Although the Roman Catholic Church has struggled to define and has continuously revised the definition of "minor," Justice Boyd contended that the civil court need not have struggled to define or interpret the definition of "minor" to resolve the defamation claims.[148] Because the Diocese of Lubbock referenced "child" or "children" in place of, or in the same breath as, "minor" or "minors" and included Deacon Guerrero on the *Names of All Clergy*, the public could have believed that Deacon Guerrero sexually abused a child.[149] The determination that Deacon Guerrero sexually abused a child involved no shred of an examination into ecclesiastical polity or doctrine or, more specifically, the definition of "minor" under the Code of Canon Law.[150] Justice Boyd

142 *Id.* at 529 (Boyd, J., dissenting); *see supra* note 111 and accompanying text.

143 *In re Diocese of Lubbock*, 624 S.W.3d at 529 (Boyd, J., dissenting).

144 *Id.* at 530 (quoting Hayden v. Schulte, 701 So. 2d 1354, 1357 (La. Ct. App. 1997)).

145 *Id.* at 526; *see infra* Section IV.A.

146 *In re Diocese of Lubbock*, 624 S.W.3d at 533 (Boyd, J., dissenting) (quoting Neely v. Wilson, 418 S.W.3d 52, 60 (Tex. 2013)); TEX. CIV. PRAC. & REM. CODE ANN. § 73.001 (West 2021).

147 *In re Diocese of Lubbock*, 624 S.W.3d at 533–34 (Boyd, J., dissenting) (quoting Turner v. KTRK Television, Inc., 38 S.W.3d 103, 114 (Tex. 2000)).

148 *Id.* at 533.

149 *Id.* at 533–34.

150 *See id.* at 534–35.

warned that religious organizations cannot immunize themselves from civil liability based on important societal concerns, such as claims of child sexual abuse, simply by incorporating such concerns into internal church documents or religious doctrine.[151] Ultimately, civil courts are "duty-bound" to resolve claims that are not prohibited under the First Amendment of the United States Constitution, such as Deacon Guerrero's defamation claims.[152]

IV. REASONING AND ANALYSIS

A. *Neutral Principles of Law and Line Drawing*

Although the application of the ecclesiastical abstention doctrine rightfully protects religious organizations from government encroachment in their internal affairs and governance, and defends the vital principle of separation of church and state, the sovereignty of religious organizations and the bounds of the ecclesiastical abstention doctrine are not limitless.[153] Civil courts' application of neutral principles of law should constrain the authority of religious organizations and prevent such organizations from receiving "blanket immunity from civil prosecution."[154]

The ease inherent in deferring to religious organizations and the challenges inherent in applying neutral principles to matters involving religious organizations are well understood, particularly in the absence of any clear guidance from the United States Supreme Court.[155] To defer in all instances to religious organizations and to permit those organizations to define the scope of their autonomy is easier because civil courts can "remain neutral among competing religious beliefs and practices."[156] In

151 *Id.* at 534.

152 *Id.* at 534–35; *see infra* Part IV.

153 Renaud & Weinberger, *supra* note 20, at 67, 98; Hicks, *supra* note 20, at 558.

154 Hicks, *supra* note 20, at 558. Mark A. Hicks suggests that neutral principles constitute any legitimate, legal cause of action, such as defamation and intentional infliction of emotional distress in tort law. *Id.* at 557. Thus, Hicks suggests that if the claim does not require a court to answer a question of religious doctrine, such as "whether Jesus is the Son of God," a civil court should hear the case. *Id.* at 557–58.

155 *Id.* at 556–58; *see supra* Part I.

156 Strasser, *supra* note 24, at 328; *see also* Victor E. Schwartz & Christopher E. Appel, *The Church Autonomy Doctrine: Where Tort Law Should Step Aside*, 80 U. CIN. L. REV. 431, 436–37 (2011) ("Litigation, actual or threatened, against a religious organization carries the possibility of distorting a faith community's 'process of self-definition,' thereby posing 'the danger of chilling religious activity.'" (quoting Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 343–44 (1987) (Brennan, J., concurring))).

turn, however, religious organizations can consistently invoke the ecclesiastical abstention doctrine and claim some connection to theology, doctrine, or their internal affairs and governance regardless of the underlying claim.[157] To apply neutral principles requires the civil courts to draw a line and determine where religious doctrine ends and secular judgments begin.[158] Therefore, the application of neutral principles of law proves difficult in certain circumstances, especially since such line-drawing problems exist and some civil courts are wary to make a determination outside of particular disputes, such as those pertaining to church property.[159] Yet, it is unfair to immunize religious organizations from civil liability for any potential question that touches on religion.[160] By refusing to draw any line, the civil courts not only permit religious organizations to escape liability for social harms, but also renounce their duty to protect long-recognized rights, such as actions for defamation, and to say "what the law is."[161] Instead, civil courts should feel empowered to apply neutral principles to any dispute that touches on ecclesiastical matters, as long as they make judgments that are secular in nature and avoid entanglement in religious doctrine or faith.[162]

In *In re Diocese of Lubbock*, the Supreme Court of Texas should have permitted the application of neutral principles to the defamation suit; by applying such principles to a "legitimate, legal cause of action," the Diocese of Lubbock would have been unable "to escape liability for a social harm merely because it claim[ed] that the harm it caused was a result of its exercise of religion" or involved its internal affairs.[163]

The civil courts could have easily evaluated the defamatory remarks, all of which revolved around the sexual abuse of a minor; as Justice Boyd detailed, numerous state courts have already managed to apply secular, objective, well-established legal concepts to tort claims and other claims

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157 *See* Hicks, *supra* note 20, at 541 n.81, 557–58; *see also* Lindvall, *supra* note 16.

158 *See* Hicks, *supra* note 20.

159 The courts are wary to make that determination for good reason. *Id.* at 556 ("However, the legal system should be used when the dispute involves, in the words of the Supreme Court, 'neutral principles of law.' . . . Unfortunately, the Supreme Court has not set forth a clear standard; therefore, a bright line rule needs to be developed to determine when courts can intervene." (footnotes omitted) (quoting Jones v. Wolf, 443 U.S. 595 (1979))).

160 *See id.* at 558; *see also* Lindvall, *supra* note 16 ("Religious freedom is undoubtedly a bedrock principle in our constitutional democracy. But a religious affiliation is not a license to sin.").

161 Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803); *see* Hicks, *supra* note 20; *see also* Lindvall, *supra* note 16; B. Jessie Hill, *Kingdom Without End? The Inevitable Expansion of Religious Sovereignty Claims*, 20 LEWIS & CLARK L. REV. 1177, 1178 (2017) ("Today, the notion that religious institutions possess inherent sovereignty is nonetheless largely embodied in the claims of religious institutions to avoid certain legal rules . . . based on the First Amendment."); Strasser, *supra* note 24, at 383.

162 *See* Hicks, *supra* note 20; *see also* Strasser, *supra* note 24.

163 Hicks, *supra* note 20, at 557; *see supra* note 21 and accompanying discussion.

beyond church property.[164] For example, in *Bowie v. Murphy*, David M. Bowie of the Board of Deacons of Greater Little Zion Baptist Church asserted that Pastor James T. Murphy, Jr., and congregation members Vivian Pace, David Pace, LaJuanna Russell, and Audrey Thornton falsely accused Bowie of assaulting Thornton.[165] Following the alleged assault, Pastor Murphy announced to congregation members at a meeting and sent them a letter stating that Bowie had assaulted Thornton.[166] In addition, David Pace and Vivian Pace sent emails to numerous third parties accusing Bowie of assault.[167] The Supreme Court of Virginia determined that the lower court could have applied neutral principles to the defamation claims, since such claims, as well as their veracity and impact on Bowie's reputation, could be decided without addressing issues of faith and doctrine.[168]

Similarly, in *Ira Banks v. St. Matthew Baptist Church*, Pastor Clinton Brantley of St. Matthew Baptist Church announced to congregation members that trustees Ira Banks, James Bell, and Vernon Holmes mortgaged church property without his knowledge; mortgaged church property to purchase nearby, uninsured apartment buildings; mismanaged funds; and consistently deceived him.[169] Pastor Brantley also urged the congregation members to remove the trustees from their positions.[170] The Supreme Court of South Carolina determined that the lower court correctly applied secular concepts to the defamation claims because the truth or falsity of the defamatory statements could be ascertained without considering religious issues or doctrines.[171] Furthermore, the Supreme Court of South Carolina confirmed that a tortfeasor could not be shielded from liability by committing torts "under the guise of church governance."[172] These two cases show that civil courts can successfully apply neutral principles to defamation claims; in each case, the civil courts could make judgments that were secular in nature and avoided entanglement in religious doctrine or faith.

Like the Supreme Court of Virginia in *Bowie* and the Supreme Court of South Carolina in *Ira Banks*, the Supreme Court of Texas should have

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164 *In re* Diocese of Lubbock, 624 S.W.3d 506, 531–32 (Tex. 2021) (Boyd, J., dissenting); *see also* Response to Brief on the Merits, *supra* note 96, at 4–5.

165 Bowie v. Murphy, 624 S.E.2d 74, 76–77 (Va. 2006).

166 *Id.* at 77.

167 *Id.*

168 *Id.* at 79 ("The circuit court can evaluate these statements for their veracity and the impact they had on Bowie's reputation the same as if the statements were made in any other, non-religious context.").

169 Banks v. St. Matthew Baptist Church, 750 S.E.2d 605, 606 (S.C. 2013).

170 *Id.*

171 *Id.* at 607.

172 *Id.* at 608.

approved the application of neutral principles to decide the defamation claims in *In re Diocese of Lubbock*. Deacon Guerrero accused the Diocese of Lubbock of defamation after it broadcasted Deacon Guerrero's alleged sexual abuse of a "minor" in multiple forms of media both within and outside of the Church and, at the same time, referenced on multiple occasions "child" or "children."[173] Based on the history of child sexual abuse in the Roman Catholic Church, such statements undoubtedly impacted and negatively affected Deacon Guerrero's reputation.[174]

That is because, like "assault" in *Bowie* or "mismanagement of funds" in *Ira Banks*, "sexual abuse of a minor" is not religious in nature.[175] Assuredly, the Diocese of Lubbock asserted that its use of the word "minor" in its *Names of All Clergy* implicated the definition of "minor" as provided in the Code of Canon Law and the Charter.[176] However, "sexual abuse of a minor" is not particular to religious doctrine, polity, or practice; rather, it is a secular concept to which secular audiences attach meaning.[177] The Diocese of Lubbock failed to even provide any definition for "minor" on the original list; the Diocese of Lubbock only asserted the term's connection to the Code of Canon Law post-publication.[178] In this instance, the invocation of the ecclesiastical abstention doctrine not only appears arbitrary but also unwarranted. The ecclesiastical abstention doctrine is designed to prevent the civil courts from deciding disputes "*strictly and purely ecclesiastical*" in their character, not to shield religious organizations from civil liability for concepts and terminology that are secular in nature but conveniently included in their governing documents.[179]

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173 *In re* Diocese of Lubbock, 624 S.W.3d 506, 510 (Tex. 2021); *see supra* note 108 and accompanying text.

174 *See supra* Introduction.

175 *See supra* notes 167–74 and accompanying text; *see also In re Diocese of Lubbock*, 624 S.W.3d at 534 (Boyd, J., dissenting).

176 *In re Diocese of Lubbock*, 624 S.W.3d at 510–11 (majority opinion).

177 *Id.* at 534 (Boyd, J., dissenting) ("No matter how pure their intent, religious organizations cannot immunize themselves from court inquiries regarding such important societal concerns merely by incorporating those concerns into their religious doctrine."); *see also* Hayden v. Schulte, 701 So. 2d 1354, 1356 (La. Ct. App. 1997) ("Society does not view child molestation as a matter of religious doctrine, as distinguished from, say, the procedures within the Church necessary to atone for such a sin. Child sexual abuse is anathema to society in general, even to atheists. It is prohibited by secular laws. The public has an interest in matters of child molestation. Therefore, where child molestation is at issue, it cannot be considered just an internal matter of Church discipline or administration.").

178 *In re Diocese of Lubbock*, 624 S.W.3d at 510; *see also Names of All Clergy*, *supra* note 94.

179 Hicks, *supra* note 20, at 541 n.81, 557–58 (emphasis added) (quoting Watson v. Jones, 80 U.S. 679, 733 (1871)) ("If a church wants to protect something as a matter of religion, then it must include that item in its governing documents. *However, the protection granted by this method cannot exclude legitimate, secular causes of action*. A church should not be granted blanket immunity from

Nevertheless, for the Diocese of Lubbock, an evaluation of the definition of "minor" would not only require the civil courts to resolve a religious question but would also interfere with the internal affairs and governance of the Church.[180] As Justice Boyd recounted, the Supreme Court of Minnesota expressed a similar concern in *Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington*.[181] In that case, the Pfeils asserted claims for defamation and negligence against St. Matthew Evangelical Lutheran Church and Pastor Thomas Braun and Pastor Joe Behnke.[182] Pastor Braun and Pastor Behnke signed and sent a letter to congregation members at a special voters' meeting that listed numerous allegations against the Pfeils, including attacking, questioning, and discrediting the integrity of Pastor Braun, Pastor Behnke, and other leaders of St. Matthew; slandering, gossiping, and speaking about Pastor Braun and his wife, Pastor Behnke, and the St. Matthew Board of Elders; engaging in a "public display of sin"; and refusing to follow the commands and teachings of God's word.[183] The Supreme Court of Minnesota decided that engaging in a "statement-by-statement analysis" of the remarks and determining which were religious or secular in nature would not only be difficult but would create an "excessive entanglement with religion."[184] Moreover, the Supreme Court of Minnesota worried that making such a determination would interfere with the internal affairs of the Church, specifically regarding membership and internal discipline.[185]

Like the Supreme Court of Minnesota, the Court of Appeals of North Carolina was also concerned about engaging in a statement-by-statement analysis of remarks "made between members of the same congregation" and entangling itself in internal disciplinary proceedings.[186] In *Lippard v. Holleman*, Kim Lippard and Barry Lippard, members of Diamond Hill Baptist Church, alleged claims of defamation

civil prosecution simply because it asserts that a claim touches upon a question of religion." (emphasis added) (footnote omitted)).

180 *In re Diocese of Lubbock*, 624 S.W.3d at 515; *cf.* Brief on the Merits, *supra* note 96, at 41–42 ("[S]econd-guessing internal church decision-making is barred, even if questions of religious doctrine are not at issue.").

181 Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, 877 N.W.2d 528, 540 (Minn. 2016); *In re Diocese of Lubbock*, 624 S.W.3d at 527 (Boyd, J., dissenting).

182 *Pfeil*, 877 N.W.2d at 530–31.

183 *Id.* at 531.

184 *Id.* at 538–39.

185 *Id.* at 540.

186 Lippard v. Holleman, 844 S.E.2d 591, 598, 601, 611 (N.C. Ct. App. 2020), *appeal dismissed*, *review denied* 847 S.E.2d 882 (N.C. 2020), *cert. denied* 141 S. Ct. 2853 (2021).

against Pastor Larry Holleman and Minister of Music Alan Hix.[187] The alleged defamatory statements were made in connection with an internal dispute between Kim Lippard, who also served as church pianist and vocalist, and Alan Hix "over the reassignment of a music solo."[188] According to the bylaws of Diamond Hill Baptist Church, whenever an internal dispute arises between church members, "the pastor and the deacons will take every reasonable measure to resolve the problem in accord with Matthew 18."[189] Thereafter, Pastor Holleman began to regularly meet with Kim Lippard and Alan Hix to encourage a "reconciliation" between the two and improve their relationship "based on biblical passages."[190] Nevertheless, the deacons of Diamond Hill Baptist Church ultimately recommended that Kim Lippard be dismissed as church pianist, and Pastor Holleman and Alan Hix continually advocated for her dismissal to the congregation.[191] In various letters, emails, and other statements, as well as ballots asking the congregation to "render a decision" as it pertained to Kim Lippard's dismissal, Pastor Holleman and Alan Hix made numerous remarks, suggesting that (1) Kim Lippard failed to "acknowledge any personal responsibility for [her] failures," and the recommendations made to dismiss her resulted from a failure to maintain "obedience to the scriptures as they regard reconciliation"; (2) Kim Lippard "had yet to acknowledge any wrongdoing" in the dispute, which stemmed from following Ephesians 4:3; (3) Kim Lippard's "unwillingness to admit to any wrongdoing" and "commit unconditionally to the process of reconciliation" could be classified "as wrong according to the Scriptures"; and (4) Barry Lippard and Kim Lippard were "out of fellowship with God and [Diamond Hill Baptist Church]."[192] The Court of Appeals of North Carolina held that

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187 *Lippard*, 844 S.E. at 594.

188 *Id.* at 594–95.

189 *Id.* at 595.

190 *Id.*

191 *Id.* at 595–96. Pastor Holleman and Alan Hix recommended that Kim Lippard be dismissed on numerous occasions, whether speaking to congregation members one-on-one, during church services, or through written communications. *Id.* Pastor Holleman also delivered a sermon on Kim Lippard's dismissal at a "church-wide" meeting. *Id.* at 595.

192 *Id.* at 601–03, 607. There are numerous other statements mentioned in the majority opinion, some of which sound more secular than religious in nature. *See id.* at 603–11; *see also id.* at 621, 624–25 (McGee, C.J., concurring in part, dissenting in part, and concurring in the judgment) ("In the case of defamation claims, I would hold that courts must evaluate the specific elements of the claim, including the falsity of the alleged statement, and determine whether 'resolution of [the truth or falsity of the alleged statement] requires the court to interpret or weigh church doctrine. If not, the First Amendment is not implicated and neutral principles of law are properly applied to adjudicate the claim.' . . . For the four allegedly defamatory statements discussed above—Mr. Hix's oral allegation that Mr. Lippard is a liar and written allegation that Plaintiffs denied 'verifiable facts,' along with Mr. Holleman's statements that 'strategies' were playing out against church leadership

determining the truth or falsity of these and other statements would require it to delve into "an internal dispute regarding ecclesiastical matters."[193]

Unlike in *Pfeil* or *Lippard*, no "excessive entanglement with religion" or interference with internal disciplinary proceedings or church governance existed in *In re Diocese of Lubbock*.[194] First, in *In re Diocese of Lubbock*, no "statement-by-statement analysis" was required to determine the secular versus religious nature of the defamatory statements, all of which revolved around "sexual abuse of a minor."[195] Second, the defamatory statements made about Deacon Guerrero occurred outside of any internal disciplinary proceedings or church governance.[196] The Diocese of Lubbock permanently withdrew Deacon Guerrero's ability to perform sacramental functions approximately eleven years prior to the publication of the *Names of All Clergy*.[197] Additionally, unlike in *Pfeil* and *Lippard*, the Diocese of Lubbock broadcasted and published the statements to third parties outside of the congregation.[198] In *Pfeil*, the Supreme Court of Minnesota even agreed that it would be troubled by the statements Pastor Braun and Pastor Behnke made if disseminated to individuals outside the Church.[199]

Albeit sometimes difficult to draw the line, civil courts should nonetheless apply neutral principles to any dispute not "*strictly and*

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and that Mr. Lippard allegedly committed a crime—I disagree and would hold that there is no need for the court to interpret or weigh church doctrine in its adjudication of the truth or falsity of these claims." (internal citation omitted)).

193 *Id.* at 598, 601, 611. The majority distinguishes based on whether statements are "purely secular" as opposed to "strictly and purely ecclesiastical," the former of which, when applied, gives greater deference to religious organizations. *See id.* at 617–18 (McGee, C.J., concurring in part, dissenting in part, and concurring in the judgment); Watson v. Jones, 80 U.S. 679, 733 (1871).

194 Pfeil v. St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, 877 N.W.2d 528, 539 (Minn. 2016); *Lippard*, 844 S.E.2d at 594, 598. *See generally In re* Diocese of Lubbock, 624 S.W.3d 506 (Tex. 2021).

195 *In re Diocese of Lubbock*, 624 S.W.3d at 531 (Boyd, J., dissenting); Response to Brief on the Merits, *supra* note 96, at 4–8; *Pfeil*, 877 N.W.2d at 538.

196 *See In re Diocese of Lubbock*, 624 S.W.3d at 509.

197 *Id.* at 509–10.

198 *Id.* at 510.

199 *Pfeil*, 877 N.W.2d. at 540 ("We would of course be troubled by any case in which statements were made with the intent of abusing the ecclesiastical abstention doctrine and avoiding liability, particularly if the statements were disseminated to individuals outside of the religious organization."). *See Lippard*, 844 S.E.2d at 611 ("Churchgoers could make defamatory statements against one another outside their religious lives and instead in their personal, business, academic, or other aspects of their temporal existence. But the statements at issue here were made *between members of the same congregation—including its pastor—about an internal dispute* regarding ecclesiastical matters." (emphasis added)).

purely ecclesiastical" in character.[200] Otherwise, the civil courts risk further expanding the bounds of the ecclesiastical abstention doctrine and elevating the status of religious organizations in society and, at the same time, threatening long-recognized civil rights.[201]

B. *Consequences of the Ruling*

The ruling of the Supreme Court of Texas in *In re Diocese of Lubbock* could produce negative consequences for public policy.[202] According to CHILD USA, a national nonprofit think tank devoted to ending child abuse and neglect, the ruling of the Supreme Court of Texas in *In re Diocese of Lubbock* could enable abusers to conceal their misconduct and threaten, defame, or discredit victims and their family members.[203] The

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200 *See* Hicks, *supra* note 20, at 541 n.81 (emphasis added) (quoting Watson v. Jones, 80 U.S. 679, 733 (1871)); *id.* at 557–58; *see also* Strasser, *supra* note 24, at 327–32.

201 *See supra* note 21; *see also* Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring) ("The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being—a concept at the root of any decent system of ordered liberty.").

202 In his dissent, Justice Boyd warned of the consequences of such a ruling in less sympathetic circumstances. *See In re Diocese of Lubbock*, 624 S.W.3d at 522 (Boyd, J., dissenting). Since religious organizations will continue to appeal to their "internal directives" or "internal governance," even if what is at issue is secular in nature, consequences could extend beyond the child sexual abuse context. *See, e.g.*, *The Expansion of the Ecclesiastical Abstention Doctrine—Why You Should Care*, HARV. C.R.-C.L.L. REV.: AMICUS BLOG (Nov. 20, 2018) [hereinafter AMICUS BLOG], https://harvardcrcl.org/the-expansion-of-the-ecclesiastical-abstention-doctrine-why-you-should-care [https://perma.cc/WJ59-LDPD] ("The . . . case involved a [B]lack student who alleged that he was the victim of continuous and often race-motivated bullying and that the school did nothing to protect him. That bullying allegedly included origami shaped like KKK hoods placed in the student's locker and apparently resulted in severe emotional damage that lead [sic] him to have subsequent personal and educational problems. The plaintiffs claim that even after one of the alleged bullies admitted to the acts the only action taken by the school was to give a one-day suspension and a requirement of a written apology. Eventually, the victim's parents removed him from the school and brought suit against the school and its officials for negligence and intentional infliction of emotional distress. A district court judge dismissed the case [and stated] that the schools [sic] disciplinary decisions were sufficiently intertwined with religious doctrine such that the court could not decide the matter."); Petitioners' Corrected Emergency Motion for Stay at 11–12, *In re* MCP No. 165, 21 F.4th 357 (6th Cir. 2021) (No. 21-4033) ("The religious autonomy doctrine broadly guarantees religious institutions' 'independence from secular control or manipulation,' and 'autonomy with respect to internal management decisions that are essential to the institution's central mission.' . . . . Here, broadly construing the OSH Act––and thus enabling OSHA to impose the ETS's requirements on religious institutions––would violate the First Amendment." (first quoting Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am., 344 U.S. 94, 116 (1952); and then quoting Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S. Ct. 2049, 2060 (2020))).

203 Brief of *Amicus Curiae* CHILD USA in Support of Real Party in Interest at 1–2, *In re Diocese of Lubbock*, 624 S.W.3d 506 (No. 20-0127), 2020 WL 4722908; *see also About Us*, CHILD USA, https://childusa.org/about-us [https://perma.cc/BL7Y-U65M].

abuser could effectively ruin the victim's reputation, as well as the reputation of the victim's family, both inside and outside of the congregation without consequence.[204]

Furthermore, victims' claims that religious organizations failed to investigate, discipline abusers, or implement their purported policies will continue to fall on deaf ears.[205] For example, in *Doe v. Roman Catholic Diocese*, Doe claimed that the Diocese of Dallas committed fraud when it failed to comply with the Diocese's Sexual Misconduct Policy.[206] Amongst other misrepresentations, Doe alleged that:

> Bishop Farrell did not report John Doe's sexual abuse to the diocesan Review Board; . . . Bishop Farrell and the Dallas Diocese made no effort to determine whether John Doe's sexual abuse constituted sexual abuse of a minor or vulnerable adult; and . . . [t]he Dallas Diocese did not report Father [Timothy] Heines'[s] sexual abuse of John Doe to the Congregation of the Doctrine of Faith.[207]

According to the Fifth Court of Appeals in Dallas, determining whether the Dallas Diocese acted fraudulently would "necessitate a secular investigation" into (1) the meaning of canonical terms, such as "minor" and "vulnerable adult" and (2) a religious organization's choices in investigating, disciplining, and regulating its formal leaders, thereby

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204 Brief of *Amicus Curiae* CHILD USA in Support of Real Party in Interest, *supra* note 203, at 13–14.

205 *See, e.g.*, AMICUS BLOG, *supra* note 202; Doe v. Roman Cath. Diocese, No. 05-19-00997-CV, 2021 WL 3556830, at *1 (Tex. App. Aug. 11, 2021).

206 *Roman Cath. Diocese*, 2021 WL 3556830, at *1. The Sexual Misconduct Policy's purpose "is, first and foremost, to protect people from all forms of sexual misconduct involving Diocesan Personnel." Reply Brief of Appellant and Brief of Cross-Appellee at 3, *Roman Cath. Diocese*, 2021 WL 3556830 (No. 05-19-00997-CV), 2020 Tx. App. Ct. Briefs LEXIS 5643*; Petition for Review at 2, *Roman Cath. Diocese*, 2021 WL 3556830 (No. 21-1050), 2021 WL 5868260. In addition, "[t]he Sexual Misconduct Policy relies on secular laws describing criminal sexual acts to define sexual misconduct. This policy is publicly available." Reply Brief of Appellant and Brief of Cross-Appellee, *supra* note 206, at 2–3 (citation omitted); Petition for Review, *supra* note 206, at 2.

207 *Roman Cath. Diocese*, 2021 WL 3556830, at *3 (third alteration in original). Prior to the lawsuit, Doe reported the sexual abuse "he suffered at the hands of Father Timothy Heines" to a Dallas Diocese priest. *Id.* at *2. In his subsequent December 6, 2021, petition for review to the Supreme Court of Texas, Doe noted that:

> The Dallas Diocese promised that at the close of its investigation the Bishop together with the Review Board would determine whether a minor or vulnerable adult was sexually abused. The Dallas Diocese did not involve the Review Board in its determination of whether a minor or vulnerable adult was abused. Rather, the Review Board was informed several months later but was not involved in any evaluation of the sexual abuse complaint. The Dallas Diocese promised to be honest and transparent with the community. Instead, the Dallas Diocese omitted information regarding abuse that John Doe suffered as a minor. The Dallas Diocese promised to prepare a written report. The Dallas Diocese did not prepare a written report.

Petition for Review, *supra* note 206, at 19.

calling into question "the internal decision making of a church judicatory body."[208] Even though the Dallas Diocese promised to perform certain acts in relation to the Sexual Misconduct Policy and represented to the "public sphere" its promise to perform such acts, the court, citing to *In re Diocese of Lubbock*, maintained that it could not apply neutral principles of law since judicial review would "impermissibly interfere with a religious organization's ability to regulate the character and conduct of its leaders."[209] Unsurprisingly, the ruling in *In re Diocese of Lubbock* has only further solidified protections for religious organizations.

As Justice Boyd emphasized in his dissent in *In re Diocese of Lubbock*, matters of "important societal concern" that affect the whole of society, such as child sexual abuse, are not particular to any religion.[210] By failing to apply neutral principles and consider a legitimate and secular cause of action, the Supreme Court of Texas further shielded religious organizations from civil liability in the state and afforded those organizations increased protection from consequences that ultimately affect individuals beyond their confines.[211]

CONCLUSION

Absent the application of neutral principles to ecclesiastical matters, and particularly those matters that do not require any interpretation of religious doctrine or faith, the civil courts stand to continually expand the bounds of the ecclesiastical abstention doctrine, further protect religious organizations from civil liability, and elevate their status in society.[212] The ruling of the Supreme Court of Texas in *In re Diocese of Lubbock* provides but one poignant example. The principles of the separation of church and state and religious freedom are important and deserve protection; however, the ecclesiastical abstention doctrine was not designed to protect just any matter that touches on religion but matters "*strictly and*

208 *Roman Cath. Diocese*, 2021 WL 3556830, at *8 (quoting *In re Diocese of Lubbock*, 624 S.W.3d at 515).

209 *Id.* at *10–11 (quoting *In re Diocese of Lubbock*, 624 S.W.3d at 516); Petition for Review, *supra* note 206, at 8, 17–19 ("Where religious organizations promise to take a specific action—even a religious action such as laying hands on an item—and fail to do so, courts have jurisdiction and may decide the case by relying on neutral principles of law without evaluating church doctrine." (citing Tilton v. Marshall, 925 S.W.2d 672 (Tex. 1996))); *see supra* Section I.A.3.

210 *In re Diocese of Lubbock*, 624 S.W.3d at 534 (Boyd, J., dissenting).

211 Hicks, *supra* note 20, at 558.

212 Lindvall, *supra* note 16, at 46 ("By granting religious institutions immunity from several torts when such immunity is not available to non-religious organizations, the government has improperly placed its stamp-of-approval on the actions of religious organizations.").

purely ecclesiastical" in their character.[213] It remains the duty of the civil courts to recognize "[t]he right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt"; it remains the duty of the civil courts to say "what the law is."[214] Although the faithful may yearn for the day when "God's unlimited, perfect judgment" reigns throughout the land, "[t]hat day is yet to come," especially in the courts of the United States.[215]

213 Watson v. Jones, 80 U.S. 679, 733 (1871) (emphasis added).

214 Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (Stewart, J., concurring); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

215 *In re Diocese of Lubbock*, 624 S.W.3d at 520 (Blacklock, J., concurring).