No. 06-1520

In the Supreme Court of the United States

THE LOCAL CHURCH, LIVING STREAM MINISTRY, ET AL.,

Petitioners,

v.

HARVEST HOUSE PUBLISHERS, JOHN ANKERBERG AND JOHN WELDON,

Respondents.

On Petition for a Writ of Certiorari to the Texas Court of Appeals

BRIEF OF VARIOUS RELIGION SCHOLARS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*

Under Rule 37 of the United State Supreme Court Rules of Appellate Procedure, Amici file this *amicus curiae* letter brief in support of Petitioners The Local Church, et al.'s Petition for Review.[1] Amici are various scholars in the fields of religion, sociology and psychology who study the doctrinal and social differences among religious groups:

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H. Newton Maloney, Ph.D., Author, Senior Professor of Psychology, Department of Clinical Psychology, at Fuller Theological Seminary, Pasadena, California.

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Father John A. Saliba, Ph.D., S.J., Author, Professor of Religious Studies at University of Detroit, Mercy, Detroit, Michigan.

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Mark G. Toulouse, Ph.D., Author, Professor of American Religious History at Brite Divinity School, Texas Christian University, Fort Worth, Texas.

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[1] Written consent was granted by the Respondents to file this amicus brief. No counsel for any party to these proceedings authored this brief, in whole or in part and no entity or person besides the amici curiae and their counsel, contributed monetarily to the writing or filing of this brief.

Stuart A. Wright, Ph.D., Author, Professor of Sociology and Assistant Director for Research and Sponsored Programs Administration, Lamar University, Beaumont, Texas.

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James M. Dunn, Ph.D., Author, Visiting Professor of Christianity and Public Policy at Wake Forest Divinity School, Former Executive Director of Baptist Joint Committee on Public Affairs.

Amici are especially well acquainted with the religious and secular meanings of the word "cult," as well as with the negative effects that the "cult" label has on the social acceptance of minority religious groups such as Petitioners, especially when combined with general accusations of criminal activity. Amici are concerned that the ruling of the Texas Court of Appeals, which rendered the word "cult" capable exclusively of a religious meaning – apart from any reference to the context of the accusation – will have a devastating effect on the diversity of religious expression practiced in the United States because it affords the dominant groups (religious or otherwise) in society, and others, a government-approved means by which they may freely defame newer or smaller groups. This, amici contend, is an indirect establishment of the dominant religions by the courts, which is impermissible under the First Amendment. Amici are also concerned that, by stretching the "ecclesiastical abstention" doctrine beyond intra-church disputes to apply to situations where a harmed denomination is not part of, and does not consent to be governed by, the ecclesiastical structure of the tortfeasor denomination, the Texas Court violated both Religion Clauses of the First Amendment and destroyed the consent requirement for the doctrine, thus enabling religious groups to freely harm non-consenting non-member individuals without fear of government interference or tort liability.

In the long run, the effects of this ruling will greatly damage religion in the public eye.

Amici urge this Court to grant review.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Establishment Clause and Free Exercise Clause of the First Amendment serve to protect minority religions and the public from the imposition of a state-sponsored or favored religion. Sometimes, however, in their determination to avoid all things religious, state and federal courts may neglect their duty to adjudicate properly justiciable claims between disputants of differing religious affiliations, as with the present case. The sting of this miscarriage of justice is occasionally felt not only by the wronged party, but – by setting a damaging precedent – by all of society.

Here, the lower court issued a ruling that favored the larger, currently prevailing religious denominations and harmed all newer and smaller religious denominations by two distinct violations of the Establishment Clause. First, by holding that a word known to have both secular and religious implications – "cult" – is religious per se and incapable of secular defamatory meaning, regardless of context attributing the most abhorrent criminal and social conduct to "cults," the judicial apparatus of the state created a very effective weapon whereby majority religious groups that are already approved by society may defame newer and smaller groups out of existence, thus establishing the current hegemony of major religious denominations as those favored by the state.

Second, in order to reach its holding, the lower court made improper use of the "ecclesiastical abstention" doctrine and treated Petitioners as if they were consenting members under the ecclesiastical authority of Respondents' denomination or ministry, which they were not. This improper application of the ecclesiastical abstention doctrine effectively established Respondents' religion as Petitioners' and deprived Petitioners of their free exercise rights. If the ecclesiastical abstention doctrine is stretched to apply to disputes between members of different denominations, then "implied consent" is no longer an underlying rationale and religious organiza-

tions will be free to act in ways that harm individuals without their consent.

ARGUMENT

I. In ruling that the word "cult" is incapable of defamatory meaning, regardless of context which attributed criminal behavior to "cults," the Texas Court of Appeals violated the Establishment Clause of the First Amendment to the Constitution and damaged the diversity of religious expression that is a bulwark of our society.

Amici are concerned that the overbroad ruling of the Texas Court of Appeals (the "Texas Court"), which assigned the word "cult" a purely religious meaning apart from any analysis of the context of the accusation, will have severe negative consequences upon the health and diversity of religious life in the United States and abroad. Amici's professional studies and years of experience in the field form the basis of their concern. At issue is whether men may squelch and render nugatory particular religious expression with which they disagree by means of hurling a "brick" of otherwise defamatory accusations through the proverbial stained glass window of their opponent and escape liability merely by attaching a note ascribing the conduct to a "cult." This is what amici believe occurred in the instant case.

In order to arrive at its ruling that the accusations contained in Respondents' book, the *Encyclopedia of Cults and New Religions* (*"ECNR"*), are not defamatory with respect to Petitioners, the Texas Court wrongly employed a method of analysis that separated the word "cult" from its context. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 24 (1990) (among the circumstances to be scrutinized by a court in a defamation action are "the type of language used, the meaning of the statement *in context*, whether the statement is verifiable, and the broader social circumstances in which the statement was made") (emphasis added) (Brennan, J., *dissenting* as to the result, but summarizing and agreeing with

the First Amendment principles employed by the majority). The Texas Court first held that the word "cult" was purely religious per se and could not impute any secular meaning.[2] Then, it went on to decide that the abhorrent anti-social and criminal accusations that were generally ascribed to cults in the book – and which provided the context for the book's discussion of cults – were not themselves applicable to Petitioners because they were not specifically alleged to be "of and concerning" them.

Amici are concerned that the ruling of the Texas Court provides a way for intolerant religious zealots to stifle the free and diverse religious practice that has been at the core of our nation's identity since its founding. This Court stated in *United States v. Ballard*, 322 U.S. 78, 87 (1944) that:

> The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views.

However, since no reasonable person would want to be identified within his community as a "cult" member, as if he were a follower of Jim Jones or some other well-known "cult" figure, and since the lower court ruling allows for those in well-known religious groups to so label those in smaller religious groups, amici believe that the lower court ruling provides a vehicle for the intolerant among us to engage in a "back door" attack upon religious sects with whom

[2] Amazingly, despite the court's stated position that it could not decide religious matters, it felt free to decide the definition of the word "cult" – adopting Respondents' definition as the basis for its ruling – without making a single reference to any objective religious authority supporting or dictating its definition of the term. Harvest House Publishers v. The Local Church, 190 S.W.3d 204, 211-212 (Tex. App. 2006).

they disagree. While they might not enlist the government to shut down their religious opponents, they might yet rather silence them by hurling false criminal accusations at a religious group such that it and all its members are rendered pariahs – all while the government turns a blind eye at what would otherwise be actionable as defamation.

II. Contrary to the ruling of the Texas Court, the word "cult" carries a secular, potentially defamatory meaning, and this secular meaning was highlighted by the context of the accusation in ECNR.

As scholars in the field of religion, amici aver that – as a matter of fact – the word "cult" has a secular meaning as well as a purely religious meaning. In purely religious terms, a cult may be defined to be a false, unorthodox, or extremist religious sect. *See Webster's Third New International Dictionary*, 552 def'n 4 (Philip Babcock Gove ed., Merriam Webster 1981). By this definition, some Southern Baptists, for example, might refer to the Amish as a cult – citing their extremist position in abstaining from technological advances in society as being beyond, and perhaps contrary, to the requirements of the Bible in which both groups believe. Because courts are not allowed to determine what is true, orthodox, or normative in religion, this usage of the word "cult" is and ought to be non-actionable. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710 (1976).

However, due to the atrocities committed by such groups as Jim Jones and the People's Temple at Jonestown, and Marshall Applewhite and the Heaven's Gate group in San Diego, the word "cult" has picked up a secular meaning associated with dangerous, deviant and criminal behavior, including abduction, brainwashing, fraud, physical assault, sexual abuse, suicide and murder. In fact, among the general population, the word is more strongly associated with its

secular meaning.[3] Consider, for example, Wikipedia's explanation of the term:

> In common usage 'cult' has a negative connotation….This popular use of the term has gained such credence and momentum that it has virtually swallowed up the more neutral historical meaning of the term….

http://en.wikipedia.org/wiki/Cult (citing James T. Richardson, *Definitions of Cult: From Sociological-Technical to Popular-Negative*, 34 REVIEW OF RELIGIOUS RESEARCH 348 (1993)).

Moreover, the *Random House Unabridged Dictionary* (2005), in addition to listing numerous religious meanings of the word "cult," lists several secular meanings, including: "An instance of veneration of a person, ideal, or thing, esp. as manifested by a body of admirers"; "a group or sect bound together by veneration of the same thing, person, ideal, etc."; a "group having a sacred ideology and a set of rites centering around their sacred symbols"; and "any system for treating human sickness that originated by a person usually claiming to have sole insight into the nature of disease, and that employs methods regarded as unorthodox or unscientific." To illustrate the significance of the secular meaning of the word "cult," consider that the Order of Skull and Bones, the secret society based at Yale University whose membership includes current President George W. Bush, former Democratic Presidential nominee John Kerry and former President and U.S. Supreme Court Chief Justice William Howard Taft, is sometimes called a "cult." Given the ruling by the Texas Court of

[3] Because mere use of the word "cult" to describe a group elicits negative, stereotypical images before any factual information about the group has been obtained, the use of the term as a descriptor in academic literature is often seen as an ethical breach for modern social scientists and many scholars have advocated dropping its use altogether. See James R. Lewis, The Encyclopedia of Cults, Sects & New Religions, 22 (Prometheus Books 1998).

Appeals, any member of that society accused of belonging to a "cult" could bring an action for defamation since the society is clearly secular. Yet Petitioners, also accused of being a "cult," are stripped of any right to protect their dignity and status solely because the groups with which they are affiliated are "religious." This is manifestly unfair and nonsensical.

The escalating negative secular meaning of the word "cult" is due primarily to the work of two groups: the "anti-cult movement" and the media. The so-called "anti-cult movement" is comprised of mostly secular organizations and individuals united by their opposition to groups they consider to be "cults." *See* Mircea Eliade, *Encyclopedia of Religion*, 2d ed., Vol. 10, 395 (MacMillan Publishing Co. 1987. These "anti-cultists" have been successful, along with a media hungry for sensationalist topics, in convincing the general public of the danger of "cults" by using events like Jonestown and Waco to create stereotypes and fuel public fear that the crimes and depravity of a few groups are characteristic of all groups labeled "cults," thus creating an "anti-cult mythology." *ECNR* employs the same fear-mongering tactics.

Amici contend that when a group is labeled a "cult" in a context that gives the word a secular meaning, that label does in fact lower the labeled group and its members in the eyes of secular society and creates an attitude of repugnance toward the group. Hence, if there is something in such a secular cult-related allegation that is not true, the use of that label should afford a basis for a cause of action for defamation.

Given that use of the term "cult" in scholarly and lay publications, such as *ECNR*, can impart either a religious meaning or a secular one – or both – depending on the context in which the term is applied, the Texas Court committed a grave error by surgically removing the word "cult" from the context of *ECNR*, for, apart from its context, it is impossible to determine whether it is being used in a purely religious

sense or in a way that calls to mind the secular meaning of the word.

An examination of context, however, reveals that *ECNR did* invoke the secular meaning of the word "cult." Although *ECNR* engaged in discussion related to the religious[4] meaning of the word, it did not use the word only in the doctrinal sense; it also implied secular wrongdoing on the part of every group in the book. It stated that every group mentioned therein deserved the title "cult"; it repeatedly called the reader's attention to the example of Jim Jones; it specifically identified several criminal and abhorrent acts such as fraud, drug-smuggling, prostitution, rape, physical beating, molestation of children, and murder as being practices generally ascribed to "cults"; and then it implied that Petitioners were particularly worthy of the "cult" designation, including the secular wrongs described, because they were among only 57 so-called cults selected for inclusion in the book from the "5000 cults [that] exist worldwide" according to the authors.[5] Lest any question remained whether a reasonable reader could understand that the word "cult" was being used in a secular sense, the book specifically stated that the term "cult," as used by Respondents, has "value for *secularists* unconcerned with theological matters yet very concerned about the consequences of cults.[6] (Emphasis added). By ignoring the potential and, in fact, *intended* secular meaning of the word, the Texas Court has, by its decision, armed future religious disputants with a weapon whereby they may freely defame the character of other religious groups and individuals with the most heinous accusations as long as they associate those abominable traits with being part of a "cult."

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[4] *I.e.* – the groups mentioned in the book were accused by the authors of being wrong in their religious doctrines.

[5] ECNR, pp. XII, XVI.

[6] Id. p. XXI.

Amici are well-acquainted with the negative social consequences that accompany non-specific accusations of being a "cult." Using "cult" as a code word to impute crimes and immorality to groups labeled as cults, as was done here in *ECNR* has been a topic of concern for Christian apologists and secular scholars who write about religious movements and the social consequences that result from using the term in that fashion. Minority religions will lose their chance at a fair hearing as soon as the *ECNR* label "cult" is successfully applied to them. Using the word "cult" to describe any religious group dehumanizes the group's members and their children. It strongly implies that the group members are social deviants, crazy, brainwashed and duped by their leader(s). It is virtually impossible for such small religious organizations, regardless of the true nature of their religious beliefs and practices, to rid themselves of the stigma of such an opprobrious label. Furthermore, because "cults" are commonly seen as dangerous, society-at-large and even family and friends of a person branded with the "cult" label frequently withdraw their affections from him.

III. The term "cult" is legally capable of defamation, and this case should therefore have been presented to a jury.

As this Court's recent rulings on displays of the Ten Commandments illustrates, context is key to Establishment Clause jurisprudence. *See McCreary County, Kentucky v. American Civil Liberties Union of Kentucky*, 545 U.S. 844 (2005) ; *Van Orden v. Perry*, 545 U.S. 677 (2005). Yet the Texas Court ruled that the word "cult" always receive Establishment Clause protection, apart from any consideration of context, such that courts of law could not entertain the possibility that accusations of being a "cult" might be defamatory.[7] Amici believe this Court has it right and the Texas

[7] The cases cited by the court below regarding "cult" being a purely religious term actually make precisely the point amici contend in this brief, namely, that context counts when considering

Court has it wrong. Just as the context indicating how, where, and for what purpose the Ten Commandments were displayed on government property provided the trigger for whether or not Establishment Clause protections were warranted in *McCreary* (yes) and *Van Orden* (no), so also here, an examination of context is required to determine if the accusation of being a "cult" is such that the Establishment Clause precludes courts from entertaining a defamation lawsuit, or whether the word has sufficient secular meaning to permit courts to decide defamation suits.

Federal and state courts have recognized that the word "cult" may be defamatory, depending on the context in which it is applied. For example, in *Kennedy v. Children's Service Society of Wisconsin*, 17 F. 3d 980 (7th Cir. 1994), adoptive parents brought suit against an adoption agency after it declined their request to adopt a child because the agency believed that the adoptive parents were members of a cult that engaged in mind control and forced exclusion from society. In affirming the district court that being identified as a member of a cult could be defamatory, the court of appeals held: "In the end...it is clear that *Gaunt's statements that the Kennedys were unsuitable parents because they belonged to a cult could give rise to a claim of defamation*." *Id*. at 984 (emphasis added).[8] *See also Kliebenstein v. Iowa Conference*

"cult" claims. For example, in *Sands v. Living Word Fellowship*, 34 P. 3d. 955, 959-60 (Alaska 2001), "cult" is used in a purely religious sense because the context involves only "doctrinal differences" between churches and, unlike ECNR, there were no accusations of harmful, criminal practices. Similarly, *Trans v. Fiorenza*, 934 S.W.2d 740, 742 (Tex. App. 1996), is distinguishable because the alleged defamatory statement that a priest was "excommunicated" was purely religious and no criminal accusations were made.

[8] *See also Tuman v. Genesis Associates*, 935 F. Supp. 1375 (1996) (Plaintiffs sued for slander based on being identified as members of a satanic cult); *Pratt v. Nelson*, 127 P.3d 1256 (2005). (The

of United Methodist Church, 663 N.W.2d 404 (Iowa 2003) (accusation that one was the "spirit of Satan" was held to have both religious and secular meanings, with the secular meaning sufficient upon which to base defamation claim).

Even in Texas there is precedent for a result different from the one reached by the Texas Court in the present case. It was held in *Hooper v. Pitney Bowes, Inc.*, 895 S.W.2d 773 (Tex. App. 1995), [9] that accusations of being a "cultist," or "cult-like" or "occult" as applied to a sales manager who conducted "emotionally charged sales meetings" and encouraged "mind-altering exercises" could indeed be defamatory. The court noted that "In these times, a high degree of opprobrium has attached to terms such as 'cultist,' [and] 'occult'.... False accusations against or characterizations of persons using those and similar terms, we believe, can certainly be considered to be beyond all bounds of decency and to be atrocious and utterly intolerable in a civilized society." *Id.* at 776.

That the offending publication also contains statements that are theological in nature does not insulate Respondents from liability for statements that falsely accuse Petitioners of specific bad acts. Here, amici ask this Court to consider a case from New York that is nearly "on all fours" with the present case, *Landmark Education v. Conde Naste*, 1994 WL 836356 (N.Y. App. Div.1994). There, the plaintiffs alleged defamation due to their inclusion as a "cult" in an article published to the public, and by the combination and juxtaposition of words and statements that attributed certain practices to the identified cults in the article. The court noted that:

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court did not dismiss based on the term "cult" being one of "religious opinion.").

[9] Since the Texas Court did not address or distinguish *Hooper* when deciding the present case, despite Hooper being cited by Petitioners in their brief, Petitioners can only guess that *Hooper* was distinguished because "cult" was there used in a secular business setting, but between competing religious denominations here.

> The interspersed facts and opinions throughout the article …concerning cults tars all the groups covered by the [article] with the same brush with language that appears to be libelous per se as it addresses the office, profession or trade of plaintiff…. [S]tatements that contain or imply assertions of provably false facts will likely be actionable." *Immuno AG v. Moor-Jankowski*, 77 N.Y.2d 235, 245, quoting *Milkovich v. Lorain Journal Co.*, 497 US 1. In applying the previously outlined test it cannot be questioned that cult has a precise meaning which is readily understood as it was defined in the article. The statements made are capable of being proven true or false as "the Forum's" procedures can be matched against the defined qualities of cults. [T]his Court believes it is for a jury to determine whether the words directed generally to the "cults" covered in the [article] would lead the reasonable reader to believe, in the context of the whole [article] that the plaintiffs had indulged in these practices. *New Testament Fellowship v. E.P. Dutton & Co,*[10] *supra; Landmark Education v. Conde Naste, supra*.

Just as in *Landmark Education*, the defined "characteristics of cults" as defined in *ECNR* (including criminal activ-

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[10] Notable also is *NT Missionary Fellowship, v. E.P. Dutton & Co., Inc*., 112 A.D. 2d 55 (1985), a defamation lawsuit based on a book entitled Let Our Children Go ―an account of cults that program young people with brainwashing. There, the court noted that "the book tars all of the groups covered by the book with the same brush, and that no innuendo is necessary to bring out the defamatory character of such words." *Id*. at 57-58 (emphasis added). It is for a jury to determine whether these words, directed generally to the "cults" covered in the book, would lead the reasonable reader to believe, in the context of the whole book, that the plaintiffs had indulged in these practices. *Id*. at 57-58 (emphasis added).

ity) and attributed to Petitioners as a "cult," are statements that are capable of being proven true or false. The case should therefore have been sent to a jury to decide whether such accusations, in context, were defamatory.

IV. In wrongly applying the "ecclesiastical abstention" doctrine to shield Respondents from liability for their otherwise defamatory accusations related to being a "cult," the Texas Court violated the Religion Clauses of the First Amendment by treating Petitioners as if they were members of Respondents' denomination, and also destroyed the doctrine's "implied consent" requirement.

The Texas Court was Oedipus-like in its approach to the Establishment Clause:[11] by over-zealously attempting to avoid an Establishment Clause problem, it created one. The Texas Court was wrong to lean on the "ecclesiastical abstention" doctrine[12] identified in *Milivojevich*, 426 U.S. 696, to support its holding that it was precluded from deciding whether Petitioners were defamed when they were listed as a "cult" in a book ascribing criminal conduct to cults, for that doctrine does not apply to secular disputes between different denominations. *Gen. Council on Finance and Administra-*

[11] Although the "ecclesiastical abstention" doctrine is usually understood as a means to prevent the government from interfering with the Free Exercise of religion, the Texas Court spoke of it as an Establishment Clause doctrine.

[12] Although the Texas Court never used the term "ecclesiastical abstention," it is apparent that they relied upon the doctrine. Harvest House, 190 S.W.3d at 211-12. First, they cited Milivojevich, which was an "ecclesiastical abstention" case, as the primary basis for their decision; next, it cited Tran, 934 S.W.2d at 742, 744, another "ecclesiastical abstention" case, mentioning that the issue there was "a matter of ecclesiastical concern." Lastly, it stated that the definition of "cult" was an "ecclesiastical matter" and cited *Sands*, 34 P.3d at 960, which relied upon "ecclesiastical abstention" cases for its decision.

tion of the United Methodist Church v. Superior Court of California, County of San Diego, 439 U.S. 1355, 1372 (1978) (Rehnquist, J. – "this Court has never suggested that [ecclesiastical abstention] constraints similarly apply outside the context of such intraorganization disputes"). *Paul v. Watchtower Bible & Tract Soc. of New York, Inc.*, 819 F.2d 875, 878 (9th Cir. 1987) (ecclesiastical abstention not relevant where former member alleged harm that did not challenge church doctrine); *E.E.O.C. v. Pacific Press Pub. Ass'n*, 676 F.2d 1272, 1281 (9th Cir. 1982) (*Milivojevich* not applicable because violation of Title VII not related to an intra-church doctrinal dispute) (abrogated on other grounds).

The "ecclesiastical abstention" doctrine has indeed been cited to prohibit courts from deciding intentional tort cases, including defamation, where the allegedly tortious conduct occurred between members of the same religious group during intra-church ecclesiastical proceedings, such as church discipline, as in *Smith v. Calvary Christian Church*, 614 N.W.2d 590 (Mich. 2000), *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929 (Mass. 2002), *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994), *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp.2d 732 (D.N.J. 1999), *Patton v. Jones*, 212 S.W.3d 541 (Tex. App. 2006); for clergy employment decisions, see *Salzgaber v. First Christian Church*, 583 N.E.2d 1361 (Ohio Ct. App. 1989), *Higgins v. Maher*, 210 Cal. App. 3d 1168 (Cal. Ct. App. 1989); for performance of missionary work, see *Turner v. Church of Jesus Christ of Latter Day Saints*, 18 S.W.3d 877 (Tex. App. 2000); for reconciliation of members, *see Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F. Supp. 1194 (W.D. KY 1994); and for religious divorce proceedings, *see Sieger v. Union of Orthodox Rabbis*, 1 A.D.3d 180 (N.Y. App. Div. 2003).

However, to amici's knowledge, the "ecclesiastical abstention" doctrine has never been applied in a situation like the one presently before this Court, where the parties are not

part of the same religious group, and where the defamatory statements are not related to the ecclesiastical workings of a particular group.[13] *See, e.g., Kliebenstein*, 663 N.W.2d 404 (term potentially importing both religious and secular meaning published to non-members and held actionable as defamation); *Callahan v. First Congregational Church of Haverhill*, 808 N.E.2d 301 (Mass. 2004) (defamatory comments made outside intra-church disciplinary process held actionable); *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989) (defamatory comments made regarding non-member not protected by First Amendment).

The reason "ecclesiastical abstention" only applies to intra-church disputes is because the doctrine requires the consent of the parties to be governed by the doctrines, rules, and authority figures of a given church. This Court first stated in *Watson v. Jones*, 80 U.S. 679, 728-29 (1871) that:

> The right to organize voluntary religious associations, to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.

(subsequently relied upon in *Milivojevich*, 426 U.S. at 724-25). Since Petitioners are not part of Respondents' religious group, they are not part of the ecclesiastical workings of Respondents' church organization or ministry; nor have they ever consented to a waiver of their civil law rights regarding

[13] Despite the accord in results across jurisdictions – barring defamation claims by the "ecclesiastical abstention" doctrine only during intra-church ecclesiastical proceedings – amici agree with Petitioners that the several state and federal jurisdictions are in disarray as to how to approach such cases.

Respondents. By applying a doctrine that is only applicable for intra-church disputes, the Texas Court has violated both the Establishment Clause and Free Exercise Clause – treating Petitioners as if they were consenting members under Respondents' ecclesiastical umbrella.

Finally, amici are concerned that the application of the "ecclesiastical abstention" doctrine by the Texas Court will wreak serious damage on First Amendment Religion Clause jurisprudence. Since the "ecclesiastical abstention" doctrine was applied to Petitioners despite the fact that there was never any consent on their part, either implicitly or explicitly, to be governed by the ecclesiastical government of Respondents, allowing the decision to stand will gut the doctrine of the consent requirement upon which it stands and allow religious groups going forward to act in ways that harm non-member individuals without the possibility of liability. Such non-consenting non-members will be left with no recourse in an ecclesiastical tribunal because they are not members, and no recourse in a court of law because consent is no longer required for ecclesiastical abstention by the judiciary. Thus will a doctrine created to direct disputes to either a judicial or ecclesiastical decision-making body transform into a doctrine that affords no adjudication and no justice at all.

CONCLUSION

By denying religious groups the same protections from defamation that are provided to other citizens, the Texas Court's decision could be extremely detrimental to the free practice of religion in America and abroad. Specifically, it allows the larger, recognized and established denominations to completely silence the voice of smaller, dissenting religious movements by using mixed accusations of being a "cult" and engaging in general criminal activity to damage their reputations in ways that are likely to be beyond repair. Under such a label, it does not matter how much a group may attempt to express their religious position through speech – no one will listen. By taking the position that it did, the

Texas Court is essentially closing the religious marketplace of ideas and establishing a permanent hegemony among the currently major denominations in society. This, amici fear, is bad for the United States and the countries around the world that look to the United States for guidance. It is also clearly against the free practice of religion envisioned by our founders. Furthermore, the Texas Court's incorrect application of the "ecclesiastical abstention" doctrine not only violated Petitioners' First Amendment rights, but it completely destroyed the "implied consent" requirement at the core of the doctrine such that, if not overturned, religious groups may now avoid liability for harming non-consenting non-members. Granting religious organizations carte blanche to act in ways that harm non-consenting persons will surely result in society's backlash against religion. Therefore, amici ask this Court to grant certiorari to rectify this situation before religious adherents everywhere suffer grave harm to their reputations, society suffers from a significant loss of religious expression, and all religions suffer from public backlash due to non-consenting non-members being harmed without judicial recourse. The petition for a writ of certiorari should be granted, and the Court should summarily reverse the decision below.

Respectfully submitted.

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