

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

—◆—  
FATHER JOHN GALLAGHER,

*Petitioner,*

v.

DIOCESE OF PALM BEACH, INC.,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Florida District Court Of Appeal  
For The Fourth District**

—◆—  
**PETITION FOR A WRIT OF CERTIORARI**

—◆—  
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## **QUESTION PRESENTED**

Whether the priest is barred by the First Amendment from bringing a defamation action against a church when the defamatory statements are published outside the church, are not related to church doctrine, and implicate matters of public safety.

**PARTIES TO THE PROCEEDING  
AND RULE 29.6 STATEMENT**

The plaintiff below is petitioner Father John Gallagher.

The Diocese is a non-profit religious entity.

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, Father John Gallagher (“Father Gallagher”), respectfully petitions for a writ of certiorari to review the judgment of the Florida District Court of Appeal, Fourth District, in this case.

**OPINIONS BELOW**

The decision of the Florida District Court of Appeal, Fourth District, is reported at 249 So. 3d 657. Pet.App.1a. The order of the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida is contained in the Appendix at Pet.App.19a. The order of the Florida Supreme Court declining discretionary review is available at 2018 WL 4050485. Pet.App.16a.

**JURISDICTION**

The Florida District Court of Appeal, Fourth District quashed the order of the trial court in an opinion on May 9, 2018, and remanded for dismissal of Father Gallagher’s Complaint. Pet.App.1a. Petitioner then invoked the discretionary jurisdiction of the Florida Supreme Court. On August 23, 2018, the Florida Supreme Court declined review. Pet.App.16a. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1257(a).

On November 9, 2018, pursuant to Rule 30.4 of the Rules of the Supreme Court, Father Gallagher requested an extension until January 21, 2019, to file his petition for writ of certiorari. That request was granted by Circuit Justice Thomas on November 21, 2018.



### **CONSTITUTIONAL PROVISIONS INVOLVED**

The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” U.S. Const. amend. I.



### **STATEMENT OF THE CASE**

#### **Underlying Facts<sup>1</sup>**

Father Gallagher was the Parochial Administrator (the priest in charge) at Holy Name of Jesus in West Palm Beach (“Holy Name”), which is part of the Diocese of Palm Beach. Pet.App.28a. Father Joseph Varkey Palimatton (“Father Palimatton”), who had been transferred from India, was assigned to Holy Name as an assistant priest. Pet.App.28a. Not long after Father Palimatton was transferred, Father Gallagher discovered that Father Palimatton had shown

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<sup>1</sup> Since the case was disposed of on a motion to dismiss, these facts are derived from the amended complaint, and the attachments thereto, which are included in the Appendix to this Petition at Pet.App.18a.

numerous pornographic photographs of minor children to a 14-year-old church member. Pet.App.28a.

When Father Gallagher confronted Father Palimatton, he admitted that the incident had occurred, that he had regularly engaged in such conduct in India, and that his superiors there told him such matters could be cured by going to confession. Pet.App.28a-29a. Father Gallagher contacted the local State Attorney's Office to report the crime and learned that the boy's father had already filed a formal complaint with the police. Pet.App.29a. Father Palimatton was arrested for showing pornography to a minor. Pet.App.29a.

Father Gallagher cooperated with law enforcement throughout the investigation of Father Palimatton and provided them with whatever information he could. Pet.App.30a-31a. In fact, he was commended by the Sheriff's Office for his help with the investigation. Pet.App.42a, 44a. The Diocese, however, attempted to thwart his cooperation.

After initially learning of the incident, the Chancellor of the Diocese informed Father Gallagher that it was its normal policy to send the offender back to his home country. Pet.App.29a. Father Gallagher was also told not to take a lot of notes about the incident nor volunteer too much information to the police. Pet.App.29a. That communication was witnessed by a third party. Pet.App.29a. Later, after Father Gallagher discovered a surveillance video of the incident between Father Palimatton and the 14-year-old child, the

Diocese told Father Gallagher not to inform the police of that fact and that he did not have to give the video to them. Pet.App.31a. That communication was also witnessed by a third party. Pet.App.31a. Father Gallagher disregarded this “suggestion” and turned the video over to the police. Pet.App.31a.

Father Gallagher believed that the church was attempting to cover-up the incident. Pet.App.32a. Over the course of the next year, he wrote letters to officials of the Catholic Church informing them of the attempted cover-up that took place in the Palm Beach Diocese regarding Father Palimatton. Pet.App.32a. When that proved futile, he went public with his concerns, speaking to local media and a radio station in his native Ireland.

As a result of his efforts to shed light on the attempted cover-up, the Diocese began a vindictive campaign involving, *inter alia*, defamation against Father Gallagher. In an attempt to silence Father Gallagher and rebut his claims, a concerted effort was made by the Diocese to convince the public that Father Gallagher had psychological problems and was lying about the attempted cover-up.

The Bishop directed the pastors to read a letter to the congregations throughout the Diocese at every mass for two days. Pet.App.32a-33a, 46a. In the letter, the Bishop denied any cover-up and accused Father Gallagher of making “unfounded allegations,” stating that “his assertion of this is but another one of his fabrications which is causing harm to the Church.”

Pet.App.47a. The Diocese also issued two press releases with similar accusations. Pet.App.34a.

The Bishop also authorized Diocesan employees and representatives to publicly make false and defamatory statements against Father Gallagher. Pet.App.33a. The first of these statements appeared in an article in the local newspaper, the *Palm Beach Post*, and included the following:

- Father Gallagher “was an egotistical problem—priest who spread lies about the Diocese because he was passed over for a promotion for at least a second time in six years.”
- “The only reason that this is going on [Father Gallagher’s allegations of a cover-up] is that John is very upset and angry that he was not named pastor. That’s the bottom line. He wanted to be pastor of Holy Name so bad.”
- “John is a disgruntled employee of the Diocese. He needs serious professional help.”

Pet.App.33a-34a, 49a-53a.

The defamatory statements were repeated in a *South Florida Sun-Sentinel* article in which the Diocese is also quoted as saying Father Gallagher was “blatantly lying.” Pet.App.55a-61a. The Diocese’s defamation of Father Gallagher spread to his home country of Ireland. In an article appearing in the *Irish Central*, the Diocese is quoted as saying that Father Gallagher

“is blatantly lying and is in need of professional assistance as well as our prayers and mercy.” Pet.App.63a-66a. Identical language was posted on Facebook by the canon lawyer for the Diocese. Pet.App.68a-69a.

A church official also posted on Facebook:

Fr Gallagher is blatantly lying in his flawed ‘recollection’ of the facts . . . it is almost humorous that SNAP is defending Fr John who has managed to manipulate them in the web of lies that he continues to spread.

Pet.App.72a.

The stress caused by the public smear campaign against Father Gallagher by the Diocese caused him to be hospitalized with an apparent heart attack. Pet.App.38a-39a. After his release from the hospital, he returned to his residence at the Church only to find that the locks had been changed by the Diocese and he was homeless. Pet.App.39a.

### **Procedural History**

Father Gallagher brought claims against the Diocese for defamation and libel *per se* based upon the facts discussed above. Pet.App.18a. He alleged that the Diocese’s conduct damaged his reputation and his livelihood. He sought an award of damages for *inter alia*, the loss of his good name, for the mental anguish he endured as a result of the Diocese’s public humiliation, and for past and future lost income. Pet.App.40a.

The Diocese moved to dismiss Father Gallagher's Amended Complaint based on the ecclesiastical abstention doctrine, explicitly relying on, *inter alia*, the First and Fourteenth Amendments of the United States Constitution. The Diocese argued that Father Gallagher's claims were matters of internal church governance and that deciding the claims would require the court to "delve into Canon law, church doctrine, and the church's religious practices."

Father Gallagher responded to the motion, arguing that the doctrine was inapplicable since his defamation and libel claims could be resolved under neutral principles of law and did not require any determination of church doctrine nor interference in the internal operations of the church.

The trial court denied the Diocese's motion to dismiss, stating, *inter alia*:

In the instant case, the alleged defamatory statements that Plaintiff was a liar, that he needed "serious professional help" and that he was angry because he was passed over for a promotion can be assessed using neutral principles of law and without resolving a church controversy. This Court also notes the public nature of these statements. Because the Court can determine whether Plaintiff was lying about the Diocese covering up a sexual abuse investigation without inquiry into religious doctrine, Defendant's Motion to Dismiss is denied.

Pet.App.12a-15a.

The Diocese sought review of that decision in Florida’s District Court of Appeal, Fourth District. That court quashed the trial court’s order, holding that to decide Father Gallagher’s defamation and libel claims would require the court to become excessively entangled in a “religious dispute.” *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 659 (Fla. 4th DCA 2018).

The appellate court based its conclusion on two grounds: certain elements of damages sought and the determination of “falsity.” As to damages, the court reasoned:

[D]eciding Father Gallagher’s claim for actual damages would require the courts to delve into why Father Gallagher was not promoted to pastor, and was reassigned to another parish. This would require the court to question the diocese’s employment decision to hire, retain, or discipline Father Gallagher—a member of the diocese—and the reasoning behind its decision.

*Id.* at 662. The court did not address the other elements of damage alleged in the complaint.

The Fourth District also ruled that it could not determine the “falsity” of the church’s public statements against Father Gallagher because to do so would require it to become “excessively entangled in Catholic Church doctrines and canonical law.” *Id.* Instead of addressing the allegations in the complaint, the court questioned whether, “[i]n his interactions with

parishioners, fellow priests, and the diocese hierarchy, was Father Gallagher following Church canons and teachings?” *Id.*

Reviewing the falsity of whether Father Gallagher needed professional help, the court stated:

Whether Father Gallagher was actually in need of professional help is beside the point . . .

Reviewing the falsity of whether Father Gallagher needed professional help will excessively entangle the courts in determining whether the diocese correctly imposed this disciplinary step on Father Gallagher, and whether the diocese followed its disciplinary practices and procedures.

*Id.* at 664-65.

Father Gallagher timely sought review in the Florida Supreme Court. However, that court declined to accept discretionary review of the case. *See Gallagher v. Diocese of Palm Beach, Inc.*, No. SC18-865, 2018 WL 4050485 (Fla. Aug. 23, 2018).



### REASONS TO GRANT THE PETITION

This Court should grant the petition because case law throughout the country is in disarray regarding the extent to which the First Amendment bars the adjudication of third-party tort claims against religious organizations. This inconsistency in the law exists as

to tort liability generally and defamation claims in particular. To obtain consistency in the analysis of such claims and defenses, which implicate the core values of our nation, it is necessary for this Court to accept jurisdiction of an appropriate case and achieve a resolution.

This Court has never directly addressed the application of First Amendment principles to the tort liability of religious organizations. It has addressed property disputes arising from internal conflicts in religious organizations and fashioned standards to avoid violations of the Free Exercise Clause of the First Amendment. *See, e.g., Kedroff v. St. Nicolas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952); *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368, 90 S.Ct. 449, 500, 24 L. Ed. 2d 582 (1970); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L. Ed. 2d 151 (1976); *Jones v. Wolf*, 443 U.S. 595 (1979). That line of cases has established that courts cannot resolve disputes based on religious doctrine or practice, and must defer when those issues have been resolved by the highest court of a hierarchical church organization. *Jones*, 443 U.S. at 602 (and cases cited therein). In *Jones*, this Court stated that in those cases “at least in general outline” that the “neutral principles of law” approach is consistent with the governing constitutional principles. *Id.*

Lower courts have attempted to apply that guidance in the evaluating religious organizations. However, it has resulted in inconsistent decisions

throughout the country regarding the extent of immunity that religious organizations have to tort claims. *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 38-40, nn.2-3 (Iowa 2018) (collecting the cases that hold “the First Amendment categorically prohibits any judicial inquiry into a religious entity’s operations, as such an inquiry would necessarily entangle the court with the church’s religious self-governance”; and in footnote 3, collecting the cases that hold “the First Amendment does not require categorical immunity for religious entities”). The problem arises because different constitutional rights and public policy concerns arise in tort cases, and the analytical model developed in property disputes cases was not designed to address them.

As this Court noted, the Free Exercise Clause of the First Amendment:

Embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

*Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940) (footnote omitted).

The latter consideration is not implicated in property dispute cases involving religious organizations, and thus the line of cases addressing them does not integrate that concern into their calculus. However, regulating tortious conduct necessarily involves such regulation of conduct, and thus that aspect of the Free

Exercise Clause must be implemented in any constitutional analysis.

Additionally, granting religious organizations immunity from tort liability solely because of religion can lead to the impermissible effect of recognizing a religion in violation of the Establishment Clause of the First Amendment, as noted by numerous courts. *Malicki v. Doe*, 814 So. 2d 347, 358 (Fla. 2002); *Smith v. O'Connell*, 986 F. Supp. 73, 80 (D.R.I. 1997) (citing *City of Boerne v. Flores*, 521 U.S. 507, 537 (1997) (Stevens, J., concurring)); *Smith v. Raleigh Dist.*, 63 F. Supp. 2d 694, 716 n.18 (E.D.N.C. 1999). As this Court noted in *Flores*, 521 U.S. at 513 (1997), it would be “an anomaly in the law” to grant someone “a constitutional right to ignore neutral laws of general applicability.”

With regard to tort law generally, the application of First Amendment principles is most “heated and diverse” in the area of sexual misconduct by clergy, *Weaver v. African Episcopal Church, Inc.*, 54 S.W.3d 575, 580 (Mo. App. 2001). Insulating religious organizations from inquiry and potential liability for such conduct is obviously deleterious to society in general. Nonetheless, that result has been justified in reliance on religious autonomy principles derived from, *inter alia*, *Kedroff* and *Jones*. The most common rationale is that any inquiry into a religious organization’s selection or supervision of its ministers violates its prerogative to choose and oversee them in accordance with their religious principles. *E.g.*, *Swanson v. Roman*

*Catholic Bishop of Portland*, 692 A.2d 441 (Me. 1997); *Gibson v. Brewer*, 952 S.W.2d 239, 247 (Mo. 1997).

However, other courts have stated: “[W]here child molestation is at issue, it cannot be considered just an internal matter of Church discipline or administration.” *Hayden v. Schulte*, 701 So. 2d 1354, 1356 (La. Ct. App. 1997) (defamation case); *Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) (defamation case quoting same language). Nonetheless, many courts ignore or minimize the public danger concern, and apply the analysis designed to address religious property disputes, where that consideration does not arise. However, as the court stated in *Hayden*:

The Church cannot appropriate a matter with secular criminal implications by making it simultaneously a matter of internal Church policy and discipline.

701 So.2d at 1356.

The case *sub judice* crystalizes that concern, as the trial court ruled that the determination of the defamation claims, *i.e.*, what happened in the Father Palimaton sexual abuse incident and whether Father Gallagher needed psychological help, could be resolved by a civil court without interfering with the church’s autonomy. As a result, it ruled that the First Amendment was not an absolute bar to the action.

However, the Fourth District recharacterized Father Gallagher’s complaint as an employment dispute, the resolution of which would infringe on the religious

prerogatives of the Diocese to supervise and control its priests. The court did not find any doctrinal issues involved in the case, nor was it dealing with any decision of a church tribunal. The Fourth District gave no consideration to the potential criminal implications of Father Gallagher's allegations,<sup>2</sup> the public's interest in enforcing tort law, or the protection of children from abuse. However, those concerns do not arise in intra-church property disputes, and thus the legal standards established in those cases cannot be expected to ensure the proper or consistent resolution of such cases.

This Court has stated that "society has a pervasive and strong interest in preventing and redressing attacks upon reputation." *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). However, that societal interest warrants no consideration under the analysis of the Fourth District in this case. Again, the intra-church property dispute paradigm never involves such a consideration, so it is necessarily inadequate under these circumstances.

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<sup>2</sup> The reporting of child abuse to the appropriate authorities is mandated by Florida law, which requires full disclosure. *See, e.g.*, Fla. Stat. Ch. 39, Part II (including § 39.201(1)(c) ("Any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse or the victim of a known or suspected juvenile sexual offender, as defined in this chapter, shall report such knowledge or suspicion to the department."); § 39.205(1) ("A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree.")).

The lower courts have struggled, with inconsistent results, in resolving First Amendment issues in defamation actions brought by ministers or congregants against religious organizations. *See Defamation of Church Member by Church or Church Official*, 109 A.L.R. 5th 541 (2003).

Even within the subset of defamation actions brought by ministers against a church organization, courts have adopted different analyses, albeit all derived from this Court's intra-church property dispute cases. *Compare Christofferson v. Church of Scientology of Portland*, 644 P.2d 577 (Or. Ct. App. 1982), *rev. denied*, 650 P.2d 928 (Or. 1982), *cert. denied*, 459 U.S. 1206 (1983), *with Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002). *See also Tubra v. Cooke*, 225 P.3d 862, 869-73 (Or. App. 2010) (comparing the two lines represented by the preceding cases and rejecting *Heard*). It appears that if Father Gallagher had brought suit in other jurisdictions, the First Amendment would not have barred his claims. *See Marshall v. Munro*, 845 P.2d 424 (Alaska 1993); *Hayden*, 101 So. 2d 1354; *Ausley v. Shaw*, 193 S.W.3d 892 (Tenn. App. 2005); *Ogle v. Horker*, 279 Fed. App'x 391 (6th Cir. 2008); *Tubra*, 225 P.3d 862.

In summary, there is a critical need for guidance from this Court regarding the appropriate First Amendment analysis of tort claims brought against religious organizations. The lower courts' rulings are in disarray as a result of reliance on this Court's decisions in intra-church property dispute cases. The analysis of tort claims requires consideration of factors not

involved in property disputes, such as the government's right to regulate religious conduct to protect the public and in defamation cases, the public policy in favor of redressing attacks on a person's reputation. The Establishment Clause of the First Amendment is also implicated because to grant tort immunity to parties based solely on their religious status would violate that principle. This case is an appropriate vehicle for this Court to provide that guidance, as it includes those factors and presents the federal constitutional question squarely and cleanly.

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### CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be granted.

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