

No. 18-964

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**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, consistent with *Hosanna-Tabor v. EEOC*, 565 U.S. 171 (2012), the First Amendment precludes a civil court from adjudicating a defamation claim that arises from an employment dispute between a priest and his Church, and which the priest first introduced into the public media.

LIST OF PARTIES

The Petitioner, Father John Gallagher, was the plaintiff below. The Respondent, Diocese of Palm Beach, was the defendant below.

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INTRODUCTION

After a full and complete review of this matter by the District Court of Appeal, underscored by the Supreme Court of Florida's decision to decline jurisdiction and deny review, Petitioner attempts to reimagine his dispute as unrelated to this Court's unanimous opinion in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012) and the other settled law that the civil courts may not police the discipline of clergy by their churches consistent with the Religion Clauses. As the District Court of Appeal ("DCA") correctly noted, *Hosanna-Tabor* barred the Florida courts "from penalizing the diocese and determining the diocese was wrong for deciding Father Gallagher was not the right clergyman for Holy Name," and from determining the falsity of the diocese's statements that Petitioner "was unfit to serve as a priest and needed professional help."

Petitioner seeks review of those findings by arguing that this Court look past the factual underpinnings and context of this dispute and mischaracterizing the DCA's opinion as finding no doctrinal issues involved in the underlying dispute. Pet. at 10, 14. There is nothing in the DCA opinion or the broader jurisprudence, including *Hosanna-Tabor* and its progeny, that warrants the intervention of this Court. The Petition should be denied.

COUNTER-STATEMENT OF THE CASE

This case always has been and still is grounded in an employment dispute between Petitioner and his Diocese and Bishop that spilled into public

disparagement by the Petitioner of his Bishop and Diocese, the Catholic Church and even Pope Francis, to which the Diocese responded. Civil courts must abstain from reviewing the Diocese's ministerial decisions and serving as an arbiter of truth in a dispute over internal priestly discipline. The decision for review here applies this settled precedent.

A. Factual Background

Respondent provides this background to specifically correct the factual mischaracterizations contained in the Petition. Rule 15.2.

Father John Gallagher is (and remains) an ordained Catholic priest incardinated in the Diocese of Palm Beach, Florida since 2000. (App.2a.) In 2015, for the second time in his priestly career, the Diocese chose not to name him a Pastor.¹ (App.4a.) In response, he refused to report to his priestly assignment,² took a leave of absence and began a

¹ Canon Law describes a Pastor as one “outstanding in sound doctrine and integrity of morals and endowed with zeal for souls and other virtues; he is also to possess those qualities which are required by universal or particular law to care for the parish in question.” For the “office of pastor to be conferred on someone, his suitability must be clearly evident by some means determined by the diocesan bishop, even by means of an examination.” The Bishop has the sole right to determine who becomes a Pastor. Can. 521, 522, 523, Code of Canon Law. The Code of Canon Law in English is found on the Vatican's website at http://www.vatican.va/archive/ENG1104/_INDEX.HTM (last visited Feb. 13, 2018).

² Father Gallagher was assigned as an assistant pastor in the normal course of the Diocese's priestly assignment system

campaign of complaints to numerous Church officials that he was being treated unfairly. (App.4a-5a.) He even filed a canonical complaint against his Bishop with Church authorities in Rome.

Later in 2015, Father Gallagher repeatedly and wrongly claimed that he was being demoted by his Bishop for exposing a “cover-up” of a sexual abuse incident at his parish. Contrary to his statements in the courts, the public record and the Petition in this case (*see* App.70a-77a, 82a-83a, 94a-99a), the incident of abuse had been referred to the Palm Beach County sheriff’s office within 24 hours of the incident occurring. That referral prompted the arrest, conviction, and deportation of the offending priest, with full cooperation from both Father Gallagher and the Diocese. Father Gallagher has acted like none of this is true and has tried to use it as an excuse to shield himself from his own conduct as a priest. (App.94a-99a.)³ He expressly refuses to

after documented issues with his work as a parish administrator. He was not “locked out” of his rectory and made “homeless.” (Pet. 6). He has a priestly assignment which he has refused to accept. It is undisputed that he still receives his priest salary from the Diocese.

³ Plainly, given these public record facts, there was no real or attempted cover-up of this crime. At several points, Father Gallagher calls himself a whistleblower and the victim of a “vindictive campaign” because he was trying to expose a cover-up of child sexual abuse by his Bishop. Nothing could be further from the truth. The Diocese is obliged to make reports of abuse to the State Attorney’s office and did so in this case. Father Gallagher neither “discovered” (Pet. 2) nor “reported” (Pet. 3) the abuse; someone else made him aware of it and phoned

accept that his dispute over his discipline is an internal Church matter (even though he has complained to Church officials about it), and he blamed his lack of positive response on “corruption.” (App.5a, 41a.)

Instead, Father Gallagher took to the airwaves in his native Ireland to disparage his own Bishop and Diocese, as well as the Pope and the Catholic Church. (App.5a.) Father Gallagher told an interviewer on Irish radio that he exposed the secret workings of the diocese and Vatican and their lack of transparency in complying with the Church’s own law and policies removing child abusers from ministry. (*Id.*) Father Gallagher said the Church had proven to him that it lacked integrity, honor, and a moral compass, and that those in governance are corrupt all the way through to the Bishop and the Pope. (*Id.*) Those charges were repeated in Florida press accounts, some of which were appended to the amended complaint and relied on by the DCA. (App.6a n.5, 58a-69a.)

The Diocese responded to this public slander in January 2016, stating that Petitioner was not telling the truth and that his actions raised questions about his suitability to be a Pastor. (App.5a.) Given the notoriety of the charges, the Diocese issued statements to its priests and parishioners, and in the press, to correct the record and address any confusion sown by his comments, chastising its priest for his

authorities. He (and the Diocese) followed diocesan policy in cooperating with authorities.

untruthfulness and unpriest-like conduct. (App.5a-6a, 91a-112a.) Father Gallagher would have this Court (as he did below), pretend that it is the Diocese's responses, not his own behaviors, that damaged his reputation and undermined his ability to serve in his "chosen profession" as a priest, causing him damage in lost income and distress. (App.7a.) Ignoring the fact that he pressed for relief in church processes, he sued the Diocese, i.e., his supervising ecclesiastical authority, in civil courts for defamation, seeking compensatory and punitive damages. (*Id.*)

B. Proceedings Below

The trial court thought it could decide which party was telling the truth about whether the Diocese's conduct conformed to Church law and policy and about Petitioner's fitness for priestly ministry without getting entangled in that same Church law and policy. It was wrong. After the trial court denied the Diocese's motion to dismiss Father Gallagher's complaint based on the ecclesiastical abstention doctrine, the Diocese successfully petitioned the DCA for a Writ of Prohibition on the same grounds. (*Id.*)

The DCA's Opinion ("Opinion") correctly recognizes that Father Gallagher's claim would necessarily require a court to scrutinize the Diocese's decisions to supervise, assign and discipline its subordinate (and insubordinate) priest Father Gallagher, and intrude upon the Diocese's reasoning for such decisions. (App.10a-11a, 12a-13a.) Father Gallagher's dispute demands that a court question why the Diocese passed over Father Gallagher for the position of pastor, and whether there was a valid religious reason for the diocese's decision. (App.12a-

13a.) Father Gallagher challenges the truthfulness of Diocese's statement that professional help is a necessary disciplinary step before he could resume "priestly ministry," and alleges damages that are distinctively about his priestly employment. (App.13a.) Consistent with cases across Florida (and every other jurisdiction), the DCA granted the Petition and directed dismissal of the complaint to avoid entangling the courts in the Diocese's ministerial decisions, the interpretation and application of canon law and Church doctrine, and internal priestly discipline, which the civil courts must abstain from reviewing and deciding. (App.15a-17a.)

Subsequently, Petitioner asked the Supreme Court of Florida to exercise jurisdiction, contending that the DCA Opinion was inconsistent with other precedent. That court denied review. (App.24a.)

REASONS TO DENY THE PETITION

A. The DCA Followed the Established Jurisprudence of this Court and Florida Courts Applying the First Amendment to Internal Church Disputes.

1. The First Amendment to the Constitution broadly protects the rights of religious groups to self-governance, including the selection and control of those it chooses as leaders. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 200-01 (2012); *Serbian E. Orthodox Church v. Milivojevich*, 426 U.S. 696, 709-12 (1976); *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). That

process is not subject to second-guessing in the civil courts. Even if the claim is “just for money damages,” the Court has recognized that in the context of a church dispute, a damages award has the same punitive or invasive effect as a direct court interference in the process. *Hosanna-Tabor*, 565 U.S. at 194. It is well-settled that litigation over the morals and standards expected of clergy by their bishops (and, in this case, vice versa) are constitutionally barred. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). Truth-telling about one’s Church is one such standard.

Even a “secular” claim will, in circumstances like the case at bar, run headfirst into the wall separating Church and State. *Gonzales v. Catholic Archbishop of Manila*, 280 U.S. 1, 16-17 (1929) (in resolving a testamentary trust, court was barred from considering religious law question). A court could not take testimony from competing experts to decide which view of a church’s processes was correct. *Serbian E. Orthodox Church*, 426 U.S. at 719-20 (excessive entanglement resulted from hearing competing expert testimony about the church’s own rules and policies). Thus, it is well settled that not only final adjudication, but the interference and entanglement created by the steps towards adjudication itself, are unconstitutional if they may impinge upon rights guaranteed by the Religion Clauses. *Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). Accordingly, courts may not sit in the stead of religious authorities, and must abstain when their processes require interpretation of and entanglement with church law and processes. *Jones*

v. Wolf, 443 U.S. 595, 604, 605 (1979) (citing *Serbian*, 426 U.S. at 723).

Here, all the basic allegations and defenses are imbued with religious matter that, if litigated, will be vigorously probed and contested on both sides during discovery, pre-trial proceedings, and motion practice well before any trial takes place. There is no doubt that Father Gallagher's complaint springs from issues of internal church governance. In his telling of the story, it was about whether the Diocese followed Church law and policy that he exposed and was punished for by denial of the office of Pastor. (*E.g.* App.40a-47a.) In the Diocese's telling of the story, Father Gallagher is a troubled priest that needed additional supervision before he could be named Pastor. (*E.g.* App.55a-69a.) Both versions concern how and why the Diocese and Bishop evaluated Father Gallagher's fitness for service and made an assignment decision. That process is not subject to scrutiny in a civil court. Tellingly, Father Gallagher waited many months before abruptly and publicly asserting that he was being punished (that is, denied the office of Pastor) for supposedly trying to hold the Diocese accountable for an imagined cover-up. The Diocese responded to his public charges—made to anyone and everyone—by pointing out their falsity in communications directed to parishioners as well as through media.

The charges were not and are not true (note 3, *supra*), but arriving at that conclusion in the Florida courts would require a reviewing court to examine each aspect of Father Gallagher's personal, personnel and assignment history, interpret the Diocese's internal policies and procedures, permit discovery

against the Bishop and every member of the personnel committee and other clergy who lead the Diocese, assess the strengths and weaknesses of Father Gallagher’s ministry, and study sundry other internal pastoral decisions along the way. Ultimately a court would be asked to assess damages based on the loss of priesthood. Even if this were about the “truth” of how an incident of child abuse was handled, a court cannot undertake that inquiry without looking at how each aspect of the Diocese’s compliance with the Charter for the Protection of Children and the “Essential Norms,” which are church law for the United States, is interpreted and applied. All of these inquiries are barred by the First Amendment. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 345 (1987) (Brennan, J. concurring) (noting “prospect of government intrusion raises concern that a religious organization may be chilled in its free exercise activity,” and therefore civil courts must refrain from analyzing religious nature of organization’s activities and process of self-definition).

2. Petitioner claims that this Court has never directly addressed the application of First Amendment principles to the tort liabilities of religious organizations. (Pet. at 10.) The Court need look no further than its unanimous decision in *Hosanna-Tabor*, where it explained that the ministerial exception precludes civil courts from deciding religious employment discrimination claims – which are torts – and therefore “ensures that the authority to select and control who will minister to the faithful—a matter ‘strictly ecclesiastical,’ [] is the

church's alone." 565 U.S. at 194–95. It is precisely this zone of decision-making that is implicated by Petitioner's lawsuit and therefore off-limits from civil adjudication.

This Court and the Florida courts, including the DCA Opinion challenged here, already explicitly recognize that the First Amendment does not extend absolute immunity to religious organizations from civil litigation. Cases that can be adjudicated on neutral principles of law without any inquiry into religious doctrine are not subject to ecclesiastical abstention in civil courts. *Wolf*, 443 U.S. at 603; *Serbian E. Orthodox Diocese*, 426 U.S. at 708–09; *Malicki v. Doe*, 814 So. 2d 347, 361 (Fla. 2002); *Flynn v. Estevez*, 221 So. 3d 1241, 1245–47 (Fla. 1st DCA 2017); *see also* Opinion at App.10a. Granting review of Petitioner's case will not resolve a conflict, redress an important misinterpretation or address a significant untraveled dimension of the First Amendment beyond the existing jurisprudence.

Similarly, the DCA's defamation damages analysis follows the established jurisprudence setting clergy reputational and employment-based damages beyond the power of civil courts to calculate or order, because opening the door to money damages acts in much the same unconstitutional way on the proper autonomy of a Church as an injunction. *Hosanna-Tabor*, 565 U.S. at 194 ("An award of such relief would operate as a penalty on the Church for terminating an unwanted minister").

Nor does the DCA Opinion suggest that religious organizations should be granted immunity from tort liability “solely because of religion.” (Pet. at 12).⁴ The Opinion explains that “[t]he subject of a priest’s employment relationship is not *per se* barred by the church autonomy doctrine;” rather inquiry must be made “[1] as to the nature of the dispute and [2] whether it can be decided on neutral principles of secular law without a court intruding upon, interfering with, or deciding church doctrine.” Opinion at App.10a (quoting *Flynn*, 221 So. 3d at 1247), *see also* App.11a-14a, 17a. For all of these reasons, the Court should decline review.

B. This Case Does Not Speak to Application of the First Amendment in Third-Party Tort Claims Against Religious Organizations

Petitioner claims that “case law through the country is in disarray” regarding the First Amendment’s application to “third-party tort claims against religious organizations.” (Pet. at 9). But Petitioner is not a third-party in pursuit of a tort claim. He is a constituent of the Church, he is a priest suing his ecclesiastical superior. Any purported “disarray” in the third-party tort arena is not relevant to Petitioner’s case, which is squarely one between a priest and his Diocese.

⁴ Indeed the Petition cites an Indiana case as proof of a division of authority but that decision cites *Florida* cases as a jurisdiction that allows such matters to go forward when not entangled in religious issues.

It is beyond dispute that Father Gallagher ignited this controversy. It was he who initiated a public campaign against the Church, the Diocese, and his Bishop. (App.58a-76a.) Father Gallagher also wrote to numerous officials in the Catholic Church in the United States, Ireland and Rome, complaining that he was being punished for what he falsely said was an “attempted cover-up by the Diocese” and seeking their assistance in defending himself against his Bishop. (App.41a, ¶41.) He claims that his Diocese falsely called Petitioner a liar and in need of psychiatric or psychological help. (App.49a, ¶ 55.). His lawsuit seeks compensation from his Diocese for damages to “his reputation and livelihood” in “his chosen profession as a priest.” (*Id.*, ¶ 56.) Plainly, Petitioner’s defamation claim arises from a strained employment relationship between a priest and his Diocese, as the DCA correctly recognized. Opinion at App.15a.

Contrary to Petitioner and proposed amicus’ arguments (Pet. at 13; Mot. at 2), even when fairly reviewing the record presented by Petitioner, this case is not about protecting children from abusive clergy or protecting religious entities who cover it up. For this reason, the Diocese refused consent to the proffered amicus as entirely irrelevant to the case and the claim, and thus not in aid of this Court’s decision on the Petition. This case is about the truth-telling surrounding the ecclesiastical discipline of a priest who contests his own fitness reviews and resists the authority of his own Bishop to assign him to ministry. That is a matter for the Church to decide, not for the civil courts. The Petition should be denied.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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