

No. 20-1174

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

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KIM LIPPARD AND BARRY LIPPARD,

*Petitioners,*

v.

LARRY HOLLEMAN AND ALAN HIX,

*Respondents.*

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**On Petition for a Writ of Certiorari to the  
Court of Appeals of North Carolina**

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**SUPPLEMENTAL BRIEF FOR PETITIONERS**

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## SUPPLEMENTAL BRIEF FOR PETITIONERS

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### **A new decision from the Texas Supreme Court strengthens the grounds for review in this case.**

The Texas Supreme Court recently decided the same question on which the Lippards seek the Court's review in this case. *See In re Diocese of Lubbock*, \_\_ S.W.3d \_\_, No. 20-0127, 2021 WL 2386133 (Tex. June 11, 2021). This new decision reinforces the reasons for the Court to grant review here.

In *Diocese of Lubbock*, a Catholic diocese investigated reports that a deacon engaged in sexual misconduct with a mentally ill woman. *Id.* at \*2. When the diocese later posted on its website a list of clergy who had been credibly accused of sexual abuse of a minor, it included the deacon on the list. *Id.* The deacon sued the diocese for defamation, arguing that he had previously been accused of sexual misconduct with an adult, not with a minor. *Id.* at \*1, \*3, \*5.

In a divided decision, the Texas Supreme Court held that the First Amendment's Religion Clauses barred the deacon's defamation claim. *Id.* at \*1, \*10.

The court initially stated that the deacon's claim was barred because that claim could not be resolved using neutral principles of law. *See id.* at \*6. That was so, the court reasoned, because the truth or falsity of the diocese's allegedly defamatory statement turned on a religious question: the meaning of the word "minor" under Catholic canon law. *See id.*

The court then held, however, that the deacon's claim would be barred even if that claim could be resolved through neutral principles of law. *Id.* at \*9.

That was so, the court concluded, because the defamation claim grew out of an ecclesiastical matter: the diocese's investigation of the deacon. *See id.* The court thus held that the Religion Clauses bar defamation claims that arise from ecclesiastical settings even if those claims can be decided through neutral legal principles. *See id.*; *see also id.* at \*1, \*5.

Justice Boyd dissented. *See id.* at \*11. He would have let the deacon's claim proceed because that claim could be resolved using neutral principles of law, and because the diocese had posted its allegedly defamatory statement on its public website. *See id.* at \*15-22. Justice Boyd relied on many of the same decisions discussed in the Lippards' petition that have adopted a neutral-principles approach to defamation claims. *See id.* at \*19; Pet. 16-20.

For four reasons, the Texas Supreme Court's decision bolsters the grounds for review in this case.

First, this decision deepens the conflict on the question presented. *See* Pet. 12-20. The Texas Supreme Court joined the six other federal courts of appeals and state courts of last resort that hold that the Religion Clauses bar defamation claims that arise from ecclesiastical settings, even when those claims can be resolved through neutral principles of law. *See id.* at 12-16. (The Texas Court of Appeals had already agreed with that position, *see id.* at 16 n.4, but the Texas Supreme Court had not.) Thus, the conflict in the lower courts has now grown from 6-5 to 7-5.

Second, the Texas Supreme Court's decision confirms that the question presented is recurring. *See* Pet. 30-31. This decision adds to the sizeable number of recent published opinions that have addressed this issue. *See id.* at 31. Indeed, with the recent rulings

from the Texas Supreme Court, the Fifth Circuit, and the North Carolina Court of Appeals, the pace of decisions on the question presented is accelerating. *See id.*

Third, the Texas Supreme Court's decision underscores the importance of the question presented. *See* Pet. 31-33. As the court recognized, the same principles that guide the Religion Clauses' application to defamation claims also guide the Religion Clauses' application to other types of claims. *See Diocese of Lubbock*, 2021 WL 2386133, at \*5, \*7-8. This decision therefore confirms that granting review here would allow the Court to provide guidance for the lower courts on all types of civil claims. *See* Pet. 32-33.

Finally, the Texas Supreme Court's decision illustrates that many lower courts have taken an overly expansive view of the Religion Clauses. *See* Pet. 24-30. The Texas Supreme Court held that a diocese was free to state on its public website that a deacon had been credibly accused of sexually abusing a minor, even though the deacon had actually been accused of sexual misconduct with an adult. *See Diocese of Lubbock*, 2021 WL 2386133, at \*1-2, \*10. That result, like the result below in this case, is troubling. *See* Pet. 29-30. This Court should grant review to rein in these overbroad readings of the First Amendment.

As Justice Alito observed just days ago, a number of "important religious liberty cases" are "bubbling up" to this Court. *Fulton v. City of Phila.*, \_\_ U.S. \_\_, No. 19-123, slip op. at 10 (June 17, 2021) (Alito, J., concurring in the judgment). We respectfully submit that, as the Texas Supreme Court's recent decision confirms, the Lippards' case is one of those important cases.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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