

No. 23-732

---

---

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

---

RICHARD PLISHKA,  
*Petitioner,*  
v.

THE BYZANTINE CATHOLIC DIOCESE OF PARMA, INC.,  
AND WILLIAM SKURLA,  
*Respondents.*

---

**On Petition for a Writ of Certiorari  
to the Supreme Court of Ohio**

---

**RESPONDENT WILLIAM SKURLA'S BRIEF  
IN OPPOSITION TO PETITION FOR A WRIT  
OF CERTIORARI**

---

ROBERT E. CAHILL (#320017)  
*Counsel of Record*  
DENISE A. DICKERSON (#320109)  
SUTTER O'CONNELL CO.  
1301 EAST 9TH STREET  
3600 ERIEVIEW TOWER  
CLEVELAND, OHIO 44114  
(216) 928-2200 PHONE  
RCAHILL@SUTTER-LAW.COM  
DDICKERSON@SUTTER-LAW.COM  
*Counsel for Respondent Archbishop*  
*William Skurla*

---

## COUNTERSTATEMENT TO QUESTION PRESENTED

The question presented by Petitioner is whether the First Amendment doctrine of ecclesiastical abstention operates to deprive civil courts of subject matter jurisdiction. This Court affirmatively answered that question in *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L. Ed. 666 (1872), and has further expanded the applicability of the ecclesiastical abstention doctrine in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N.A.*, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952), and *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L. Ed.2d 151 (1976). Moreover, the “ministerial exception,” adopted by this Court in *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, 565 U.S. 171, 132 S.Ct. 694, 181 L. Ed.2d 650 (2012), to address employment discrimination cases arising under federal law, and with which Petitioner improperly conflates the ecclesiastical abstention doctrine, has neither altered nor diminished the holdings of *Watson*, *Kedroff*, and *Milivojevich*.

**TABLE OF CONTENTS**

COUNTERSTATEMENT TO QUESTION PRESENTED .....	i
TABLE OF CONTENTS .....	ii
TABLE OF APPENDICES .....	iv
TABLE OF AUTHORITIES.....	v
INTRODUCTION .....	1
STATEMENT OF CASE .....	2
REASONS FOR DENYING CERTIORARI .....	7
I. THE ECCLESIASTICAL ABSTENTION DOCTRINE BARS SUBJECT MATTER JURISDICTION OVER ECCLESIASTICAL DISPUTES.....	9
II. THE MINISTERIAL EXCEPTION ONLY APPLIES TO EMPLOYMENT CASES.....	15
III. PETITIONER EXAGGERATES THE “CONFLICT” OVER THE PROCEDURE BY WHICH ECCLESIASTICAL ABSTENTION SHOULD BE APPLIED .....	20
A. There Is No Conflict in the Federal Cases Cited by Petitioner .....	21

B. The Four State Cases Relied Upon by Petitioner Do Not Create a Conflict.....	23
IV. NO DECISION OF THIS COURT CAN AFFECT THE ULTIMATE OUTCOME OF THIS MATTER.....	26
A. Ohio's Procedure for Analyzing a Challenge to Subject Matter Jurisdiction .....	28
B. This Matter Involves an Ecclesiastical Dispute Over Which Civil Courts Must Abstain Regardless of the Procedure Used to Make Such a Determination.....	30
CONCLUSION .....	34

## **TABLE OF APPENDICES**

APPENDIX 1	Complaint (January 17, 2018) .....	App. 1
APPENDIX 2	Suspension Decree (July 20, 2017).....	App. 9
APPENDIX 3	Plaintiff's Motion in Limine to Preclude All References to All Testimony Regarding, and All Documents Relating to Church Proceedings/Matters (July 6, 2021).....	App. 11
APPENDIX 4	Order on Motions in Limine (September 21, 2021) .....	App. 20
APPENDIX 5	Journal Entry Regarding Verdict Against Plaintiff (November 19, 2021) .....	App. 22

## TABLE OF AUTHORITIES

### CASES

<p><i>Aetna Life Ins. Co. v. Haworth</i>, 300 U.S. 227 (1937).....27</p> <p><i>Bryce v. Episcopal Church in the Dioceses of Colorado</i> 289 F.3d 648 (10<sup>th</sup> Cir. 2002).....21</p> <p><i>Brazauskas v. Fort Wayne-South Bend Diocese, Inc.</i>, 796 N.E.2d 286 (Ind. 2003).....25</p> <p><i>Brown v. Cincinnati Public Schools</i>, 1<sup>st</sup> Dist. Hamilton No. C-150345, 2016 Ohio App. Lexis 641.....29, 30</p> <p><i>California v. San Pablo &amp; Tulare R. Co.</i>, 149 U.S. 308 (1893).....27</p> <p><i>EEOC v. Roman Catholic Diocese of Raleigh, N. C.</i>, 213 F. 3d 795 (4<sup>th</sup> Cir. 2000).....19</p> <p><i>EEOC v. Southwestern Baptist Theological Seminary</i>, 651 F. 2d 277 (5<sup>th</sup> Cir. 1981).....19</p> <p><i>Hayburn's Case</i>, 2 Dall. 409 (1972).....27</p> <p><i>Henry v. Mississippi</i>, 379 U.S. 447 (1965).....28</p>
---

<i>Hosanna-Tabor Evangelical Lutheran Church &amp; School v. Equal Employment Opportunity Commission</i> , 565 U.S. 171, 132 S.Ct. 694, 181 L. Ed.2d 650 (2012) .....	7, 9, 15, 16, 17, 18, 19, 20, 23, 24
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N.A.</i> , 344 U.S. 94, 73 S.Ct. 143, 97 L. Ed. 120 (1952). ....	1, 7, 8, 13, 14, 15, 16, 20, 21
<i>Kelly v. Marcantonio</i> , 187 F.3d 192 (1 <sup>st</sup> Cir. 1999) .....	23
<i>Liner v. Jafco, Inc.</i> , 375 U.S. 301 (1964).....	28
<i>Md. &amp; Va. Churches v. Sharpsburg Church</i> , 396 U.S. 367, 90 S.Ct. 499, 24 L. Ed.2d 582 (1970).....	15
<i>McClure v. Salvation Army</i> , 460 F. 2d 553 (5 <sup>th</sup> Cir. 1972).....	19
<i>McRaney v. North American Mission Board of the Southern Baptist Convention, Inc.</i> , 966 F.3d 346 (5th Cir. 2020).....	22
<i>Missouri, Kansas &amp; Texas R. Co. v. Ferris</i> , 179 U.S. 602 (1900).....	27
<i>Morrison v. National Australia Bank Lt.</i> , 561 U.S. 247, 130 S.Ct. 2869, 177 L. Ed. 2d 535 (2010).....	17

<i>Muskrat v. United States,</i> 219 U.S. 346 (1911).....	27
<i>Nemazee v. Mt. Sinai Med. Ctr.,</i> 56 Ohio St.3d 109, 564 N.E.2d 477 (1990) .....	29
<i>North Carolina v. Rice,</i> 404 U.S. 244, 92 S.Ct. 402, 30 L. Ed.2d 413 (1971) .....	26
<i>Oil Workers Unions v. Missouri.</i> 361 U.S. 363 (1960).....	27
<i>Oklahoma Annual Conference of the United Methodist Church,</i> 538 P.3d 163 (Okla. 2023).....	25
<i>Our Lady of Guadalupe School v. Morrissey-Berry,</i> ____ U.S. ___, 140 S.Ct. 2049, 207 L. Ed.2d 870 (2020) .....	17, 18, 19, 20
<i>Pankey v. Ohio Dept. of Rehab. &amp; Corr.,</i> 10 <sup>th</sup> Dist. No. 13AP-701, 2014-Ohio-2907.....	30
<i>Paul v. Watchtower Bible &amp; Tract Society of New York, Inc.,</i> 819 F.2d 875 (9 <sup>th</sup> Cir. 1987) .....	21, 22
<i>Pfiel v. St. Matthews Evangelical Lutheran Church,</i> 877 N.W. 2d 528 (Minn. 2016).....	24
<i>Powell v. McCormack,</i> 395 U.S. 486 (1969).....	28

<i>Rayburn v. General Conference of Seventh-day Adventists,</i> 772 F. 2d 1164 (4 <sup>th</sup> Cir. 1985) .....	19
<i>St. Jospeh Catholic Orphan Society v. Edwards,</i> 449 S.W. 3d 727 (Ky. 2014) .....	24
<i>Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich,</i> 426 U.S. 696, 96 S.Ct. 2372, 49 L. Ed.2d 151 (1976) .....	1, 7, 8, 14, 15, 20, 21, 22
<i>Southgate Dev. Corp. v. Columbus Gas Transm. Corp.,</i> 48 Ohio St.2d 211, 358 N.E.2d 526 (1976) .....	29
<i>State ex rel. Bush v. Spurlock,</i> 42 Ohio St.3d 77, 537 N.E.2d 641 (1989) .....	29
<i>United States v. Alaska S. S. Co.,</i> 253 U.S. 113 (1920) .....	27
<i>Watson v. Jones,</i> 80 U.S. 679, 13 Wall. 679, 20 L. Ed. 666 (1872) .....	1, 7, 8, 9, 10, 11, 12, 13, 15, 20, 21
<i>White v. Ohio Public Defender,</i> 10 <sup>th</sup> Dist. Franklin No. 19AP-243, 2019-Ohio-5204 .....	30
<i>Wilkerson v. Howell Contrs., Inc.,</i> 163 Ohio App.3d 38, 2005-Ohio-4418, 836 N.E.2d 29 (1 <sup>st</sup> Dist.) .....	29

<i>Winkler v. Marist Fathers of Detroit, Inc.,</i> 901 N.W.2d 566 (Mich. 2017) .....	23
---	----

RULES AND STATUTES

Fed.R.Civ.P. 12(b)(1) .....	21, 22, 28
Ohio Civ.R. 12(B)(1) .....	4, 28, 29, 30
Americans with Disabilities Act of 1990, 42 U.S.C. ¶12101 et seq.....	15
Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. .....	15, 21
42 U.S.C. § 1985 .....	21
42 U.S.C. § 1986 .....	21

## INTRODUCTION

This Court should refuse to accept jurisdiction over this matter because none of the reasons set forth in the petition are compelling. This matter does not arise from 1. a decision of a federal court of appeals in conflict with another court of appeals' decision, 2. a decision by a state court of last resort involving an important federal question that conflicts with another state court of last resort or a federal court of appeals, or 3. a decision of a state court of last resort or a federal court of appeals deciding an important question of federal law that should be settled by this Court. Supreme Court Rule 10.

Rather, Petitioner seeks an order from this Court directing the Ohio Supreme Court to accept jurisdiction over this matter, which the Ohio Supreme Court refused to do because the Ohio 8<sup>th</sup> District Court of Appeals' decision was well-reasoned and properly applied the ecclesiastical abstention doctrine as has been developed through Ohio caselaw based on this Court's decisions in *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L. Ed. 666 (1872), *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N.A.*, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952), and *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L. Ed.2d 151 (1976). The Ohio Supreme Court clearly accepted the Ohio 8<sup>th</sup> District Court of Appeals' decision in this matter as being consistent with Ohio law, the First Amendment to the U.S. Constitution, and this Court's pronouncements of the ecclesiastical

abstention doctrine. For these reasons, this Court should refuse to accept jurisdiction over this matter.

### **STATEMENT OF CASE**

As Petitioner has misstated some of the facts, pursuant to Supreme Court Rule 15(2), Respondent presents the following Statement of the Case:

This matter arises from the suspension of a priest who took Church property and refused to return it. Petitioner, Fr. Richard Plishka, upon completion of an assignment at Respondent Byzantine Catholic Diocese of Parma's Cultural Center, took property belonging to the Diocese, including two sacred relics. After attempting to recover the missing property and sacred relics for a year, Respondent Archbishop William Skurla, who was serving as the Apostolic Administrator (temporary administrator appointed by Pope Francis while the office of bishop was vacant) for the Diocese at the time, authorized a replevin suit be filed because the Catholic Church's Canon Law provides no means by which personal property can be replevied and resort to the civil courts was necessary in order to retrieve the Diocese's property. Due to Fr. Plishka's refusal to return the Diocese's property, Archbishop Skurla also suspended him from active priestly ministry in accordance with Canon Law. Respondent's Appendix 2, Suspension Decree, App. pgs. 9-10.

Shortly after suit was filed and Fr. Plishka was suspended, Pope Francis appointed a new Bishop, who chose to attempt a pastoral approach

with Fr. Plishka. The new Bishop ordered the replevin suit be dismissed and lifted Fr. Plishka's suspension. Fr. Plishka responded to this pastoral approach by filing suit and alleging that the Diocese and Archbishop Skurla had abused process in filing the replevin suit.

Fr. Plishka's Complaint alleged as follows:

- The defendants did not file their complaint against plaintiff for its stated purpose – to recover allegedly converted property and/or to receive just compensation. Instead, the defendants misused, and misapplied, the lawsuit to accomplish an end other than that which it was purportedly designed to accomplish - to summarily and unilaterally suspend plaintiff and harm his credibility and reputation as a Byzantine Priest.
- There exist within the Byzantine Catholic church extensive canonical procedures, whereby a Diocese or Apostolic Administrator, suspecting that a priest has converted church property, can initiate an internal proceeding challenging the priest's conduct. The accused priest is given notice of the charges, provided an opportunity to defend himself, and an objective body within the church determines whether or not the

allegations have merit, and whether or not the priest should be punished.

- Had the defendants chosen to use these internal procedures, they would have discovered that the property at issue actually belonged to plaintiff, or remained at the Cultural Center. Plaintiff never would have been publicly accused of theft. He never would have been suspended. Parishioners, Bishops, priests, staff, and dioceses domestic and abroad would not have been informed of his suspension. And plaintiff's reputation as a priest generally, and particularly within the Diocese, never would have been damaged.
- But defendants did an end-around their own internal procedures, instead electing to sue plaintiff, so that they could subvert the stated purpose of their lawsuit, and use it as their basis to act unilaterally and to suspend plaintiff from the ministry.

Respondent's Appendix 1, Complaint, ¶¶ 8, 12-14, App. pgs. 1-8.

Respondents moved to dismiss for lack of subject matter jurisdiction on ecclesiastical abstention grounds pursuant to Ohio Civ.R. 12(B)(1), but the trial court denied the motion.

Before trial, Fr. Plishka moved in limine to exclude reference to his suspension and the Church's discipline. Specifically, Fr. Plishka stated in his Motion in Limine "... specific reference to church processes, suspensions from church-related duties, and/or reinstatement to church-related duties, are not only irrelevant, but also deal directly with the Catholic Church's discipline, internal organization, and ecclesiastical rule, and as such, are beyond this Court's jurisdiction and the jury's purview." Respondent's Appendix 3, Fr. Plishka's Motion in Limine, App. pg. 13. The trial court granted Fr. Plishka's motion in limine incorporating into its order the very language used by Fr. Plishka in his motion. Respondent's Appendix 4, Order, App. pgs. 20-21.

At trial, after a three-week presentation of Fr. Plishka's case, the trial court granted a directed verdict to Respondents on Fr. Plishka's abuse of process claim. Petitioner's App., pg. 47. The jury then found for the Diocese on the Diocese's replevin claim, which was refiled when Fr. Plishka brought suit. Respondent's Appendix 5, Judgment Entry, App. pgs. 22-23. The trial court ordered Fr. Plishka to return the two sacred relics to the Diocese. *Id.*

After Fr. Plishka appealed, the Ohio 8<sup>th</sup> District Court of Appeals reversed the trial court's denial of Respondents' motion to dismiss for lack of subject matter jurisdiction on Respondents' cross appeal and held as follows:

Under the foregoing circumstances, we find the question of whether the

defendants misused or improperly used the original lawsuit in this case is not limited to the interpretation of secular law. Resolving this dispute would require an examination of the disputed canon laws and internal church procedures — matters that civil courts are prohibited from adjudicating. Because the trial court lacked subject-matter jurisdiction to resolve Fr. Plishka’s abuse-of-process claim, we find the trial court erred in denying the defendants’ motion to dismiss.

Petitioner’s App., pg. 45, ¶80. Fr. Plishka sought reconsideration of the Court of Appeals’ judgment, which was denied. Petitioner’s App., pgs. 50-51.

Fr. Plishka then filed a jurisdictional brief with the Ohio Supreme Court, which declined to accept jurisdiction. Petitioner’s App., pgs. 1-2. The Ohio Supreme Court also denied Fr. Plishka’s request for reconsideration. Petitioner’s App., pg. 49.

Appellant is now attempting one final time to resurrect his abuse of process claim in order to obtain redress for the reputational harm he allegedly suffered due to his suspension from priestly ministry even though the proper forum to challenge his suspension is in the Catholic Church’s ecclesiastical courts.

## REASONS FOR DENYING CERTIORARI

Certiorari should be denied in this matter because the rulings made by Ohio's courts properly upheld the parties' constitutional right to freely exercise their Catholic faith under the First Amendment. The underlying decisions were consistent with long-standing precedent of this Court, namely *Watson*, *Kedroff*, and *Milivojevich*, which established the ecclesiastical abstention doctrine.

In his petition, Fr. Plishka argues that this Court's adoption of the "ministerial exception" in *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, 565 U.S. 171, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012), implicitly altered the holdings of *Watson*, *Kedroff*, and *Milivojevich* and that the ecclesiastical abstention doctrine should no longer be viewed as a bar to subject matter jurisdiction. Fr. Plishka's position fails to appreciate that the "ministerial exception" arose from employment discrimination cases that were brought under federal statutes. In response to the competing jurisdictional pressures of the ecclesiastical abstention doctrine and the federal courts' inherent jurisdiction to interpret acts of Congress, this Court adopted the "ministerial exception" that recognizes federal courts' jurisdiction over acts of Congress while still permitting religious institutions a full opportunity to raise their First Amendment rights under the Establishment and Free Exercise Clauses. Simply put, the "ministerial exception" is only

applicable to employment discrimination cases brought under federal law. Moreover, the “ministerial exception” did not generally alter the ecclesiastical abstention doctrine established by *Watson*, *Kedroff*, and *Milivojevich*.

In any event, as it pertains to this matter, whether the ecclesiastical abstention doctrine acts as a bar to subject matter jurisdiction or whether it should have been raised as an affirmative defense by Respondents is a distinction without a difference. Procedurally, under Ohio law, a challenge to subject matter jurisdiction is raised via a motion to dismiss and the court determines whether a plaintiff has alleged any cause of action cognizable under Ohio law. Ohio’s broad standard favoring jurisdiction is the same whether or not the challenge to subject matter jurisdiction is raised as an affirmative defense, which it typically is.

Moreover, in this matter, Fr. Plishka’s own Complaint conclusively established that this matter involves an ecclesiastical dispute. Fr. Plishka alleged that Respondents circumvented the Catholic Church’s Canon Law in suspending him from priestly ministry and that his reputation was harmed by publication of the suspension. Inherent in determining the validity of Fr. Plishka’s claim requires an analysis of the propriety of his suspension under Canon Law. Such an inquiry is clearly prohibited under the First Amendment. As such, any decision by this Court would be moot as it pertains to these parties because even a pronouncement by this Court clarifying that all First Amendment challenges to subject matter must be

treated as affirmative defenses would not ultimately change the outcome of this matter.

For these reasons, as will be more fully addressed below, Fr. Plishka's petition for certiorari should be denied.

#### **I. THE ECCLESIASTICAL ABSTENTION DOCTRINE BARS SUBJECT MATTER JURISDICTION OVER ECCLESIASTICAL DISPUTES**

The origins of the ecclesiastical abstention doctrine can be traced back to the Magna Carta, adopted in 1215, which provided that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired." *Hosanna-Tabor* at 182. Nearly six centuries later in 1791, the Bill of Rights to the U.S. Constitution was ratified and the First Amendment's Establishment and Free Exercise Clauses became law: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

In *Watson*, this Court first set forth the ecclesiastical abstention doctrine when it refused to disturb the decision of the General Assembly of the Presbyterian Church concerning whether pro-slavery or anti-slavery factions owned a church in Louisville, Kentucky. In discussing the subject matter jurisdiction of civil courts over ecclesiastical courts, this Court noted that "There is, perhaps, no word in legal terminology so frequently used as the word jurisdiction, so capable of use in a general and vague sense, and which is used so often by men

learned in the law without a due regard to precision in its application.” *Id.* at 732-733.

After discussing how ecclesiastical courts would have no subject matter jurisdiction over civil matters, the *Watson* Court held as follows:

But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character, – a matter over which the civil courts exercise no jurisdiction, – a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, – becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and

care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon [which permitted English civil courts to decide property disputes between English churches], and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.

*Id.* at 733-734 (emphasis in original).

This Court in *Watson* further differentiated between disputes arising in an independent congregation compared to a hierarchical church and explained how decisions made by a hierarchical church, such as the Catholic Church, must be accepted and are binding on the civil courts:

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law

have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

*Id.* at 727.

In what is likely the most quoted portion of *Watson*, this Court held as follows:

In this country the full and free right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. 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. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

*Id.* at 728-729.

In *Kedroff*, this Court further expanded the ecclesiastical abstention doctrine when it ruled unconstitutional a New York law requiring Russian Orthodox churches to recognize the determination of clergy by a North American governing body over the Patriarch in Russia. The *Kedroff* Court discussed *Watson* and held that the constitutional protections it afforded religious organizations must also extend to the selection of clergy:

The [Watson] opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or 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.

*Kedroff* at 116.

In *Milivojevich*, this Court further clarified the ecclesiastical abstention doctrine when it reversed the Illinois Supreme Court's decision that the church did not follow its own internal regulations when it defrocked a bishop. This Court held as follows:

The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments "civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes].... Such a determination ... frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation

of power within a [hierarchical] church so as to decide ... religious law [governing church polity] ... would violate the First Amendment in much the same manner as civil determination of religious doctrine.”

*Id.* at 708-709, quoting *Md. & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 369, 90 S.Ct. 499, 24 L. Ed.2d 582 (1970) (Brennan J., concurring).

This Court clearly established in *Watson*, *Kedroff*, and *Milivojevich* that civil courts do not possess subject matter jurisdiction to hear ecclesiastical disputes.

## **II. THE MINISTERIAL EXCEPTION ONLY APPLIES TO EMPLOYMENT CASES**

Unlike the ecclesiastical abstention doctrine, the “ministerial exception” was recently created by federal courts to address employment discrimination claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., and other employment discrimination laws. This Court first recognized the “ministerial exception” in *Hosanna-Tabor*. In that case, a teacher, who had undergone extensive religious training at a Lutheran school, was terminated after she developed narcolepsy, would not accept the school’s suggestion that she resign, and threatened legal action.

The EEOC brought suit alleging a violation of the Americans with Disabilities Act of 1990, 42

U.S.C. §12101 et seq. After noting the “ministerial exception” that had been created by the federal courts of appeal to deal with employment cases against religious institutions, this Court held that:

We agree that there is such a ministerial exception. The members of a religious group put their faith in the hands of their ministers. Requiring a church to accept or retain an unwanted minister, or punishing a church for failing to do so, intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs.

*Id.* at 188.

In finding that the “ministerial exception” applied to the Lutheran school teacher, this Court further held that “The purpose of the exception is not to safeguard a church’s decision to fire a minister only when it is made for a religious reason. The exception instead ensures that the authority to select and control who will minister to the faithful—a matter ‘strictly ecclesiastical,’ *Kedroff*, 344 U.S., at 119, 73 S. Ct. 143, 97 L. Ed. 120—is the church’s alone.” *Id.* at 194-195.

In footnote 4 of *Hosanna-Tabor*, this Court noted a conflict had arisen over whether the “ministerial exception” is a jurisdictional bar or a defense on the merits. This Court held that:

We conclude that the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. That is because the issue presented by the exception is “whether the allegations the plaintiff makes entitle him to relief,” not whether the court has “power to hear [the] case.” *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 254, 130 S. Ct. 2869, 177 L. Ed. 2d 535, 546 (2010) (internal quotation marks omitted). District courts have power to consider ADA claims in cases of this sort, and to decide whether the claim can proceed or is instead barred by the ministerial exception.

*Id.* at 195, footnote 4.

In addressing this conflict, this Court had to weigh the federal courts’ inherent jurisdiction to interpret acts of Congress against the ecclesiastical abstention doctrine’s prohibition against jurisdiction over ecclesiastical matters. The decision to treat the “ministerial exception” to federal employment claims as an affirmative defense enabled federal courts to exercise jurisdiction over claims arising from acts of Congress while still prohibiting civil courts from reviewing ecclesiastical disputes.

In *Our Lady of Guadalupe School v. Morrissey-Berru*, \_\_ U.S. \_\_, 140 S.Ct. 2049, 207 L. Ed.2d 870 (2020), this Court further expanded the “ministerial exception” to apply to two Catholic

school teachers, who had significantly less religious training than the teacher in *Hosanna-Tabor*. The schools maintained that one teacher's contract was not renewed due to the teacher's difficulty in administering a new reading and writing program and the other teacher's contract was not renewed due to a failure to observe a planned curriculum and to keep an orderly classroom.

In reversing the 9<sup>th</sup> Circuit's decision that the schools were not entitled to summary judgment under the "ministerial exception," this Court reaffirmed that religious schools' decisions concerning who should teach cannot be reviewed by civil courts.

The independence of religious institutions in matters of "faith and doctrine" is closely linked to independence in what we have termed "matters of church government." [*Hosanna-Tabor*], 565 U. S. [171], at 186, 132 S. Ct. 694, 181 L. Ed. 2d 650. This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission. And a component of this autonomy is the selection of the individuals who play certain key roles.

The "ministerial exception" was based on this insight. Under this rule, courts

are bound to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions. The rule appears to have acquired the label “ministerial exception” because the individuals involved in pioneering cases were described as “ministers.” See *McClure v. Salvation Army*, 460 F. 2d 553, 558-559 (CA5 1972); *Rayburn v. General Conference of Seventh-day Adventists*, 772 F. 2d 1164, 1168 (CA4 1985). Not all pre-*Hosanna-Tabor* decisions applying the exception involved “ministers” or even members of the clergy. See, e.g., *EEOC v. Southwestern Baptist Theological Seminary*, 651 F. 2d 277, 283-284 (CA5 1981); *EEOC v. Roman Catholic Diocese of Raleigh, N. C.*, 213 F. 3d 795, 800-801 (CA4 2000). But it is instructive to consider why a church’s independence on matters “of faith and doctrine” requires the authority to select, supervise, and if necessary, remove a minister without interference by secular authorities. Without that power, a wayward minister’s preaching, teaching, and counseling could contradict the church’s tenets and lead the congregation away from the faith. The ministerial exception was recognized to preserve a church’s independent authority in such matters.

*Morrissey-Berru* at 81-882.

Fr. Plishka's request that this Court expand the "ministerial exception" is misplaced because the instant matter is not an employment case. Fr. Plishka has only alleged an abuse of process. While the core of Fr. Plishka's claim arises from his suspension from priestly ministry, Fr. Plishka has asserted no employment-based claims.

### **III. PETITIONER EXAGGERATES THE "CONFLICT" OVER THE PROCEDURE BY WHICH ECCLESIASTICAL ABSTENTION SHOULD BE APPLIED**

Fr. Plishka argues that "State supreme courts across the country, as well as federal circuit courts, are split over whether the First Amendment doctrine of ecclesiastical abstention operates to deprive civil courts of subject-matter jurisdiction. The split is deep and pervasive and has, if anything, become only more intractable since this Court's decision in *Hosanna-Tabor*." Petition, pg. 12. Fr. Plishka greatly exaggerates the split among federal and state courts concerning how this nation's courts apply the ecclesiastical abstention doctrine. Most courts, relying upon this Court's decisions in *Watson*, *Kedroff*, and *Milivojevich*, hold that civil courts do not possess subject matter jurisdiction to hear ecclesiastical disputes. A review of the cases Fr. Plishka cites as being in conflict with the majority of decisions demonstrate how exaggerated is his claim of a pervasive conflict.

### **A. There Is No Conflict in the Federal Cases Cited by Petitioner**

Fr. Plishka first cites to *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10<sup>th</sup> Cir. 2002), as representing a conflict. In *Bryce*, an employee of the church who served as a youth minister was terminated for being in a homosexual relationship. The employee brought suit under Title VII of the Civil Rights Act of 1964 and also claimed conspiracy to interfere with civil rights under 42 U.S.C § 1985 and neglect to prevent a conspiracy under 42 U.S.C. § 1986. The church filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1) arguing the employee's claims were barred by the First Amendment's Free Exercise and Establishment Clauses. The district court, after converting the motion into a motion for summary judgment, granted it.

In affirming judgment for the church, the 10<sup>th</sup> Circuit Court of Appeals relied upon what it termed "church autonomy cases," chiefly *Watson*, *Kedroff*, and *Milivojevich*. *Bryce* at 655-656. The 10<sup>th</sup> Circuit also relied upon the "ministerial exception" that had developed in other federal employment discrimination cases. *Id.* at 656. As the *Bryce* case involved an employee making federal claims and was decided in part upon the "ministerial exception," it does not represent a conflict.

Fr. Plishka next cites to *Paul v. Watchtower Bible & Tract Society of New York, Inc.*, 819 F.2d 875 (9<sup>th</sup> Cir. 1987), as representing a conflict. Paul

brought claims in the Washington State Superior Court against the Jehovah’s Witness Church for “shunning” and alleged torts of defamation, invasion of privacy, fraud, and outrageous conduct. After defendants removed the case on diversity grounds, the district court denied the church’s Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, but granted defendants summary judgment. The 9<sup>th</sup> Circuit, relying on *Milivojevich*, held that the ecclesiastical abstention doctrine was not pertinent to the case because Paul was not alleging the church’s rules concerning “shunning” were improper under church law or that church members were acting inconsistent with church rules. *Id.* at 878, footnote 1. Nevertheless, the 9<sup>th</sup> Circuit affirmed holding that the Jehovah’s Witnesses’ practice of “shunning” was protected under the First Amendment. *Id.* at 883. As Paul was decided on grounds other than the ecclesiastical abstention doctrine, it does not represent a conflict.

There is no conflict with how the federal courts have addressed the ecclesiastical abstention doctrine in the cases cited by Fr. Plishka. Moreover, the two cases cited by Fr. Plishka as noting a conflict did so in dicta<sup>1</sup> and in analyzing whether the court had subject matter jurisdiction despite commenting that it is debatable whether religious autonomy deals with subject matter jurisdiction.<sup>2</sup> As such,

---

<sup>1</sup> *McRaney v. North American Mission Board of the Southern Baptist Convention, Inc.*, 966 F.3d 346, 348, footnote 1 (5<sup>th</sup> Cir. 2020).

<sup>2</sup> *Kelly v. Marcantonio*, 187 F.3d 192, 197 (1<sup>st</sup> Cir. 1999).

these cases do not create a conflict and merit no further discussion.

**B. The Four State Cases Relied Upon by Petitioner Do Not Create a Conflict**

Fr. Plishka first cites to *Winkler v. Marist Fathers of Detroit, Inc.*, 901 N.W.2d 566 (Mich. 2017), as representing a conflict. Winkler alleged she was discriminated against under Michigan law due to her disability when she was denied admission to a Catholic high school. The Supreme Court of Michigan, relying in part on *Hosanna-Tabor*, overruled prior cases holding that the ecclesiastical abstention doctrine entirely deprives civil courts of subject matter jurisdiction. *Id.* at 569 and 575, footnote 5. Rather, the Court held that:

What matters instead is whether the actual adjudication of a particular legal claim would require the resolution of ecclesiastical questions; if so, the court must abstain from resolving those questions itself, defer to the religious entity's resolution of such questions, and adjudicate the claim accordingly. The doctrine, in short, requires a case-specific inquiry that informs how a court must adjudicate certain claims within its subject matter jurisdiction.

*Id.* at 575.

Fr. Plishka next cites to *Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528 (Minn. 2016), in which Pfeil, a parishioner, alleged pastors made defamatory statements during formal church disciplinary proceedings. While the Court held that “the U.S. Supreme Court’s holding in *Hosanna-Tabor* leads us to conclude that the ecclesiastical abstention doctrine is not a jurisdictional bar,” it affirmed the dismissal of Pfeil’s claims.

Fr. Plishka next cites to *St. Joseph Catholic Orphan Society v. Edwards*, 449 S.W.3d 727 (Ky. 2014), in which ousted board members of a Catholic orphanage challenged their removal and sought reinstatement. The Court held that:

We conclude the ecclesiastical-abstention doctrine does not divest our courts of subject-matter jurisdiction to hear cases they are otherwise authorized to adjudicate....Instead, we reason that the ecclesiastical-abstention doctrine is to be applied as an affirmative defense akin to the ministerial exception, including the right to an interlocutory appeal following a trial court’s denial of its application.

*Id.* at 730. The Court, finding the case involved an ecclesiastical dispute, directed the trial court to dismiss the complaint. *Id.* at 741.

Fr. Plishka lastly cites to *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286 (Ind. 2003) in which an employee terminated from her job at a Catholic church alleged breach of contract and tortious interference with a business relationship when the church shared the reasons for her dismissal with a Catholic university at which Brazauskas sought employment. The Court held that “[a] court with general authority to hear matters like employment disputes is not ousted of subject matter or personal jurisdiction because the defendant pleads a religious defense. Rather, pleading an affirmative defense like the Free Exercise Clause may under certain facts entitle a party to summary judgment.” *Id.* at 290. The Court held that the First Amendment’s Free Exercise Clause entitled defendants to summary judgment on Brazauskas’ claims. *Id.* at 294.

Fr. Plishka has cited to a grand total of four state cases that hold ecclesiastical abstention does not bar subject matter jurisdiction.<sup>3</sup> Certainly, this does not amount to a “deep and pervasive” conflict as alleged by Fr. Plishka. Moreover, all four cases were decided under the laws of those states and each state has the inherent authority to determine procedurally how cases involving ecclesiastical disputes should be addressed as long as churches’ First Amendment rights are protected.

---

<sup>3</sup> By Fr. Plishka’s own admission, Oklahoma recently reaffirmed that “church autonomy is a bar to subject matter jurisdiction” in *Oklahoma Annual Conference of the United Methodist Church*, 538 P.3d 163 (Okla. 2023) and thus there is no need to address prior Oklahoma precedent holding otherwise.

Quite simply, none of the federal or state cases cited by Fr. Plishka provide any reason for this Court to accept jurisdiction over the instant matter.

#### **IV. NO DECISION OF THIS COURT CAN AFFECT THE ULTIMATE OUTCOME OF THIS MATTER**

Fr. Plishka's petition should be denied because no decision of this Court can affect the ultimate outcome of this matter because 1. Ohio's procedure for determining subject matter jurisdiction will not be impacted by a decision rendered by this Court and 2. the dismissal of this matter on ecclesiastical abstention grounds would occur based on the allegations in Fr. Plishka's complaint and the evidence of record regardless of what procedure is used to determine whether this matter involves an ecclesiastical dispute.

As this Court has long held, "The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653 (1895).

In *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S. Ct. 402, 30 L. Ed.2d 413 (1971), this Court clearly set forth why it cannot decide moot cases, such as the instant case, holding as follows:

Early in its history, this Court held that it had no power to issue advisory opinions, *Hayburn's Case*, 2 Dall. 409 (1792), as interpreted in *Muskrat v. United States*, 219 U.S. 346, 351-353 (1911), and it has frequently repeated that federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them. *Oil Workers Unions v. Missouri*, 361 U.S. 363, 367 (1960). To be cognizable in a federal court, a suit "must be definite and concrete, touching the legal relations of parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-241 (1937). However, "moot questions require no answer." *Missouri, Kansas & Texas R. Co. v. Ferris*, 179 U.S. 602, 606 (1900). Mootness is a jurisdictional question because the Court "is not empowered to decide moot questions or abstract propositions," *United States v. Alaska S. S. Co.*, 253 U.S. 113, 116 (1920), quoting *California v. San Pablo & Tulare R. Co.*, 149 U.S. 308, 314 (1893); our impotence "to review moot cases derives from the requirement of Article III of the

Constitution under which the exercise of judicial power depends upon the existence of a case or controversy.” *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3 (1964). See also *Powell v. McCormack*, 395 U.S. 486, 496 n. 7 (1969). Even in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction. *Henry v. Mississippi*, 379 U.S. 443, 447 (1965). *Liner v. Jafco, Inc.*, at 304.

As any decision rendered by this Court would not affect the outcome of this matter, Fr. Plishka’s petition for certiorari should be denied.

**A. Ohio’s Procedure for Analyzing a Challenge to Subject Matter Jurisdiction**

The State of Ohio has an established procedure for addressing challenges to the courts’ subject matter jurisdiction, which will not be impacted by a decision of this Court in this matter. Ohio Civ.R. 12(B)(1), which is substantively identical to Fed.R.Civ.P. 12(b)(1), provides that “Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter.”

In *Brown v. Cincinnati Public Schools*, 1<sup>st</sup> Dist. Hamilton No. C-150345, 2016 Ohio App. Lexis 641, \*3, the Court set forth the standard Ohio courts apply when analyzing a motion to dismiss for lack of subject matter jurisdiction:

When determining whether dismissal is warranted under Civ.R. 12(B)(1), the court must determine if the plaintiff has alleged “any cause of action cognizable by the forum.” *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). The Ohio Supreme Court has held that “the trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction pursuant to a Civ.R. 12(B)(1) motion to dismiss, and it may consider material pertinent to such inquiry without converting the motion into one for summary judgment.” *Southgate Dev. Corp. v. Columbus Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus; see *Nemazee v. Mt. Sinai Med. Ctr.*, 56 Ohio St.3d 109, 111, 564 N.E.2d 477 (1990), fn. 3; *Wilkerson v. Howell Contrs., Inc.*, 163 Ohio App.3d 38, 2005-Ohio-4418, 836 N.E.2d 29, ¶ 9 (1st Dist.).

“An appellate court reviews a trial court’s decision on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction under a *de novo* standard of review. *Pankey v. Ohio Dept. of Rehab.*

& Corr., 10th Dist. No. 13AP-701, 2014-Ohio-2907, ¶ 7.” *White v. Ohio Public Defender*, 10<sup>th</sup> Dist. Franklin No. 19AP-243, 2019-Ohio-5204, ¶ 9.

In this matter, Respondents raised the defense of lack of subject matter jurisdiction through a Rule 12(B)(1) motion to dismiss. The Ohio 8<sup>th</sup> District Court of Appeals applied the forgoing standard when it ruled that the trial court lacked subject matter jurisdiction over this matter. Petitioner’s App., pgs. 31-32, ¶¶ 58-59.

Regardless of what this Court may rule in this matter should it accept jurisdiction, any party who contests subject matter jurisdiction in Ohio’s courts must do so pursuant to Civ.R. 12(B)(1) and such contestation will be analyzed in the same manner it was in the instant matter. Moreover, Respondents raised lack of subject matter jurisdiction as a defense to Fr. Plishka’s claims. For these reasons, Fr. Plishka’s petition for certiorari is moot.

**B. This Matter Involves an Ecclesiastical Dispute Over Which Civil Courts Must Abstain Regardless of the Procedure Used to Make Such a Determination**

Fr. Plishka’s Complaint established that his claim involves an ecclesiastical dispute concerning the propriety of his suspension from priestly ministry and whether he was damaged as a result of the publication of his suspension. Specifically, Fr. Plishka’s Complaint alleged as follows:

- The defendants did not file their complaint against plaintiff for its stated purpose – to recover allegedly converted property and/or to receive just compensation. Instead, the defendants misused, and misapplied, the lawsuit to accomplish an end other than that which it was purportedly designed to accomplish - to summarily and unilaterally suspend plaintiff and harm his credibility and reputation as a Byzantine Priest.
- There exist within the Byzantine Catholic church extensive canonical procedures, whereby a Diocese or Apostolic Administrator, suspecting that a priest has converted church property, can initiate an internal proceeding challenging the priest's conduct. The accused priest is given notice of the charges, provided an opportunity to defend himself, and an objective body within the church determines whether or not the allegations have merit, and whether or not the priest should be punished.
- Had the defendants chosen to use these internal procedures, they would have discovered that the property at issue actually belonged to plaintiff, or remained at the Cultural Center. Plaintiff never would have been publicly accused of theft. He never

would have been suspended. Parishioners, Bishops, priests, staff, and dioceses domestic and abroad would not have been informed of his suspension. And plaintiff's reputation as a priest generally, and particularly within the Diocese, never would have been damaged.

- But defendants did an end-around their own internal procedures, instead electing to sue plaintiff, so that they could subvert the stated purpose of their lawsuit, and use it as their basis to act unilaterally and to suspend plaintiff from the ministry.

Respondent's Appendix 1, Complaint, ¶¶ 8, 12-14, App. pgs. 1-8.

The Ohio 8<sup>th</sup> District Court of Appeals assessed “the allegations set forth in Fr. Plishka’s complaint” to “determine whether the nature of Fr. Plishka’s abuse-of-process claim involves purely secular issues.” Petitioner’s App., pg. 35, ¶ 65. After reviewing Fr. Plishka’s Complaint and the evidence of record, the Court of Appeals held as follows:

After careful review of the record and the materials attached to the defendants’ various motions, we find Fr. Plishka’s abuse-of-process claim is inextricably entangled with ecclesiastical concerns. Even accepting Fr. Plishka’s contention that his

complaint does not directly challenge the propriety of his suspension, we find the abuse-of-process claim necessary requires inquiry into ecclesiastical matters, including whether the Diocese's internal procedures permitted it to suspend Fr. Plishka based on the nature of his alleged conduct and the initiation of civil proceedings against him.

Petitioner's App., pg. 39, ¶ 70.

Based on the allegations in Fr. Plishka's Complaint, which clearly deal with an ecclesiastical dispute concerning the propriety of his suspension from priestly ministry, it does not matter whether the trial court's ability to hear this matter was analyzed 1. as a bar to subject matter jurisdiction or 2. under the procedure preferred by Fr. Plishka—that Respondents should have raised the courts' inability to hear this case as an affirmative defense, which was in fact done through Respondents' motion to dismiss. The results are the same under either procedure because this is an ecclesiastical dispute concerning the propriety of Fr. Plishka's suspension from priestly ministry. Under either procedure, civil courts cannot decide whether Fr. Plishka was properly suspended in accordance with the Canons of the Catholic Church. Based on the inevitable outcome of this matter under whichever procedural path is employed to analyze whether this case involves an ecclesiastical dispute, this Court should refuse jurisdiction because no decision of this Court can affect the ultimate outcome of this matter.

## CONCLUSION

For all the foregoing reasons, this Court should deny certiorari in this matter.

Respectfully submitted,

ROBERT E. CAHILL (#320017)  
*Counsel of Record*  
DENISE A. DICKERSON (#320109)  
SUTTER O'CONNELL CO.  
1301 EAST 9TH STREET  
3600 ERIEVIEW TOWER  
CLEVELAND, OHIO 44114  
(216) 928-2200 PHONE  
RCAHILL@SUTTER-LAW.COM  
DDICKERSON@SUTTER-LAW.COM

*Counsel for Respondent*  
*Archbishop William Skurla*

February 7, 2024

## **APPENDIX**

## APPENDIX

### TABLE OF CONTENTS

APPENDIX 1	Complaint (January 17, 2018) .....	App. 1
APPENDIX 2	Suspension Decree (July 20, 2017).....	App. 9
APPENDIX 3	Plaintiff's Motion in Limine to Preclude All References to All Testimony Regarding, and All Documents Relating to Church Proceedings/Matters (July 6, 2021).....	App. 11
APPENDIX 4	Order on Motions in Limine (September 21, 2021) .....	App. 20
APPENDIX 5	Journal Entry Regarding Verdict Against Plaintiff (November 19, 2021) .....	App. 22

---

## APPENDIX 1

---

### IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

RICHARD	)	[FILED JAN 17, 2018]
PLISHKA,	)	
124 Columbus Cir.	)	<b>CASE NO.</b>
Clarks Summit,	)	
PA 18411,	)	
Plaintiff,	)	
	)	
v.	)	<b><u>COMPLAINT FOR</u></b>
	)	<b><u>ABUSE OF PROCESS</u></b>
	)	<b><u>PROCESS</u></b>
WILLIAM	)	
SKURLA	)	
66 Riverview Ave.	)	
Pittsburgh, PA,	)	
15214	)	
And	)	<b><u>JURY DEMAND</u></b>
BYZANTINE	)	<b><u>ENDORSED HEREON</u></b>
CATHOLIC	)	
DIOCESE OF	)	
PARMA	)	
SSE, Inc.	)	
Statutory Agent	)	
26600 Detroit	)	
Road, 3 <sup>rd</sup> Floor	)	
Westlake, OH	)	
44145,	)	
	)	
Defendants.	)	

Plaintiff Richard Plishka states for his Complaint:

**PARTIES**

1. Richard Plishka is a priest employed by Defendant Byzantine Catholic Diocese of Parma ("Diocese").
2. William Skurla is the Metropolitan Archbishop of the Byzantine Catholic Archeparchy of Pittsburgh. He also served as the Diocese's Apostolic Administrator from May 7, 2017 until July 20, 2017.
3. The Diocese is an Ohio not-for-profit corporation with several parishes, spirituality centers, and related facilities located throughout the Midwest, including the former Byzantine Catholic Cultural Center located at 2420 W. 14<sup>th</sup> St., Cleveland, OH 44113 (the "Cultural Center"). The Diocese's principal administrative offices are located at 1900 Carlton Rd., Parma, OH, 44134.

**JURISDICTION AND VENUE**

4. Jurisdiction and venue are proper in this Court because the Diocese is located and has its principal place of business in Cuyahoga County, and because Cuyahoga County is where part of this claim for relief arose.

**FACTS**

5. In 2011, the Diocese assigned plaintiff to the Cultural Center as its administrator and leader. In connection therewith, plaintiff moved into and began living at the Cultural Center.
6. Thereafter, the relationship between defendants and plaintiff soured. In 2015, the Diocese relieved plaintiff of his position at the Cultural Center, reassigned him elsewhere within the Diocese, and instructed him to vacate the Cultural Center. Defendant Skurla subsequently reduced plaintiff's salary. Whether any of this conduct exceeded the defendants' authority and discretion is not at issue in this case; however ill-advised and whatever their intentions, plaintiff is not by this lawsuit seeking redress from defendants for any of it.
7. In May 2017, however, the defendants elected to involve the judicial system in their ongoing dispute with plaintiff. On May 31, 2017, the Diocese sued plaintiff in the Cuyahoga County Court of Common Pleas for conversion, in a case styled *Byzantine Catholic Diocese of Parma v. Richard Plishka*, Case No. 17-CV-881086. In that suit, the Diocese accused plaintiff of stealing church property when he vacated the Cultural Center a year earlier, and asked the Court to order plaintiff to pay

both compensatory and punitive damages.

8. The defendants did not file their complaint against plaintiff for its stated purpose - to recover allegedly converted property and/or to receive just compensation. Instead, the defendants misused, and misapplied, the lawsuit to accomplish an end other than that which it was purportedly designed to accomplish - to summarily and unilaterally suspend plaintiff and harm his credibility and reputation as a Byzantine Priest.
9. After suing plaintiff, and before plaintiff even responded to the Diocese's complaint, defendant Skurla issued a decree in his capacity as Apostolic Administrator of the Diocese. In it, defendant Skurla stated that because "civil lawsuits have been lodged in the civil court of the United States" against plaintiff, plaintiff was suspended, effective immediately, and would remain suspended "depending on the outcome of the resolution of said civil lawsuits." Nowhere in his decree did defendant Skurla state that the "civil lawsuits" he referenced as grounds for plaintiff's suspension had been filed by the Diocese itself, at his direction.
10. Defendant Skurla issued his decree suspending plaintiff on July 20, 2017 - on Skurla's last day serving as Apostolic Administrator of the Diocese.

App. 5

11. Four days after defendant Skurla's decree, on July 24, 2017, the Diocese informed all clergy and staff that plaintiff had been suspended from his ministry. And on July 30, the Diocese's newspaper, Horizons, reported that plaintiff had been suspended from all priestly activities. Horizons' circulation includes all parishioners within the Diocese, Bishops, priests and dioceses throughout the United States, and additional Bishops and dioceses in Europe.
12. There exist within the Byzantine Catholic church extensive canonical procedures, whereby a Diocese or Apostolic Administrator, suspecting that a priest has converted church property, can initiate an internal proceeding challenging the priest's conduct. The accused priest is given notice of the charges, provided an opportunity to defend himself, and an objective body within the church determines whether or not the allegations have merit, and whether or not the priest should be punished.
13. Had the defendants chosen to use these internal procedures, they would have discovered that the property at issue actually belonged to plaintiff, or remained at the Cultural Center. Plaintiff never would have been publicly accused of theft. He never would have been suspended. Parishioners, Bishops, priests, staff, and dioceses domestic and abroad would not have been informed of his suspension. And

plaintiff's reputation as a priest generally, and particularly within the Diocese, never would have been damaged.

14. But defendants did an end-around their own internal procedures, instead electing to sue plaintiff, so that they could subvert the stated purpose of their lawsuit, and use it as their basis to act unilaterally and to suspend plaintiff from the ministry.
15. In contrast to defendants' conduct, plaintiff appealed his suspension internally. Defendant Skurla's successor as Apostolic Administrator of the Diocese, Milan Lach, rescinded it almost immediately. He preliminarily rescinded plaintiff's suspension on August 7, 2017 - three days after plaintiff challenged defendant Skurla's decree. And he permanently rescinded defendant Skurla's decree a week later, on August 14, 2017. Less than four weeks after that, on September 8, 2017, the Diocese dismissed its complaint against plaintiff accusing him of conversion.
16. The damage caused to plaintiff by defendants' abuse of process - suing, suspending, and publicly reporting that one of their own priests was an untrustworthy thief - is both severe and ongoing.

**ABUSE OF PROCESS**

17. Plaintiff incorporates paragraphs 1-16 above.
18. Defendants began a lawsuit against plaintiff in proper form and with probable cause.
19. Defendants perverted the lawsuit to attempt to accomplish an ulterior purpose for which it was not designed.
20. Plaintiff has been directly damaged by the wrongful use of process.
21. By their conduct, defendants acted maliciously.

WHEREFORE, plaintiff prays for:

- a) Compensatory damages against defendants in an amount to be determined at trial exceeding \$15,000;
- b) Punitive damages in an amount to be determined at trial;
- c) Interest, costs, expenses, and attorneys fees; and
- d) Such further relief as the Court may deem appropriate.

**JURY DEMAND**

Plaintiffs hereby request a trial by jury.

Respectfully submitted,

/s/ Michael R. Hamed  
Philip S. Kushner (0043858)  
Michael R. Hamed (0069092)  
Kushner, Hamed & Grostic Co.,  
LPA  
1375 East Ninth Street, Suite  
1930  
Cleveland, Ohio 44114  
Phone: (216) 696-6700  
Fax: (216) 696-6772  
pkushner@kushnerhamed.com  
mhamed@kushnerhamed.com

*Attorneys for Plaintiff*

---

## APPENDIX 2

---

From:  
Most Rev. William C. Skurla  
66 Riverview Avenue  
Pittsburgh PA 15214

To:  
Rev. Richard Plishka  
2107 West 10<sup>th</sup> St.  
Cleveland, OH 44113

July 20, 2017

***Personal Confidential***

Dear Reverend Richard:

**Decree of Suspension**

Whereas canon 1517 §1 of the Code of Canons of the Eastern Churches states "before issuing an extrajudicial decree, an authority is to seek out the necessary information and proofs, hear or consult those whom the decree directly touches and especially those whose rights can be injured," and;

Whereas the undersigned has sought and received the necessary information and proofs, and; Whereas civil lawsuits have been lodged in the civil court of the United States against the Reverend Richard Plishka, in which Reverend

App. 10

Plishka has been accused to have violated the norm of canon 1449 ("a person who alienated ecclesiastical goods without the prescribed consent or permission is to be punished with an appropriate penalty"), and;

Whereas such an accusation is of such a serious nature and has caused scandal so as to question suitability of Reverend Plishka's ministry in the local church of to which the undersigned has been entrusted;

The undersigned hereby decrees that:

The Reverend Richard Plishka is to be suspended from the exercise of his priestly ministries, including the celebration of the Divine Liturgy depending on the outcome of the resolution of said civil lawsuits.

Sincerely yours in Christ,

*+William C Skurla*

Most Reverend Archbishop William C. Skurla, D.D.  
*Apostolic Administrator of Eparchy of Parma*

PLISH2035

---

### APPENDIX 3

---

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

[FILED JULY 6, 2021]

RICHARD	) Case No. CV-18-891709
PLISHKA,	)
	) JUDGE SHERRIE
Plaintiff,	) MIDAY
	)
V.	)
	) <u>PLAINTIFF'S MOTION</u>
	) <u>IN LIMINE TO</u>
WILLIAM	) <u>PRECLUDE ALL</u>
SKURLA, et	) <u>REFERENCES TO, ALL</u>
al.	) <u>TESTIMONY</u>
	) <u>REGARDING, AND ALL</u>
Defendants.	) <u>DOCUMENTS</u>
	) <u>RELATING TO CHURCH</u>
	) <u>PROCEEDINGS/</u>
	) <u>MATTERS</u>

For the reasons set forth in the attached Memorandum, Plaintiff respectfully requests a Court order precluding at trial any testimony regarding, reference to, and/or documents relating to church proceedings, as they are irrelevant to this lawsuit, they are unduly prejudicial, and they will confuse the jury.

Plaintiff requests that all irrelevant allegations concerning Plaintiff be excluded, and that testimony and documents pertaining to the ongoing religious proceedings likewise be precluded. Plaintiff further specifically requests that the characterization of the reason/basis for Plaintiff's claim of abuse of process be limited to a phrase such as "Defendants' filing of this lawsuit for church-related reasons, rather than for return of property", without going into specifics.

WHEREFORE, Plaintiff respectfully requests his Motion be granted.

Respectfully submitted,

/s/ Caryn M. Groedel  
Caryn M. Groedel (0060131)  
[cgroedel@groedel-law.com](mailto:cgroedel@groedel-law.com)  
CARYN GROEDEL &  
ASSOCIATES CO., LPA  
31340 Solon Road, Suite 27  
Cleveland, OH 44139  
Phone: (440) 544-1122  
Fax: (440) 996-0064  
Attorneys for Plaintiff

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION IN LIMINE TO  
PRECLUDE**

A good deal of irrelevant matter and material have been discussed and litigated in this case -- matters and materials involving the Catholic Church's discipline, internal organization, ecclesiastical rule, and laicization process. Such matters are beyond this Court's jurisdiction and thus the jury's purview due to the ecclesiastical abstention doctrine.<sup>1</sup>

For example, specific reference to church processes, suspensions from church-related duties, and/or reinstatement to church-related duties, are not only irrelevant, but also deal directly with the Catholic Church's discipline, internal organization, and ecclesiastical rule, and as such, are beyond this Court's jurisdiction and the jury's purview. Moreover, permitting testimony about the church's proceedings and/or documents will likely result in embarrassment and harm to the

---

<sup>1</sup> See *Doe v. Pontifical College Josephinum*, 2017-Ohio-1172, 87 N.E.3d 891 (10th Dist.). Under the ecclesiastical abstention doctrine, Ohio courts hold that "civil courts must not infringe upon a hierarchical church's disposition of an ecclesiastical dispute." *Id.* at ¶9. Ohio civil courts do not have subject matter jurisdiction over ecclesiastical disputes. *Id.* at ¶10.

parties, and would be unduly prejudicial.

As stated in this Court's Motion to Dismiss the Writ of Prohibition filed by Defendants in the Ohio Supreme Court:

On May 22, 2019, respondent Judge Miday denied the relators' motion to dismiss. See Complaint at para. 33-35; *id.* at Wolf Affidavit at ¶ 5(j) and Exhibit J. In her ruling, Judge Miday stated:

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

Civil courts lack jurisdiction to hear or determine purely ecclesiastical or spiritual disputes of a church or religious organization. *Tibbs v. Kendrick*, 93 Ohio App.3d 35, 40,637 N.E.2d 397 (8th Dist. 1994)]. "Generally, the question of who will preach from the pulpit of a church is an ecclesiastical question, review of which by the civil courts is limited by the First and Fourteenth Amendments to the United States Constitution." *Id.* [93 Ohio App.3d at 41,637 N.E.2d 397.]

Consistent with the First and Fourteenth Amendments, "civil courts do not inquire whether the relevant [hierarchical] church governing body has power under religious law [to decide such disputes] \*\*\* . Such a determination\*\*\* frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide\*\*\* religious law [governing church polity] \*\*\* would violate the First Amendment in much the same manner as civil determination of religious doctrine. (Ellipsis and insertions sic.)" *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-709, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Simply because one of the parties includes a religious figure does not necessarily make the matter ecclesiastical. *Ciganik v. York*, 11th Dist. Portage No. 2013-P- 0018, 2013-Ohio-5834, ¶ 26. Under Ohio law, a civil court has subject-matter jurisdiction over a case involving a religious organization if the dispute is secular rather than ecclesiastical. *Zhelezny v. Olesh*, 10th Dist. Franklin No. 12AP-681, 2013-Ohio-4337, ¶ 37. Courts

## App. 16

retain jurisdiction on purely secular matters, i.e., non-doctrinal disputes which can be resolved by employing neutral principles of law. *Ciganik*, at

¶ 25. *See also Slavic Full Gospel Church, Inc. v. Vernyuk*, 8th Dist. Cuyahoga No. 97158, 2012-Ohio-3943.

Furthermore, religious institutions are not immune from tort liability. *Strock v. Pressnell*, 38 Ohio St.3d 207, 209, 527 N.E.2d 1235 (1988). The First Amendment has not been construed to create blanket tort immunity for religious institutions or their clergy. *See Ga/las v. Greek Orthodox Archdiocese*, 154 Misc2d 494, 499, 587 N.Y.S.2d 82 (Sup.Ct. 1991).

The jurisdictional query in this case is whether the Plaintiff's claim for an abuse of process involves secular or ecclesiastical matters. Plaintiffs claim for an abuse of process stems from Defendants initial filing of a conversion and replevin action. The court finds that a claim for abuse of process is independent of any ecclesiastical matters and does not require interpretation of the church documents, internal church procedures, or a determination of the merits of [another church matter]\*\*\*.

Respondent's Motion to Dismiss in Case No. 2019-0842 before the Ohio Supreme Court at 8-9.

This case is about Plaintiffs abuse of (civil) process claim, and Defendant Diocese's counterclaims of conversion, unjust enrichment, and civil theft claims -- none of which concern ecclesiastical issues, matters, or documents.

Civil courts lack jurisdiction to hear or determine a religious organization's purely ecclesiastical disputes. *Tibbs v. Kendrick*, 93 Ohio App.3d 35, 40, 637 N.E.2d 397 (8th Dist. 1994), but have subject matter jurisdiction over cases involving religious organizations if the dispute is purely secular and can be resolved by employing neutral principles of law and without reference to ecclesiastical concepts. For example, in *Ciganik v. York*, 11th Dist. No. 2013-P- 0018, 2013-Ohio-5834, the court held that the plaintiff's claims for defamation and intentional infliction of emotion distress against a church pastor were governed by clearly defined principles of secular law and did not require interpreting or deciding church doctrines or concerns. Likewise, in *Zhelezny v. Olesh*, 10th Dist. No. 12AP-681, 2013-Ohio-4337, the court held that the plaintiff's claims for malicious prosecution, civil conspiracy, and intentional infliction of emotional distress

were secular matters and could/would be decided independent of any ecclesiastical concerns. *Id.* at ¶¶ 38-42.

In the instant case, Plaintiff's Complaint contains one claim: a tort claim for abuse of process arising out of the May 2017 conversion lawsuit filed against him by the Diocese. He has expressly denied seeking, in this lawsuit, to recover damages for any of the purely ecclesiastical determinations made by Defendants. Whether Defendants are liable for the tort of abuse of process is a strictly secular issue that can be resolved by applying neutral principles of law.

WHEREFORE, because all the claims in this case are strictly secular and not ecclesiastical, Plaintiff respectfully requests the Court preclude all reference to ecclesiastical matters and documents.

App. 19

Respectfully submitted,

*/s/ Caryn M Groedel*  
Caryn M. Groedel (0060131)  
*cgroedel@groedel-law.com*  
CARYN GROEDEL & ASSOCIATES  
CO., LPA  
31340 Solon Road, Suite 27  
Cleveland, OH 44139  
Phone: 440-544-1122  
Fax: 440-996-0064  
One of Plaintiff's Attorneys

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 6th day of July, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Caryn M Groedel*

---

**APPENDIX 4**

---

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

[FILED SEPTEMBER 21, 2021]

RICHARD PLISHKA,	)	CASE NO. CV-18-
	)	896359
Plaintiff,	)	CONSOLIDATED
	)	WITH CASE
v.	)	CV-18-891709
	)	
WILLIAM SKURLA,	)	JUDGE SHERRIE
et al.,	)	MIDAY
	)	
Defendants.	)	<b>ORDER ON</b>
	)	<b>MOTIONS IN</b>
	)	<b>LIMINE</b>

App. 21

This matter came before the Court on Fr. Plishka's Motion in Limine to Preclude All References to, All Testimony Regarding, and All Documents Relating to Church Proceedings/Matters; filed July 6, 2021 and the Byzantine Catholic Diocese of Parma, Inc.'s Motion in Limine to Exclude Evidence of Fr. Plishka's July 20, 2017 Suspension and His Administrative Penal Process, also filed July 6, 2021. Upon due consideration of those motions, the Court grants the motions as follows:

No party or counsel shall offer any evidence of, or reference in any way, Fr. Plishka's July 20, 2017 suspension, the publication of such suspension, Fr. Plishka's Administrative Penal Process or matters and materials involving the Catholic Church's discipline, internal organization, ecclesiastical rule, and laicization process. The parties and counsel may characterize the basis for Fr. Plishka's abuse of process claim in any accurate way that is not inconsistent with the foregoing limitation.

SO ORDERED.

Judge Sherry Miday  
Court of Common Pleas  
Cuyahoga County, Ohio

---

**APPENDIX 5**

---

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

[FILED NOVEMBER 19, 2021]

)  
RICHARD PLISHKA, ) CASE NO. CV-18-  
 ) 891709  
 Plaintiff, )  
 ) JUDGE SHERRIE  
 v. ) MIDAY  
 )  
 WILLIAM SKURLA, ) **JOURNAL ENTRY**  
 et al., )  
 )  
 Defendants. )  
 )  
 )

81 DISP. JURY TRIAL – FINAL

11/16/2021: JURY DELIBERATION CONTINUES. JURY RETURNS VERDICT IN FAVOR OF BYZANTINE CATHOLIC DIOCESE OF PARMA, INC. AGAINST RICHARD PLISHKA FOR POSSESSION OF THE RELICS. JURY RETURNS VERDICT IN FAVOR OF THE BYZANTINE CATHOLIC DIOCESE OF PARMA, INC., AS TO THE CLAIMS IN CV-18-896359 AGAINST RICHARD PLISHKA IN THE AMOUNT OF \$0.00.

COURT COSTS ASSESSED TO THE PLAINTIFF(S).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

SO ORDERED. Judge Sherry Miday  
Court of Common Pleas  
Cuyahoga County, Ohio