

No. 21-1377

IN THE
Supreme Court of the United States

THE ROMAN CATHOLIC BISHOP OF OAKLAND, ET AL.,
Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA IN & FOR
THE COUNTY OF LOS ANGELES, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari
to the Court of Appeal to the State of California,
Second Appellate District**

**MOTION FOR LEAVE TO FILE AND BRIEF OF
AMICUS CURIAE UNITED STATES CONFERENCE
OF CATHOLIC BISHOPS IN SUPPORT OF
PETITIONERS**

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**MOTION FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE UNITED STATES
CONFERENCE OF CATHOLIC BISHOPS**

For decades, the Catholic Church has worked hard to understand and eradicate the roots of child abuse from its ministries. The process has not been an easy one but there has been significant progress, and that progress continues. Beginning in 1984, as the first “clergy cases” were reported nationally, the United States Conference of Catholic Bishops (USCCB or Conference) took a leadership role in focusing attention on responding effectively to cases of abuse through outreach to victims and removal of those credibly accused from assignments. The explosion of abuse reports in 2002 prompted another look at the Church’s policies and procedures, and the Conference again was the means through which Diocesan Bishops agreed to a series of action steps to respond to and prevent instances of abuse. In 2003 the California Legislature allowed previously time-barred claims for childhood sexual abuse to be filed. Since 2002-2003, significant improvements and changes occurred in how Catholic dioceses and institutions responded to and deal with the problem of abuse. The rates of complaints have been diminished substantially. This reality stands in stark contrast to what the California Legislature stated in enacting the Assembly bill under review here.

In 2020, a second three-year window opened in California to allow for the filing of childhood sexual abuse claims. The instant Petition argues why the imposition of a second revival for such claims violates the rights of Petitioners. The Petition rests on sound arguments about the substantial unfairness in allowing for new litigation against them, having already allowed for such litigation nearly twenty years ago. In an effort to contextualize those arguments, the USCCB's experience and perspective provides necessary background to educate the Court about the reality that persists inside the Catholic Church in the United States today.

Counsel for Respondents have refused consent and thus the Conference seeks leave to file the attached brief as amicus curiae urging the Court to grant the Petition.

Respectfully submitted,

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INTEREST OF AMICUS CURIAE¹

Amicus United States Conference of Catholic Bishops (“USCCB” or “Conference”) is a nonprofit corporation, the members of which are the active Catholic Bishops in the United States. Values of critical importance to the USCCB include protecting children and young people from harm and neglect, promoting healing where such abuse does occur, and assuring that our system of justice is administered in accordance with principles of fundamental fairness and the rule of law. In service to the Court’s consideration of the Petition in No. 21-1377, this brief outlines steps taken by dioceses and other Church entities in the United States toward the attainment of that end.

SUMMARY OF ARGUMENT

Child sexual abuse is a scourge on human society, affecting every country, every institution, and every community. In the words of Pope Francis, child abuse is a form of “psychological murder” and a

¹ Counsel of record for all parties received timely notice of USCCB’s intention to file this brief. Respondents do not consent and therefore USCCB filed a motion for leave to file this amicus brief. Pursuant to Rule 37.6 of the Rules of this Court, USCCB states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief *amicus curiae*. No other person other than USCCB or its counsel made a monetary contribution to its preparation or submission.

“cancellation of childhood.”² States have a duty to identify abusers and to punish them, and to do so within constitutional bounds. Similarly, the various institutions in society that serve children—schools, sports leagues, recreational and cultural institutions, and religious communities—must take active and effective measures to prevent abuse and to help remedy it when it occurs.

For many years, the Catholic Church, like other child-serving institutions, often failed to meet its responsibility to protect all children. The legacy of child sexual abuse by some Catholic clergy, and the misguided and harmful response to claims of abuse by some in Church leadership, is shameful. It is good that the problem of child sexual abuse is now more widely known and better understood, enhancing prevention and ensuring an honest confrontation with the facts by all members of society, including Catholic bishops.

As the Church has acknowledged these failings, it has compensated many of those who claimed injury from abuse according to theories of recovery provided by state legislatures and common law and adjudicated according to well-established court procedures. In doing so, the Church relied on the finality of those claims and processes. Decisions regarding how to treat Church assets were made with the understanding that, by submitting to the requirements of civil

² Pope Francis, Address of the Holy Father During an Audience with Members of the “Meter” Association (May 15, 2021), *available at* <https://press.vatican.va/content/salastampa/en/bollettino/publico/2021/05/15/210515d.html> (last visited May 17, 2022).

authorities, liabilities for claims of past abuses could be satisfied once and for all.

The Petition filed by dioceses in California rests on sound arguments about the substantial unfairness and punitive character of legislation that retroactively revives civil claims against them a second time, now for three years rather than one, and adding a treble damages remedy. *Amicus* offers this brief to provide the Court with an element of context that confirms the unfair and punitive nature of that legislation: between California's first retroactive revival of claims in 2002 and its second in 2020, the Catholic Church in the United States continued to make substantial progress in preventing and providing redress for sexual abuse. Whether or not a second retroactive revival of claims is unfair or punitive as against an entity (religious or otherwise) that has taken no corrective action or worsened its misconduct (regarding sexual abuse or otherwise) since the first revival, it can *only* be unfair and punitive against an entity that has undertaken the large-scale and effective preventive and remedial steps as described herein.

Since at least the mid-1980s, the Church has engaged in widespread efforts to eradicate child sexual abuse in its midst and to promote healing for those who have suffered it. The process has not been an easy or perfect one, but there has been significant progress, and that progress continues today. As explained further below, there are discernable milestones in this progress—from the Conference's initial response to the first "clergy cases" reported nationally in 1984; to the articulation of the "Five Principles" in the early 1990s and their initial implementation in many dioceses; to the more widespread and consistent

application of those principles, plus the zero-tolerance principle, via the *Charter for the Protection of Children and Young People* and the *Essential Norms* in 2002;³ to safe environment training and background checks for those who serve in Church ministries; to the establishment of independent claims commissions beginning in 2016; to *Vos estis lux mundi* and corresponding *Directives* from the Conference in 2019.

Most relevant for present purposes, however, is the fact that progress continued strongly in the eighteen-year period between California's first and second retroactive revival of claims—indeed, especially strongly in the wake of the *Charter*. But in the eyes of the California Legislature of 2020, none of this progress ever occurred. Instead, that Legislature not only revived lapsed civil damage claims for an additional three years but added the severe remedy of treble damages in many instances. Ratcheting up legislative remedies against misconduct that has diminished substantially—even at an accelerated rate—since the last remedial action is simply unfair and punitive.

If the Constitution were to allow such repeated, retroactive perpetuation and expansion of civil liability against any entity—religious or otherwise, in the sexual abuse context or otherwise—for misconduct it now effectively prevents and remedies, other state and local legislatures will follow California's model.

³ *The Charter for the Protection of Children and Young People*, first adopted in June 2002, available at [https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final\(1\).pdf](https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final(1).pdf) (last visited May 16, 2022) (hereinafter “the *Charter*”).

This potential problem bears such exceptional importance that the Petition should be granted and the decisions below reversed.

ARGUMENT

I. Nationwide Progress Against the Sin and Crime of Sexual Abuse of Minors in the Catholic Church Dates Back to the 1980s, has been Substantial, and Continues to this Day.

The problem of sexual abuse of children by Catholic clergy first came to the attention of the Bishops' Conference—then called the National Conference of Catholic Bishops / United States Catholic Conference, or “NCCB/USCC”—in 1982, in the form of allegations arising out of just two dioceses.⁴ In 1984, allegations of abuse by Father Gilbert Gauthe, a priest of the Diocese of Lafayette, Louisiana, gained widespread public attention. Dozens of claimants in multiple states came forward following publicity about allegations of abuse by Father Gauthe. For the first time, the Conference was confronted with more than a single, seemingly isolated claim. As the claims gained wider publicity, numerous other cases involving multiple claimants came to the attention of the Conference.⁵

Though still not fully aware of the full scope of the crisis, the problem of sexual abuse of minors was

⁴ Ad Hoc Committee on Sexual Abuse, *Brief History: Handling Child Abuse Claims*, Origins, Vol. 23, No. 38 (Mar. 10, 1994) at 666.

⁵ *Id.*

addressed during a 1985 executive session of the NCCB in Collegeville, Minnesota. During that meeting, the bishops sought the guidance of experts and began proposing tentative approaches.⁶ Following that meeting, the Conference spent several years continuing its efforts to understand the scope of the problem and the appropriate response. The Conference also began to speak publicly about the issue, though it admittedly did so with caution—remaining focused on confidentiality due to concerns regarding the privacy of individuals involved, including victims, and the application of attorney-client privilege.⁷

In 1988, although the Conference did not (and does not) have supervisory or governance authority over dioceses or any of their clergy, it offered five non-binding principles as advice to dioceses faced with claims of abuse: dioceses should respond promptly to all allegations, remove credibly accused clergy from ministry, report incidents to civil authorities and cooperate with their investigations, communicate compassionately with victims and their families, and deal as transparently as possible with the public regarding incidents of abuse.⁸ These “Five Principles” persisted for some time, reiterated in substantially the same form by the Administrative Committee of the Conference in 1989,⁹ and by the Conference President in 1992:

⁶ *Id.* at 667.

⁷ *Id.* at 668.

⁸ *Id.*

⁹ *Id.* at 669.

“- Respond promptly to all allegations of abuse where there is reasonable belief that abuse has occurred.

“- If such an allegation is supported by sufficient evidence, relieve the alleged offender promptly of his ministerial duties and refer him for appropriate medical evaluation and intervention.

“- Comply with the obligations of civil law regarding reporting of the incident and cooperating with the investigation.

“- Reach out to the victims and their families and communicate sincere commitment to their spiritual and emotional well-being.

“- Within the confines of respect for privacy of the individuals involved, deal as openly as possible with members of the community.”¹⁰

In the same timeframe, and within the parameters of these principles, there remained the question whether it was *ever* possible to reassign a priest who had engaged in sexual abuse.¹¹ Although firmly resolved now, the question was more problematic then and was studied intensely from a range of disciplines—theological, pastoral, canonical, legal, and medical.¹² The result at the time was inconclusive, consisting of a list of factors that bishops

¹⁰ *Id.* at 668.

¹¹ *Id.* at 669.

¹² *Id.*

should consider locally in making the decision in particular cases.¹³

In 1993, the Conference appointed the Ad Hoc Committee on Sexual Abuse to advise bishops and dioceses about the best ways in which to deal with allegations of abuse.¹⁴ The Committee issued three reports from 1994 through 1996, focusing on topics such as fairness and responsiveness to victims, removal of credibly accused priests from any public ministry, cooperation with civil authorities, and increasing transparency with Catholics and the public generally about sexual abuse in the Church.¹⁵ A major issue that emerged during this time period was accountability—what was known about abuse in the past, and how Catholics would know that the proper procedures were being followed now in their dioceses.

In 2002, the Church experienced renewed focus on clergy child sexual abuse in its ranks. Beginning in January, the *Boston Globe* published an examination of how the Archdiocese of Boston handled complaints of abuse and credibly accused offenders. Although the focus of the *Globe's* series was Boston, its examination of how abuse complaints were handled historically was soon part of an examination everywhere in the United States. As recorded in *America* magazine in 2006:

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See, e.g.*, the Restoring Trust reports and other such documentation is available at *Additional Founding Documentation*” <https://www.usccb.org/offices/child-and-youth-protection/charter-protection-children-and-young-people> (last visited May 18, 2022).

In a flash, newspapers around the country began reprinting the *Globe's* reports and developing their own. They published 728 stories in January, 1,095 in February and 2,961 in March. By April, these papers were publishing a new story every nine minutes, 160 every day, 4,791 for the month. By year end, American papers provided their readers over 21,000 stories of sexual abuse by Catholic priests.¹⁶

The national focus resulted in the passage of the *Charter for the Protection of Children and Young People*, adopted by the bishops on June 14, 2002, at their General Assembly in Dallas, Texas. The “Dallas *Charter*,” as it is often known, is a compact among the bishops by which they each committed to taking a series of action steps in their local dioceses to more effectively prevent sexual abuse and promote healing wherever such abuse occurred.

Also at the June 2002 meeting, the U.S. bishops adopted parallel “essential norms,” which would impose many of the same requirements of the *Charter* as a matter of canon law, if they were given approval (or “*recognitio*”) by the Holy See. After consultation with the Holy See over the following months, a revised version of these norms was proposed to the bishops at their next General Assembly. On November 13, 2002, the General Assembly adopted the text of the

¹⁶ L. Martin Nussbaum, *Changing the Rules*, AMERICA (May 16, 2006) *available at* <https://www.americamagazine.org/issue/572/article/changing-rules> (last visited May 9, 2022).

Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, as well as conforming revisions to the *Charter*.

Some of the provisions of the *Charter* and *Essential Norms* simply restated—and ensured more consistent application—of the Five Principles.¹⁷ But the *Charter* and *Essential Norms* also went well beyond the Five Principles in many important respects, including:

- Nationwide zero tolerance – “Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor— whenever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state.”¹⁸
- No transfers to ministry elsewhere – “No priest or deacon who has committed an act of sexual abuse of a minor may be

¹⁷ See *Charter* Art. 2 (parallel to principle 1 re prompt response); *Essential Norms* Norms 6 & 9 (parallel to principle 2 re prompt removal); *Charter* Art. 4 (parallel to principle 3 re civil reporting and other compliance); *id.* Art. 1 (parallel to principle 4 re pastoral outreach); *id.* Art. 7 (parallel to principle 5 re open communication).

¹⁸ *Charter* Art. 5; see *Essential Norms* Norms 8 & 9.

transferred for a ministerial assignment in another diocese/eparchy.”¹⁹

- Background checks for everyone in contact with minors – “The diocesan/eparchial bishop is to evaluate the background of all incardinated priests and deacons. ... Dioceses/eparchies are to evaluate the background of all their respective diocesan/eparchial and parish/school or other paid personnel and volunteers whose duties include contact with minors. Specifically, they are to utilize the resources of law enforcement and other community agencies.”²⁰
- Written diocesan conduct standards / policies on sexual abuse – “Each diocese/eparchy will have a written policy on the sexual abuse of minors by priests and deacons, as well as by other church personnel.”²¹
- Establishment of Diocesan Victim Assistance Coordinators – “Dioceses/eparchies are to have a competent person or persons to coordinate assistance for the immediate pastoral care of persons who report having been

¹⁹ *Essential Norms* Norm 12; see *Charter* Art. 14.

²⁰ *Charter* Art. 13.

²¹ *Essential Norms* Norm 2; see *Charter* Arts. 6, 12.

sexually abused as minors by clergy or other church personnel.”²²

- Establishment of Diocesan Safe Environment Programs – “Dioceses/eparchies are to maintain ‘safe environment’ programs which the diocesan/eparchial bishop deems to be in accord with Catholic moral principles.”²³
- Establishment of Diocesan Review Boards – “Dioceses/eparchies are also to have a review board that functions as a confidential consultative body to the bishop/eparch. The majority of its members are to be lay persons not in the employ of the diocese/eparchy. ... This board is to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric’s suitability for ministry ... [and] to review diocesan/eparchial policies and procedures for dealing with sexual abuse of minors.”²⁴
- Ad Hoc Committee made permanent – “The Committee on the Protection of Children and Young People is a standing committee of the United States Conference of Catholic Bishops,” and its purposes include “advising the USCCB on all matters related to child and youth

²² *Charter Art. 2; see Essential Norms Norm 3.*

²³ *Charter Art. 12.*

²⁴ *Charter Art. 2; see Essential Norms Norms 4 & 5*

protection” and “to provide the USCCB with comprehensive planning and recommendations concerning child and youth protection.”²⁵

- Annual, publicly reported audits of diocesan *Charter* compliance – “The Secretariat is to produce an annual public report on the progress made in implementing and maintaining the standards in this Charter. The report is to be based on an annual audit process whose method, scope, and cost are to be approved by the Administrative Committee on the recommendation of the Committee on the Protection of Children and Young People. This public report is to include the names of those dioceses/eparchies which the audit shows are not in compliance with the provisions and expectations of the Charter.”²⁶
- Establishment of National Review Board – “The Committee on the Protection of Children and Young People is to be assisted by the National Review Board, a consultative body established in 2002 by the USCCB. The Board will review the annual report of the Secretariat of Child and Youth Protection on the implementation of this Charter in each diocese/eparchy and any recommendations

²⁵ *Charter* Art. 8.

²⁶ *Charter* Art. 9.

that emerge from it, and offer its own assessment regarding its approval and publication to the Conference President.”²⁷

- Commission of Studies on Nature and Scope, Causes and Contexts – “To understand the problems more fully and to enhance the effectiveness of our future response, the National Review Board will commission a comprehensive study of the causes and context of the current crisis. The Board will also commission a descriptive study, with the full cooperation of our dioceses/eparchies, of the nature and scope of the problem within the Catholic Church in the United States, including such data as statistics on perpetrators and victims.”²⁸

These additional measures represented a powerful boost to the ongoing efforts of the Church both to prevent and to help heal sexual abuse by its clergy.

²⁷ *Charter* Art. 10.

²⁸ *Charter* Art. 9 (2002 version). The Charter was amended in 2005, 2011 and 2018 and the original Article 9 was renumbered as Article 10 and updated to reflect the completion and publication of the studies.

II. Disregard of the Progress Since 2002—the Year of Both California’s First Retroactive Revival of Claims and of the Charter—Underscores the Punitive Character of California’s Action Here.

About two weeks after the passage of the *Charter*, the California Legislature retroactively revived civil claims of sexual abuse for calendar year 2003.²⁹ That window resulted in the filing of approximately 1,000 lawsuits, which were resolved by 2007 at a total cost of about \$1.2 billion.³⁰ As detailed in the Petition, those dioceses acted on the expectation that the window would resolve the claims that were otherwise time-barred.³¹

Meanwhile, implementation of the *Charter* was getting underway. For example, the National Review Board commissioned the John Jay College of Criminal Justice to undertake the two independent social science studies prescribed by the *Charter*.³² “The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002,” was published in 2004,³³ and “The Causes

²⁹ See California Senate Bill 1779.

³⁰ Veto Message of Governor Edmund G. Brown (September 30, 2018), Appendix J, Pet. App. 150a.

³¹ *Roman Catholic Bishop, et al. v. Superior Court, et al.*, U.S. No. 21-1377 Petition at 6–7 (filed April 25, 2022).

³² See USCCB, *History of the National Review Board*, at 13–15 (2011), available at <https://www.usccb.org/resources/NRB-History-5-17-2011.pdf> (last visited May 16, 2022).

³³ Karen Terry, *et al.*, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States*

and Context of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2010,” was published in 2011.³⁴ The researchers counted the numbers of allegations reported to dioceses and catalogued them by decade of abuse and by decade of report. The researchers found that between 1950 and 2003 (when the study was being undertaken), 10,667 minors may have been victims of clergy sexual abuse.³⁵ However, of that number, those researchers found that only 810 claims were reported to the dioceses in the United States between 1950 and 1984.³⁶ By contrast 85% of the abuse reported to John Jay

1950-2002, A RESEARCH STUDY CONDUCTED BY THE JOHN JAY COLLEGE OF CRIMINAL JUSTICE (2004), *available at* <https://www.usccb.org/sites/default/files/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf> (last visited May 9, 2022) (hereinafter “*Nature and Scope*”).

³⁴ Karen Terry, *et al.*, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2010* (2011), A REPORT PRESENTED TO THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS BY THE JOHN JAY COLLEGE RESEARCH TEAM, *available at* <https://www.usccb.org/sites/default/files/issues-and-action/child-and-youth-protection/upload/The-Causes-and-Context-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-in-the-United-States-1950-2010.pdf> (last visited May 9, 2022) (hereinafter “*Causes and Context*”).

³⁵ *Nature and Scope* at 4–5, 89–90.

³⁶ *Causes and Context* at 78.

researchers in 2003 was reported between 1990 and 2002.³⁷

Likewise, the annual audit reports required by the *Charter* began in the early 2000s and have continued every year since. The Conference's Secretariat of Child and Youth Protection continues to record data on numbers of new accusations and accused by decade of abuse.³⁸ As was the situation in 2002, the overwhelming numbers of abuse allegations have occurred between 1960 and 1990, peaking between 1974 and 1982.³⁹ There are 20 years of public data reports that demonstrate this fact: the peak years for Catholic clergy is now 50-60 years ago. In other words, the peak documented nearly 20 years ago by John Jay researchers has not moved forward, and

³⁷ *Nature and Scope* at 90. 40% of the total number of allegations counted by the John Jay researchers were reported between 1990 and 1999. 44% were reported between 2000 and 2002. "One third of all allegations were reported in 2002-2003...." *Id.* at 5.

³⁸ All of these reports are publicly available. *See* <https://www.usccb.org/offices/child-and-youth-protection/archives> (last visited May 16, 2022).

³⁹ *Nature and Scope* at 5, 78, 90.

there are few abuse cases between 1990 and 2000,⁴⁰ or any other later time.⁴¹

The annual audit reports also confirm widespread implementation of other key provisions of the *Charter*, such as the requirements to have Victim Assistance Coordinators in every diocese,⁴² to cooperate with civil reporting requirements,⁴³ and many others. And the ongoing work of the Secretariat since 2002 also includes support for dioceses in their

⁴⁰ The John Jay researchers confirmed this information at a public forum at Fordham University in 2019. *Reckoning and Reform: New Horizons on the Clergy Abuse Crisis* (March 26, 2019), *video available at* Reckoning and Reform: New Horizons on the Clergy Abuse - Part 1 Crisis - Center on Religion and Culture : Fordham Digital Collections – at time stamp 20:30 (last visited May 13, 2022). *See id.*, transcript at 6, *available at* Worldview Breakfast (fordham.edu) (last visited May 13, 2022) describing Slide 15 *available at* PowerPoint Presentation (fordham.edu). *See also* discussion transcript at 17–18 (last visited May 13, 2022).

⁴¹ At the above presentation of data, the researchers noted that between 2004 and 2017, of the 8,645 persons who came forward to allege that they had been abused by Catholic clergy, only about 300 such complaints were brought forward claiming the abuse occurred between 2000 and 2017, about 16 per year.

⁴² *See, e.g.*, <https://www.usccb.org/offices/child-and-youth-protection/victim-assistance> (last visited May 16, 2022) (listing current VACs, along with contact information).

⁴³ The Annual Compliance Reports of independent auditors issued by the USCCB report that allegations are reported and that there was cooperation between dioceses and law enforcement about reporting prior allegations. *See, e.g.*, Annual Report for 2005, at 13 (March 2006), found at <https://www.usccb.org/sites/default/files/2020-02/annual-report-2005.pdf> (last visited May 16, 2022).

local implementation of the *Charter*,⁴⁴ such as their performing background checks,⁴⁵ providing safe environment training,⁴⁶ and establishing and maintaining their Diocesan Review Boards.⁴⁷ The *Charter* has also been revised periodically—in 2005, 2011, and 2018—in order to take new developments into account.

Even apart from the *Charter*, the ongoing efforts of the Church to prevent and remedy abuse have continued and expanded. For example, dioceses continue to settle individual complaints of abuse by the hundreds.⁴⁸ Recognizing that the litigation process is long and expensive, many dioceses have attempted

⁴⁴ See generally, Diocesan Resources, available at <https://www.usccb.org/offices/child-and-youth-protection/diocesan-resources> (last visited May 18, 2022).

⁴⁵ See 2020 Background Check Methodology Compilation, available at <https://www.usccb.org/resources/2020%20Background%20Check%20Methodologies.pdf> (last visited May 18, 2022) (compiling methodologies used by various dioceses to check backgrounds).

⁴⁶ USCCB publishes information about the numbers of persons trained and other information about providing safe environments. See, e.g., Safety Statistics, available at <https://www.usccb.org/topics/catholic-safeguards/safety-statistics> (last visited May 18, 2022).

⁴⁷ See Diocesan Review Board Resource Booklet, available at <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/2012-Diocesan-Review-Board-Resource.pdf> (last visited May 18, 2022).

⁴⁸ Such data are publicly available. See, e.g., Sexual Abuse by U.S. Catholic Clergy Settlements and Monetary Awards in Civil Suits, available at <https://www.bishop-accountability.org/settlements/> (last visited May 18, 2022).

to deal with the allegations through some form of alternative dispute resolution. Although claims filed in litigation are commonly subject to mediation or other form of resolution short of trial, many dioceses—beginning with the Archdiocese of New York in 2016,⁴⁹ and including California dioceses soon after⁵⁰—adopted a claims resolution process modeled after those following the attacks on September 11, 2001, and even moderated by the same mediator, Kenneth Feinberg.⁵¹ By whatever particular method, dioceses

⁴⁹ FAQs About the Archdiocese of New York’s Independent Reconciliation and Compensation Program (IRCP), CATHOLIC NEW YORK (Oct. 12, 2016), *available at* <https://www.cny.org/stories/faqs-about-the-archdiocese-of-new-yorks-independent-reconciliation-and-compensation-program,14567> (last visited May 18, 2022)

⁵⁰ The program has recently been completed in California and its information is publicly available. *See* Press Release, *Independent Compensation Program for Victims of Sexual Abuse by Diocesan Priests in California Concludes* (Sept. 2, 2021), *available at* https://rcbo.org/wp-content/uploads/2021/09/ioc_icp_press_release_final_v-2-1.pdf (last visited May 18, 2022).

⁵¹ Other dioceses have adopted the same approach. *See, e.g.*, Deena Yellin, *NJ Catholic dioceses unveil compensation program for victims of clergy abuse*, NORTHJERSEY.COM (Feb. 11, 2019) *available at* <https://www.northjersey.com/story/news/2019/02/11/nj-roman-catholic-dioceses-unveil-compensation-program-victims/2840166002/> (last visited May 18, 2022); Lou Baldwin, *Program announces first payments to survivors in Philadelphia Archdiocese*, CATHOLIC NEWS SERVICE (Feb 25, 2019) <https://www.ncronline.org/news/accountability/program-announces-first-payments-survivors-philadelphia-archdiocese> (last visited May 18, 2022).

remain committed to the process of resolving claims fairly and amicably.

Also in between the first and second California lookback laws--and also beyond the scope of the *Charter*--the Church in the United States has taken additional steps, in coordination with the Holy See, to enhance the accountability of bishops regarding sexual abuse. In 2019, in response to the discovery of sexual abuse by Theodore McCarrick through the Archdiocese of New York's independent claims process, Pope Francis promulgated new, universal law for the Church providing for the investigation of sexual misconduct by bishops, or of bishops' cover-up of sexual misconduct by others.⁵² For their part, the bishops of the United States complemented this action a month later with their own *Directives for the Implementation of the Provisions of Vos estis lux mundi Concerning Bishops and their Equivalents*.⁵³ Among other things, these *Directives* both called for the establishment of a third-party reporting mechanism for receiving reports against bishops under *Vos estis lux mundi*, and for bishops involved in

⁵² See *Vos estis lux mundi*, promulgated by Pope Francis May 9, 2019 *available at* https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html (last visited May 17, 2022).

⁵³ See USCCB, *Directives for the Implementation of the Provisions of Vos estis lux mundi Concerning Bishops and their Equivalents* (June 2019), *available at* <https://www.usccb.org/sites/default/files/about/leadership/usccb-general-assembly/2019-june-meeting/upload/usccb-modified-amended-directives-2019-06.pdf> (last visited May 17, 2022).

the receipt of such complaints to appoint a “qualified lay person” to assist them in that process.⁵⁴

Notwithstanding all these positive steps, no one would be so bold as to suggest that any institution has eliminated the potential for child abuse in its programs. Human nature makes this impossible. Neither would any institution have the temerity to suggest that it has “solved” the problem of child abuse. But the evidence is overwhelming that the Catholic Church in the United States—especially, but not only, since the first retroactive revival of civil claims—has made significant strides towards preventing abuse, healing the hurt that abuse has caused, improving the quality and character of priests and others who minister, educating parents and the community about the possibilities for and dangers of abuse, and providing ongoing programmatic support for the well-being and reconciliation of victim/survivors and their families. Dioceses in the United States, including in California, have spent considerable amounts of money to compensate victim-survivors as a matter of justice, since the 2003 window closed.

The instant Petition addresses this situation through the lens of what the California Legislature intended by the new three-year window in 2020. That Petition makes plain that the Legislature intended to punish anyone who might have employed or supervised a person who abused a child. That the Legislature intended retroactive “punishment,” including the possibility of treble damages, by itself raises a question about whether the Legislature violated the Constitution. The Petition also raises the

⁵⁴ *Id.* at No. 1.

Due Process question – namely whether the opening of a second window, for three years, and allowing treble damages is substantially unfair. What the Conference advances in support of the Petition is simple: the California bill as applied to the Catholic dioceses violates notions of fundamental fairness all the more, because the Legislature has imposed compound punishments for misconduct that the Church has now spent decades preventing and remedying.

Twenty years after the *Charter*, the Catholic Church and its approach to preventing and responding to child abuse is very different.⁵⁵ The bishops of the United States understand the continuing suffering of victims of abuse. As revelations about what had happened decades ago are made, such as in the 2018 Pennsylvania Grand Jury report that documented instances of historic abuse in six of the eight Pennsylvania dioceses, the natural reaction is to punish those responsible. That such abuses occurred and are horrendous is not in dispute. But those “responsible” are for the most part deceased and the environment that allowed those abuses to occur has

⁵⁵ In the Fordham discussion, the John Jay researchers noted that with the implementation of training and safe environment protocols, “people are starting to be more vocal . . . not just about what’s being done to them but about what they are seeing, and so I do think this is a slightly different era than we have had before in the church.” Transcript at 20, *supra* n. 40.

forever changed. The earlier environment no longer exists.⁵⁶ As has been noted,

“[The] Charter has worked. Not worked perfectly, not without need for regular improvements and constant watchfulness. But worked. Justified alarm and demands for accountability at instances of either deliberate noncompliance or bureaucratic incompetence should not be wrenched into an ill-founded pretense that, fundamentally, nothing has changed.”⁵⁷

But the California Legislature has acted as if nothing has changed. It has ignored the substantial progress, the robust attention to resolving claims and complaints, the pastoral action towards victims, and the public accountability of the Catholic Church to its past, especially after the 2003 window brought more than 1,000 claims forward for resolution. The

⁵⁶ Peter Steinfels, *The PA Grand-Jury Report: Not What it Seems*, COMMONWEALMAGAZINE.ORG (January 25, 2019) available at <https://www.commonwealmagazine.org/pa-grand-jury-report-not-what-it-seems> (last visited May 18, 2022). (“[The Grand Jury Report] documents that a good portion of these crimes, perhaps a third or more only came to the knowledge of Church leaders in 2002 or after, when the Dallas Charter mandated automatic removal from ministry. It documents, well before 2002, many conscientious attempts to determine the truth of the accusations and prevent any further abuse, often successful though sometimes poorly executed or tragically misinformed. It documents significant differences between dioceses and bishops and time periods in the response to allegations of abuse. It documents major changes in vigilance and response in some dioceses during the 1990s and, as far as the evidence shows, dramatic changes after 2002.”)

⁵⁷ *Id.*

California Legislature appears to have acted on the premise that the misconduct of decades ago persists in the face of considerable evidence to the contrary. It seeks to deter behavior that no longer exists and punish institutions today not for what they are, but what they were.

III. The Importance of this Case Extends Beyond the Catholic Church, the California Legislature, or Sexual Abuse.

The California Legislature has punished the present-day Catholic dioceses of California under a new and undefined standard for conduct that none of them engages in. As explained in detail above, protective practices began to emerge in the 1980s and 1990s, and accelerated with the *Charter* in 2002—just before the California Legislature retroactively revived civil claims the first time. In the eighteen years that followed, preventive and remedial measures have been integrated more fully into the life of the Church, and additional measures have been introduced as the problem is better known and understood. Despite this additional progress, the California legislature revived claims a second time, and with a vengeance—for three years and with a treble damages remedy.

There is no question that the Catholic Church—in California, as elsewhere in the United States—failed to protect children to disastrous effect before it undertook the preventive and remedial measures detailed above. And the State plainly has a duty to help right those wrongs. But it must do so within constitutional bounds. Whenever any person or group—not just a Catholic priest, bishop, or diocese—commits a grievous wrong, they rightly face civil

redress, but not over and over again, indefinitely into the future. And the injustice of repeated revival and expansion of civil claims, whether for the misconduct at issue here or any other, is worsened where the offender has renounced the misconduct and has actively combated it for decades. If the Court allows this legislation to stand, especially as applied to these circumstances, it will serve as a model for circumvention of the protections of fundamental fairness guaranteed by the Due Process and Ex Post Facto Clauses.

CONCLUSION

In consideration of the foregoing recitation of facts and circumstances, the Conference submits that the Petition for review filed by the Catholic dioceses in California should be granted and set for plenary review by this Court.

Respectfully submitted,

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May 19, 2022