No. 24-1136

4/23/2025

IN THE

# Supreme Court of the United States

DALE PREY,

*Petitioner*

v.

FRANCISCAN UNIVERSITY OF STEUBENVILLE, ET. ALL

*Respondent*

On Petition For Writ of Certiorari
To The Jefferson County Court of Appeals,
Seventh Appellate District, Ohio

Case No. 24 JE 0004

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED:

1) Does the text of the First Amendment, "Congress shall make no law", limit its application to the Legislature and, thus, allow the Judiciary to craft laws favoring certain religious parties, while punishing those who refuse to submit to the religious doctrines they did not freely accept?

2) Did the Ohio courts err when they elected to modify law established by multiple Supreme Court practices, and precedents, violating the well established principle that only the Supreme Court may modify its own rulings?

3) Does the First Amendment require courts dismiss a "non-Catholic's" secular tort and contract law claims – *because they include statements which were presented, by the crafters, as true representations of Catholic Doctrine* – when courts routinely rely on self-authenticating evidence of this type, if offered by a "Catholic" party?

4) Does the Constitution's provision, allowing for injured parties to petition the government for redress, include an implicit expectation that requires the courts to fairly adjudicate the claims and faithfully apply State procedural and substantive law, ensuring "Equal – Justice – Under – Law"?

## PARTIES TO PROCEEDING AND RELATED CASES

*Dale Prey v. Franciscan University of Steubenville, et al.*, Court of Common Pleas of Jefferson County, Ohio; Case No.: 22-CV-145 (18 Jan. 2024)

*Dale Prey v. Franciscan University of Steubenville, et al.*, Court of Appeals of Ohio, Seventh Appellate District; Case No. 24 JE 0004(13 Aug. 2024); *Application for Reconsideration:* (03 Oct. 2024) (Overruled)

*Dale Prey v. Franciscan University of Steubenville, et al.*, The Supreme Court of Ohio; Case No. 2024-1599: (28 Jan 2025 / 14 Feb. 2025) (Jurisdiction Declined)

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## DATE OF THE ORDER TO BE REVIEWED:

*Order of Dismissal and Judgment (Trial Court)*: 18 Jan., 2024

*Opinion and Judgement Entry of Court of Appeals*: 13 Aug., 2024

*Request for Reconsideration (Overruled)*: 3 Oct., 2024

*Ohio Supreme Court Appeal (Declined Jurisdiction)*: 28 January, 2025 / 14 Feb. 2025

## STATEMENT OF UNITED STATES SUPREME COURT JURISDICTION:

It is well settled that the Supreme Court has jurisdiction over cases *"arising under this Constitution"*, including appellate Jurisdiction allowing it to review state court decisions on Constitutional law. It was recognized that State courts could find themselves facing Constitutional questions, *"in exercise of their ordinary jurisdiction"* and that there would be differences of opinion over these matters which required the Supreme Court to ensure "*uniformity of decisions*" amongst all the courts. *Martin v. Hunter's Lessee,* 14 U.S. 304 at 342, 347-348 (1816).

This power was granted to the Supreme Court, by the people, as part of the mandate *"in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common*

*defense, promote the general welfare, and secure the blessings of liberty to themselves and, their posterity."* *Cohens v. Virginia*, 19 U.S. 264, 381 (1821) And with great power comes great responsibility. *"We have no more right to decline the jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution."* (*Id.*)

The Supreme Court's decisions are binding upon all other courts, including *"the Judges in every State." (Article VI, §2)*; (*See, Shaun Michael Bosse v. Oklahoma, 580 U.S. _____ (2016).*

**NOTIFICATION STATEMENT PER RULE 29.4:**

Neither the United States, nor any department, office, agency, officer, or employee is a party in this action.

This case does not question the Constitutionality of any act of Congress.

This case does not question the Constitutionality of any Ohio State statute.

**CONSTITUTIONAL PROVISIONS:**

*"The judicial Power of the United States, shall be vested in one supreme Court."* (*Article III, §1*)

*"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to*

*Law and Fact" (Article III, §2)*

*"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . .shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (Article VI, §2)*

*"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .or the right of the people . . .to petition the Government for a redress of grievances." (First Amendment)*

## STATEMENT OF THE CASE:

At first glance, this case appears to be a perfect example of a judicial ruling that "got it right" – dismissal of a case targeting the Catholic Church, through unfounded tort and contract law claims, by a non-Catholic employee who committed multiple atrocities in his classroom.

Yet the only way to harmonize the rulings, by the Ohio State courts and precedents established by this Court, requires creation of new facially unconstitutional rules of law:

- a Federal Court, which specifically declines jurisdiction over State law claims, may still

effectively adjudicate those State law issues;[1]

- religiously affiliated parties may offer evidence of their religious beliefs – which a court must accept as true; however, an opposing party (of a different religious affiliation) may not use that exact same evidence to support their case;

- "Contracts" are binding, legally enforceable, agreements; however, "Contracts" which include references to religious doctrine are neither binding, nor legally enforceable.

Closer examination of the actual facts in the case reveals a very different story. A story in which the Ohio courts, faced with a lawsuit between parties of different beliefs, committed an act that is absolutely prohibited by the Constitution.

Both courts' rulings rely on one simple premise: A "non-Catholic" Petitioner's reliance on published statements containing Catholic Doctrine somehow creates a "dispute" over religious doctrine, preventing factual evaluation and application of secular law, requiring dismissal under the

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[1] *Res Judicata* requires a plaintiff had a *"full and fair opportunity"* to litigate the claim or issue" *(Allen v. McCurry*, 449 U.S. 90 (1980) at pg 95, 101). This requires a "court of competent jurisdiction" (*AJZ's Hauling, L.L.C. v. TruNorth Warranty Program of N. Am.*,Slip Opinion No. 2023-Ohio 3097, pg. 7, 8).

Ecclesiastical Abstention Doctrine. *Franciscan University's inclusion of Catholic religious doctrine in employment matters, magically transforms traditional tort and contract law, making the resulting agreements unenforceable in secular courts.*

The Catholic Church is not a party to the lawsuit. There is no evidence in the record to support the proposition that Franciscan University has any "official" position in the Church's Hierarchical Organization, nor that is has any official dispensation to review, interpret or create Catholic Doctrine, much less an "inquisitorial" responsibility to pass judgement on, or sentence, non-Catholics. It is simply an institution of higher education which promotes itself as "Passionately Catholic."[2]

In its Ohio Supreme Court filing opposing

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[2] Whenever cornered by a student, and questioned about his religion, Petitioner would routinely avoid the discussion by stating he "had ceased practicing organized religion when the Romans killed off the rest of the Druids". Obviously this statement was meant to prevent improper advocacy of non-Catholic religious doctrine (as per his contractual requirements).

To suggest that this statement "proves" he was over 2000 years old, an ordained minister in a faith older than Christianity, that his small off-grid homestead was a sacred grove, and that he was legally entitled to all the tax exemptions and other government benefits due his station, is equivalent to the Ohio courts' determination of Franciscan University's role in deciding issues of Catholic Doctrine under *Watson*.

Petitioner's request, Respondent listed two main reasons why the review should not be granted:

1) Petitioner's status as a "*Pro Se*" litigant;

2) the case was a simple "contract" case with no Constitutional issues.

The University got it half right: Petitioner is a *Pro Se* litigant.[3]

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[3] Fortunately our rule of law is "Equal Justice Under Law", not "Equal Justice Under Lawyers".

A *Pro Se* litigant may not have the financial resources to employ a team of lawyers from a nationally top ranked litigation firm. The "dollar value" of the case may not be high enough to interest qualified representation on a contingency basis.

**But that does not change the importance of the Constitutional rights, or the law, presented in the case.** Nor does it absolve a court of fairly adjudicating a case.

Petitioner, in signing each of his filings, makes a legal representation to the court, *that he has personal knowledge and / or evidence to support his legal positions.* If a *Pro Se* litigant fails to provide that evidence, *when offered the opportunity to do so*, they have made serious misrepresentations to the court.

There is no legitimate / legal reason for a court to *knowingly make substantive rulings based on a limited record*, and reward an opposing party for acting to conceal evidence, by dismissing Petitioner's entire claim, *with prejudice.* Respondent's own actions make it much more likely that such evidence exists and that such evidence is compelling support for Petitioner's case.

However, the story of this case is anything but a "simple contract dispute." The story crafted by Franciscan University and the Ohio state courts contains two plots: the first rejecting the primacy of the Supreme Court's precedents and the second denying the secular evidentiary value, and legitimacy, of statements by the Pope of the Catholic Church, carefully selected groups of Cardinals and even the Catechism, *as true representations of Catholic Doctrine.*

Some 150 years of carefully reasoned Supreme Court precedents make the law governing the critical issue in this case very clear: under the Constitution, a court is required to accept statements of religious doctrine as *true statements of religious doctrine* which are otherwise no different from other evidence.

While not explicitly categorizing it as such, this Court's reasoning reflects the contractual nature inherent in religious choice. Someone expressly exercising their fundamental Constitutional Rights, and accepting the governance of a church's doctrine by becoming a member of its congregation, is essentially contracting to live by the church's rules.

Typically, the reward for living in accordance with those rules is only received after death. A secular court has no jurisdiction in the afterlife, thus, it cannot decide matters of "faith." A secular court only has jurisdiction over violations of secular law but religious belief does not exempt a party from compliance with those valid, generally applicable laws.

As this Court stated in *Watson*, *"It is not for us to determine or apportion the moral responsibility which attaches to the parties for this result. We can only pronounce the judgment of the law as applicable to the case presented to us."*

Secular law does not "require" religious doctrine's "permission." When the Catechism, the Commandment against "bearing false witness" and secular law all agree that defamation creates a harm and requires restitution, it is a reflection of a compelling universal recognition of the importance of a party's good name and reputation. *It does not prevent a secular court from adjudicating whether the statements made were true, or not.*

To conclude otherwise, as the Ohio courts did, is to create a legal absurdity: Individuals accused of conspiracy, in the terrorist attacks of 9/11, would be immune to prosecution – *since the religious doctrine of "Jihad" does not agree with the secular characterization of those attacks.* The "right to an abortion" would be firmly validated in the Constitution under "religious freedoms" – *only members of a religion which prohibited abortion could be prosecuted under the various new laws implemented after the Dobbs decision.*

Fortunately every important Constitutional issue in this case has already been decided by this Court. Precedents which were modified, or simply ignored, by the Ohio courts to reach a ruling which

fundamentally violates the Constitution.[4] Under these Supreme Court precedents the legal absurdities listed, above, do not exist.

- *"[I]t is this Court's prerogative alone to overrule one of its precedents"; "Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." Bosse v. Oklahoma*, 580 U.S. ____ (2016)(Per Curiam);[5]

- *"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect . . . All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." Watson v. Jones*, 80 U.S. 679 (1871)(pg. 728-

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[4] Petitioner does not claim this was done maliciously. This Court has often noted that qualified, well-intentioned, legal scholars / judges may have legitimately different viewpoints about various issues of the law and its proper application in a particular case.

[5] This simple premise, on which the entire "rule of law" is based, resolves this entire case: either the Supreme Court agrees with the Ohio courts' right to "correct" Supreme Court decisions, or the Ohio courts violated the Constitution's mandate that the Supreme Court's decisions are . . . "supreme" . . .and must be followed by every lower court. *(Article III, §1,2; Article VII, §2)*

729);[6]

- This Court determined that the commandment against *"bearing false witness"* has arguably secular applications and actually reviewed, and cited, biblical scriptures to support its decision. *Stone v. Graham*, 449 U.S. 39 (1980);

- As Judge Learned Hand articulated so well *"(t)he First Amendment . . . gives no one the right to insist that, in pursuit of their own interests, others must conform their conduct to*

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[6] Neither Ohio court provided any legal reasoning supporting their decision that Petitioner's beliefs were subservient to Respondent's religious beliefs.

Note that the very cases used by the Appellate Court, and the Trial Court, to support their novel application of the Ecclesiastical Abstention Doctrine, explicitly followed the rule established by the Supreme Court.

*See Ohio Supreme Court Appeal, fn 6 (original, fn 4 in this appendix), "the ecclesiastical abstention doctrine prohibited the trial court from considering an abuse of process claim filed by a* ***Byzantine Catholic priest against the Diocese and the Archbishop****" (Judgement, ¶31, citing Plishka v. Skurla, 2022-Ohio-4744, an 8th district case which it found "instructive");*

*See also, "Turner is an* ***ordained minister who was employed by defendant-appellee, Tri-County Baptist Church of Cincinnati*** *("TCBC") for more than 35 years.", Turner v. Tri-County Baptist Church of Cincinnati, 122 N.E.3d 603, ¶ 2, 12th Dist.)(Cited by Trial Court).* (bold emphasis mine)"

*his own religious necessities."* (quoted in *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985));[7]

- Compliance with a religious belief does not act as a shield against acts which violate valid, generally applicable, secular law. *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990);[8]

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[7] Petitioner"s filings included review of Ohio law governing the use of evidence and requirements for dismissal of a complaint. *(See, Appendix 'F' at pg. 2-4, 6, 11-14)* and the fact that Respondent had acted to prevent any discovery, *(See, Complaint, ¶7)* thus limiting the evidence to publically available documents (containing references to Catholic Doctrine), crafted by the University itself or the leadership of the Catholic Church.

A major claim in Petitioner's Complaint was that the University was *acting out of financial concerns and a need to protect its "Passionately Catholic" identity, (See, Complaint, ¶15)* even if it meant turning a blind eye to students' violations of the very Catholic Doctrine they were sworn to uphold and teach.

[8] It certainly follows, logically, that simply submitting evidence containing religious doctrine should not create a "dispute over doctrine" requiring a court to dismiss the case, rendering *Smith* (which, itself, violated this rule) meaningless.

*A* simple jury instruction would eliminate the issue of impermissibly reviewing Catholic Doctrine while allowing the evidence to be used in a normal fashion. *The evidentiary value is in the fact it was stated as truth.* Ohio Jury Instructions are based on *"reasonable person"* standards and reasonable /

- A "valid, generally applicable" law is one which addresses a societal need that outweighs the Constitution's guarantee of freedom of religion and does not target acts of a specific religion. (See, *Wisconsin v. Yoder,* 406 U.S. 205 (1972); *Church of the Lukumi-Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993))[9] Ohio Tort and Contract law address essential societal needs and do not target specific acts of worship which Catholic Doctrine requires;

- This Court relies heavily on documented religious doctrines in resolving Title VII "religious exemption" cases[10], often citing

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ordinary care to *"avoid injuring (another person)"*. Religious Doctrine has no impact on those standards. (*See, Ohio Jury Instructions, CV Section 401.01(1), Negligence Standard*)

[9] Both cases required the Court to use the underlying religious doctrines for their evidentiary impact, in analyzing secular law, without any impermissible evaluation of the validity of the religious doctrines (*exactly what the Ohio courts concluded was impossible in this case.*)

[10] The District Court and the Circuit Court had no problem looking at facts *(such as the mission statement and Oath of Fidelity)* to reach the legal conclusion that Franciscan University was a religious institution and ruling they were covered by the religious exemption in Title VII. *See "Opinion and Judgement" (Appendix 'A' ¶18,19).*

It is Unconstitutional to conclude it is not reliable /

these documents as evidence supporting the decision. *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, et al.*, 483 U.S. 327 (1987);[11] *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC,* 565 U. S. ____(2012);[12]

- *"A purpose to favor one faith over another, or adherence to religion generally, clashes with the "understanding . . . that liberty and social stability demand a . . . tolerance that respects the religious views of all citizens."* (*McCreary v. American Civil Liberties Union* 545 U.S. 844 (2005) citing *Zelman v. Simmons-Harris*, 536

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acceptable based on the religious affiliation of the party who submits it.

[11] Religious employers can require employees to be members of their religion and their employment controlled by metrics based on religious doctrine *which the Court cites.* This was the Church legitimately deciding matters of faith, not the government establishing a religious requirement. *Respondent had no such requirement. Petitioner was not a member of their religion.*

[12] This Court determined that, based on evidence including documents stating religious doctrines, the employee was a *"minister".*

However, this Court also clearly stated that *it was* ***not*** *deciding that Title VII exemptions precluded employees from filing breach of contract or fraud claims against their employer.*

The Ohio courts have now essentially decided the issue sua sponte.

U. S. 639, 718, Pp. 11–12);[13]

- the proper analysis of tort claims *(based on statements that clearly proclaimed church doctrine on homosexuality or denouncement of*

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[13] A simple example demonstrates how application of the "modified" requirements for dismissal under Ecclesiastical Abstention Doctrine, creates an unlimited licence for a "religious group" to commit fraud – simply by including "religious doctrine" in their contracts – thus making them impossible to adjudicate.

No other individual, or organization, in the United States has the ability to make public statements, which it publishes, representing them as true statements, then successfully argue that a lawsuit claiming they failed to act in accordance with the statements requires a court to dismiss the entire complaint.

Such a ruling is facially unconstitutional, whether it is limited to the Catholic religion, or granted to all religions, simply because it is an impermissible, legal benefit *"favoring adherence to religion generally."* Essentially, the version of the Ecclesiastical Abstention Doctrine adopted by the Ohio courts, would have been a huge win for the "losing" party in *Watson*.

They lost the right to the property that was the subject of the dispute. But they could have continued to own slaves, in accordance with their clearly documented religious doctrine: *"the system of negro slavery in the South is a divine institution, and that it is the peculiar mission of the Southern church to conserve that institution"* (*Watson v. Jones*, 80 U.S. 679 (1871) (at pg. 691)). Under the Ohio courts' legal reasoning, every prosecution would require dismissal, as a court could not adjudicate secular law on slave ownership ordained by God.

*the Pope and the Catholic Church)* is a standard first amendment / free speech analysis; even Justice Alito, in his scathing dissent criticizing Westboro Baptist Church's conduct, advocated application of defamation law[14]. *No Justice even suggested that the entire dispute should have been dismissed at the trial court level, due to the evidentiary reliance on signs and published statements of church doctrine. Snyder v. Phelps*, 562 U.S. 443 (2011);

- The First Amendment includes a right to petition the government, which includes a right of access to the courts. (*California Transport v. Trucking Unlimited*, 404 U.S. 508; citing *Eastern Railroad Conference v. Noerr Motor Freight*, 365 U.S. 127, at 138; *Johnson v. Avery*, 393, U.S. 483, 485; *Ex parte Hull*, 312 U.S. 546, 549)[15]

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[14] *"Ohio's per se defamation law is unusually broad; other states limit it to certain categories but Ohio's law extends to any statement that "reflects upon the character of [the plaintiff] by bringing him into ridicule, hatred, or contempt, or affects him injuriously in his trade or profession." Becker v. Toulmin,* 138 N.E.2d 391, 395 (Ohio 1956).

[15] This is an important precedent as it makes it clear that 50 years ago the Supreme Court recognized an undisputed requirement for a court reviewing a motion to dismiss: *"We must, of course, take the allegations of the complaint at face value for the purposes of that motion"*, citing *Walker Process Equipment v. Food Machinery & Chemical Corp.* 382 U.S., at

- The impact of converting a "dismissal without prejudice" into a dismissal that forecloses a Plaintiff from litigating their claims creates a serious impediment to Plaintiffs with both State law and Federal law claims arising from the same episode. *Artis v. District of Columbia*,

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174-175. *See, also, Order of Dismissal* (Appendix 'C') at pg. 4.

Neither the Trial Court, nor the Appellate Court, followed that precedent. Instead both courts adopted Respondent's characterization of both the evidence and the law. The Trial Court concluded that 18 years of continuous employment, *where Petitioner was paid to perform professional duties and teach assigned courses*, did not – as a matter of law – demonstrate evidence by which a reasonable jury could conclude there was an on-going contract. *See also "Opinion and Judgement" (Appendix 'A' ¶ 6-9) (note the Court does not even mention the important fact that Petitioner's claim is that these statements were demonstratively false / misleading.)*

The Court also makes a general pronouncement that *"First Amendment rights may not be used as a means or the pretext for achieving "substantive evils", see NAACP v. Button*, 371 U.S. 415, 444." *(Id.)*

Using your "First Amendment rights" to include Catholic Doctrine as a prominent theme in recruiting new employees and new students, then arguing that a court must recognize your "First Amendment rights" require dismissal of a lawsuit – because the evidence includes references to Catholic Doctrine – certainly appears to be exactly the "substantive evils" mentioned above: effectively blocking a litigant's First Amendment right of access to the courts.

583 U.S. ___ (2018) (pg. 18);[16]

The rulings by the Ohio courts are noteworthy for their remarkable deviation from these established precedents. Instead they usurp the Supreme Court's role, modifying precedents and creating new law out of whole cloth.

- they modify *Watson's* carefully reasoned requirement ensuring application of the Ecclesiastical Abstention Doctrine does not violate the Constitution, by eliminating the requirement demonstrating a party's willingness to be governed by a specific religion's doctrines; *(See, Rulings of the State Courts, infra)*

- they ignore the long-standing use of documents which contain religious doctrine as evidence, and rule that by submitting evidence which contains religious doctrine, a non-Catholic litigant creates a requirement that the court impermissibly examine (and rule on) the validity of those religious doctrines[17]; *Id.*

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[16] The Ohio Courts rely on the Federal Court's decision that the student statements, *standing alone*, do not meet *Title VII's requirement* for "*constructive discharge*" as conclusively adjudicating state law claims – claims over which the Federal Court specifically refused to accept jurisdiction.

[17] *Stone*, recognized that the Commandment against "bearing false witness" had an arguably secular purpose. Defamation law is clearly based on this concept as "truth" is an

- the Ohio courts' decisions not only modify, or discount, established Supreme Court precedents, they demonstrate a cavalier attitude towards Ohio State substantive and

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absolute defense. Yet the Ohio courts concluded that Petitioner's evidentiary submission of a section of the Catechism *(which is based on that Commandment)* created a "dispute" over Catholic Doctrine.

In other words, had Petitioner simply relied on the general text of the 10 Commandments, his entire case could have proceeded normally. But in using more detailed, directly relevant, evidence – self-authenticating evidence crafted by the Catholic Church itself – his entire case had to be dismissed, *with prejudice.*

The students' published statements can easily be evaluated using secular logic: for instance the "offensive" bible stories is *a work of satire* Plaintiff created, not Catholic Doctrine. It was crafted with the expectation that university students, in a communication / writing course, would meet, or exceed, the high school proficiency requirements *set by the State of Ohio.*

*"Analyze how a modern work of fiction alludes to themes . . from . . . (but not limited to)* ***the Bible***; *"By the time a student graduates from high school they are expected to be able to "Analyze a case in which grasping point of view or perspective requires distinguishing what is directly stated in a text from what is really meant (e.g.,* ***satire****, sarcasm, irony, or understatement) and evaluate the impact of these literary devices on the content and style of the text."* (*Ohio's Learning Standards for English Language Arts*, education.ohio.gov)

procedural law;[18]

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[18] The Trial Court failed to hold a timely mandatory scheduling meeting *(required by Ohio Rules of Civ. Pro. Rule 16; Rule 16(B)(2))* which deprived Petitioner of the opportunity to request a court order allowing him to submit critical evidence (which the University claimed was protected by FERPA); *See, Rule 16(C)(2)(d) (Matters for Consideration . . . The necessity of amendments to the pleadings)*;

The Ohio courts, rather than adopt the required point of view accepting Petitioner's statements of facts as true *(see, California Transport, supra)* clearly adopted Respondent's point of view, even going so far as to ignore well established laws governing the use of "hearsay" evidence. (*See, Ohio R. Evid. §801(C), §802*)

Both courts' decisions appear to accept Respondent's carefully selected samples of the students' out of court statements as true reports of Petitioner's unacceptable conduct, failing to even note, in passing, that Petitioner claimed these statements were lies and that the "full" statements often supported Petitioner's claims. *Opinion and Judgment Entry (Appendix 'A')* ¶*6-9*).

For example, "How White Person" is not actually a racial slur, however, the rest of the statement, that he said this while adopting a stereotypical stance of a Native American Chief, makes it much more likely that it was a scripted presentation addressing cultural appropriation. Petitioner's Complaint included multiple statements, which could be easily verified including statistics and factual events, to support his claims. (*See, "Concerns Remain After Franciscan Univ Apologizes for Blasphemous Book"* https://www.churchmilitant.com/news/article/franciscan-univ-apologizes-for-pornographic-blasphemous-book; *"Elizabeth Warren Apologizes To Cherokee Nation For DNA Test"*

https://www.npr.org/2019/02/01/690806434/warren-apologizes-to-cherokee-nation-for-dna-test; *"CNN settles lawsuit with Covington Catholic student from viral video"* https://www.ncronline.org/news/cnn-settles-lawsuit-covington-catholic-student-viral-video; *"Longer video shows start of Covington Catholic incident at Indigenous Peoples March"* https://www.cincinnati.com/story/news/2019/01/20/covington-catholic-incident-indigenous-peoples-march-longer-video/2630930002/)

The Appellate Court not only followed the Trial Court's example: it added more out of court statements from the other class (as supporting the truth of the hearsay claims). *(at ¶9)*

The fact that *several individuals tell similar lies* does not *make them true*. But several individuals *making similar statements* does provide evidence of a conspiracy. And it still falls on the court to follow the rules of evidence.

The Ohio courts refused to consider that self-authenticating documents crafted by the University and the leadership of the Catholic Church are *"party opponent statements against interest". Opinion and Judgment Entry (Appendix 'A'), ¶21,22, 30, 35, 36.* Essentially ruling, instead, that since *the University* disputes their application, they must be unclear / unreliable (at best), or untrue (at worst). Thus, they cannot be used for traditional evidentiary purposes without a court impermissibly "reviewing" the doctrines to determine their validity. *(See, Ohio R. Evid. §801(D); §201(B) (judicial notice of facts) and § 803 (business records and documents prepared before January 1, 1998). See, also, Ohio R. Evid. § 402.)*

The Ohio courts carefully avoid any legal analysis of Petitioner's actual factual claims that the students conspired, to injure Petitioner's name, reputation and business relationship with his employer, and that the University's actions to support

**OHIO SUPREME COURT APPEAL:** (*This information is taken verbatim from Petitioner's filing. Additional footnotes of explanation have been made for clarity.*)

Appellant (who was, as noted above, neither a member of the Catholic Church, nor a member of a Catholic Religious order) was employed by Franciscan University starting in January, 2002, to perform professional duties in the English / Theatre Department and teach such courses as he was assigned, based on his educational and professional background. As part of his employment interview process, Appellant was required to read various documents crafted by the University, which outlined both his employment obligations, and the work environment.[19]

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and defend students based on a financial motive make it a co-conspirator under Ohio law, even though a dismissal was only appropriate *if no "cause of action cognizable by forum has been raised in the complaint". Vos v. State* (2017 Ohio 4005, 7 Dist.)

[19] *Additional Footnote: See, "it has an obligation to proclaim and promote Christian moral, spiritual and religious values to its students and constituency at large"* (https://gcp.franciscan.university/about/mission-statement);

*See, also "rules and policies for student conduct that best fosters individual ownership of Christian values . . . increase in the exercise of self-responsibility"; "FUS oppose arbitrary discrimination"; "assisting each student to establish priorities and life commitments which reflect all that is true"; "realize the responsibility of their professional life"; "FUS respect for others . . . "Non-Catholic members are required to respect the Catholic character of the University . . . Those who are not Catholic . . .*

These statements contained important conditions for Appellant, who was not Catholic, including the requirement that in teaching he was to cover all relevant material, but *he could not advocate positions contrary to Catholic Doctrine.* As a non-Catholic, he relied on documents crafted by the highest authorities in the Catholic Church – the writings of Pope John Paul II, documents on the obligations of educators and those who craft media, and the Catechism[20] – which were published on the Vatican's website, often referencing those documents in his lectures, etc.

Appellant's original part-time position, with adjunct teaching assignments was converted to a full time professional position which included teaching responsibilities. The 9 month / academic year appointment was renewed on a yearly basis, often months after the new school term had started. However, Appellant was expected to expend substantial effort preparing for the new school terms, during the winter and summer breaks. Appellant remained continuously employed at the University until December, 2019.

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*are assured . . . the right to free will decisions in matters of faith are respected"; "Academic Freedom . . . the Catholic Church accepts all that is true and rejects all that is false"* (https://franciscan.edu/mission-charisms).

[20] *Additional Footnote:* "These documents included *Pope John Paul II's "Letter to Artists", the instructions found in Inter Mifica, Communio et Progressio and Aetatis Novae, and the Catechism." (See, Complaint, ¶14)*

The Chair of the Communications Department asked Appellant to teach two courses on Interactive Media, for the Spring 2019 term - one as part of his regular course load and a second as an overload.[21] Appellant's classroom presentations included specific references to Catholic Doctrine (such as the Catechism section on "bearing false witness" as part of the lecture on defamation concerns for media creators). Appellant routinely addressed current issues in media (such as such as Senator Warren's DNA test and the popular media attacks on a young Catholic student for his disrespectful "smirk" directed at a Native American elder) using his life experiences[22] to contrast and illustrate cultural appropriation and bias in media.

Appellant also used his experience working with a small team of industry professionals on an interactive media project *to craft a class experience that mimicked real world conditions* – treating students as *"interns" at a company* who were *responsible for creating content* for their clients,

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[21] *Additional Footnote:* Using the appropriate standard of review for 12(b)(1) or 12(b)(6), the reasonable conclusion is that this person is unlikely to assign someone, who has no qualifications, to teach this course, making contrary statements by students less likely to be truthful.

[22] *Additional Footnote*: Petitioner lived, as a child, on the Hopi Reservation. Those earliest childhood memories are the foundation for much of his world view, including a respect for the cultural and religious influences he experienced, both as a child and later as an adult.

showcasing the current project status in *"stand-up" reports to the client* and *emphasizing responsiveness to client needs* vs. formal contract rigidity.

While Appellant created actual examples of the assigned projects to use in lectures, he also relied on the Socratic method of teaching. One of his examples included a work of satire, contrasting well known Bible stories with contemporary media messages. It culminated with a direct reference to recent issues at the University (the *"Church Militant"* scandal) contrasting Christ's example with those who were happy to cast stones at others, in righteous anger.

Ultimately several students used the University's anonymous course evaluation system to post statements to specifically discredit Appellant and negatively impact his employment relationship with the University. The Dean, with oversight of the Communications Department, instructed the Chair of the Department to meet with Appellant to inform him *that his inappropriate actions in his classroom were not acceptable*, that *they would be made a part of his permanent employment record* and *would impact his future teaching opportunities*. In response Appellant compiled copies of actual class materials, *references to Catholic Doctrine he used / referenced in teaching those subjects* and other documents, such as e-mails from students, *all of which demonstrated that the student statements were misrepresentations* or less than accurate *(lies)* obviously meant to use the University's vulnerability after the recent scandal. The comprehensive document, almost 100 pages in

length, was provided to University administrators.

The University's response was that the students had not violated any University policy and that it was Appellant's own actions that caused the students to act as they did. The proffered solution was for Appellant to *"humbly accept" that the students' violations of secular law and "sins" under the Catechism were his own fault.*[23] This lawsuit resulted from Appellant's refusal to accept professional martyrdom to protect the students' and the University's name and reputation.

Appellant's complaint listed five causes of action; *Defamation; Tortious Interference*[24]*, Conspiracy, Breach of Contract and Fraud. (Judgement, Assignment of Errors #2-#6)* Since the

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[23] *Additional Footnote*: Before the Constitution was established, the infamous "Salem Witch Trials" demanded the accused admit their relationship with the devil to avoid being hung. Franciscan University essentially demanded the same. (*See, The Catechism, Article 8, §III. Offenses Against Truth, at 2482 "The Lord denounces lying as the work of the devil".*) Yet neither Ohio court felt such demands, nor the requirement Petitioner give up important Constitutional rights, was unreasonable or created a "hostile" work environment.

[24] Note, both the Magistrate and the Seventh District mislabel this claim as only "interference with *contract*" (italics mine) (*Judgement, ¶20*). It is a subtle, but important difference, as a jury could find there was a 18 year employment relationship which was simply memorialized by an annual letter of appointment.

University had made it clear that it considered all of the documentation from his class to be protected by Federal Law on the confidentiality of student records, the only documents Appellant could attach were publically available documents created and published by the Vatican or the University. Not surprisingly, most of these documents contained elements of Catholic Doctrine.

Procedurally, no discover took place, during the 18 months between filing the case and the Trial Court's dismissal of the case. The pre-trial conference *(required by Ohio Rules of Civ. Pro. Rule 16)* was neither scheduled, nor held by the Trial Court within the time limits of *Rule 16(B)(2)*, denying Appellant the opportunity to formally request the judicial order which would allow submission of documents the University claimed were covered by FERPA[25].

## STAGE OF PROCEEDINGS WHERE FEDERAL QUESTIONS WERE RAISED:

**Trial Court Proceedings:**

The Ecclesiastical Abstention Doctrine, was raised by Respondents in their very first filing with the Trial Court, under 12(b)(1). That Motion to Dismiss also included a 12(b)(6) analysis based primarily on State law, but implied that other Federal Law was relevant, including a "potential" claim that Petitioner was a "minister."

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[25] *The Family Educational Rights and Privacy Act* (20 U.S.C. § 1232g; 34 CFR Part 99).

Respondent recycled much of its argument from the Title VII case (where it first argued that FERPA protected the unnamed students preventing Petitioner from using evidentiary materials from his class without a court order) citing res judicata.

Petitioner responded with a careful analysis of each of his claims. Every secular claim was analyzed, after simply removing references to "Catholic Doctrine".

Petitioner cited the Federal Courts' use of the mission statement and Oath of Fidelity as evidence. Plaintiff noted if the University had a "potential" valid legal defense, it should have actually included it, so it could be addressed.

The 12(b)(1) "Subject Matter" red herring was addressed by clarifying that Petitioner's position was that **he believed** the evidence he presented **accurately reflected Catholic Doctrine**, thus, he was **not** requesting an impermissible review.

Petitioner discussed the lack of discovery, which limits the "evidence" available to documents published on the Vatican or University website.

Petitioner cited *Hosanna-Tabor v. EEOC* 597 F. 3d 769, reversed (563 U. S. ___(2011) (*We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers* (sec. IV) and *Artis v. District of Columbia*, 583 U.S. ___ (2018) *(if a Federal Court declines to*

*exercise jurisdiction, State law claims must be allowed to proceed in state courts*), nullifying the res judicata argument.

**Court of Appeals Proceedings: Appeal**

Petitioner's first Assignment of Error listed the Trial Court applying the Ecclesiastical Abstention Doctrine to dismiss the case of a Plaintiff who was neither a Priest, nor a Catholic. (*"ISSUE OF FIRST IMPRESSION: Does the Ecclesiastical Abstention Doctrine apply when the parties are not members of the same religion?"*); Petitioner cited *Ohio Constitution*, Art. I, §7 and *Watson v. Jones*, 80 U.S. 679 (1871)

Petitioner's fifth Assignment of Error reflected the University's use of FERPA and the conflict over characterization of the evidence as "party-opponent admissions".

Petitioner noted the conflict with *State v. Morrier*, wherein Jefferson County Common Pleas Judge Joseph Bruzzese reportedly stated *"That was the most powerful victim impact statement I have ever heard. You're fortunate she agreed to this."* after matters of religious doctrine were raised in the victim's statement.

Petitioner cited *Employment Division v. Smith*, 494 U.S. 872 (1990); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U. S. ____ (2012), pg. 21; noted the University's reliance on the Title VII "ministerial exemption" was

illogical as it argues that Petitioner *(a non-Catholic it claims did not understand Catholic Doctrine, even after reading and studying the top authorities of the Church)* was actually hired to teach Catholic Doctrine.

Petitioner documents that the University relied on the *"Religious Exemption"* in the Title VII action - an exemption that predates his initial employment date supporting the idea that the University's factual representation of non-discrimination was fraudulent.

Petitioner introduces the "law of unintended consequences" (formulated by Sir Terry Pratchet) *pointing out that the broad scope of the new rule could easily help establish Franciscan University as the creator of a Constitutional right to abortion.*

**Court of Appeals Proceedings: Request for Reconsideration**

Appellant's *Request for Reconsideration* starts with the obvious fact that the very case the Appellate Court cites clearly follows the Supreme Court's original legal formulation – that "the parties must be "united" to the religious body in a way that allows a court to find "implied consent" to be bound by decisions of questions "arising among themselves."

Appellant cites *Employment Div. v. Smith*, 494 U.S. 872 (1990), uses Judge Learned Hand's famous quote, cites *McCreary v. American Civil Liberties Union* 545 U.S. 844 (2005), compares the impact of

the Establishment Clause on a legislature passing laws with similar effects to the Court's rulings and impermissibly "supporting" religion; cites *Gibson Bros., Inc. v. Oberlin College*, 2022-Ohio-1079 and *State v. Morrier* as examples of actual Constitutional conflicts; cites *Snyder v. Phelps*, 562 U.S. 443 (2011), cites *Stone v. Graham*, 449 U.S. 39 (1980), cites *Hosanna-Tabor v. EEOC,* 97 F. 3d 769, reversed. (563 U. S. ___ (2011), and cites *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, et al., 483 U.S. 327 (1987).

**Ohio Supreme Court: Memorandum in Support of Jurisdiction**

Petitioner's Memorandum identifies this case as one of first impression, sitting at the nexus of three fundamental Constitutional Rights – the "Establishment Clause", the "Free Exercise Clause" and the "Right to Petition Government" as short-hand for the issues raised in previous filings. Petitioner adds additional new citations to *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Franciscan Univ. of Steubenville v. Sebelius*, Case No. 2:12-CV-440.

***Note:*** Petitioner did not specifically address the third Constitutional issue, *Access to the Courts*, until now. The full impact of was not felt until the Ohio Supreme Court denied his petition.

**RULINGS OF THE STATE COURTS ON THESE ISSUES OF CONSTITUTIONAL LAW**

**Trial Court: (Order of Dismissal / Appendix 'C')**

The Trial Court eliminated the Constitutional requirement that the parties are members of the same religion, with a valid doctrinal dispute, between themselves. In support of its decision, it cited a case which followed the exact requirements found in *Watson*, not the new legal formulation it used. *(pg. 1-3)*

It carefully avoided analysis of the critical Ohio State Law claims contained in the complaint *(the students' actions and the University's financial incentive). (pg. 4-6)* It reaches the illogical conclusion, that the District Court, which refused to accept jurisdiction over Petitioner's state law claims, and dismissed them "without prejudice", had actually ruled on these important State law issues – *issues it lacked jurisdiction to adjudicate. (pg. 7)*

Thus, there is no independent 12(b)(6) ruling which would still result in dismissal if their modification of *Watson* was not proper.

**Court of Appeals: (Opinion and Judgement Entry / Appendix 'A')**

The Court of Appeals adopted the modified rule to validate the lower court's decision. *(¶1)* It correctly cited the requirement *(¶26) then ignored it.* Essentially it determined Petitioner, a non-Catholic, was legally indistinguishable from a Byzantine

Catholic Priest.[26] *(¶31-36)* It declined to review Petitioner's other Assignments of Error, concluding that dismissal under 12(b)(1) meant that evaluation of the existence of any claims, over which a court potentially had subject matter jurisdiction, was oddly enough, not required. (¶37)[27]

## ARGUMENT IN FAVOR OF WRIT

Although the Constitutional and legal issues are set forth in the previous sections, this Court often carefully considers a wider view in reaching a decision. Respondent's narrow focus, on obtaining favorable ruling in this case, blinds them to the larger impact: it has essentially forced the

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[26] The Appellate Court apparently failed to see the logical inconsistency in first stating the rule of law, that a secular court may not determine matters of religious doctrine, then independently determine a fairly important matter of religious doctrine: *who is "united" to a religious body*.

While the limits on secular law may mean that Petitioner's two decades in that status will have little benefit in the afterlife, the ruling does mean that the State of Ohio and the Federal Government owe him 18+ years of income taxes a "Catholic Priest" was not required to pay and the local county owes him 16 years of real estate taxes they collected on his "Hermitage".

[27] *See, also "However, we predicated the application of the doctrine on the evidence that Appellant offered in support of his claims, rather than his relationship to the Catholic Church." (Opinion and Judgement Entry, (Application for Reconsideration) / Appendix 'B' ¶3)*

documentation of a situation which can / will be judged by a much larger general public. While only having direct application in courts of law located in the United States it reaches internationally, to the Vatican and to those who are anxious to demonstrate our Country's commitment to law and equality are lies.

Even the reputation of this Court is at stake: if the Court declines to weigh in on these issues, given the nature and impact of the Ohio courts deviation from established substantive and procedural law, it risks damage to its own public reputation. A decision to decline to review a case, does not *technically* mean the Court agrees with the holding. However, in our media dominated society, there is money to be made "connecting the dots"[28] . . . *"If we cannot rely on the Supreme Court to uphold the Constitution"* . . .

Petitioner recognizes the chance of this Court accepting his *Pro Se* petition is low but the story is now well documented on publically accessible

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[28] Petitioner was teaching a class on interactive media, after all, where knowledge of how media portrayals are powerful methods of shaping perceptions was a basic area covered in the class *(note his use of current issues in media, such as Senator Warren's release of her DNA test results and the Catholic student (attending the "March for Life") who was attacked in the popular media, for his "smirking" at a Native American Elder, based on his actual life history living as a small child on the Hopi Reservation.)*

forums. Even if the Court rules in Petitioner's favor, either by issuing a *Per Curium* opinion or scheduling the case for full review, the University's legal team can continue to delay the case at the local level. Petitioner is old, appearing *Pro Se*, and his case essentially dies with him.

Nor is an Ohio court, sitting as elected officials in a location where Respondent wields significant political power, likely to be inclined to view Petitioner's case favorably, on remand. Especially if chastised by the Supreme Court at Petitioner's behest.

Yet Petitioner believes that the rights our ancestors risked their lives, and fortunes, to win in the Revolutionary War *(literally in Petitioner's case as his great aunt, on his father's side, was a card carrying member of the DAR)* are worth the effort to maintain.

The Constitution is clear: members of a religion may freely accept religious doctrines and when those members submit a doctrine to a court, the court cannot "review" it to determine its validity. The Constitution is also clear in that religious doctrine cannot be treated differently than any traditional form of secular statements, when submitted by a non-member. A court may not "take sides" in a dispute between members of different faiths and establish which is dominant.

Petitioner also recognizes the "law of unintended consequences" presents significant

issues: Respondent's legal filings essentially argue that *Catholics can ignore doctrine "for good reasons"* and *that statements by the Pope, the Church's Cardinals and even the Catechism are outright fabrications to mislead public, or so unreliable, that the Constitution requires a court to shield them from claims based on their own representations that they faithfully follow these doctrines.*

These legal arguments do injury to name and reputation of Catholic Church, in general. As Petitioner often explained to his students, the Catholic Church reportedly has one billion members, which gives it great potential for doing good world-wide. But it also means there are some six billion non-Catholics, like himself, who will judge their faith not by what they *profess* to believe, but how their *actions reflect their beliefs*.[29]

The rulings by the Ohio courts place the Vatican itself in a awkward position: the record establishes that senior administrators, who have taken the "Oath of Fidelity" are "foresworn". That in refusing to be held accountable to Catholic Doctrine,

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[29] The classic bible story tells of Judas' fate, after he received his 30 pieces of silver, for betraying Christ. Throughout this litigation, Petitioner has often considered sending copies of the filings to official representatives of the Catholic Church.

He decided that they can simply buy the book (tentative working title "Catholic Hypocrisy: What I Learned Working and Teaching at Franciscan University of Steubenville for 18 Years.") *(See, fn. 31, infra)*

Franciscan University is falsely promoting itself as "Passionately Catholic", misleading true followers of the Catholic faith. This is not a legal issue, unless the Catholic Church seeks a judicial order preventing Respondent from using *"Passionately Catholic"* or other misleading information, in their publications or advertising. In other words, *exactly the type of case where Watson would apply.*

After Franciscan University recently raised almost $100,000,000 through their capital campaign, there might be a number of angry contributors who feel they were defrauded about the University's actual dedication to faithfully follow Catholic Doctrine. Generating a new cycle of lawsuits, not all of which will necessarily be heard by sympathetic Ohio courts. State Courts in California and New York might have very different approaches, and decisions, on these Constitutional issues.

Nationally, the sheer number of lower courts which are now empowered to ignore, or modify, Supreme Court precedents in favor of local interests, would destroy our vaunted "rule of law". The Supreme Court would be inundated with requests, just like this one, yet the Court would be rendered impotent, physically unable to carefully review every instance. *(Much the way DOS – Denial of Service – attacks can bring down a powerful computer network.)*

And new rulings can be ignored just as easily as 150 year old precedents.

The "game plan" crafted by Franciscan University and the Ohio courts is not limited to future cases. Unless this Court expressly rejects the modifications to established precedent, created in this case, every legal case which has a "religious doctrine" component is subject to review.

Father Morrier *(assigned to Franciscan University)*, whose victim *(a Catholic student at Franciscan University)* made multiple references to *Catholic Doctrine* in her statement to the court,[30] could certainly argue that a criminal defendant was prejudiced by the State's consideration of such "disputed religious doctrine" evidence.

Post 9/11 there are multiple individuals accused of conspiracy or acts of religiously motivated terrorism. Fatwa and Jihad are well documented religious doctrines, directly referenced in those cases (normally to show "motive" or "common goal"). Under the new rule of law created by the Ohio courts, each of them now have a powerful new legal theory with which to challenge the legal proceedings.

Not only does this create havoc with those

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[30] This case was contemporaneously decided by a different judge sitting in the same Jefferson County Courthouse as Petitioner's case. That judge did not dismiss the case, after the victim's references to Catholic Doctrine, but praised her powerfully moving statement. (*State v. Morrier* (unpublished case, *see "Rev. David Morrier sentenced to probation for sexual battery"*, published in Herald Star, 12 March 2022))

prosecutions, it is a "win" / "win" scenario for certain international groups. A reviewing court would be required to treat those individuals the same way the Ohio courts treated the Catholic parties in this case – dismissing otherwise valid cases under the Ecclesiastical Abstention Doctrine.

After all, how can an adjudicatory body decide if a person participated in a conspiracy to fly planes into the Pentagon and the "Twin Towers", without reviewing the religious doctrine of Jihad? How do the proclamations of a radical Islamic Cleric fundamentally differ from the writings of Pope John Paul II, under the rules of evidence?

If a court fails to do so it generates international political ammunition: that in America *"Catholics"* are more equal than followers of *"Islam"*.[31] That equality and the *"rule of law"* are

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[31] Petitioner expects this is not "news" to this Court. However, members of the general public (like himself), who rely on Google and public resources for research, will not have the firewalls and security protocols that insulate this Court from some of the worst the internet has to offer.

The *"Church Militant"* website is not the only "news organization" to recognize the lucrative financial benefits of a particular version of "news reporting" targeting specific religious / cultural groups.

Potentially the *"Church Militant"* website may no longer even exist, after *(as Petitioner predicted in that Spring, 2019 course)* they ran afoul of the law. *"That "news" organization is now facing bankruptcy as a result of a defamation lawsuit*

empty promises. Lies told to placate the general public, while in reality only rich Christian individuals of a certain ethnic backgrounds are members of this protected elite class.

*Is this the "more perfect Union" promised by the Constitution*? Or will this be the lasting legacy of the story crafted by Franciscan University and the Ohio courts?

It is rather appropriate that review of this fanciful story is now in the hands of the actual Supreme Court. The same Court which has handed down 150 years of decisions establishing binding precedent on these issues. A Court in which a majority of the Justices are Catholic and, thus, uniquely situated to reaffirm the supremacy of the Court's precedents as well as the deference a court must show to statements on Catholic Doctrine (or any religious doctrine), made by the leadership of the Church.

*That, in fact, by law, the Pope, these Cardinals*

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*brought by . . . wait for it . . . Father de Laire, judicial vicar for the Diocese of Manchester.*
*(https://catholicreview.org/facing-defamation-lawsuit-church-militant-confronts-prospect-of-shutting-down/)*"

Although if that trial court adopted the Ohio court's legal reasoning in this case, it would, of course, dismiss Father de Laire's case under the Ecclesiastical Abstention Doctrine, because the evidence supporting the claims naturally contains Catholic Doctrine . . .

*and the Catechism* ***do not lie about Catholic Doctrine****, and for a court to even consider Franciscan University's self-serving claim – that there is a doctrinal dispute requiring dismissal – is a violation of the Constitution.*

Petitioner's conduct in this case mimics his conduct in his classroom. He does not demand that the courts accept his interpretation of what the First Amendment requires. He cites rulings by this Court. Petitioner did not teach that "in his opinion" Catholic Doctrine should make lying a sin, that Catholics working in the field of media "speak truth", or that "art" is important: he cited the Catechism, definitive statements by Cardinals in three different documents, and Pope John Paul II.

This Court can certainly change its mind and decide that a "Passionately Catholic" institution, its administrators and students have a "God given right" under the First Amendment, to ignore secular law. Franciscan University can reveal a secret "Gospel of Saint Judas" which makes it clear that "Caesar's Coin" trumps all other Catholic Doctrines. But neither of these situations have yet happened.

Dale Prey; Pro-Se
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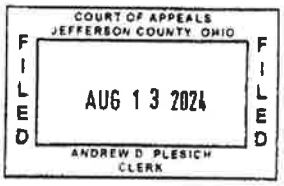
**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

DALE PREY,

Plaintiff-Appellant,




v.

FRANCISCAN UNIVERSITY OF
STEUBENVILLE, ET AL,

Defendant-Appellee.

OPINION AND JUDGEMENT ENTRY
Case No. 24 JE 0004

Civil Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 22-CV-145

BEFORE:
Katelyn Dickey, Carol Ann Robb, Mark A. Hanni,
Judges.

Appendix A

JUDGMENT: Affirmed.

Dale Prey, Plaintiff-Appellant and

*Atty. Adam M. Mattello* and *Atty. Derek T. Teeter,* Husch Blackwell LLP, for DefendantAppellee.

Dated: August 13, 2024

DICKEY, J.

{¶1} Appellant, Dale Prey, pro se, appeals the judgment entry of the Jefferson County Court of Common Pleas sustaining the motion to dismiss filed pursuant to Civ.R. 12(B)(1) and 12(B)(6) on behalf of Appellee, Franciscan University of Steubenville ("University"), his former employer, in this action for defamation, tortious interference with contract, civil conspiracy, breach of contract, and fraud against the University and five students identified as "John Does #1-5." Because Appellant predicated his otherwise secular claims on the interpretation of religious doctrine, we find the trial court does not have subject matter jurisdiction over the claims. Accordingly, we affirm the trial court's dismissal of the case pursuant to Civ. R. 12(B)(1).

## STANDARD OF REVIEW

{¶2} A court is required to grant a motion to dismiss pursuant to Civ.R. 12(B)(1) where the court lacks jurisdiction over the subject matter of the litigation. *T & M Machines, LLC v. Yost*, 2020-Ohio-551, 11 9 (10th Dist.). " 'Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits.' " *State ex rel. Ohio Democratic Party v. Blackwell*, 2006-Ohio-5202, 8, quoting *Morrison v. Steiner*, 32 Ohio St.2d 86, 87 (1972), paragraph one of the syllabus.

{¶3} When considering a motion to dismiss pursuant to Civ.R. 12(B)(1), the court must determine "whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). "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 without converting the motion into one for summary judgment." *Southgate Dey. Corp. y. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211 (1976), paragraph one of the syllabus.

{¶4} We review the trial court's determination under Civ.R. 12(B)(1) de novo. *In re J.R.P.*,

2018-Ohio-3938, II 24 (7th Dist.). A de novo review requires this Court to independently consider the trial court's judgment without any deference to the trial court's determination. Id.

## FACTS AND PROCEDURAL HISTORY

{¶5} According to the Complaint, the University is a private institution of higher education "which promotes and markets itself based on its 'Passionately Catholic' identity and its compliance with the teachings of the Catholic Church." (Cmplt., II 1.) Appellant was employed by the University in 2001 and began teaching in 2002. In the Spring of 2019, Appellant taught a communications class titled, "Writing for Interactive Media," one day class (COM 381 A) and one night class (COM 381 N).

{¶6} The University utilizes an anonymous course evaluation platform, which allows students to comment on the performance of the professor. The Course Summary Reports for both classes are attached to the Complaint. Four of thirteen students provided evaluations of the day class, eight of fifteen students in the night class provided evaluations.

{¶7} The content and organization of "Writing for Interactive Media," drew considerable and pointed criticism on the platform from the responding

night-class students. They wrote that they learned very little and struggled to understand Appellant's expectations regarding class assignments.

{¶8} Further, several comments focused on Appellant's demeanor and the topics he discussed in class. For instance:

> Appellant penned and assigned as required class reading "satirical bible stories," which ridiculed books of the Bible;
>
> Appellant joked that movies and video games all involve "molesting princesses";
>
> Appellant told a female student, "[Y]ou are nothing";
>
> Appellant called a male student "[B]elow [A]verage Joe";
>
> Appellant greeted the only non-white student in the class by raising his hand as if he were a Native American chief, looked directly at the student and said, "How, white person";

Appellant wasted class time going on tangents and shared his unwanted opinions on various matters;

One student wrote, "I've never had a professor who behaved in such an unprofessional manner, as well as treated his students with such blatant disrespect."

Another student wrote, "We wonder why you have to drag slavery, 9/11, [the burning of] Notre Dame [Cathedral in France], rape and other things that some of us happen to hold very dark and traumatizing connections to, into a class that has nothing to do with those things. But it's just jokes, right? You laugh it off and let the discomfort sit there in the room while we stare at each other in disbelief."

A third student wrote, "Classes included

> topics non-related to media of any kind, (expected since [Appellant] lives in a cabin by himself off grid where he has zero access to media), topics such as 9/11, [the burning of] Notre Dame [Cathedral in France], racism, slavery, 'molesting princesses' (direct quote), and rape. AND, he did not take these topics as seriously as he should have, but rather made them into his own sadistic jokes."
>
> Finally, a fourth student wrote, "[Appellant] did not live up to the Catholic values that I expect to see from professors at [the University], which makes sense because he himself told us many times how he is not Catholic.

{¶9} Although the reviews of the four responding day students included positive feedback, there were two students from the day class who echoed concerns regarding Appellant's demeanor, class organization, and expectations. Because the day student responses are more favorable than the night student responses, and the day student responses contain no reference to Appellant's age or religion, Appellant reasons the night students "targeted [Appellant] using comments and

statements calculated to get a negative response from the University." (*Id.*, 11.)



{¶10} According to the Complaint, Appellant was "reprimanded" by the chair of the Communications Department (pursuant to instructions from the Dean), who informed Appellant that his conduct [as reported in the student comments] was "unacceptable at Franciscan University, and that the information would be made a part of his permanent record and impact his future ability to teach." (*Id.*, ¶3.) In response, Appellant prepared a detailed analysis of his course preparation, including citations to "Pope John Paul II's 'Letter of Artists,' and instructions found in Inter Mifica, Communio et Progressio and Aetatis Novae," which he explained were all available on the Vatican website. (*Id.*, ¶14 .)

{¶11}Appellant alleges he worked intently as a non-Catholic to comport his teaching with Catholic doctrine and to refrain from supporting propositions or values contrary to the Church's position. The Complaint reads:

> [Appellant] made great efforts to research the role of communication instruction at a Catholic Institution of Higher Learning and embraced the instructions found in Vatican documents. His satire, contrasting popular ideologies with actual biblical teachings, culminated with Christ's message as it related to the [internet] scandal — which had cost the University so much money and divided the University community. His use of visuals (the black and silver U.S. Olympic uniforms) demonstrated the importance of personal responsibility in selecting what one chooses to wear, if one wishes to conform to Catholic traditions of modesty, rather than projecting that responsibility onto others. His review of the research into "false memories" and the number of persons (often African American males accused of sexual impropriety with White females) who had been exonerated through the Innocence Project reflected the challenging intersection of Catholic Social Justice issues.

(*Id.*, ¶ 20.)

{¶12} Appellant filed a complaint with the University accusing the night class students of harassment and discrimination against him based on religion and age. (*Id.*) According to Appellant, the students specifically advanced religion-based criticism in an effort to injure his professional status and ability to teach at the University. Further, Appellant informed the University of his intent to pursue legal action against the students, should the University fail to "follow its own guidelines, including Mission Statement, etc., and teachings of the Catholic Church (including the importance of 'truthful' communication) and condemn student actions which violated these guidelines and teaching." (*Id.*, ¶ 14.)

{¶13} Appellant demanded the University identify the students and punish them. The University investigated the matter and concluded Appellant had not been the subject of harassment or discrimination, and refused to identify the students.

{¶14} The Complaint alleges the University's decision was contrary to an "Oath of Fidelity" to submit to the teaching of the Pope and the Church undertaken by all upper-level administrators and motivated by a desire to avoid another internet scandal. The Complaint further alleges the University's response "was to reject [Appellant's]

efforts to teach material in accordance with Catholic precepts, and conclude that students (who were Catholic) were far more knowledgeable about actual Catholic doctrine." (*Id.*, ¶ 21.)

{¶15} The Complaint reads:

> The religious affiliation of [the University] is part of its primary marketing campaign. When [an internet] scandal cost them millions of dollars the University responded with a very public event where administrators, faculty and staff were seen to be taking the "Oath of Fidelity." A few months later they were concluding that student perceptions of what was appropriate in the classroom were more important than the teachings of Pope John Paul II and the obligations of educators in the field of communications, as set forth in Inter Mifica, Communio et Progressio and Aetatis Novae. Rather than submit to these teachings and the doctrine set forth in the Catechism, they allowed the educational mission and environment to be dictated by a few disgruntled students
>
> . . .

(*Id.*, ¶24.)

{¶16} As a consequence, Appellant resigned his position. Appellant does not allege he suffered any reduction in pay, demotion, or diminution in benefits prior to voluntarily leaving the University.

{¶17} On January 13, 2020, following the issuance of his right to sue letter from the Equal Employment Opportunity Commission, Appellant filed a lawsuit in the United States District Court for the Southern District of Ohio. *See Prey v. Franciscan University of Steubenville, et al.*, No. 20-CV-00188 (S.D. Ohio). Appellant asserted claims against the University under Title VII (religious discrimination) and the Age Discrimination in Employment Act (age discrimination), as well as various state law claims for defamation, tortious interference with a contractual relationship, civil conspiracy, and breach of contract. Appellant joined as unknown "John Doe" defendants the various students who raised concerns about Appellant's conduct in an effort to recover damages for their allegedly false negative comments.

{¶18} In an Opinion and Order filed on December 18, 2020, the Southern District Court dismissed Appellant's federal claims against the University for failure to state a claim and denied Appellant's request to take discovery to identify the

John Doe defendants. The Southern District Court found the University was a religious employer and statutorily exempt from Title VII's prohibition on religious discrimination, and Appellant failed to exhaust his administrative remedies for his age discrimination claim. The Southern District Court further found Appellant suffered no adverse employment action as a matter of law because the negative student comments did not create a hostile or abusive environment, and would not have caused a reasonable person to resign. Having dismissed Appellant's federal claims, the federal court declined to exercise supplemental jurisdiction over the remaining state law claims.

{¶19} Appellant filed a motion for reconsideration, which the Southern District Court denied. Appellant then appealed the decision of the Southern District to the United States Circuit Court of Appeals for the Sixth Circuit, which affirmed the Southern District Court's dismissal of Appellant's federal claims in an unpublished order. *See Prey v. Franciscan University of Steubenville, et al.*, No. 21-/3200 (6th Cir. Nov. 2, 2021).

{¶20} On May 2, 2022, Appellant refiled his state claims in the Jefferson County Court of Common Pleas, naming the University and "John Does, #1-5" as

defendants.



Appellant reasserted his claims for defamation, tortious interference with contract, civil conspiracy, breach of contract, and fraud.

{¶21} The Complaint contains numerous references to Catholic beliefs, papal teachings, and Vatican decrees. For instance, Appellant argues that Catholic teaching permits satire, and accuses the University of violating Catholic Church teachings. In support of his interpretation of Catholic dogma, Appellant attached to his Complaint excerpts from the Catechism of the Roman Catholic Church, the University's statement of its Catholic mission, and a Profession of Faith and Oath of Fidelity.

{¶22} Further, the Complaint cites the Catechism to allege that false criticism by the students is an "offense against truth," and that the University "had both a legal (civil law) and a moral (Catholic Church's teachings) to speak 'truth!" (Cmplt., ¶8.) Appellant characterizes the cited Catholic doctrine as admissions of a party opponent.

{¶23} On June 1 , 2022, the University moved to dismiss the Complaint for lack of subject matter jurisdiction and failure to state a claim. The University alleged the trial court did not have subject matter jurisdiction based on the ecclesiastical abstention

doctrine, which deprives civil courts of jurisdiction to sit in judgment of a decision made by a religious entity regarding religious discipline, faith, custom or rule. In the alternative, the University argued the Complaint failed to allege valid state law claims. Appellant filed his response on June 15, 2022, and the University filed its reply on June 22, 2022. The trial court heard oral argument on July 11, 2022.

{¶24} On January 18, 2024, the trial court filed the judgment entry on appeal, granting the University's motion and dismissing Appellant's claims with prejudice. The trial court first determined it could not resolve disputed points of religious doctrine, and therefore, Appellant's claims were non-justiciable under the ecclesiastical abstention doctrine. In the alternative, the trial court determined Appellant failed to state one or more of the necessary legal elements of his claims under a traditional Rule 12(B)(6) analysis and that he failed to plead fraud with particularity as required by Rule 9(B). Accordingly, the trial court dismissed Appellant's claims against the University and the John Doe defendants on the alternative ground that he failed to state a claim.

{¶25} This timely appeal followed.



## ANALYSIS

## ASSIGNMENT OF ERROR NO. 1

**THE TRIAL COURT ERRED WHEN RULING THAT THE ECCLESIASTICAL ABSENTION DOCTRINE COULD BE APPLIED TO AN INDIVIDUAL WHO WAS NEITHER A PRIEST, NOR A CATHOLIC, IN DIRECT CONFLICT WITH OHIO'S CONSTITUTION AND THAT THE FEDERAL COURT'S DISMISSAL OF APPELLANT'S TITLE VII CLAIM, BASED ON A BROAD STATUTORY RELIGIOUS EXEMPTION, PRECLUDED APPELLANT'S ABILITY TO BRING STATE LAW CLAIMS, WHERE NO "RELIGIOUS EXEMPTION" APPLIES.**

{¶26} It is well established that civil courts lack jurisdiction to hear ecclesiastical disputes within a church, although courts may hear church disputes that are secular in nature. *Watson v. Jones*, 80 U.S. 679 (1871); *Serbian E. Orthodox Diocese V. Milivojevich*, 426 U.S. 696 (1976). The ecclesiastical abstention doctrine is a recognition that all who unite themselves to such a body, i.e., a church, do so with an implied consent to its government and are bound to submit to it. *Ohio Dist. Council, Inc. v. Speelman*, 2016-Ohio-751, 19 (12th Dist.). "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.

{¶27} "Ohio appellate courts have fashioned the ecclesiastical abstention doctrine into a two-part test to determine whether a court has subject-matter jurisdiction over a church dispute." *Harrison v. Bishop*, 2015-Ohio-5308, If 41 (6th Dist.), citing *Bhatti V. Singh*, 2002-Ohio-3348, 25 (12th Dist.). First, the court must determine whether the church is hierarchical or congregational. *Slavic Full Gospel Church, Inc. v. Vernyuk*, 2012Ohio-3943, if 17 (8th Dist.). If the church is hierarchical, civil courts generally lack jurisdiction to hear the dispute. *Tibbs v. Kendrick*, 93 Ohio App.3d 35, 42, (8th Dist.1994). In a hierarchical system, the congregation is subordinate to a general organization, typically consisting of clerics or tribunals, which controls religious or doctrinal policy and makes decisions for the entire membership. *Sheriff v. Rahman*, 2003-Ohio-1336, IT 12 (8th Dist.).

{¶28} In contrast, in a congregational system, the congregation governs itself; it is subservient to no other body. *Tibbs* at 42, citing *State ex rel. Morrow v. Hill*, 51 Ohio St.2d 74, 76 (1977). If the church is congregational, a civil court has jurisdiction only to

determine a narrow issue - whether the proper church authority made the decision regarding an ecclesiastical dispute. Id. The ultimate arbiter of the bylaws is the highest authority within the organization, and the court's role is limited to identifying that authority, not reviewing its decision. *Sheriff* at ¶ 15.

{¶29} Second, courts determine whether the nature of the dispute is ecclesiastical or secular. *Slavic Full Gospel Church* at 18. This determination involves review of the complaint and counterclaims to identify whether the controversies in each count involve ecclesiastical or secular issues. *Tibbs* at 43. Ecclesiastical matters include decisions about faith, doctrine, and selection of the clergy as well as matters of church government. *Sacrificial Missionary Baptist Church v. Parks*, 1997 WL 812168, "5-6 (8th Dist. Dec. 30, 1997). Civil courts retain jurisdiction over purely secular issues, whether the church is hierarchical or congregational.

{¶30} The University argues, "the trial court correctly held that it lacked subject matter jurisdiction over [Appellant's] claims because to resolve those claims as [Appellant] framed them, the trial court would have had to resolve disputes over Catholic doctrine and determine whether the University and its students acted in accordance with Catholic doctrine."

(Emphasis in original)(Appellee's Brf., p. 9.) In other words, although the University concedes Appellant's claims are secular, it argues the evidence offered by Appellant to prove his underlying claim - the students lied on the anonymous platform in a concerted effort to damage his professional reputation and the University countenanced the deception in order to avoid controversy - is predicated upon violations of Catholic doctrine.

{¶31} The Eighth District's recent decision in *Plishka v. Skurla*, 2022-Ohio-4744, 11 66-67 (8th Dist.), appeal not allowed, 2023-Ohio-1665, reconsideration denied, 2023Ohio-2664, and cert. denied, 144 S.Ct. 1058, is instructive. In that case, the Eighth District concluded the ecclesiastical abstention doctrine prohibited the trial court from considering an abuse of process claim filed by a Byzantine Catholic priest against the Diocese and the Archbishop. In order to establish his abuse of process claim, Father Plishka was required to show the defendants filed a case in which legal procedure has been set in motion in proper form, with probable cause, and even with ultimate success, but has been perverted to accomplish an ulterior purpose for which it was not designed.
*Yaklevich v. Kemp, Schaeffer & Rowe Co., L.P.A.*, 68 Ohio St.3d 294, 297 (1994), quoting Keeton, Dobbs,

*Keeton & Owen, Prosser and Keeton on the Law of Torts*, Section 121, 897 (5th Ed.1984).

{¶32} Fr. Plishka's complaint alleged the defendants "misused" a lawsuit against Fr. Plishka for conversion and replevin to summarily and unilaterally suspend Fr. Plishka and harm his credibility and reputation as a Byzantine priest. The complaint further alleged the Diocese filed the lawsuit specifically to avoid its own internal church procedures, which would have entitled Fr. Plishka to notice and the opportunity to be heard before an objective body of the Byzantine Catholic Church.

{¶33} The defendants dismissed their conversion and replevin claims against Fr. Plishka, then refiled them. As a consequence, the conversion case and the abuse of process case were consolidated for trial.

{¶34} The trial court granted both parties' motions in limine to prohibit the introduction of "all references relating to church proceedings and matters," including evidence of Fr. Plishka's suspension and the "canonical-related events that have followed." *Plishka* at 36. Ultimately, the trial court entered a directed verdict on the abuse of process claim, finding Fr. Plishka failed to demonstrate the defendants filed the original action to achieve an ulterior purpose. The jury found in favor of defendants on the conversion claim,

but awarded no damages.

{¶35} On appeal, the Eighth District recognized the abuse of process claim was secular, but found the 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." *Id.* at 70. Because the forgoing evidence was required to establish the second element of the abuse of process claim, the Eighth District concluded the trial court was without jurisdiction to consider the abuse of process claim. The Eighth District opined,"[w]ith respect to this issue, the parties have greatly contested one another's interpretation of ecclesiastical text and whether Fr. Plishka's suspension was authorized, and thereby proper, under canon law and the Diocese's internal procedures." *Id.* at ¶ 74.

{¶36} The same is true here. Appellant relies exclusively upon religious doctrine to establish the University's duty to investigate the students' accusations and vindicate Appellant. Specifically, the Complaint alleges "student perceptions of what was appropriate in the classroom were more important [to the University] than the teachings of Pope John Paul II and the obligations of educators in the field of

communications, as set forth in Inter Mifica, Communio et Progressio and Aetatis Novae." (CompIt., ¶ 24.) The Complaint continues, "[r]ather than submit to these teachings and the doctrine set forth in the Catechism, [the University] allowed the educational mission and environment to be dictated by a few disgruntled students." (*Id.*) Like the abuse of process claim in Plishka, supra, Appellant's claims "necessary require[ ] inquiry into ecclesiastical matters," and therefore, fall squarely beyond the trial court's subject matter jurisdiction pursuant to the ecclesiastical abstention doctrine. Accordingly, we find the trial court did not err when it dismissed Appellant's claims pursuant to Civ.R. 12(B)(1), and Appellant's first assignment of error is meritless.

## ASSIGNMENT OF ERROR NO. 2

**THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S DEFAMATION CLAIM WITHOUT REVIEWING APPELLANT'S ACTUAL COMPLAINT — THAT IT WAS THE STUDENTS WHO ENGAGED IN DEFAMATION — AND IN ACCEPTING HEARSAY AND SPECULATION TO REBUT APPELLANT'S STATED FACTS IT EXCEEDED THE LIMITS OF 12(B)(6) REVIEW CONVERTING IT INTO A 56(C) MOITON FOR**

**SUMMARY JUDGMENT.**

**ASSIGNMENT OF ERROR NO. 3**

**THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S TORTIOUS INTERFERENCE CLAIM WITHOUT REVIEWING APPELLANT'S ACTUAL COMPLAINT – THAT IT WAS THE STUDENTS WHO ENGAGED IN TORTIOUS INTERFERENCE.**

**ASSIGNMENT OF ERROR NO. 4**

**THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S BREACH OF CONTRACT CLAIM BASED ON RES JUDICATA, OR ALTERNATIVELY, THAT APPELLANT HAD PLED NO EVIDENCE OF A CONTRACT – YET FAILED TO REVIEW THE FACTS IN THE COMPLAINT THAT DOCUMENTED AN 18 YEAR LONG EMPLOYMNET HISTORY, INCLUDING THE ON-GOING PUBLICATION OF KEY DOCUMENTS AND THE LOGICAL INFERENCES DERIVED FROM THOSE FACTS IN LIGHT OF OHIO LAW.**

**ASSIGNMENT OF ERROR NO. 5**

**THE TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S GENERAL FRAUD CLAIM, HOLDING HIM TO A STRICT PLEADING STANDARD, EVEN THOUGH [THE UNIVERSITY] HAD ACTIVELY SOUGHT TO PREVENT DISCOVERY USING FEDERAL LAW PROTECTING STUDENT RECORDS AND CONCLUDING THAT APPELLANT'S RELEVANT EVIDENCE — FACTUAL EVIDENCE CONTAINED IN HIS COMPLAINT AND RECOGNIZED BY THE OHIO RULES OF EVIDENCE AS "PARTY-OPPONENT ADMISSIONS" WAS "ACTUALLY" AN ATTEMPT BY APPELLANT TO GET THE COURT TO IMPERMISSIBLY REVIEW CATHOLIC DOCUMENTS.**

**ASSIGNMENT OF ERROR NO. 6**

**THE TRIAL COURT ERRED WHEN IT FAILED TO FOLLOW ESTABLISHED LAW ON CIVIL CONSPIRACY AND DISMISSED APPELLANT'S CLAIM WHEN THERE WERE ABUNDANT FACTS IN THE CLAIM TO DEMONSTRATE *TWO, OR MORE STUDENTS*, HAD ACTED TO ACHIEVE THE SAME GOAL *OF INJURING APPELLANT IN HIS WORKPLACE /***

***INTERFERING WITH HIS EMPLOYMENT RELATIONSHIP*** **AND THAT THE UNIVERSITY HAD PARTICIPATED IN ONE OR MORE WAYS — INCLUDING MAKING STATEMENTS THEY KNEW, OR SHOULD HAVE KNOWN, WERE DEFAMATORY PART [SIC] OF HIS PERMANENT EMPLOYMENT RECORD — THUS** ***EXPANDING THE SCOPE OF THE ORIGINAL TORT BEYOND APPELLANT'S CURRENT EMPLOYER TO ESSENTIALLY EVERY INSTITUTION OF HIGHER EDUCATION.***

{¶37} Because we find the trial court was without subject matter jurisdiction to consider the claims in the Complaint, we find Appellant's second, third, fourth, fifth, and sixth assignments of error are moot.

## CONCLUSION

{¶38} In summary, we find the trial court did not have subject matter jurisdiction to consider the claims in the Complaint pursuant to the ecclesiastical abstention doctrine. Accordingly, the judgment entry of the trial court dismissing the case pursuant to Civ.R. 12(B)(1) is affirmed.

Robb, P.J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the first assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

JUDGE KAYELYN DICKEY

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI

**NOTICE TO COUNSEL**

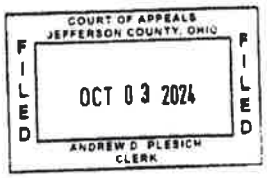
This document constitutes a final judgment entry.

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

DALE PREY,

Plaintiff-Appellant,




v.

FRANCISCAN UNIVERSITY OF STEUBENVILLE, ET AL.,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 24 JE 0004
Application for Reconsideration

BEFORE:
Katelyn Dickey, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT: Overruled.

Dale Prey, Plaintiff-Appellant and

*Atty. Adam M. Martell* and *Atty. Derek T. Teeter,*
Husch Blackwell LLP,, for Defendant-Appellee.

Appendix B

Dated: October 3, 2024

PER CURIAM.

{¶) On August 22, 2024, Appellant, Dale Prey, acting *pro se*, filed an application for reconsideration of our August 13, 2024 opinion and judgment entry in Prey v. Franciscan Univ. of Steubenville, 2024-Ohio-3087 (7th Dist.), in which we affirmed the dismissal of Appellant's claims for defamation, tortious interference with contract, civil conspiracy, breach of contract, and fraud against his former employer, Appellee, Franciscan University of Steubenville ("University") and five University students identified as "John Does #1-5." We concluded the trial court did not have subject matter jurisdiction over Appellant's claims because they were predicated upon interpretation of religious dogma in contravention of the ecclesiastical abstention doctrine. The University filed its opposition brief to the application for reconsideration on August 28, 2024.

{¶2} App.R. 26, which provides for the filing of an application for reconsideration, includes no guidelines to be used in the determination of whether a decision

is to be reconsidered and changed. D.G. v. M.G.G., 2019-Ohio-1190, ¶2 (7th Dist.). The test generally applied is whether the application for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not at all or was not fully considered by us when it should have been. *Id.* An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *Martin v. Taylor*, 2024-Ohio-3207, ¶1 (7th Dist.). Rather, App.R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law. *Id.*

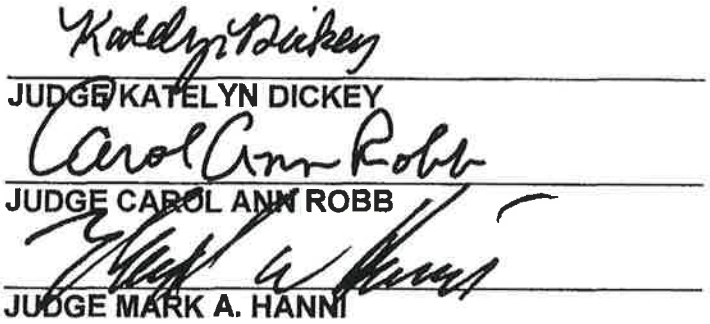
{¶3} In the application for reconsideration, Appellant reasserts claims originally presented in his appellate brief. For instance, Appellant contends we applied the ecclesiastical abstention doctrine in error because he is neither a clergyman nor a congregant, and the application of the doctrine abridges his First Amendment rights. However, we predicated the application of the doctrine on the evidence that

Appellant offered in support of his claims, rather than his relationship to the Catholic Church. Insofar as Appellant alleged the University was acting in contravention of religious doctrine, we concluded the trial court did not have subject matter jurisdiction over his claims. Similarly,



his First Amendment rights are not infringed because he chose to base his claims on Catholic dogma.

{¶4} Because Appellant has failed to identify an obvious error in our decision or an issue that was not at all or not fully considered, we find his application for reconsideration has no merit. Accordingly, the application for reconsideration is overruled .



JUDGE KATELYN DICKEY

JUDGE CAROL ANN ROBB

JUDGE MARK A. HANNI

NOTICE TO COUNSEL

This document constitutes a final judgment entry.
Case No. 24 JE 0004

**IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO**
**STEUBENVILLE, OHIO**

{*Stamp* 2024 JAN 18 P 2:27; ANDREW D. PLESICH; CLERK OF COURTS, JEFFERSON COUNTRY, OH}

Dale Prey

Plaintiff, CASE NO.: 22-CV-145

-vs- JUDGE: Michelle G. Miller

Franciscan University of Steubenville, et al.,

Defendants. **ORDER OF DISMISSAL AND JUDGMENT**

On Monday, July 11, 2022, this case came on for full hearing on Defendant Franciscan University of Steubenville's Motion to Dismiss filed June 1, 2022. The Defendant was represented by Attorney Adam Martello. The Plaintiff appeared *pro se.*

Oral arguments were presented. The Court then took the matter under advisement.

Attachment 'C'

The University argues that this Court should dismiss this case for lack of subject matter jurisdiction under Rule 12(B)(1) because Plaintiff's claims, as pleaded, would require the Court toadjudicate disputed points of religious doctrine, making the claims non-justiciable under the ecclesiastical abstention doctrine. The University alternatively argues at Plaintiff has failed to adequately plead one or more elements of his claims and therefore dismissal for failure to state a claim is proper under Civil Rule 12(B)(6). After considering the various points, authorities, and arguments made by the parties, and for the following reasons, the Court grants the University's motion and dismisses Plaintiff's claims.

The Court finds that Plaintiff's claims are non-justiciable because they would require the Court to resolve disputed points of religious doctrine.

1

Under this "ecclesiastical abstention doctrine," trial courts may not hear claims arising from the separation of employment where those claims would necessitate review and resolution of subjective points of church doctrine. *See, e.g., Turner v. Tri-County Baptist Church of Cincinnati*, 2018-Ohio-4658 19, 122 N.E.3d 603, 607 (12th Dia) (ecclesiastical abstention

doctrine deprived court of subject matter jurisdiction over breach of contract and defamation claims arising from employment termination because they implicated "spiritual considerations" and would "require review of subjective judgments made by church personnel.").

Here, Plaintiff alleges that the University is a private institution of higher education that promotes itself as "Passionately Catholic" and in compliance with the teachings of the Catholic Church. Plaintiff alleges that he was employed by the University as a communications instructor and that he received negative comments in anonymous course evaluations from students. Some of the various comments made by the students in their course evaluations of the Plaintiff criticized Plaintiff for joking about the burning of Notre Dame Cathedral, for requiring students to read satirical stories about the Bible, for making various disrespectful comments to students, and for generally behaving in an unprofessional manner. Based on the negative comments, Plaintiff alleges he was reprimanded by his Department Chair. Plaintiff then filed an internal complaint with the University, accusing the students who made the various comments of engaging in religious discrimination against him as a non-Catholic and for discriminating against him based on his age. It is undisputed that when the University declined to discipline the students, as

Plaintiff requested, Plaintiff resigned.

Based on this series of events, Plaintiff filed this lawsuit against the University and various "John Doe" defendants representing the students who made the anonymous comments. Plaintiff asserts claims for defamation, tortious interference with contract, civil conspiracy, breach of



contract, and fraud. It is not entirely clear which specific claims Plaintiff makes against which specific defendants, but the gravamen of all the claims, as reflected in the allegations in Plaintiff's Complaint, and the arguments he makes in briefing, is that both the students and the University hold an overly rigorous review of Catholic teaching and that his joking about Notre Darne Cathedral and attempted satire were not actually inconsistent with Catholic teaching and, therefore, it was illegitimate for the students in question to complain about his actions. And because Plaintiff alleges Catholic doctrine permitted him to engage in the pedagogy he did, **he** claims the University had a **religious obligation** to discipline the students in question and its failure to do so was therefore tortious and/or a breach of contract. Thus, Plaintiff, through his allegations, has made this case

primarily a religious dispute.

Plaintiff's Complaint and briefing contain extensive references and quotations to the Catechism of the Catholic Church, Vatican decrees, the contents of the University's Oath of Fidelity, and the Nicene Creed. And, Plaintiff extensively articulates various theological positions. Also, Plaintiff's Complaint and briefing contain Plaintiff's argument about what a correct understanding of Catholic doctrine on various points is, how the various religious authorities noted above should be interpreted, and how the University and its students should or should not have understood and applied them. The Court further finds that during oral argument, Plaintiff was not able to argue against dismissal without reverting to extensive discussion and argument over religious doctrine and his claims that the University and students do not have a correct understanding of Catholic doctrine. This simply reinforces the fact that his claims, as pleaded, are bound up in and inseparable from disputed points of religious doctrine. Because the Court will not be able to adjudicate Plaintiff's claims as pleaded, without determining "correct" Catholic



doctrine on various points, Plaintiffs claims are not

justiciable, and the Court must dismiss them for failure to state a claim under the ecclesiastical abstention doctrine.

Although the Court's opinion relies on "catholic doctrine" rationale, the Court also concludes that Plaintiff has failed to state a claim against the University as argued by the Defendant at hearing. "A motion to dismiss filed pursuant to Civ. R. 12(B)(6) for failure to state a claim upon which relief can be granted is procedural in nature and tests only the kgal sufficiency of the complaint." *Carelli v. Canfield Local Sch. Dist. Bd of Educ.*, 2019-Ohio-1096, 126 N.E.3d 1232, 1235 (7th Dist.). "When making a determination on a Civ. R. 12(B)(6) motion, a court must accept the facts as alleged within the complaint as true and draw all reasonable inferences from those facts in favor of the plaintiff." *Id.* But the allegations must plead a claim that is "plausible" and not simply "conceivable." *Michelson v. Volkswagen Aktiengesellschaft*, 2018-Ohio-1303, 24, 99, N.E.3d 475, 481 (8th Dist.). The obligation to plead a plausible claim requires "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* Stated differently, "legal conclusions in a complaint do not enjoy a presumption of truth. . . . In other words, where there is a failure to allege one of

the elements of the claim, we do not presume the existence of the element because the plaintiff generally asserted a named claim." *See Jones v. Mahoning County Clerk of Court*, 2019-Ohio-1097, 11 9, 2019 WL 1400058, at *2 (7th Dist.). Defendant's claims also fail under this application of the law discussed more particularly below.

*Defamation*

Under Ohio law, defamation is the "unprivileged publication of a false and defamatory matter about another." *McPeek v. Leetonia Italian-Am. Club*, 174 Ohio App.3d 380, 384, 882



N.E.2d 450, 453 (7th Dist., 2007). To prevail on a defamation claim, the plaintiff must plead and eventually prove the following elements: "(1) a false statement, (2) about the plaintiff, (3) was published without privilege to a third party, (4) with fault of at least negligence on the part of the defendant, and (5) the statement was either defamatory per se or caused special harm to the plaintiff." *Id.* The Court finds that to the extent Plaintiff intends to assert a defamation claim against the University, he pleads no facts indicating the University made any of the statements

he claims are defamatory (that is, the statements made in anonymous evaluations), nor does he plead any facts suggesting the University published those statements to any third-party, as required to sustain a defamation claim under Ohio law. Therefore, Plaintiff fails to state a viable defamation claim against the University.

*Tortious Interference With Contract*

To state a claim for tortious interference with contract, a plaintiff must allege: "(1) the existence of a contract, (2) the wrongdoer's knowledge of the contract, (3) the wrongdoer's intentional procurement of the contract's breach, (4) lack of justification, and (5) resulting damages." *Fred Siegel Co., L.P.A. v. Arter & Hadden,* 85 Ohio St. 3d 171, 176, 707 N.E.2d 853, 858 (1999). It is black-letter law that only a *non-party* to the contract can be liable for tortious interference. *See AAA Installers v. Sears Holding Corp.*, 764 F. Supp.2d 931, 942 (S.D. Ohio) ("In order for a person to interfere, the person must not be party to the contract.") (citing *Scanlon v. Gordon F. Stofer & Bros. Co*, 8th Dist. Cuyahoga No. 55467, 55472, 1989 WL 69400, at *4 (June 22, 1989). The Court finds that here, Plaintiff was employed by the University as a faculty member. Therefore, the only "contract" that Plaintiff could allege was interfered with was a contract between him and the University. Because the University cannot

tortiously interfere with



its own contract, Plaintiff fails to plead a viable claim for tortious interference with contract against the University.

*Civil Conspiracy*

As to Plaintiff's Civil Conspiracy claim, under Ohio law, civil conspiracy requires a "malicious combination of two or more persons to injure another person or property, in a way not competent for one alone, resulting in actual damages."*Gilreath v. Plumbers, Pipefitters, & Sen,. Technicians Local 502*, 2010 WL 6423321, at *5 (S.D. Ohio 2010). "The malice involved in the tort is 'that statement of mind under which a person does a wrongful act purposefully, without a reasonable or lawful excuse, to the injury of another." *Id* "The conspiracy claim must be pled with some degree of specificity." *Id.*

The Court finds that here, Plaintiff alleges that "two, or more," of the students acted "in concert" to "discredit Plaintiff and negatively impact his employment situation." But Plaintiff does not allege that the University was a party to any such conspiracy.

Plaintiff does assert that the University "knew, or should have known, that the evaluation process as flawed yet continued to provide it to students." This argument falls short of pleading the Unijversity entered into any type of agreement with its students with the intent to purposefully injure Plaintiff. Furthermore, there was no evidence that the students are required in any manner to complete course evaluations. The Court further finds that the Complaint contains no allegations indicating the University was aware that students intended to make adverse comments, let alone that the would make comments Plaintiff now claims are defamatory and harassing. Thus, Plaintiff has failed to plead the basic elements of a civil conspiracy claim against the University.



*Breach of Contract*

Regarding Plaintiffs Breach of Contract claim, a plaintiff must plead and prove "the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff." *Doner y. Snapp*, 98 Ohio App. 3d 597, 600,649 N.E.2d 42,44 (2nd Dist., 1994). The Court finds here that the Plaintiff has not even pleaded sufficient facts to

establish what "contract" is at issue. Plaintiff's Complaint pleads that he had a "contractual requirement" to teach courses in the Spring of 2019, but Plaintiff admits that he taught the courses at issue, and he does not claim the University failed to compensate him as agreed. Nor does he claim that he had a contractual expectation of employment beyond the Spring 2019 semester. And even if he did, the federal court has already definitively ruled that Plaintiff *resigned* his employment and was not the subject of a constructive discharge. This ruling applies in this case by virtue of collateral estoppel because Plaintiff was a party to and is bound by the federal court's decision. *See Jordan y. Howard*, 2021 -Ohio-4025 ¶ 53,2021 WL 5275974, at *9 (2nd Dist., 2021 (rulings made in federal court are collateral estoppel in second-state lawsuit arising from the same facts and can be applied in the context of a motion to dismiss).[1] Therefore, any breach of contract claim cannot be predicated on the breach of an alleged contract for continued employment.

Plaintiff also appears to claim the University had a contractual duty to "welcome" him as a non-Catholic "based on the Catholic Church's teachings," and/or to protect him from "overly enthusiastic students," that he claims "target[ed]

non-Catholics." The Court finds that while Plaintiff alleges that these were policies of the University, he does not plead any facts giving rise to an inference they were contractual in nature. He does not identify the existence of any document in which the University agreed that its policies were contractually enforceable, nor does he plead



any oral contract was made rendering these policies contractual. He pleads no facts indicating the exchange of bilateral promises, consideration, or mutual assent as it pertains to the University's Mission Statement and the unnamed "second policy" that supposedly protected him from "overly enthusiastic students." *See, e.g., Alexander v. Columbus State Community Coll.*, 2015-Ohio-2170, 4ft 19, 35 N.E.3d 949, 954 (10th Dist.) ("Both parties must have intended for the language in the handbook or manuals to be legally binding.").

In addition, even if the University had assumed a duty not to permit Plaintiff to be discriminated against based on his status as a non-Catholic, the federal court already rejected the idea that Plaintiff was discriminated against by the student comments, which the federal court held could not, as a matter of law, constitute a hostile environment based on religion.

Attachment 'C'

This ruling is also subject to treatment here as collateral estoppel. *See Jordan*, 2021-Ohio-4025, 53-56, 2021 WL 5275974, at *9. Therefore, even if the University had a contractual duty to protect Plaintiff from discrimination by students based on his non-religious status, Plaintiff has already litigated the question of whether he suffered discrimination and lost.

Finally, Plaintiff must allege a viable damages theory to sustain his breach of contract claim. Yet, as the "Damages" section of his Complaint shows, the only damages Plaintiff seeks are pecuniary losses resulting from the loss of his employment—namely, lost wages, lost Social Security, and lost retirement contributions. But the federal court has already determined that Plaintiff's loss of employment resulted from his voluntary resignation and riot from a constructive discharge. Thus, Plaintiff cannot claim these damages are causally related to the alleged failure on the University's part to welcome him and/or prevent discrimination—because neither of those things caused his separation. Thus, he fails to state a viable breach of contract claim for this reason as well.

*Fraud*

As to Plaintiff's Fraud claim, under Ohio law, the elements of fraud must be pleaded with particularity. *See* Ohio Civ. R. 9(B). These elements include "the time, place, and content of the false misrepresentation, the misrepresented facts, the identity of the person giving the false information, and the nature of what was obtained or given in connection with the fraud." *Wick v. Ach*, 2019-Ohio-2405, 1 12, 139 N.E.3d 480, 485 (1st Dist.). These elements also include "a showing of justifiable reliance on the alleged fraudulent statement to the alleging party's detriment." *Id.*

Plaintiff's Complaint does not plead the elements of fraud with particularity. The Court cannot discern, with particularity, what the alleged "false misrepresentations" are. Plaintiffs "Cause of Action #5 — Fraud," simply contains Plaintiff's criticism such as that the University failed to follow the teachings of Pope John Paul II, that it "undermin[ed]" his efforts to teach students, and that confidence in the University transcripts has supposedly been "calle[edl into question" because the University "allowed disgruntled students to attack and discredit instructors." Nor does

Plaintiff identify a single false representation of fact with specificity, let alone when such a statement was made and by whom. Rule 9(B) clearly requires this, and Plaintiff failed to do so.

In addition, it is not enough for a plaintiff simply to allege the existence of false statements. A plaintiff must allege false statements and then plead facts showing that he *relied on those statements to his detriment.* It is not enough for a Plaintiff to express after-the-fact dissatisfaction with how the University responded to complaints brought to it by students. But that is all Plaintiff does in his Complaint. Moreover, to the extent Plaintiff is attempting to predicate his claim on a theory that the University committed fraud by failing to follow its own stated policies or teachings, Plaintiff would have to plead facts (as opposed to legal conclusions) demonstrating the University never intended to follow those policies and teachings *at the time it stated them.* Plaintiff pleads no facts remotely suggesting this. *See Integrated Molding Concepts, Inc. v. Stopol Auctions*, 2007 WL 3001385, at *6-7 (N.D. Ohio 2007) ("A plaintiff may only prevail on a claim for promissory fraud if he proves that the defendant made a promise with the present intention of not performing."). Therefore, Plaintiff fails to state a claim

for fraud against the University.

For the reasons set forth above, Plaintiff's claims are dismissed, with prejudice, and judgment is hereby entered in favor the defendants.

BE IT SO ORDERED

JUDGE MICHELLE G. MILLER

CC: Dale Prey, Plaintiff *pro se*

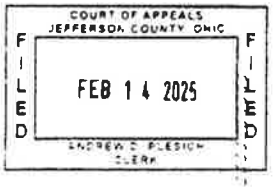
Attorney Adam Martello, Defense Counsel



Attachment 'C'

Supreme Court of Ohio Clerk of Court - Filed
January 28, 2025 - Case No. 2024-1599

# The Supreme Court of Ohio




Dale Prey

Case No. 2024-1599

v.

ENTRY

Franciscan University of Steubenville, et al.

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Jefferson County Court of Appeals; No. 24 JE 0004)

Sharon L. Kennedy
Chief Justice

**The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/**

Appendix 'D'

COURT OF COMMON PLEAS
JEFFERSON COUNTY, OHIO

| | | |
|---|---|---|
| Dale Prey | ) | Case No. |
| 45811 Cadiz-Harrisville Rd. | ) | Judge: |
| Cadiz, Ohio, 43907 | ) | |
| Plaintiff | ) | |
| vs. | ) | COMPLAINT |
| Franciscan University of Steubenville | ) | |
| 1235 University Blvd. | ) | |
| Steubenville, Ohio, 43952 | ) | |
| | ) | |
| John Does, #1 -#15 | ) | |
| Defendants | ) | |

**Plaintiff requests this case be heard, and decided, by a jury in accordance with the laws of the State of Ohio.**

**Procedural History:**

1) Franciscan University is not simply an employer - it is a private institution of Higher Education, which promotes and markets itself based on its *"Passionately Catholic"* identity and its compliance with the teachings of the Catholic Church. Plaintiff was hired in the latter part of 2001, and began working / teaching at Franciscan University in the Spring semester of 2002.

2) In Spring, 2019 Plaintiff taught two classes for the Communications Department, one as a part of his contractual requirement and the second as an "overload." At the end of that semester several students in the night class used the University provided anonymous course assessment process to publish statements discrediting Plaintiff (including explicit, or implicit, references to his non-Catholic status or age). These course evaluations are used by administration in various ways that impact employment, including teaching assignments, advancement / pay and retention.

3) Plaintiff was not initially aware of the specific content of these statements until he was summoned to meet with the Chair of the Communications Department (on June 12, 2019), who had been instructed (by the Dean) to reprimand Plaintiff and make it clear that Plaintiff's conduct was unacceptable at Franciscan University, and that the information would be made part of his permanent record and impact his future ability to teach. Given the number of statements relating to his failure to be Catholic, or young, Plaintiff filed a complaint with the EEOC. The EEOC issued a Notice of Right to Sue letter, dated 15 October, 2019.

4) After Franciscan University completed the investigation required by the EEOC, and determined

that these attacks did not violate the University policy on Harassment and Discrimination, Plaintiff filed a Federal lawsuit, based on Title VII violations, in the District Court in January, 2020. *(Case No. 2:20-cv-00188-MHW-EPD, Judge: Michael H. Watson)*

5) Judge Watson, after reviewing Defendant's 12(b)(6) motion, dismissed the Federal Title VII claims, with prejudice, based on Franciscan University's status as a religious employer protected by the specific religious exemption to Title VII. He declined to exercise supplemental jurisdiction over Plaintiff's related state law claims, dismissing them "without prejudice".

6) Plaintiff filed a timely appeal to the 6th Circuit (No. 21-3200) and the appeals process was completed in December, 2021.

7) Plaintiff resides in Harrison County, Ohio. Defendant Franciscan University of Steubenville is located in Jefferson County, Ohio. Current residences of John Does are unknown as Franciscan University has blocked every attempt by Plaintiff to identify the actual students who made the statements, arguing that this information is protected under Federal Law.

**Cause of Action #1 – Defamation:**

7) Plaintiff alleges that a group of 8 students (over 50% of the night class) did use the University provided anonymous course evaluation system to publish negative statements about him with the express purpose of injuring his professional status and ability to teach classes at Franciscan University. Several of the statements were intentionally misleading / inaccurate or immaterial (*Plaintiff only used out-dated course content from 1980's; Plaintiff lives off-grid; Plaintiff forced them to read a work of satire which "mocked" the bible; although many students commented on his lack of credentials to teach a class on interactive media none of them mentioned the fact that Plaintiff was currently working on an interactive media project with small team of industry professionals with decades of experience*) or included explicit, or implicit references to membership in a protected class (*religion and age*). The number of comments based in "religion" made it clear that the students knew these types of claims were likely to result in a specific response from the University (who had recently suffered a million dollar loss in potential revenue after a "scandal" created by the "Church Militant" website, questioning Franciscan University's commitment to teaching only "appropriate" materials.) Franciscan University's subsequent actions demonstrated that they accepted

those statements as true (or concluded that student subjective perceptions were more important than actual truth) and adopted them.

8) Two of Plaintiff's most vocal detractors used examples that actually resulted from their own failure to follow University rules for enrolling in a class and class attendance, but failed to mention these facts, demonstrating likely impermissible motives. One of them used an example which would suggest a belief that "Catholic" Professors would ignore the University rules on grade assignment and would have given her a higher grade to "motivate" her to work harder in the future. The second, in bragging about her ability to lead others, actually demonstrates a specific example of actions that are "offenses against truth" *(Catechism of the Catholic Church, III. Offenses Against Truth; Article 8, THE EIGHTH COMMANDMENT: You Shall not bear false witness against your neighbor, sec. 2481, while sec. 2487 makes the duty of reparation clear.)* The irony of students violating the Catholic Church's Catechism, to accuse Plaintiff of failing to act in accordance with Catholic teaching - accusations which Franciscan University accepted and adopted - do more than just suggest an impermissible motive and failure to reasonably discover the truth. In undermining Plaintiff's efforts to teach students

(planning on working in the field of communications) that they had both a legal (civil law) and a moral (Catholic Church's teachings) to speak "truth", the University did immeasurable damage to Plaintiff's name and reputation.

**Cause of Action #2 – Tortious Interference:**

9) Plaintiff alleges that these students knew that there was a contractual / business relationship between himself and Franciscan University and that they specifically sought, in the plain language of these statements, to interfere with this relationship; the University's initial response was to accept these statements as factual and to require Plaintiff to attend a meeting where he was told that this was unacceptable at Franciscan University, that the students' evaluations would be made a part of his permanent record, that this would / could negatively impact his ability to teach classes in the future and that this situation would be included as part of his annual employee evaluation. Ultimately the University chose to breach its own contractual obligations, rather than hold the students responsible for acts that were violations of not only civil law, but the teachings of the Catholic Church (*as found in the Catechism noted above*).

10) In the day class (COM 381A) evaluations

Plaintiff was given a "combined median" of "3.0". *In the night class (COM 381N), which wanted him fired or prevented from teaching, he was given a "0.2".* In the day class Plaintiff was ranked "Good" or better in 75% of the responses in all four categories. *In the night class he was ranked "Poor" or lower, in 87%, 100%, 74% and 100% of these same categories.* The students in the day class made no "Open Ended Responses" referencing religion or age, and no student stated Plaintiff should not be teaching or was not qualified to teach the class. In stark contrast, *3 of the 8 students in the night class included references to "religion", 2 of the 8 referenced "age", 6 of the 8 stated he should not be teaching, 5 of the 8 stated he was not qualified to teach.*

11) Since these were essentially the exact same class, just different sections, using the same instructional methods, assignments, grading criteria, etc. it is clear that a core group of students, in the night class, targeted Plaintiff using comments and statements calculated to get a negative response from the University. The specific focus on Franciscan University's weakness, (recently demonstrated in the "Church Militant" scandal), is clear, as is the expectation that the University would quickly act to avoid another "scandal".

**Cause of Action #3 – Civil Conspiracy:**

12) Plaintiff alleges that two, or more, of these students acted in concert to obtain their objective (to discredit Plaintiff and negatively impact his employment situation), based on the small statistical chances of the different students, acting on their own, using the same language, examples, pathos, or expressed objective of preventing him from being able to continue teaching. Several students used "inclusive" language "all" or "most" students in the class agree . . . indicating that there was some discussion among the students and the actual language supports a conclusion that some students listed items from those discussions. One student brags about being a great leader and her influence on the other students, outside of the class. Since this student was one of the most vocal detractors, it is likely that she also was key in "leading" the other students to join her efforts, even if they did nothing more than agree to post similar negative comments in the course evaluations.

13) Plaintiff also alleges that Franciscan University knew, or should have known, that the evaluation process was flawed yet it continued to provide students with the opportunity to attack a member of their community in this way. The promotion of this method of collecting "feedback" for

the administration to use provided students with the means and opportunity to join as a member of an anonymous group, while knowing that their actual identity would be protected by the University policies. Without the course evaluation process a student would need to meet with someone, in person, to air their complaints - which would be subject to review and timely examination, to ensure the actual facts were known before the University acted. Or a student would be forced to post on a public forum, such as "Rate My Professors" or write an expose' for a website like the "Church Militant".

14) Franciscan University created a Policy on Harassment and Discrimination which allowed, if not promoted, attacks on individuals who were not Catholic and directly contravened the policy set forth in the mission statement and related documents[1]. By providing an internal "evaluation" system, without any meaningful efforts to moderate student claims, Franciscan University facilitated these types of attacks, enabling a vindictive student to substantially harm an instructor, with direct impact on their employment - something that would not occur with proper, timely, investigation of in-person complaints to a responsible administrator, or with

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[1] See attachment: "FUS Equal Employment"

the legal consequences of defaming someone on a large public forum.

14) In response to the attacks and Franciscan University's initial response, Plaintiff crafted a detailed analysis of the facts including:

a) Plaintiff's reliance on Catholic teachings, including *Pope John Paul II's "Letter to Artists"* and the instructions found in *Inter Mifica, Communio et Progressio* and *Aetatis Novae* in crafting and teaching the course. (All reference documents available on Vatican website.)

b) Validity of Assessment, including issues of Confirmation Bias, Fundamental Attribution Error, Argumentum ad populum and False Memory, found in the statements, themselves.

c) Review of course focus, teaching methodology and example projects and lecture materials, providing verification of what was actually presented in class and documentation of e-mail interactions.

d) Rebuttal of specific concerns listed by students, including adding in the additional facts which were not part of the student statements and relevance of topics used as examples, based on Catholic principles and Franciscan University specific policies on

grading, etc.

e) A clear statement of his intent to pursue legal actions against the students under tort law, with an option for Franciscan University to follow its own guidelines, including its Mission Statement, etc. and teachings of the Catholic Church (including the importance of "truthful" communication) and condemn student actions which violated those guidelines and teachings.[2]

15) Although the President of the University and all upper level administrators had recently taken an Oath of Fidelity[3] to submit to the teachings of the Pope and the Church (which would presumably include the Catechism) Franciscan University, instead, sided with the students - adopting their views of what was appropriate behavior and content in a course over the teachings and instructions found in seminal Church documents. Franciscan University had a very strong financial motive for allowing and supporting these types of attacks. If it wished to avoid another million

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[2] See attachments: "FUS maturity and self responsibility"; "FUS Mission Statement 1"; "FUS Mission Statement 2"; "FUS oppose arbitrary discrimination"; "FUS respect for others"; "FUS student grade criteria".

[3] See attachment: "Oath of Fidelity"

dollar loss, (resulting from a student inspired scandal on a web-site with some appeal to certain Catholics who might send students to Franciscan, or make donations to a Capital Campaign) "empowering" students to engage in these types of attacks, in a venue they controlled made sound financial sense. Although the University's support of the students would significantly increase the damage to Plaintiff's name and reputation, it costs the University comparatively little. The onus is all on the victim - humbly accept these types of attacks as a condition of continued employment or leave.

**Cause of Action #4 – Breach of Contract:**

16) As was Franciscan University's policy, Plaintiff was required to read the Mission Statement and related documents, during the hiring process. These documents not only made Plaintiff's responsibilities clear, they also promised that he (a non-Catholic) would not be subject to harassment or discrimination based on that status.[4] While it had no obligation, under Title VII - due to the broad reach of the Religious Exemption - the University still chose to market itself in this way, not as a matter of law,

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[4] See attachments: "Academic Freedom", "FUS Mission Statement 1", "FUS Mission Statement 2", "FUS oppose arbitrary discrimination", "FUS respect for others".

but as a religious tenant. Franciscan University knew Plaintiff was not Catholic, and Plaintiff agreed to be guided by the Catholic Church's teachings and doctrine in constructing and presenting material in the classroom.

17) For 18 years Plaintiff worked for, and taught at, Franciscan University. During that time he never "pretended" to be Catholic, falsely representing his status to his students. Instead he made it very clear that he was not Catholic, but in sharing some of the same core values / beliefs, Plaintiff could act as an example of how common ground could be found between individuals of different faiths. Plaintiff carefully avoided any discussions of the comparative values of religion, etc., instead presented only information based on documents crafted by Catholic Church leadership or commonly accepted foundational materials such as the bible. As a "non-Catholic" he could also provide a point of view which could encompass aspects of a situation that might not be readily apparent to a Catholic.

18) When Plaintiff's (Catholic) students were devastated by the Notre Dame fire, his research into the actual facts available at the time:

*that the fire had not spread and destroyed the entire building or a large area of Paris;*

*that the fire alarms had gone off several times previously, allowing time for an orderly evacuation of people and preservation of priceless religious artifacts;*

*the timing of the fire, just a few days before Easter would have resulted in a packed building, meant there was not a single injury or death due to the fire;*

*that all evidence pointed to an accident, not an act of terrorism targeting a significant Catholic cathedral;*

allowed him to present the thesis that instead of focusing on the tragedy of the loss of a few timbers, instead, we should focus on these miracles. After all, was not human life more important than the roof of a building?

19) One might believe that the Catholic Church would agree with Plaintiff's assessment. Yet the fact that he had "made a joke" about the burning of Notre Dame figured prominently in the student critiques. Critiques which significantly failed to include the actual "lesson" Plaintiff sought to teach. While Plaintiff was being taken to task over making a joke about the Notre Dame fire, the new President of Franciscan University was making a joke about young people, who choose to attend a dating seminar,

wanting to go to hell.[5] Rather than facing condemnation for his insensitivity and calls for his dismissal, etc., this joke was reported in a favorable article on the main page of the University web site. The University's actions demonstrate either a complete breach of their contractual obligations or Plaintiff's failure to recognize that the Catholic Church places a much higher value on its buildings, than it does on the souls of young adults.

19) Franciscan University had two policies: one, found in the Mission Statement and related materials on the website, describe an educational institution where non-Catholics are welcomed members of the community, based on the Catholic Church's teachings. The other policy is an internal document, which was used to evaluate Plaintiff's EEOC complaint. In the second policy, overly enthusiastic students (and others) are free to target non-Catholics, simply because they are not Catholic. Such attacks are not considered violations of the governing policy, even when these attacks clearly violate the plain language of the Catechism of the Catholic Church. Either Franciscan University made promises to the Plaintiff, which it later failed to perform for economic reasons, or the original

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[5] See attachment "they want to go to hell".

promises contained in those documents were illusory.

20) Similarly, the requirement that Plaintiff comport his teaching with Catholic Doctrine and refrain from supporting propositions or values contrary to the Church's position, is made invalid if it is impossible to perform. Plaintiff made great efforts to research the role of communication instruction at a Catholic institution of Higher Education and embraced the instructions found in Vatican documents. His satire, contrasting popular ideologies with actual biblical teachings, culminated with Christ's message as it related to the recent "Church Militant" scandal – which had cost the University so much money and divided the University community. His use of visuals (the black and silver U.S. Olympic uniforms) demonstrated the importance of personal responsibility in selecting what one chooses to wear, if one wishes to conform to Catholic traditions of modesty, rather than projecting that responsibility onto others. His review of the research into "false memories" and the number of persons (often African American males accused of sexual impropriety with White females) who had been exonerated through the Innocence Project reflected the challenging intersection of Catholic Social Justice issues.

21) The University's response, to student

attacks based on these exact issues being "inappropriate" at Franciscan University, was to reject Plaintiff's efforts to teach material in accordance with Catholic precepts, and conclude that students (who were Catholic) were far more knowledgeable about actual Catholic doctrine. In contrast these exact topics were deemed appropriate, if not essential, in other classes, administrative functions, and events hosted by the University. When Plaintiff made it clear that he would take legal action to seek reparations for the damage these students had done the University acted to protect the students and shift the blame onto Plaintiff. Even when the student actions clearly violated the precepts found in the Catechism, and were "*offenses against truth*" resulting in a duty of reparations, the University refused to perform its contractual obligations, including its ultimate mission of educating students to "*take a mature, responsible approach to life*", "*foster individual ownership of Christian values*" and "*exercise of self-responsibility*".[6] Whether this was motivated by concerns about the economic impact to the University, and willingness to set aside Catholic teaching when they were inconvenient, or an actual belief that a non-Catholic

[6] See attachment "FUS maturity and self responsibility".

can never understand Catholic doctrine and teachings, no matter how many hours of research and study they devote to the effort, either constitutes a breach in their contractual obligations to Plaintiff.

**Cause of Action #5 – Fraud:**

22) Franciscan University is not simply an employer. It is an accredited institution of higher education which prepares students for entry into the workforce and participation in a larger society. It is formally associated with the Catholic Church, marketing itself based on its "Passionately Catholic" identity. Unlike a religious employer that simply bakes cakes or sells hobby supplies, Franciscan University role as an institution of higher education incurs additional obligations to society. When a student graduates potential employers rely on the integrity of Franciscan University's grading policy. The process for accrediting a University reviews many aspects of the educational environment. Potential students carefully consider the learning environment they will experience and educational opportunities provided by the institution.

23) While Plaintiff's "Breach of Contract" claim encompasses related aspects of fraud (in the formation of the contract) those same misrepresentations constitute an even greater issue

since the damage done by the fraud extends far beyond the contract to work and teach. If Franciscan University's claim that grades are based on measurable criteria of student performance on class assignments is countered by a student's claim that a "Catholic Professor" would violate that policy, Franciscan University's support of the student calls into question the legitimacy of *every student transcript*. What accrediting agency would consider assignment of grades based on student and / or instructor religious standing a *valid assessment*? When being "accredited" can have significant impact on an institution's financial success, Franciscan University's willingness to ignore its own stated policies and allow disgruntled students to attack and discredit instructors who follow those policies perpetrates a far reaching fraud. It impacts every student Plaintiff ever taught by calling into question every grade he has given. *Did Plaintiff have the integrity to award the grade a student deserved, or was he pressured by administration (or bullied by a student who threatened to get him fired / demoted via the course evaluation system) to "adjust" their grade?*

24) The religious affiliation of Franciscan University is part of its primary marketing campaign. When the "Church Militant" scandal cost them a million dollars the University responded with

a very public event where administrators, faculty and staff were seen to be taking the "Oath of Fidelity". A few months later they were concluding that student perceptions of what was appropriate in the classroom were more important than the teachings of *Pope John Paul II* and the obligations of educators in the field of communications, as set forth in *Inter Mifica, Communio et Progressio* and *Aetatis Novae*. Rather than submit to these teachings and the doctrine set forth in the Catechism, they allowed the educational mission and environment to be dictated by a few disgruntled students - which as noted above had often violated University rules, precipitating the "unacceptable" actions by Plaintiff. *A parent, who sent their child to Franciscan University, expecting them to be molded into an individual who takes responsibility for their own actions, thinks critically about issues using the lens of Catholic doctrine and aspires to follow Christ's example may never know that (in reality) a few students (who failed at all three of these University stated educational goals) control the educational environment.*

25) As a non-Catholic member of Franciscan University's community Plaintiff did not only offer a unique perspective when teaching issues of import to Catholic students. *Plaintiff also embodied the*

*opportunities for a non-Catholic to be part of this community.* This was not a contractual obligation for which the University paid him additional money. For non-Catholic students, knowing that there was someone with significantly different life experiences, often meant there was someone in the community to whom they could talk more freely. While Plaintiff would not advocate positions contrary to Catholic teaching he could often listen and make suggestions in a less judgmental manner. When a student was accused of casting evil spells on her sleeping room-mate, using a plastic toy "Harry Potter" wand, he could point out the positive aspects of the Harry Potter stories and the statistically small likelihood of a company in China having a direct connection to hell and able to imbue millions of plastic wands with the ability to cast real magic spells. When a student contending with gender identity issues was thrown out of the Catechetic program and had to deal with "Men" vs. "Women" bathrooms, Plaintiff could tell them they were free to come to the theatre and use the shop bathroom anytime they wanted. When a student, who had likely suffered serious abuse in her life, was brought to the point of tears by a Theology professor's statement in class that "there are no bad" men, Plaintiff could help her understand that the comment may not have been fully understood and

was unlikely to be a direct statement about her personal situation. Franciscan University's treatment of Plaintiff, accepting the complaints as true and indicating they had no intention of enforcing their own policies, not only caused Plaintiff to leave the University. *It demonstrated those policies were just as unreliable for every non-Catholic, be they employee, or student, and deprived those current and future non-Catholic students of Plaintiff's life experiences and counsel.*

26) In undermining Plaintiff's efforts to teach students, seeking a career in communications, that their future work required "truth", both legally (due to civil law on defamation and fraud) and morally (due to Catholic teachings), Franciscan University not only failed in its primary job of teaching students. It, instead, taught them that truth could be disregarded when it was inconvenient. That the law could be disregarded when it was inconvenient. That the Catholic Church's teachings could be disregarded when they were inconvenient. These three precepts are patently false. These specific students, having seen that Plaintiff's position was not supported by the University, have been primed to use falsehood in their work, to the detriment of their employers and future victims. Students who did not participate in the attacks on Plaintiff, either because they did not

agree with the observations or decided to instead follow the example of Christ, will see the University's actions and wonder about important issues of Catholic faith. If University administrators, who take an Oath of Fidelity, instead put financial considerations above their obligations, where is the line? In each of these situations Plaintiff's name and reputation suffers on-going damage. The ultimate conclusion, by students, employers and victims is that Plaintiff taught something that is not true.

27) Plaintiff taught a large number of classes over his 18 years of service to the University, over half of which were in the area of Communications (including English writing courses, Speech Communication courses and the Inter-Active Media course). In each of these courses he taught the same basic principles – truth is the essential aspect of communication. It is required by law. And it is required by seminal documents critical to the Catholic faith. When the University's actions discredit Plaintiff on these issues it impacts his reputation with each of these students. More importantly, it calls into his credibility on every issue he taught: If he was wrong about the law and Catholic doctrine, what else was he wrong about? Every student he taught is connected by alma mater and / or religion and are often active in those

communities. They may work together, marry, raise families together. They keep in touch via social-networking apps. Whenever someone at Franciscan University abruptly ceased being there rumors about possible reasons the University got rid of them dominated those discussions.

28) Critically, Franciscan University is not the only institution of higher education which relies on course assessments in employment decisions. In allowing the student comments to stand unchallenged, the University also doomed any attempts by Plaintiff, to obtain employment at an educational institution, to failure. Even its position as an opponent in a lawsuit wherein Plaintiff attempts to address the harms to his name and reputation acts as an insurmountable barrier. If his previous employer found his actions to be so egregious and defends the student actions, what potential employer would risk hiring Plaintiff? This is in stark contrast to a situation where the University condemns the misuse of the assessment system, for inappropriate motives, stands by the Plaintiff's teaching methodologies and content, yet both parties agree that the situation could reoccur and look to a solution involving early retirement, etc.

**Damages:**

29) Plaintiff suffered not only direct financial damages of lost wages, but also related contributions to Social Security and the retirement program of the University. At the time of the incident, having worked and taught at Franciscan University for almost 17 ½ years, he had 3 - 5 years before he was eligible for social security, with standard "full retirement age" on, or about 5 years in the future. A significant financial loss was his insurance. Although he seldom used it, Covid-19 became a full-blown pandemic in 2020. Thus, the loss of insurance was not only a direct financial loss, but created the additional mental stress of being without this key protection during a global health crisis.

Plaintiff's level of graduate and professional education was a key element of his employment, giving him the credentials required to teach a myriad of classes. The students' efforts to deprive him of the value of his educational experiences has a direct correlation to the value they place on their own education. At the time, a full time student would pay approximately $25,000 a year for tuition at Franciscan University. Plaintiff has some 9-10 years of formal undergraduate and graduate education, not including military training or professional work experience.

Franciscan University has also set a value on

the cost of damage to its own reputation, during the "Church Militant" scandal, at approximately one million dollars. This number, if taken as the reason for the University to violate both its contractual obligations and its responsibilities under the Oath of Fidelity to the Catholic Church's teachings, including specific language in the Catechism, also sets an important dollar value on the incident.

Using these three examples, damages are somewhere between $150,000 and $250,000 for direct contract based losses for salary and retirement contributions; between $225,000 and $250,000 based on student valuations on formal education; and $1,000,000 as the amount the University sought to save by its actions.

Plaintiff request actual damages, to be determined by the jury, based on these three examples, as well as any punitive damages allowed by law, as determined by the jury.

Signature: _____ Date: _____

Dale Prey, Plaintiff
45811 Cadiz-Harrisville Road
Cadiz, Ohio
43907

MEMORANDUM IN SUPPORT OF JURISDICTION

**IN THE SUPREME COURT OF OHIO**

| | | |
|---|---|---|
| Dale Prey, | ) | On Appeal from the |
| Appellant | ) | Jefferson County Court |
| v. | ) | of Appeals |
| Franciscan University | ) | Seventh Appellate |
| of Steubenville, | ) | District |
| John Does #1-#5, | ) | Court of Appeals |
| Appellees | ) | Case No. 24 JE 0004 |

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# MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT DALE PREY

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APPELLANT

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APPELLEE

Appendix 'F'

## TABLE OF CONTENTS

## EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Courts have the unique position of ensuring "Equal – Justice – Under – Law. The "Establishment Clause", "Free Exercise Clause" and "Right to Petition Government" are important rights under the U.S. Constitution and similar provisions in Ohio's Constitution. Appellant is not Catholic. He was not born Catholic. He was not raised Catholic. He did not convert to Catholicism as an adult. He was never "baptized" a Catholic. He attended no seminary or other "priestly discernment" program. He took no vows, nor was he ordained as a Priest. Neither Ohio's Constitution, nor the U.S. Constitution, allow the University to force a non-Catholic to submit to Catholic Doctrine, other than through explicit contractual obligation.

This case of first impression sits at the nexus of these Constitutional Rights involving three critical issues, which not only negatively impacted Appellant's rights but create the appearance of impermissible bias, impacting public perceptions of the legitimacy of our legal system, creating confusion and disparate rulings in cases where a defendant is religiously affiliated. The rulings by the lower courts create the following Constitutional questions:

(1) May a court eliminate the requirement restricting the ecclesiastical abstention doctrine to cases where the parties were all members of the same religious class (and thus have exercised their

Constitutional rights to voluntarily submit to church doctrine) and replace it with a rule that is facially Unconstitutional?

(2) May a court violate Ohio's laws of evidence, by listing carefully selected "out of court statements" (made by students) as true and accurate reports of Appellant's misconduct to support their ruling, etc.?

(3) May a court dismiss claims, which it never evaluated, after ruling that some evidence to support those claims contains references to Catholic Doctrine, in direct conflict with valid uses listed in the Ohio Rules of Evidence and ignoring its own precedent in previous rulings on motions to dismiss under *12(B)(1)*?

Both the Trial Court and the Seventh District dismissed Appellant's lawsuit, containing claims of defamation, conspiracy, interference with business relationship / contract, breach of contract and fraud, based on a modification of the "ecclesiastical abstention" doctrine. This extension eliminated the historical requirement, that a court will not interpret matters of religious doctrine, *when the litigants are members of the same religious class. Watson v. Jones*, 80 U.S. 679 (1871) (*Judgement, ¶31*, citing *Plishka v. Skurla*, 2022-Ohio-4744; *Turner v. Tri-County Baptist Church of Cincinnati*, 122 N.E.3d 603, ¶2, 12th Dist., *cited by Trial Court.*)

The new rule, as formulated by the Appellate Court, was that Appellant's inclusion of documents (required by Ohio law to be part of his complaint under *Ohio R. Civ. Pro. Rule* 10(D)) prevented the Court from adjudicating secular claims – simply because the

documents contained statements of religious doctrine (statements which Appellant noted were relevant to various elements of his claims). *(Judgement, ¶30, 36)* This new rule is facially invalid as there is no scenario in which it is Constitutionally permissible: If limited to this specific case or defendants who are affiliated with the Catholic Church, it violates the Establishment Clause; If extended to protect defendants affiliated with any church, it violates the Establishment Clause – by definition this new rule can never apply to defendants who are not affiliated with a specific religion and, thus, can never have "religious doctrines." When applied, as it was in this case, it makes the University's right to religious freedom superior to Appellant's exact same right under both the U.S. and Ohio Constitutions.

In support of this ruling the Court listed a carefully selected subset of the student statements – statements Appellant claimed were defamatory. *(Judgement, ¶8)* Yet the Court presented these statements as if they were factual and accurate representations of Appellant's misconduct in his classroom. The Court failed to mentioned the important fact that Appellant's complaint clearly indicated *that the statements were actually false and misleading*. Such a presentation of hearsay evidence is prohibited under *Ohio Rules of Evidence, §801*. Misuse of hearsay impacts the legitimacy of the Courts' rulings, creates the appearance of a violation of the *Ohio Code of Judicial Conduct* (Canon 1 and Canon 2) and *Ohio Rules of Evidence's* purpose to *support just adjudication of causes by helping to ascertain truth. (Ohio R. Evid., §102).*

Although neither lower court actually reviewed the critical acts, *by the students*, which formed the basis for the Complaint, both courts dismissed all of Appellant's claims. *(Judgement, ¶30, ¶36)* While *12(B)(1)* allows a court to dismiss claims over which it has no jurisdiction, it may only do so when there is no claim in the complaint over which they do have jurisdiction. *Vos v. State* (2017 Ohio 4005, 7th Dist.) This compounds the Hearsay error, above, as several of the student accusations can be addressed without any reference to religious doctrine.

- Initially, complicity of students, the University and its administrators is evaluated by established (secular) law: a legal duty to use reasonable / ordinary care to avoid injuring another person. *(Ohio Jury Instructions §431.03 and §401.01, cited in Gibson)* Catholic Doctrine only impacts review of how egregious the conduct was and operates to discredit the University's claims that the actions were reasonable or innocent violations.

- Appellant's statement *"How, White Person" is not, in fact, a racial slur* and was taken out of context – Appellant was using his unique life experiences (*living, as a small child, on the Hopi Indian Reservation)* to address current media reports involving issues of cultural appropriation and *news media* attacks on a young Catholic student for "smirking" at a Native American elder.

- Appellant's work of satire does not require any evaluation of Pope John Paul II's *"Letter to*

*Artists."* A jury could simply read the document (note that it is clearly labeled as *"Satire"* at the top) and consider *Ohio's Educational Standards* to determine if, factually, the document mocked the bible or if the student had been less than truthful.

- *Current laws on sexual assault of a sleeping person*, who cannot give consent, demonstrate classic *Disney media* (such as Sleeping Beauty and Snow White) *depict actions that are now illegal* – an important lesson for contemporary media creators.

- The *9/11 reference was part of a case study presentation on a computer game* (to demonstrate the futility of the American Policy to end terrorism through military action, post 9/11) which was developed *as an educational tool* and showcased *"gamification"* applications of interactive media.

The "religious doctrines" contained in the Catechism, and other documents created by the *highest authorities in the Catholic Church*, and *published on the Vatican website*, define Catholic Doctrine and a court is required to treat these statements deferentially (*Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)), not dismiss Appellant's case because *the University* disputes their application in this case. These statements are relevant, as they demonstrate Appellant's efforts to comply with his contractual requirements. Appellant did not create the requirement – the University chose to make religious doctrine part of the contractual relationship.

The fact that the Court dismisses Appellant's characterization of these documents as "party-opponent admissions" is contrary to the plain language of *Ohio R. Evid. §801 (D).* Although no evidentiary hearing has been held, *Ohio R. Evid. §201 (B) (judicial notice of facts*) and *Ohio R. Evid. § 803 (business records and documents prepared before January 1, 1998)* provide other clear options for admissibility. The documents are obviously relevant and are admissible, unless there is a specific exception. *Ohio R. Evid. § 402.*

Not only are they critical to support elements of Appellant's contract and fraud claims, *Ohio R. Evid. §616* allows these documents to be used to impeach the credibility of Franciscan University's representatives. The University has attacked Appellant's credibility, claiming their investigation demonstrated it was Appellant's inappropriate actions which caused this situation. Thus, Appellant may legitimately use the inclusion of references to these documents, *in his teaching,* to rebut the University's attempt to characterize him as someone with a deep antagonism towards the Catholic Church.

Any one of these issues is enough to call into question the legitimacy of the lower courts' rulings. Taken as a whole they stand in stark contrast to contemporaneous cases where Catholic Doctrine was cited, extensively in Steubenville's Criminal Court proceedings, by the victim in *State v. Morrier*[1] and *Gibson Bros., Inc. v. Oberlin College*, 2022-Ohio-1079

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[1] *State v. Morrier (unpublished case, see "Rev. David Morrier sentenced to probation for sexual battery", published in Herald Star, 12 March 2022)*

where the institution of higher education was not associated with a religious organization.

Thus, not only is there the potential for conflicting application of the new doctrine, there is actual conflict under the Establishment Clause. If these rulings are allowed to stand as precedent, potential for misuse / abuse in future cases is not the only negative result: the legitimacy of our Courts as impartial adjudicators of laws – laws which apply equally to everyone – suffers immeasurable harm in the eyes of the general public. If we can't trust the courts to follow the law the damage to society is obvious.

## STATEMENT OF THE CASE AND FACTS

*(*Text deleted – included, verbatim, in Petition)*

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

**Proposition of Law No. I: The lower courts eliminated the requirement restricting the ecclesiastical abstention doctrine to cases where the parties were all members of the same religious class and replaced it with a rule that is facially Unconstitutional.**

150 years ago, in *Watson v. Jones, 80 U.S. 679 (1871)* the Supreme Court not only articulated the limitations of the ecclesiastical abstention doctrine, it provided a model of how courts were to approach issues of doctrinal controversy:

*"The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect . . . All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it." (at pg. 728-729)*

In requiring a litigant to have taken some affirmative action demonstrating their submission to a church's doctrinal authority a court complies with Establishment Clause's limitations. Nor is a court paralyzed by evidence that include statements of religious doctrine.[2] In its opinion the *Watson* court specifically addresses the history of the religious schism[3] – a controversy over slavery *as a religious doctrine*. It then uses that exact schism to decide the secular issue in the case without impermissibly ruling on the religious doctrines.

Both the Trial Court, and the Seventh District, cite cases which explicitly follow these rules[4]. Then

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[2] *See, State v. Morrier*, supra.

[3] *Watson v. Jones, 80 U.S. 679 (1871).* "the system of negro slavery in the South is a divine institution, and that it is the peculiar mission of the Southern church to conserve that institution." (at pg. 691)

[4] *"the ecclesiastical abstention doctrine prohibited the trial court from considering an abuse of process claim filed by a* ***Byzantine Catholic priest against the Diocese and the Archbishop****" (Judgement, ¶31, citing Plishka v. Skurla, 2022-Ohio-4744, an 8th district case which it found "instructive"; see also, "Turner is an* ***ordained minister who was employed by***

citing these precedents they modify the doctrine – an expansion which is not supported by law and is facially Unconstitutional. It impermissibly places the University's religious freedoms over Appellant's religious freedoms[5]. Since defendants who are not associated with a religious organization cannot, by definition, have religious doctrines, this rule can never be applied universally and will always violate the Constitution by favoring religion.[6]

As *Watson* clearly demonstrated the ecclesiastical abstention doctrine does not prevent the use of documents which contain religious doctrine. Modern applications of this principle are represented by a litany of cases:

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***defendant-appellee, Tri-County Baptist Church of Cincinnati*** *("TCBC") for more than 35 years.", Turner v. Tri-County Baptist Church of Cincinnati, 122 N.E.3d 603, ¶ 2, 12th Dist.)(Cited by Trial Court).* (bold emphasis mine)

[5] As Judge Learned Hand articulated so well *"(t)he First Amendment . . . gives no one the right to insist that, in pursuit of their own interests, others must conform their conduct to his own religious necessities."* (quoted in *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985)).

[6] This case stands in stark contrast to *Gibson Bros., Inc. v. Oberlin College*, 2022-Ohio-1079. The Supreme Court made it clear in *McCreary v. American Civil Liberties Union 545 U.S. 844 (2005) "A purpose to favor one faith over another, or adherence to religion generally, clashes with the "understanding ... that liberty and social stability demand a ... tolerance that respects the religious views of all citizens."* (citing *Zelman v. Simmons-Harris*, 536 U. S. 639, 718, Pp. 11–12).

- the *Ten Commandments* were examined by the Supreme Court in *Stone v. Graham*, 449 U.S. 39 (1980);

- in Title VII cases courts rely on, and cite, *statements on the employers' religious doctrine*, to determine if an employment action was based on a valid religious consideration[7];

- the use of Peyote, *as a religious practice,* was at the heart of the Supreme Court's decision in *Employment Div. v. Smith*, 494 U.S. 872 (1990);

- Franciscan University, and other Catholic affiliated groups, *used Catholic Doctrine on abortion* to challenge the contraception mandate in Obama-Care[8];

- in the infamous "Thank God for Dead Soldiers" case, *the religious doctrines* on which Westboro Baptist Church members based their speech, did not prevent the Supreme Court from analyzing the First Amendment issues in *Snyder v. Phelps*, 562 U.S. 443 (2011).

**Proposition of Law No. II: The lower courts**

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[7] *Hall v. Baptist Memorial Health Care Corporation*, 215 F.3d 618 (6th Cir. 2000); *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U. S. ____ (2012); *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, et al.*, 483 U.S. 327.

[8] *Franciscan Univ. of Steubenville v. Sebelius*, Case No. 2:12-CV-440.

**violated Ohio's laws of evidence, by listing carefully selected excerpts from the "out of court statements" made by students, as true and accurate reports of Appellant's misconduct.**

Ohio's Rules of Evidence are quite clear. "The purpose of these rules is to provide procedures for the adjudication of causes to the end that the truth may be ascertained and proceedings justly determined." *(Ohio R. Evid. §102).* "All relevant evidence is admissible, except as otherwise provided" . . . "Evidence which is not relevant is not admissible." *(Ohio R. Evid. §402).* There is no exception for "religious documents" or documents which contain references to "religious doctrine" – if the evidence is relevant, it is admissible. "Relevant evidence" means any evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probably than it would be without the evidence. *(Ohio R. Evid. §401).*

Anyone who has watched a crime drama knows that "hearsay" is not allowed in court proceedings. Intuitively we understand that these statements are problematic as they cannot be easily verified by cross-examining the witness, etc. *Ohio's Rules of Evidence, §802* formalizes this fact by stating that "hearsay" is not admissible, unless there is a specific exception to the general rule. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the statement." *(Ohio R. Evid. §801 (C).*

The "out of court statements" (made by the

students), are clearly "hearsay" when used by the University and the Court, to prove the very misconduct they report. They are not "hearsay" when offered to show *the students made statements* which Appellant's complaint labels as defamatory. Appellant is required to prove *the statements were made* and that they were not true.

The lower courts adopted the University's version of these statements rather than Appellant's claim that they were false / misleading. However, this version while often providing an accurate quote, carefully omitted contextual information: for instance the *"How, white person"* is an accurate quote. But the full statement, by the student, includes the context of his *raising his hand in a stereotypical Native American greeting*, and *reference to his having lived on the reservation*. That additional context supports Appellant's explanation that this action and comment were part of a scripted presentation, using his legitimate experience living on the reservation, to address a current media story about DNA testing and cultural appropriation.

An admission by a party-opponent is not "hearsay." *(Ohio R. Evid. §801 (D)(2))*. Business documents or those documents created before January 1, 1998 are also exceptions to the hearsay rule. *(Ohio E. Evid. §803)*. The documents Appellant attached to his complaint were crafted by the top authorities in the Catholic Church, or the University itself. Even if a court was not willing to accept the "Oath of Fidelity" as an adoption of Catholic Doctrine reflected in the Catechism, etc. Appellant could still rely on them as business records (the Church promulgates documents

on Catholic Doctrine, which it routinely publishes as guidelines for the faithful.) *Ohio R. Evid. §201 (B)* also allows a court to take "judicial notice" of the content of those documents, which can be easily authenticated by a quick visit to the Vatican's web-site.

The lower courts' decisions to accept student hearsay statements as accurate reports of Appellant's misconduct, yet refuse to consider Catholic / University documents (which are covered by exceptions to the hearsay rule) as true statements on Catholic Doctrine, is an error which affected a substantial right of Appellant. *(Ohio R. Evid.*, 103 §A)

**Proposition of Law No. III : The lower courts dismissed claims, which were never evaluated, in direct conflict with valid uses listed in the Ohio Rules of Evidence and ignoring the Seventh District's own precedent for motions to dismiss under 12(B)(1).**

The Seventh District's dismissal of Appellant's complaint, without even evaluating the actual claims, violates the very rule it stated in *Vos v. State* (2017 Ohio 4005, 7th Dist.) Under its own statement of law, it may only dismiss a lawsuit, under *12(B)(1)* if no "*cause of action cognizable by forum has been raised in the complaint*". Putting the proverbial "cart before the horse" it articulates different rule of law: if there are some potential issues with jurisdiction, under the ecclesiastical abstention doctrine, then there is no need to review claims which might very well be cognizable and resolved without impermissible review of Catholic Doctrine.

This ruling also violates *Ohio R. Civ. Pro. Rule 8(E)* No technical pleading form is required, the pleadings may include multiple claims that are inconsistent and *"the pleading is not made insufficient by the insufficiency of one or more of the alternative statements."* Thus, the existence of even a single defamatory statement is sufficient to defeat the *12(B)(1)* motion. Appellant need not prove that Catholic Doctrine allows "jokes", if he can show that his treatment was different from the treatment of the new University President (who made a joke about students who elected to attend a dating seminar "wanted to go to hell.")

Likewise, Appellant need not prove every student and every administrator at Franciscan University was part of the "conspiracy." While the totality of the student accusations is pretty damning, if the University's recent financial loss made it vulnerable to those exact types of accusations, if two (or more) students had a motive to retaliate against Appellant, and if many of the statements are false or misleading, the "conspiracy" picture becomes clear. *Defamation does not become truth, simply because several individuals tell similar lies, it is, however, strong evidence of a conspiracy.* Thus, the Court usurps the role of the jury when it dismisses Appellant's argument that the student statements themselves demonstrate evidence of a conspiracy.

While the Seventh District listed several "damages" that Appellant *did not suffer (Judgement, ¶16)*, under Ohio Law, *Defamation, Per Se*, by its very nature, damages an individual in his job or profession. *Becker v. Toulmin, 138 N.E.2d 391, 395 (Ohio 1956)*

Similarly, Appellant's First Amendment rights, like those of the University, are not trivial. *(Judgement, ¶6 - ¶9).* As above, it is the role of the jury to determine what damages, if any, Appellant suffered. The court's role is to instruct the jury on the law governing damages.

## CONCLUSION

Appellant is not Catholic. He was not born Catholic. He was not raised Catholic. He did not convert to Catholicism as an adult. He was never "baptized" a Catholic. He attended no seminary or other "priestly discernment" program. He took no vows, nor was he ordained as a Priest. He never voluntarily subjected himself to Catholic Doctrine. Nor may the State force his submission by placing Catholic Doctrine above secular law. For this reason and the others discussed above, this case involves matters of public and great general interest and substantial constitutional questions. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Dale Prey; Pro-Se
45811 Cadiz-Harrisville Rd.
Cadiz, Ohio 43907

## CERTIFICATE OF COMPLIANCE

No.

Dale Prey, *Pro Se*

Petitioner(s)

v.

Franciscan University of Steubenville, et. al.

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 8888 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

**Total Words** (full document): 9838

**Total Exempt Words**: 950 (Cover, pages i-vii)

**Total Words** (pages 1-40): 8888

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 23 Apr, 2025

Dale Prey; Pro-Se

45811 Cadiz-Harrisville Rd.

Cadiz, Ohio 43907

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CERTIFICATE OF SERVICE

Three copies of this Petition for Writ of Certiorari were sent by US Mail, ~~First Class~~ / ~~Express~~ / Priority on 23 April, 2025.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on 23 April, 2025

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