No.

In the Supreme Court of the United States

THE ROMAN CATHOLIC CHURCH OF THE DIOCESE OF BATON ROUGE AND THE REVEREND M. JEFFREY BAYHI,
Petitioners,

v.

ROBERT D. MAYEUX AND LISA M. MAYEUX,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Louisiana

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has long and consistently held that the First Amendment binds "civil courts * * * to accept the decisions [of church authorities] on matters of discipline, faith, internal organization, [and] ecclesiastical rule, custom or law." *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 713 (1976). "[R]eligious controversies are not the proper subject of civil court inquiry[] and * * * a civil court must accept the ecclesiastical decisions of [a] church * * * as it finds them." *Ibid.* For "[a court to] substitute[] its interpretation of the [church's] constitutions for that of the [church itself is what] the First and Fourteenth Amendments forbid." *Id.* at 721. This constitutional command is known as the "religious question" doctrine.

The question presented is whether a court can pivot liability for a priest's failure to report certain communications to public authorities on the court's own determination of whether those communications constitute "confession[] *per se*," App., *infra*, 9a, or whether it must respect the church's own view that such communications are confessional and absolutely protected from disclosure by the priest on penalty of automatic excommunication.

PARTIES TO THE PROCEEDING BELOW

In addition to the parties identified in the caption, defendants below included the estate of George J. Charlet, Jr., and the Charlet Funeral Home, Inc.

RULE 29.6 STATEMENT

Petitioner Roman Catholic Church of the Diocese of Baton Rouge has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App., *infra*, 1a-10a) is reported at 135 So. 3d 1177 (2014). The opinion of the court of appeal (App., *infra*, 11a-64a) is reported at 135 So. 3d 724 (2013). The judgment of the district court (App., *infra*, 65a-66a) is unreported.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on April 4, 2014. Petitioners timely filed a petition for rehearing, which was denied on May 23, 2014. App., *infra*, 70a. This Court's jurisdiction is invoked under 28 U.S.C. § 1257. Pursuant to Rule 29.4(c), petitioners believe 28 U.S.C. § 2403(b) may apply and will serve the Attorney General of Louisiana with a copy of this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides, in pertinent part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The relevant statutory provisions at the time of the decisions below were La. Child. Code Ann. arts. 603(15), 609 (Supp. 2013), *recodified at* La. Child. Code Ann. arts. 603(17)(c), 609 (2014); La. Civ. Code Ann. arts. 2315-2316 (2010), La. Code

Evid. Ann. art. 511 (2006). All are reproduced in the appendix to this petition. App., *infra*, 78a-82a.

INTRODUCTION

This case concerns who—the Church or the state—gets to determine the meaning, content, and requirements of the Catholic Sacrament of Reconciliation—one of the Church's most sacred and central practices. Under the Louisiana Supreme Court's ruling in this case, petitioners, the Diocese of Baton Rouge and one of its priests, Father Bayhi, may face liability—and certainly litigation—for Father Bayhi's alleged failure to disclose to state authorities information learned from respondents' child during the Sacrament of Reconciliation—knowledge that under church law he is absolutely forbidden to share with others *for any reason* under penalty of automatic excommunication. See pp. 5-7, *infra*. If the "factfinder," App., *infra*., 9a, presumably a jury, determines that the child's statements made in confession are not "confessions *per se*," *ibid*., and thereby disagrees with the church's determination of their confessional character, Father Bayhi and the Church may be held liable for violation of a mandatory reporting obligation that otherwise would not attach to them. Of course, merely to determine whether the communications are "confessions *per se*," the factfinder must first breach the sanctity and confidentiality of the Sacrament and Father Bayhi can be sanctioned—even sent to prison, see La. Code Civ. Pro. Ann. art. 226 (2014) —for not revealing the content of these communications.

The state cannot make civil and possibly criminal liability turn on a jury's view of whether

communications a religion views as "confessional" are "confession[al] *per se*." Doing so allows the state to override the religion's own determination of what its beliefs and practices require and destroys the sacred seal of confession in the process.

The decision below stands in stark contrast to those of other courts, who uniformly hold that the First Amendment bars the state from second-guessing religions' determinations of what their own beliefs entail. It also violates core free exercise and establishment principles enunciated by this Court in *Hosanna-Tabor Evangelical Lutheran Church and School* v. *EEOC*, 132 S. Ct. 694 (2012), and earlier cases.

The Louisiana Supreme Court's decision cannot stand. It conflicts with long-standing authority of this and other courts and threatens church autonomy. On remand, the district court has been asked to (1) violate the confidentiality of the Sacrament of Reconciliation, (2) sort through all the discussion that occurred there, (3) separate out what was "confession[] *per se*" from what was not, and (4) determine whether all that was said in the latter category should impose a reporting obligation on the priest. Further review is warranted.

STATEMENT

A. The Sacrament of Reconciliation

The Sacrament of Reconciliation, also known as the Sacrament of Penance or of Confession, is one of the central institutional practices of Roman Catholicism, Eastern Orthodox Churches, and some other Christian religions. After the Sacrament of

Baptism, which establishes membership in the Church and absolves all previous sin, the Sacrament of Reconciliation stands as the "second plank" of salvation. The Canons and Decrees of the Sacred and Œcumenical Council of Trent 107 (J. Waterworth trans., 1848) (Sess. XIV, c.2), https://history.hanover.edu/texts/trent/ct14.html [hereinafter Trent Canons and Decrees]. It remits all sin after Baptism, see *id.* at 93 (Sess. XIV, ch.1), and reconciles believers with both their Savior and the Church, Catechism of the Catholic Church §§ 1468-1469, http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c2a4.htm [hereinafter Chatechism]. It is the "only ordinary way for the faithful to reconcile themselves with God and the Church." 1983 Code c.960; Catechism § 1484.

Catholics believe that Christ instituted the Sacrament on first reappearing to his disciples after his resurrection, see *John* 20: 22-23 (New American Bible rev. ed. 2011) ("[Christ] breathed on them and said to them 'Receive the holy Spirit. Whose sins you forgive are forgiven them, and whose sins you retain are retained.'"), and that his final injunction to them before he ascended into heaven was to spread the Sacrament, see *Luke* 24: 46-47 (New American Bible rev. ed. 2011) ("And he said to them, 'Thus it is written that the Messiah would suffer and rise from the dead on the third day and that repentance, for the forgiveness of sins, would be preached in his name to all the nations, beginning from Jerusalem.'").

Belief in the Sacrament, moreover, is one of twelve core beliefs every Catholic reaffirms at Mass in professing faith through the Apostles' Creed. See

Catechism pt. 1, § 2 ("I believe in * * * the forgiveness of sins."). Without the Sacrament, a Catholic who sins gravely after Baptism is "incapable of eternal life" and must suffer the "'eternal punishment' of sin." *Id.* § 1472. Every Catholic of the age of discretion, moreover, must confess serious sins at least once a year, *id.* § 1457, and is strongly encouraged to confess both these and "everyday faults" more frequently, *id.* § 1458.

To a Catholic, the spiritual effects of the Sacrament are blessed and manifold. Most fundamentally, the Sacrament reconciles the penitent with God and allows the penitent God's grace and mercy through the forgiveness of sin. Catechism § 1496. It also reconciles the penitent with the Church and thereby restores fraternal communion and revitalizes the life of the Church itself. *Id.* § 1469. It reconciles the penitent as well "with himself in his inmost being[,] with his brethern whom he has in some way attacked and wounded[, and] with all creation." Pope John Paul II, *Reconciliation and Penance* 31:5, http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_02121984_reconciliatio-et-paenitentia_en.html.

The Sacrament also remits both the eternal punishment incurred by mortal sin and part of the temporal punishments resulting from all sin. Catechism § 1496. To the penitent, it also provides "peace and serenity of conscience[] and spiritual consolation" and "spiritual strength for the Christian battle" with sin. *Ibid.*

One central and necessary feature of the Sacrament is the "seal of the confessional." Under

this doctrine, "it is never lawful under any circumstances to make known the least thing that has been manifested by a penitent in confession." 2 Thomas Slater, A Manual of Moral Theology for English-Speaking Countries 173 (5th ed. 1925). As the Church Catechism describes it:

> [E]very priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives. This secret, which admits of no exceptions, is called the "sacramental seal," because what the penitent has made known to the priest remains "sealed" by the sacrament.

Catechism § 1467. Under canon law, "[t]he sacramental seal is inviolable." 1983 Code c.983.

A priest cannot break the seal no matter how great the penalty or how great a harm or injustice would otherwise be caused. As one priest has described this sacred obligation, a priest

> cannot break the seal to save his own life, to protect his good name, to refute a false accusation, to save the life of another, to aid the course of justice (like reporting a crime) or to avert a public calamity. He cannot be compelled by law to disclose a person's confession or [even] be bound by any oath he takes, e.g., as a witness in a court trial.

William Sanders, *The Seal of Confession*, Arlington Catholic Herald, Aug. 9, 2001, http://catholicherald.com/stories/bThe-Seal-of-Confess

ionb,4714?content_source=&category_id=&search_filter=seal+of+the+confessional&event_mode=&event_ts_from=&list_type=&order_by=&order_sort=&content_class=&sub_type=stories,blogs&town_id=. Even when it is to the advantage of the Church or to the penitent, canon law makes clear that information derived from confession may not be divulged or used. See, e.g., 1983 Code c.240, § 2 ("When decisions are made about admitting students to orders or dismissing them from the seminary, the opinion of * * * confessors can never be sought.").

So strict is this obligation that Church punishment is severe. In 1215, the Fourth Lateran Council decreed that "[h]e who dares to reveal a sin confided to him in the tribunal of penance * * * be not only deposed from the sacerdotal office but also relegated to a monastery of strict observance to do penance for the remainder of his life." Medieval Sourcebook: Twelfth Ecumenical Council: Lateran IV 1215, c.21, http://www.fordham.edu/Halsall/basis/lateran4.asp. And canon law today punishes "[a] confessor who directly violates the seal of confession [with] automatic excommunication." 1983 Code c.1388 § 1.

The Church, moreover, celebrates the martydom of those who died to preserve the seal. It recognizes St. John Nepomucene, for example, as the first "martyr of the confessional" for his death by drowning for refusing to reveal what was said to him in confession. *St. John Nepomucene*, Catholic Online, http://www.catholic.org/saints/saint.php?saint_id=690 . And, more recently, the church canonized St. Mateo Correa Magallanes for his death by

shooting at the hands of the military in 1927 for similarly refusing to reveal the contents of confessions he had heard. *St. Mateo Correa Magallanes*, Catholic Online, http://www.catholic.org/saints/saint.php?saint_id=5707. These saints are upheld as exemplars for the faithful—priests and parishioners alike.

B. Factual Allegations

In 2009, respondents, parents of a minor daughter, sued for damages suffered by them and their daughter as a result of alleged inappropriate kissing and touching of their child by a member of their parish named George Charlet, Jr. App., *infra*, 2a. They named, among others, petitioners Father M. Jeffrey Bayhi (the priest) and the Roman Catholic Church of the Diocese of Baton Rouge (the Diocese) as defendants—Father Bayhi, for allegedly being a mandatory reporter who failed to report abuse allegations he learned about in confession and the Diocese for allegedly negligently training and supervising the priest and for vicarious liability for Father Bayhi's own alleged misconduct. *Ibid*.

The suit alleged that in 2008, when the daughter was about 12 years old, Mr. Charlet began exchanging one to two emails "involving 'words of inspiration' and daily Bible verses" with the daughter per day. App., *infra*, 14a. Soon, the suit alleged, the emails increased in frequency to five to seven per day and "began taking on a more personal tone." *Ibid*. Mr. Charlet allegedly told the child "to keep the nature of their email correspondence private * * * because 'no person, other than God, would understand their mutual feelings for one another.'"

Ibid. The suit contained various other allegations of Mr. Charlet's inappropriate behavior, none of which the lower courts found relevant to the claims made against petitioners, *ibid.*, "culminat[ing] in the kissing and fondling of the minor child," *ibid.*

The suit alleged that the child became "confused and scared over the evolving 'relationship' with Mr. Charlet[] and that on three separate occasions [the child] decided to seek spiritual guidance through the Sacrament of Reconciliation with [Father Bayhi]." App., *infra*, 15a. It further alleged that the child had told the priest "during her confession * * * that Mr. Charlet had inappropriately touched her, kissed her, and told her that 'he wanted to make love to her.'" *Ibid.* According to the suit, "the priest allegedly responded to her that she simply needed to handle the situation herself, because otherwise[] too many people would be hurt." *Ibid.* According to the child, during one of the confessions, when she asked the priest how she could end things between herself and Mr. Charlet, "[h]e just said [']this is your problem. Sweep it under the floor and get rid of it.'" *Ibid.*

The suit further alleged that Mr. Charlet continued to act inappropriately after the confessions. App., *infra*, 15a-16a. According to the suit, the priest and the girl's parents independently met with Mr. and Mrs. Charlet and, during his conversation with them, Father Bayhi mentioned concern with "the seeming inappropriate closeness between the two that had been observed by various parishioners." *Id.* at 16a.

A little later, the suit alleged, the parents confronted their daughter about her relationship with

Mr. Charlet and she admitted its "true nature[,] including details of the inappropriate sexual contacts." App., *infra*, 16a-17a. The parents then contacted Mr. Charlet and ordered him to cease contact with their daughter. *Id*. at 17a. When they later saw Mr. Charlet hug their daughter against her will after a church service, they filed a formal complaint against him with local police. *Ibid*. According to the suit, the police investigation was ongoing when Mr. Charlet died of a heart attack before the complaint was filed. *Ibid*.

C. **Proceedings Below**

1. Petitioners filed a motion in limine, seeking to exclude from trial all evidence about the confessions. App., *infra*., 4a. They argued, among other things, that allowing the testimony would "present[] very serious First Amendment issues in terms of forcing [Father Bayhi] to choose between excommunication or speaking of [the] matter." Tr. on Hr'g on Mot. in Limine 3. Although the district court found the issue "very difficult," App., *infra*, 67a, it ultimately denied the motion, *id.* at 66a. It held that the penitent herself could waive the privilege and testify as to what had been said in confession. *Id*. at 68a. It also found that "as often happens with the legislature, they enact parts of statutes sometimes without reading the other parts, and [they] created a conflict." *Id*. at 67a. As the district court explained, the statute creates a clergy-penitent privilege but also "says that notwithstanding any claim of privileged communication, any mandatory reporter who has a cause to believe the child's physical or mental health or welfare is endangered as a result of abuse or neglect

shall report [it]." *Ibid.* The district court noted that this obligation negates the privilege: "To know whether or not [the priest] has a [mandatory] duty, * * * we have to know what he learned in the confession, and his interpretation of what he learned." *Id.* at 67a-68a.

2. Petitioners sought review of the order denying their motion in limine. The Louisiana court of appeal reversed the district court's judgment and sua sponte held that no private right of action exists for violating the mandatory reporting obligation. App., *infra*, 37a-40a. As to the motion in limine, the court of appeal held that "the record clearly established that the communication was had while in confession [and that] therefore it is statutorily defined to be a confidential communication," *id.* at 33a, which "a 'member of the clergy' * * * *is not required* to report," *ibid.* "Therefore," the court continued, "it is axiomatic that the priest, under these circumstances, is not, and cannot be, a mandatory reporter. Accordingly, La. Child. Code art. 609, which addresses mandatory reporters, and mandates the reporting of any child abuse and neglect * * * is simply and wholly inapplicable." *Ibid.* "Because * * * there can be no private or civil cause of action against him for any breach of statute inapplicable to him[,] any evidence or testimony, by anyone, regarding the occurrence of a confession, or the subject matter thereof, is wholly inadmissible, irrelevant, and non-probative." *Id.* at 36a. It thus reversed the district court's denial of the motion in limine.

The court of appeal went further, however, to hold that "*even if* * * * the priest [were] a mandatory

reporter, there is no civil cause of action and no civil remedy for any alleged violation." App, *infra*, 39a. Because "[t]here are no civil remedies provided in the entire statutory scheme [and] remedy is expressly delegated to criminal law enforcement," *ibid*., the court held, there could be no cause of action against the priest even "for any reportable information to which he may have been privy outside of the confessional," *id*. at 40a.

Judge Kuhn concurred. To him, Louisiana's statutory exemption of priests from mandatory reporting obligations for information learned in confession was "[p]remised on our nation's bill of rights [and] acknowledge[s] that * * * [t]o subject a Catholic priest to such mandatory reporting would be clearly violative of the First Amendment of the United States Constitution." App., *infra*, 57a.

3. Respondents then filed in Louisiana Supreme Court for a writ allowing discretionary review. They asked the court to review both parts of the judgment of the court of appeal. Petitioners filed a memorandum in opposition, arguing that review should be denied. Without holding argument or requiring subsequent briefing on the merits, the Louisiana Supreme Court summarily reversed the court of appeal. App., *infra*, 9a.

The court held that the mandatory duty to report abuse could attach to a priest for some information learned in confession and that Louisiana's

> general concept of liability * * * that every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it

> and every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill,

App., *infra*, 7a (internal quotation marks and citations omitted), creates an implied private right of action for tort damages for violation of the obligation. It further held, however, that "[w]hether this particular priest owed this particular duty to the plaintiffs in this particular factual context is a mixed question of law and fact" that turns in part on "whether the communications between the child and the priest were confessions *per se* and whether the priest obtained knowledge outside the confessional that would trigger his duty to report." App., *infra*, 8a-9a. Justice Hughes concurred "to emphasize that the issue [was] whether the subject communication was in fact a 'confession.'" *Id*. at 10a.

Petitioners then asked the Louisiana Supreme Court to rehear the case, arguing that it "cannot remand to the trial court to determine whether or not the communications in question were 'confessions *per se*' without violating" the First Amendment. Appl. For Rehearing Submitted By Defs. 8. The supreme court denied rehearing without opinion. App., *infra*, 70a. Justice Guidry concurred in the denial stating that "[w]hether or not the communication was part of a 'confession per se' as that term is understood in religious doctrine, may be an ecclesiastical problem for the priest, but it does not appear to be relevant here to consideration of the meaning and intent of the Louisiana statutes involved in this case." *Id*. at 72a-73a. Justice Victory dissented from the denial and would have "grant[ed] and docket[ed] the case for full

argument and briefing by the parties to consider whether the reporting requirement * * * overrides any privilege that may otherwise be claimed by the priest." *Id.* at 74a. "At the very least," he added, "I would grant rehearing to correct the per curiam which remands the case to the trial court to determine whether the communications between the priest and the minor were 'confessions *per se*.'" *Ibid.*

REASONS FOR GRANTING THE PETITION

I. The Louisiana Supreme Court's Holding Violates The First Amendment By Allowing States To Override A Religion's View Of What Its Own Faith Means And Requires

In *Hosanna-Tabor Evangelical Lutheran Church And School* v. *EEOC*, 132 S. Ct. 694, 702 (2012), this Court reaffirmed its long line of holdings that "[b]oth [the Establishment and Free Exercise] Clauses bar the government from interfering with the decision of a religious group" over certain core matters." As early as 1871, the Court pointed out, it had "explained that 'whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.'" *Id.* at 704 (quoting *Watson* v. *Jones*, 80 U.S. (13 Wall.) 679, 727 (1871)). "It is of the essence of * * * religious unions," the *Watson* Court noted, "that those decisions should be binding in all cases of ecclesiastical cognizance." *Watson*, 80 U.S. at 729. So deep ran this principle, in fact, that the States followed it as a matter of common law even before the First Amendment was incorporated by the

Fourteenth. See *id*. at 730-732 (discussing state common law cases).

This Court has consistently and repeatedly held that courts (1) cannot determine religious questions, (2) must respect religions' own views of what their faith means and requires, (3) cannot review these church determinations for substantive or procedural validity under church law and (4) must accept an individual's own view of what her religion requires even when the basis of that belief is unclear or unsettled. In *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-446 (1969), for example, this Court stated that since *Watson* "it [has been] wholly inconsistent with the American concept of the relationship between church and state to permit civil courts to determine ecclesiastical questions." "Th[is] logic," it held, "leaves the civil courts *no* role in determining ecclesiastical questions." *Id*. at 447 (emphasis added). "To reach those questions," it noted, "would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine." *Id*. at 451.

The corollary follows that courts must respect a religion's own view of what its faith means and requires. In *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976), this Court reversed an Illinois Supreme Court decision that a bishop's defrocking and a diocesan reorganization were improper under church law. It did so because "civil courts are bound to accept the decisions [of church authorities] on matters of discipline, faith, internal organization, [and] ecclesiastical rule, custom or law."

Id. at 713. "[R]eligious controversies are not the proper subject of civil court inquiry[] and * * * a civil court must accept the ecclesiastical decisions of [a] church * * * as it finds them." *Ibid*. For the "Supreme Court of Illinois [to] substitute[] its interpretation of the [church's] constitutions for that of the [church itself is what] the First and Fourteenth Amendments forbid." *Id*. at 721. As this Court noted in *Hosanna-Tabor*, 132 S. Ct. at 704, this injunction, flows clearly from *Watson*'s early understanding that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the [church] the legal tribunals must accept such decisions as final, and as binding on them," 80 U.S. at 727.

This Court has held that the First Amendment requires lower courts to defer to a church's view of its own doctrine in all areas of church activity. Most recently, in *Hosanna-Tabor*, it held that civil courts could not review a church's decision to fire a minister because such an inquiry would override church determinations of who properly can "personify its beliefs" and represent "government involvement in * * * ecclesiastical decisions." 132 S. Ct. at 706. It has also consistently applied the rule in cases involving church appointments, see *Gonzalez* v. *Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929) (holding that courts could not decide who deserved chaplaincy "[b]ecause the appointment is a canonical act [and] it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them."), defrockings, see *Milivojevich*, 426 U.S. at 713 (holding that "a court must accept * * * ecclesiastical

decisions [over defrockings and diocesan reorganizations] as it finds them"), institutional restructurings, see *ibid*., property disputes, see *Presbyterian Church*, 393 U.S. at 449 (holding that "courts [must] decide church property disputes without resolving underlying controversies over religious doctrine"); *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94; *Watson*, 80 U.S. 679, church practices, see *Fowler* v. *Rhode Island*, 345 U.S. 67, 70 (1953) ("[I]t is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment."), and church membership, see *Bouldin* v. *Alexander*, 82 U.S. 131, 139-140 (1872) (("[W]e cannot decide who ought to be members of the church, nor whether the excommunicated have been regularly or irregularly cut off. We must take the fact of excommunication as conclusive proof that the persons exscinded are not members."). And this Court has "[r]epeatedly and in many different contexts" held that "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds [and] that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim." *Emp't Div.* v. *Smith*, 494 U.S. 872, 887 (1990).

Just as a court must respect a religion's own view about what its doctrine means, it cannot review those decisions' validity under church law. In *Milivojevich*, this Court overturned an Illinois Supreme Court decision that a bishop's defrocking and an ensuing diocesan reorganization did not

"compl[y] with church law and regulations." 426 U.S. at 713. "[A]nalyz[ing] whether the ecclesiastical actions of a church * * * are in that sense 'arbitrary,'" it held,

> must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires * * * or else into the substantive criteria by which the[church is] supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church[es] as it finds them.

Ibid. Courts' reviewing such a decision, just like their making it, overrides the church's own determination of what its beliefs require.

The First Amendment, in fact, so strongly protects the autonomy of religious decision-making that a court must accept an individual church member's view of what church belief requires so long as his belief "reflects 'an honest conviction.'" *Burwell* v. *Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2779 (2014) (quoting *Thomas* v. *Review Bd. Of Ind. Emp't Sec. Div.*, 450 U.S. 707, 716 (1981)). Because "[c]ourts are not arbiters of scriptural interpretation" they cannot "dissect religious beliefs because the believer admits that he is 'struggling' with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ" or "resolve [intrafaith] differences in relation to the Religion Clauses." *Thomas*, 450 U.S. at 715-

716. If the believer "dr[aws] a line, * * * it is not for [the courts] to say that the line he dr[aws is] an unreasonable one." *Id.* at 715.

This Court has recognized that these rules serve several foundational constitutional purposes. For starters, courts have little competence to decide religious questions. In *Watson*, for example, this Court noted that churches have

> a body of constitutional and ecclesiastical law of [their] own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

80 U.S. at 729. Such questions represent a "religious thicket," *Milivojevich*, 426 U.S. at 719, into which civil courts should fear to tread.

Second, courts cannot answer religious questions without excessively entangling church and state. See *Lemon* v. *Kurtzman*, 403 U.S. 602, 619 (1971) (holding that "comprehensive, discriminating, and continuing state surveillance [would] involve excessive and enduring entanglement between state

and church"). This fear rests on two separate but mutually reinforcing concerns: that

> [w]hen the state becomes enmeshed with a given denomination in matters of religious significance, the freedom of religious belief of those who are not adherents of that denomination suffers [and] the freedom of even the adherents of the denomination is limited by the governmental intrusion into sacred matters.

Aguilar v. *Felton*, 473 U.S. 402, 409-410 (1985), *overruled on other grounds by Agostini* v. *Felton*, 521 U.S. 203 (1997). "[T]he First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." *McCollum* v. *Bd. of Educ.*, 333 U.S. 203, 212 (1948).

Third, court determination of religious questions impairs "the faith and mission of the church," *Hosanna-Tabor*, 132 S. Ct. at 707; see also *id.* at 706, which this Court has described as "the very core of * * * religion," *Presbyterian Church*, 393 U.S. at 450. If courts undertake such inquiries, "the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Id.* at 449. Mere "uncertainty about whether its [own understandings of what its faith requires] will be rejected, and a corresponding fear of liability, may cause a religious group to conform its beliefs and practices * * * to the prevailing secular understanding." *Hosanna-Tabor*, 132 S. Ct. at 711 (Thomas, J., concurring). As this Court recognized in

Corporation of Presiding Bishop of Church of Latter-Day Saints v. *Amos*,

> it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.

483 U.S. 327, 336 (1987).

Fourth, allowing this type of court inquiry can lead to discrimination against minority and unpopular religions, thereby violating the First Amendment's command that government "must be neutral in matters of religious theory, doctrine, and practice" and "may not aid, foster, or promote one religion or religious theory against another." *Epperson* v. *Arkansas*, 393 U.S. 97, 103-104 (1968); see *Fowler* v. *Rhode Island*, 345 U.S. 67, 70 (holding that state could not say that "services" were religious and "sermons" were not without "preferring one religion over another" and penalizing an "unpopular group for performing the same function" as do mainstream religions). "Judicial attempts to fashion * * * civil definition[s of religious terms] risk disadvantaging those religious groups whose beliefs, practices, and membership are outside of the 'mainstream' or unpalatable to some." *Hosanna-Tabor*, 132 S. Ct. at 711 (Thomas, J., concurring).

Finally, as this Court has held, "[i]t is not only the conclusions that may be reached * * * which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *NLRB* v. *Catholic Bishop*, 440 U.S. 490, 502 (1979). Indeed, the process of inquiry can injure religious autonomy as much as the conclusions reached. As Justices Alito and Kagan recognized in *Hosanna-Tabor* in rejecting the government's suggested pretext inquiry,

> whatever the truth of the matter might be, the mere adjudication of such questions would pose grave problems for religious autonomy: It would require calling witnesses to testify about the importance and priority of the religious doctrine in question, with a civil factfinder sitting in ultimate judgment of what the accused church really believes, and how important that belief is to the church's overall mission.

132 S. Ct. at 715 (Alito, J., concurring).

Because the present case fits squarely within the First Amendment's long-standing command that courts defer to a church's view of what its faith means and requires *and* implicates all the important constitutional purposes that rule serves, the holding of the Louisiana Supreme Court must be reversed. First, it is clear that in determining whether statements made in confession are "confession[al] *per se*" the fact-finder must decide what statements inhere intrinsically or instrumentally in the Catholic sacrament and which do not—a quintessentially religious question—and it can override the Church's own views as expressed by Father Bayhi, the priest

who took the confession, and Father Counce, the Judicial Vicar and canon lawyer for the diocese, see Defs. Mot. Sum. J. Ex. A (Aff. Of Father Paul D. Counce) (explaining "the absolute requirement in Catholic law that a priest never reveal anything he hears during a person's confession" and noting that "[i]n practice, it is not just the sins confessed that are the matter of the seal[but also that] the priest is not permitted to reveal anything discussed in the confession"). Their statements are authoritative as to what Catholic faith holds and certainly reflect more than the "honest conviction," *Hobby Lobby Stores*, 134 S. Ct. at 2779 (quoting *Thomas*, 450 U.S. at 716) about what Catholic faith entails that the First Amendment requires courts to respect.

Second, the fact-finder, particularly a lay jury, would have little competence to answer these questions. They would have to base their judgments on the views of what experts testify Catholic law commands and evaluate individual confessional statements accordingly. This is exactly the "religious thicket," *Milivojevich*, 426 U.S. at 719, and "forbidden domain," *United States* v. *Ballard*, 322 U.S. 78, 87 (1944), into which the First Amendment denies the state entry.

Third, such inquiry would create "excessive entanglement" between church and state. It would allow the state to review and set aside determinations at the heart of faith—what a sacred sacrament means and requires—and it would place the state in the confessional. By pivoting civil liability on the fact-finder's determination of what is "confession[al] *per se*," both the confessor and the

penitent will understand that the state is potentially a participant and observer in the Sacrament of Reconciliation itself.

Fourth, judicial second-guessing of what is truly confessional may encourage churches to trim their beliefs and practices concerning confession to the state's judgments in order to avoid potential liability. If the state penalizes some aspects of confession, economic pressure will grow for the church to modify its understanding of what the sacrament means and requires.

Fifth, imposing courts' views as to what is truly confessional on churches will discriminate against those faiths whose confessional practices cut against mainstream custom and opinion. Those churches' confessional practices are more likely to be seen as odd, archaic, or dangerous. In fact, Catholic confession was long viewed with deep suspicion by some other sects and as politically subversive by some governments. See 1 William Hogan, Auricular Confession and Popish Nunneries 12 (rev. ed. 1878) (arguing that "in the Confessional * * * alone do Romish priests teach and fasten upon the mind of their penitents all the iniquities which the Church of Rome sanctions"); *id*. at 15 (arguing that "every crime which the Romish church sanctions, and almost all the immoralities of its members, either originate in Auricular Confession or have some connection with it"); *id*. at 180 (warning Americans that "your liberty is threatened by Romish priests inculcating treason in their confessionals up to your very beards").

Finally, the process of inquiry the Louisiana Supreme Court has ordered violates a core tenet of

Catholicism—one which priests have died to protect, see pp. 7-8, *supra*. In order to determine which communications made during confession were "confession[al] *per se*" and which were not, the fact-finder must know what those communications were and what they concerned. App., *infra*, 67a (noting that in order "to know whether or not [Father Bayhi] has a duty * * * [the court must] know what he learned in the confession, and his interpretation of what he learned"). In other words, the court must break the sacred seal of the confession by demanding Father Bayhi testify about what was said, a sin so serious that he would be automatically excommunicated. The mere process of making the determination thus not only potentially overrides church judgment of what is confessional and protected but necessarily destroys the sanctity of the sacrament—even if the fact-finder ultimately agrees with the Church's judgment that all the communications are protected as "confessional *per se*" and cannot give rise to any mandatory reporting obligation.

II. In Rejecting The First Amendment's Religious Question Doctrine, The Louisiana Supreme Court Created A Conflict With All Federal Courts of Appeals And All Other State Supreme Courts That Have Considered It And A Direct Conflict In Its Application With The Second And Fourth Circuits And The New Jersey And Massachusetts Supreme Courts

Because of this Court's longstanding and consistent application of the religious question

doctrine, no federal court of appeals or state supreme court other than Louisiana's rejects it. Although petitioners know of no other jurisdictions that have adopted the particular standard at issue here—"confession[] *per se*"—and empowered juries to determine the religious character of confessional statements, these other courts have consistently applied the doctrine in a wide variety of contexts to protect religious belief and practice from destructive state inquiry into their meaning and requirements.

In *Hosanna-Tabor*, in fact, this Court noted that although it had never considered the question of whether the doctrine "is implicated by a suit alleging discrimination in employment, * * * the Courts of Appeals have uniformly recognized the existence of a 'ministerial exception' grounded in the First Amendment, that precludes application of such legislation to claims concerning the employment relationship between a religious institution and its ministers." 132 S. Ct. at 705. Indeed, the lower courts recognize that the principle of the ministerial exception applies broadly to preclude many types of employment suits, see, e.g., *Alcazar* v. *Corp. of the Catholic Archbishop*, 627 F.3d 1288 (9th Cir. 2010) (en banc) (dismissing claim for wages under state minimum wage law); *El-Farra* v. *Sayyed*, 226 S.W.3d 792 (Ark. 2006) (dismissing claim for breach of iman's employment contract); *Van Osdol* v. *Vogt*, 908 P.2d 1122 (Colo. 1996) (dismissing intentional and negligent tort claims arising out of church's revocation of minister's license), including suits brought by non-minister employees against non-religious employers, see *Pielech* v. *Massosoit Greyhound, Inc.*, 668 N.E.2d 1298 (Mass. 1996)

(dismissing suit against employer for religious work accommodations required under state law).

Similarly, "courts throughout the United States have uniformly rejected claims for clergy malpractice under the First Amendment." *Franco* v. *Church of Jesus Christ of Latter-Day Saints*, 21 P.3d 198, 204 (Utah 2001); see, e.g., *F.G.* v. *MacDonell*, 696 A.2d 697 (N.J. 1997) (dismissing clergy malpractice claim); *Nally* v. *Grace Comm. Church*, 763 P.2d 948 (Cal. 1988) (same); *Destafano* v. *Grabrian*, 763 P.2d 275 (Colo. 1988) (same). "These courts have generally held that a determination of such claims would necessarily entangle the courts in the examination of religious doctrine, practice, or church polity—an inquiry that * * * is prohibited by the [First Amendment]." *Franco*, 21 P.3d at 204. They have, in fact, also dismissed a much wider class of claims, including ones "for gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty" when they "are merely an elliptical way of alleging clergy malpractice." E.g., *id*. at 205.

Courts have likewise dismissed claims against churches and their members for defamation. E.g., *Bryce* v. *Episcopal Church*, 289 F.3d 648, 659 (10th Cir. 2002); *Hutchison* v. *Thomas*, 789 F.2d 392 (6th Cir. 1986). They recognize that such claims implicate "internal ecclesiastical dispute[s] and dialogue protected by the First Amendment['s religious question doctrine.]" *Bryce*, 289 F.3d at 659.

They also routinely dismiss claims for intentional infliction of emotional distress and other torts that challenge church decisions to discipline its members, see, e.g., *Paul* v. *Watchtower Bible & Tract Soc. of*

New York, Inc., 819 F.2d 875 (9th Cir. 1987) (dismissing range of tort claims based on church's shunning of former member); *Westbrook* v. *Penley*, 231 S.W.3d 389 (Tex. 2007) (dismissing claim against church and pastor for breaching counseling confidence in religious proceeding); *Bear* v. *Reformed Mennonite Church*, 341 A.2d 105 (Pa. 1975) (dismissing claim challenging excommunication), including claims that church instruction to members to shun former member caused his business to fail and his family to stop speaking to him, e.g., *ibid.* In all these cases, the courts dismissed the claims because they would require determining matters of faith.

Courts even dismiss claims for "false imprisonment, assault, battery, loss of consortium, and child abuse" when they cannot determine damages without inquiring into religious belief. In *Pleasant Glade Assembly of God* v. *Schubert*, 264 S.W.3d 1 (Tex. 2008), for example, the Texas Supreme Court dismissed claims for these torts that arose from a forceful laying on of hands after a sighting of demons. The court recognized that it could not evaluate any damages, a necessary element of these torts, without determining and evaluating church belief. "Because the religious practice of 'laying hands' and church beliefs about demons are so closely intertwined with [the] tort claim[s]," it noted, "assessing * * * damages * * * would unconstitutionally burden the church's right to free exercise and embroil this Court in an assessment of the propriety of those religious beliefs." *Id.* at 11.

The Louisiana Supreme Court's holding conflicts most directly with cases dismissing claims because the law upon which they are based turns on a religious term. In *Pielech* v. *Massosoit Greyhound, Inc.*, 668 N.E.2d 1298, for example, the Massachusetts Supreme Judicial Court dismissed a lawsuit brought by employees of a dog racing track against their employer claiming that they were entitled to Christmas Day off under state law. The court held the statute unconstitutional because it required the courts "to determine what actions and beliefs are required of adherents to the Roman Catholic faith." *Id.* at 1304. Relying on this Court's religious question cases, see *id*. at 1303, the Massachusetts court held, "[t]hese are not proper matters for the courts to decide," *id*. at 1304.

Two federal courts of appeals and the New Jersey Supreme Court have likewise held unconstitutional laws addressing the fraudulent sale of food labeled kosher. All three courts have held that involving courts in the business of determining whether an item is truly kosher, as the laws required, violates the religious question doctrine. See *Commack Self-Service Kosher Meats, Inc.* v. *Weiss*, 294 F.2d 415, 427 (2d Cir. 2002); *Barghout* v. *Bureau of Kosher Meat & Food Control*, 66 F.3d 1337, 1344 (4th Cir. 1995); *Ran-Dav's Cty. Kosher, Inc.* v. *State*, 608 A.2d 1353, 1362-1364 (N.J. 1992). As the Second Circuit explained,

> In order to assert that a food article does not conform to kosher requirements, New York must take an official position as to what are the kosher requirements. In doing so, the Department must

> either interpret religious doctrine or defer to the interpretation of religious officials in reaching its official position. * * * State authorities [can]not make a determination that * * * meat d[oes] not conform to kosher requirements without first [arriving] at an official position on what the kosher requirements are.

Commack, 294 F.3d at 427-428 (quoting *Presbyterian Church*, 393 U.S. at 452 (Harlan, J., concurring)); accord *Barghout*, 66 F.3d at 1344 ("City officials or municipal courts would have to determine the Orthodox standards of kashrut * * *. This is clearly not permitted by our Establishment Clause jurisprudence."); *Ran-Dav's*, 608 A.2d at 1363-1364 ("[Courts] may not resolve * * * controversies if resolution requires the interpretation of religious doctrine * * * and any adjudication by a court [of whether particular food was properly kosher] inevitably would entail the application and interpretation of Jewish law.").

The Louisiana's Supreme Court's holding pivoting civil liability on whether statements constitute "confession[] *per se*" enmeshes the courts in exactly this kind of inquiry. To tell whether statements are "confession *per se*," a court "must either interpret religious doctrine or defer to the interpretation of religious officials in reaching its official position." *Commack*, 294 F.3d at 427-428 (quoting *Presbyterian Church*, 393 U.S. at 452 (Harlan, J., concurring)). Within the Second and Fourth Circuits, such liability is unconstitutional. The State simply cannot turn liability on the meaning of a religious term. In Louisiana, by contrast, such liability is constitutional.

The State *can* attach tort liability to the meaning of such terms. The possibility of liability in this case, then, depends upon the happenstance of geography.

The constitutionality of such laws in Louisiana itself, moreover, may well depend on the happenstance of which court system—state or federal—any challenge occurs in. Since the Fifth Circuit takes a robust view of the religious question doctrine, see, e.g., *Combs* v. *Cent. Tex. Ann. Conf. Of The United Methodist Church*, 173 F.3d 343 (5th Cir. 1999) (rejecting employment claim brought by clergy member against church); *Church Of God In Christ, Inc.* v. *Cawthon*, 507 F.2d 599 (5th Cir. 1975) (applying religious question doctrine to settle church property dispute), predicating liability on the meaning of a religious term would likely provoke there grave doubts about the law's constitutionality.

III. This Often-Recurring Issue Is One Of Central Importance To Churches And Their Members

The issue this case presents—both in its narrowest and broadest forms—implicates the religious freedom of millions of Americans. Most narrowly, the roughly 4,500,000 Roman Catholics who live in Louisiana, see Catholic Hierarchy, *USA: Statistics By Province* (Province of New Orleans), http://www.catholic-hierarchy.org/country/spcus3.html, now understand that they cannot seek the Sacrament of Reconciliation without the State possibly breaking the seal of the confession and inquiring into what was said. That will not only discourage some from seeking the Sacrament, without which they believe they cannot achieve

eternal salvation if they have seriously sinned, but also cripple the Church's mission of saving souls. The holding also threatens other religions' counselling programs in the State. A minister who, as part of the church's official mission, counsels church members to approach their problems in the way their faith demands may now fear that the State will destroy the confidentiality of those discussions and possibly impose liability if it disagrees with the advice he gave.

More broadly, the Louisiana Supreme Court's holding threatens other religious practices and beliefs. If the State can turn liability on the concept of "confession *per se*," why not on "keeping kosher *per se*," "baptism *per se*," "preaching *per se*," or "religious education *per se*"? The State could impose liability based on its own ideas, not the church's, about whether the church was following an acceptable view of its own religious faith and practices. Torts like "clergy malpractice," "intentional infliction of emotional distress," "negligence," and "defamation" could be used to impose liability for the exercise of faith. See pp. 26-31, *supra*. That, as courts elsewhere uniformly recognize, places an intolerable burden on religious belief. See *ibid*.

More broadly still, the holding below places pressure on religious freedom nationwide. When churches elsewhere understand that long-understood freedoms are now less secure, they may be tempted to avoid potential liability by trimming their own beliefs and practices to majoritarian views of appropriate religious behavior.

IV. This Case Is An Ideal Vehicle For Addressing Whether States Can Second-Guess Religions' Own Views As To What Their Faith Means And Requires

This case concerns whether the First Amendment's religious question doctrine requires a court to accept a religion's view of what one of its central practices entails. Petitioners raised this issue below before the district court, Tr. on Hr'g on Mot. in Limine 11 (arguing that if the statute "creates an obligation on the priest to divulge what happens during confession, or during an alleged confession, * * * it is in grave violation of the First Amendment"), and before the Louisiana Supreme Court immediately after it adopted the "confession[] *per se*" standard, a standard advanced by neither party at any prior point in the litigation. In their request for rehearing by that court, petitioners argued that the standard violated the First Amendment and thus required dismissal of the case. Appl. for Reh'g Submitted by Defs. 5. The Louisiana Supreme Court necessarily rejected that view in denying rehearing—although Justice's Guidry's concurrence in the denial and Justice Victory's dissent from it both indicate "buyer's remorse" for the concept of "confession[] *per se*" on which the per curiam makes liability turn, see App., *infra*, 72a-73a (Guidry, J., concurring in denial of rehearing) (disavowing that term "confession per se" has any relevance to case); *id.* at 74a (Victory, J., dissenting from denial of rehearing) ("I would grant rehearing to correct the per curiam which remands the case to the trial court to determine whether the communications between the priest and the minor were 'confessions *per se*.'").

The issue is also one of pure law—*whether* the religious question doctrine applies, not *how* it applies. Under any conceivable application of that doctrine, the State would have to accept the Church's view that all statements made during the Sacrament are protected by the confessional seal. The State could thus not break the seal, violate the Sacrament, and sift through what was said in confession to determine itself which individual statements were "confession[al] *per se*" and which were not.

Furthermore, the consequences of going forward when the district court has been ordered to break the seal of the confessions are severe both to Father Bayhi and to the Church. Father Bayhi would be automatically excommunicated from the Church if he breaks the seal. The Church would be irredeemably injured as its members realized that it could no longer offer the sacramental protections necessary for personal redemption.

Although technically in an interlocutory posture, the judgment is final for purposes of this Court's jurisdiction. Under *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469 (1975), and *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974), this Court enjoys jurisdiction under 28 U.S.C. § 1257. All the requirements of those cases are met:

1. The Louisiana "Supreme Court's judgment is plainly final on the federal issue and is not subject to further review in the state courts;"

2. [Petitioners] will be liable for damages if the elements of the state cause of action are proved;"

3. "[I]f the [Louisiana] court erroneously [interpreted the First Amendment] there should be no trial at all;"

4. "[E]ven if [petitioners] prevailed at trial and made unnecessary further consideration of the constitutional question, there would remain in effect the unreviewed decision of the State Supreme Court that a civil action * * * may go forward despite the First * * * Amendment[];"

5. "Delaying final decision of the First Amendment claim until after trial will 'leave unanswered . . . an important question * * * under the First Amendment,' 'an uneasy and unsettled constitutional posture [that] could only further harm the operation of [religion];" and

6. Were this Court to "hold that the First * * * Amendment[] bar[s] civil liability * * *, this litigation ends.

Cox Broadcasting, 420 U.S. at 485-486. In short,

> [g]iven these factors—that the litigation could be terminated by [this Court's] decision on the merits and that a failure to decide the question now will leave [churches] in [Louisiana] operating in the shadow of the civil and criminal sanctions of a rule of law * * * the constitutionality of which is in serious doubt— * * * reaching the merits is consistent with the pragmatic approach that [this Court has] followed in the past in determining finality.

Id. at 486.

The nature of the dispute also counsels for immediate review. The religious question doctrine, like qualified immunity, sovereign immunity, official immunity, and immunity from double jeopardy, operates as an immunity from litigation, not just from damages. *McCarthy* v. *Fuller*, 714 F.3d 971, 975 (7th Cir. 2013). Thus, "[i]f the defense * * * is erroneously denied and the defendant has to undergo the trial before the error is corrected[,] he has been irrevocably deprived of one of the benefits—freedom from having to undergo a trial—that his immunity was intended to give him." *Ibid.* Postponing review in these circumstances "wreak[s] irreparable harm." *Ibid.*

The dispute is fully ready for this Court's review. Delay would, moreover, place petitioners in a double bind. In order to persuade the court that no liability attaches because the statements were "confession[al] per se," they must violate the sanctity of the Sacrament itself. If, on the other hand, they respect the seal of confession, they can offer no evidence of any statements' confessional character— indeed, no evidence that a confession even occurred, see Defs.' Mot. Summ. J. Ex. A (affidavit of Father Paul Counce, Judicial Vicar of the Diocese)—and will be subject to court sanctions and tort liability.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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