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Introduction

This note analyzes the tort liability of clergy and sexual abuse claims against churches. Tragically, for the past several decades, there have been many news stories of sexual abuse of children and minors by people with religious authority. As a result, many victims of priest sexual abuse have brought civil suits against the church for several years. According to US Catholic Church reports, allegations of child sex abuse by clerics have more than doubled in its latest 12-month reporting period, and its spending on victim compensation and child protection has surged over \$3 billion.¹ There are still many victims that have not reported their perpetrators and continue to survive with their experiences hidden.

The current crisis in the Catholic Church is not merely a problem of repeated acts of sexual abuse by clergy, but the institutional failure on the part of Church leaders and/or bishops to act definitively to recognize allegations of abuse, hold offenders strictly accountable, and prevent further abuse. Courts have held, and continue to hold Bishops and Catholic Church dioceses accountable by imposing tort liability on the institutions. This liability leads to reforms to protect children and young people from sexual abuse.

Clergy sex abuse is an example of a worldwide social problem that appears to have undergone mushroom growth, receiving virtually no attention from media or policy makers before about 1984.² The Boston Globe's now famous Spotlight investigation in 2002 made it

¹ Emily Zogbi, The Catholic Church Has Paid Nearly \$4 Billion Over Sexual Abuse Claims, NEWSWEEK (August 15th, 2018), <https://www.newsweek.com/over-3-billion-paid-lawsuits-catholic-church-over-sex-abuse-claims-1090753>

² Joel Best, *TYPIFYING CONTEMPORARY SOCIAL PROBLEMS* (2d ed. 2017).

clear that clerics were involved in covering up sexual assault of children.³ When survivors began to speak up, they and their families were often offered “hush money” in order to prevent a scandal.⁴ Allegations of cover-ups by the church institutions proliferated with the claims against the abusive priests.⁵ Through the course of litigation, many Dioceses have had to admit to their decisions to hide the allegations, and the resulting anger from the Catholic community in the United States forced the worldwide Catholic church to respond.⁶

Also, for decades, the Catholic church handled allegations of abuse by transferring and reassigning its clergy to other churches.⁷ Catholic leaders were clearly aware of the sex abuse and chose to protect the reputation of the church rather than protecting the innocence of children.⁸ The National Catholic Review Board found that “most abuse went unreported and unprosecuted, as church officials moved offending clerics from treatment to parishes to treatment in a whirring scenario of revolving doors.”⁹ The church has been too forgiving under the legal standards of the state.

³ Emma Green, *Why Does the Catholic Church Keep Failing on Sexual Abuse?*, THE ATLANTIC, Feb. 14, 2019, <https://www.theatlantic.com/politics/archive/2019/02/sean-omalley-pope-francis-catholic-church-sex-abuse/582658/>.

⁴ See Michelle Boorstein & Julie Zauzmer, “*Payout Chart*” For Molestation: Secret Archive Held Chilling Details of Clergy Abuse, WASH. POST (Mar. 3, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/03/abuse-survivor-advocates-see-hope-in-spotlight-and-in-new-report-alleging-widespread-cover-up/?utm_term=.f7ef8e6598d1.

⁵ Diana L. Grimes, *Practice What You Preach: How Restorative Justice Could Solve the Judicial Problems in Clergy Sexual Abuse Cases*, 63 WASH. & LEE L. REV. 1693, 1696 (2006); see also *Doe v. Hartz*, 52 F. Supp. 2d 1027, 1036-38 (N.D. Iowa 1999) (stating all claims made by the victim and showing that about half of them were made against Bishop Soens and the Roman Catholic Diocese of Sioux City). Some victims have even extended their claims to the Vatican and the Pope himself. See Associated Press, *U.S. Asks Court to Dismiss Abuse Suit That Names Pope*, N.Y. TIMES, Sept. 21, 2005, at A22 (“The Justice Department has told a Texas court that a lawsuit accusing Pope Benedict XVI of conspiring to cover up the sexual molestation of three boys by a seminarian should be dismissed because the pontiff enjoys immunity as head of state of the Holy See.”).

⁶ Grimes, *supra* note 6 at 1696.

⁷ Marci A. Hamilton, FindLaw Forum: Child Abuse, Religious Exemptions and the Separation of Church and State [P 2], <http://archives.cnn.com/2002/LAW/04/columns/fl.hamilton.abuse.04.01/> (Apr. 1, 2002).

⁸ Carol Eisenberg, “Massive’ Abuse of Children; State’s Report Details Hundreds of Cases, Cover-Up in Boston,” NEWSDAY (New York) A09 (July 24, 2003).

⁹ Seni Baeza, *Sheep In Wolve’s Clothing: Why Legislation Is Necessary To Help Prevent Child Sexual Abuse In Churches*, 4 Whittier J. Child & Fam. Advoc. 441, 446-447 (2005).

In response to the problem of clergy sexual abuse in Catholic church, in 2002, the Bishops adopted the Charter for the Protection of Children & Young People, to make safe environment for children and protect the community from harm.¹⁰ Seeking to provide some measure of accountability, the preamble of the document offers an apology for the sexual abuse scandal: "As bishops, we acknowledge our mistakes and our role in that suffering, and we apologize and take responsibility for too often failing victims and our people in the past."¹¹ Throughout the years, individual Bishops in their dioceses also implemented additional amendments.

Additionally, tort liability of Catholic churches brings hope to protect children in all churches. Courts have rejected the churches' argument that they cannot be liable in tort because the First Amendment gives them broad protection for their autonomy. Instead, courts have adopted a neutral principles approach to hold these churches accountable in tort without affecting their religious rights.

Part I of the Article provides a brief history of sexual abuse by priests and explains how priests used their position in order to engage in sexual acts with children. Part II examines how First Amendment defenses against such claims brought by victims have been aggressively advanced and explicitly rejected by the Court and how the law developed to allow these tort actions to proceed on the basis of neutral principles of law. Part II also discusses the autonomy principles that come out of the *Hosanna Tabor* case, a 2012 decision from the U.S. Supreme Court. That case is actually about the freedom ("autonomy") of churches to make employment

¹⁰ Grimes, *supra* note 6 at 1699.

¹¹ United States Conference of Catholic Bishops (USCCB), 'Charter for the Protection of Children and Young People' (2011), <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-revised-2011.pdf>.

decisions without the government interfering. Part III discusses some obstacles to bringing lawsuits and the recent reforms.

History

Until the early 1980s, clergy sexual abuse litigation was almost nonexistent. Prior to 2002, the church had successfully escaped any negative publicity about a sexual abuse problem by stating that the priests accused of such acts were anomalies and that the problem was not prevalent.¹² The first widely publicized clergy sexual abuse litigation took place in the mid-1980s. The first to gain nationwide attention involved a Louisiana priest, Gilbert Gauthé, who was arrested in 1983 and admitted to molesting dozens of child victims in the confessional and elsewhere since the 1960s.¹³ This case played important roles within the history of clergy sexual abuse litigation. Gauthé's sex crimes received a great deal of media attention and the lawsuits resulted in huge settlement monies, and the legal world changed.¹⁴

In 1992, former priest, James Porter, was discovered to have molested dozens of children and his sex abuse scandal swept the Roman Catholic church.¹⁵ Church officials had transferred him from one parish to another, and the Fall River diocese had agreed to pay at least \$7 million to Porter's victims.¹⁶ The Porter case was only the leading edge of clerical abuse that eventually enlarged to include hundreds of priests and a major cover-up scandal with a rising number

¹² Diana L. Grimes, *Practice What You Preach: How Restorative Justice Could Solve the Judicial Problems in Clergy Sexual Abuse Cases*, 63 WASH & LEE L. REV. 1693, 1699.

¹³ "United States Media Coverage of the Clerical Sex Abuse Crisis in the American Catholic Church, 1983-2004," (New York: Unpublished report prepared by RF|Binder Partners, Inc., February 2005).

¹⁴ See Anthony DePalma, *Church Scandal Resurrects Old Hurts in Louisiana Bayou*, N.Y. TIMES, Mar. 19, 2002, at A1.

¹⁵ Nbcnews.com, *Pedophile priest James Porter dies at 70* (Feb. 11, 2005), http://www.nbcnews.com/id/6955607/ns/us_news/t/pedophile-priest-james-porter-dies/#.XavR2S2ZN0s.

¹⁶ The Journalism School Knight Case Studies Initiative, *Reporting an Explosive Truth: The Boston Globe and Sexual Abuse in the Catholic Church*, http://cenmtl.columbia.edu/projects/caseconsortium/casestudies/14/casestudy/files/global/14/Boston%20Globe%20and%20Sexual%20Abuse%20in%20the%20Catholic%20Church_wm.pdf

lawsuits that threatened to bankrupt the church.¹⁷ These two cases helped open the flood gates for victims who allege they too have been victims of sexual abuse by clergy.

In 2002, Boston Globe journalists uncovered the scandal of widespread sexual abuse by disgraceful priests and led to the current crisis in the Catholic church. Since the mid-1990s, more than 130 people have come forward with shocking childhood tales about how former priest John J. Geoghan allegedly molested or raped them during three-decades through a half-dozen Greater Boston parishes.¹⁸ Shockingly, church leaders were aware of Geoghan's sexual crimes, but they never reported or notified parishioners, and instead, repeatedly reassigned him to different positions where he would have access to children.¹⁹ The archdiocese had secretly settled the claims of over fifty of Geoghan's victims in the late 1990s for over \$ 10 million. Also in 2002, they had entered into a settlement with an additional eighty-six victims for another \$ 10 million.²⁰

The 2004 report on clergy abuse by scholars from the John Jay School of Criminal Justice found that just 3.5 percent of the abusers, 149 priests, were responsible for abusing 2,960 children, 27 percent of the victims known at that time.²¹ Each of these priests had more than 10 allegations against him.²² On the other hand, 56 percent of the priests had only one accusation against them.²³

¹⁷ [TheSunChronicle.com, *Father Porter: Remembering the evil* \(May 13, 2012\), https://www.thesunchronicle.com/news/local_news/father-porter-remembering-the-evil/article_1f621267-2287-5f81-a1fb-4bce1ea0f10d.html.](https://www.thesunchronicle.com/news/local_news/father-porter-remembering-the-evil/article_1f621267-2287-5f81-a1fb-4bce1ea0f10d.html)

¹⁸ The Global Spotlight Team, Church allowed abuse by priest for years, the Boston Globe, Jan. 6, 2002, available at <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>.

¹⁹ Investigative Staff of the Boston Globe, *betrayal: the crisis in the catholic church* 6, 3, 8, 14, 23, 26 (2002).

²⁰ Baeza, *supra* note 9 at 816-17.

²¹ See U.S. Conference of Catholic Bishops, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States: A Research Study Conducted by the John Jay College of Criminal Justice*, <http://www.usccb.org/nrb/johnjaystudy>. (February 2004).

²² *Id.*

²³ *Id.*

First Amendment

The First Amendment to the U.S. Constitution, provides that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.”²⁴ These two clauses are known, respectively, as the Establishment Clause and the Free Exercise Clause. The First Amendment forbids the adjudication of lawsuits that either directly or indirectly require resolving religious-based questions, such as disputes over religious beliefs, practices, or ecclesiastical law.²⁵ Both the Establishment and Free Exercise Clauses have been successfully raised by churches as a defense to the claims brought by victims of sexual abuse.²⁶ The Establishment Clause has long been interpreted as preventing courts from deciding religious issues, on the ground that the courts lack subject-matter jurisdiction over disputes involving church doctrine.²⁷ In fact, the Florida Supreme Court had repeatedly refused to address the adjudicability of religious questions until 2002.²⁸ The state courts and lower federal courts relied on the church autonomy doctrine because they were concerned with entanglement in religious questions, and subsequently this changed to apply the neutral principles approach.

However, in 2002, the Florida Supreme Court finally rejected the First Amendment defense raised by religious institutions. In *Malicki v. Doe*, the Court concluded that the First Amendment did not bar claims for negligent hiring and supervision because the claims

²⁴ U.S. Const. amend. I.

²⁵ See Scott C. Idleman, Tort Liability, *Religious Entities, and the Decline of Constitutional Protection*, 75 IND. L.J. 219, 219 (2000).

²⁶ *Id.*

²⁷ *Serb. E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976) (finding that the controversy before the Court did not involve a property dispute but a religious dispute, “the resolution of which . . . is for ecclesiastical and not civil tribunals”); see also *Banks v. St. Matthews Baptist Church*, 706 S.E.2d 30, 33 (S.C. 2011) (When a civil court is presented an issue that is a question of religious law or doctrine masquerading as a dispute over church property or corporate control, it must defer to the decisions of the proper church judicatories to the extent it concerns religious or doctrinal issues.).

²⁸ See Nathan Clay Belzer, Deference in the Judicial Resolution of Intrachurch Disputes: The Lesser of Two Constitutional Evils, 11 St. Thomas L. Rev. 109, 112 (1998) (noting that “the Supreme Court has not addressed this issue [of adjudicating intrachurch disputes] since the [Jones v.] Wolf decision in 1979” and that “[s]tate courts, therefore, have been the final arbiter of intrachurch dispute resolution during the course of the last eighteen years”).

constituted neutral principles of tort law that did not violate either the Free Exercise Clause or the Establishment Clause.²⁹

In so holding, the Supreme Court of Florida held that the First Amendment does not preclude a secular court from imposing liability against a church for harm caused to an adult and a child parishioner arising from the alleged sexual assault or battery by one of its clergy.³⁰ The majority stated that it must “determine whether the dispute was an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom or law”³¹ in which the First Amendment may act as a bar to those claims or whether it is a case simply involving a religious institution in a purely secular dispute with a third party in which the First Amendment may not act as a bar to the claims.³²

Ultimately, the majority rejected the position that the First Amendment serves as a bar to the adjudication of the dispute since this case is not an internal church matter.³³ Furthermore, the majority acknowledged that no greater or lesser deference is given to tortious conduct committed on third parties by religious organizations than is given to tortious conduct committed on third parties by non-religious organizations.³⁴ In the case of the sex abuse, the parishioners' cause of action for negligent hiring and supervision is based on neutral application of principles of tort law and not rooted in religious belief.³⁵

As the Court explained in *Malicki*, "whether the priest's tortious conduct in this case involved improper sexual relations with an adult parishioner he was counseling or sexual assault

²⁹ See *Malicki v. Doe*, 814 So. 2d 347,357 (Fla. 2002) (internal quotations omitted).

³⁰ *Id.*

³¹ *Id.* at 357.

³² See *id.*

³³ See *id.* at 360.

³⁴ See *id.* at 361.

³⁵ See *id.*

and battery of a minor, the necessary inquiry in the claim against the church Defendants is similarly framed: whether the church Defendants had reason to know of the tortious conduct and did nothing to prevent reasonably foreseeable harm from being inflicted upon the plaintiffs."³⁶

Four years later, the Mississippi Supreme Court again addresses constitutional issues arising from the nature of their causes of action brought by victims of sexual abuse.³⁷ The Court carefully examined the church's duty to protect against sexual molestation of children.³⁸ The court held that enforcing the duty to protect against sexual molestation of children would not excessively entangle the courts in religious matters.³⁹ The level of authority by defendant over its priests belied any notion that defendant was immune from claims against it under the theory of vicarious liability.⁴⁰ "There is nothing remotely religious about such reprehensible conduct such as molestation."⁴¹ Plaintiffs' claim of negligent hiring, retention and supervision of the priest was simply a negligence claim.⁴²

Thus the court found no merit to the assertion that the Free Exercise Clause deprived civil courts of jurisdiction over plaintiffs' complaint.⁴³ The court explained that "the cloak of religion, which does not shield religious institutions from civil responsibility for fraud or breach of contract, surely could not serve to shield such institutions from civil responsibility for more abhorrent conduct such as sexual molestation of a child."⁴⁴

³⁶ *Id.* at 31.

³⁷ *Roman Catholic Diocese of Jackson v. Morrison*, 905 So.2d 1213 (Miss. 2006).

³⁸ *Id.*

³⁹ *Id.* at 1219.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

In sum, these state supreme courts concluded that the First Amendment does not provide a shield behind which a church may avoid liability for harm resulting from misconduct of the clergy.⁴⁵ Moreover, it was expressly noted that this holding is only to prevent the First Amendment from barring cases from further litigation during the initial pleading stage.⁴⁶

Autonomy Doctrine

The constitutional principle known as the doctrine of church autonomy⁴⁷ is derived from the religion clauses of the First Amendment and brought out in over a thousand published precedents, including six United States Supreme Court opinions, which raised and followed the 1871 Supreme Court decision *Watson v. Jones*.⁴⁸ Basically, church autonomy is the right of churches to be free from government interference when dealing its internal matters which include defining church governance, structure and institutional identity.⁴⁹ Church autonomy involves both the Free Exercise Clause and the Establishment Clause. "The doctrine is rooted in both of the religion clauses, protecting a church's freedom to regulate its own internal affairs by prohibiting civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity."⁵⁰

The Supreme Court first articulated the church autonomy doctrine in *Watson v. Jones*.⁵¹

⁴⁵ See *Malicki*, 814 So. 2d at 347; *Roman Catholic Diocese of Jackson*, 905 So.2d at 1213.

⁴⁶ See *id.*

⁴⁷ Mark E. Chopko & Michael F. Moses, *Freedom to be a Church: Confronting Challenges to the Right of Church Autonomy*, 3 Geo. J.L. & Pub. Pol'y 387, 399 (2005): "Church autonomy is rooted in specific constitutional guarantees--freedom from establishment, free exercise, freedom of speech --and in the right of association implicit in these explicit guarantees. The First Amendment reflects a promise that a church may be distinctive; that a church may be different from secular entities and other churches; that the government may not impose upon a church criteria that define it; that a church may, free of government intrusion and interference, exercise and enjoy those characteristics that make it what it is²¹ -in short, a promise that churches can be churches."

⁴⁸ L. Martin Nussbaum, *Scandal and the Constitution* (Oct., 2003), <https://www.firstthings.com/article/2003/10/scandal-and-the-constitution>.

⁴⁹ See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

⁵⁰ *McKelvey v. Pierce*, 173 N.J. 26, (N.J.2002).

⁵¹ *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).

Watson involved a dispute between the pro-and anti-slavery factions within the Third or Walnut Street Presbyterian Church of Louisville, Kentucky, both of whom claimed church property.⁵² The Court held that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them”⁵³ In sum, *Watson* held that civil courts have neither the subject matter jurisdiction nor the competence to adjudicate ecclesiastical matters. These are issues for the church, not the state. *Watson*’s doctrine of church autonomy thereby ensures that when church and state are operating within their respective spheres, neither is subjugated to the other.⁵⁴

"The essence of church autonomy is that the ... church should be run by duly constituted [church] authorities and not by legislators, administrative agencies, labor unions, disgruntled lay people, or other actors lacking authority under church law."⁵⁵ Church autonomy is also rooted in case law that "affirms the fundamental right of churches to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."⁵⁶

The *Watson*’s doctrine of church autonomy was substantially reaffirmed in *Kedroff v. St. Nicholas Cathedral* and *United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, which precluded courts from determining the true beliefs of a church.⁵⁷ *Kedroff* reasoned that “the opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or manipulation -- in short, power to decide for themselves,

⁵² *Id.*

⁵³ *Id.* at 727.

⁵⁴ *Id.*

⁵⁵ Douglas Laycock, *The Things that are not Caesar's: Religious Organizations as a Check on the Authoritarian Pretensions of the State: Church Autonomy Revisited*, 7 Geo. J.L. & Pub. Pol'y 253, 254.

⁵⁶ *McKelvey v. Pierce*, 173 N.J. 26 (N.J.2002).

⁵⁷ See *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

free from state interference, matters of church government as well as those of faith and doctrine.”⁵⁸ The Court further held, the state "can play no role in any . . . judicial proceedings" because it unconstitutionally "inject[s] the civil courts into substantive ecclesiastical matters."⁵⁹

Similarly, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, the court held that the inquiries made by the state supreme court into matters of ecclesiastical cognizance and polity contravened the First and Fourteenth Amendments.⁶⁰ The religious controversy within the church was not the proper subject of civil court inquiry, and the court must accept the ecclesiastical decisions of church tribunals.⁶¹

Later, in *Jones v. Wolf*, the Supreme Court deviated from the church autonomy doctrine and adopted the “neutral principles” approach for the first time to resolving church property disputes.⁶² This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization.⁶³ The members of the local church brought a declaratory judgment action seeking an order establishing them as the owners of the church’s property.⁶⁴ Applying neutral principles of property law, a state court decided in favor of the local church members.⁶⁵ The hierarchical church organization challenged the state court’s decision on the grounds that the court’s resolution of an internal church matter violated the First Amendment.⁶⁶ The Supreme Court ruled that, under the religion clauses, a state could resolve disputes over church property between two groups by applying neutral

⁵⁸ *Kedroff*, 344 U.S. at 116.

⁵⁹ *Presbyterian Church in the United States*, 393 U.S. at 450-51. (emphasis added).

⁶⁰ *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 697 (1976).

⁶¹ *Id.*

⁶² *Jones v. Wolf*, 443 U.S. 595 (1979)

⁶³ *Id.* at 597.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

principles of law rather than relying on “compulsory deference to religious authority.”⁶⁷

According to the Court, the First Amendment does not mandate states to defer to religious authority in resolving church property disputes where no issue of doctrinal controversy is involved.⁶⁸ Thus, so long as a court’s resolution of church property disputes is based solely on neutral principles of law and not an interpretation of church’s internal matter or practice, a court may step in and make a final decision as to property ownership.⁶⁹ This neutral principle doctrine beneficial for non-religious disputes, as it allows the court to make objective determination and focus on the general concepts of law as opposed to religious questions.

The Decision in *Hosanna-Tabor* Does Not Apply to Sex Abuse Claims

A recent Supreme Court decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* extended the protection of church autonomy. This landmark decision allowed religious organizations to have freedom of expressive association, but it does not apply to sex abuse claims. For example, courts have continuously rejected claims of clergy malpractice on the grounds that the standard of care for counseling by clergy would inevitably involve religious questions.⁷⁰ Many courts have permitted claims by victims of sexual abuse against religious institution for negligent supervision of abusing clergy.⁷¹ Thus, *Hosanna-Tabor* does not protect decisions that are related to sex abuse.

The Supreme Court’s unanimous 2012 decision in *Hosanna-Tabor*⁷² firmly established what the federal courts of appeals had previously recognized for decades that churches have an

⁶⁷ *Id.* at 605.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Lupu, Ira C. and Tuttle, Robert W., *The Mystery of Unanimity in Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC* (2017). 20 Lewis & Clark L. Rev. 1265 (2017).

⁷¹ *Id.*

⁷² The case involved a fourth-grade teacher, Cheryl Perich, suing her employer, a church-based school, alleging retaliation for having asserted her rights under the Americans with Disability Act (ADA).

absolute First Amendment right to select their own religious ministers, free from government interference.⁷³ The decision rested on broad principles of church autonomy over internal religious affairs, principles that the Court said arise from both the Establishment and Free Exercise Clauses.⁷⁴ *Hosanna-Tabor* thus appears to have more constitutional protections, and further, churches enjoy broader Free Exercise rights than any other non-religious groups.⁷⁵

So, the *Hosanna-Tabor* Court expressly reaffirmed the church autonomy doctrine that courts cannot interfere with ecclesiastical matters. Chief Justice Roberts distinguished the leading case of *Employment Division, Department of Human Resources of Oregon v. Smith*.⁷⁶ In *Smith*, two employees were fired by a drug rehabilitation organization after ingesting peyote for sacramental purposes.⁷⁷ The Employment Division denied them unemployment compensation because peyote use was criminal under Oregon law, making their discharge work related “misconduct.”⁷⁸ The Oregon Supreme Court held that while the ceremonial use of peyote violates state law, the application of the unemployment law violated the free exercise clause.⁷⁹ The Court reversed, applying the neutral principles standard, holding that a neutral, generally applicable law that impacts an individual’s exercise of a religious act is valid because the Free Exercise Clause does not prohibit a state from enforcing a “valid, neutral law of general applicability.”⁸⁰

Chief Justice Roberts admitted that the Americans with Disabilities Act (“ADA”) was a general law of neutral application that happened to have an opposite outcome on *Hosanna-*

⁷³ 565 U.S. 171 (2012).

⁷⁴ *See id.* at 702

⁷⁵ Ashutosh Bhagwat, *Religious Associations: Hosanna-Tabor and the Instrumental Value of Religious Groups*, 92 Wash. U. L. Rev. 073 (2014).

⁷⁶ 494 U.S. 872 (1990).

⁷⁷ *Id.* at 874.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* (citing *United States vs. Lee*, 455 U.S. 252, 263 (1982)).

Tabor's power to terminate a teacher.⁸¹ But he then, for a unanimous Court, drew distinction between the *Hosanna-Tabor* and *Smith*:⁸²

[A] church's selection of its ministers is unlike an individual's ingestion of peyote. *Smith* involved government regulation of only outward physical acts. The present case, in contrast, concerns government interference with an internal church decision that affects the faith and mission of the church itself.⁸³

Hence, the rule in *Smith* does not apply to cases that involve "an internal church decision that affects the faith and mission of the church itself." The firing of school teacher was considered as "internal church decision," and the firing of two employees in *Smith* was considered as "outward," which means that the state's denial of unemployment benefits did not regulate a decision of church power. Furthermore, the ingestion of peyote was considered as a "physical act," while the firing of school teacher regulated by the ADA was an internal church decision.

Although the Court in *Smith* admitted that there is no contention that the state's drug law represents an attempt to regulate religious beliefs, the plaintiffs in *Smith*, who were discharged for engaging in a sacrament, obviously suffered a burden on the right of free exercise of religion.⁸⁴ However, the purpose of *Hosanna-Tabor* was not about burden on religious practice, but rather the issue of government interference with a church governance. The state law in *Smith* was not aimed at restricting external actions based on religious beliefs, thus there was no government interference.⁸⁵

The ministerial exception in *Hosanna-Tabor* has provided broad autonomy interest for the selection of clergy, but not when it involves sex abuse matters. Like in *Smith*, a church has no autonomy interest in reassigning and transferring sexual abusers. Law does not interfere with

⁸¹ *Hosanna-Tabor Evangelical Lutheran Church & Sch.*, 565 U.S. at 190.

⁸² *Id.*

⁸³ *Id.* (internal citation omitted)

⁸⁴ *Employment Div.*, 494 U.S. at 874.

⁸⁵ *Id.*

internal church matters; instead, the law makes the church accountable for enabling the external, physical acts of its abusive priests.⁸⁶

Rejecting Church Autonomy in Clergy Sex Abuse Claims

Until recently, children sexually abused by clergy were in a very weak position to protect themselves because so many defenses worked against their interest. Churches enjoyed charitable immunity in the past and the Court did not want to touch this matter because of the church autonomy doctrine. However, over time, more and more cases were brought to courts and the media increased its coverage of clergy sex abuse. Courts have said that the sexual abuse is not religious belief and the churches are just hiding from the sexual abuse epidemic. The courts further explained that they are not getting into any religious questions; thus, this is no longer entanglement issue. Some states still accept the autonomy argument. Most states started to look only at the behavior of bishops and sexual misconduct has nothing to do with religious faith. Courts start to say that they have jurisdiction over sexual abuse claims.

Some courts agreed with church autonomy arguments and would bar the claims of negligent hiring and supervision against religious institutions.⁸⁷ However, many courts have upheld tort claims against dioceses and their officers.⁸⁸ For most courts, the general and neutral principles of tort law did not interfere with church's religious belief or questions; sex abuse cases did not require courts to interpret church law or involve religious beliefs or internal church governance.⁸⁹ The *Morrison* court stated that "the First Amendment deprives our civil courts of

⁸⁶ *Id.* at 875.

⁸⁷ *Ayon v. Gourley*, 47 F. Supp. 2d 1246, 1250 (D. Colo. 1998). The court reasoned that the negligent hiring claim was barred because for the court "to insert itself into the process by which priests are chosen would substantially burden these Defendants' free exercise." Furthermore, the court reasoned that the negligent supervision claim was barred because "the supervision model used by the Archdiocese Defendants is based on [a] unique relationship conceived by the church doctrine."

⁸⁸ Angela C. Carmella, *Catholic Institutions In Court: The Religion Clauses And Political-Legal Compromise*, 120 W. Va. L. Rev. 1, 50 (2017).

⁸⁹ *See id.*

jurisdiction over claims which would require ‘excessive entanglement’ of our courts in employment decisions of the Catholic Church.”⁹⁰ They further noted that “however, we find the ‘excessive entanglement’ prong of the *Lemon* test⁹¹ has been unnecessarily expanded and extended by the minority of courts granting First Amendment protection to religious organizations from claims such as those before us today.”⁹²

Reform of Statute of Limitation

Until now, victims of sexual abuse were prevented from bringing lawsuits against their abusers because of the statute of limitations. Usually, different states have different Statute of Limitation laws and some states might have harsh statutes than other states. After the sexual abuse scandal erupted in 2002, California became the first state to temporarily suspend the statute of limitations, giving victims of sexual abuse one year to file lawsuits, no matter how long ago the abuse took place.⁹³ Under New Jersey’s old law, survivors of sexual abuse had only two years to pursue litigation, and a victim of child sexual abuse has only until age 20.⁹⁴ Now, New Jersey victims of sexual abuse now have more time to file civil lawsuits against their alleged abusers under a landmark bill Gov. Phil Murphy signed a law that offers victims of child sexual

⁹⁰ *Morrison*, 905 So. 2d at 1229.

⁹¹ *Lemon v. Kurtzman*, 403 U.S. 602, (1971); *Lemon* is the current guidance for application of the Establishment Clause to claims of governmental intrusion into religious territory. *Lemon* provides a three-pronged test for governmental restrictions on religious activity. To test negative for an Establishment Clause violation, the governmental action must (1) have a secular purpose; (2) not have the primary effect of enhancing or inhibiting religion; and (3) avoid excessive entanglement with religion. As to the "excessive entanglement" prong of the *Lemon* test, courts are provided yet another test to determine when entanglement becomes excessive; that is, they are instructed to examine the character and purposes of the institutions that are benefitted, the nature of the aid that the state provides, and the resulting relationship between the government and the religious authority.

⁹² *Id.*

⁹³ Ian Lovett, *Catholic Church Offers Cash to Settle Abuse Claims-With a Catch* (Jul 11, 2019),

<https://www.wsj.com/articles/catholic-church-offers-cash-to-settle-abuse-claimswith-a-catch-11562854848>

⁹⁴ A prosecution for an offense set forth in *N.J.S.2C:14-3* or *N.J.S.2C:24-4* , when the victim at the time of the offense is below the age of 18 years, must be commenced within five years of the victim's attaining the age of 18 or within two years of the discovery of the offense by the victim, whichever is later;

abuse the ability to sue their abusers up until they turn 55, or within seven years of their realization that the abuse caused them harm.⁹⁵

Essentially, after December 1, 2019, any action resulting from an injury related to the commission of a sexual assault, sexual crime, or codified sexual abuse under N.J.S.A. 2A:61B-1 against a minor under the age of 18 that occurred prior to December 1, 2019, shall be commenced within 37 years of the date the minor reaches 18, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act.⁹⁶ For acts that occurred when the plaintiff was over 18, the action must be commenced within seven years from the date of reasonable discovery of the injury and its relationship to the act.⁹⁷ Notably, under N.J.S.A. 2A:14-2b(a), plaintiffs who would have been otherwise barred by a statute of limitation for causes of action under this statute, now have two years to file again starting on December 1, 2019.⁹⁸

In addition, victims previously barred by the narrow statute of limitations from suing their abusers and the institutions that protected them now have two years to file lawsuits seeking damages.⁹⁹ The measure, which takes effect December 1st, 2019, not only lifts the existing two-year statute of limitations for future claims, but it also creates a two-year window for people who did not file before their time window expired.¹⁰⁰

⁹⁵ Deena Yellin, *NJ extends statute of limitations, allows sex abuse victims much more time to sue* (May 13, 2019), <https://www.northjersey.com/story/news/new-jersey/2019/05/13/nj-extends-statute-limitations-child-abuse-cases/1183930001/>

⁹⁶ N.J.S.A. 2A:14-2a(1) (effective December 1, 2019).

⁹⁷ N.J.S.A. 2A:14-2a(b)(1).

⁹⁸ Yellin, *Supra* note 95.

⁹⁹ *Id.*

¹⁰⁰ Nicholas Pugliese, *N.J. gives sex abuse victims sweeping new ability to sue* (May 13, 2019), <https://why.org/articles/n-j-gives-sex-abuse-victims-sweeping-new-ability-to-sue/>

Similarly in New York, the Child Victims Act gives sexual abuse survivors, barred by a statute of limitations, a one-year window to file a civil lawsuit against their alleged perpetrators, and institutions like the boy scouts, schools and churches.¹⁰¹

Even the Catholic Church has made numerous attempts to protect children and effectively respond to sexual abuse; Pope Francis issued a “groundbreaking” law that requires all Catholic personnel globally to report any suspicious behavior such as clergy sex abuse and cover-up by superiors to all dioceses.¹⁰² It also provides protections for whistle blower who makes a report.¹⁰³ The law makes the world's 415,000 Catholic priests and 660,000 religious sisters mandated reporters.¹⁰⁴

And finally, these actions may not proceed on a class basis due to “the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault.”¹⁰⁵ Thereby, “any other crime of a sexual nature, a prohibited sexual act or sexual abuse against either a minor under the age of 18 or a person” may not proceed on a class basis.¹⁰⁶

Confidentiality Agreements Do Not Prevent Sexual Abuse Claims

¹⁰¹ Under the Child Victim Act (“CVA”), survivors can now file a claim against private and public institutions that may have also been involved in the abuse (this includes negligence of the institution). This is because the CVA removed “the notice of claim” requirement under the old law which usually applies before someone can bring a claim against a public institution. Survivors can file claims against these institutions during the new one (1)-year extension period for claims that had already expired under the old statute of limitations.

¹⁰² John Winer, *The Statute of Limitations Maze* (Jun. 25, 2019), https://www.snapnetwork.org/guest_blog_the_statute_of_limitations_maze_jun19; *see also*, Emma Green, *Pope Francis Stops Hiding From the Church's Sexual Abuse Epidemic* (May 12, 2019), <https://www.theatlantic.com/politics/archive/2019/05/catholic-church-sex-abuse-pope-francis/589243/>, (noting “the pope’s *moto proprio*, which will take effect in June and remain in place as an experiment for three years, is a definitive and concrete step forward for the Church, demonstrating that Pope Francis is taking sexual abuse seriously. The new law is not a panacea, however: It does not detail specific punishments for Church leaders who violate these norms, and it does not mandate the involvement of authorities outside the Church.”).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *See* N.J.S.A. 2A:30B-2; N.J.S.A. 2A:61B-1

¹⁰⁶ *Id.*

Sexual abuse allegations against clergy stretched over many decades. How was it possible that they were able to continue this sex abuse for so long? For years, the Church has entered into confidential settlements with victims in order to avoid negative publicity and bad reputation. When victims began to speak up, they and their families were often offered compensation money in order to prevent media coverage or scandal. When they received money, they often signed a confidentiality agreement promising not to make statements that could harm the reputation of the churches. Although these agreements protected the identity of the victim, they also concealed the identities of the priests who often continued to serve at their parishes or other ministries.¹⁰⁷ For example, New Jersey's five Catholic dioceses have paid out at least \$50 million to sexual abuse victims.¹⁰⁸ Some of that money came from jury awards, or very public settlements, or bankruptcy funds the Catholic church has paid to alleged sexual abuse victims across the U.S.¹⁰⁹ Thus, the cover up was sophisticated and the church protected the institution at all costs.

In 2002, U.S. Catholic bishops responded to the Boston sexual abuse scandal and adopted the Charter for the Protection of Children & Young People at their meeting in Dallas, Texas.¹¹⁰ The Charter is a comprehensive set of procedures originally established by the USCCB in June 2002 for addressing allegations of sexual abuse of minors by Catholic clergy.¹¹¹ The Charter also includes guidelines for reconciliation, healing, accountability, and prevention of future acts of abuse.¹¹² Under the Charter, American dioceses were forbidden from entering into

¹⁰⁷ See Laurie Goodstein, *Albany Diocese Settled Abuse Case for Almost \$1 Million*, N.Y. TIMES, June 27, 2002, at B1.

¹⁰⁸ Kelly Heyboer, *Here's how much N.J. Catholic dioceses have paid out to sex abuse victims*, https://www.nj.com/news/2018/08/heres_how_much_priest_sex_abuse_settlements_have_c.html.

¹⁰⁹ *Id.*

¹¹⁰ At the Dallas meeting, the bishops heard impact statements from victims of clergy sexual abuse. U.S. Conference of Catholic Bishops, *Restoring Trust: Response to Clergy Sexual Abuse*, at <http://www.usccb.org/issues-and-action/child-and-youth-protection/charter.cfm>.

¹¹¹ *See id.*

¹¹² *See id.*

confidentiality or non-disclosure agreements with victims when they reached a financial settlement with the church, unless the victims requested confidentiality.¹¹³

Even now, issues of confidentiality are frequent concerns for sexual abuse victims. Recently, a grand jury report¹¹⁴ found shocking levels of child sex abuse in the Pennsylvania Catholic Church.¹¹⁵ The investigation uncovered widespread sexual abuse and institutional cover up across the entire state.¹¹⁶ It uncovered, in six dioceses, Allentown, Erie, Harrisburg, Greensburg, Pittsburg and Scranton, the sexual abuse of over 1,000 children and named 301 perpetrator priests.¹¹⁷ The grand jury uncovered 301 Catholic priests identified as sexual predator priests who sexually abused young children while serving in active ministry in the church.¹¹⁸ It also discovered detailed accounts of over 1,000 children sexually abused by predator priests, with the grand jury alleging it believed the actual number of victims was in the “thousands.”¹¹⁹ It also found senior church personnel, including bishops, monsignors and others, were aware about the sex abuse committed by priests, but consistently covered it up to avoid undesirable scandal, criminal charges against priests, and monetary damages to the dioceses for decades.¹²⁰ Most shockingly, priests who committed such horrendously horrible acts of sexual abuse upon children were routinely transferred to other parishes and/or dioceses while

¹¹³ *See id.*

¹¹⁴ See Attorney General Shapiro Details Findings of 2-Year Grand Jury Investigation into Child Sex Abuse by Catholic Priests in Six Pennsylvania Dioceses (Aug 14, 2018), <https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-details-findings-of-2-year-grand-jury-investigation-into-child-sex-abuse-by-catholic-priests-in-six-pennsylvania-dioceses> (*quoting* “the 884-page grand jury report documents scores of sexual assaults and rapes of children by priests, and the institutional cover ups that followed by senior church officials.”)

¹¹⁵ See Report of the Grand Jury, July 27, 2018 (made public July 27, 2018) [Philadelphia archdiocese], <http://www.pacourts.us/assets/opinions/Supreme/out/J-56A-M-2018%20MO.pdf?cb=1>

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

parishioners were left unaware of sexual predators among them.¹²¹ In response, Pope Francis, head of the Roman Catholic Church, wrote a letter addressed to “the People of God,” saying,

“With shame and repentance, we acknowledge as an ecclesial community that we were not where we should have been, that we did not act in a timely manner, realizing the magnitude and the gravity of the damage done to so many lives. We showed no care for the little ones; we abandoned them.”¹²²

The grand jury finally recommended reforming Pennsylvania law governing child sex abuse, the grand jury stated: “We can’t charge most of the culprits. What we can do is tell our fellow citizens what happened, and try to get something done about it.”¹²³ Attorney General Shapiro strongly supported each reform recommended by the grand jury – and issued a challenge to every Pennsylvania bishop.¹²⁴

In 2016, California became the first state to ban confidentiality agreements in civil cases that could be prosecuted as felony sex crimes.¹²⁵ New Jersey Catholic dioceses finally announced that victims of priest sexual abuse who signed confidentiality agreements with Catholic dioceses in new Jersey are free to ignore those deals and speak publicly about their experiences.¹²⁶ The announcement means all victims who reached financial settlements with the Catholic Church in New Jersey can bring a lawsuit against their abusers and religious institutions.¹²⁷

Bankruptcies in the Sexual Abuse Crisis

¹²¹ *See id.*

¹²² Pope Francis, *To the People of God*, Aug. 20, 2018, http://www.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html

¹²³ *Grand Jury Report*, supra n. 114.

¹²⁴ Attorney General Shapiro, *Attorney General Shapiro Details Findings of 2-Year Grand Jury Investigation into Child Sex Abuse by Catholic Priests in Six Pennsylvania Dioceses*, Aug. 14, 2018.

¹²⁵ Los Angeles Times, *California politics newsfeed* (Oct. 1, 2017), <https://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-201710-htmlstory.html>.

¹²⁶ Kelly Heyboer, supra n. 68.

¹²⁷ *See id.*

The Catholic Church is faced with mass tort liability for sexual abuse of children by priests. Payments to victims of sexual abuse by clergies in the United States are very expensive. Usually, the diocese covered about half the settlement money. Insurance and other defendants, including religious institutions, paid out the rest to victims. Most victims seek to recover almost entirely for emotional distress. Most of the times, it is very hard to predict the amount of settlement a jury will award to those victims. The total amount in legal settlements the Catholic Church has paid out to alleged sexual abuse across the U.S. reached at least \$3 billion.¹²⁸ As of October 2019, 21 U.S. Catholic dioceses and religious orders have filed for bankruptcy protection during the ongoing sexual abuse crisis in the Catholic church.¹²⁹

In July 2004, facing financial burden from numerous pending trials on sex abuse claims, the Archdiocese of Portland filed for Chapter 11 bankruptcy.¹³⁰ It is the first Catholic church in the nation to seek financial and legal protections from the court against multi-millions of dollars in sexual-abuse claims.¹³¹ Though Portland is the first one to file for Chapter 11 bankruptcy, many dioceses followed Portland's path to avoid scandal's effects. Three months later after Portland filed for bankruptcy, diocese in Tuscan, Ariz also seek legal protections.¹³² Catholic church's financial pressures became worse as a result of the states' new statute of limitation law, which temporarily set aside the usual statute of limitations for lawsuits to give victims of childhood sexual abuse at least a year to pursue even decades-old claims.

¹²⁸ *See id.*

¹²⁹ BishopAccountability.org, <http://www.bishop-accountability.org/bankruptcy.htm>.

¹³⁰ Ed Langlois, *Archdiocese of Portland Files Chapter 11 Bankruptcy* (Jul. 7, 2004), <http://www.bishop-accountability.org/ia-davenport/bankruptcy/2004-07-07-CatholicSentinel-ArchdioceseOf.htm>

¹³¹ *See id.*

¹³² Tom Corrigan, *Catholic Church Used Bankruptcy for Sexual-Assault Cases. Now Others Are Following Suit*, *The Wall Street Journal*, December 27, 2018 at <https://www.wsj.com/articles/catholic-church-used-bankruptcy-for-sexual-assault-cases-now-others-are-following-suit-11545906600>.

Recently, the Roman Catholic diocese of Rochester, New York, filed for bankruptcy after facing financial pressures as a result of the new statute of limitation law.¹³³ Surprisingly, over 400 sex abuse suits have been brought against the dioceses as the new litigation window opens.¹³⁴ The Rochester diocese's bankruptcy has left many who were promised justice under New York's Child Victims Act feeling betrayed and hopeless.¹³⁵

For example, Mr. Saracino, 67 years old surviving victim, filed a lawsuit against the Roman Catholic Diocese of Rochester under a new law in New York.¹³⁶ His lawsuit and many others against the diocese were expect to be heard at the court, with the hope of justice, but the diocese avoided all of that by declaring bankruptcy.¹³⁷ As a result, thousands of these helpless victims are being denied justice, leaving them helpless and without resources for years.

However, said victims could still find empowerment in bankruptcy court, such as the opportunity to meet with and interrogates an abuser.¹³⁸ In some cases, committees have successfully asserted that the settlement include handing over documents that reveal how a diocese hid the sexual abuse cases for decades.¹³⁹ The battle in court is crucial because the victims want to reveal the cover-ups behind the crime, not just a predator priest.

Conclusion

The nation's most shocking sexual abuse crisis involving the Catholic Church, the heinous behavior of priests, and the repeated institutional failures have been deeply impressed

¹³³ Carolyn Thompson, *A New York Diocese Filed for Bankruptcy Under the Weight of Sexual Misconduct Lawsuits. Will Others Follow?* (Sep. 23, 2019), <http://www.sentinel.org/articles/2004-27/12880.html>.

¹³⁴ *Id.*

¹³⁵ See Corina Knoll, *He Sued Over a Priest's Abuse. Then the Diocese Filed for Bankruptcy*, N.Y. TIMES, Sept. 26, 2019, at <https://www.nytimes.com/2019/09/26/nyregion/sexual-abuse-rochester-diocese-catholic.html>.

¹³⁶ *See id.*

¹³⁷ *See id.*

¹³⁸ *See id.*

¹³⁹ *See id.*

upon the public consciousness.¹⁴⁰ Francis did not make any clear and specific recommendations as to this crisis. However, he expressed sympathy to the victims and a promise to create a culture able to prevent such situations from happening again.¹⁴¹ He wrote, “no effort to beg pardon and to seek to repair the harm done will ever be sufficient. Looking ahead to the future, no effort must be spared to create a culture able to prevent such situations from happening, but also to prevent the possibility of their being covered up and perpetuated.”¹⁴² “It will take several generations, a clean record, and a world of good deeds for the Church of Rome in the U.S. to regain the full measure of its institutional reputation.”¹⁴³

In the judicial proceeding, many First Amendment defenses against such claims brought by victims have been aggressively advanced and explicitly rejected by the Supreme Court.¹⁴⁴ Many millions of dollars in legal settlements have been paid, and significant number of church properties have been sold in order to pay the costs of such settlements.¹⁴⁵ In several jurisdictions, prosecutors and grand juries have been put in the effort with consistency to investigate the wrongdoing by church leaders and uncover the ugly truth about Catholic Church.¹⁴⁶

¹⁴⁰ See *supra* n. 102.

¹⁴¹ Pope Francis: *Letter to the People of God*, <https://www.vaticannews.va/en/pope/news/2018-08/pope-francis-letter-people-of-god-sexual-abuse.html>.

¹⁴² *Id.*

¹⁴³ See generally, Peter Steinfelds, *A People Adrift: The Crisis of the Roman Catholic Church in America* (2003). See also Catholics for a Free Choice, *Clergy Sexual Abuse: Out of the Shadows: A Shadow Report on the Holy See and the Convention on the Rights of the Child* (http://www.bishopswatch.org/Links/May_Shadow_report.pdf). A survey by the National Review Board, a panel of lay Catholics commissioned by the U.S. Conference of Catholic Bishops, reports that nearly 4500 Catholic priests – slightly under 5% of those who have been served as priests – have been accused of sexual misconduct over the past 50 years. Alan Cooperman, *Nearly 4500 Priests Accused of Abuse, Draft Report Finds*, *Washington Post*, Feb. 17, 2004, p. A2.

¹⁴⁴ Ira C. Lupu & Robert W. Tuttle, *Sexual Misconduct and Ecclesiastical Immunity*, 2004 B.Y.U. L. REV. 1789 (2004).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

The recent effort of adult survivors alleging sexual abuse by clergy has led to an increased public awareness of the extent of heinous sexual crimes occurring in the church. Recently, civil cases against religious institutions have successfully challenged the negligence of the church hierarchy and these favorable judicial decisions led to reforms.