2021

Amicus Brief of Law and Religion Professors for Petitioners, Lippard v. Holleman

Leslie C. Griffin

No. 20-1174

In The
Supreme Court of the United States

KIM LIPPARD AND BARRY LIPPARD,

Petitioners,

v.

LARRY HOLLEMAN AND ALAN HIX,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of North Carolina

BRIEF AMICUS CURIAE OF LAW AND RELIGION PROFESSORS IN SUPPORT OF PETITIONERS

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INTERESTS OF THE AMICI CURIAE

With the written consent of the Petitioners and the Respondents, Amici respectfully submit this brief as amici curiae.[1]

Amici are professors who study law and religion. We are aware that defamation occurs both inside and outside religious organizations. We ask this Court to allow this religious defamation lawsuit to proceed because the Lippards' reputations were damaged by a non-religious harmful act not protected by religious freedom. We ask the Court not to allow absolute protection to religious people who harm the reputations of their colleagues.

Amici include:

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[1] Counsel for amici curiae authored this brief in whole and no other person or entity other than amici or their counsel has made a monetary contribution to the preparation or submission of this brief. Petitioners and Respondents were timely notified and granted consent to file.

Mark Strasser, Trustees Professor of Law, Capital University Law School, Columbus, Ohio

SUMMARY OF ARGUMENT

The nation's courts are in profound disagreement about the law of defamation in religious organizations. We ask the Court to grant certiorari in this case so that Barry Lippard can sue for the defamatory comment that he had "blocked [Hix's] exit from the music room and was aggressively going after [Hix], pointing his finger in [Hix]'s face." Kim LIPPARD and Barry Lippard, Petitioners v. Larry HOLLEMAN and Alan Hix, Respondents, 2021 WL 763758 (U.S.), 6. We ask the Court to grant certiorari in this case so that Kim Lippard can show that being charged with "slandering comments about a fellow choir member, and that she had accused Hix of lying and hiding sheet music," was defamatory. *Id.* These are factual disputes that can be resolved through defamation law, without any attention to religious teaching or any infringement of religious liberty.

Some states judge the lawsuits according to "neutral principles of law." *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 160, 750 S.E.2d 605, 607 (2013). Others back a "categorical rule of law, closely akin to an *absolute privilege to defame*, thereby denying a state court remedy for a state tort. The court virtually inoculates speakers from liability for even their most outrageous false, malicious, and damaging statements

that may have only a remote connection to any religious doctrine or mission." *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 545 (Minn. 2016) (Lillehaug dissent) (emphasis added).

A different court determined that the "spirit of Satan" had a secular as well as a religious meaning, and therefore a defamation claim could be brought against religious defendants without using arguments about religion. *Kliebenstein v. Iowa Conf. of United Methodist Church*, 663 N.W.2d 404, 407–08 (Iowa 2003). In contrast, some cases are dismissed under the ministerial exception. *See Lee v. Sixth Mount Zion Baptist Church of Pittsburg*, No. CV 15-1599, 2017 WL 3608140, at *34 (W.D. Pa. Aug. 22, 2017), *aff'd sub nom. Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113 (3d Cir. 2018) ("Pennsylvania courts have clearly held that the ministerial exception applies to contract and defamation claims."); *Connor v. Archdiocese of Philadelphia*, 601 Pa. 577, 622–23, 975 A.2d 1084, 1111–12 (2009) ("in many of the ministerial exception cases involving defamation claims, the courts explicitly note that jurisdiction cannot be exercised even though the allegedly defamatory statements themselves may have been of a secular nature."); *Yaggie v. Ind.-Ky. Synod Evangelical Lutheran Church in Am.,* 860 F. Supp. 1194, 1198 (W.D. Ky. 1994) (A defamation case involving employment of a minister could not be brought).

Some cases are dismissed because the involved parties are priests or because the events took place in a church's disciplinary setting. *Downs v. Roman*

Catholic Archbishop of Baltimore, 683 A.2d 808 (Md. Ct. Spec. App. 1996); *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528 (Minn. 2016).

In many of these lawsuits, "a defamation claim based on a man making similar statements from a soapbox on the street corner would be within the court's jurisdiction." *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 162, 750 S.E.2d 605, 608 (2013). We ask this Court to clarify in this case that defamation is illegal both in the pulpit and on the soapbox. We ask you to grant certiorari and allow the Lippards' lawsuit to proceed under the defamation laws of North Carolina.

In North Carolina, "[i]n order to recover for defamation, a plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation." *Boyce & Isley, PLLC v. Cooper*, 211 N.C. App. 469, 478, 710 S.E.2d 309, 317 (2011), citing *Tyson v. L'eggs Products, Inc.,* 84 N.C.App. 1, 10–11, 351 S.E.2d 834, 840 (1987). The Lippards can prove those elements without any interference with anyone's religious freedom.

Indeed, it would violate religious freedom to give religious people complete freedom to defame others without ever paying a penalty. Religious organizations would therefore become lawless institutions that do great harm to their members. We ask this Court to

state that the First Amendment does not give constitutional or statutory protection to defamation. Under *Emp't Div., Dept. of Human Res. of Or. v. Smith*, the defamation laws are neutral laws of general applicability that apply to everyone. 494 U.S. 872 (1990). Under *Sherbert v. Verner*, 374 U.S. 398, 406 (1963), the government has a "compelling interest" in eradicating defamation; it would "commit one of 'the gravest abuses' of its responsibilities" if it did not make clear to the country that falsely harming people's reputations is illegal for everyone. *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2392 (2020).

ARGUMENT

I. Defamation Cases Should Be Decided by the Courts Under Neutral Principles of Law.

Which of the following statements is defamatory? The courts are all over the place about such statements, disagreeing about what defamation law protects whenever religion is involved, even when the statement is not religious and is not protected by religious freedom.

A "priest and nun spread a rumor about the local Catholic school's elementary principal, implying to multiple people that she 'was having a sexual affair with Father Ed Doyle.'" *Gaydos v. Blauer,* 81 S.W.3d 186 (Mo. Ct. App. 2002), cited in Alexander J. Lindvall,

Forgive Me, Your Honor, for I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices, 72 S.C. L. REV. 25, 43–44 (2020).

The "Trustees had placed a mortgage upon the Church's property in order to purchase apartment buildings nearby. . . . the Trustees failed to insure the apartment buildings and that funds were missing because of their mismanagement. Finally, he stated the Trustees had constantly deceived him." *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 158–59, 750 S.E.2d 605, 606 (2013).

The priest was living with a woman he was not married to. Moreover, he had posted sexually descriptive items on Facebook. *Warnick v. All Saints Episcopal Church,* No. 01539 DEC.TERM 2011, 2014 WL 11210513, at *7–8 (Pa. Com. Pl. Apr. 15, 2014), *aff'd*, 116 A.3d 684 (Pa. Super. Ct. 2014), *for text, see* No. 714 EDA 2014, 2014 WL 10753746 (Pa. Super. Ct. Dec. 11, 2014).

The "Pfeils had 'accused [him] of stealing money from' St. Matthew Lutheran Church. The Pfeils allege that they made no such accusation. In other words, they contend that the minister falsely accused them of making a false accusation of the crime of theft." *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 546 (Minn. 2016) (Lillehaug dissent).

"Folks, when is enough, enough? When will you stop the blaming, negative and unhappy persons

among you from tearing down the spirit of Jesus Christ among you? . . . You know whether a person has the spirit of Jesus or Satan by their fruits. . . . I am distressed and perplexed why people have tolerance and compassion for anyone who habitually tears down the Body of Christ by habitually sowing discord and pain." *Kliebenstein v. Iowa Conf. of United Methodist Church*, 663 N.W.2d 404, 405 (Iowa 2003).

"McRaney alleges that NAMB [North American Mission Board] intentionally made false statements about him to BCMD [Baptist Convention for Maryland/Delaware] that resulted in his termination. Specifically, he alleges that NAMB falsely told BCMD that he refused to meet with Dr. Kevin Ezell, president of NAMB, to discuss a new SPA [strategic partnership agreement]. He also alleges that NAMB intentionally got him uninvited to speak at the mission symposium and posted his picture at its headquarters to 'communicate that [McRaney] was not to be trusted and [was] public enemy #1 of NAMB.'" *McRaney v. N. Am. Mission Bd. of the S. Baptist Convention, Inc.*, 966 F.3d 346, 349 (5th Cir. 2020).

"Marshall's complaint alleges Munro maliciously made false statements that Marshall was divorced, was dishonest, was unable to perform pastoral duties due to throat surgery, and had made an improper advance to a member of the Anchorage congregation." *Marshall v. Munro*, 845 P.2d 424, 425 (Alaska 1993).

"[P]erson X murdered their spouse" or "person X is a child molester." Alexander J. Lindvall, *Forgive Me,*

Your Honor, for I Have Sinned: Limiting the Ecclesiastical Abstention Doctrine to Allow Suits for Defamation and Negligent Employment Practices, 72 S.C. L. REV. 25, 43–44 (2020).

"Suppose there was a radical sect of Christianity in the United States that took the Bible's verses on stoning literally. If the congregants stoned a man for 'gathering wood on the sabbath day,' could the stonee sue for battery?" *Id.* at 50.

The "priest accused the seminarian of 'sexually motivated [mis]conduct.'" *Downs v. Roman Catholic Archbishop of Baltimore,* 683 A.2d 808 (Md. Ct. Spec. App. 1996).

"Joe violated God's Fourth Commandment." Lindvall, *supra*, at 51–52.

"Father Jones stole $5,000 from the church and should be removed from the priesthood." *Id.*

"Father Jones is untrustworthy and should be removed from the priesthood." *Id.*

The "Synod placed a document in Drevlow's file stating that his spouse had previously been married. This accusation was untrue." Drevlow never got a job because this was in his file. *Drevlow v. Lutheran Church, Missouri Synod*, 991 F.2d 468, 469–70 (8th Cir. 1993).

The "minister assaulted a member of the church." Kim LIPPARD and Barry Lippard, Petitioners v. Larry

HOLLEMAN and Alan Hix, Respondents, 2021 WL 763758 (U.S.), 2.

"Mr. Lippard had 'blocked [Hix's] exit from the music room and was aggressively going after [Hix], pointing his finger in [Hix]'s face.'" *Id.* at 6.

The courts have conflicting results on these statements; some states ban defamation lawsuits when religions are involved. The tort law of defamation, however, is neutral enough to handle these situations without any violation of religious liberty. Like other states, in North Carolina, "[i]n order to recover for defamation, a plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation." *Boyce & Isley, PLLC v. Cooper*, 211 N.C. App. 469, 478, 710 S.E.2d 309, 317 (2011), citing *Tyson v. L'eggs Products, Inc.,* 84 N.C.App. 1, 10–11, 351 S.E.2d 834, 840 (1987).

These elements could be applied in all these cases. In *Warnick*, for example, the court dismissed the case for religious reasons, even though there was no defamation case because it was *true* that the plaintiff was living with another woman and had posted sexually explicit items on Facebook. *Warnick*, *supra*, at *31. True statements are not defamatory. *Id.* at *32. In *Drevlow*, by contrast, the statements about the man's wife being divorced were untrue and defamatory. *Drevlow*, *supra*, at *471. Whether a person had stolen $5,000, Lindvall, *supra*, or physically attacked another

person, *Lippard*, *supra*, are factual situations that can be decided to be true or false in the courtroom. Whether someone is divorced, had throat surgery, or failed to insure apartment buildings, are basic facts that can be handled by the defamation laws.

Mr. Lindvall asks above, "If the congregants stoned a man for 'gathering wood on the sabbath day,' could the stonee sue for battery?" Lindvall*, supra*, at 50. We hope so. We also hope that all those defamed by their religious friends will be able to sue for the harm caused by defamation.

Letting the courts decide who wins or loses is better than letting defamers have complete freedom to injure everyone's reputation. "Our thesis is that the Constitution meant to and should be interpreted as creating a secular republic, meaning that the government has no role in advancing religion and that religious belief and practice should be a private matter, one where people should not be able to inflict injury on others in the name of religion." HOWARD GILLMAN AND ERWIN CHEMERINSKY, THE RELIGION CLAUSES: THE CASE FOR SEPARATING CHURCH AND STATE 18 (2020). Defamation is such an injury that should not be inflicted in the name of religion. The Lippards should be able to sue against such injury in court.

II. The Free Exercise Clause Allows Such Lawsuits.

Courts may determine the factual claims in a defamation lawsuit, even when the alleged culprit made

the potentially false statements in a religious setting. That rule is consistent with this Court's free exercise law. *Smith* reflects this Court's important tradition of asking religious people to obey neutral laws that govern everyone. *Smith* reiterated this Court's longstanding view that "religious believers are subject to the law." *See* Marci A. Hamilton, Employment Division v. Smith *at the Supreme Court: The Justices, the Litigants, and the Doctrinal Discourse*, 32 CARDOZO L. REV. 1671, 1674–75 (2011); *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990). "This approach was employed . . . to uphold the anti-polygamy laws, the social security laws, military conscription laws, Sunday closing laws, social security identification requirements, federal oversight of federal lands, prison regulations, and state taxation of products sold by a religious organization." *Id.* (footnotes omitted). This Court has repeatedly held that religion must not undo laws that protect everyone's health and safety. *See, e.g.*, *Smith*, 494 U.S. at 879; *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring). As this Court stated in *Smith*:

> We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition.

494 U.S. at 878–79.

This Court has been clear that religious employers do not enjoy an exemption from the Social Security laws of the United States. *See Lee*, 455 U.S. at 258–61 (identifying the dangers of giving religious exemptions to the tax laws). "The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.* at 260; *see also Hernandez v. Comm'r*, 490 U.S. 680 (1989) (rejecting free exercise challenge to income taxes). Indeed, in *Smith*, this Court reiterated the free exercise point: "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." *Smith*, 494 U.S. at 882 (quoting *Gillette v. United States,* 402 U.S. 437, 461 (1971)).

This Court accepts that a "private right to ignore generally applicable laws is a constitutional anomaly." *Smith*, 494 U.S. at 886. There are many situations where the Court had ruled it important for everyone to obey neutral laws. As this Court stated about rejecting the religious exemption rule in *Smith*:

> The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind-ranging from compulsory military service, see, *e.g.*, *Gillette v. United States,* 401 U.S. 437 (1971), to the payment of taxes, see, *e.g.*, *United States v. Lee, supra*; to health and safety regulation such as manslaughter and child neglect laws, see, *e.g.*, *Funkhouser v. State*, 763 P.2d 695 (Okla. Crim.

> App. 1988), compulsory vaccination laws, see, *e.g.*, *Cude v. State*, 237 Ark. 927, 377 S.W.2d 816 (1964), drug laws, see, *e.g.*, *Olsen v. Drug Enforcement Administration*, 279 U.S. App. D.C. 1, 878 F.2d 1458 (1989), and traffic laws, *see Cox v. New Hampshire*, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); to social welfare legislation such as minimum wage laws, *see Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985), child labor laws, see *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944),. . . . and laws providing for equality of opportunity for the races, see, *Bob Jones University v. United States*, 461 U.S. 574, 603–04, 103 S.Ct. 2017, 2034–35, 76 L.Ed.2d 157 (1983).

Id. at 888–89. As this Court concluded about all those cases, "*The First Amendment's protection of religious liberty does not require this.*" *Id.* at 889 (emphasis added).

Instead, this Court has accepted the idea that applies to this case: "Simply stated, when conduct jeopardizes human health and safety, government cannot deregulate for religion without sacrificing its health and safety interests in the regulation." Hamilton, *supra*, at 1687 (footnotes omitted).

If this Court prefers to apply *Sherbert v. Verner*, 374 U.S. 398 (1963) to this case, the result is the same. The government has a "compelling interest" in eradicating illegal defamation that harms people's reputations. *See, e.g.*, *Little Sisters of the Poor Saints Peter &*

Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2392 (2020) (Alito, J., concurring) (stating that "'[o]nly the gravest abuses, endangering paramount interest' could 'give occasion for [a] permissible limitation' on the free exercise of religion.") (alteration in original) (quoting *Sherbert*, 374 U.S. at 406); *Bostock v. Clayton Cty., Ga.*, 590 U.S. ___, ___ (2020) (slip op., at 32) (asserting that the "federal government [is prohibited] from substantially burdening a person's exercise of religion unless it demonstrates that doing so both furthers a compelling governmental interest and represents the least restrictive means of furthering that interest").

Free exercise should never protect a right to defame.

III. The Ministerial Exception Does Not Bar This Lawsuit.

Mr. Lippard was a church member, but not a minister, so the ministerial exception does not bar his claims. As a pianist, Mrs. Lippard may be viewed as a minister in some courts. *See, e.g., Cannata v. Cath. Diocese of Austin*, 700 F.3d 169, 170 (5th Cir. 2012) (church pianist is a minister). The courts have given great protection to the ministerial exception in order to protect religious freedom. However, the ministerial exception "does not mean that religious institutions enjoy a general immunity from secular laws[.]" *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). This Court explained in

Hosanna-Tabor that churches are not absolutely free to abuse their ministers. "We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers. There will be time enough to address the applicability of the exception to other circumstances if and when they arise." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 196 (2012).

The circumstances have arisen. The time has come for the Court to state that defamation cases should be won or lost on the facts, in court.

Protecting all churches from being subject to defamation law is reminiscent of the churches' early claims "that the First Amendment shields them from civil lawsuits for negligent supervision and retention of employees who sexually abuse children." Editorial, *Clerical Abusers and the First Amendment*, N.Y. TIMES, Mar. 14, 2012. We now are certain that religious wrongdoers who abuse others should be punished by the courts. As the courts now allow child abusers to be held liable for their misconduct, so too should they allow the courts to decide the defamation cases based on the facts, and not on religious status.

Now is the time for this Court to make clear, and to reiterate, that the First Amendment does not protect individuals from all defamation suits.

The First Amendment usually blocks individuals from suing their churches "over matters of significant religious concern." Christopher C. Lund, *Free Exercise*

Reconceived: The Logic and Limits of Hosanna-Tabor, 108 NW. U. L. REV. 1183, 1203 (2014). The courts learned from the child abuse cases that such abuse is not a matter of religious concern. No one in these cases is claiming that defamation is a religious duty that they must undertake. Instead, it is illegal conduct, which should be barred for everyone.

This is why "the regular tort rules apply to someone hit by the church bus or by a falling gargoyle. Those suits threaten no religious practice." Lund, *supra*, at 1204. This case is as bad as being hit by a church bus or by a falling gargoyle; it involves the defamatory charge that "Mr. Lippard had 'blocked [Hix's] exit from the music room and was aggressively going after [Hix], pointing his finger in [Hix]'s face.' " *Lippard, supra,* at 6. Mr. Lippard could get into legal trouble if he had engaged in such terrible conduct. More important for the ministerial exception, pianist Mrs. Lippard was accused of making "slandering comments about a fellow choir member, and that she had accused Hix of lying and hiding sheet music." *Id.* at 6. These are factual disputes that can be resolved without any attention to religious teaching and without any infringement of religious liberty.

While this case does not involve child abuse, this Court should clarify that religious freedom does not provide religious organizations freedom from neutral, generally applicable laws like defamation. As in the sex abuse cases, such decisions have no relation to ministry, the only title expressly protected. Consequently, it is of vital importance that this Court clarify the law,

thereby encouraging others to come forward and discontinue their silence about defamation for fear of dismissal of their cases by hesitant courts.

This Court has long stated that religious actors are required to obey neutral laws because the rule of law protects everyone. *See, e.g.*, *Jones v. Wolf*, 443 U.S. 595, 604 (1979); *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990). This Court should clarify that the neutral principles of law apply to this case. Consistent with this Court's First Amendment jurisprudence, state and federal courts have abstained from hearing cases only when the dispute cannot be resolved according to neutral principles of law. *See, e.g.*, *Kirby v. Lexington Theological Seminary*, 426 S.W.3d 597, 618 (Ky. 2014) ("Secular courts may, however, have jurisdiction over a case involving a church if 'neutral principles of law' can be applied in reaching the resolution.").

For this reason, courts allow lawsuits against a Christian seminary to proceed because the litigation can be resolved according to neutral, non-religious principles of law, just like the defamation case here. *Id.* at 615. *See also Galetti v. Reeve*, 331 P.3d 997, 1001 (N.M. Ct. App. 2014) (when tort and contract claims can be "'resolved by the application of purely neutral principles of law and without impermissible government intrusion . . . there is no First Amendment shield to litigation'") (quoting *McKelvey v. Pierce,* 800 A.2d 840, 852 (N.J. 2002) (emphasis, internal quotation marks, and citations omitted)).

"The First Amendment stands as a bulwark against official religious prejudice and embodies our Nation's deep commitment to religious plurality and tolerance. That constitutional promise is why, '[f]or centuries now, people have come to this country from every corner of the world to share in the blessing of religious freedom.'" *Trump v. Hawaii*, 138 S. Ct. 2392, 2446–47, 201 L. Ed. 2d 775 (2018) (Kagan, J., dissenting) (quoting *Town of Greece v. Galloway,* 572 U.S., at ___, 134 S. Ct., at 1841 (Kagan, J., dissenting)).

As part of our blessing of religious freedom, the Free Exercise Clause reserves the right of American citizens to accept any religious belief, but limits their rights to action. *Smith,* 449 U.S. at 877. It does not allow religious employers to change their actions when they get to court if it keeps the case non-justiciable. In other words, although the freedom to believe is absolute, the freedom to act, whether religiously motivated or otherwise, is not.

"At some point, accommodation [of religious freedom] may devolve into 'an unlawful fostering of religion' and violate the Establishment Clause." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 334–35 (1987) (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 145 (1987)). That point is reached here, where the Petitioners lost their right to win or lose a defamation suit in court. Like the Connecticut statute that unconstitutionally "arm[ed] Sabbath observers with an absolute and unqualified right not to work on whatever day they designate as their Sabbath," the

ban on defamation suits in this case violates the Establishment Clause through its "unyielding weighting in favor of [religious organizations] over all other interests," especially the interests of church members in keeping their reputations from nasty harm by their fellow church members. *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709 (1985); *see also Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005). The point of unlawful fostering of religion is reached with the government's complete exemption from defamation laws.

CONCLUSION

"Courts must stop pretending that the Constitution requires affording immunity to public humiliation and character assassination – providing such immunity does not promote the interests of religious institutions, their members, or the public at large." Mark P. Strasser, *A Constitutional Balancing in Need of Adjustment: On Defamation, Breaches of Confidentiality, and the Church*, 12 FIRST AMEND. L. REV. 325, 383–84 (2013).

Religious freedom does not give individuals a right to disobey the laws that govern everyone. *See, e.g.*, *Emp't Div., Dept. of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990). This is the important and sustainable lesson of *Smith*. Everyone, even religious people, must obey neutral laws of general applicability. *Id.* at 879. *See Smith*, 494 U.S. at 879 ("[T]he right of free exercise does not relieve an individual of the obligation to

comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).' ") (quoting another source); *see also Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 694 n.24 (2010) (observing that, under *Smith*, the Free Exercise Clause did not require public law school to grant religious exemption to its "all-comers" policy forbidding discrimination by student organizations).

Defamation is not a permissible choice for religious actors. The law should not be changed to legalize defamation, as Respondents request in this case. We ask the Court to grant certiorari and open the defamation lawsuits to all sustainable cases. Plaintiffs ask this Court to remember that everyone, religious and non-religious, must obey "neutral laws of general applicability." *Employment Division, Dep't of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

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