

No. 18-964

In The
Supreme Court of the United States

—◆—
FATHER JOHN GALLAGHER,

Petitioner,

v.

DIOCESE OF PALM BEACH, INC.,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The Florida District Court Of Appeal
For The Fourth District**

—◆—
**MOTION OF CHILD USA FOR LEAVE TO FILE
A BRIEF *AMICUS CURIAE* IN SUPPORT OF
PETITIONER AND BRIEF OF CHILD USA AS
AMICUS CURIAE IN SUPPORT OF PETITIONER**

—◆—
MARCI A. HAMILTON, ESQ.
Counsel of Record
CEO & Academic Director
CHILD USA
Robert A. Fox Professor
of Practice
University of Pennsylvania
3814 Walnut St.
Philadelphia, PA 19104
(215) 539-1906
marcih@sas.upenn.edu

LESLIE C. GRIFFIN, ESQ.
Director of Amicus
Advocacy
CHILD USA
3701 Chestnut St.,
6th Floor
Philadelphia, PA 19104
(713) 301-3105
leslie.griffin@unlv.edu

**MOTION OF CHILD USA FOR LEAVE
TO FILE A BRIEF *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

Pursuant to Rule 37.2(b), CHILD USA respectfully moves for permission to file the attached brief *amicus curiae*. Petitioner has consented to CHILD USA's filing of a brief. In accordance with Rule 37.2(a), CHILD USA has provided notice to Counsel for Respondent of CHILD USA's intent to file a brief. Mark E. Chopko, Counsel for the Diocese of Palm Beach, refused consent to CHILD USA's filing.

CHILD USA, the Think Tank for Child Protection, is a 501(c)(3) nonprofit think tank that conducts evidence-based legal, medical, and social science research to identify, impact, and inform the laws and policies affecting child protection in the United States. With these facts, CHILD USA is able to promote ideas, and propose effective policy solutions that work to protect kids from abuse and prevent childhood neglect. CHILD USA draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to the persistent and widespread epidemic of child abuse.

Sexual abuse and the maltreatment of children have an all too frequent impact on children's health and well-being. Every day, millions of children's civil rights are violated in the United States, and due to the continued existence of certain statutes of limitations, the statutes that are meant to protect them may have the perverse effect of protecting only the perpetrator.

Although these offenses may occur in secret, behind closed doors, they have devastating public consequences for victims, their families, and the public, in some cases lasting decades after the violence ends. CHILD USA cuts through the shame and secrecy to gather and analyze the data behind this type of abuse and neglect. All child victims deserve justice, and it is CHILD USA's mission to find a path for them to achieve it.

We therefore ask this Court to grant certiorari in this case and to identify a child-protective rule that keeps children from harm.

Respectfully submitted,

MARCI A. HAMILTON, ESQ.

Counsel of Record

CEO & Academic Director

CHILD USA

Robert A. Fox Professor of Practice

University of Pennsylvania

3814 Walnut St.

Philadelphia, PA 19104

(215) 539-1906

marcih@sas.upenn.edu

LESLIE C. GRIFFIN, ESQ.

Director of Amicus Advocacy

CHILD USA

3701 Chestnut St., 6th Floor

Philadelphia, PA 19104

(713) 301-3105

leslie.griffin@unlv.edu

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**BRIEF OF *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

With the written consent of the Petitioner filed with the Clerk of the Court, CHILD USA, respectfully submits this brief as *amicus curiae*.¹ *Amicus* has moved to have this Court accept this brief without the consent of the Respondent.



**STATEMENT OF INTEREST
OF *AMICUS CURIAE***

Amicus curiae, CHILD USA, conducts evidence-based legal, medical, and social science research to improve the laws and policies affecting child protection. In addition to research, CHILD USA compiles evidence, promotes ideas, and proposes the most effective policies to prevent childhood abuse and neglect. With these facts, CHILD USA shines a light on the best ways to truly protect all children from abuse and neglect. Sexual abuse and the maltreatment of children have an all too-frequent impact on children's health. These acts often occur in secret, behind closed doors, but have public consequences. Victims, their families, and the public pay a high price even decades after the violence ends. CHILD USA cuts through the shame

¹ Counsel for *amicus curiae* authored this brief in whole and no other person or entity other than *amicus* or their counsel has made a monetary contribution to the preparation or submission of this brief. Counsel for both parties were given ten days notice. Petitioner granted consent. We move to have this Brief admitted by this Court without Respondent's consent.

and the secrecy to gather and analyze the data behind abuse and neglect.

CHILD USA draws on the combined expertise of the nation's leading medical and legal academics to reach evidence-based solutions to persistent and widespread child abuse and neglect. All child victims deserve justice, and it is CHILD USA's mission to find a path for them to achieve it.



SUMMARY OF ARGUMENT

This Court needs to state again that religious freedom does not protect tortious conduct. Father John Gallagher reported a priest, who showed a minor pornographic pictures, to the state police. The offending priest was subsequently convicted and deported.

Instead of celebrating this heroic act of child protection, Gallagher's diocese punished him, publishing numerous defamatory statements about him. The trial court would have heard Gallagher's defamation lawsuit against the diocese. The Florida appeals court dismissed the lawsuit, concluding that a mix of church autonomy, ecclesiastical abstention, and the ministerial exception barred the case from being heard.

Amicus repeatedly and frequently protects children from abuse by religious and non-religious actors. Many religious actors hide their wrongdoing instead of revealing this abuse. This Court should grant certiorari to remind the nation's courts that religious

freedom does not protect illegal conduct like defamation. *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990). This defamation case should be decided according to neutral principles of law.

◆

ARGUMENT

Father John Gallagher correctly reported his new assistant priest, Father Joseph Palimatton, to the Palm Beach County sheriff's office after discovering that Father Palimatton had shown pornographic pictures to a 14-year-old boy. Father Palimatton pled guilty to possessing and showing pornography to a minor and was deported to India. *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 659 (Fla. Dist. Ct. App. 2018), review denied, No. SC18-865, 2018 WL 4050485 (Fla. Aug. 23, 2018).

There is no question that Father Gallagher correctly identified a criminal to the police and, as a result, protected other children from abuse by Palimatton. Florida police even praised Father Gallagher's valuable work on the Palimatton case. One sheriff wrote a letter to Sean Cardinal O'Malley, stating, "Father Gallagher, immediately, took the steps to hold the individual responsible and defer any further crime that might have been perpetrated against other children in the congregation." App. to Pet. Cert. 52a.

Instead of celebrating Father Gallagher as a brave whistleblower who had exposed a wrongdoer and kept

more children from harm, the Palm Beach Diocese punished him and tried to cover up Palimatton's crime. In response, Father Gallagher alleged that the diocese had defamed him in numerous ways, including in news stories in Florida newspapers and social media posts.

The Florida trial court properly rejected the diocese's ecclesiastical abstention defense, ruling that the defamation lawsuit "could be resolved based on neutral legal principles without entangling the courts in the interpretation and application of church law, policies, and practices." *Id.* at 658-59. The Florida appeals court, however, incorrectly granted the diocese's writ of prohibition. It concluded that the case "cannot be resolved without the courts excessively entangling themselves in what is essentially a religious dispute." *Id.* at 659. The Florida Supreme Court denied review. *Gallagher v. Diocese of Palm Beach, Inc.*, No. SC18-865, 2018 WL 4050485 (Fla. Aug. 23, 2018).

This case is not a religious dispute. It is a neutral legal dispute between religious actors. It is a case about the protection of children. State and federal prosecutors, judges, and legislators have increasingly recognized the need to protect children from religious wrongdoers, whether they are ministers who abuse children or their superiors who work to systematically conceal the misconduct from police. *See, e.g., In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712 (Pa. 2018). Across the country, thousands of children are in danger of abuse by these types of offenders whose misconduct may take decades to reveal, a lapse

in time that is only amplified by systemic employer cover-ups. *Id.*

This Court should grant certiorari in this case to clarify that religious freedom does not authorize religious organizations to defame their brave employees who protect children from harm. Father Gallagher's lawsuit involves defamatory statements published outside the church, not related to church doctrine, and implicating matters of public safety. *See* Petition for Writ of Certiorari at i, *Gallagher v. Diocese of Palm Beach*, No. 18-964, 2019 WL 338905 (Jan. 25, 2019). Consequently, it is of vital importance that this Court clarify the law, thereby encouraging other ministers to come forward and not remain silent for fear of retaliation from their religious employers. As an organization devoted to the protection of children's well-being, we urge this Court to allow this case to go to trial based on neutral principles of law.

I. This Case Should Be Resolved According to Neutral Principles of Law.

This Court has long argued 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 standard applies to tort cases. Consistent with this Court's First Amendment jurisprudence, state and federal courts have abstained from hearing cases under the "ecclesiastical abstention rule" 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 Petitioner’s 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).

Respondent and the Florida appeals court mischaracterized Petitioner’s case as a purely religious dispute that the courts cannot adjudicate. The court concluded the case was a matter of church autonomy and ecclesiastical abstention, even though this Court has never identified church autonomy as the proper theory of the First Amendment. This argument ignores the neutral nature of the defamation tort. In Florida, to establish defamation, Father Gallagher must “allege and prove the defamatory statement was published, it was false, the person who said it must have been acting ‘with knowledge or reckless disregard as to the falsity,’ and Father Gallagher suffered actual damages as a

result of the statement.” *Diocese of Palm Beach, Inc. v. Gallagher*, 249 So. 3d 657, 662 (Fla. Dist. Ct. App. 2018), review denied, No. SC18-865, 2018 WL 4050485 (Fla. Aug. 23, 2018) (quoting *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008)).

The Florida court’s dismissal of Petitioner’s case deprived him of the opportunity to establish that his employer defamed him in describing Father Gallagher’s reporting of certain criminal conduct undertaken against children. The employer accused Father Gallagher of, e.g., making “unfounded allegations,” “fabrications,” and “blatantly lying” about the charges against Father Palimatton. Cert. Petition at 4-5. Arguments about those claims should be neutrally reviewed in the trial court.

The trial court is the appropriate place for Respondent to contest the facts of this case, which ended on a writ of prohibition. Respondent’s factual response confirms the wisdom of a ruling from this Court allowing Petitioner and Respondent to participate in a lawsuit conducted according to the principles of Florida tort law, which protects all plaintiffs from defamation, whether by a religious or a non-religious actor.

This case is about one kind of harm to children. Investigations and court decisions repeatedly demonstrate how thousands of children are endangered by all types of abuse. *See, e.g., In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712 (Pa. 2018). Florida law requires reporting child abuse to state authorities. *See, e.g.,* FLA. STAT. ANN. §§ 39.201(1)(c), 39.205(1).

Defamation law should not be interpreted to discourage reporters of abuse by allowing them to be defamed by their employers. It is a legal harm that can be reviewed by neutral legal principles.

II. The Florida Court Mistakenly Relied on this Court's Ministerial Jurisprudence to Dismiss the Lawsuit.

The Florida appeals court also suggested that this case should be dismissed because Father Gallagher is a minister for ministerial exception purposes. In resolving both the church autonomy and ecclesiastical abstention “doctrines,” the court noted that such “doctrine”

“precludes courts from exercising jurisdiction where an employment decision concerns a member of the clergy or an employee in a ministerial position.” *Palm Beach*, 249 So. 3d at 661 (quoting *Archdiocese of Miami, Inc. v. Minagorri*, 954 So. 2d 640, 641 (Fla. 3d DCA 2007)).

The appeals court then added:

Courts may not consider employment disputes between a religious organization and its clergy because such matters necessarily involve questions of internal church discipline, faith, and organization that are governed by ecclesiastical rule, custom, and law. Whether an individual is qualified to be a clergy member of a particular faith is a matter to be

determined by the procedures and dictates of that particular faith.

The interaction between a church and its pastor is an essential part of church government. . . . Thus, civil courts must abstain from deciding ministerial employment disputes . . . , because such state intervention would excessively inhibit religious liberty. *Palm Beach*, 249 So. 3d at 661-62 (citing *SE Conference Ass'n of Seventh-Day Adventists, Inc. v. Dennis*, 862 So. 2d 842, 844 (Fla. 4th DCA 2003)).

The court then cited this Court's decision in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012), as additional reason to dismiss the suit. The court wrongly concluded that Father Gallagher's dispute was not neutral, due in part to his status as a minister. Even though Petitioner's defamation case involved possible illegal activity that could be resolved under neutral legal principles, the Florida courts dismissed it.

In *Hosanna-Tabor*, this Court "express[ed] no view on whether the [ministerial] 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." 565 U.S. 171, 196 (2012).

The time is now. Now is the time for this Court to clarify that religious freedom, including the ministerial exception, does not absolutely ban tortious conduct

lawsuits. Defamation cases, and other tort lawsuits, should be resolved according to neutral principles of law.

During this Court's oral argument in *Hosanna-Tabor*, Justice Sotomayor anticipated cases like Petitioner's, where important societal interests other than the purely internal, ecclesial relationship between a church and its ministers are at stake. The Justice asked in particular about teachers who are fired for reporting sexual abuse to the government. Under the Florida court's reasoning in Petitioner's case, such lawsuits would be absolutely barred by religious freedom. Justice Sotomayor anticipated the serious problems with that outcome, asking, "[r]egardless of whether it's a religious belief or not, doesn't society have a right at some point to say certain conduct is unacceptable, even if religious . . . ? And once we say that's unacceptable, can and why shouldn't we protect the people who are doing what the law requires, i.e. reporting it?" Transcript of Oral Argument at *5, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012) (No. 10-553), 2011 WL 4593953 (U.S.) [hereinafter *Hosanna-Tabor* Oral Arg.]. See also *Ballaban v. Bloomington Jewish Cmty., Inc.*, 982 N.E.2d 329, 339 (Ind. Ct. App. 2013) (struggling with the ministerial exception analysis in a rabbi's case because the "United States Supreme Court has not determined the applicability of the ministerial exception where a minister's employment was terminated or otherwise impacted for reporting or attempting to report child abuse or neglect").

This Court should protect the people like Petitioner who do what the law requires. Florida law requires reporting child abuse to state authorities. *See, e.g.*, FLA. STAT. ANN. §§ 39.201(1)(c), 39.205(1). This Court has repeatedly held that the First Amendment does not protect criminal conduct or fraud. *See, e.g., Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 879 (1990) (“reject[ing] the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice”); *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 606 (2003) (noting, “when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener, the First Amendment leaves room for a fraud claim”); *Schneider v. State (Town of Irvington)*, 308 U.S. 147, 164 (1939) (indicating that “[f]rauds,” including “fraudulent appeals . . . made in the name of charity and religion,” may be “denounced as offenses and punished by law”). Petitioner asks this Court to clarify that, consistent with this Court’s interpretation of the First Amendment in other doctrinal areas, religious freedom and the ministerial exception do not ban tortious conduct lawsuits when important societal interests are at stake. Those cases can be resolved according to neutral principles of law.

In response to Justice Sotomayor’s important question, even counsel for Hosanna-Tabor Lutheran Church and School acknowledged that the ministerial exception should not be absolute: “if you want to carve out an exception for cases like child abuse where the

government's interest is in protecting the child, not an interest in protecting the minister, when you get such a case, we think you could carve out that exception." *Hosanna-Tabor* Oral Arg. at *6. Counsel then provided the "theoretical framework" for the exception requested by Justice Sotomayor:

First, you have to identify the government's interest in regulation. If the government's interest is in protecting ministers from discrimination, we are squarely within the heart of the ministerial exception. If the government's interest is something quite different from that, like protecting the children, then you can assess whether that government interest is sufficiently compelling to justify interfering with the relationship between the church and its ministers. But the government's interest is at its nadir when the claim is we want to protect these ministers as such, we want to tell the churches what criteria they should apply for – for selecting and removing ministers.

Id. at *6-7. *Amicus* respectfully asks this Court to pursue that framework here, in a case that has nothing to do with Father Gallagher's qualifications for ministry and everything to do with respecting the government's profound interests in protecting children.

Such a balanced and non-absolute approach to the ministerial exception would be consistent with this Court's Religion Clause precedents, which have never identified religious freedom rights as absolute when important governmental and third-party interests are at stake. *See, e.g., Estate of Thornton v. Caldor, Inc.*, 472

U.S. 703, 709 (1985) (noting that religious accommodations must take account of third-party interests); *United States v. Lee*, 455 U.S. 252, 261 (1982) (same); *Cutter v. Wilkinson*, 544 U.S. 709, 720-22 (2005) (indicating that prisoners' demands under RLUIPA must be weighed against the "burden a requested accommodation may impose on nonbeneficiaries" and "measured so that [they do] not override other significant interests"); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014) (stating that religious accommodations must consider interests of third-party employees).

This Court has always weighed the proposed actions of First Amendment rights holders against potential harm to third parties because "[a]t 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)). Moreover, Free Exercise values are equally at stake in recognizing that religious employers do not enjoy absolute immunity from civil liability. Religious freedom and the ministerial exception must not be interpreted inconsistently with this Court's Free Exercise precedents, which require *all citizens*, even religious ones, to obey neutral laws of general applicability. See *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993); *Employment Div. v. Smith*, 494 U.S. 872, 879 (1990). This Court has never granted

absolute First Amendment immunity from tort liability to a church for violation of a neutral, generally applicable law. Its doctrine is squarely to the contrary. See *Employment Div. v. Smith*, 494 U.S. 872, 881 (1990); *Church of Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531-32 (1993); *Hosanna Tabor*, 565 U.S. at 196 (“express[ing] no view on whether the [ministerial] exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers”).

Moreover, this Court has never extended absolute immunity to religious organizations in cases that involve illegal conduct or third-party harm and that may be resolved through “neutral principles of law.” *Jones v. Wolf*, 443 U.S. 595, 604 (1979). See also *Hosanna-Tabor*, 565 U.S. at 196. Neither should the courts of Florida or any other courts extend such immunity to religious organizations.

On behalf of Petitioner Father John Gallagher, *Amicus* respectfully asks this Court to clarify that his employers do not enjoy absolute immunity for his defamation. Father Gallagher wants his day in trial court, and the opportunity to win or lose his case there based on neutral principles of law. We ask you to give him that opportunity.



CONCLUSION

Whether church autonomy, the ecclesiastical abstention rule and the ministerial exception of the First Amendment bar tort lawsuits is an important issue to ministers like Petitioner, whose lawsuit ended on a writ of prohibition without any consideration of his duties to obey the law and protect innocent children.

For these reasons, the petition for certiorari should be granted.

Respectfully submitted,

MARCI A. HAMILTON, ESQ.

Counsel of Record

CEO & Academic Director

CHILD USA

Robert A. Fox Professor of Practice

University of Pennsylvania

3814 Walnut St.

Philadelphia, PA 19104

(215) 539-1906

marcih@sas.upenn.edu

LESLIE C. GRIFFIN, ESQ.

Director of Amicus Advocacy

CHILD USA

3701 Chestnut St., 6th Floor

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leslie.griffin@unlv.edu