Filed: 2/11/2021 5:20 PM
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Marion County, Indiana

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	
COUNTY OF MARION	)	CAUSE NO. 49D01-1907-PL-27728

JOSHUA PAYNE-ELLIOTT,)
)
Plaintiff,)
)
vs.)
)
ROMAN CATHOLIC)
ARCHDIOCESE OF)
INDIANAPOLIS, INC.,)
)
Defendant.)

AMENDED BRIEF OF THE STATE OF INDIANA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

INTEREST OF *AMICUS CURIAE* AND SUMMARY OF THE ARGUMENT

The State of Indiana files this brief as of right under Indiana Code section 34-33.1-1-2. The State has a significant interest in preventing entanglement of the Indiana judiciary in religious disputes. The Indiana Supreme Court long-ago recognized that "[n]o power save that of the church can rightfully declare who is a Catholic." *Dwenger v. Geary*, 14 N.E. 903, 908 (Ind. 1888). But if this Court exercises jurisdiction here, it would put that fundamental proposition to the test.

The Indiana Supreme Court's mandamus order unambiguously vests this Court with the authority to reconsider the prior judge's refusal to dismiss this case. Indiana case law makes clear that a newly assigned trial judge has both the authority and the responsibility to reconsider the orders of a prior judge. This Court should exercise that authority here to dismiss this case.

Cases such as this questioning internal religious governance and doctrine must be dismissed outright. The church autonomy doctrine is, in essence, an immunity. Like sovereign, absolute, or qualified immunity, church autonomy entails immunity from suit, not just from liability. And just as with those other immunities, permitting this case to go forward would violate the rights of the Archdiocese in a way that appeal following final judgment cannot remedy.

For these reasons, this Court should dismiss this case immediately under the church autonomy doctrine.

ARGUMENT

I. The Indiana Supreme Court's Mandamus Order Vests this Court with the Power To Reconsider the Prior Judge's Rulings De Novo

Plaintiff Joshua Payne-Elliott, a teacher fired by Cathedral High School when the Archdiocese of Indianapolis instructed the school adhere to Catholic marriage doctrine or no longer be recognized as Catholic, sued the Archdiocese for tortious interference with contract. The suit should have been dismissed immediately under the First Amendment's longstanding protections for church autonomy, reconfirmed just recently in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020). Instead, Special Judge Stephen R. Heimann permitted the case to move forward and denied the Archdiocese leave to pursue an interlocutory appeal.

The Archdiocese then filed an original action seeking mandamus from the Indiana Supreme Court, arguing that under the First Amendment church autonomy doctrine the trial court had an absolute duty to refrain from exercising jurisdiction. An evenly divided Court denied the writ, but appointed this Court to replace Judge Heimann, the latter having recused himself from the case. The order "vests in [this Court] jurisdiction over th[e] case, including authority to consider new and pending issues and reconsider previous orders in the case." *State ex rel. Roman Cath. Archdiocese of Indianapolis, Inc. v. Marion Superior Ct.*, 160 N.E.3d 182 (Ind. 2020).

The Supreme Court's order unambiguously vests this Court with full authority to reconsider and to reverse Judge Heimann's denial of the Archdiocese's motion to dismiss. In support, the Court cited *Matter of Estate of Lewis*, which held that "[a]

trial court may reconsider its prior rulings while the underlying matter is still pending." 123 N.E.3d 670, 673 (Ind. 2019). That proposition remains true even when a case has been reassigned to a new trial judge. As the Indiana Supreme explained in *State ex rel. Williams Coal Co. v. Duncan*, "[t]he ruling of the original judge does not become the law of the case so as to bind the judge who later has jurisdiction, nor in passing upon the question when again presented, does he review the ruling of the former judge." 6 N.E.2d 342, 343–44 (Ind. 1937). Instead, the new judge's "authority and his duty require that he exercise his judicial discretion as though the matter were presented for the first time." *Id.* at 344.

For this reason, Indiana courts routinely reconsider prior rulings after the case has been reassigned to a new judge. *See, e.g.*, *In re Paternity of B.S.C.*, 950 N.E.2d 31, at * 6 (Ind. Ct. App. 2011) ("[T]he judge who later has jurisdiction is duty-bound to exercise his judicial discretion 'as though the matter were presented for the first time.'"); *Brunner v. Trustees of Purdue Univ.*, 702 N.E.2d 759, 762 (Ind. Ct. App. 1998) ("Superior Court Thirteen had the authority to hear and rule upon the motion for summary judgment in spite of the fact that a court previously having jurisdiction in the matter had heard the same motion."); *Woodmar Coin Ctr., Inc. v. Owen*, 447 N.E.2d 618, 620 (Ind. Ct. App. 1983) ("[T]he trial court was 'duty-bound' to consider the personal jurisdiction issue despite the other court's prior ruling."); *McLaughlin v. Am. Oil Co.*, 391 N.E.2d 864, 865 (Ind. Ct. App. 1979) ("[A] trial court has inherent power to reconsider, vacate or modify any previous order, so long as the case has not

proceeded to judgment."). This Court should follow suit by considering the issue of whether this case should be dismissed *de novo*.

II. The Church Autonomy Doctrine Functions as an Absolute Immunity Requiring Immediate Dismissal

Religious organizations have the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). Above all, "[r]eligious questions are to be answered by religious bodies." *McCarthy v. Fuller*, 714 F.3d 971, 976 (7th Cir. 2013). And where a lawsuit against an Archdiocese threatens church autonomy, the result must be judgment for the defendant, period. *Brazauskas v. Fort Wayne-South Bend Diocese, Inc.*, 796 N.E.2d 286, 288–89, 294 (Ind. 2003) (directing summary judgment for defendant where the Court concluded that applying tort law "to penalize communication and coordination among church officials . . . on a matter of internal church policy and administration" would "violate the church autonomy doctrine"); *see also Hosanna-Tabor Evangelical Lutheran Church and Sch. v. Equal Employment Opportunity Commission*, 565 U.S. 171, 194 (2012) (holding that "the First Amendment requires dismissal" of lawsuits falling within the ministerial exception).

The Archdiocese's religious guidance on the qualifications for Catholic schools was, "at its core," focused on matters that were "purely ecclesiastical," such that the case should have been dismissed because "the trial court lacked subject matter jurisdiction to adjudicate" it. *Stewart v. McCray*, 135 N.E.3d 1012, 1029 (Ind. Ct. App.

2019). The Indiana Court of Appeals has on multiple occasions held that church "personnel decisions are protected from civil court interference where review by the civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law," and that cases concerning such decisions warrant dismissal. *Stewart v. Kingsley Terrace Church of Christ, Inc.*, 767 N.E.2d 542, 546 (Ind. Ct. App. 2002) (quoting *McEnroy v. St. Meinrad Sch. of Theology*, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999)). Civil courts should refrain from any form of "review" when the court would be "require[d] . . . to interpret and apply religious doctrine or ecclesiastical law," such as where claims would require assessment whether canon law required the church to take a particular action or whether ecclesiastic authorities "properly exercised . . . jurisdiction." *McEnroy*, 713 N.E.2d at 337 (citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976)). This is precisely such a case.

What is more, the application of church autonomy doctrine must properly be understood as an absolute immunity from litigation, not merely a defense to liability. An immunity from litigation protects the beneficiary from even having to undergo the exposure and indignity of judicial proceedings. Here, for example, the Archdiocese has already suffered irreparable harm in the form of exposure of internal church documents and decisions (including those having no relation to this case), and the harm will only grow if this Court continues to exercise jurisdiction. "The very process of inquiry leading to findings and conclusions" presents the possibility of "imping[ing] on rights guaranteed by the Religion Clauses." *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979); *see also Whole Woman's Health v. Smith*, 896 F.3d

362, 373 (holding that allowing discovery of internal church documents not only interferes with a church's "decision-making processes" but may "expose[] those processes to an opponent and will induce similar ongoing intrusions against religious bodies' self-government.").

Other courts have recognized that church autonomy doctrine properly functions as litigation immunity. *See McCarthy v. Fuller*, 714 F.3d at 975 (equating the church's immunity to "official immunity" or "immunity from the travails of a trial and not just from an adverse judgment"); *Presbyterian Church (U.S.A.) v. Edwards*, 566 S.W.3d 175, 179 (Ky. 2018) (church autonomy renders defendant "immune not only from liability, but also 'from the burdens of defending the action'") (quoting *Rowan Cty. v. Sloas*, 201 S.W.3d 469, 474 (Ky. 2006)); *United Methodist Church, Balt. Ann. Conf. v. White*, 571 A.2d 790, 792 (D.C. 1990) (church autonomy "grant[s] churches an immunity from civil discovery and trial" (citing *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. at 503)).

Yet, if the Archdiocese must litigate this case to final judgment before the judiciary will respect that immunity, it will, in effect, lose it. "[I]mmunity entitles its possessor to be free 'from the burdens of defending the action, not merely . . . from liability.'" *Breathitt Cty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009) (quoting *Rowan Cty. v. Sloas*, 201 S.W.3d at 474). Consequently, "such an entitlement cannot be vindicated following a final judgment for by then the party claiming immunity has already borne the costs and burdens of defending the action." *Id.*; *see also Daynor v. Archdiocese of Hartford*, 23 A.3d 1192, 1198–1200 (Conn. 2011) (explaining that

"the very act of litigating a dispute that is subject to the ministerial exception would result in the entanglement of the civil justice system with matters of religious policy, making the discovery and trial process itself a First Amendment violation."), *overruling on other grounds recognized in Trinity Christian Sch. v. Commission on Human Rights and Opportunities*, 189 A.3d 79, 89 (Conn. 2018); *Harris v. Matthews*, 643 S.E.2d 566, 570 (N.C. 2007) (ruling that additional discovery was impermissible since, once it became clear that resolving claims would cause entanglement, allowing discovery would only worsen entanglement).

In sum, because this Court has "no ecclesiastical jurisdiction," *Dwenger*, 14 N.E. at 908, it has an *absolute* duty to dismiss this case.

CONCLUSION

The Court should dismiss this case.

Dated: February 11, 2021

Respectfully submitted,

<u>/s/ Thomas M. Fisher</u>

THEODORE E. ROKITA
Atty. No. 18857-49
Attorney General of Indiana

THOMAS M. FISHER
Atty. No. 17949-49
Solicitor General

KIAN J. HUDSON
Atty. No. 32829-02
Deputy Solicitor General

JULIA C. PAYNE
Atty. No. 34728-53
Deputy Attorney General

Office of the Attorney General
IGC South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov

Counsel for the State of Indiana

CERTIFICATE OF SERVICE

I certify that on February 11, 2021, I electronically filed the foregoing document using the Indiana E-filing System ("IEFS"). I hereby certify that a copy of the foregoing was served on the following persons using the IEFS:

Kathleen Ann DeLaney
Christopher S. Stake
DeLaney & DeLaney LLC
3646 North Washington Blvd.
Indianapolis, IN 46205
kathleen@delaneylaw.net
cstake@delaneylaw.net

John S. (Jay) Mercer
Fitzwater Mercer
One Indiana Square, Suite 1500
Indianapolis, IN 46204
jmercer@fitzwatermercer.com

Daniel H. Blomberg
Luke W. Goodrich
Christopher Pagliarella
The Beckett Fund for
Religious Liberty
1200 New Hampshire Ave. NW
Suite 700
Washington, DC 20036
(202) 955-0095
dblomberg@becketlaw.org
lgoodrich@becketlaw.org

Josh J. Minkler
United States Attorney
United States Attorney's Office
for the Southern District
of Indiana
10W.MarketSt., Suite 2100
Indianapolis, IN 46204

Thomas E. Wheeler
Stephanie V. McGowan
Frost Brown Todd LLC
201 N. Illinois Street, Suite 1900
Indianapolis, IN 46244

/s/ Thomas M. Fisher
Thomas M. Fisher
Solicitor General

Office of the Indiana Attorney General
IGC South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204
(317) 232-6255
Tom.Fisher@atg.in.gov