Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

IN THE SUPREME COURT OF MISSOURI

JOHN DOE 122,	)	
	)	
Plaintiff/Appellant,	)	
vs.	)	
	)	
MARIANIST PROVINCE OF THE UNITED STATES, and CHAMINADE COLLEGE PREPARATORY, INC.	)	Case No. SC98307
	)	
Defendants/Respondents.	)	

SUBSTITUTE REPLY BRIEF OF APPELLANT

Marci A. Hamilton, Esq.
36 Timber Knoll Drive
Washington Crossing, PA 18977
PHONE: (215) 353-8984
FAX: (215) 493-1094

Kenneth M. Chackes #27534
Ken Chackes, LLC
230 S. Bemiston Ave.
Suite 510
St. Louis, MO 63105
PHONE: (314)880-4465
FAX: (314)872-7017

ATTORNEYS FOR PLAINTIFF/APPELLANT

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

TABLE OF CONTENTS

Point 1 - *GIBSON V. BREWER* DOES NOT REQUIRE DISMISSAL OF NEGLIGENCE CLAIMS ……………………………………..2

Point 2 - SUMMARY JUDGMENT ON COUNT III WAS IMPROPER BECAUSE OF RESPONDENTS' FAILURE TO SUPPORT THEIR MOTION WITH STATEMENTS OF MATERIAL FACT ……………………..19

Point 3 - SUMMARY JUDGMENT ON COUNT III WAS IMPROPER BECAUSE RESPONDENTS' KNOWLEDGE THAT WOULFE WAS DANGEROUS IS A GENUINE ISSUE OF MATERIAL FACT ………………22

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Point 1

GIBSON v. BREWER DOES NOT REQUIRE DISMISSAL OF NEGLIGENCE CLAIMS

I. Respondents' Broad Claims of Immunity from Neutral, Generally Applicable Laws are Incompatible with the Supreme Court's First Amendment Doctrine and the United States' System of Ordered Liberty.

Respondents and their Amici argue for an expansive theory of religious liberty that would encompass the right to be immune from the law. Essentially, they are arguing that they have a right to autonomy from the law. *See* Respondents' Substitute Brief at 16-44; Brief of Amici Curiae the Thomas More Society and Christian Legal Society for Defendants/Respondents (hereafter "Brief of Respondents' Amici") at 4-45. Their arguments are based on a so-called doctrine of "church autonomy" that Respondents never raised in the courts below as a basis for their motion for summary judgment. *See* LF, D14 and D15 (Defendants' motion for summary judgment and memorandum in support thereof); Respondents' Brief (Mo. App. ED107767, Sept. 27, 2019). This argument is waived and should not be considered. *See J.A.R. v. D.G.R.*, 426 S.W.3d 624, 630 (Mo. 2014) (refusing to consider argument raised in appellant's substitute brief where the argument was not asserted in appellant's brief to the Court of Appeals); *see also* Mo. R. Civ. P. 83.08(b) (stating that a party's substitute brief "shall not alter the basis of any claim that was not raised in the court of appeals brief").

Even if this Court is inclined to consider the issue, the United States Supreme Court has never embraced such immunity or "autonomy" for churches. Instead, there is a long and unbroken history of the Court applying the Framers' intent for "ordered liberty."

See *McDonald v. City of Chicago*, 561 U.S. 742, 760-61, 764, 767, 778, 787 (2010); *Milkovich v. Lorain Journal Co*., 497 U.S. 1, 22 (1990); *Bowen v. Roy*, 476 U.S. 693, 701-02 (1986); *Gertz v. Robert Welch*, 418 U.S. 323, 341 (1974); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 500 (1965) (Harlan, J., concurring); *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949); *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), overruled by *Benton v. Maryland*, 395 U.S. 784 (1969).

Respondents' maximalist view of immunity would provide unqualified insulation from accountability for a range of harms, including child sex abuse. The Framers, however, never intended the First Amendment to provide an unrestricted license to engage in harmful conduct under the auspices of religious freedom. *See Reynolds v. United States*, 98 U.S. 145, 163 (1879) (discussing Madison's and Jefferson's view that "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order"). It was expected that religious institutions would conduct themselves in a manner consistent with the safety, peace, and order of the public. *See Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940) (The Free Exercise Clause "embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society."); *Boerne v. Flores*, 521 U.S. 507, 539–41(1997) (Scalia, J., concurring) (relying on state constitutional protections of free exercise at the time of the framing, and noting that "[r]eligious exercise shall be permitted so long as it does not violate general laws governing

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

conduct.")[1]; See also Marci A. Hamilton, *Religious Institutions, the No-Harm Doctrine, and the Public Good*, 2004 BYU L. REV. 1099 (2004).

In that same vein, the Supreme Court's Religion Clauses doctrine maintains that a claim of religious conviction alone does not automatically confer upon its proclaimant a right to be free from government regulation. *See e.g., Employment Div. v. Smith*, 494 U.S. 872, 878–79 (1990) ("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."); *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988); *Bowen v. Roy*, 476 U.S. 693, 701-02 (1986); *United States v. Lee,* 455 U.S. 252, 255 (1982).

The Supreme Court has consistently rejected broad claims of First Amendment immunity as inconsistent with our country's system of "ordered liberty." "[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." *See, e.g., Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972); *Prince v. Massachusetts,* 321 U.S. 158, 167 (1944) (upholding child labor laws against free exercise challenge); *Jacobson v. Massachusetts*, 197 U.S. 11, 26-27 (1905) (upholding vaccine mandate against religious

---

[1] Justice Scalia cited the Maryland Act Concerning Religion of 1649, negating a license to act in a manner "unfaithful to the Lord Proprietary;" the Rhode Island Charter of 1663, requiring people to "behave" in a "peaceable and quiet" manner; the earliest New York, Maryland, and Georgia Constitutions, prohibiting interference with the "peace [and] safety of the State;" the first New Hampshire Constitution, forbidding anyone from "disturb[ing] the public peace;" and the Northwest Ordinance of 1787, prohibiting citizens from "demean[ing]" oneself in other than a "peaceable and orderly manner."

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

liberty challenge); *Reynolds*, 98 U.S. at 166-67 ("Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."). The Religion Clauses reflect a "no-harm" principle that makes harm to others a limit on free exercise. *See generally*, Marci A. Hamilton, *Religious Institutions, the No-Harm Doctrine, and the Public Good*, 2004 BYU L. REV. 1099, 1194-95 (2004). It is the foundation of our criminal and tort laws that prohibit third-party harm and promote the common good over that of the individual. Marci A. Hamilton, *The Waterloo for the So-Called Church Autonomy Theory: Widespread Clergy Abuse and Institutional Cover-Up*, 29 CARDOZO L. REV. 232, 233 (2007).

II. Respondents May Be Held Accountable for Third-Party Harms Under Neutral Principles of Law

Respondents concede that the neutral principles concept articulated in *Jones v. Wolf,* 443 U.S. 595 (1979), may indeed be applied to religious defendants. *See* Respondents Substitute Brief at 29. Here, the torts of negligent supervision may be applied to Respondents' conduct without violating First Amendment principles, as Respondents have erroneously argued it would. *See* Respondents Substitute Brief at 29 (making the perplexing argument that "[f]or a court to dictate the extent to which a religious organization must perform background investigations on and supervise clergy-to-be would inevitably require the state to involve itself in quintessentially religious minutiae.").

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

The First Amendment's Religion Clauses are not a refuge for illegal or tortious conduct that harms children. The Supreme Court's settled doctrine makes clear that Respondents' religious beliefs alone do not mitigate their legal obligation to avoid hurting others. *See, e.g., Smith*, 494 U.S. 872; *Bowen*, 476 U.S. 693 at 701-02; *Lyng*, 485 U.S. 439 at 447-453; *Lee*, 455 U.S. 252 at 261; *Cantwell*, 310 U.S. 296. The First Amendment does not preclude courts from hearing claims invoking generally applicable, neutral principles, where the law can be applied in a neutral manner to religious conduct and not just beliefs. *See Wolf,* 443 U.S. 595 at 604. As explained by the Supreme Court, "Beliefs are absolutely protected, which leaves courts the task for which they are best equipped: applying 'neutral principles of law' to findings of fact regarding actions." *Id.* Indeed, "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods." *Id*. at 606.

The Supreme Court has routinely held religious actors accountable for illegal conduct or third-party harms under a variety of generally applicable, neutral laws. *See, e.g., Smith*, 494 U.S. 872 (drugs and unemployment compensation); *Lee*, 455 U.S. 252 (social security taxes); *Wolf*, 443 U.S. at 604 (church property dispute); *Gillette v. United States*, 401 U.S. 437 (1971) (military conscription); *Braunfeld v. Brown*, 366 U.S. 599 (1961) (Sunday closing laws); *Reynolds,* 98 U.S. 145 (polygamy). Conversely, if a law is designed to target a religious entity for negative treatment, it is subjected to heightened scrutiny. *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 523, 547

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

(1993) (holding city ordinance banning animal "sacrifice" but not outlawing other means of killing animals violates the First Amendment).

However, Respondents fail to identify any support that negligent tort laws were enacted with a focus on religion. *See*, by comparison, *Lukumi,* 508 U.S. 520 at 532 (finding that an ordinance that singled out the activities of the Santeria faith, such that only conduct tied to specific religious belief was burdened, violated the First Amendment). Rather than focusing on the methods of supervising clergy, Appellants' claims are rooted in the duty to supervise and protect children. The question in a negligent failure to supervise claim is, assuming Respondents knew or should have known that children within their care were in danger of sexual abuse, and also had the authority and ability to protect those children from that danger, was Respondents' supervision reasonable in light of the foreseeable risk. The resolution of questions of reasonableness does not implicate any Free Exercise or Establishment Clause concerns, as Respondents and their Amici suggest. *See* Brief of Respondents' Amici at 39-41 (Appellants disagree that the, ". . . implementation [of negligent tort law] will trench on church autonomy, specifically, *redefining the office of bishop*" or ". . . expose [the Respondents] to lawsuits that un*dermine the church's ability to choose how it defines its leaders and administers the faith*.") (emphasis added).

Negligence is determined according to an objective standard of reasonableness. *See, e.g., Pierce v. Platte-Clay Elec. Co-op., Inc*., 769 S.W.2d 769, 772 (Mo. 1989) ("Duty of care is an objective standard determined by what an ordinary careful and prudent person would have done under the same or similar circumstances."); MAI 11.02

("'[N]egligence' as used in this [these] instruction[s] means the failure to use that degree of care that an ordinarily careful person would use under the same or similar circumstances"). One who has custody or control of children, owes them a duty to supervise and protect them from danger. *Smith v. Archbishop of St. Louis*, 632 S.W.2d 516 (Mo.App. E.D. 1982). In a claim of negligent supervision of a child, "the decisive factor in finding a duty to supervise turns on 'the obligation and ability to supervise and control the child, not the instrumentality that causes the harm.'" Daniel N. McPherson, *Missouri Law on Negligent Supervision*, 59 Journal of the Missouri Bar 127 (May/June, 2003).

The court need not interpret any doctrine, nor otherwise impermissibly entangle itself with religion to conclude that Respondents had a duty to supervise and failed to do so. Conversely, failing to hold religious employers accountable for their failure to supervise their employees would grant immunity in favor of religious entities, which the state may not do.

III. Respondents are not Immunized From Tort Liability Under the Free Exercise Clause of the First Amendment

The Free Exercise Clause does not "incorporate" a so-called "church autonomy doctrine" that shields religious actors from judicial oversight, as Respondents attempt to argue. *See* Respondents' Substitute Brief at 17-24. Adjudication of Appellant's claims has no bearing on Respondents' "freedom to select the clergy" or determination of the "essential qualifications" of the same, nor will it interfere with "matters of faith and

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

doctrine." *Id*. The Supreme Court's Free Exercise cases cited by Respondents and their Amici, involving exclusively *intraorganizational* disputes, are thus not on point.

To raise a Free Exercise claim, Respondents bear the burden of establishing that negligence-based tort laws impose a substantial burden on their exercise of a sincerely held religious belief. *See Smith*, 494 U.S. at 879; *Yoder*, 406 U.S. 205 at 215; *Sch. Dist. v. Schempp*, 374 U.S. 203, 223 (1963).

Appellants' negligent supervision claims involve the limited issue of whether the Respondents' were negligent when they placed a child abuser in an unsupervised position where he had unfettered contact with students and the ability to isolate them. There is no substantial burden on any religious belief of Respondents imposed by the neutral, generally applicable law of negligent supervision in the context of prevention of child sex abuse. *See, e.g., Redwing v. Catholic Bishops for the Diocese of Memphis*, 363 S.W.3d 436 (Tenn. 2012); *Malicki v. Doe*, 814 So.2d 347, 354 (Fla. 2002). Respondents make no claim that church doctrine condones, much less requires, putting children at risk of sexual abuse. Therefore, Respondents have no basis upon which to challenge negligent supervision claims under the Free Exercise Clause.

Assuming the Respondents *could* articulate some burden, Supreme Court precedent requires deference to, and application of, valid, neutral laws of general applicability even if the laws incidentally burden religious conduct. *See Lee*, 455 U.S. 252 at 263 ("The 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).").

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Though the nation's highest court has yet to address the issue of whether religious institutions can be held liable for tort claims arising from their employees' conduct, the highest courts to address the issue have held religious organizations liable under the First Amendment for sexual misconduct by their clergy. *See, e.g.,*; *Byrd v. Faber,* 565 N.E.2d 584 (Ohio 1991) ("While even the most liberal construction of the First Amendment will not protect a religious organization's decision to hire someone who it knows is likely to commit criminal or tortious acts, the mere incantation of an abstract legal standard should not subject a religious organization's employment policies to state scrutiny. . . . [A] plaintiff bringing a negligent hiring claim must allege some fact indicating that the religious institution knew or should have known of the employee's criminal or tortious propensities."); *Smith v. Privette*, 495 S.E.2d 395, 398 (N.C. Ct. App. 1998) ("The Plaintiffs' claim [. . .] presents the issue of whether the Church Defendants knew or had reason to know of Privette's propensity to engage in sexual misconduct, conduct that the Church Defendants do not claim is part of the tenets or practices of the Methodist Church. Thus, there is no necessity for the court to interpret or weigh church doctrine in its adjudication of the Plaintiffs' claim for negligent retention and supervision." (Citation omitted.)); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*,196 F.3d 409, 431-32 (2d Cir. 1999); *Dausch v. Rykse,* 52 F.3d 1425, 1428 (7th Cir. 1994); *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 985 P.2d 262 (Wash. 1999); *Doe v. Liberatore, 478 F. Supp.* 2d 742, 774 (M.D. Pa. 2007); *Doe v. Archdiocese of Denver*, 413 F. Supp. 2d 1187, 1194-95 (D. Colo. 2006); *Malicki*, 814 So. 2d 347 at 351 ("[I]t appears that the Free Exercise Clause is not implicated in this case because the conduct sought to be regulated,

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

that is, the Church Defendants' alleged negligence in hiring and supervision is not rooted in religious belief. Moreover, even assuming an 'incidental effect of burdening a particular religious practice,' the parishioners' cause of action for negligent hiring and supervision is not barred because it is based on neutral application of principles of tort law." (quoting *Lukumi* 508 U.S. at 531, 113)); *Fortin v. Roman Catholic Bishop of Portland,* 871 A.2d 1208, 1232 (Me. 2005); *Petrell v. Shaw*, 902 N.E.2d 401, 406 (Mass. 2009); *Odenthal v. Minnesota Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 436 (Minn. 2002); *Roman Catholic Diocese v. Morrison*, 905 So. 2d 1213, 1242-43 (Miss. 2005); *McKelvey v. Pierce*, 800 A.2d 840, 850, 857-58 (N.J. 2002); *Turner v. Roman Catholic Diocese of Burlington*, 987 A.2d 960, 972-73 (Vt. 2009); *Redwing*, 363 S.W.3d 436, 452 ("Claims against a religious institution asserting the negligent hiring of a member of the clergy do not inevitably enmesh the courts in religious doctrine or dogma.").

Respondents have no right to immunity from the law of negligent supervision under the Free Exercise Clause or any other First Amendment principle.

IV. The Doctrine of Judicial Abstention Does not Grant Immunity to Respondents for the Secular Harm They Caused by Committing Secular Torts

Respondents and their Amici attempt to draw a sexual abuse case under the umbrella of the judicial abstention doctrine by claiming that adjudication by civil courts necessarily requires inquiry into the church's "internal affairs." *See* Respondents' Substitute Brief at 26-27; Brief of Respondents' Amici at 21-29. However, none of the

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

essential requisites that would otherwise entitle a religious defendant to immunity under the doctrine are met in this case.

Under the Religion Clauses, the Supreme Court has crafted a doctrine of judicial abstention that precludes courts from interfering in religious disputes if they are: (1) between internal factions of the church body; or (2) where the parties have impliedly consented to be bound by the church governance; or (3) where the dispute is governed by controverted questions of faith; and where the church doctrine does not "violate the laws of morality and property and . . . does not infringe personal rights." See *Watson v. Jones*, 80 U.S. 679, 727 (1871); see also *Wolf*, 443 U.S. 595. The Supreme Court's overriding concern is to prevent courts from determining or directing religious entities and their believers what to believe. This concern does not extend to circumstances where the question is whether the religious organization has engaged in conduct that harmed others.

The Court recognizes an absolute right to be free from jurisdictional oversight for claims that arise from *intraorganizational* disputes based *solely* on ecclesiology or belief. *Watson* at 728-29. The Court has also shielded churches from lawsuits brought by clergy or ministers against the organization for discrimination claims, but has not extended that shield to other disputes between clergy and the church. See *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171, 196 (2012) ("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."). The "ministerial exception" is quintessentially about the right to set the boundaries between an organization and its clergy. The religious organization's right to discriminate against

employed ministers does not imply at its farthest reach a right to permit ministers to endanger children.

The Court has declined to apply the doctrine to cases that may be resolved through neutral principles of law, even those involving religious institutions or religiously motivated conduct, because the harm resulting from actions must be redressed or prevented to serve the public good. See *Wolf,* 443 U.S. 595 at 604; see also *Boerne*, 521 U.S. 507 at 539 (Scalia, J., concurring) ("Religious exercise shall be permitted so long as it does not violate general laws governing conduct."); *Smith*, 494 U.S. 872 at 885 ("[I]t is hard to see any reason in principle or practicality why the government should have to tailor its health and safety laws to conform to the diversity of religious belief . . . ."); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) (reserving the question of whether there may be an exception where civil courts may review ecclesiastical decisions in instances of fraud or collusion, while holding there is no exception for arbitrary decisions); *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (noting that civil courts are the proper tribunals for resolving internal church property disputes where those disputes may be resolved by "neutral principles of civil law.").

Here, Respondents cannot claim immunity under the judicial abstention doctrine because none of the essential requisites under *Watson* and *Jones* are met in cases of clergy sex abuse.

First, judicial abstention does not apply to purely secular disputes between a third-party and a religiously-affiliated organization because there is no risk of the courts

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

becoming entangled in religious controversies or intervening on behalf of groups espousing doctrinal beliefs. See *Gen. Council on Fin. & Admin., United Methodist Church v. Cal. Superior Court*, 439 U.S. 1369, 1372-73 (1978). Nor does this case involve questions of faith, church law, policy or practice. The question is whether an employer let an employee endanger a child, and the facts about such decisions don't turn on faith but rather conduct. When a religious actor causes secular harm in violation of a third-party's legal and civil rights, the Respondents claim to immunity must fail under the *Watson* analysis. The touchstone of this case is the harm to the Appellant, as well as the health and safety of all children, and not the identity of the wrongdoers.

Accordingly, any claim to immunity under the judicial abstention doctrine by Respondents is a legal illusion. As the Supreme Court has repeatedly concluded, the First Amendment was never intended to prohibit state action for the punishment of acts inimical to the peace, good order, and morals of society. *Bob Jones Univ. v. United States*, 461 U.S. 574, 603-05 (1983); *Lee*, 455 U.S. 252; *Cantwell*, 310 U.S. 296; *Davis v. Beason*, 133 U.S. 333 (1890). That is precisely why the limitations on the judicial abstention doctrine are constitutionally required.

V. The Court's Application of Neutral Principles of Tort Law to Respondents' Conduct Does not Violate the Establishment Clause

Respondents and their Amici erroneously argue that subjecting a religious institution to civil claims of negligent supervision would be tantamount to attempting to regulate its ecclesiastical polices, principles, and procedures. *See* Respondents' Substitute Brief at 27, 29; *see also* Brief of Respondents' Amici at 38-39.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

The Establishment clause states, "Congress shall make no law respecting an establishment of religion." U.S. CONST. AM. 1. The Clause "aim[s] to foster a society in which people of all beliefs can live together harmoniously." *Am. Legion v. Am. Humanist Ass'n,* 139 S. Ct. 2067, 2067 (2019). To achieve this purpose, individuals and entities alike must be held accountable to society for their actions that harm others. The tort laws that require religious actors to avoid negligently placing children at risk of abuse must be enforced in order to keep society's children safe.

The Supreme Court defined the parameters of the Establishment Clause in *Lemon v. Kurtzman*, 403 U.S. 602, 612-613 (1971). In *Lemon*, the Court held that a state action does not violate the Establishment Clause if such action: 1) has a secular purpose; 2) has a primary effect which neither advances nor inhibits religion; and 3) does not foster excessive state entanglement with religion. *Id.*

The first two prongs are not implicated here. *Lemon*, 403 U.S. 602 at 612. This case involves common law tort rights which serve a clear secular purpose—the protection of children from predatory behavior of employees and their employers' negligence—and the primary effect of the same neither advances, nor inhibits religion, because the church is simply held to the same standard as any other entity. Therefore, Respondents claim to immunity hinges on whether resolution of the case would involve excessive governmental entanglement with religion.

To be clear, the First Amendment has always permitted some religious entanglement; only "excessive" entanglements, those that are "comprehensive, discriminating, and continual, are prohibited." *Id.* at 619. In *Lemon*, the Court was

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

primarily concerned that the government action might have "self-perpetuating and self-expanding propensities" thereby creating ongoing government involvement. *Id*. at 624. This case only requires the court to make a limited finding—whether Respondents negligently supervised a predatory employee (Count II) or its students (Count IV). There is no threat or necessity for ongoing involvement in the church's employment decisions. Therefore, there is no excessive entanglement concern.

Conversely, if the court were to grant Respondents absolute immunity from tort law liability under a First Amendment defense, where it would not grant the same to secular actors, this would itself raise Establishment Clause concerns. *Texas Monthly v. Bullock*, 489 U.S. 1 (1989); *Larkin v. Grendel's Den, Inc.,* 459 U.S. 116 (1982). Such immunity would serve no secular purpose, and would certainly have the primary effect of advancing the interests of the church.

VI. Even if Respondents Were Protected by the First Amendment in Some way for Endangering Children, Appellant Should Prevail Because There is a Compelling Interest in Protecting Children From Sexual Abuse

Respondents' Amici wrongly contend that "[t]here is no basis in the U.S. Supreme Court case law for a 'third-party harm' exception to church autonomy." *See* Brief of Respondents' Amici at 38-42. The Supreme Court has *continuously* rejected an absolute right to religious freedom where 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); *Lee*, 455 U.S. 252 at 261 (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*., 573 U.S. 682, 739 (2014) (stating that religious accommodations must consider interests of third-party employees).

Though the rights of religious organizations are important, in the context of child sexual abuse, the state's interest in the protection of children must outweigh those rights. Undoubtedly there is great societal interest in protecting the well-being of children. *See Packingham v. North Carolina,* 137 S. Ct. 1730, 1740 (2017); (Protecting children from sexual misconduct is a "government objective of surpassing importance."); *Maryland v. Craig*, 497 U.S. 836 (1990) ("[i]t is evident beyond the need for elaboration that a State's interest in safeguarding the physical and psychological well-being of a minor is compelling.); *Bellotti v. Baird,* 443 U.S. 622 (1979) (recognizing that the "peculiar vulnerability" of children may curtail otherwise protected rights of adults); *Prince v. Massachusetts,* 321 U.S. 158, 167 (1944); ("[P]rotecting children from abuse is a compelling state interest.").

History illustrates the profound harm that can be done when religious institutions abuse broad constitutional freedoms. The church's problems have shown, repeatedly, how the concealment of predators increases danger to all children. MARCI A. HAMILTON, JUSTICE DENIED: WHAT AMERICA MUST DO TO PROTECT ITS CHILDREN, 30 (CAMBRIDGE U. PRESS 2012)(hereafter "JUSTICE DENIED") (highlighting a study that tracked recidivism among 197 convicted child molesters and found that 42% of offenders were convicted of a subsequent violent or sexual crime); *id*. at 30-31 (noting that perpetrators

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

typically prey on children throughout their entire lives); *id*. at 114 ("Each time a predator priest has been given the hierarchy's blessing to move onto the next assignment and to 'sin no more,' while the public was told nothing about the priest's record, new children were fondled, raped or sodomized.").

Respondents' Amici Brief argues:

> The tort of negligent supervision imposes an assumption by the finder of fact [. . .] that certain training and the manner of being a bishop or other religious leader is deviated from only upon risk of suffering a judgement for damages. Even the threat of such a lawsuit and its attendant penalty in damages is chilling.

Brief of Respondents' Amici at 38. Appellants argument is precisely that -- we must rely on deterrence vis-a-vis imposition of legal liability in order to "chill" the sexual abuse of children by religious actors.

Justice for victims of the past, therefore, is also an opportunity to prevent current harms. If survivors can bring their claims before a court and religious organizations held legally accountable for the harms they inflict, then children will be protected and religious organizations deterred from putting them at risk. JUSTICE DENIED at 30. The Court must remove this artificial barrier to neutral and generally applicable tort laws that continues to shield religious institutions from accountability for their knowing, reckless, and negligent behavior towards Missouri's children. *Id*. at 36.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Point 2

SUMMARY JUDGMENT ON COUNT III WAS IMPROPER BECAUSE OF RESPONDENTS' FAILURE TO SUPPORT THEIR MOTION WITH STATEMENTS OF MATERIAL FACT

Respondents fail to refute Appellant's argument that Respondents' Motion for Summary Judgment is deficient for failing to state any "uncontroverted material facts" regarding Count III. *See* Substitute Brief of Appellant, Point 2, at 41-46; Respondents' Substitute Brief at 33-39. The only so-called "material facts" Respondents stated in support of their motion Count III are statements about Plaintiff's deposition testimony regarding his personal knowledge:

> 38. Plaintiff admitted during his deposition that he has no knowledge to support his allegation that Woulfe had sexually assaulted at least one other boy at Chaminade before assaulting Plaintiff. (Plaintiff's Depo. Tr., Ex. B, Vol. II, p. 491:5-12, 18-25).
> 39. Plaintiff admitted that he has no personal knowledge of Woulfe watching other boys masturbate (Ex. B, Vol. II, p. 476:13-22); and that while he was at Chaminade, he never heard even any rumors of any alleged inappropriate sexual contact between Woulfe and other students (Ex. B, Vol. II, p. 317:2-5; 337:1-7).
> 40. Plaintiff explicitly agreed that he has no information that Chaminade or the Marianist Province knew Woulfe was abusing children before he allegedly abused Plaintiff. (Ex. B, Vol. II, p. 493:21 – 494:7).
> 41. Plaintiff has no information that any of Woulfe's supervisors were ever made aware of Woulfe allegedly abusing any student at that time (Ex. B, Vol. II, p. 406:22 – 407:1; 496:2-7), and during Plaintiff's conversation with Fr. Solma, there was no indication that Chaminade or the Marianist Province knew in 1971 that Woulfe had abused other boys. (Ex. B, Vol. II, p. 407:2-7; 495:21 – 496:1).
> 42. Plaintiff testified that is not even aware of any other individuals who claim to have personal knowledge that Chaminade or the Marianist Province knew Woulfe had abused children before he allegedly abused Plaintiff. (Ex. B, Vol. II, p. 494:8-20).

LF, D16 at 6-7, ¶¶38-42.

Respondents tacitly admit that they stated no material facts regarding Count III when they state: "while testimony may not, itself, be a material fact, that testimony can ***support*** a material fact." Respondents' Substitute Brief at 36 (emphasis in original). Respondents also state: "Respondents cited Appellant's deposition as supporting the ***material fact*** that he has no evidence from which a reasonable jury could find the following essential elements: (1) that Respondents 'knew that harm was certain or substantially certain to result;' and (2) that Respondents disregarded a 'known risk.'" *Id.* (emphasis in original). Respondents do not even argue that any of the statements in paragraphs 38-42 are statements of material fact.

Instead, Respondents assert that Plaintiff's testimony about his lack of personal knowledge "constitutes an admission" that no evidence exists. *Id.* But a review of the deposition testimony that Respondents cite shows clearly that Plaintiff's testimony was only about his personal knowledge, and, therefore, is not an admission. *See* D18, Vol. II, 317:2-5; 337:1-7; 406:22 - 407:7; 476:13-22; 491:5-12, 18-25; 493:21 - 494:20; 495:21 – 496:7 (Cited in Respondents' Substitute Brief at 36-37). In fact, Respondents' attorney specifically directed Plaintiff to exclude information known to his attorney:

> 21 Q. Do you have any evidence or information
> 22 that Chaminade and Marianist knew Woulfe was abusing
> 23 children before he allegedly abused you?
> 24 A. I personally do not.
> 25 **Q. And apart from your lawyer, do you have**
> 1 **any information that any other individuals may have**
> 2 **knowledge about that claim?**
> 3 A. I have no proof.
> 4 Q. Okay.
> 5 A. Personally.
> 6 Q. No personal knowledge?

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

7 A. Right.
8 Q. And you're not aware of any other
9 witnesses or folks who say they have knowledge that
10 Chaminade and Marianist knew Woulfe was abusing
11 children before plaintiff, before you?
12 A. Okay. Say that again.
13 Q. Sure. **You're not aware of -- put aside**
14 **Ken Chackes your lawyer for a minute.**
15 **A. Okay.**
16 **Q. You're not aware of any other**
17 **individuals who say they have personal knowledge**
18 **about the Marianists or Chaminade knowing Woulfe had**
19 **abused kids, students before you?**
20 **A. Well, no.** I know that there were other
21 people who responded to Solma's letter stating that
22 there was abuse. I don't know who they are.

D18, Vol. II, 493:21 –494:20.

Respondents also assert: "Appellant admitted that he had no such knowledge in his summary judgment pleadings. (D25, at 9-11, ¶¶ 38-42)." Respondents' Substitute Brief at 37. Rather than making admissions, Appellant provided this response to each of Respondents' statements about Plaintiff's testimony: "Disputed. Not disputed as to Plaintiff's personal knowledge. But see Plaintiff's Statement of Additional Facts ¶¶ 6-28 below, regarding the evidence about other Chaminade students sexually assaulted by Woulfe that is known to but ignored by Defendants." LF, D25, at 9-11, ¶¶ 38-42.

That Plaintiff had no personal knowledge of evidence to support an element of his case is not a material fact, is not an admission, and is not proof of absence of evidence. Therefore, summary judgment on Count III should have been denied for failure to comply with Rule 74.04.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Point 3

SUMMARY JUDGMENT ON COUNT III WAS IMPROPER BECAUSE RESPONDENTS' KNOWLEDGE THAT WOULFE WAS DANGEROUS IS A GENUINE ISSUE OF MATERIAL FACT

In their response to Point 3, Respondents' Substitute Brief mischaracterizes or ignores much of Appellant's evidence and arguments.

A. Respondents Mischaracterize the Evidence Regarding Prior Notice as "Pure Speculation."

Respondents begin with four erroneous and/or misleading contentions to support their conclusion that "Appellant Relies on Nothing More Than Pure Speculation." Respondents' Substitute Brief at 41-42.

1. Evidence that Respondents had Prior Notice that Woulfe was Dangerous is not Limited to Woulfe's Personnel File.

Respondents contend: "Appellant's ***only*** 'evidence' of Respondents' alleged prior notice constitute excerpts from Woulfe's personnel file." *Id.* at 41 (emphasis in original). That contention is easily refuted by a review of the evidence of prior notice described in Appellant's Statement of Facts (Substitute Brief of Appellant at 3-12), Appellant's Argument on Point 3 (*Id.* at 48-60), and, in the trial court, in Plaintiff's Statement of Additional Facts (LF, D25 at 12-20) and the exhibits attached thereto (LF, D26-D41).

Contrary to Respondents' statement, the evidence of prior notice also includes deposition testimony and affidavits:

- Deposition testimony establishing that statements in Woulfe's file regarding requirements of "religious life," could be referring to violations of the vow of

chastity, as that is one of the requirements of a "religious life."[2] LF, D38 at 11-18, 46.

- Deposition testimony from a Marianist official that he could not explain why Woulfe's records never explicitly mention reports of sexual abuse. LF, D38 at 15-16, 46.
- Affidavits from former students stating they were sexually abused by Woulfe and reported it to Marianist officials in 1971. LF, D63 and D67.
- Deposition testimony from a Marianist Brother that he received a report of Woulfe's sexual abuse from another student in the mid-1970s. LF, D40 at 27-35.
- Deposition testimony establishing that Woulfe was removed from Chaminade in the 1976-1977 school year due to a report of sexual abuse, whereas the statements in Woulfe's personnel file pertaining to that time period and removal indicate nothing about sexual abuse, but only refer to Woulfe not improving "in the religious life aspects," and "a school problem because of some professional negligence." *See* LF, D38 at 36-37, 44 (Hakenewerth); LF, D41 at 6-7 (Osborne); LF, D29 at 57-60 and D39 at pp. 11-14 (records).

[2] Father Hakenewerth testified that the term "**religious life**" includes the keeping and observance of the vows, including the vow of chastity, and that making a sexual advance toward a student would violate the vow of chastity. LF, D38 at 11-18, 46.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

2. Appellant Never Admitted he had no Evidence that Woulfe's Abused Other Students, or that Woulfe's Supervisors had no Information About Such Abuse.

Respondents' second misleading assertion is that "Appellant admitted that he had no knowledge of any sexual contact between Woulfe and other students, or that Woulfe's supervisors had any information about any such alleged sexual contact." Respondents' Substitute Brief at 41.

Respondents contend that Appellant's deposition testimony constitutes admissions of those facts. As discussed above, the statements which Respondents claim are "admissions" are all limited to whether he had personal knowledge of those matters. *See* above at 20-21. Respondents also mischaracterize as "admissions" Appellant's responses to Respondents' statements of fact pertaining to Woulfe's abuse of others and his supervisors' knowledge thereof. Rather than admitting Respondents' factual allegations, however, Appellant disputed each one, and directed Respondent to the evidence obtained in discovery. Appellant's D25, at 9-11, ¶¶ 38-42. *See* above at 21. Those responses clearly are not admissions that Appellant has no evidence of prior notice.

3. Reports of Woulfe's Sexual Abuse of Other Students After Plaintiff was Abused are Relevant to Prior Notice.

Respondents' third misleading assertion is that with respect to Appellant's evidence that "Respondents received reports of allegations of sexual abuse by Woulfe in late 1971 and in 1974 or 1975 . . . none of these allegations goes to ***prior*** notice as it is undisputed that Appellant claims to have been sexually abused by Woulfe in the spring of 1971." *Id.* at 41, n.13 (emphasis in original). That contention ignores two important facts:

(1) none of those reports of Woulfe's sexual abuse are mentioned in Respondents' records and (2) Woulfe's records contain similar descriptions of his problem behaviors before and after those known reports of abuse. *See* Substitute Brief of Appellant at 3-12. That evidence, even without the testimony of Father Doyle, supports the reasonable inference that Respondents knew Woulfe was abusing students before he abused Plaintiff.

Additional factual evidence supplied by Doyle that also supports that inference includes:

- The ***facts***, attested to by Father Doyle, based upon his extensive experience reviewing personnel files of Catholic clergy perpetrators of sexual abuse, that

  > [P]roblems such as alcohol abuse, absence from community meals, spiritual exercises or relationships with women are addressed directly. If the cleric or brother is involved with minors of either gender, it is not addressed directly. Rather, various forms of coded language are used.

  LF, D33 at 4, ¶11.e.

- The ***facts***, also from Doyle's testimony, that:

  > In the documentation that is habitually used by religious superiors and bishops and other clerics that I've reviewed over three decades, they never -- I've never seen sexual abuse of minors directly referred to with the proper direct language.
  >
  > It's always referred to in some form of coded or euphemistic language that is covering up or massage -- or masking what the reality is . . . .

  LF, D37 at 69, lines 8-15.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

4. Appellant Does not Rely Solely on the Conclusions of Father Doyle and Respondents Mischaracterize Doyle's Testimony.

Respondents' fourth incorrect and misleading statement in response to Point 3 is that "Appellant relies ***solely*** on the speculative and unfounded conclusions of his expert witness Father Thomas Doyle to extrapolate that 'euphemistic or coded language' in Woulfe's personnel file must constitute references to sexual abuse." *Id.* at 41-42 (emphasis added).

First, Appellant is not relying "***solely***" on Doyle's testimony as evidence of Respondent's prior notice that Woulfe was dangerous. Respondents' assertion to that effect is contradicted by Respondents' other assertion that "Appellant's ***only*** 'evidence' of Respondents' alleged prior notice constitute excerpts from Woulfe's personnel file." *Id.* at 41 (emphasis in original). Secondly, as discussed immediately below, Respondents mischaracterize Doyle's testimony.

B. Father Doyle's Testimony is Admissible.

Respondents' argument that Doyle's testimony is purely speculative and inadmissible is also misleading and not fully responsive to Appellant's argument to the contrary. *See* Respondents' Substitute Brief at 42-44. Appellant's opening brief describes Doyle's testimony and argues that it is admissible both as to facts he has observed and his expert opinions in connection with the Catholic Church's uniform practices with respect to clergy abuse of minors. *See* Substitute Brief of Appellant at 5-6, 8 (Statement of Facts) and 51-60 (Argument). *See also* Brief of Amici Curiae Missouri Coalition Against Domestic and Sexual Violence and SNAP for Plaintiff/Appellant at 11-12.

Respondents, however, focus their argument regarding the admissibility of Doyle's testimony on his opinions, and ignore the facts to which he testified. The Majority Opinion of the Court of Appeals does the same thing. Opinion at 16-20. Respondents do not dispute Appellant's argument that "Mo. Rev. Stat. §490.065 . . . allows both opinion and factual testimony." Substitute Brief of Appellant at 51-52.[3] The factual testimony that Respondents ignore relates to Doyle's observation that in the personnel files of Catholic clergy that he has reviewed the topic of sexual abuse of minors is never addressed explicitly but instead is referred to in coded or euphemistic language, whereas "problems such as alcohol abuse, absence from community meals, spiritual exercises or relationships with women are addressed directly." *Id*. at 5-6. Doyle clearly is competent to provide that factual evidence. Doyle has extensive knowledge and experience relating to clergy sexual abuse in the Catholic Church. *See id.* at 51-52, 54-60; *see also* Brief of Amici Curiae Missouri Coalition Against Domestic and Sexual Violence and SNAP for Plaintiff/Appellant at 12.

Doyle also testified to his opinion that Woulfe's supervisors knew he was sexually abusing students before he abused Appellant in the 1970-71 school year. Doyle's opinion "is based on sufficient facts or data" as required by §490.065.2(1)(b), including the fact that Catholic clergy personnel files never explicitly address child sexual abuse and the

[3] Appellant quoted the previous version of the statute in his Substitute Brief, but the current version also contains the relevant language that a qualified expert "may testify in the form of an opinion or otherwise." §490.065.2(1) (2017).

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

facts that in the years prior to Woulfe's sexual abuse of Appellant, Woulfe's records include statements from his supervisors indicating:

- In 1968 Woulfe was transferred to Chaminade from St. Boniface High School, where "things did not work out more appropriately," and describing the transfer as an "unusual situation" that might help Woulfe "to confront and overcome the problem, which if left untended, would eventually become a serious one for religious life." *Id.* at 4.
- In 1969 Woulfe's evaluations indicate he was "not good as a dormitory prefect because he is always running away with his other preoccupations" and he "should be replaced in the dormitory next year." *Id.* at 6.
- In 1970 Woulfe's superiors attempted to remove him from Chaminade and described the "unfortunate circumstances connected with the change." Woulfe objected to the move, indicating that "[n]obody knows why I am being changed," describing the "emotional turmoil which will exist," while acknowledging that he "will need a fresh start, away from Chaminade in order that the pain can be erased" and conceding "I have always admitted that I did not live faithfully day to day the externals of Religious Life." Woulfe's supervisors relented "with considerable misgivings and reservations," and allowed him to stay at Chaminade for the 1970-71 school year, the year during which he abused Appellant. *Id.* at 6-8.

Doyle's conclusion that Respondents had prior knowledge is also based on the facts pertaining to the subsequent reports by students to Woulfe's supervisors that he was

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

sexually abusing them. Woulfe's personnel records contain no mention of reports made by three students to Woulfe's supervisors between 1971 and 1975. When Woulfe's supervisors finally removed him from Chaminade in the 1976-77 school year, which they admit was due to a report that he made a sexual advance to a student, Respondent's records describe the reasons for his removal in euphemistic terms similar to those used prior to Woulfe's abuse of Appellant: "Woulfe has not improved in the religious life aspects;" it is a "problem because of some professional negligence;" and it involves aspects of Woulfe's "religious life." *Id.* at 10-11. In addition, Woulfe's records make it clear that his superiors were not sharing with other members of the Chaminade community the "real reasons" for his removal. *Id.* at 11.

Respondents do not challenge many of Appellant's arguments regarding the admissibility of Doyle's testimony. Appellant argued in his opening brief:

- "[P]roof of knowledge, like any mental state, can be inferred from circumstantial evidence." *See* Substitute Brief of Appellant at 49-50.
- Missouri Courts allow expert witnesses to testify about a defendant's knowledge of risk of harm to children in criminal prosecutions for child endangerment. *Id.* at 52-53.
- Respondents' sweeping statement that witnesses may not "comment on another person's intent and state of mind" is overly broad and does not accurately reflect Missouri law (citing cases in which expert witnesses were allowed to testify to a decedent's susceptibility to undue influence in a will contest and to render

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

opinions regarding the context of events, even when the opinion relates to a party's mental state). *Id.* at 54

- Doyle is competent to provide factual evidence regarding the personnel records of Catholic clergy. *Id.* at 54-55.

Doyle's factual and opinion testimony is admissible as it is based on his "specialized knowledge" and it "will help the trier of fact to understand the evidence or to determine a fact in issue." Mo. Rev. Stat. §490.065.2. Even if the Court were to determine that Doyle's opinions are inadmissible, his factual testimony is clearly admissible and supports Appellant's argument that the issue of Respondents' prior notice of Woulfe's danger is a disputed issue of fact precluding summary judgment. This Court should therefore reverse the trial court's summary judgment on Count III.

CONCLUSION

The judgment of the Circuit Court should be reversed and this matter remanded for further proceedings, allowing Appellant to pursue his claims of Negligent Supervision (Count II), Negligent Supervision of Children (Count IV), and Intentional Failure to Supervise (Count III).

CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing Reply Brief of Appellant complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 7648 words as determined by MS Word. The foregoing Brief also complies with Supreme Court Rule 55.03.

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Electronically Filed - SUPREME COURT OF MISSOURI - April 24, 2020 - 04:36 PM

Respectfully submitted,

/s/ Kenneth M. Chackes
Kenneth M. Chackes, MO Bar #27534
Ken Chackes, LLC
230 S. Bemiston Ave., Suite 510
St. Louis, Missouri 63105
Phone: (314) 880-4465
Fax: (314) 872-7017
kchackes@chackes.com

Marci A. Hamilton, Esq.
36 Timber Knoll Drive
Washington Crossing, PA 18977
Phone: (215) 353-8984

CERTIFICATE OF SERVICE

The undersigned certifies that on this 24th day of April, 2020, the foregoing was filed electronically with the Clerk of Court, therefore to be served electronically by operation of the Court's electronic filing system to:

Gerard T. Noce
Justin L. Assouad
Alexandra S. Haar

ATTORNEYS FOR RESPONDENTS

s/*Kenneth M. Chackes*