

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION No. 2002-04548-T1
CONSOLIDATED WITH No.2002-1296
ORIGINALLY ENTERED IN
MIDDLESEX COUNTY as
No. 2000-06066A

SCOTT P. SULLIVAN,)
)
 Plaintiff)
)
 v.)
)
 AUSTIN PREPARATORY SCHOOL,)
 and THE CATHOLIC)
 ARCHDIOCESE of the CITY)
 of BOSTON,)
)
 Defendants)

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' OMNIBUS MOTION TO
DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

Plaintiff, Scott P. Sullivan, hereby opposes the Defendants' Omnibus Motion to Dismiss for Lack of Subject Matter Jurisdiction for the following reasons. Mr. Sullivan also joins and adopts those oppositions and arguments filed by other plaintiffs in these consolidated actions.

STATEMENT OF THE FACTS

Scott Sullivan was a ten year old boy (born on April 14, 1967) when Father Robert Turnbull, an Augustinian Brother and teacher and coach at defendant, Austin Preparatory School, began to sexually molest and rape him. Affidavit of Scott P. Sullivan¹. Scott's older brother was a student at defendant,

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Unless stated otherwise, the facts alleged are taken from Scott Sullivan's Affidavit, filed herewith.

Austin Preparatory School, a Catholic teaching institution affiliated with the Roman Catholic Archbishop of Boston, A Corporation Sole (hereafter "Archdiocese" or "Church"). Scott's mother became involved in the parents' committee which arranged school dances. Scott met Father Turnbull as a consequence of these relationships.

Father Turnbull ingratiated himself into the Sullivan family, taking advantage of the fact that Scott's father was often away from home on business. As with many of the plaintiffs' families, the Sullivan parents had been raised and raised their children to value the attention paid to them by an authorized leader of their religion. Father Turnbull served as a substitute caretaker and father figure for Scott, and was permitted to take Scott on outings.

For approximately the next three years, between 1978 and 1980, Father Turnbull used Scott for deviant sexual purposes on approximately 40-50 occasions. The molestation started with the priest groping Scott's genitals in the swimming pool to which Father Turnbull had brought him, and degenerated further into nude "pig wrestling", fellatio and attempted anal rape. The priest illegally bought vodka and beer for the minor (10-13 years old), which he used, in addition to the can of Crisco he kept in the Austin Preparatory gymnasium for such purposes, to "lubricate" Scott to help him participate in Father Turnbull's

deviant sexual activities. The molestation occurred at the North Meadow Tennis Club, where Father Turnbull had a membership, in the priest's car, and at Austin Preparatory School, including in the priest's dormitory at the School where Father Turnbull lived. The molestation ended when Scott refused to submit to anal rape. The priest threatened him into silence.

Scott was not Father Turnbull's only victim. Indeed, students of Austin Preparatory School referred to the priest as "The Queer" and "Father Turnballs". *Id.*, and Affidavit of Mark F. Itzkowitz, Exhibit "A" (Defendants' file on Father Robert Turnbull, ordered produced in discovery in consolidated cases). They would not shower/bathe in his presence. They knew of the can of Crisco he kept in the gymnasium. As wrestling coach, the priest made a practice of palpating his minor athlete's genitalia for "hernias" and having them exercise naked in his presence. Other claims have been filed and settled against him, including by counsel for some of the other plaintiffs affected by the instant Motion. Indeed, before the instant litigation, the Augustinian Brothers and Father Turnbull's estate settled the claims Scott was preparing to file against them. Itzkowitz Affidavit, ¶4.

Scott Sullivan did not and legally could not have consented to being raped and molested. G.L. c. 265, §13B. To the contrary, the abuse by a trusted "father" figure led him to

rebel against authority figures and to act out in self-destructive ways, as described in his affidavit².

Nor has Scott consented to having his claims against Father Turnbull and his supervisors tried in a Church forum or by a Church Tribunal. He has not instituted disciplinary proceedings within the Church. Instead, he claimed his rights as an American citizen to try his case in a civil court for the criminal offenses and torts committed against him by the defendants in the Commonwealth of Massachusetts. Sullivan Affidavit, ¶¶48-53.

ARGUMENT

A. PROCEDURAL ISSUES: MASS. R. CIV. P. 12 (b) (1)

The materials submitted by the defendants in support of their Motion to Dismiss do not convert their motion to one for summary judgment. *Williams v. Episcopal Diocese of Massachusetts*, 436 Mass. 574, 577 n. 2 (2002). Consequently, Scott Sullivan need not produce opposing affidavits which

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Since the memories of his abuse flooded back upon him, Scott has been overwhelmed by nightmares, sleeplessness, depression and anxiety. He has sought psychotherapeutic counseling, has been diagnosed with delayed onset chronic Post-Traumatic Stress Disorder and has been medicated with Zoloft. His memories and emotional trauma so overwhelmed him that his inability to concentrate led him to leave the best job he ever held; as manager of Auto Exchange, where he earned over \$100,000 per year. He since has accepted work with less responsibilities for less pay. His continuing anxiety and stress have elevated his blood pressure to dangerous levels, requiring hospitalization for cardiac care on several occasions in the recent past.

establish the factual predicate for his claims. He need only address those issues raised by the defendants' First Amendment arguments. For such purposes, he has submitted his affidavit and that of his counsel. The plaintiff also relies upon documents submitted by other plaintiffs.

B. THE FIRST AMENDMENT DOES NOT DEPRIVE THIS COURT OF JURISDICTION TO ADJUDICATE THIS ACTION AND THE CONSOLIDATED PRIEST ABUSE ACTIONS.

The defendants claim extraterritoriality in the name of Church autonomy. The First Amendment has never been held to create a right or privilege that broad. Clergy is not above the civil law, no matter how highly placed an individual is in the ecclesiastical hierarchy. *Madsen v. Erwin*, 395 Mass. 715, 726 (1985) ("the rights of religion are not beyond the reach of the civil law"). Tortious conduct by clergy is subject to regulation for the protection of society. *Id.*; *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Several courts have suggested that the broad immunity from civil liability for criminal and tortious conduct sought by the defendants itself could be deemed to violate the First Amendment. *Malicki v. Doe*, 814 So.2d 347, 358 (Fla. 2002) (holding that First Amendment does not bar civil tort action against priests and their supervisors for alleged sexual molestation of minors); *McKelvey v. Pierce*, 173 N.J. 26, 53, 800 A.2d 840, 857 (2002) (reversing dismissal on First Amendment grounds of plaintiff's tort and

contract claims arising from alleged "regular[] and persistent[] subject[ion] to unwanted homosexual advances" during seminary training); *Smith v. O'Connell*, 986 F.Supp. 73, 80 (D.R.I. 1997) (holding that First Amendment does not bar civil tort action against priests and their supervisors for alleged sexual molestation of minors). Rather than accepting the defendants' invitation to immunize their non-compliance with the obligations they share with all other members of civil society by declining jurisdiction, this Court should perform its judicial obligations recognizing that:

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract [or, we would add, their liability arising from the commission of a tort], are equally under the protection of the law, and the actions of their members subject to its restraints.... [W]e enter upon [the appeal's] consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

Martinelli v. Bridgeport Roman Catholic Diocesan Corporation, 196 F.3d 409, 431 (2d Cir. 1999) (inserts in original) (affirming verdict for plaintiff in suit against priests and supervisors arising from sexual molestation of minor), quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 714 (1871). See also *McKelvey*, 173 N.J. at 54, 800 A.2d at 857 ("Churches and their ministers are not above the law and may be held liable for tortious

conduct or contractual undertakings"); *Rashedi v. General Board of Church of the Nazarene*, 203 Ariz. 320, 54 P.3d 349, 353 (2002) (reversing trial court's dismissal for lack of jurisdiction; "Because religious organizations are part of the civil community, they are subject to societal rules governing property rights, torts, and criminal conduct.").

"The First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith or internal organization. The question is whether this case concerns such a dispute". *Parish of the Advent v. Protestant Episcopal Diocese of Massachusetts*, 426 Mass. 268, 280 (1997) (internal citations omitted). The answer is that it does not.

The defendants seek to misdirect the Court's focus in these consolidated actions from an analysis under Massachusetts law of the defendants' duties to the plaintiffs and their breach of those duties to an analysis under Roman Catholic Church law of the relationship between the predator priests and their supervisors. The plaintiff seeks no interpretation or application of Church law or doctrine. Scott Sullivan has never sought to have his case tried in a Church forum, by a Church tribunal, or under Church law. Sullivan Affidavit, ¶¶48-53. He never waived his rights to pursue his claims in an American civil court or to the application of Massachusetts law to his

civil tort claims for injuries he suffered in Massachusetts while a Massachusetts domicile by a priest domiciled in the defendants' properties in Massachusetts under the authority of defendants incorporated under Massachusetts law to perform functions in Massachusetts relating to the welfare of Massachusetts citizens and residents; which functions led to the relationship between the parties. See *Martinelli*, 196 F.3d at 431.

Massachusetts cases recognize that the voluntary nature of religious affiliation, carrying with it implied relationships of loyalty, trust and consent, underlie much of First Amendment analysis. *Hiles v. Episcopal Diocese of Massachusetts*, 437 Mass. 505, 512-14, 517 (2002) (citing agreements to submit to Church discipline and to waive constitutional rights to seek relief in civil courts as support for declining jurisdiction and stating, "A minister's consent to disciplinary proceedings historically has been a prominent reason for courts to decline to exercise jurisdiction over a dispute on First Amendment grounds"); *Williams v. Episcopal Diocese of Massachusetts*, 436 Mass. at 580 n. 3, quoting Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM.L.REV. 1373, 1408-09 (1981) ("When an employee agrees to do the work of the church, he must be held to submit to church authority in much the same

way as a member...."); *Parish of the Advent*, 426 Mass. at 281 n. 25 (explaining role of doctrine of "private ordering" and implied consent as basis for judicial deference in cases involving internal church discipline). However, ten year old boys cannot legally consent to sexual molestation, G.L. c. 265, §13B, regardless of whether the molestation is performed by a stranger or by a person in a relationship of trust with the child victim, such as his priest. It is questionable whether minors can be held to have voluntarily affiliated with the religion into which they were born. Scott Sullivan did not convert to Roman Catholicism; he was born into it. Sullivan Affidavit, ¶47. The defendants' assertion that the plaintiffs were not strangers to the Church does not mean that they and their families implicitly submitted to child rape by its clergy. See Defendants' Brief, p. 50. Internal Church discipline between persons who have waived their rights to seek civil adjudication is not at issue in this case; "[r]ather, it is a dispute between church officials and third persons who allege that they were seriously injured by the negligence of the church officials." *Smith v. O'Connell*, 986 F.Supp. at 77. See also *Malicki*, 814 So.2d at 356-57 ("considerations [that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs] are not

applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged"), quoting General Council on Finance & Administration v. California Superior Court, 439 U.S. 1355, 1372-73 (Rehnquist, Circuit Justice 1978) (emphasis in original).

The proper questions for this Court to address are whether the consolidated actions call upon the Court to interpret Church law and doctrine, which it may not do, and whether permitting these actions to proceed will inhibit the free exercise of the Roman Catholic religion. See *Alberts v. Devine*, 395 Mass. 59, 72-74 (1985); *Smith v. O'Connell*, 986 F.Supp. at 73-82; *Martinelli*, 196 F.3d at 431-32; *Malicki*, 814 So.2d at 354-57. Again, the answer to both questions is "no".

The Second Circuit Court of Appeals addressed these questions *after* trial had produced a verdict for the plaintiff in *Martinelli*. It thus had the benefit of reviewing the facts and evidence after they had been developed in discovery and at trial; the very advantage which this Court sought when it compelled the defendants to respond to discovery requests in *Leary v. Geoghan*, 2001 WL 1902393 (Suffolk Sup. Ct. Civil Action Nos. 99-0371 & 99-1109, Memorandum of Decision and Omnibus Discovery Order, November 26, 2001) at 8-9. The Second Circuit rejected as "meritless" the supervisor defendants' First

Amendment arguments that the plaintiff's evidence at trial concerning religious matters, including evidence explaining the fiduciary relationship between the parties, evidence about the indoctrination of the plaintiff concerning the hierarchical relationship between the clergy and their parishioners, including that the bishop "is like a 'shepherd' to his 'flock'", and evidence "about the status and responsibilities of the bishop under Canon Law", required unconstitutional interpretations of Church doctrine and violated the defendants' rights to freely exercise their religion. *Martinelli*, 196 F.3d at 430. The Court observed that the evidence had been introduced, along with other relevant evidence, to determine "whether, as a matter of fact, [the plaintiff's] following of the teachings and belief in the tenets gave rise to a fiduciary relationship between [the plaintiff] and the Diocese"; not to determine the meaning, validity, truthfulness, or divine sanction of the propositions discussed. *Id.*, 196 F.3d at 431. In reviewing the evidence,

neither the district court nor we have made any decision for or against any religious doctrine or practice. The Diocese points to no disputed religious issue which the jury or the district judge in this case was asked to resolve. ... [W]e judge nothing to be heresy, support no dogma, and acknowledge no belief or practices of any sect to be the law.

Id. References to religious matters alone do not prevent courts from deciding secular civil disputes involving religious

institutions. *Id.* The relationships adjudicated for purposes of resolving tort claims do not decide issues of religious doctrine.

[The plaintiff's] claim was brought under Connecticut law, not church law; church law is not ours to assess or to enforce. [The plaintiff's] claim neither relied upon nor sought to enforce the duties of the Diocese according to religious beliefs, nor did it require or involve a resolution of whether the Diocese's conduct was consistent with them. The jury's consideration of church doctrine here was both permissible under First Amendment principles and required by Connecticut law.

Id. See also *Rashedi*, 54 P.3d at 354-55 (court may examine religious documents to define duties and factually examine roles of defendants); *McKelvey*, 173 N.J. at 55-56, 800 A.2d at 858 (same).

The same is true of the cases at bar. This Court need not interpret Church dogma to resolve the tort issues raised by Scott Sullivan's action or by the hundreds of pending cases arising from the thousands of child rapes and molestations³ performed by hundreds of the defendants' representatives and servants over the course of half a century. Duties of care, breach, proximate causation and damages are to be resolved in accordance with general, neutral and accepted principles of

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Scott Sullivan and many other plaintiffs allege rapes and, indeed, homosexual rapes. Statistics have long indicated that the number of disclosed rapes is only a small percentage of the number of actual rapes perpetrated. National Victim Center and Crime Victims Research and Treatment Center, *Rape in America: A Report to the Nation* (1992) (finding that "84% of rape victims do not report to the police").

Massachusetts tort law; not principles of Canon law. The Court need not analyze the doctrinal relationship between priest and bishop, bishop and parishioner, or priest and parishioner to determine whether Massachusetts law creates a duty of care and whether the defendants breached it. The Church had the authority, and exercised it when and how it so chose, to determine the type and location of priests' assignments, the living arrangements of priests, the extent and nature of contact between priests and parishioners, the removal of priests, and the discipline of priests. The control of the supervisor defendants over the perpetrators, and the negligent and irresponsible manner in which the supervisor defendants abandoned the minor children who were placed in their care for purposes of education, indoctrination and "enlightenment" to the known and/or knowable dangerous proclivities of the perpetrators, gives rise to duties of care towards the plaintiffs based upon neutral and accepted common law principles of negligent supervision of the employed perpetrators, *Foster v. The Loft, Inc.*, 26 Mass. App. Ct. 289 (1988), premises liability, *Mullins v. Pine Manor College*, 389 Mass. 47 (1983), and, to the extent this Court accepts the defendants' arguments that a bishop is like a father to his priests, negligent parental supervision, *Caldwell v. Zaher*, 344 Mass. 590 (1960). To the extent that the defendants may be correct that the

supervisory defendants are not mere employers "supervising errant salespersons", Defendants' Brief at 12, the defendants' duties of care towards the plaintiffs are greater because their control over the defendants was far greater than that of a mere employer over his employee, and the relationship of trust, faith and deference to clergy the defendants inculcated in their parishioners exposed the plaintiffs to far greater danger at the hands of the defendants' servants than that of a consumer exposed to an "errant salesperson". See *Doe v. Evans*, 814 So.2d 370, 378 (2002) (Quince, J., concurring) ("all too often acts of sexual and other abuse are committed against especially vulnerable victims by those who occupy sensitive positions of trust or authority over them"). Massachusetts tort law principles, however, are adequate to address all of these relationships. The Court need not interpret Church dogma to determine the defendants' duties of care and breach. The Establishment Clause does not preclude the plaintiff's action.

Similarly, subjecting the defendants to tort liability will not impede their free exercise of the Roman Catholic religion. The defendants vehemently deny that ritual child abuse and/or ritual fornication are elements of Roman Catholic worship, as they have been of other religions⁴. The plaintiff need not

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Cf., Leviticus 18:21 (prohibiting Canaanite practice of ritual child sacrifice to deity, Molech); Herodotus, THE HISTORIES, Book I, v. 199

challenge that assertion to prove his case⁵. The defendants' denial that the Church practices ritual child sexual abuse suffices to establish that the curtailment of such practices by its clergy will not interfere with the defendants' free exercise of their religion. *Smith v. O'Connell*, 986 F.Supp. at 78. See also *Sanders v. Casa View Baptist Church*, 134 F.3d 331, 338 (5th Cir. 1998) (affirming verdict for plaintiffs in tort action alleging sexual abuse by religious counselor; the defendant's

p. 121-22 (Aubrey de Sélincourt trans., Penguin Books 1976) (describing Assyrian/Babylonian practice of ritual prostitution in worship of deity, Mylitta (Aphrodite/Ishtar)); Deuteronomy 23:18-19 (prohibiting Canaanite practice of cult prostitution).

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The evidence concerning the vast extent of the child sexual abuse practiced by the defendants' clergy, and the supervisor defendants' failure to take reasonable measures to prevent it for so long a period of time including so recently, invites that challenge. It is galling for the defendants to attempt to claim credit for taking "unprecedented preventative efforts to ensure that such conduct will not again arise from the ministry of the Archdiocese or its affiliated parishes and schools." Defendants' Brief at 2. The extent of the defendants' crimes and torts is no less "unprecedented", or at least one hopes not. Moreover, actions the defendants will take in the future to prevent reoccurrences of these abominations will not compensate the instant plaintiffs for the harm inflicted upon them. In view of all of the evidence that has been accumulated in these consolidated cases and the vast number of jurisdictions which have been obliged to address similar issues, see *Doe v. Evans*, 814 So.2d at 382 n. 6 and 383 n. 8 (Fla. 2002) (Harding, J. *dissenting*) (citing cases addressing clergy liability for priest sexual abuse), it is unlikely that any court could again write, as did the SJC in 1914, "It is not 'according to human experience and the natural and ordinary course of events' that a parish priest should commit so flagitious and atrocious a crime and expose himself undoubtedly to the discipline of his church as well as to the bitter penalty of the civil law (R.L. c. 207, §22), even though he might be a man of low moral character, of vicious and degenerate tendencies, and of gross sexual proclivities". *Carini v. Beaven*, 219 Mass. 117, 124 (1914).

"First Amendment arguments ... reflected the obvious truth that the activities complained of by the plaintiffs were not part of his religious beliefs and practices and he is not so brazen as to now contend otherwise.").

Moreover, even were the Church to claim that ritual child sexual abuse is required by the exercise of its religion, the Court would not be required by the First Amendment to permit such practices. The freedom to act in the name of religion is not absolute. "Conduct remains subject to regulation for the protection of society". *Hiles*, 437 Mass. at 512, quoting *Madsen*, 395 Mass. at 727, quoting *Cantwell v. Connecticut*, 310 U.S. at 303-04. The Supreme Judicial Court has recognized that even where religious practitioners claim to be compelled for religious reasons to violate civil obligations they are not thereby relieved of civil tort liability:

We conclude, therefore, that even if it be assumed, without inquiry, that the Book of Discipline or other rule of the United Methodist Church provides that Carroll and Barclay had a right, or even a duty, to seek medical information about Alberts from Devine, the First Amendment does not preclude the imposition of liability on those defendants. We also conclude that the First Amendment does not bar judicial inquiry into the church's proceedings culminating in Alberts's failure to gain reappointment.

Alberts v. Devine, 395 Mass. at 74. *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 882 (1990) (First Amendment does not prohibit punishment of Native American use of peyote in religious rituals:

"Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now."); *Reynolds v. United States*, 98 U.S. 145 (1878) (First Amendment does not prohibit criminal prosecution of Mormons for practicing polygamy); *Smith v. O'Connell*, 986 F.Supp. at 79-80 (denying Church's motion to dismiss tort claims against Church supervisors on same First Amendment grounds as argued in Motion at bar).

Neither the recognition of the civil duty which requires the supervisor defendants to prevent their servants from sexually abusing their minor parishioners nor the judicial investigation into the alleged breach of that duty violates the Church's free exercise of Roman Catholicism. The plaintiff need not specify how the defendants should have acted to conform to their civil obligations. Various options were open to the defendants, including changing the work assignments and living arrangements of the alleged perpetrators, closely supervising their activities and taking preventative and disciplinary measures against them. The Court need not interpret Church doctrine, dogma or law to determine which measures the supervisor defendants may or should have adopted to have prevented the harm to the plaintiff. *Smith v. Privette*, 128

N.C. App. 490, 495, 495 S.E.2d 395, 398 (1998) (reversing dismissal of action on First Amendment grounds; plaintiff not obliged to investigate church defendants' reasons for appointing minister to prove claims against supervisor defendants for negligent supervision of sexually abusive minister). Nothing in the extensive materials submitted by the defendants in support of their Motion "suggests that canon law precludes hierarchical officials from taking appropriate action to *prevent* priests, who are known pedophiles, from sexually abusing children. The affidavits make no reference to any limitation on the Bishop's power to determine a priest's assignment or to closely monitor and supervise the priest's activities". *Smith v. O'Connell*, 986 F.Supp. at 78 (emphasis in original). Nor do the defendants' arguments concerning the Church's belief in redemption, forgiveness of sin, and confidentiality of information provided to clergy explain how or why the defendants could not have taken reasonable measures to prevent their servants from abusing their minor parishioners. *Id.*

[T]here is no indication, that by taking the kind of preventative action required by tort law, the hierarchy defendants would have violated any 'doctrine, practice or law' of the Roman Catholic Church. In the absence of such a conflict, subjecting the hierarchy defendants to potential tort liability does not violate their right to the free exercise of their religion.

Id., 986 F.Supp. at 78. See *Malicki*, 814 So.2d at 360-61 ("the Free Exercise Clause is not implicated in this case because the

conduct sought to be regulated; 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"). See also *Rashedi*, 54 P.3d at 354 (claims that plaintiff "was injured by the tortuous conduct of individuals whom church officials placed in a position to injure her when they knew or should have known of the risk of harm presented by those individuals" held not barred by First Amendment); *Nutt v. Norwich Roman Catholic Diocese*, 921 F.Supp. 66, 74 (D.Conn. 1995) (denying defendants' motion for summary judgment based on First Amendment arguments).

This Court should hold, like the majority of courts that have considered the issue in similar cases, "that the First Amendment does not provide a shield behind which a church may avoid liability for harm arising from an alleged sexual assault and battery by one of its clergy members", for "[t]o hold otherwise and immunize the Church Defendants from suit could risk placing religious institutions in a preferred position over secular institutions, a concept both foreign and hostile to the First Amendment". *Malicki*, 814 So.2d at 365.

CONCLUSION

For all of the above reasons, this Court should deny the Defendants' Omnibus Motion to Dismiss for Lack of Subject Matter Jurisdiction.

By his Attorney,

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