No. _____

In the Supreme Court of the United States

LaVonne Pfeil,

Petitioner,

vs.

St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

THE LAW OFFICE OF
ZORISLAV R. LEYDERMAN
Zorislav R. Leyderman
222 South Ninth Street
Suite 1600
Minneapolis, MN 55402
(612) 876-6626
Email: zrl@ZRLlaw.com

Attorney for Petitioner

2016 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

QUESTION PRESENTED

Does the First Amendment to the United States Constitution provide absolute immunity for defamatory statements made in a religious setting, even if the person defamed is not a member of the religious organization and even if the truth or falsity of the defamatory statement can be adjudicated without considering or interpreting religious doctrine?

This Court has never answered this specific question and, due to lack of guidance from this Court, state courts around the country have developed conflicting and inconsistent First Amendment jurisprudence. This Court should grant this Petition to accomplish uniformity and to resolve this important question of federal law.

PARTIES TO THE PROCEEDINGS

Petitioner LaVonne Pfeil was the Appellant before the Minnesota Supreme Court.

Respondent St. Matthews Evangelical Lutheran Church of the Unaltered Confession of Worthington, Nobles County, Minnesota, was a Respondent before the Minnesota Supreme Court.

Respondent Pastors Thomas Braun and Joe Behnke were Respondents before the Minnesota Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner LaVonne Pfeil respectfully seeks a writ of certiorari to review the judgment of the Minnesota Supreme Court in this case.

OPINIONS BELOW

The published opinion of the Minnesota Supreme Court, (App. A-1 – A-36), is reported at 877 N.W.2d 528 (Minn. 2016). The unpublished opinion of the Minnesota Court of Appeals, (App., A-37 – A-50), is reported at No. A14-0605, 2015 WL 134055 (Minn. Ct. App. Jan. 12, 2015). The unpublished Order and Memorandum of Nobles County District Court, (A-51 – A-77), is not reported.

STATEMENT OF JURISDICTION

Petitioner is requesting that this Court review the Judgment of the Minnesota Supreme Court, (App. A-78 – A-80), which was entered on May 13, 2016. This Court has jurisdiction to consider this Petition pursuant to 28 U.S.C. § 1257.

U.S. CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the United States Constitution provides, in relevant part, as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

STATEMENT OF THE CASE

A. Procedural History.

This lawsuit was initially filed in Nobles County District Court in the State of Minnesota. Respondents raised the federal question in the district court as part of their Motion to Dismiss for Lack of Subject Matter Jurisdiction. (App., A-70.) The district court granted Respondents' motion and dismissed the case pursuant to the "ecclesiastical abstention doctrine," which is a defense based on the First Amendment to the United States Constitution. (App. A-70 – A-77.) Petitioner appealed the district court's decision to the Minnesota Court of Appeals, and the Minnesota Court of Appeals affirmed on First Amendment grounds. (App. A-37 – A-69.) Petitioner then petitioned the Minnesota Supreme Court to review the case. The Minnesota Supreme Court accepted review and, in a 3-2 decision, affirmed the district court's dismissal of the case, once again on First Amendment grounds. (App. A-1 – A-36.)

B. Factual Background.

Petitioner LaVonne Pfeil and her late husband Henry Pfeil, an elderly couple who lived in Worthington, MN, were longstanding members of St. Matthew Lutheran Church, but were later excommunicated. (App., A-3.) At two church meetings following the excommunication, one meeting having 89 church members present, (App. A-3), the Respondent Pastors made a variety of false and defamatory statements about the Pfeils, which included the following: (1) that the Pfeils had engaged in breaches of confidentiality, (2) that the

Pfeils had engaged in lying and perpetuating of false information to others, (3) that the Pfeils had accused Pastor Behnke of stealing money, and (4) that other people have submitted complaints about the Pfeils to the Pastors, (App. A-18). All of these statements were false and their truth/falsity could be proven by the Pfeils based on neutral principles of defamation law without engaging in religious doctrine, theory, or interpretation. (See App. A-18 – A-19, A-27 – A-36.) As the Minnesota Court of Appeals recognized, Respondents "besmirched . . . [Ms. Pfeil's] reputation and that of her deceased husband, Henry Pfeil, a grievous injury to the family name." (App. A-49.)

After the complaint was filed in the district court, Respondents moved to dismiss, arguing that the ecclesiastical abstention doctrine deprived the district court of subject matter jurisdiction to hear the case. Relying almost exclusively on *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. Ct. App. 1993), the district court dismissed the case, holding that the ecclesiastical abstention doctrine deprived it of subject matter jurisdiction even though some of the statements alleged to be defamatory were secular in nature and did not require interpretation of religious doctrine. (App. A-70 – A-77.) On appeal, finding itself bound by its own decision in *Mains*, the Minnesota Court of Appeals affirmed, confirming that any defamatory statement made during a religious disciplinary proceeding, even if the statement is secular in nature, is absolutely immune from liability pursuant to the First Amendment to the United States Constitution. (See App. A-43 – A-50.)

The Minnesota Supreme Court then accepted the case for review and, in a 3-2 decision, affirmed the rulings of the district court and the Minnesota Court of Appeals based on the First Amendment to

the United States Constitution. The Minnesota Supreme Court held that the "ecclesiastical abstention doctrine," which is based on the First Amendment, provides absolute immunity for defamatory statements made in a religious setting, even if the truth/falsity of the alleged defamatory statement can be adjudicated based on neutral principles of defamation law and without considering or interpreting religious doctrine. (App. A-13 – A-26, A-27.)

Two of the five Minnesota Supreme Court justices dissented, writing that the majority had created an "absolute privilege to defame in 'formal church discipline proceedings' . . ., [and] [n]o matter how false and malicious the statement, and no matter how much the victim is damaged, there is no remedy whatsoever in Minnesota's courts." (App. A-27.) The dissent further wrote that the "U.S. Supreme Court has never suggested that the First Amendment requires what the court does today." (App. A-29.) The majority and the dissent agreed that this Court has never addressed the specific First Amendment issues that have been raised in this case. (App. A-10, A-29.)

REASONS FOR GRANTING THE PETITION

Due to Lack of Guidance from this Court, the Minnesota Supreme Court has Decided an Important Federal Question in a Way that Conflicts with the Decisions of Other State Supreme Courts.

As noted by the Minnesota Supreme Court, this Court has never addressed the specific question presented in this case—whether the First Amendment provides absolute immunity for all defamatory statements made in a religious setting. Due to lack of guidance from this Court, state supreme courts have taken it upon themselves to answer this important constitutional question and, as a result, have created inconsistent and conflicting First Amendment law.

Some states, like the State of Minnesota in this case, have interpreted the First Amendment Establishment and Free Exercise clauses as providing absolute immunity for any and all defamatory statements made in a religious setting, and this immunity applies even to secular statements that can be adjudicated true or false without considering or interpreting religious doctrine. Other states, such as Pennsylvania, have adopted a completely opposite approach, holding that the First Amendment does not provide any such absolute immunity and that defamation claims arising from a religious setting are actionable as long as their truth/falsity can be determined based on neutral legal principles and without interpreting religious doctrine. *Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084 (Pa. 2009).

The result, of course, is that citizens of Pennsylvania are entitled to strikingly different First Amendment protections than citizens of Minnesota. Minnesota pastors, for example, can defame anyone and everyone they choose knowing that, so long as they utter their defamatory statements during some formal religious meeting, the First Amendment will always be there to shield them from liability. Pennsylvania pastors, on the other hand, have to operate in a completely opposite universe because they are not entitled to any such First Amendment protections and can be held liable for defamatory statements made during religious proceedings.

Due to the lack of precedent from this Court, the general public of the two States is likewise subjected to completely different First Amendment protections. An honorable citizen of Pennsylvania who is falsely accused of being a child molester by some religious leader during some religious proceeding can seek justice through Pennsylvania state courts and not only recover damages, but also restore his reputation and good name. On the other hand, an honorable citizen of Minnesota who is similarly falsely accused of being a child molester by some religious leader during some religious proceeding can, at best, consider relocating to Pennsylvania because Minnesota's interpretation of the First Amendment leaves him with no legal remedies within the State of Minnesota. (App. A-27.)

It should also be noted that Minnesota's absolute privilege rule is not limited to members of the religious organization where the individual was defamed. Quite to the contrary, under Minnesota's interpretation of the First Amendment, even a nonmember of a religious organization where the defamatory statement was spoken is deprived of a

legal remedy. (See App. A-34.) On the other hand, a Pennsylvania citizen who is defamed by some religious organization of which he/she is not a member can successfully sue in Pennsylvania state courts, all because Minnesota and Pennsylvania have two completely different interpretations of the First Amendment.

The inequities outlined above are not limited to just two States. Due to lack of guidance from this Court, numerous courts around the country have developed their own interpretations of the First Amendment's Establishment and Free Exercise clauses when considering defamation claims arising from religious proceedings. While each court that has considered this issue has taken on a somewhat different approach, two general interpretations have emerged. Some courts, like the State of Minnesota, have determined that the First Amendment provides comprehensive immunity for defamatory statements arising from religious proceedings, even for secular defamatory allegations that can be proven true/false without considering or interpreting religious doctrine. Other states, like the State of Pennsylvania, have expressly rejected such a broad interpretation of the First Amendment and have instead allowed such defamation claims to be heard as long as the truth/falsity of the defamatory statement can be determined based on secular legal principles and without considering or interpreting religious doctrine.

At least four state courts of last resort, including Minnesota, and one federal circuit have interpreted the First Amendment as providing general immunity for defamatory statements arising from religious proceedings. *See Pfeil v. St. Matthews Evangelical Lutheran Church*, 877 N.W.2d 528 (Minn. 2016); *Hiles v. Episcopal Diocese of Mass.*, 773

N.E.2d 929 (Mass. 2002); *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994); *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986). Numerous other state and federal courts across the country have adopted a similar interpretation of the First Amendment. *See Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in Am.*, 860 F. Supp. 1194 (W.D. Ky. 1994); *Farley v. Wisc. Evangelical Lutheran Synod*, 821 F. Supp. 1286 (D. Minn. 1993); *Higgins v. Maher*, 258 Cal. Rptr. 757 (Cal. Ct. App. 1989); *Joon Ki Lee v. Byeong Ho Son*, No. 1-11-3217, 2012 WL 6962978 (Ill. Ct. App. Sept. 28, 2012); *Stepek v. Doe*, 910 N.E.2d 655 (Ill. Ct. App. 2009); *Purdum v. Purdum*, 301 P.3d 718 (Kan. Ct. App. 2013); *Brady v. Pace*, 108 S.W.3d 54 (Mo. Ct. App. 2003); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997); *Ausley v. Shaw*, 193 S.W.3d 892 (Tenn. Ct. App. 2005); *Anderson v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, No. M2004-01066-COA-R9CV, 2007 WL 161035 (Tenn. Ct. App. Jan. 19, 2007).

Not surprisingly, at least five state courts of last resort, including Pennsylvania, and one federal circuit have adopted the opposite interpretation of the First Amendment's application to defamatory statements arising from religious proceedings. *See Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605 (S.C. 2013); *Connor v. Archdiocese of Phila.*, 975 A.2d 1084 (Pa. 2009); *Bowie v. Murphy*, 624 S.E.2d 74 (Va. 2006); *Lipscombe v. Crudup*, 888 A.2d 1171 (D.C. 2005); *McAdoo v. Diaz*, 884 P.2d 1385 (Alaska 1994); *Marshall v. Munro*, 845 P.2d 424 (Alaska 1993); *Drevlow v. Lutheran Church, Mo. Synod*, 991 F.2d 468 (8th Cir. 1993). A number of other courts around the country have also adopted a similar

interpretation. *See Kavanagh v. Zwilling*, 997 F. Supp. 2d 241 (S.D.N.Y. 2014); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732 (D.N.J. 1999); *Cargill v. Greater Salem Baptist Church*, 215 S.W.3d 63 (Ky. Ct. App. 2006); *Ciganik v. York*, No. 2013-P-0018, 2013 WL 6881611 (Ohio Ct. App. Dec. 31, 2013).

These above-cited cases clearly demonstrate that a lack of guidance and precedent from this Court has generated inconsistent and conflicting interpretations of the First Amendment, together with inconsistent and conflicting law and individual results. Consequently, citizens and residents of this Nation are no longer protected by one, uniform First Amendment, but are instead subjected to some version of the First Amendment adopted, or perhaps yet to be adopted, by their state supreme court. This Court should grant this Petition to resolve these conflicting state rulings and to restore uniformity to the First Amendment, as this Court has done once in the past.

Historically, this Court has devoted enormous resources and attention to the intersection between the common law tort of defamation and the First Amendment. In *New York Times v. Sullivan*, 376 U.S. 254 (1964), due to First Amendment concerns, this Court granted certiorari and created a heightened burden of proof for "public officials" seeking to recover damages for defamation. Three years later, this Court granted certiorari once again in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), and extended the *New York Times* heightened burden of proof to "public figures," once again based on the First Amendment. Four years later, this Court granted certiorari in *Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971), to consider what types of damages are

constitutionally permissible in defamation lawsuits that relate to matters of public concern. Only three years later, this Court granted certiorari once again in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), and held that defamation plaintiffs in cases involving issues of public concern cannot recover presumed damages without satisfying the constitutional burden set forth in *New York Times v. Sullivan*. This Court once again granted certiorari in *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986), where the Court added to the already heightened burden of proof for defamation cases involving private plaintiffs and defamatory statements of public concern. Finally, in 1990, this Court granted certiorari in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), to consider whether the First Amendment permits recovery in defamation cases where the defamatory statement is alleged to be a statement of opinion.

As this Court has admitted in several decisions, it has historically "struggled . . . to define the proper accommodation between the law of defamation and the freedoms of speech and press protected by the First Amendment." *Gertz*, 418 U.S. 323 at 325; *see also Hepps*, 475 U.S. at 768. In *Milkovich*, this court emphasized, "The numerous decisions . . . [of this Court] establishing First Amendment protections for defendants in defamation actions surely demonstrate the Court's recognition of the Amendment's vital guarantee of free and uninhibited discussion of public issues." 497 U.S. at 22. "But there is also another side to the equation; we have regularly acknowledged the 'important social values which underlie the law of defamation,' and recognized that '[society] has a pervasive and strong interest in preventing and redressing attacks upon

reputation.'" *Id.* (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966). Quoting Justice Stewart, *Milkovich* confirmed this Court's historic determination and commitment to striking a proper balance between protecting First Amendment rights and providing meaningful redress for defamatory attacks upon reputation:

> The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being — a concept at the root of any decent system of ordered liberty.
>
> . . . . .
>
> The destruction that defamatory falsehood can bring is, to be sure, often beyond the capacity of the law to redeem. Yet, imperfect though it is, an action for damages is the only hope for vindication or redress the law gives to a man whose reputation has been falsely dishonored.

Id. at 22-23 (quoting *Rosenblatt*, 383 U.S. at 92-93 (Stewart, J., concurring)).

Though this Court has "struggled," it has relentlessly sought, and eventually achieved, a proper constitutional balance between the right to protect one's reputation from harm and the right to speak freely on matters of public concern. This Court's determination to achieve this constitutional balance has established a set of clear legal principles that produce uniform and consistent results in Minnesota, Pennsylvania, and in every other federal, state, and municipal court in this Nation. Never had this Court given up in its "struggle" to reach this constitutional

balance. Never had this Court suggested that the tort of defamation, when confronted by the First Amendment, must yield completely in the form of absolute immunity or privilege. Never had this Court allowed the individual States to create and force upon the citizens of this Nation their own variations of the rights and limitations embodied in First Amendment.

In stark contrast to this Court's attention to the juncture between the tort of defamation and the First Amendment's right to freedom of speech, this Court has not addressed an equally important question—the connection between the tort of defamation and the First Amendment's right to freedom of religion. As already discussed above, this Court's lack of precedent on this issue has created a sharp dissension between numerous state supreme courts as well as several federal circuit courts. Citizens of different states are already subjected to different variations of the First Amendment and, without guidance from this Court, state courts will continue to manipulate the meaning of the First Amendment until, eventually, there will be as many variations of the First Amendment as there are states. Petitioner respectfully requests that this Court grant this Petition to resolve the split in authority between the state supreme courts and to restore uniformity in the application of the First Amendment.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

THE LAW OFFICE OF
ZORISLAV R. LEYDERMAN
Zorislav R. Leyderman
222 South Ninth Street
Suite 1600
Minneapolis, MN 55402
Tel: 612-876-6626
Email: zrl@ZRLlaw.com

Attorney for Petitioner

STATE OF MINNESOTA

IN SUPREME COURT

A14-0605

Court of Appeals — Anderson, J.
Dissenting, Lilligaug, J., Gildea, C.J.
Took no part, Hudson, Chutich, JJ.

LaVonne Pfeil, Individually and as Trustee for Heirs of Henry Pfeil, deceased,
Appellant,

vs.

Filed: April 6, 2016
Office of Appellate Courts

St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, et al.,
Respondents.

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota, for appellant.

Ken D. Schueler, Jennifer M. Peterson, Dunlap & Seeger, P.A., Rochester, Minnesota; and

Timothy J. O'Connor, William L. Davidson, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota, for respondents.

Mark R. Bradford, Steven P. Aggergaard, Bassford Remele, Minneapolis, Minnesota; and

Sherri C. Strand, Mark Sableman, Anthony F. Blum, Thompson Coburn, LLP, Saint Louis, Missouri, for

amicus curiae The Lutheran Church-Missouri Synod.

SYLLABUS

Under the ecclesiastical abstention doctrine, pastors and their church are not liable to former parishioners for defamation or related common-law torts for statements made by the pastors during the course of formal church discipline proceedings when the statements were communicated only to other members of the church and participants in the formal church discipline process.

Affirmed.

OPINION

ANDERSON, Justice.

In this case, we are presented with the question of whether pastors and their church can be held liable for statements the pastors made about a parishioner during formal church disciplinary proceedings. Appellants LaVonne and Henry Pfeil allege that they were defamed by the pastoral staff of St. Matthew Lutheran Church[1] during two church disciplinary proceedings that were held for the purpose of excommunicating the Pfeils from St. Matthew. The district court dismissed the Pfeils' claims with

[1] There appears to be some discrepancy with respect to the church's proper name. Appellant indicates that, according to the Secretary of State's office, the church's legal name is "St. Matthews [sic] Evangelical Lutheran [sic] Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota." The church is commonly referred to as "St. Matthew" and respondents have clarified that the church would prefer to be identified as "St. Matthew."

prejudice on First Amendment grounds, and the court of appeals affirmed. Because the First Amendment to the United States Constitution protects the right of a religious organization to make autonomous decisions regarding church discipline and membership, we affirm the district court's dismissal of the claims.

I.

Prior to 2011, LaVonne and Henry Pfeil were longstanding members of St. Matthew.[2] St. Matthew, in turn, is a member of the Lutheran Church-Missouri Synod. On August 22, 2011, the Pfeils received a letter signed by St. Matthew's pastors, respondent Thomas Braun ("Braun") and respondent Joe Behnke ("Behnke"). The letter contained several allegations regarding the Pfeils' conduct over the preceding two years, but focused on complaints that the Pfeils had been engaged in "slander and gossip" against the leadership and ministry of the congregation. In addition to criticizing the Pfeils' behavior, the letter advised the Pfeils that they had excommunicated themselves from St. Matthew and informed the Pfeils that their church membership had been terminated.

Subsequent to the August 22 letter, the Lutheran Church-Missouri Synod advised the leadership of St. Matthew to hold a "special voters' meeting" so that the congregation could vote to affirm or reject the excommunication decision. The Pfeils and approximately 89 members of St. Matthew attended the special voters' meeting, which was held

[2] Because this case was resolved on a Rule 12 motion to dismiss, the facts recited here are drawn from the Pfeils' Second Amended Complaint.

on September 25, 2011. Braun addressed the meeting, reading from a set of prepared remarks, and published the August 22 letter to those present at the meeting. According to the Pfeils, Braun's remarks and the August 22 letter contained several defamatory statements, including:

- The Pfeils were actively involved in slander, gossip, and speaking against Braun and his wife, Behnke, and the St. Matthew Board of Elders.
- The Pfeils had intentionally attacked, questioned, and discredited the integrity of Braun, Behnke, and other St. Matthew church leaders.
- Other people had observed the Pfeils display anger and disrespect toward Braun.
- The Pfeils had publicly engaged in "sinful behavior" inside and outside St. Matthew.
- The Pfeils had engaged in behavior unbecoming of a Christian.
- The Pfeils had engaged in a "public display of sin."
- The Pfeils had refused to meet for the purpose of confession and forgiveness.
- The Pfeils had "refused to show respect" toward servants of God and St. Matthew church leadership.
- The Pfeils had led other people into sin.
- The Pfeils had engaged in slander and gossip and had refused to stop engaging in slander and gossip.
- The Pfeils had refused to follow the commands and teachings of God's word.

After Braun's remarks, ballots were distributed to the members of St. Matthew who were present at the meeting, and the members voted to affirm the pastors' decision to terminate the Pfeils'

membership at St. Matthew. Subsequently, in March 2012, a Missouri Synod panel held a hearing to reconsider the Pfeils' excommunication. The Pfeils allege that during the Synod hearing, Behnke falsely claimed that the Pfeils had recently accused Behnke of stealing money from St. Matthew. The Synod panel also affirmed the Pfeils' excommunication.

On August 16, 2013, LaVonne Pfeil brought a lawsuit on behalf of herself and Henry Pfeil, asserting claims for defamation and negligence against St. Matthew, Braun, and Behnke (collectively respondents).[3] On December 24, 2013, respondents filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Minn. R. Civ. P. 12.02(c). Respondents argued that the Pfeils' claims would cause the district court to become excessively entangled with religion and that the claims were therefore barred by the First Amendment to the United States Constitution under the "ecclesiastical abstention doctrine."

After resolving Henry Pfeil's claims on other grounds,[4] the district court concluded that the First

[3] Henry Pfeil died in April 2012. After LaVonne Pfeil filed suit, the district court named her trustee for Henry Pfeil's claims, and the complaint was amended to reflect this change. Although only LaVonne Pfeil appears here, we refer to the Pfeils collectively in this opinion for convenience.

[4] Previously, respondents moved to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e), arguing that the Pfeils did not plead the defamatory statements with sufficient detail and that Henry Pfeil's claims did not survive his death. The Pfeils countered by opposing the motion, moving to amend their complaint, and submitting a second amended complaint for the district court's consideration. The court granted the Pfeils' motion to amend their complaint; granted respondents' motion to dismiss with respect to Henry Pfeil's claims, finding that they did not survive his death; and denied respondents' motion with

Amendment deprived the court of jurisdiction to adjudicate LaVonne Pfeil's remaining claims and dismissed the case with prejudice. The Pfeils appealed the district court's ruling and the court of appeals affirmed with respect to the First Amendment issue, concluding that the First Amendment barred all of the Pfeils' claims.[5] *Pfeil v. St. Matthews Evangelical Lutheran Church*, No. A14-0605, 2015 WL 134055, at *3-6 (Minn. App. Jan. 12, 2015). We granted review to clarify our jurisprudence regarding the intersection of the First Amendment and civil claims against religious institutions.

II.

A.

The district court and the court of appeals based their rulings on what they termed the "ecclesiastical abstention doctrine." The legal principle that has come to be known as the "ecclesiastical abstention doctrine" or the "church autonomy doctrine" has its roots in a line of U.S. Supreme Court decisions regarding church property and church schisms. The first, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), concerned a dispute over

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respect to LaVonne Pfeil's claims, finding that they were pleaded with sufficient detail. None of these rulings are before us because they were not appealed or argued to this court and the court of appeals resolved the case solely on First Amendment grounds.

[5] The Pfeils brought claims for defamation against Braun, Behnke, and St. Matthew. They also brought a negligence claim against St. Matthew, alleging that St. Matthew negligently allowed the defamation to occur. Because all of these claims have their factual basis in the allegedly defamatory statements made during church disciplinary proceedings, we analyze them together and generally refer to the defamatory statements as the basis for the Pfeils' claims.

which individuals were entitled to the position of "elder" in a Presbyterian church in Kentucky. *Id.* at 714. Rather than evaluate the merits of the parties' arguments regarding church doctrine, the Court deferred to the ruling of the Presbyterian General Assembly, which did not recognize the individuals in question as elders, and indicated the lower courts should have exercised the same deference. *See id.* at 732-34. The Court viewed judicial review of ecclesiastic tribunals as striking at the very heart of religious freedom and held that allowing civil review would "deprive [religious] bodies of the right of construing their own church laws . . . and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions." *Id.* at 733-34. The essence of the Court's holding is captured in a now-famous quotation:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and

> of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Id. at 728-29.

The U.S. Supreme Court strengthened the doctrine announced in *Watson* when it decided *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696 (1976).[6] In deciding that the Illinois Supreme Court had violated the First Amendment when it reinstated a defrocked bishop, the *Milivojevich* Court held that "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." *Id.* at 709.

But the autonomy granted to religious

[6] *Watson* was a pre-*Erie* diversity case and was decided on the basis of federal common law, not the First Amendment. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115-16 (1952). Subsequently, however, *Kedroff* enshrined *Watson*'s theory of deference as a constitutional doctrine by grounding *Watson*'s holding in the First Amendment. *Id. Milivojevich* represents the first time the Court addressed the doctrine post-*Kedroff* and clearly constitutionalized the idea that the decisions of religious tribunals should be afforded significant deference under the First Amendment.

institutions by the First Amendment is not boundless. The U.S. Supreme Court has repeatedly emphasized that certain situations allow courts to use "neutral principles of law" to resolve controversies involving religious institutions and their parishioners. *Jones v. Wolf*, 443 U.S. 595, 602-05 (1979) (approving of the "neutral principles of law" approach as "consistent with the [First Amendment]" and stating that "[w]e cannot agree [with the dissent] that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved"); *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) (suggesting that courts could resolve church property disputes if they applied "neutral principles of law"). Indeed, we applied the neutral-principles approach in the context of a negligent counseling claim brought against a pastor by a former parishioner who received counseling services from the pastor. *See Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 430-36, 440-41 (Minn. 2002) (using the neutral principles contained in a statute regulating counseling activity to determine the standard of care applicable to a pastor providing counseling services).

The U.S. Supreme Court recently addressed the ecclesiastical abstention doctrine in 2012 when it decided *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, ____ U.S. _____, 132 S. Ct. 694 (2012). In *Hosanna-Tabor*, a unanimous Supreme Court adopted the so-called "ministerial exception," a derivative of the ecclesiastical abstention doctrine that had been endorsed for years in the federal circuit courts. *Id.* at ____, 132 S. Ct.

at 705-06. The ministerial exception exempts churches and religious organizations from compliance with employment discrimination statutes when making decisions regarding ministerial employees. *Id*. at _____, 132 S. Ct. at 705-06. In adopting the ministerial exception, the *Hosanna-Tabor* Court relied heavily on *Watson*, *Kedroff*, and *Milivojevich*, and concluded that subjecting churches and religious organizations to discrimination laws in the context of ministerial employment decisions would "interfere[] with the internal governance of the church" and violate the Free Exercise Clause and the Establishment Clause of the First Amendment. *Id.* at ____, 132 S. Ct. at 706. The Court further indicated that whether the ecclesiastical abstention doctrine applies or whether neutral principles and secular law can be used in a given case turns on whether adjudication would result in "government interference with an internal church decision that affects the faith and mission of the church itself." *Id*. at ____, 132 S. Ct. at 707.

Although none of these Supreme Court cases speaks directly to the issues raised by the Pfeils' claims, several helpful rules can be drawn from them. First, a court cannot overturn the decisions of governing ecclesiastical bodies with respect to purely ecclesiastical concerns, such as internal church governance or church discipline. *See Watson*, 80 U.S. at 727. Second, a court may not entertain cases that require the court to resolve doctrinal conflicts or interpret church doctrine. *See Milivojevich*, 426 U.S. at 720; *Mary Elizabeth*, 393 U.S. at 449. Finally, a court may decide disputes involving religious organizations, but only if the court is able to resolve the matter by relying exclusively on neutral principles of law, the court does not disturb the ruling

of a governing ecclesiastical body with respect to issues of doctrine, and the adjudication does not "interfere[] with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, ____ U.S. at ____, 132 S. Ct. at 707; *see also Wolf*, 443 U.S. at 602-05.

B.

Before addressing the specifics of this case, we must clarify one additional point about the ecclesiastical abstention doctrine. Previously, we have characterized the doctrine as a jurisdictional bar. *See Odenthal*, 649 N.W.2d at 430-34, 441. The district court, the court of appeals, and the parties also proceeded under the assumption that the doctrine limits a court's subject matter jurisdiction. *See Pfeil v. St. Matthews Evangelical Lutheran Church*, No. A14-0605, 2015 WL 134055, at *2-3 (Minn. App. Jan. 12, 2015). In *Hosanna-Tabor*, however, the U.S. Supreme Court clarified that the doctrine does not relate to subject matter jurisdiction. The Court resolved a disagreement among federal circuit courts and held that the ministerial exception actually functioned as an affirmative defense on the merits to an "otherwise cognizable" claim under a federal statute. _____U.S. at_____, 132 S. Ct. at 709 n.4 ("We conclude that the exception operates as an affirmative defense to an otherwise cognizable claim, not a jurisdictional bar. That is because the issue presented by the exception is 'whether the allegations the plaintiff makes entitle him to relief,' not whether the court has 'power to hear [the] case.' " (quoting *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 254 (2010))).

The U.S. Supreme Court's holding in *Hosanna-*

Tabor leads us to conclude that the ecclesiastical abstention doctrine is not a jurisdictional bar. When applied to a state-law tort claim, the doctrine could function as an affirmative defense on the merits, as it does in the context of federal anti-discrimination statutes. *See Hosanna-Tabor*, ____ U.S. at ____, 132 S. Ct. at 709 n.4. But we do not believe that the U.S. Supreme Court's ruling in *Hosanna-Tabor* compels that result. The unique circumstances surrounding the decision in *Hosanna-Tabor*, particularly the fact that the Court was confronted with a statutory cause of action, provide us with some latitude to decide how the doctrine will be applied in Minnesota courts.

As mentioned above, one possible option is to treat the doctrine as an affirmative defense on the merits. We note, however, that the doctrine could also function as a form of abstention, as one of its names implies. We have previously suggested that Minnesota courts could abstain from certain cases. *See Gavle v. Little Six, Inc.*, 555 N.W.2d 284, 290 (Minn. 1996) (discussing abstention in the context of a suit involving tortious acts, some of which were committed on tribal land). Abstention provides a narrow exception to a district court's obligation to hear the cases that are brought before it, allowing the court to dismiss a claim it would otherwise adjudicate. *Id.* Ordinarily, abstention is invoked when there is concurrent jurisdiction, or more than one court has been asked to adjudicate the same set of claims. *Id.* But abstention can also be a useful framework in cases where there are not "two competing lawsuits." *Id.*

The parties did not brief or argue the distinction between an affirmative defense and abstention. Because the issue was not briefed and is not essential to the disposition of this case, we decline

to characterize the doctrine. *See State v. Schweppe*, 306 Minn. 395, 401 n.3, 237 N.W.2d 609, 614 n.3 (1975) (declining to decide an issue not briefed or argued by the parties). Instead, we hold only that the doctrine is not a jurisdictional bar to adjudication. We leave for another time the question of whether the doctrine is best viewed as an affirmative defense on the merits or a form of abstention.

III.

In reaching the conclusion that adjudication of the Pfeils' claims was barred by the First Amendment, both the district court and the court of appeals relied heavily on two previous court of appeals decisions. In the first, *Black v. Snyder*, 471 N.W.2d 715 (Minn. App. 1991), *rev. denied* (Minn. Aug. 29, 1991), the court of appeals held that a former pastor could not bring a defamation claim and a whistleblower claim against the church that had terminated her based on statements that were made during the course of her termination.[7] *Id.* at 718, 720. Essentially, the *Snyder* court adopted what amounted to a ministerial exception. *See id.* at 720 (citing *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354, 1360-61 (D.C. Cir. 1990)). The court observed that "[w]hen claims involve 'core' questions of church discipline and internal governance, the Supreme Court has acknowledged that the inevitable danger of governmental entanglement precludes judicial

[7] The court did allow the pastor to pursue a sexual-harassment claim based on the conduct of another pastor at the church because that claim was not based on the church's decision to terminate her employment and because that claim was unrelated to pastoral qualifications or issues of church doctrine. *Snyder*, 471 N.W.2d at 720-21.

review." *Id*. (citing *Milivojevich*, 426 U.S. at 717, 721).

Snyder's ruling was extended by *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. App. 1993). The *Mains* court held that two former parishioners could not sue their former pastor for defamation because their claim arose out of four statements the pastor made to the congregation when he was explaining his reasons for terminating the plaintiffs' membership in the church. *Id*. at 234-35. The court found that three out of the four allegedly defamatory statements could not serve as the basis for a claim because adjudicating the truth or falsity of the statements would require the court to interpret matters of church doctrine. *Id*. at 236. The court noted that one of the reasons stated for terminating the parishioners' membership—that they had engaged in the "direct fabrication of lies"—could possibly be adjudicated without interpreting or inquiring into church doctrine. *Id*. But, relying on *Snyder*, the *Mains* court found that adjudicating a defamation claim based on that statement would violate the First Amendment because it would require an inquiry into matters of church discipline. *Id.* (citing *Snyder*, 471 N.W.2d at 720).

Both the district court and the court of appeals concluded the holding in *Mains* was directly applicable to the Pfeils' case and held that adjudicating the Pfeils' claims would violate the First Amendment. *Pfeil*, 2015 WL 134055, at *3-6. It is clear that if we adopt the rule from *Mains*, the Pfeils' claims should be dismissed. All of the statements on which the Pfeils base their claims occurred during church disciplinary proceedings, and *Mains* prohibits civil courts from inquiring into any statements made during the course of a church disciplinary proceeding. 504 N.W.2d at 236. We are, of course, not bound by

decisions of the court of appeals, and appellants urge us to modify the rule from *Mains* to allow defamation suits based on statements that are made during the course of church discipline proceedings when adjudicating the truth of the statements at issue would not require a court to interpret matters of religious doctrine.

A.

Respondents' primary argument is that adjudicating the Pfeils' claims would violate the First Amendment to the United States Constitution.[8] Issues of constitutional interpretation are questions of law that we review de novo. *State v. Shattuck*, 704 N.W.2d 131, 135 (Minn. 2005). We have traditionally analyzed the ecclesiastical abstention doctrine as an Establishment Clause question and applied the three-pronged test announced in *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). *See, e.g.*, *Odenthal*, 649 N.W.2d at 435. In order to be valid under *Lemon*, "a state action must have a secular purpose, must neither inhibit nor advance religion in its primary effect, and must not foster excessive governmental

[8] Respondents also contend that the Pfeils' claims are barred by the Freedom of Conscience Clause in Article I, section 16 of the Minnesota Constitution. Respondents did not raise this argument below. This court does not typically consider constitutional issues that were not raised in the district court. *In re Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981). At oral argument, respondents contended that the court should address their argument under the Minnesota Constitution because claims regarding subject matter jurisdiction cannot be waived. *See Dead Lake Ass'n v. Otter Tail Cty.*, 695 N.W.2d 129, 134 (Minn. 2005). Because we decide that the ecclesiastical abstention doctrine does not create a jurisdictional bar, we decline to reach respondents' arguments under the Minnesota Constitution—those arguments have been forfeited. *See In re Welfare of C.L.L.*, 310 N.W.2d at 557.

entanglement with religion." *Odenthal*, 649 N.W.2d at 435. The parties agree that because defamation law serves a secular purpose and does not have the primary effect of advancing or inhibiting religion, only the excessive- entanglement question is in dispute.

It is worth noting that no U.S. Supreme Court case applying the ecclesiastical abstention doctrine has used the *Lemon* test or announced another general test. The *Hosanna-Tabor* court grounded the doctrine in both the Establishment and Free Exercise Clauses of the First Amendment, but provided no guidance on the applicability of more general Establishment Clause and Free Exercise Clause jurisprudence. *See* U.S. at , 132 S. Ct. at 706. Regardless, *Lemon*'s entanglement prong and *Hosanna- Tabor*'s focus on whether adjudicating the claim would interfere with internal decisions that impact religious organizations' faith and mission appear to be substantially similar inquiries. Thus, we must determine whether allowing the Pfeils' claims to proceed will "foster excessive governmental entanglement with religion," *Odenthal*, 649 N.W.2d at 435 (citing *Lemon*, 403 U.S. at 612-13), or "interfere[] with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, ___ U.S. at ___, 132 S. Ct. at 707.

B.

Courts from other jurisdictions that have faced similar facts have generally adopted one of two approaches. Respondents urge us to adopt a rule that adjudicating any defamation claim arising out of a statement made during a church disciplinary proceeding violates the First Amendment, as several

other courts have done.[9] The Pfeils have asked us to adopt a claim-by-claim, element-by-element approach to the ecclesiastical abstention doctrine.[10] Specifically, the Pfeils direct us to *Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084 (Pa. 2009), and argue that we should adopt the rule that the Pennsylvania Supreme Court announced in that case.

The *Connor* court ruled that a student who was expelled from a religious school could maintain an action for defamation based on statements made

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[9] *See Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986); *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in Am.*, 860 F. Supp. 1194 (W.D. Ky. 1994); *Farley v. Wisc. Evangelical Lutheran Synod*, 821 F. Supp. 1286 (D. Minn. 1993); *Higgins v. Maher*, 258 Cal. Rptr. 757 (Cal. Ct. App. 1989); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361 (Haw. 1994); *Joon Ki Lee v. Byeong Ho Son*, No. 1-11-3217, 2012 WL 6962978 (Ill. Ct. App. Sept. 28, 2012); *Stepek v. Doe*, 910 N.E.2d 655 (Ill. Ct. App. 2009); *Purdum v. Purdum*, 301 P.3d 718 (Kan. Ct. App. 2013); *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929 (Mass. 2002); *Brady v. Pace*, 108 S.W.3d 54 (Mo. Ct. App. 2003); *Howard v. Covenant Apostolic Church, Inc.*, 705 N.E.2d 385 (Ohio Ct. App. 1997); *Ausley v. Shaw*, 193 S.W.3d 892 (Tenn. Ct. App. 2005); *Anderson v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, No. M2004-01066-COA-R9CV, 2007 WL 161035 (Tenn. Ct. App. Jan. 19, 2007); *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007).

[10] *See Drevlow v. Lutheran Church, Mo. Synod*, 991 F.2d 468 (8th Cir. 1993); *Kavanagh v. Zwilling*, 997 F. Supp. 2d 241 (S.D.N.Y. 2014); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732 (D.N.J. 1999); *McAdoo v. Diaz*, 884 P.2d 1385 (Alaska 1994); *Marshall v. Munro*, 845 P.2d 424 (Alaska 1993); *Lipscombe v. Crudup*, 888 A.2d 1171 (D.C. 2005); *Cargill v. Greater Salem Baptist Church*, 215 S.W.3d 63 (Ky. Ct. App. 2006); *Ciganik v. York*, No. 2013-P-0018, 2013 WL 6881611 (Ohio Ct. App. Dec. 31, 2013); *Connor v. Archdiocese of Phila.*, 975 A.2d 1084 (Pa. 2009); *Banks v. St. Matthew Baptist Church*, 750 S.E.2d 605 (S.C. 2013); *Bowie v. Murphy*, 624 S.E.2d 74 (Va. 2006).

during the course of his expulsion. *Id*. at 1113. In reaching that ruling, the *Connor* court announced a broader rule to govern ecclesiastical abstention cases. According to *Connor*, a court confronted with an ecclesiastical abstention issue should evaluate each individual claim brought by the plaintiffs and determine whether it is "reasonably likely" that the plaintiffs could prove each element without intruding on the "sacred precincts." *Id*.

As an initial matter, the Pfeils have conceded here that the majority of the statements detailed in their second amended complaint cannot serve as the basis for a defamation claim, even under the more liberal rule announced in *Connor*, because adjudicating the truth or falsity of the statements would require the court to consider and interpret matters of church doctrine. *See Milivojevich*, 426 U.S. at 720; *Mary Elizabeth*, 393 U.S. at 449. For instance, a court could not decide whether the Pfeils were engaged in a "public display of sin" without interpreting the meaning of the word "sin" as a matter of Lutheran doctrine—a determination that would clearly be unconstitutional.

The Pfeils maintain that four of the statements discussed in the complaint can be adjudicated without violating the First Amendment: (1) that the Pfeils "perpetuated falsehoods" about St. Matthew and its pastors, (2) that the pastors of St. Matthew had received numerous complaints about the Pfeils' slander and gossip, (3) that the Pfeils accused Behnke of stealing money from the church shortly before the Synod hearing, and (4) that the Pfeils committed "breaches of confidentiality." The Pfeils argue that a court could use neutral principles of law to determine the truth of these statements and, consequently, adjudicating a claim based on these four statements

would not lead to excessive entanglement with religion. Respondents and their amicus, the Lutheran Church-Missouri Synod, counter that the religious context in which these statements were made necessarily precludes judicial intervention.

C.

Respondents argue that allowing a court to adjudicate a claim based on statements made during a church disciplinary proceeding would unduly entangle the court with religion and severely interfere with the ability of religious organizations to govern their own affairs. To begin with, respondents posit that because the statements were made during the course of a church disciplinary hearing, each statement has some religious meaning and a court cannot simply sort so-called "secular" statements from "religious" ones.

This argument has merit. Many of the statements the Pfeils identified in their complaint are obviously religious in nature. Although other statements seem more secular in nature, it would certainly be difficult to differentiate between secular and religious statements, especially when the context in which the statements were made was clearly religious. A statement-by-statement analysis would be, at best, a difficult endeavor and, at worst, a court might be forced to interpret doctrine just to determine whether or not a statement had a religious meaning. It is precisely this sort of complicated and messy inquiry that we seek to avoid by prohibiting courts from becoming excessively entangled with religious institutions.

Respondents also argue that the Pfeils' claims are nothing more than an attempt to circumvent the U.S. Supreme Court's rulings in *Watson* and

Milivojevich and obtain judicial review of the decision to excommunicate them. There is no doubt that the First Amendment protects the right of churches and religious organizations to make decisions regarding their membership. *See Watson*, 80 U.S. at 727. To some degree, the Pfeils' defamation claims are a request to evaluate the accuracy of the facts used to support respondents' decision to excommunicate the Pfeils. Some courts that adopt an absolute position on adjudicating suits arising out of church disciplinary proceedings reason that "[t]he First Amendment's protection of internal religious disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." *Hiles v. Episcopal Diocese of Mass.*, 773 N.E.2d 929, 937 (Mass. 2002).

In essence, respondents argue that immunity from defamation suits based on statements made during church disciplinary proceedings must necessarily be included within a church's First Amendment right to make membership decisions, lest that right ring hollow. Respondents stress that this is particularly true because exposing these proceedings and their participants to civil litigation will lead to a chilling effect. If church disciplinary proceedings are not shielded from the scrutiny of civil courts, there is a very real risk that those who participate will censor themselves in order to avoid liability or the threat of a lawsuit. *See Paul v. Watchtower Bible & Tract Soc. of N.Y., Inc.*, 819 F.2d 875, 880 (9th Cir. 1987); *Westbrook v. Penley*, 231 S.W.3d 389, 400 (Tex. 2007).

In response, the Pfeils argue that the rule in *Connor* would provide sufficient protection to religious organizations by preventing courts from intruding into the "sacred precincts." The Pfeils seem

to interpret intruding on the "sacred precincts" to be equivalent to interpreting church doctrine. But the Pennsylvania Supreme Court did not specify what would qualify as a "sacred precinct." In fact, the Pennsylvania Supreme Court cited *Mains* with approval, indicating that our court of appeals made the correct decision by refusing to delve into statements made during a church disciplinary proceeding because adjudicating the parishioners' claims would have "obviously intrude[d] into the sacred precincts." *Connor*, 975 A.2d at 1108 (citing *Mains*, 504 N.W.2d at 234). Consequently, it is quite possible that even the *Connor* court would bar suits based on statements made during the course of a church disciplinary proceeding.

Additionally, the Pfeils fail to address the argument that determining which statements are secular and which are religious would, itself, create an excessive entanglement with religion. Although the Pfeils argue that defamation law provides sufficient protection for statements made during the course of a church disciplinary proceeding, we find this argument unpersuasive. This litigation and the arguments on which the Pfeils rely provide evidence to the contrary. Indeed, the fact that under Pfeils' rule "clearly religious" statements would be immune from suit while more factually based "secular" statements would not be only exacerbates the chilling effect of which respondents warn. Such a rule could perversely incentivize religious organizations to rely on amorphous and "doctrinal" reasons when making membership decisions in order to avoid any statements that could be construed as secular. Although not directly before us, the fact that Pfeils' rule would reward such behavior demonstrates that it would both excessively entangle the court with

religion and unduly interfere with the ability of religious organizations to make decisions regarding membership and internal discipline.[11]

The Pfeils make two additional arguments in an effort to support a statement-by- statement approach. First, they argue that the rule from *Mains* is itself unconstitutional because it provides an impermissible benefit to religious leaders and organizations, which is a violation of the Establishment Clause of the First Amendment. The Pfeils cite no case law in support of the proposition that shielding religious leaders and organizations from tort liability for their actions in the course of a church disciplinary proceeding would violate the Establishment Clause, and we have found none.

In fact, the Pfeils' argument appears to be in tension with the U.S. Supreme Court's holding in *Hosanna- Tabor*, which broadly exempted religious organizations from federal anti-discrimination law in the context of ministerial employment decisions on the basis of the First Amendment. ___ U.S. at ___, 132 S. Ct. at 705-06. If the ministerial exception does

[11] We also reject the dissent's suggestion that a qualified privilege would sufficiently protect participants in a church disciplinary proceeding. Although a qualified privilege would provide greater protection than the rule advocated by appellants, it would still be insufficient. A qualified privilege only protects statements if the privilege is not "abused." *Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876, 890 (Minn. 1986). "[T]he question of whether [a qualified] privilege was abused is a jury question." *Id.* Consequently, determining whether a statement is entitled to the protection of a qualified privilege requires extensive litigation. Thus, although a qualified privilege would provide some protection on the ultimate question of liability, it would do little to ameliorate the chilling effect that the specter of litigation can create. *See* discussion *supra* at 18-19.

not violate the Establishment Clause—and the U.S. Supreme Court clearly believes it does not—it is difficult to see how an exemption from tort liability in church disciplinary proceedings could be unconstitutional. The Pfeils' contention that a rule barring defamation claims based on statements made during a church disciplinary proceeding violates the Establishment Clause of the First Amendment is meritless.

Second, the Pfeils argue that an absolute bar will lead to absurd results. For instance, they suggest that a pastor could hold a church discipline meeting, accuse a parishioner of molesting children while knowing the accusation is false, and face no liability. The dissent also advances this argument, discussing a similar, although not identical, hypothetical set of facts. These concerns have merit. We would of course be troubled by any case in which statements were made with the intent of abusing the ecclesiastical abstention doctrine and avoiding liability, particularly if the statements were disseminated to individuals outside of the religious organization. *See, e.g.*, *Kliebenstein v. Iowa Conference of United Methodist Church*, 663 N.W.2d 404, 408 (Iowa 2003) (concluding that a statement made as part of a church disciplinary proceeding, but also disseminated outside the church and carrying at least some secular meaning, was not immune from liability). But those facts are not before us and we leave the resolution of such a case for another day.[12]

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[12] The dissent criticizes our failure to clarify how this rule of law would apply to various hypothetical facts. Although we recognize the dissent's concerns regarding future cases, it would be inappropriate to speculate on how the First Amendment may apply to hypothetical facts that are not before us. Those decisions must be left for another, properly presented, case or

The reality, however, is that any rule that shields some individuals or organizations from liability will necessarily cause some otherwise meritorious claims to go uncompensated. It is clear that at least some statements and actions within the context of a church disciplinary proceeding are immune from liability—the Pfeils even admit as much. Certainly a claim for redress arising out of defamatory speech is a valued and important societal interest. But on the facts before us—where ministers made largely religious and doctrinal allegations as part of an excommunication proceeding and only disseminated those statements to members of the congregation—"the First Amendment has struck the balance for us." *Hosanna-Tabor*, ___ U.S. at ___, 132 S. Ct. at 710.

Finally, the dissent argues that our holding today represents a rejection of *Odenthal*. That is simply not the case. The dissent reasons that because no U.S. Supreme Court case directly prohibits the adjudication of the Pfeils' claims, we are bound to apply neutral principles under *Odenthal*. The dissent concludes that our refusal to apply neutral principles as we did in *Odenthal* amounts to an act of judicial policymaking on issues of immunity. But the dissent fundamentally misunderstands our holding.

Odenthal itself recognized that the Constitution prohibits courts from engaging in inquiries that cause "excessive entanglement" with religion. *See Odenthal*, 649 N.W.2d at 435-38. The U.S. Supreme Court reaffirmed this understanding in *Hosanna-Tabor* when it held that courts may not "interfere[] with an internal church decision that

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controversy. We hold only that, on the facts before us, adjudicating the Pfeils' claims would violate the First Amendment.

affects the faith and mission of the church itself." *Hosanna-Tabor*, ___ U.S. at ___, 132 S. Ct. at 707. Today, we hold that adjudicating a defamation claim based on statements made during a church disciplinary proceeding and published only to members of the religious organization and its hierarchy would "interfere[] with an internal church decision that affects the faith and mission of the church itself," *id*., and would excessively entangle the courts with religion. *See Odenthal*, 649 N.W.2d at 435-38. As a result, such an adjudication is prohibited by the First Amendment. *Hosanna-Tabor*, ____ U.S. at ___, 132 S. Ct. at 707; *see Odenthal*, 649 N.W.2d at 435-38.

The absence of a U.S. Supreme Court decision directly on point with the decision we reach today does not constrain our ability to interpret the First Amendment in light of the cases the U.S. Supreme Court has decided. The U.S. Supreme Court's silence should not be interpreted as affirmative permission for courts to adjudicate these sorts of cases. Further, our holding does not represent a rejection of *Odenthal*. Rather, we simply recognize that adjudicating a defamation claim based on statements made during the course of a church disciplinary proceeding and published exclusively to members of the religious organization and its hierarchy necessarily fosters an excessive entanglement with religion, interferes with a religious organization's ability to make decisions that affect its faith and mission, and precludes the application of neutral principles of law.

Finally, our decision today is not an act of judicial policymaking. Rather, we conclude that the Pfeils' claims are barred as a matter of constitutional law, something very different than judicially created

or statutorily enacted immunities. The immunity cases cited by the dissent involve circumstances in which the court was called upon to balance society's interest in providing a remedy to private citizens with its interest in providing immunity to certain groups or individuals. Although we take the dissent's point that some interests weigh against granting absolute immunity, "the First Amendment has struck the balance for us" in this case. *Hosanna-Tabor*, ____ U.S. at _____, 132 S. Ct. at 710.

The law places a premium on providing remedies to those injured. Sometimes, however, the courts cannot award a remedy, no matter how valid the claim. These are not easy decisions. But they are necessary decisions, particularly where, as here, the right to a remedy must be weighed against constitutionally enshrined commitments to religious freedom. We conclude that adjudicating Pfeils' claims would excessively entangle the courts with religion and unduly interfere with respondents' constitutional right to make autonomous decisions regarding the governance of their religious organization.

IV.

In summary, we agree with respondents insofar as they argue that applying the issue-by-issue approach advocated by the Pfeils to this case would foster an excessive entanglement with religion, unduly interfere with the internal governance decisions of religious organizations, and violate the First Amendment. Ultimately, adjudicating Pfeils' claims would excessively entangle the courts with religion and unduly interfere with respondents' constitutional right to make autonomous decisions regarding the governance of their religious organization. We hold that the First Amendment

prohibits holding an individual or organization liable for statements made in the context of a religious disciplinary proceeding when those statements are disseminated only to members of the church congregation or the organization's membership or hierarchy. As a result, the district court properly dismissed the claims brought by the Pfeils against St. Matthew and its pastors.

Affirmed.

HUDSON, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

CHUTICH, J., took no part in the consideration or decision of this case.

DISSENT

LILLEHAUG, Justice (dissenting).

Today the court creates what is, essentially, an absolute privilege to defame in "formal church discipline proceedings." No matter how false and malicious the statement, and no matter how much the victim is damaged, there is no remedy whatsoever in Minnesota's courts.

The United States Supreme Court's jurisprudence on ecclesiastical abstention does not *require* this rule of law. Further, its categorical nature is contrary to our controlling precedent. In *Odenthal v. Minnesota Conference of Seventh-Day Adventists*, 649 N.W.2d 426 (Minn. 2002), we established the framework for liability for torts committed within religious organizations. *Odenthal*

held that, although we may not inquire into or review the internal decisionmaking or governance of a religious organization, we may apply neutral principles of law if we can do so without excessive entanglement. *Id.* at 435-38.

Instead of following the *Odenthal* framework, the court simply labels it a "complicated and messy inquiry" and announces a new rule. Because the opinion of the court undermines the doctrine of stare decisis and may deprive victims of a remedy, I respectfully dissent.

I.

It is black-letter constitutional law that we may not decide controverted questions of religious faith. *See Watson v. Jones*, 80 U.S. (13 Wall.) 679, 729-30 (1872); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115-16 (1952); *Serbian E. Orthodox Diocese for the U.S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 708-10 (1976). As we acknowledged in *Odenthal*, "a state may not inquire into or review the internal decisionmaking or governance of a religious institution." 649 N.W.2d at 435 (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979)).

But we may decide a case involving a religious organization when the dispute can be resolved according to "neutral principles of law." *Id.* at 435; *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969). There is no "compulsory deference to religious authority . . . where no issue of doctrinal controversy is involved." *Jones v. Wolf*, 443 U.S. 595, 605 (1979). As we said recently in *State v. Wenthe*, 839 N.W.2d 83, 90 (Minn. 2014): "No entanglement problem exists . . . when civil courts use neutral

principles of law—rules or standards that have been developed and are applied without particular regard to religious institutions or doctrines—to resolve disputes even though those disputes involve religious institutions or actors."

The most recent Supreme Court case applying the ecclesiastical abstention doctrine, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, __ U.S at ____, 132 S. Ct. 694 (2012), is consistent with this principle. The court held that applying federal anti-discrimination employment law to ministerial employees would interfere with religious organizations' internal governance. *Id*. at __, 132 S. Ct. at 706. To do so would constitute "government interference with an internal church decision that affects the faith and mission of the church itself." *Id*. at ___ , 132 S. Ct. at 707.

The issue in *Hosanna-Tabor*—the criteria for hiring and terminating ministerial employees—went directly to the heart of religious organizations' missions. "The church must be free to choose those who will guide it on its way." *Id*. at __, 132 S. Ct. at 710. But the opinion of the court took care not to express a view on other types of suits, including tort claims that might be brought by an employee against a religious employer. *Id*. at ___, 132 S. Ct. at 710.

Here, the court admits that neither *Hosanna-Tabor* nor any other U.S. Supreme Court case "speaks directly to the issues raised by the Pfeils' claims." The U.S. Supreme Court has never suggested that the First Amendment requires what the court does today. Therefore, in the absence of higher and contrary judicial authority, we should apply our own controlling case, *Odenthal*, that established the framework to analyze state tort claims against religious organizations.

The tort claim alleged in *Odenthal* was for negligence in counseling. The plaintiff invoked several statutes governing the conduct of unlicensed mental-health practitioners. 649 N.W.2d at 436-37. The defendants, a minister and a religious organization, argued that the application of a tort standard of care drawn from a secular regulatory statute was barred by the First Amendment because adjudication would entangle the court in religion. *Id*. at 438. We rejected that argument. Relying on *Wolf*, 445 U.S. 595, we held that the state tort claim was based on neutral principles of law that set a minimum standard of care, and that the case could be decided without undue entanglement. *Odenthal*, 649 N.W.2d at 438, 441.

Nothing in *Odenthal* hints that adjudicating a particular kind of state tort claim is entangling per se. To the contrary, it requires that we analyze state tort claims on a claim-by-claim basis.[1]

Like *Odenthal*, this is a case based on neutral principles of state tort law. Like *Odenthal*, this case arises out of an activity considered part of a religious organization's mission. Thus, there is no principled reason for the court to jettison the *Odenthal* framework and treat claims for defamation differently.

II.

Unquestionably, religious organizations have a constitutionally protected right to make decisions regarding their membership. Correctly, the Pfeils

[1] As the opinion of the court demonstrates at footnotes 8 and 9, the majority of state supreme courts that have considered defamation claims arising out of religious disciplinary proceedings have applied the ecclesiastical abstention doctrine on a claim- by-claim basis, rather than as a categorical bar.

have not asked us to overturn their excommunication from St. Matthew Lutheran Church. Instead, they ask us to do as *Odenthal* requires: apply neutral principles of state defamation law, consider each allegedly defamatory statement, and, as to each, determine whether adjudication would excessively entangle us in religion.

Adjudicating certain kinds of allegedly defamatory statements would lead inevitably to entanglement. Examples of such statements are found in the Pfeils' Second Amended Complaint. The Pfeils plead that they were defamed when a minister said: "That Plaintiffs had publicly engaged in 'sinful behavior' " inside and outside of the congregation. The Pfeils further plead that the minister defamed them with the words that the Pfeils had "refus[ed] to follow the commands of God's Word and Scriptural warnings by elected leaders of the congregation." Obviously, we would be entangled excessively in religion if we tried to adjudicate what is "sinful behavior" or whether someone refused to follow "the commands of God's Word."

But there are clear instances in which we can apply neutral principles of state defamation law to adjudicate defamation claims without excessive entanglement. Imagine a religious disciplinary proceeding in which a member has been charged with teaching false doctrine in the Sunday school. Plainly, we could not adjudicate any dispute regarding "false doctrine." But, assume that, in response, the member says, maliciously and without a shred of truth: "The charge that I'm harming the Sunday school is ironic, given that the minister regularly sexually assaults the kids in the class." As is true of many vicious accusations, inevitably such a defamatory statement would spread like wildfire through the religious

organization and into the community, causing great injury. Applying the *Odenthal* framework, a district court could likely use neutral principles of state defamation law to adjudicate the minister's defamation claim without excessive entanglement.

This is not to say that applying the test of excessive entanglement is always easy. There may be close cases when the analysis becomes, as the court puts it, "complicated and messy." But I reject the court's notion that the process of making a decision about excessive entanglement itself constitutes excessive entanglement. Such decisions are part of the judicial function, and we have made them as a matter of course. *See, e.g.*, *Wenthe*, 839 N.W.2d at 90-92; *Odenthal*, 649 N.W.2d at 434-41. We should have done so here.

III.

Instead, the court announces a categorical rule of law, closely akin to an absolute privilege to defame, thereby denying a state court remedy for a state tort. The court virtually inoculates speakers from liability for even their most outrageous false, malicious, and damaging statements that may have only a remote connection to any religious doctrine or mission.

Because this new privilege is not required by the United States Supreme Court's constitutional jurisprudence, it must be the product of judicial policy making. Historically, our policy has been that, because they deprive defamation victims of a remedy, absolute privileges should be rare creatures. "Absolute privilege is not lightly granted," *Zutz v. Nelson*, 788 N.W.2d 58, 62 (Minn. 2010), and is "confined within narrow limits," *Matthis v. Kennedy*, 243 Minn. 219, 223, 67 N.W.2d 413, 417 (1954). As we said in *Zutz*, we only extend absolute privilege "when

public policy weighs *strongly* in favor of such extension." 788 N.W.2d at 66 (emphasis added).

Although religious freedom is, of course, a strong public policy, the court does not demonstrate that the possibility of defamation liability "unduly interfere[s]" with that freedom. Nor does the court discuss why religious organizations cannot procure insurance to protect themselves from defamation liability.

On the other hand, the court concedes that there is "merit" to concerns about injustice to defamation victims. It tries to limit the inoculation from liability it grants with a proviso: the rule of law applies only to statements made "during the course of formal discipline proceedings" and "communicated only to other members of the church and participants." This proviso ignores the reality of how defamation can devastate its victims. Any statement made in a closed meeting of "members" and "participants" is unlikely to stay there. More likely, a vicious falsity uttered in a small-town house of worship will be avidly republished, starting the very next morning during coffee at the Chatterbox Café.

A qualified privilege, rather than an absolute privilege, would strike a much better balance between a defamation victim's right to a remedy and a religious organization's right to discipline. Under Section 596 of the Restatement (Second) of Torts, a qualified privilege is available "for communications among [members of a religious organization] concerning the qualifications of the officers and members and their participation in the activities of the society." *Id.* § 596 cmt. e (1977). We have recognized a similar privilege for communications in the context of employment. *See Lewis v. Equitable Life Assurance Soc'y of the U.S.*, 389 N.W.2d 876,

889-90 (Minn. 1986); *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 256-57 (Minn. 1980). A qualified privilege should have eased the court's concerns.

IV.

Under the guise of avoiding a "complicated and messy" entanglement analysis, the court's rule of law creates its own set of complications. The opinion creates a liability- free zone, but does not properly mark and fence the boundaries. As a result, the zone is both over-inclusive and under-inclusive.

First, the court does not explain precisely which claimants, besides the Pfeils, lose their defamation remedy. A defamatory statement during a religious disciplinary proceeding might be *heard* by only members and participants, but might be *about* a non-member third party. I suspect that, under the court's rule of law announced today, third-party victims would not have a state court remedy. But this is not clear.

Second, the court does not tell us what it means by "membership" and "formal church disciplinary proceedings." Religious organizations' understandings of "membership" and "formal disciplinary proceedings" vary widely. Some religious organizations have clearly defined indicia of what it means to belong; others do not. Some organizations have rules-based governance; others revolve around the thoughts of a single charismatic leader. Some organizations have complicated adjudicatory systems with several levels of appeal; others have nothing of the sort. By using words such as "formal" and "membership," the opinion sends us into more religious tangles than it avoids.

Finally, it is difficult to discern why the court's categorical rule of law insulating religious actors

from defamation claims would not extend to and insulate those actors from liability for other torts. The court's opinion necessarily raises the question of whether the state judiciary can adjudicate other state tort claims allegedly committed in connection with religious discipline, such as battery, fraud, false imprisonment, and negligent counseling.

V.

Had the court applied the *Odenthal* framework, it would have held that it could use neutral principles of law: Minnesota's law of defamation. Then it would have analyzed the allegedly defamatory statements, one by one, to determine whether each could be resolved without excessive entanglement. Had it done so, it would have concluded that adjudicating most of the statements would be entangling. It also would have concluded that most were not actionable because they were matters of opinion.[2] *See, e.g.*, *McKee v. Laurion*, 825 N.W.2d 725, 733 (Minn. 2013) (calling a physician a "real tool" is an opinion that cannot be the basis for a defamation action).

One statement, though, appears to be capable of adjudication without excessive entanglement. Paragraph 12 of the Second Amended Complaint alleges that a minister stated that the Pfeils had "accused [him] of stealing money from" St. Matthew Lutheran Church. The Pfeils allege that they made no such accusation. In other words, they contend that the minister falsely accused them of making a false

[2] *E.g.*, "That Plaintiffs had 'refused to show respect' towards servants of God and St. Matthew Lutheran Church leadership," and "That . . . Plaintiffs 'openly and intentionally attempted to discredit the integrity of the pastors and church leaders.' " On their face, these are matters of opinion.

accusation of the crime of theft.

Whether or not the Pfeils accused the minister of theft has little to do with the underlying disciplinary proceeding. I see no reason why a court and jury could not apply neutral principles of law without entanglement to determine whether: (1) the minister made the alleged statement; (2) it was false; (3) it was damaging to reputation; and (4) it was not protected by a qualified privilege. *See Stuempges*, 297 N.W.2d at 255-57.

Therefore, the court should have reversed the court of appeals and remanded the case to the district court to apply the *Odenthal* framework on a statement-by-statement basis. Any surviving defamation and negligence claims would then be subject to all available defenses, including qualified privilege.

For all of these reasons, I respectfully dissent.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice Lillehaug.

STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0605

LaVonne Pfeil,
Individually and as Trustee for Heirs of Henry Pfeil, deceased, Appellants,

vs.

St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, et al., Respondents.

Filed January 12, 2015
Affirmed
Chutich, Judge

Nobles County District Court
File No. 53-CV-13-817

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for appellants)

Ken D. Schueler, Jennifer M. Peterson, Dunlap & Seeger, P.A., Rochester, Minnesota; and

Timothy J. O'Connor, William L. Davidson, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Chutich, Presiding Judge; Stauber, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

Appellants LaVonne and Henry Pfeil challenge the district court's dismissal of their defamation claims against St. Matthew Evangelical Lutheran Church and its pastors. The district court ruled that it lacked subject-matter jurisdiction under the ecclesiastical abstention doctrine. Because any judicial inquiry into the truth of statements made during a church disciplinary proceeding would create an excessive entanglement with the church that would violate the First Amendment, we affirm.

FACTS

Appellants LaVonne and Henry Pfeil, an elderly couple who lived in Worthington, were longstanding members of St. Matthew.[1] In August 2011, the Pfeils were excommunicated from St. Matthew. The following September, Pastor Thomas Braun and Pastor Joe Behnke held a special voter's meeting at St. Matthew to determine whether the voting members of the church would affirm the Pfeils' excommunication. The Pfeils and approximately 89 other church members attended the meeting.

At the special voter's meeting, Pastor Braun read from a prepared document and made numerous statements about the Pfeils. These statements included:

[1] The respondents state that the church's proper name is "St. Matthew" and not "St. Matthews," as is listed in the caption to the Pfeils' action.

- The Pfeils were "actively involved in slander, gossip, and speaking against [Pastor Braun, Pastor Braun's wife, St. Matthew, and Pastor Behnke]."
- The Pfeils had "intentionally attacked, questioned, and discredited the integrity" of Pastor Braun, Pastor Behnke, and other St. Matthew leaders.
- Other people had seen the Pfeils display "anger and disrespect" towards Pastor Braun.
- The Pfeils had publicly engaged in "sinful behavior" inside and outside St. Matthew.
- The Pfeils had engaged in behavior unbecoming of Christians.
- The Pfeils had "refused to meet for the purpose of confession and forgiveness."
- The Pfeils had "refused to show respect" towards servants of God and St. Matthew leadership.
- The Pfeils had "led other people into sin."
- The Pfeils had engaged in "slander and gossip" and refused to stop.
- The Pfeils had "refused to follow the words and teachings of God."

During the same meeting, Pastor Braun also published and displayed a second document containing statements about the Pfeils. The published statements included the following:

- There had been "numerous reports" accusing the Pfeils of engaging in "slander" against Pastor Braun and his wife prior to their arrival at St. Matthew.

- Pastor Braun and St. Matthew had received "monthly reports" accusing the Pfeils of "slander" against Pastor Braun and "discredit[ing]" the ministry of Pastor Braun and St. Matthew.
- On December 6, 2010, the Pfeils participated in a meeting during which "reports of slander were [presented to the Pfeils]."
- Since January 26, 2011, Pastor Braun and St. Matthew had received "numerous monthly reports," from both members and nonmembers of St. Matthew, accusing the Pfeils of "slander and gossip . . . against the leadership and ministry of [St. Matthew]."
- In July 2011, the Pfeils "openly and intentionally attempted to discredit the integrity of the pastors and church leaders [of St. Matthew]."
- Since August 2, 2011, Pastor Braun and St. Matthew had received additional reports accusing the Pfeils of "slander and gossip."
- Since August 2, 2011, the Pfeils engaged in "breaches of confidentiality."
- The Pfeils had "publically and intentionally perpetuated false information and caused . . . dissention for the work and ministry of St. Matthew."

At the same meeting, Pastor Braun and Pastor Behnke distributed a ballot for the attendees to vote on whether to affirm the Pfeils' excommunication. The statements printed on the ballot included:

- The Pfeils had refused "to stop their slander and gossip."
- The Pfeils had led "other people into sin by

their behavior."

- The Pfeils had refused "to follow the commands of God's Word."
- The Pfeils had "[p]ublically attempt[ed] to discredit the integrity of the pastors and church leaders."
- The Pfeils refused "to show respect to called and ordained servants of the Word."
- The Pfeils had refused "to meet with both pastors and the Board of Elders for the purpose of confession and forgiveness."

In March 2012, the Pfeils and approximately ten other people attended a synod panel hearing.[2] At St. Matthew, the synod panel is part of the dispute-resolution process set forth in the bylaws of the church; the panel is responsible for reviewing decisions of the church congregation regarding discipline. During this hearing, Pastor Behnke alleged that the Pfeils had recently accused him of stealing money from St. Matthew.

The Pfeils sued respondents St. Matthew, Pastor Behnke, and Pastor Braun (collectively, the Church), alleging that the Church's statements injured their character and reputation in their small community. The Pfeils' complaint specifically alleges the Church's statements were defamatory, defamation per se, and that the Church was negligent in making false and defamatory statements about the Pfeils. Henry Pfeil died before the complaint for this lawsuit was filed, and his wife, LaVonne Pfeil, continued his defamation claims in his name as

[2] "Synod" refers to "an ecclesiastical council." *The American Heritage Dictionary* 1766 (5th ed. 2011).

trustee of his estate.

In September 2013, the Church moved to dismiss under Minnesota Rule of Civil Procedure 12.02(e), asserting that the Pfeils failed to state a claim upon which relief can be granted. In its motion, the Church argued that Henry Pfeil's claim did not survive his death, the Pfeils did not plead their defamation claims with the required level of specificity, and the Pfeils did not allege any actionable defamatory statements.

In December 2013, the Church filed a second motion to dismiss under Minnesota Rule of Civil Procedure 12.08(c) for lack of subject-matter jurisdiction. In this motion, the Church argued that all the alleged defamatory statements pertained to church governance, membership, and/or discipline proceedings, and therefore the district court lacked subject-matter jurisdiction under the Establishment Clause of the First Amendment.

In its well-reasoned order, the district court (1) granted the Church's motion to dismiss Henry Pfeil's claims under rule 12.02(e), determining that his defamation claims did not survive his death; (2) denied the Church's motion to dismiss LaVonne Pfeil's claims under rule 12.02(e), determining that she pleaded sufficient facts to maintain her claims; and (3) dismissed all of the Pfeils' claims under rule 12.08(c), determining that the ecclesiastical abstention doctrine barred the court from exercising subject-matter jurisdiction over the dispute.

In its interpretation of the ecclesiastical abstention doctrine, the district court relied on our decision in *Schoenhals v. Mains*, 504 N.W.2d 233, 235 (Minn. App. 1993). The district court reasoned that because all of the alleged defamatory statements "were made in the context of internal church

governance and involve the reasons and motives for disciplining [the Pfeils]," the court lacked subject-matter jurisdiction under *Schoenhals*.

Both parties appealed. The Pfeils contend that the district court erroneously dismissed their claims for lack of subject-matter jurisdiction and erroneously dismissed Henry Pfeil's claims for failing to survive his death. The Church argues that the district court erred by not dismissing LaVonne Pfeil's claims for failure to state an actionable claim.

DECISION

The Pfeils argue that the district court erred in dismissing their claims for lack of subject-matter jurisdiction because *Schoenhals* departs from prior Minnesota caselaw and other relevant authorities. The Church responds, and we agree, that *Schoenhals* is dispositive, and the district court properly applied the ecclesiastical abstention doctrine to dismiss the Pfeils' claims.

Ecclesiastical Abstention Doctrine

Subject-matter jurisdiction refers to the court's power to hear and to determine cases. *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 643 (Minn. 2012). Whether subject-matter jurisdiction exists is a question of law that we review de novo. *In re Civil Commitment of Giem*, 742 N.W.2d 422, 425-26 (Minn. 2007).

The Establishment Clause of the First Amendment says that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I.[3] The Establishment Clause applies to the

[3] Similarly, the Minnesota Constitution gives every citizen the

states through the Due Process Clause of the Fourteenth Amendment, and it "forbids state action that: (1) lacks a secular purpose; (2) has the primary effect of advancing or inhibiting religion; or (3) fosters excessive entanglements with religion (*Lemon* test)." *State v. Wenthe*, 839 N.W.2d 83, 87 (Minn. 2013) (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971)).

The third prong of the *Lemon* test, excessive entanglement, prohibits a court from inquiring into or reviewing "the internal decisionmaking or governance of a religious institution." *Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 435 (Minn. 2002). "No entanglement problem exists, however, when civil courts use neutral principles of law—rules or standards that have been developed and are applied without particular regard to religious institutions or doctrines—to resolve disputes even though those disputes involve religious institutions or actors." *Wenthe*, 839 N.W.2d at 90.

Under the ecclesiastical abstention doctrine, courts lack subject-matter jurisdiction if the disputed topic is "strictly and purely ecclesiastical in its character, [a] matter over which the civil courts exercise no jurisdiction, [a] matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713-14, 96 S. Ct. 2372, 2382 (1976) (emphasis omitted) (quotation omitted).

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right to worship "according to the dictates of his own conscience" and requires that the state not control, interfere, or give preference by law to "any religious establishment or mode of worship." Minn. Const. art. I, § 16.

In *Schoenhals*, we interpreted the ecclesiastical abstention in a strikingly similar factual situation. 504 N.W.2d at 233. The Schoenhals received a letter from their pastor terminating their membership from the church. *Id.* at 234. The pastor read the letter to the entire congregation and discussed it separately with the Schoenhalses' son, who was also a member of the church. *Id.* at 235. The letter set forth the following reasons for terminating the Schoenhalses' membership with the church:

> 1. A lack of financial stewardship with consistency and faithful tithing and offering over a given period of time.
>
> 2. A desire on your part to consistently create division, animosity and strife in the fellowship.
>
> 3. Direct fabrication of lies with the intent to hurt the reputation and the establishment of Faith Tabernacle of Truth Church and congregation.
>
> 4. Backbiting, railing accusations, division, lying, are some of the most serious sins found in the Bible. Where, by all appearances and related conversations, you have fallen into all of the categories.

Id. at 234.

The Schoenhals sued the church and its pastor alleging defamation, among other claims. *Id.* at 235. The district court granted summary judgment to the church and dismissed the Schoenhalses' defamation claim under the ecclesiastical abstention doctrine. *Id.* at 235. We affirmed the dismissal and held that an examination as to the truth of the pastor's statements would "require an impermissible inquiry into Church doctrine and discipline" in violation of the

Establishment Clause of the First Amendment. *Id.* at 236.

We also specifically acknowledged that one of the pastor's statements—the accusation that the Schoenhals had fabricated lies intended to hurt the reputation and establishment of the church—appeared unrelated to church doctrine on its face. *Id.* But we nevertheless reasoned that the statement "relate[d] to the Church's reasons and motives for terminating the Schoenhals[es]' membership" and therefore any examination into "those reasons and motives would also require an impermissible inquiry into Church disciplinary matters." *Id.* In addition, we noted that the letter was disseminated only to other congregation members, which strengthened our conclusion that the pastor's statements were related and limited to internal church disciplinary proceedings. *Id.*

The statements here, like the statements in *Schoenhals*, are all related to the Church's motives and reasons for excommunicating the Pfeils. Any examination as to the truth of these statements would be an impermissible inquiry into church doctrine under the First Amendment. *Id.* at 236. Adjudicating the truth of statements concerning sin and Christian doctrine cannot be done without impermissibly intruding on issues that are "strictly and purely ecclesiastical in [their] character." *Milivojevich*, 426 U.S. at 713, 96 S. Ct. at 2382 (quotation omitted).

At oral argument, the Pfeils' counsel conceded that we could not examine the truth of the statements concerning "sin" and Christian doctrine without violating the Establishment Clause. Nevertheless, the Pfeils contend that four categories of statements—the breach of confidentiality, lying

or perpetuating false information, accusing Pastor Behnke of stealing money, and the reported complaints of other congregation members concerning the Pfeils' behavior—can be adjudicated true or false based on secular, legal principles.

But this argument overlooks why the statements were made and the context in which they were made. In *Schoenhals*, we declined to inquire into any statements that related to a church's reasons and motive for terminating membership, even if the alleged defamatory statements appear unrelated to church doctrine on their face. 504 N.W.2d at 236. Likewise here, any examination into whether the statements were truthful would be an "impermissible inquiry into Church doctrine and discipline," *id.*, because the statements were directly related to the Church's reasons for excommunicating the Pfeils. Furthermore, these statements all occurred during the context of internal church disciplinary proceedings—the special voter's meeting in September and the synod panel hearing in March—that are specifically designed to determine membership status at St. Matthew.

The Pfeils next argue that we should "modify" *Schoenhals* because it (1) improperly departs from *Black v. Snyder*, 471 N.W.2d 715 (Minn. App. 1991), *review denied* (Minn. Aug. 29, 1991); (2) creates an absolute immunity for religious leaders unrecognized in state and federal law; and (3) enhances religion in violation of the First Amendment. None of these assertions are persuasive.

In *Black*, the appellant was a female pastor who claimed that her supervisor, a male pastor, repeatedly made unwelcome sexual advances toward her. *Id.* at 717-18. Less than three months after

reporting the sexual harassment to the Minnesota Department of Human Rights, the appellant was fired for her "inability to conduct the pastoral office efficiently in [the] congregation in view of local conditions." *Id.* at 718. She sued the church and pastor for sexual harassment and defamation, among other claims. *Id.*

We dismissed the appellant's defamation claim because we determined that any inquiry into the church's stated reason for her discharge—her inability to conduct her ministry efficiently—would be an impermissible inquiry into "an essentially ecclesiastical concern." *Id.* at 720. We permitted the appellant to pursue her sexual harassment claim because it was unrelated to her pastoral qualifications or issues of church doctrine and the remedy that she claimed would not require extensive court oversight. *Id.* at 721.

The Pfeils claim that *Schoenhals* strays from our holding in *Black* because the defamation claim in *Schoenhals* could have been resolved on neutral legal principles like the sexual harassment claim in *Black*. We disagree. *Schoenhals* aligns with *Black* because both decisions characterize the discharge of a person—whether an employee or church member—as a matter that concerns church governance and discipline over which civil courts have no subject-matter jurisdiction. *Schoenhals*, 504 N.W.2d at 236; *Black*, 471 N.W.2d at 720.

The Pfeils also contend that *Schoenhals* creates an absolute immunity for religious leaders that is not recognized in state and federal law and it enhances religion in violation of the First Amendment. Contrary to the Pfeils' assertions, *Schoenhals* does not create an absolute immunity for religious leaders; it merely recognizes that courts

cannot interfere with a church's disciplinary proceeding of its own members. As the United States Supreme Court has stated, issues of church discipline are "strictly and purely ecclesiastical . . . over which the civil courts exercise no jurisdiction." *Milivojevich*, 426 U.S. at 713-14, 96 S. Ct. at 2382 (quotation omitted). And if church leaders are accorded any special protection, it is only when the principles of the First Amendment require it. *See id.*; *see also Schoenhals*, 504 N.W.2d at 236.

Finally, the Pfeils argue that we should adopt the reasoning of the Pennsylvania Supreme Court in *Connor v. Archdiocese of Philadelphia*, 975 A.2d 1084 (Pa. 2009). This court, however, is not bound by the decisions of other state courts. *In re Welfare of Child of E.A.C.*, 812 N.W.2d 165, 174 (Minn. App. 2012), *review denied* (Minn. Mar. 27, 2012). And when binding Minnesota precedent is directly on point, we cannot disregard our own authority for that of other states. Accordingly, we decline to follow Pennsylvania caselaw here.

In concluding that the Pfeils' claims must be dismissed, we do not minimize the concerns that brought them to court. We recognize that LaVonne Pfeil, a lifelong resident of Worthington and longstanding member of the St. Matthew congregation, believes that the Church's statements besmirched her reputation and that of her deceased husband, Henry Pfeil, a grievous injury to the family name. But the separation of church and state, a principle enshrined in the Minnesota and United States Constitutions, prevents a district court from determining the merits of the Pfeils' dispute with their former church. Our decision here does not excuse any defamatory behavior that may have occurred in a sacred setting; it merely honors the

separation of church and state by avoiding secular intrusion into the heart of religious concerns: who may be a member of the church; what standards of behavior are required of them; and how and when members may be disciplined.

In sum, because the ecclesiastical abstention doctrine bars the court from inquiring into excommunication proceedings under these circumstances, the Pfeils' claims were properly dismissed for lack of subject-matter jurisdiction. Given our conclusion above, we need not address the Pfeils' remaining arguments and the Church's cross-appeal.

Affirmed.

STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF NOBLES FIFTH JUDICIAL DISTRICT

LaVonne Pfeil; and Henry Pfeil, deceased, by and through LaVonne Pfeil, Trustee of Henry Pfeil,

Plaintiff,

AMENDED ORDER

vs. File No. 53-CV-13-817

St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, a Minnesota Nonprofit Corporation; Pastor Thomas Braun, individually and as Pastor, employee, and agent of St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota; and Pastor Joe Behnke, individually and as Pastor, employee, and agent of St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota,

Defendants.

The above-entitled matter came initially before this Court on November 14, 2013 pursuant to Defendants' motion to dismiss under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief may be granted, and Plaintiffs' cross motion for leave to amend the complaint. The matter returned to this Court on January 24, 2014, pursuant to Defendants' motion to dismiss under Minn. R. Civ. P. 12.08(c) for lack of subject matter jurisdiction over the underlying dispute in this case. Plaintiffs appeared at both

hearings through their attorney, Zorislav R. Leyderman. Defendant appeared through attorneys Kenneth D. Schueler and Scott V. Kelly at the November 14th hearing and through attorneys Jennifer M. Peterson and Timothy O'Connor and at the January 24th hearing.

Based upon the record, file, and arguments of counsel, the Court, being otherwise advised in the premises, makes the following **ORDER:**

1. Plaintiffs' motion for leave to amend the complaint is, GRANTED. For purposes of judicial economy, the Court will address the Defendants' motions to dismiss in relation to the allegations in Plaintiffs' Second Amended Complaint submitted to the Court.

2. Defendant's motion to dismiss for failure to state a claim upon which relief may be granted under Minn. Civ. R. Pro. 12.02(e) is, DENIED in part, and GRANTED in part, as follows:

    a. Defendants' motion to dismiss all claims on behalf of Henry Pfeil on the grounds that his claims did not survive his death, is, hereby, in all things, GRANTED; but

    b. Defendants' motion to dismiss all claims by LaVonne Pfeil on the grounds that her claims do not state claims upon which relief may be granted, is, hereby, in all things, DENIED.

3. Defendants' motion to dismiss all claims of LaVonne Pfeil under Minn. R. Civ. P. 12.08(c) due to the Court's lack of subject matter jurisdiction over this dispute is, in all things, GRANTED.

4. Plaintiffs' claims against Defendants are DISMISSED with prejudice. The Court Administrator is directed to enter judgment accordingly in favor of Defendants without an entry of costs or disbursements in favor of Defendants, which are expressly denied.

5. The following Memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

IT IS SO ORDERED.

27 March 2014 s/_____
Gordon L. Moore, III
Judge of District Court

MEMORANDUM[1]

I. INTRODUCTION.

This case presents a series of tort claims pursued by two former members of Defendant church after they were "excommunicated" from church membership. Plaintiffs assert claims of defamation, defamation per se, and negligence against

[1] This Amended Order was issued at the request of Plaintiffs clarify that Judgment as to be entered by the Court Administrator dismissing this case in its entirety for purposes of allowing Plaintiffs to pursue an appeal. That was the intention of the Court in its February 12, 2014 Order granting Defendant's Motion for Summary Judgment on this file, but that was not made clear on the face of the Order. This Amended Order clarifies that and also that the attached Memorandum of law is incorporated by reference in to the Order and Judgment issue. Other than those administrative matters, nothing has been changed or altered from the earlier Order.

Defendants, all arising out of statements made by Defendant Pastors Thomas Braun and Joseph Behnke regarding Plaintiffs during two church meetings involving church "discipline" proceedings against Plaintiffs.

The issues at this early stage in the litigation are not whether or not the statements Plaintiffs attribute to Defendants were, in fact, made, or for that matter whether the statements, if made were defamatory or otherwise fair and appropriate commentary. Rather, the issues are whether the allegations Plaintiffs make state cognizable claims under Minnesota law under which relief may be granted, and to the extent they do, whether this court has jurisdiction over the subject matter of the dispute to permit this lawsuit to proceed.

With regard to the subject matter jurisdiction issue, the necessary and fundamental question for this court to answer prior to this lawsuit proceeding is whether, under the First Amendment to the Constitution, a civil state court may be used to litigate defamation claims which arise from statements made by church leaders within internal church "disciplinary" proceedings involving church membership. The separation of church and state generally precludes courts from involving themselves in disputes between pastors and parishioners over church doctrine and membership. The issue before the court is whether the Plaintiff's lawsuit crosses that fundamental line. The question here is not whether the court condones, approves, or ratifies of any of the alleged behavior attributed to the Defendants in this case, but whether this Court can be used as a vehicle to assert tort claims arising from that behavior against Defendants.

For the reasons more thoroughly explained

below, the court has granted the Defendants' motions in part and denied them in part. However, the final result of these rulings is that Plaintiffs' complaint is dismissed, because Henry Pfeil's claims did not survive his death in 2013, and because, even assuming Lavonne Pfeil's claims are cognizable under Minnesota law, this court does not have subject matter jurisdiction over them because they all arise from statements made within a church disciplinary process.

II. FACTS.

A. PROCEDURAL HISTORY.

Plaintiff's LaVonne and Henry Pfeil[2] brought this suit claiming defamation, defamation per se, and negligence in making false and defamatory statements. This dispute first came to this Court on November 14, 2013, on the Defendants' motion to dismiss for failure to state a claim under Minn. R. Civ. P. 12.02(e) and Plaintiffs' cross motion for leave to amend the complaint. Prior to the Court issuing its ruling on that motion, the matter returned to this Court on January 24, 2014, on Defendants' motion to dismiss under Minn. R. Civ. P. 12.08(c) for lack of subject matter jurisdiction. The Defendants motioned to dismiss the case under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted. In response, Plaintiffs sought leave to file an amended complaint.

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[2] Henry Pfeil died on April, I0, 2013 at his home south of Worthington. His claims in this matter have been prosecuted through his wife, LaVonne Pfeil, who was appointed Trustee to pursue claims after his death. For sake of simplicity, Henry Pfeil's claims will be described as his claims even though he is not the person prosecuting them.

For purposes of the analysis of Defendants' Rule 12 motions, the Court is going to consider only the allegations within or attached to Plaintiff s Second Amended Complaint, which is attached to the Affidavit of Zorislav Leyderman as Exhibit B, and will not consider any of the additional material submitted by affidavits of either party. Considering such material would convert this matter into a Summary Judgment motion, which is not appropriate at this stage of the case when the parties have conducted no discovery and therefore have not been given a reasonable opportunity to present all materials pertinent to such a motion. *See* Minn. R. Civ. P. 12.02. The Plaintiff's request for the court to disregard the affidavit of Thomas Braun submitted by Defendants is therefore granted.[3]

B. FACTUAL ALLEGATIONS CONTAINED IN PLAINTIFFS' COMPLAINT.

For purpose of this motion, the Court accepts the statement of facts submitted by the Plaintiffs, as follows below, with editing and the omissions of references to any affidavit other than that submitted by Plaintiffs' counsel which contains the Second Amended Complaint.

At the time of the incidents which are the subject matter of this lawsuit, Plaintiffs Henry and Lavonne Pfeil were an elderly husband and wife living in Worthington, MN; (See Leyderman Aff., Ex. B, hereinafter "Ex. B.") Prior to August 22, 2011, Plaintiffs were longtime standing members of Defendant St. Matthew Lutheran Church.

[3] The Court is also not considering the Affidavits of LaVonne Pfeil, Carol Culver, Helen Sandersfeld, or Helen Markman submitted by the Plaintiffs.

(Leyderman Aff., Ex. A, Second Am. Compl., hereinafter "Compl." ¶7.) On August 22, 2011, Plaintiffs were excommunicated from the membership of Defendant St. Matthew Lutheran Church. (Compl. ¶7.)

On September 25, 2011, Defendants held a meeting at St. Matthew Lutheran Church. (Compl. ¶7.) Plaintiffs and approximately 89 other members of St. Matthew Lutheran Church, all living in Plaintiffs' small, rural community, were present and participated in the meeting. (Compl. ¶8.) During this meeting, Defendant Pastor Braun, reading from a document he had previously prepared, (See Compl., Ex. 1 (attached to Second Amended Complaint)), made numerous statements about Plaintiffs to the other members in attendance. (Compl. ¶9.) These statements, alleged to be false, disparaging, and defamatory, included the following:

a. That Plaintiffs were "actively involved in slander, gossip, and speaking against [Pastor Braun and his wife Colleen Braun]."

b. That Plaintiffs were 'actively involved in slander, gossip, and speaking against [Pastor Behnke]."

c. That Plaintiffs were "actively involved in slander, gossip, and speaking against" St. Matthew Lutheran Church Board of Elders.

d. That Plaintiffs had “intentionally attacked, questioned, and discredited the integrity" of Pastor Braun, Pastor Behnke, and other St. Matthew Lutheran Church leaders.

e. That other people have seen Plaintiffs display "anger and disrespect" towards Pastor Braun.

f. That Plaintiffs had publicly engaged in "sinful

behavior" inside St. Matthew Lutheran Church.

g. That Plaintiffs had publicly engaged in "sinful behavior" outside of St. Matthew Lutheran Church.

h. That Plaintiffs had engaged in behavior unbecoming of a Christian.

i. That Plaintiffs had engaged in “public display of sin.”

j. That Plaintiffs had "refused to meet for the purpose of confession and forgiveness."

k. That Plaintiffs had "refused to show respect" towards servants of God and St. Matthew Lutheran Church leadership.

l. That Plaintiffs had “led other people into sin."

m. That Plaintiffs had engaged in "slander and gossip."

n. That Plaintiffs had "refused to stop their slander and gossip."

o. That Plaintiffs had 'refused to follow the words and teachings of God." (Compl. 9.)

During the September 25, 2011, meeting, Defendant Pastor Braun also published and displayed a document, (See Compl., Ex. 2 (attached to Second Amended Complaint)), containing allegedly false, disparaging, and defamatory statements about Plaintiffs to the members in attendance. (Compl. 10.) The statements which were published and displayed included the following:

a. That there had been "numerous reports" accusing Plaintiffs of engaging in "slander" against Defendant Pastor Braun and his wife Colleen Braun prior to their arrival at St. Matthew Lutheran Church.

b. That Pastor Braun and St. Matthew Lutheran Church had received "monthly reports" accusing Plaintiffs of "slander" against Defendant Pastor Braun.

c. That Pastor Braun and St. Matthew Lutheran Church had received "monthly reports" accusing Plaintiffs of "discredit[ing]" the ministry of Pastor Braun and St. Matthew Lutheran Church.

d. That on December 6, 2010, Plaintiffs participated in a meeting during which "reports of slander were [presented to the Plaintiffs]."

e. That, since January 26, 2011, Pastor Braun and St. Matthew Lutheran Church had received "numerous monthly reports," from both members and nonmembers of St. Matthew Lutheran Church, accusing Plaintiffs of "slander and gossip . . . against the leadership and ministry of [St. Matthew Lutheran Church]."

f. That, in July of 2011, Plaintiffs "openly and intentionally attempted to discredit the integrity of the pastors and church leaders [of St. Matthew Lutheran Church]."

g. That, since August 2, 2011, Pastor Braun and St. Matthew Lutheran Church had received additional reports accusing Plaintiffs of "slander and gossip."

h. That, since August 2, 2011, Plaintiffs engaged in "breaches of confidentiality."

i. That Plaintiffs had 'publically and intentionally perpetuated false information and caused ...dissention for the work and ministry of St. Matthew Lutheran Church."

(Compl. 110.)

During the September 25, 2011, meeting, Defendants Pastor Braun and Pastor Behnke also handed out a ballot, (See Compl., Ex. 3 (attached to Second Amended Complaint)), containing allegedly false, disparaging, and defamatory statements about Plaintiffs to the members in attendance. (Compl. ¶11.) These false, disparaging, and defamatory statements printed in the ballot included the following:

a. That Plaintiffs had "[r]efus[ed] to stop their slander and gossip."

b. That Plaintiffs had "[l]e[d] other people into sin by their behavior."

c. That Plaintiffs had "[r]efus[ed] to follow the commands of God's Word."

d. That Plaintiffs had "(p]ublically attempt[ed] to discredit the integrity of the pastors and church leaders."

e. That Plaintiffs "[r]efus[ed] to show respect to called and ordained servants of the Word."

f. That Plaintiffs had committed "public sin."

g. That Plaintiffs had "[r]efus[ed] to meet with both pastors and the Board of Elders for the purpose of confession and forgiveness."{Compl. ¶11.)

In March of 2012, a Synod panel hearing was held. (Compl. 12.) Plaintiffs and approximately 10 other people attended the hearing. (Compl. 12.) During this hearing, Defendant Pastor Joe Behnke made several allegedly false, disparaging, and defamatory statements about Plaintiffs. (Compl. 12.) Specifically, Pastor Behnke stated that, just recently, Plaintiffs had "accused [him] of stealing money from

…[St. Matthew Lutheran] Church." (Compl. 12.)

Plaintiffs are claiming that the Church and Pastors defamed them with the above- referenced statements, which they alleged were false and in some cases defamation *per se.* Plaintiffs also contend that Defendants and were negligent in making the statements. There is no dispute that each of the alleged defamatory statements was made within the church at church disciplinary proceedings. Defendants assert that the pleadings are insufficient to maintain the action against them because the claims fail to state the defamatory language with the required specificity. Defendants also allege that the court lacks subject matter jurisdiction over the dispute. Prior to initiating the action, Henry Pfeil died. LaVonne Pfeil wishes to continue this action in his name as trustee of his estate. Defendants claim that Mr. Pfeil's claims may not now be pursued.

III. LEGAL ANALYSIS.

A. PLAINTIFFS' MOTION FOR LEAVE TO AMEND THE COMPLAINT IS GRANTED.

On November 5, 2013, Plaintiffs moved the Court for leave to amend the complaint. Leave to amend shall be freely given when justice so requires. Minn. R. Civ. P. 15.01. The liberality to be shown in the allowance of amendments to pleadings depends in part upon the stage of the action and in a great measure upon the facts and circumstance of the particular case. *Bebo v. Delander,* 632 N.W.2d 732, 740-41 (Minn. Ct. App. 2001). This case is currently in the preliminary stages of litigation. The second amended complaint submitted with the motion appears to state the cause of action with more

specificity. Both parties benefit from specificity in the pleadings. The Court finds no reason to deny Plaintiffs' motion for leave to amend the complaint and it is so granted.

B. DEFENDANTS' MOTION TO DISMISS THE COMPLAINT UNDER RULE 12.02(E) IS DENIED, IN PART, AND GRANTED, IN PART.

Defendants' motion to dismiss for failure to state a claim upon which relief can be granted is denied, in part, and granted, in part. The Minnesota Rules of Civil Procedure provide, in relevant part, that:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
>
> …
> (e) failure to state a claim upon which relief can be granted . . . .

Minn. R. Civ. P. 12.02(e).

Pleadings generally must consist of a "short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. Pleadings that fail to state a claim upon which relief can be granted will be dismissed. *In Re Milk Indirect Purchaser Antitrust Litig.,* 588 N.W. 2d 772,774 (Minn. App. 1999) (citing Minn. R. Civ. Pro. 12.02(e)). "[A] pleading will be dismissed only if it appears to a

certainty that no facts which could be introduced consistent with the pleading exist which would support granting the relief demanded." *Bahr v. Capella Univ.,* 788 N.W.2d 76, 80 (Minn. 2010) (quoting *N. States Power Co. v. Franklin,* 122 N.W.2d 26, 29 (Minn. 1963)). A bare legal conclusion alleged in the complaint is not binding on the court. *Herbert v. City of Fifty Lakes,* 744 N.W.2d 226, 235 (Minn. 2008). In recent years the Minnesota Supreme Court has followed the lead of the federal court and adopted a much higher standard against which to measure the sufficiency of the allegations in a complaint, stating, "[a] plaintiff must provide more than labels and conclusions" in its pleadings. *Id.* (citing *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007)).

On a motion to dismiss for failure to state a claim, the trial court may consider only the complaint and the documents referred to in the complaint. *Martens v. Minn. Min.* & *Mfg. Co.,* 616 N.W.2d 732, 739-40 (Minn. 2000); see also Minn. R. Civ. P. 12.01(e); *Royal Realty Co. v. Levzn,* 69 N. W .2d 661, 610 (Minn. 1955). All facts as alleged in the complaint are accepted as true. *Bodah v. Lakeville Motor Express, Inc.,* 663 N.W.2d 550, 553 (Minn. 2003). The district court must "review the complaint as a whole, including the documents upon which [the plaintiffJ rel[ies], to determine whether as a matter oflaw a claim has been stated."*Martens,* 616 N.W.2d at 740. The Court considers the Plaintiffs' Second Amended Complaint when reviewing the sufficiency of the pleadings.

1. PLAINTIFF HENRY PFEIL'S CLAIMS DO NOT SURVIVE HIS DEATH.

Defamation is an injury to the person and does

not survive death; therefore, Henry Pfeil's claims for defamation were extinguished by his death in April 2013 as a matter of law. Under the common law, prior to the 1983 amendment to Minnesota's survival statute, Minn. Stat.§ 573.01, a cause of action for defamation did not survive the death of the party claiming to be injured. *Wild v. Rarig,* 234 N. W.2d 775, 792 (Minn. 1975); *Bryant v. American Sur. Co. of N.Y.,* 71 N.W. 826, 826 (Minn. 1897).

In 1983, Minn. Stat.§ 573.01 was amended to provide:

> [a] cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

Minn. Stat. § 573.02, subd. 2 states:

> [w]hen injury is caused to a person by the wrongful act of omission of any person or corporation and the person thereafter dies from a cause unrelated to those injuries, the trustee appointed in subdivision 3 may maintain an action for special damages arising out of such injury if the decedent might have maintained an action therefor had the decedent lived.

The statute does not define "injury to the person." Whether a claim survives lies "in the substance, not the form, of the cause of action." *Beaudry v. State Farm Mut. Auto Ins. Co.,* 518 N.W.2d 11, 13 (Minn. 1994). The Eighth Circuit

Court of Appeals found that the test is whether injury to the person is the "primary and moving cause of the damages sought." *Webber v. St. Paul City Ry. Co.,* 97 F. 140, 145 (8th Cir. 1899). This test is consistent with the one presented by the Minnesota Supreme Court. *Fowlie v. First Minneapolis Trust Co.,* 237 N.W. 846, 847 (Minn. 1931); *see also Beaudry,* 518 N.W. 2d at 13. The *Fowlie* test requires a court to look at "the nature of the damages sued for rather than the form of the remedy." *Fowlie,* 237 N.W. at 847.

Applying these tests here, Plaintiff Henry Pfeil's claims for defamation, defamation per se and negligence are all "injury to the person" claims. The only damages sought by Mr. Pfeil are those relating to injury to his person, including damage to character, personal reputation and status in community, and religious reputation as a faithful, honest, and devout Christian, mental/emotional trauma, anguish, and distress, humiliation and embarrassment, and diminished quality and enjoyment of life. There can be no disputing that injury to the person in this case is the "primary and moving cause of the damages sought."

Since these are claims for "injury to the person," all Mr. Pfeil's claims abate unless there are special damages[4]. See Minn. Stat. 573.02, subd. 2. Special damages "are the natural but not the necessary consequence" of the complained of act. *Lipka* v. *Minn. School Employees Ass 'n, Local 1980,* 537 N.W.2d 624, 630 (Minn. App. 1995) (quoting *Smith v. Altier,* 238 N.W. 479,479 (Minn. 1931)).

[4] Special damages are those damages which actually result from a wrongful act, but which are not presumed or implied. 23 Minn. Prac., Trial Handbook For Minn. Lawyers § 26:3 (2013 ed.).

"When items of special damage are claimed, they shall be specifically stated" inthe pleading. Minn. R. Civ. P. 9.07. Here, Plaintiff Henry Pfeil did not pray for any special damages, and he is not entitled to any special damages.

The Plaintiffs makes many creative arguments why Henry Pfeil's claims should survive his death. The arguments, however, have no basis in Minnesota law, which is clear that injuries to the person do not survive death. As defamation and negligence are injuries to the person, these claims do not survive Mr. Pfeil's death and are dismissed.

2. PLAINTIFFS' AMENDED COMPLAINT PLEADS SUFFICIENT FACTS TO MAINTAIN LAVONNE PFEIL'S CLAIMS OF DEFAMATION, DEFAMATION PER SE, AND NEGLIGENCE.

Plaintiff LaVonne Pfeil pled sufficient facts to support her claims for defamation and negligence. Under Minnesota law, a statement is defamatory if it "disgraces and degrades the plaintiff, holds him to the public hatred, contempt or ridicule" or "harm[s] the plaintiffs reputation and lower[s] the plaintiff to the estimation of the community." *Stuempges v. Parke, David & Co.,* 297 N.W.2d 252, 255 (Minn. 1980). The elements of a defamation claim are (1) a false statement, (2) communication of the false statement to someone other than the plaintiff, and (3) harm to the plaintiffs reputation caused by the false statement. *Richie* v. *Paramount Pictures Corp.,* 544 N.W.2d 21, 25 (Minn. 1996). "Statements are defamatory per se if they falsely accuse a person of a crime, of having a loathsome disease, or of unchastity, or if they refer to improper

or incompetent conduct involving a person's business, trade, or profession."*Longbehn v. Schoenrock,* App.2007, 727 N.W.2d 153. A defendant is negligent in the publication of a statement or communication if he/she knew or in the exercise of reasonable care should have known that the statement was false. *Jadwin v. Minneapolis Star and Tribune Co.,* 367 N.W.2d 476 (Minn. 1985).

It is well settled under Minnesota law that in a defamation action the specific defamatory language must be set out verbatim in the complaint, and paraphrasing of defamatory language is insufficient. *See Moreno v. Crookston Times Printing Co.,* 610 N.W.2d 321, 327 (Minn. 2000); *Am. Book Co. v. Kingdom Pub. Co.,* 73 N.W. 1089, I 090 (Minn. 1898). In other words, a claim of defamation must be pleaded with particularity regarding the specific statements made. *Special Force Ministries v. WCCO Television,* 584 N.W.2d 789, 794 (Minn. App. 1998). "It is not sufficient to merely state the effect of the language, or that the publication was of a certain defamatory tenor and import. The plaintiff cannot content himself with drawing his own inference from the words established, and then allege such inference, without apprising the defendant of the words of which he complains." *Am. Book Co.,* 73 N.W. at 1090. While in a defamation action it may not be essential to set forth the entire publication, "it is absolutely necessary to set forth in precise words such parts or passages as are claimed to be actionable." *Id.*

Plaintiff s Second Amended Complaint sufficiently pleads the alleged defamatory language in the body of the complaint and the attached documents. Paragraphs 9, 10, and 11 of the complaint filed November 5, 2013, put forth specific defamatory

statements set off with quotation marks, allege who allegedly made the statements, who allegedly heard the statements, when the statements were allegedly made, and where the statements were allegedly made.

Plaintiffs referenced documents in the second amended complaint that were attached. These documents were allegedly created by the Defendants and published to members of the congregation. The Plaintiffs also pled facts to establish defamation per se in paragraph 20 of the second amended complaint. Assuming the facts pled are true, the Plaintiff LaVonne Pfeil has established a claim for defamation and defamation per se.

The standard for pleading negligence requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Minn. R. Civ. P. 8.01. Plaintiff has claimed in the complaint that Defendants had a duty not to make defamatory statements about her and breached that duty by failing to investigate reasonably prior to making the defamatory statements. As a result of the Defendants breach, Plaintiff claims she has suffered damage to her reputation. Plaintiff has sufficiently pled negligence in making the defamatory statements. Defendants' motion to dismiss LaVonne Pfeil' s claims under 12.02(e) is therefore denied.

3. THE DEFAMATORY STATEMENTS ALLEGED BY THE PLAINTIFF WERE NOT CLEARLY OPINIONS OF THE DEFENDANTS.

The Plaintiff has pled defamation that can be reasonably be interpreted as fact and verified or discredited by the Defendants. In order to be

actionable, a defamatory statement must be reasonably interpreted as stating facts that can be proven false. *Metge v. Central Neighborhood Improvement Ass'n,* 649 N. W.2d 488, 496 (Minn. App. 2002). "[S]tatements which cannot be reasonably interpreted as stating actual facts, are absolutely protected by the First Amendment." *Bebo v. Delander,* 632 N.W.2d 732, 739 (Minn. App. 2001) (quoting *Hunt v. University of Minn.,* 465 N.W .2d 88, 94 (Minn. App. 1991)). "Expressions of opinion, rhetoric, and figurative language are generally not actionable if, in context, the audience would understand the statement is not a representation of fact." *Id.* See also *McKee v. Laurion,* 825 N.W.2d 725 (Minn. 2013). "If the words are capable of the defamatory meaning, it is for the jury to decide whether they were in fact so understood." *Gadach v. Benton County Co-op Association,* 236 Minn. 507, 53 N.W.2d 230 (1952).

Courts consider four factors when determining whether a statement is one of fact or opinion: (1) the precision and specificity of the statement; (2) the statement's verifiability; (3) the social and literary context of the statement; and (4) the public context in which the statement was made. *Id.*

The defamatory statements asserted by Plaintiffs are actionable because they were not made as statements of opinion and are capable of being proven true or false. The detail included in the Defendants allegations against the Plaintiff indicate that at least some facts could be verified.[5] Defendants allegedly made the defamatory statements about the

[5] The documents attached to the second amended complaint reference specific dates, activities, and places where Defendants claimed the Plaintiffs engaged in the alleged behavior.

Plaintiff relying on reports from parishioners and members of the community. According to the documents attached to the complaint, reports were recorded and verified with signatures. If they exist, these reports can be presented to the Court as a defense to the defamation claims.

The script from the September 25, 2011, meeting presents a matter-of-fact tone and begins with the credentials of both Pastors. The tone and language of the script does not support the Defendants claim that the defamatory statements were mere opinions. There is little question that the audience, Church members and leaders, understood these statements to be facts.

Although the definition of slander, gossip, sin, etc., may vary from person to person, if this Court has jurisdiction over the case, it is up to a jury to determine if the statements were understood as defamatory. The Plaintiff has pled defamatory statements, which could reasonably be interpreted as facts. Defendants' motion to dismiss for failure to state a claim under 12.02(e) is denied.

C. THIS COURT LACKS JURISDICTION OVER THE SUBJECT MATTER OF PLAINTIFF LAVONNE PFEIL'S CLAIMS UNDER THE ECCLESIASTICAL ABSTENTION DOCTRINE.

Defendants have alternatively moved the court to dismiss Plaintiffs' claims against Defendants with prejudice under Minn. R. 12.08(c) on the ground that this Court lacks jurisdiction over the subject matter of this dispute under the Ecclesiastical Abstention Doctrine. The basis for Defendants' motion is their allegation that all of Plaintiffs' claims involve

internal church governance, church membership, and/or church discipline, and the First Amendment to the United States Constitution prohibits courts from exercising jurisdiction over said issues.

Plaintiffs, on the other hand claim that this case can "be resolved entirely based on neutral and secular principles of defamation law and does not require any inquiry or interpretation of religious doctrine." Plaintiff s Memorandum in Opposition to Motion to Dismiss, p. 10.

Minn. R. Civ. P. 12.08(c) states that "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.02(a) permits a party to raise lack of jurisdiction over the subject matter of an action by motion. Subject matter jurisdiction refers to the court's authority or power to consider an action or issue a ruling that will dispose of the issues raised by the pleadings. "Subject matter jurisdiction involves the constitutional and statutory bases for the court's authority and any limitations on that authority." Herr & Haydock, 1 Minn. Prac. § 12:5, p. 359. The allegations of the pleadings usually determine the question of subject matter jurisdiction. *Id* Therefore, this Court once again will not consider information outside of the Second Amended Complaint and its attachments in deciding this motion.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I. This clause requires, among other things, that a law or religion not foster excessive governmental entanglement with religion. *Black v. Snyder,* 471 N.W.2d 715, 719-20 (Minn. Ct. App. 1991).

The United State Supreme Court has held that for an exercise of governmental authority to be valid under the Establishment Clause, it must: (1) have a secular purpose; (2) neither inhibit nor advance religion as its primary effect; and (3) not create excessive entanglement between church and state. *Lemon v. Kurtzman,* 403 U.S. 602, 612-13 (1971). The Supreme Court has also applied the "principles of neutrality" test, requiring that civil courts hear only disputes which can be determined on the basis of neutral principles of law. *Jones v. Wolf,* 443 U.S. 595, 602 (1979).

Excessive entanglement may occur when judicial review of a claim requires "a searching . . . inquiry into church doctrine." *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 723 (1976). Under the ecclesiastical abstention doctrine, civil courts are prohibited from exercising subject matter jurisdiction over matters concerning "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of a church to the standard of morals required of them." *Id* at 713-714; *Schoenhals v. Mains,* 504 N.W.2d 233, 235 (Minn. Ct. App. 1993). But, if a claim may be resolved by "neutral methods of proof ' unrelated to issues of church doctrine and governance, then the First Amendment will not prohibit judicial review. *Schoenhals, id.*

The Minnesota Court of Appeals' decision in *Schoenhals* is directly on point and instructive regarding the present matter. In *Schoenhals,* former church members sued their church and pastor for defamation following their expulsion from the church. *Id* at 234. The basis of the defamation claims was a letter which was read to the entire congregation of the church detailing the reason for their expulsion:

(1) lack of financial stewardship; (2) a desire "to constantly create division, animosity and strife in the fellowship; (3) "direct fabrication of lies" with the intent to hurt the reputation and establishment of the church; and (4) "backbiting, railing accusations, division, lying, . . . some of the most serious sins found in the Bible . . .you have fallen into all of the categories." *Id*

The Courts Of Appeals upheld the District Court's decision that the defamation claims were barred by the First Amendment because "examination of those reasons and motives would also require an impermissible inquiry into Church disciplinary matters." *Id.* at 236. The Court of Appeals noted that although determination of the truthfulness of some of these statements might be unrelated to church doctrine on its face, the statements nonetheless involved "the Church's reasons and motives for terminating [plaintiffs'] membership. The Court noted that the fact the letter was disseminated only to other members of the Church "strengthens the conclusion that [defendant's] statements involved and were limited to Church discipline. The Schoenhals' claim clearly involves an internal conflict within the Church, which is precluded by the First Amendment." *Id.*

This Court believes that the *Schoenhals* decision stands for the proposition that the Establishment Clause of the First Amendment to the United States Constitution bars the review of a defamation claim brought against a religious institution and its clergy arising out of the discipline and termination of the institution's members. Minnesota civil courts are simply not permitted to engage in an impermissible inquiry into church doctrine and discipline of its members. Statements

made by a pastor describing reasons for the "excommunication" of a church member result from ecclesiastical decision making and may not be subjected to review by a civil court or jury.

Based on *Schoenhals,* it is clear to the court that permitting this lawsuit to continue "would require an impermissible inquiry into Church doctrine and discipline." *Schoenhals, id* at 235. Despite Plaintiffs' somewhat blithe claims in their memorandum that this Court can make inquiry into the truth or falsity of the alleged defamatory statements "without resorting to interpreting religious doctrine, "Plaintiffs' Memorandum at p. 15, Plaintiffs' counsel conceded at oral argument that inquiring into the Lutheran definition of "sin" is not a secular exercise, but rather clearly connected to a religious context.

The overall problem with Plaintiffs' claims, however, is that they are all based entirely on statements made in connection with the Church's reason for excommunicating Plaintiffs from the congregation of St. Matthew's Lutheran Church in Worthington. The statements were made at a Special Voter's Meeting held before the congregation on September 25, 2011, and the Synod Panel Hearing on March 27, 2012. The purpose of the Special Voter's meeting was to discuss Plaintiff's excommunication and asking the congregation to affirm the chosen discipline. The Synod Panel Hearing was held for the sole reason of reviewing the decision of the Special Voter's Meeting to excommunicate Plaintiffs and was held in accordance with the Church's formal internal dispute resolution process.

Under these circumstances, the Court agrees with the Defendant that the statements alleged by Plaintiffs to be defamatory were all made in the

context of internal church governance and involve the reasons and motives for disciplining Plaintiffs, which were based in scripture, church governance, and internal church policy. While certain statements alleged to be defamatory, such as an allegation that Plaintiffs falsely accused Pastor Behnke of stealing money from the congregation, may have secular meaning or overtones, the context of where they are made prohibits the court from involving itself in the matter, because it related to the reasons and motives for terminating Plaintiffs' church membership.

Plaintiffs' efforts at distinguishing *Schoenhals* are unavailing. In both cases, a pastor read a document to the entire congregation summarizing reasons through an ecclesiastical process for dismissing people from church membership. In both cases, the statements at issue related to the reasons and motives for terminating the plaintiffs' membership. As in *Schoenhals,* the issue here is not whether the allegedly defamatory statements relate to church doctrine on their face, but rather whether the statements relate to the Church's motives and reasons for terminating the plaintiffs' membership in the church. Some of the statements alleged to be defamatory in *Schoenhals* as in this case were unrelated to church doctrine on their face (spreading lies to hurt the reputation of pastors, etc.) but all related to the reasons why the plaintiffs' membership was terminated.

Plaintiffs urge the court to disregard the *Schoenhals* decision and adopt the decision of the Pennsylvania Supreme Court in *Connor v. Archdiocese of Philadelphia,* 975 A.2d 1084 (Pa. 2009). This Court may not disregard published, binding precedent issued by the appellate courts of Minnesota and choose another state's legal analysis.

If the Plaintiffs wish the courts of this state to adopt a different standard for reviewing intra-church defamation claims, they will have to appeal this decision and make such a claim.[6]

Had the Plaintiffs alleged that Defendants' communication about their excommunication from St. Matthew's was published outside the congregation, the Court's decision in this case would be different. *See Kliebenstein v. Iowa Conference of the United Methodist Church, et al.,* 663 N.W.2d 404, 405 (Iowa 2003) (letter by United Methodist District Superintendent characterizing a church member of having the "spirit of Satan" found to be actionable because it was mailed to not only members of Shell Rock UMC congregation but also Shell Rock community). But there is no evidence in this case presented to the court that the publication went to persons beyond church members or was outside the internal church appeal process.

The Court wishes to emphasize that by reaching this decision, it expresses no opinion regarding the appropriateness, fairness, decency, or lack thereof, of any of the alleged behavior of the Defendants related to this matter. The Court's decision should not be read as condoning defamatory behavior, but rather as respecting the separation of church and state in this country. It is simply not for

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[6] The *Connor* decision is distinguishable from the present case as it involved claims of defamation after a student was expelled from a parochial school for bringing a knife to school. *Id* at I 087. The school made statements explaining that the student had been expelled for bringing a knife to school and implying that the student presented a danger to the school and community. The Pennsylvania Supreme Court expressly distinguished *Schoenhals,* noting that it was a case which "wasn't persuasive" because it involved facts where resolution of the dispute "would obviously intrude into the sacred precincts." *Id*

this Court to interject personal opinion or engage in an evaluation of a Church's decisions regarding its internal governance or membership decisions.

The Court would only comment in conclusion that the legacy and reputation left behind after a person dies ought to be based upon an evaluation of a lifetime body of work and should not be defined by disagreements with one or two people. While the circumstances leading to this lawsuit here are very unfortunate, resolution of the matter is up to the parties involved, not the courts. It is simply not a matter that a judge or jury in Nobles County District Court should be involved with in any way, shape, or form.

GLM

STATE OF MINNESOTA SUPREME COURT

JUDGMENT

Appellate Court #A14-0605

La Vonne Pfeil, Individually and as
Trustee for Heirs of Henry Pfeil,
deceased,

Petitioner,

vs. Trial Court # 53-CV-13-817

St. Matthews Evangelical
Lutheran Church of the Unaltered
Augsburg Confession of
Worthington, Nobles County,
Minnesota, et al.,

Respondents,

Pursuant to a decision of the Minnesota Supreme Court duly made and entered, it is determined and adjudged that the decision of the Nobles County District Court herein appealed from be and the same hereby is affirmed and judgment is entered accordingly.

It is further determined and adjudged that St. Matthews Evangelical Lutheran Church of the Unaltered Augsburg Confession of Worthington, Nobles County, Minnesota, et al., herein, have and recover of La Vonne Pfeil, Individually and as Trustee for Heirs of Henry Pfeil, deceased herein the amount of $795.71 as costs and disbursements in this cause in the Supreme Court, and the amount of $777.23 as costs and disbursements in this cause in the Court of Appeals. Execution may be issued for the enforcement thereof.

Dated and signed: May 13, 2016

FOR THE COURT

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: /s/
Clerk of the Appellate Courts

Statement For Judgment

Costs and Disbursements in the Amount of: $1,572.94

Attorney Fees in the Amount of:

Other in the Amount of:

Total: $1,572.94

Satisfaction of Judgment filed: _____
Dated

Therefore the above judgment is duly satisfied in full and discharged of record

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Court

By: _____
Assistant Clerk

STATE OF MINNESOTA SUPREME COURT

TRANSCRIPT OF JUDGMENT

I, AnnMarie S. O'Neill, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,
In the City of St. Paul May 13, 2016
Dated

Attest: AnnMarie S. O'Neill
Clerk of the Appellate Courts

By: /s/
Clerk of the Appellate Courts