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Attorneys for Defendant Holy See
without waiver of defenses, jurisdictional or otherwise

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN V. DOE,

Plaintiff,

v.

HOLY SEE, (State of the Vatican City), Its Instrumentalities and/or Agents -- Does 1-10; ARCHDIOCESE OF PORTLAND IN OREGON, an Oregon Corporation; THE ROMAN CATHOLIC ARCHBISHOP OF PORTLAND IN OREGON, and successors, a corporation sole, dba THE ARCHDIOCESE OF PORTLAND IN OREGON; THE CATHOLIC BISHOP OF CHICAGO, a corporation sole; THE ORDER OF THE FRIAR SERVANTS OF MARY, dba THE ORDER OF THE FRIAR SERVANTS OF MARY, U.S.A., PROVINCE, INC.,

Defendants.

Case No. 3:02-cv-00430-MO

**DECLARATION OF DR.
EDWARD N. PETERS IN
SUPPORT OF DEFENDANT
HOLY SEE'S REPLY TO
PLAINTIFF'S OPPOSITION
TO SECOND MOTION TO
DISMISS FOR LACK OF
SUBJECT MATTER
JURISDICTION**

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I, Dr. Edward N. Peters, hereby declare and state as follows:

I. Qualifications of Dr. Edward N. Peters

1. I graduated in 1979 from Saint Louis University, where I received my Bachelor's degree in political science. I thereafter attended the University of Missouri School of Law, where I received my J.D. degree in 1982. I was admitted to the Bar of the State of Missouri after my graduation and maintained an out-of-state license through 2008.

2. I began studies in canon law in 1985 at The Catholic University of America ("CUA") in Washington, D.C. At CUA, I earned my licentiate degree (J.C.L.) in 1988, and my doctoral degree (J.C.D.) in 1991. During my doctoral studies at CUA, I was named a Johannes Quasten Fellow for advanced studies in religious disciplines, the first canon law student awarded this fellowship. My doctoral dissertation, *Penal Procedural Law under the 1983 Code of Canon Law*, was directed by Professor Thomas Green.

3. From 1990 to 1992, I served as Vice-Chancellor, Chancellor, and Defender of the Bond in the Diocese of Duluth, Minnesota, in which positions I regularly addressed a variety of issues of canon law and diocesan administration.

4. From 1992 to 2001, I served as Vice-Chancellor, Director of the Office for Canonical Affairs, as well as (at turns) Promoter of Justice, Defender of the Bond, and panel Judge for the Diocese of San Diego. In these capacities, I regularly handled matters relating to canon law and diocesan administration. I also served in the Diocese of San Diego in an Of Counsel capacity to the Office for Civil Affairs, where I assisted diocesan and retained counsel with canon law issues. During these same years, I served as Defender of the Bond and/or panel Judge for the Metropolitan Province of Los Angeles. In addition, from 1995 to 2001, I taught

master's level courses in canon law and canonical structures as an adjunct instructor for the Institute of Religious and Pastoral Studies at the University of Dallas.

5. From 2001 to 2005, I taught canon law full-time in the graduate-level Institute for Pastoral Theology, then located in Ann Arbor, Michigan. I also taught Ecclesiastical Latin and Liturgy & Sacraments for the Institute.

6. Since 2005, I have held the rank of full professor and hold the Edmund Cardinal Szoka Chair at Sacred Heart Major Seminary in Detroit, Michigan. As a professor at the Seminary, I serve on the theology faculty in affiliation with the Pontifical University of St. Thomas Aquinas, in Rome, Italy. At Sacred Heart Seminary, I regularly teach graduate level courses in the canon law of the Roman Catholic Church, ecclesiastical structures, and the Magisterium. I also regularly teach undergraduate level courses on the Catholic Church, Ecclesiastical Latin, and Liturgy & Sacraments.

7. In addition to my qualifications as a canonist, I regularly teach Ecclesiastical Latin at Sacred Heart Major Seminary and have served for four years as the Latin language consultant for an extensive liturgical translation project currently being undertaken by the National Catholic Office for the Deaf. I produced the well-received translation from Latin to English of the 1917 Pio-Benedictine Code ("1917 CODE"), a work entailing the translation of all 2,414 canons of that Code.

8. Although primarily a canonist, I am also a member of the graduate theology faculty at Sacred Heart Major Seminary. As a faculty member, I regularly teach, among other things, the licentiate level course entitled Structures of the Particular Church, a course that examines canonical and ecclesiological issues that are the subject matter of this declaration. I

also teach Introduction to the Catholic Church. Both courses require familiarity with the theology, history, beliefs, and operations of the Catholic Church.

9. I have published numerous articles and/or reviews on canon law and related ecclesiastical topics in professional and peer-reviewed journals, including *PERIODICA DE RE CANONICA* (Rome, Italy), *ANGELICUM* (Rome), *IUS ECCLESIAE* (Rome), *APOLLINARIS* (Rome), *EPHEMERIDES THEOLOGIAE LOVANIENSIS* (Louvain, Belgium), *STUDIA CANONICA* (Ottawa, Canada), CANON LAW SOCIETY OF AMERICA ADVISORY OPINIONS (Washington, D.C.), *CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND NEWS* (Westminster, England), *THE JURIST* (Washington, D.C.), *BULLETIN OF THE CANADIAN CANON LAW SOCIETY* (Ottawa), *LAW & JUSTICE* (England), and *THE JOURNAL OF LAW AND RELIGION* (Minneapolis, MN). I have also published many canonical and Catholic-oriented articles and reviews in at least 60 other respected journals, including *HOMILETIC & PASTORAL REVIEW*, *CHICAGO STUDIES*, *CATHOLIC WORLD REPORT*, *AMERICA*, *FELLOWSHIP OF CATHOLIC SCHOLARS QUARTERLY*, *CATHOLIC DOSSIER*, and *ANTIPHON*.

10. Among my monographs are *THE 1917 OR PIO-BENEDICTINE CODE OF CANON LAW IN ENGLISH TRANSLATION WITH EXTENSIVE SCHOLARLY APPARATUS* (2001) (777 pages) and the *INCREMENTA IN PROGRESSU 1983 CODICIS IURIS CANONICI [A LEGISLATIVE HISTORY OF THE 1983 CODE OF CANON LAW]* (2005) (1,548 pages).

11. I have contributed to numerous Catholic academic and canonical reference works, including the *CAMBRIDGE DICTIONARY OF CHRISTIANITY* (2010), the *NEW CATHOLIC ENCYCLOPEDIA REVISED ON-LINE EDITION* (2009), the *ENCYCLOPEDIA OF CATHOLIC SOCIAL THOUGHT* (2007), the *NEW DICTIONARY OF CANON LAW* (forthcoming), and the *DICIONARIO GENERAL DE DERECHO CANONICO [GENERAL DICTIONARY OF CANON LAW]* (forthcoming).

II. Materials Reviewed in Preparation for this Declaration

12. In addition to the authorities and other materials cited herein, I have reviewed the following documents in preparation for this declaration:

- Plaintiff's Amended Complaint in *Doe v. Holy See, et al.*, Case No. CV-02-430-MO, Docket No. 86, dated March 31, 2004 ("Complaint" or "Cmplt.");
- Declaration of Father Luke Stano, O.S.M., Docket No. 249, dated September 7, 2010 ("Stano Decl.");
- *Regula S. Augustini Episcopi et Constitutiones Ordinis Fratrum Servorum Beatae Mariae Virginis* (Rule of Saint Augustine and the Constitution of the Order of Friar Servants of Mary), dated March 5, 1940, attached as Exhibit 1 to the Stano Decl.;
- An unofficial English translation of the Constitution of the Order of Friar Servants of Mary (1940) ("1940 SERVITE CONST."), attached as Exhibit 2 to the Stano Decl.;
- Defendant Holy See's Memorandum in Support of Second Motion to Dismiss for Lack of Subject Matter Jurisdiction, Docket No. 252, dated September 8, 2010;
- Declaration of Jeffrey S. Lena in Support of Defendant Holy See's Second Motion to Dismiss for Lack of Subject Matter Jurisdiction, Docket No. 251, dated September 8, 2010 ("Lena MTD Decl.");
- Exhibits 1 through 140 to the Lena MTD Decl., Docket Nos. 251-1 through 251-140;
- Plaintiff's John V. Doe's Memorandum in Opposition to Defendant Holy See's Second Motion to Dismiss, Docket No. 300, dated March 13, 2012 ("Plaintiff's Opposition" or "Pltf.'s Opp.");
- Declaration of Michael Finnegan in Support of Plaintiff's Opposition to Defendant Holy See's Second Motion to Dismiss, Docket No. 301, dated March 13, 2012 ("Finnegan Declaration" or "Finnegan Decl.");
- Exhibits 1 through 38 to the Finnegan Decl., Docket Nos. 301-1 through 301-45;
- Declaration of Patrick J. Wall, Docket No. 303, dated March 13, 2012 ("Wall Declaration" or "Wall Decl.");
- Exhibits A through F to the Wall Decl., Docket Nos. 303-1 through 303-6;

- Expert Declaration of Thomas P. Doyle, J.C.D., C.A.D.C., Docket No. 302, dated March 12, 2012 (“Doyle Declaration” or “Doyle Decl.”);
- Declaration of Father Ronald Bowers, dated April 3, 2012;
- Declaration of Father Vincent Tobin, O.S.B., dated April 13, 2012 (“Tobin Decl.”);
- *Instructio De Modo Procedendi in Causis Sollicitationis*, dated June 9, 1922 (*Typis Polyglottis Vaticanis* 1922), attached hereto as Exhibit A;
- *Instructio De modo procedendi in causis sollicitationis* dated March 16, 1962 (*Typis Polyglottis Vaticanis* 1962), attached hereto as Exhibit B; and
- Instruction On the Manner of Proceeding in Cases of Solicitation, English translation of the 1962 Instruction (“*Crimen*”), attached hereto as Exhibit C.¹

III. Scope of Declaration

13. This declaration states my expert opinion. It is not an official statement by the Holy See. I rely in this declaration only on publicly-available sources and commentary.

14. This declaration will address the statements of canon law and theology made by Plaintiff and his proffered declarants, Patrick Wall and Thomas Doyle, in the court filings referenced above.

IV. Competencies Required for Analysis of Canon Law

15. An accurate understanding of most issues related to canon law requires three competencies. First, it requires an ability to understand Latin, because with respect to core canonical documents – such as conciliar documents and the Code of Canon Law itself – only Latin has binding force.² Second, with respect to understanding the *ratio legis* underlying canonical norms, a deep familiarity with Catholic theology and ecclesiology is required. As Pope John Paul II observed in promulgating the 1983 Code of Canon Law (“1983 CODE”):

¹ I have examined the translation of *Crimen* that is attached hereto as Exhibit C. I find the translation to be accurate.

² See *Normae de latino textu* at 1, no. 1. For the convenience of the Court, I have attached as Exhibit D English translations of all of the 1917 and 1983 CODE provisions cited herein.

The instrument, which the Code is, fully corresponds to the nature of the Church, especially as it is proposed by the teaching of the Second Vatican Council in general, and in a particular way by its ecclesiological teaching. Indeed, in a certain sense, *this new Code could be understood as a great effort to translate this same doctrine, that is, the conciliar ecclesiology, into canonical language.* If, however, it is impossible to translate perfectly into canonical language the conciliar image of the Church, nevertheless, in this image there should always be found as far as possible its essential point of reference.

*From this there are derived certain fundamental criteria which should govern the entire new Code, both in the sphere of its specific matter and also in the language connected with it. It could indeed be said that from this there is derived that character of complementarity which the Code presents in relation to the teaching of the Second Vatican Council, with particular reference to the two constitutions, the Dogmatic Constitution *Lumen gentium* and the Pastoral Constitution *Gaudium et spes*.*

John Paul II, *Sacrae disciplinae leges* ¶¶ 18-19.³ And third, understanding the Code requires extensive training in the field of canon law itself.⁴

V. Patrick Wall's Lack of Qualifications as a Canonist

16. I have reviewed paragraphs 2 and 3 of the Wall Declaration, wherein Wall states his qualifications as an “expert witness” in the canon law. I offer the following observations regarding Wall’s statement of qualifications.

17. Wall claims to hold “an LLM in Canon Law from the University Of Cardiff School of Law.” The Cardiff LLM degree is not a canonically recognized or accredited degree in the canon law of the Catholic Church. *Cf.* 1983 CODE c.817; *see also* 1983 CODE cc.253 § 1; 378 § 1, 5°; 478 § 1; 1420 § 4; 1421 § 3; 1435.

18. I have read online the requirements of the Cardiff canon law LLM program.⁵ The Cardiff University website explains that its program is “part-time only,” and consists of eight

³ *See also Novo Codice* at 283.

⁴ *See Novo Codice* at 283-84; 1983 CODE cc.1420 § 4, 1435 and 1483.

weekends of contact course work spread over a two-year period. In addition, despite the short period of course work, the program covers not only the canon law of the Roman Catholic Church, but also “the canon law of the churches of the Worldwide Anglican Communion (in particular the Church of England).”

19. Such a low expectation in terms of Roman Catholic canon law course work stands in sharp contrast to a licentiate degree in canon law, which requires three years of full-time course work relating to the canon law of the Catholic Church. *Novo Codice, passim*. To draw an analogy to civil law, Wall’s educational background might be considered the equivalent of a student who completed a 16-day “legal studies” course during summer school. While such a course may serve as a basic introduction to the United States legal system, it does not render one licensed to practice law, and certainly does not qualify a person as an “expert” in United States law.

20. Wall claims to have served “as a Judge/Advocate” in the tribunal of the Archdiocese of St. Paul-Minneapolis from 1994 through 1996.

21. As an initial matter, while there are diocesan judges and advocates, there is no hybrid position of “judge/advocate” in the canon law system. The position identified by Wall does not exist.

22. Moreover, the members of diocesan tribunals are listed in the *Official Catholic Directory* for the United States. I do not find Wall listed in the *Official Catholic Directory* as a member of the tribunal during any of those years. In addition, the Code requires that diocesan judges “possess a doctorate, or at least a licentiate, in canon law.” 1983 CODE c.1421 § 3; *see*

⁵ See <http://www.law.cf.ac.uk/degreeprogrammes/>; *see also* <http://www.law.cf.ac.uk/degreeprogrammes/pgt/canon/>.

also 1983 CODE c.1420 § 4. Since Wall possessed neither a doctorate nor a licentiate in canon law, he would not have met the requirements to be a judge on a diocesan tribunal.

23. With regard to Wall's claim to have served as an "Advocate," the Code requires an advocate to be "a doctor in canon law or otherwise truly skilled." 1983 CODE c.1483. As stated above, Wall did not (and still does not) hold a doctorate in canon law. To be "otherwise truly skilled" to qualify as an advocate under canon 1483, the applicant must be "truly versed in canon law, which can be deduced from the fact that he or she teaches in state or ecclesiastical universities, or at least in seminaries, or from the fact that – after having received the degree – has attended, passing the annual examinations, the Rota course or other courses that may be recognized as qualified to confer a diploma." Gullo, IV/1 EXEGETICAL COMMENTARY at 980-81. I see nothing in Wall's declaration that would suggest that Wall would have met this requirement.⁶

24. In any event, the normal course of duties of persons involved in American diocesan tribunal work focuses heavily, often exclusively, on Catholic matrimonial law. Tribunal work would not – absent unusual circumstances not stated in Wall's declaration – bring one into regular contact with "the Canon Law as it relates to the Apostolic See, Roman Curia, Bishops, Priests, religious Men, Religious Women and Laity." *Cf.* Wall Decl. ¶ 2.

25. Wall's lack of qualifications in canon law manifests itself throughout his declaration, and I discuss many of Wall's errors below. However, it is worth noting in particular that Exhibit A to the Wall Declaration contains a wide range of mistakes. Wall mischaracterizes numerous provisions of the 1917 CODE, often by omitting portions of the canons that affirm the

⁶ With regard to a person qualified to serve as an advocate, commentators provide the example of an individual who followed "courses leading to a degree in jurisprudence" at the Pontifical Gregorian University. *Id.* at 981 n.2. Not only does Wall fail to list any such course work in his declaration, but my understanding is that Wall was dismissed from the Pontifical Gregorian University in 1997 prior to completing any course work. *See* Tobin Decl. ¶¶ 10-17.

discretion of local bishops and religious superiors. *Compare* Wall Decl., Exh. A (descriptions of canons 136-39, 141, 606, 1503, 1532, 2314, 2331, 2347, 2388) *with* 1917 CODE cc.136-39, 141, 606, 1503, 1532, 2314, 2331, 2347, 2388. Wall also grossly misstates Code provisions throughout Exhibit A. *Compare* Wall Decl., Exh. A (descriptions of canons 652, 670, 2257, 2314, 2331, 2345, 2371, 2373, 2388) *with* 1917 CODE cc.652, 670, 2257, 2314, 2331, 2345, 2371, 2373, 2388). I will not analyze each such misstatement here, but provide the following straightforward example. Wall claims that canon 952 states that “[a]nyone not ordained by the Roman Pontiff cannot be promoted to a higher order without a faculty from the Holy See.” Wall Decl., Exh. A, at 4. Canon 952 in fact states the opposite: “It is not permitted to promote to a higher order anyone who was ordained by the Roman Pontiff without a faculty from the Apostolic See.” 1917 CODE c.952.

26. Because of the number and significance of the mistakes contained therein, Exhibit A to the Wall Declaration is not a reliable description of the provisions of the 1917 Code of Canon Law.⁷ Exhibit A does provide, however, a telling example of what can happen when an individual who is not qualified as a canonist attempts to interpret the Code of Canon Law.

VI. Plaintiff’s Contentions Relating to the Code of Canon Law

27. Plaintiff and his declarants repeatedly characterize the Code of Canon Law as the Holy See’s “policies,” “rules,” “standards” or “norms.” *See, e.g.*, Pltf.’s Opp. at 9 n.4, 10, 11, 12, 13, 14, 17, 18, 38; Wall Decl. ¶¶ 10, 20; Doyle Decl. ¶¶ 23, 24. Such characterizations reflect a basic lack of understanding regarding the nature of canon law itself.

⁷ There are analogous mischaracterizations and mistakes in Wall’s discussion of Holy See documents. *See* Wall Decl., Exh. F. There is, for example, no evidence that the file produced by the Holy See relating to Ronan is a “remnant.” Wall Decl., Exh. F. And Wall’s description of documents contained in *ACTA APOSTOLICAE SEDIS* and *LEGES ECCLESIAE* does not accurately reflect the meaning of the materials he cites.

28. Canon law states the law of the Catholic Church.⁸ It is not dictated by the Holy See; instead, it evolved over two millennia⁹ from a wide range of sources, including theology, divine law,¹⁰ natural law, custom, tradition,¹¹ written decisions of bishops, written decisions of popes, regional councils,¹² and ecumenical councils.¹³ It was codified in projects whose impetus came from the College of Bishops and the Pope, acting together in hierarchical communion. *See* Benedict XV, *Mater Ecclesia* (stating that the Code had been requested at the First Vatican Council and was the product of extensive consultations with diocesan bishops and other ordinaries).¹⁴ The view taken by Plaintiff and his declarants – equating the canon law with

⁸ *See* Hervada & Lombardía, I EXEGETICAL COMMENTARY at 2 (“Canon law is the law of the Church.”).

⁹ Caparros, CODE OF CANON LAW ANNOTATED at 13 (“As far back as the earliest times of the Church, it has been the practice to make collections of the sacred canons so that they could be more easily known, used, and observed by the sacred ministers In fact, over the course of the first ten centuries, there existed a profusion of ecclesiastical law collections, for the most part the result of individual efforts. . . . In the mid-12th century, this aggregate of collections and rules . . . was reduced to one concordance of laws and collections by the private initiate of the monk Gratian.”); *see also* Hervada & Lombardía, I EXEGETICAL COMMENTARY at 77-81, 88-90, 93-94, 104-06.

¹⁰ *See* John Paul II, *Sacrae disciplinae leges* (“A second question arises: what is the Code? For an accurate answer to this question, it is necessary to remind ourselves of that distant heritage of law contained in the books of the Old and New Testaments. It is from this, as from its first source, that the whole juridical and legislative tradition of the Church derives.”); Hervada & Lombardía, I EXEGETICAL COMMENTARY at 60-61 (“The divine constitution of the Church was established by Christ and is one of the aspects of the revelation made by God to mankind At each moment in time canon law is a concretion and development of the principles of its divine constitution in a number of elements of human origin.”).

¹¹ *See* John Paul II, *Sacrae disciplinae leges* (stating that the Code “is based on the juridical and legislative heritage of revelation and tradition”).

¹² Hervada & Lombardía, I EXEGETICAL COMMENTARY, at 68-70.

¹³ *See* John Paul II, *Sacrae disciplinae leges* (stating that the Code “fully accords with the nature of the Church, particularly as presented in the authentic teaching of the Second Vatican Council seen as a whole, and especially in its ecclesiological doctrine”).

¹⁴ *See also* Caparros, CODE OF CANON LAW ANNOTATED at 15 (“[D]uring the preparation of the First Vatican Council, many bishops asked for a new and single collection of laws which would provide for the pastoral care of the people of God with greater certainty and efficacy The work was completed in twelve years with the help of experts, consultants and bishops throughout the Church.”); Hervada & Lombardía, I EXEGETICAL COMMENTARY at 110 (“at Vatican Council I many bishops demonstrated a desire to have canon law codified and the intricate forest of texts and collections that had accumulated since the time of Gratian condensed into a manageable body of law”).

“policies” or “rules” from the Holy See – ignores that the Code is based upon a complex and collegial process spanning centuries.¹⁵

29. To show the profound mistake made by Plaintiff and his declarants in this regard, I will take just one example from Exhibit A to the Wall Declaration. Canon 132 of the 1917 CODE provided that clerics “constituted in major orders are prohibited from marriage and are bound by the obligation of observing chastity” 1917 CODE c.132 § 1. Wall identifies canon 132 of the Code of Canon Law as a “Holy See canon directing the conduct of the cleric, such as Ronan.” Wall Decl., Exh. A, Docket No. 303-1. According to Wall, canon 132 shows “the Holy See’s control over individual clerics.”

30. Canon 132 reflected a long-standing core practice of the Catholic Church based upon religious doctrine. *See Presbyterorum Ordinis* art. 16 (“Perfect and perpetual continence for the sake of the Kingdom of Heaven, commended by Christ the Lord and through the course of time as well as in our own days freely accepted and observed in a praiseworthy manner by many of the faithful, is held by the Church to be of great value in a special manner for the

¹⁵ That is also true of the 1983 CODE, which was the product of extensive consultation with bishops, priests, religious leaders, and lay scholars; the general and particular proposals for revision numbered in the tens of thousands, and required decades to examine and consider. *See generally* my extensive legislative history of the 1983 CODE, *INCREMENTA IN PROGRESSU 1983 CODICIS IURIS CANONICI* (2005) in some 1,500 pages; *see also* Herranz, 1 EXEGETICAL COMMENTARY at 158. As stated by Pope John Paul II upon promulgation of the Code:

If we now turn our attention to the nature of the labours which preceded the promulgation of the Code and to the manner in which they were performed . . . it is vital to make quite clear that these labours were brought to their conclusion in an eminently collegial spirit. This not only relates to the external composition of the work, but it affects also the very substance of the laws which have been drawn up.

This mark of collegiality by which the process of this Code’s origin was prominently characterised, is entirely in harmony with the teaching authority and the nature of the Second Vatican Council. The Code therefore, not only because of its content but because also of its origin, demonstrates the spirit of this Council in whose documents the Church . . . is presented as to the people of God, and its hierarchical constitution is shown as founded on the College of Bishops together with this Head.

John Paul II, *Sacrae disciplinae leges*.

priestly life.”); *see also* de Otaduy, II/1 EXEGETICAL COMMENTARY at 346 (“The bond of celibacy, freely assumed, is a sign of the reality of betrothal which is undertaken in sacred ordination and which is, first and foremost, of a theological and moral nature, but in addition, finds itself sanctioned by a precise juridical bond from which the moral obligation of observance derives.”); *id.* at 347 (“The current discipline on celibacy in the Latin catholic Church responds to a very ancient tradition which can be traced back to Christ himself.”). Contrary to Wall’s assertion, the canon was not a “rule” or “policy” imposed by the Holy See in 1917 – it was, instead, a codification of an ancient religious practice of the Catholic Church.

31. The purpose of the 1917 CODE was to “codify the current [canonical] norms into a manageable legal corpus.” Hervada & Lombardía, I EXEGETICAL COMMENTARY at 114. The codification of canon law did not alter the nature of canon law. After promulgation of the 1917 CODE, canon law remained what it was before: the law of the Catholic Church – and not “rules” or “policies” dictated by the Holy See.

VII. Plaintiff’s Contention that the Pope Holds “Absolute” Power in the Catholic Church

32. Plaintiff and his declarants claim that the Pope and the Holy See have “complete and absolute” authority over “the entire worldwide Catholic Church.” Doyle Decl. ¶ 13; *see also* Wall Decl. ¶ 23; Cmpl. ¶ 3 (“Defendant Holy See has unqualified power over the Catholic Church including each and every individual and section of the church.”). According to Doyle, the “pope’s power is absolute over every corporate body in the Church and over every individual Catholic whether the Catholic is a layperson, a cleric or a member of a religious order.” Doyle Decl. ¶ 15.

33. Because such contentions undergird much of the other assertions of canon law and religious doctrine made by Plaintiff and his declarants,¹⁶ I will devote considerable analysis to the issue.

34. I have three major observations regarding the contention that the Pope and the Holy See have “complete and absolute” power. First, the issue is inseparable from complex issues of theology, religious doctrine, and ecclesiastical governance that are essential to comprehending papal authority; indeed, the contention uses erroneously absolutist terms to address some of the most complex and sensitive issues in the life and history of the Church. Second, as a matter of ecclesiastical history, the issue of the relationships between the Pope and the bishops, and between the Pope and religious orders, is extraordinarily complicated, giving rise to major historical events in the Western world over the past two thousand years. Third, the contention by Plaintiff and his declarants rests on a profound misunderstanding of the nature of the Catholic Church itself. Indeed, I know of not a single reputable scholar who adopts such an absolutist and distorted vision of the relationship between the Pope and his fellow bishops, or between the Pope and religious orders. As Pope Benedict XVI himself stated when he was head of the Congregation of the Doctrine of the Faith, the Pope does not hold “absolute power.” Ratzinger & Bertone, *Primacy of the Successor of Peter* no. 10.

35. Because the issue of the Holy See’s authority requires a different analysis for bishops and religious orders, I will analyze each separately.

¹⁶ For example, Doyle asserts that the Pope “has the power and authority to directly intervene in the life of every member of a religious Order, including the members of the Servite order and every diocesan priest and every bishop.” Doyle Decl. ¶ 26. Such an assertion assumes that the Pope has no limits or restraint upon his authority; as will be shown below, that is a mistaken view of papal power.

A. Bishops

36. With regard to bishops, the issue implicates “one of the most difficult issues of Catholic ecclesial structure, that of the so-called concurring power of jurisdiction of the pope and bishops over their particular churches and their groupings.”¹⁷ The complexity – and the inherent religious nature – of this issue requires an understanding of the doctrinal foundation and experiential history of the relationship between the Pope and the bishops.

37. Under the religious doctrine and theology of the Catholic Church, the Pope is the successor of Peter and the bishops are the successors of the Apostles:

Bishops . . . with their helpers, the priests and deacons, have taken up the service of the community, presiding in place of God over the flock, whose shepherds they are, as teachers for doctrine, priests for sacred worship, and ministers for governing. And just as the office granted individually to Peter, the first among the apostles, is permanent and is to be transmitted to his successors, so also the apostles’ office of nurturing the Church is permanent, and is to be exercised without interruption by the sacred order of bishops. Therefore, the Sacred Council teaches that bishops by divine institution have succeeded to the place of the apostles, as shepherds of the Church, and he who hears them, hears Christ, and he who rejects them, rejects Christ and Him who sent Christ.

Lumen gentium (“LG”) 20.^{18,19} “The title ‘Successor of the Apostles’ lies at the root of the pastoral ministry of the Bishop and of his mission in the Church and it clearly defines the figure of the Bishop and his mission.” *Introduction to Apostolorum Successores*.²⁰

¹⁷ Walf, *Hierarchical Constitution of the Church* at 439; *id.* at 438 (discussing “the extremely delicate problem” of the “concurring power of jurisdiction of the Pope and bishop in the particular churches”); Granfield, *LIMITS OF THE PAPACY* at 107 (“The limitations of the papacy in relation to the local Church continues to reflect an ongoing dialectical tension. Any discussion of the limits of the papacy has to take into account the unique relationship between the local Churches throughout the world and the local Church of Rome – the Church of Peter and Paul. How we understand this relationship shapes our view of Church, papacy, and episcopacy.”); Green, *Pastoral Governance Role of the Diocesan Bishop* at 490 (1989) (discussing the “complexities of papal-episcopal relations”).

¹⁸ *Lumen gentium*, the Dogmatic Constitution on the Church, is one of the principal documents of the Second Vatican Council. It is difficult to overestimate the importance of ecumenical councils in the life of the Catholic Church. Only 21 ecumenical councils have been convened in the nearly 2,000-year history of the Church, with just three councils having been held since the sixteenth century, namely, the Council of Trent (intermittently, 1545-1563), the First Vatican Council (1869-1870), and the Second Vatican Council (1962-1965). The “college of bishops, whose head is the Supreme Pontiff” and which is

38. As a matter of Catholic Church doctrine and theology, the ecclesiastical polity is based upon divine law and is therefore not a polity chosen but, rather, received. As stated in

Lumen gentium:

This is the one Church of Christ which in the Creed is professed as one, holy, catholic and apostolic, which our Saviour, after His Resurrection, commissioned Peter to shepherd, and him and the other apostles to extend and direct with authority, which He erected for all ages as ‘the pillar and mainstay of the truth.’ This Church constituted and organized in the world as a society, subsists in the Catholic Church, which is governed by the successor of Peter and by the Bishops in communion with him, although many elements of sanctification and of truth are found outside of its visible structure. These elements, as gifts belonging to the Church of Christ, are forces impelling toward catholic unity.

LG 8.²¹

“also the subject of supreme power over the universal Church” (1983 CODE c.336), exercises its power “in a solemn manner in an ecumenical council.” 1983 CODE c.337 § 1; *see also* 1917 CODE c.228.

¹⁹ *See also* LG 24; 1983 CODE c.330 (“Just as by the Lord’s decision Saint Peter and the other Apostles constitute one college, so in a like manner the Roman Pontiff, the successor of Peter, and the bishops, the successors of the Apostles, are united among themselves.”); c.375 § 1 (“Bishops, who by divine institution succeed to the place of the Apostles through the Holy Spirit who has been given to them, are constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship, and ministers of governance.”).

²⁰ It is worth noting that the relationship between the Pope and the bishops is not identical to the relationship between Peter and the Apostles. *See, e.g.,* Molano, II/1 EXEGETICAL COMMENTARY at 589 (stating that canon 330 “expresses the similar but not identical relationship between the first College (Peter-apostles) and the second (Pope-bishops). This parallel does not imply the transmission of the special power of the apostles to their successors, nor equality between the head of its members, but rather only proportionality.”); LG, Prelim. Note 1; *see also* Ratzinger, CALLED TO COMMUNION at 97 (stating that only the Bishop of Rome “is the successor of a particular apostle” (Saint Peter), while “[a]ll the remaining bishops are successors of the *apostles* in general; they do not succeed a certain apostle but are members of the college that takes the place of the apostolic college, and this fact make each single one of them a successor of the apostles”).

²¹ *See also* *Apostolorum Successores* 9 (“At the beginning of his mission, the Lord Jesus, after praying to the Father, appointed twelve Apostles to be with him and to be sent out to preach the Kingdom of God and to cast out demons. Jesus willed the Twelve to be an undivided College with Peter as head, and so it was that they carried out their mission as eye-witnesses of his resurrection, beginning from Jerusalem (cf. *Luke* 24:47) and then to all the peoples of the earth (cf. *Mark* 16:20). This mission, which the Apostle Peter forcefully proclaimed when addressing the first Christian community of Jerusalem (cf. *Acts* 1:21-22), was fulfilled by the Apostles as they went forth proclaiming the Gospel and making disciples of all nations (cf. *Matthew* 28:16-20).”); Herranz, *Power of Governance* at 17 (“[T]he first principle that ought to be put into relief, following the teaching of the Second Vatican Council and the norm of the Code, is the *sacred and personal character* of the diocesan bishop’s power of governance In any natural society which has jurisdiction, power is conferred on those who govern through an act which is *exclusively juridical* in nature. While in the Church, the bishop’s power of governance . . . is

39. As a matter of ecclesiastical history, the issue of the relationship between the Pope and the bishops – which involved questions of papal primacy and local autonomy – is extraordinarily complex. Differing interpretations of these relationships can be traced back to the third and fourth centuries, and have been sources of continuing theological debates, some so profound as to result in events like the Great Schism of 1054. The issue was addressed, for example, in the Fourth Lateran Council of 1215, the Council of Basel-Ferrara-Florence in the fifteenth century, and the Council of Trent in the sixteenth century. More recently, Vatican I discussed the Roman Pontiff and the Petrine office, while Vatican II clarified doctrine regarding the College of Bishops. Molano, II/1 EXEGETICAL COMMENTARY at 582-83. Throughout the centuries, and continuing through today, the question of the relationships between Popes and bishops has proved difficult to resolve in ecumenical contexts as well:

The question of the primacy of Peter and of its continuation in the bishops of Rome is probably the most difficult problem of the ecumenical dispute. Even in the Catholic Church herself, the Roman primacy has again and again proved to be a stumbling block, from the medieval struggle between *imperium* and *sacerdotium*, through the early modern state Church movements and the nineteenth century's demands for independence from Rome, up to the contemporary surges of protest against the pope's function of leadership and his mode of exercising it.

Ratzinger, CALLED TO COMMUNION at 47. The issue is, without question, one of great doctrinal and historical significance, one that plumbs the depths not only of theology, but the very origins of law itself in the Western Legal Tradition.²²

40. In other words, to address whether the Holy See exercises “absolute and unqualified control and power” over a bishop, a civil court would unquestionably be forced to

conferred ontologically on sacred pastors through an act which is of *sacramental nature*: Episcopal consecration (*Lumen gentium* 21).”).

²² See Collins, *Origins of Church Law* at 134-56 (tracing etiology of “Church Law” to normative elements in New Testament texts describing “church order,” and noting the widespread use in the Mediterranean basin of *episkopos* as a noun meaning “overseer” and describing people who served as guardians or supervisors).

wade deeply into Catholic religious doctrine, theology, and history. If a court were to find that the Holy See possessed such “absolute and unqualified” power over bishops, the court would, in effect, be re-defining a core doctrine of the Catholic Church – one marked by significant and overarching theological, religious, and historical ramifications. Explaining the relationship between the Pope and the bishops is extraordinarily complicated for even the best theologians, canonists, and historians. To my knowledge, no civil or canonical court has ever previously attempted to resolve this issue.

41. While defining with precision the nature and contours of the Pope’s relationship with bishops inevitably involves one in complex theological, religious, and historical questions, it is not difficult to reject the contention that the Holy See has “absolute and unqualified power and control” over bishops and dioceses. However one might try plausibly to describe the ecclesiological relationships between the Pope and bishops, Plaintiff and his declarants’ contention reflects a markedly erroneous understanding of the Catholic Church’s structure and polity.

42. Neither the Complaint nor Plaintiff’s declarants cites any authority for their claim regarding the Holy See’s “absolute and unqualified” power over bishops and dioceses, so I am not sure where to begin refutation of such an assertion. I will hypothesize, however, that Plaintiff and his declarants base their claim on an uninformed reading of canons 331 and 333 of the 1983 Code of Canon Law. Canon 331 provides as follows:

The bishop of the Roman Church, in whom continues the office given by the Lord uniquely to Peter, the first of the Apostles, and to be transmitted to his successors, is the head of the college of bishops, the Vicar of Christ, and the pastor of the universal Church on earth. By virtue of his office he possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely.

Canon 333, in turn, states the following:

§ 1. By virtue of his office, the Roman Pontiff not only possesses power over the universal Church but also obtains the primacy of ordinary power over all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care.

§ 2. In fulfilling the office of supreme pastor of the Church, the Roman Pontiff is always joined in communion with the other bishops and with the universal Church. He nevertheless has the right, according to the needs of the Church, to determine the manner, whether personal or collegial, of exercising this office.

43. I begin by noting that neither canon 331 nor canon 333 uses the terms “absolute” or “unqualified” in describing papal authority, terms that are unusual in canon law and unheard of in this context.

44. There are, however, more significant problems with the assertion that the Holy See enjoys “absolute” and “unqualified” power over the Catholic Church. First, such an assertion reduces a highly complex theological issue to an inaccurate and simplistic formula. The question of supreme power in the Church goes “to the roots of the mystery of the Church” and “resist[s] easy simplification and systematization.” Molano, II/1 EXEGETICAL COMMENTARY at 586. To answer the question regarding the subjects of supreme power,

it is necessary to take into account other matters that depend on this power, such as the nature and origin of the power (the role of the sacrament of orders and the canonical mission), the separation or division of powers (the *sacra potestas* and its relationship with the power of orders and the power of jurisdiction), the various functions of power (be it the question of the threefold *munus – sanctificandi, docendi, and regendi* of *sacra potestas* – or of the various functions of the power of jurisdiction in a strict sense – legislative, executive and judicial), the various spheres in which the power is exercised (universal Church or particular churches), and the various means of its exercise (personal or collegial, etc.).

Id. at 582. In the end, no rigid and simplistic formula, such as the one set forth in the Complaint or in the declarants’ declarations, can provide a correct answer:

The canons of the Code leave many possibilities open for the exercise of the action of governance in the sphere of the universal Church. The style of

governance in the Church cannot follow rigid formulas, and it will be up to the members of the supreme bodies (certain individuals, undoubtedly endowed with certain charisma, together with their personal qualities) to apply at each moment and in each historical circumstance the most appropriate style for the situation. For this discernment, they also have the aid of the Holy Spirit.

Id. at 587.

45. Second, the formulation adopted by Plaintiff and his declarants ignores the vital governance role of the College of Bishops in the Church. “The college of bishops, whose head is the Supreme Pontiff and whose members are bishops by virtue of sacramental consecration and hierarchical communion with the head and members of the college and in which the apostolic body continues, together with its head and never without this head, *is also the subject of supreme and full power over the universal Church.*” 1983 CODE c.336 (emphasis added).²³ The College of Bishops has a critical role in Church governance:

[T]he lines between personal and collegial governance are very fluid. On the one hand, the personal governance of the pope must always be in communion with the episcopate and the rest of the Church. On the other hand, collegial governance allows extremely ample methods that cannot be reduced to that which strictly collegial acts may bring about, such as an ecumenical council. Most acts of pontifical governance, at least the most important ones, are more or less broad expressions of that collegiality that was rediscovered and encouraged by the last council.

Molano, II/1 EXEGETICAL COMMENTARY at 587.²⁴

²³ See also Molano, II/1 EXEGETICAL COMMENTARY at 584 (“According to the [Second Vatican] Council, the pope as well as the College of Bishops, with and under the pope, are subjects of full and supreme power in the Church.”).

²⁴ These two elements – that the College of Bishops exists as a permanent structure of communion that is ordered hierarchically, and that there is a moral obligation to engage with the mystery of the Church – do not function as mere admonitions upon those who exercise ecclesiastical power; rather, these factors are constitutive of the Church itself. The relation of the Successor of Peter to the bishops with whom he is in hierarchical communion does not so much constitute a set of boundaries or confines around the power of the Pope, but rather comprise a set of irreducible theological realities that function as solemn obligations not to disrupt the constitutive structure of ecclesiastical polity. Faccani, *Il Vescovo e la collegialità, passim*. Thus, it may be said that the Pope enjoys a power that is distinct and sacred in nature, but never “isolated” from the episcopal corpus of which he is head. *Id.* at 16.

46. Third, the claim of “absolute and unqualified” papal power and control ignores the key principles animating Church doctrine on papal primacy. Underlying canons 331 and 333 is the principle that the Pope’s power is intended to maintain the unity of the faith and communion of all the Churches.²⁵ As stated by a leading commentator:

The Roman Pontiff is a guarantor of unity in the Church as he is in the college of bishops (*LG* 18). This general function derives from the fact that the Roman Pontiff, as successor of Peter, is at the center of the communion of the pastors and the other faithful, as a perpetual and visible source and foundation of unity (*LG* 23), which, from the juridical point of view, establishes his supervisor role over the *unity of communion in the Church*. This specific function is juridically relevant for legitimizing the direct intervention of the Roman Pontiff in the actual governance of particular Churches.

Arrieta, GOVERNANCE STRUCTURES at 102.

47. The principles of unity and communion are important for correctly interpreting canons 331 and 333. In keeping with the crucial theological doctrine of *communio*, the Roman Pontiff does not ordinarily interfere in the governance of particular and local churches:

The exercise of preeminent power is not exempt from the principle of communion in the Church, and the pope himself as the head of the Church cannot be separated in his activity from the body of pastors nor from the body of the universal Church, of which he himself is a qualified member. The preeminent or collegial exercise of power is thus placed in a context of communion (*communione . . . est*

²⁵ See John Paul II, *Ut Unum Sint* no. 94 (“All the Churches are in full and visible communion, because all the Pastors are in communion with Peter and therefore united in Christ. With the power and the authority without which such an office would be illusory, the Bishop of Rome must ensure the communion of all the Churches. For this reason, he is the first servant of unity.”); *id.* at no. 88 (“Among all the Churches and Ecclesial Communities, the Catholic Church is conscious that she has preserved the ministry of the Successor of the Apostle Peter, the Bishop of Rome, whom God established as her ‘perpetual and visible principle and foundation of unity.’”); *LG* 18 (“And in order that the episcopate itself might be one and undivided, He placed Blessed Peter over the other apostles, and instituted in him a permanent and visible source and foundation of unity of faith and communion.”); Ratzinger, CALLED TO COMMUNION at 72 (“The Roman primacy is not an invention of the popes, but an essential element of ecclesial unity that goes back to the Lord and was developed faithfully in the nascent Church.”); Molano, II/1 EXEGETICAL COMMENTARY at 576 (“[T]he unity of the episcopacy . . . claims a principle of unity, the visible foundation of which is the Roman Pontiff.”); *id.* at 593 (“[T]he *raison d’être* of the office of Peter consists of being the origin and basis, perpetual and visible, for the unity of faith and communion in the entire Church.”); see also Walf, *Hierarchical Constitution of the Church* at 431-32; CATECHISM OF THE CATHOLIC CHURCH 882; 1983 CODE cc.333 § 2, 375 § 2.

coniunctus), which entails mutual and reciprocal requirements between the members – head and body.

Molano, II/1 EXEGETICAL COMMENTARY at 602; *see also* 1983 CODE c.381 § 1.²⁶ Even as the canon law vests him with plenary power and primacy of jurisdiction, the Roman Pontiff's ministry is one of unity. In accord with one of his traditional titles, the Roman Pontiff serves as a “bridge” (*pons*) to and between all the particular churches. Theology, and the law that is its instrument, require the Petrine ministry to perform the function of ensuring that on the constitutive and communal levels the catholicity of the Church be protected and defended. This is not a lording over dioceses, but a service to them.

48. Fourth, and more broadly, the ends of the Church itself define and delimit the Pope's power.

The term *full* does not mean that the pope is not subject to any limitations. . . . [I]t is a power to serve the ends of the Church, a power that must respect the constitution and structure of the divinely instituted Church (including faith, the sacraments, and the ecclesiastical system itself, with the existence of the episcopate, of particular churches, the rights of the faithful, etc.).

Molano, II/1 EXEGETICAL COMMENTARY at 594-95.²⁷ As stated by Archbishop Arrieta:

This freedom . . . is subject to certain limits. The office has by its very nature, some objective limits. The Roman Pontiff is limited by the fact that a) the end for which the Church was instituted does not permit the exercise of the supreme power in defiance of the good of souls and governance of the Church (c.205 CIC); b) the episcopate is also of divine origin (*LG* 22) and therefore attention and deference towards the jurisdiction of individual pastors in the dioceses must be respected; c) the necessity to govern ‘for the advantage of the Church or of the

²⁶ *See also* Molano, II/1 EXEGETICAL COMMENTARY at 587 (“[T]he personal governance of the pope must always be in communion with the episcopate and the rest of the Church.”); Granfield, LIMITS OF THE PAPACY at 61 (“The legislative, executive, and judicial actions of the Pope should contribute to the unity of faith and communion.”); Arrieta, GOVERNANCE STRUCTURES at 208 (“[W]e find ourselves facing a plurality of concurrent jurisdictions at the level of the particular Church – that of the Roman Pontiff and that of the diocesan bishop – which should be harmonized according to the rules pertaining to communion in governance.”); *see also* de Echeverría, CÓDIGO DE DERECHO CANÓNICO at 195 (commenting on canon 336, noting that the pope remains a member of the College of Bishops).

²⁷ *See also* Granfield, LIMITS OF THE PAPACY at 59 (“The purpose of the papacy functions as a principle of limitation.”); Pinto, *COMMENTO AL CODICE DI DIRITTO CANONICO* at 197-98.

faithful' (*LG 27*) excludes the arbitrary use of power and implies respect for the areas of legitimate autonomy of the faithful. This is a duty on the Pontiff himself, despite his protection from appeal or recourse pursuant to c.333, § 3 CIC.

Arrieta, *GOVERNANCE STRUCTURES* at 104-05.²⁸ Or again, as the eminent scholar Louis Bouyer observes,

Does this mean that the pope must, or at least *can*, in every instance intervene in the place of each bishop in the affairs of his local Church, or, at the very least, in a general way, substitute himself for the totality of bishops in the governing and harmonious development of the whole Church? In no way. A pope who would so act, or try to act, would prove that he understands nothing about his function.

Bouyer, *CHURCH OF GOD* at 387.²⁹

49. Fifth, as recognized in conciliar documents and the Code of Canon Law, dioceses are part of the Catholic Church's constitutive structure. The Pope cannot ignore this structure.³⁰

50. Finally, canon law specifies that papal primacy "strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care." 1983 CODE c.333 §1; *see also LG 27*. This provision "clearly establishes" that "the exercise of [the Pope's] preeminent power is not intended to diminish or reduce the scope of competence of the ordinary power of the bishops in their churches, but rather to reinforce and defend it. . . . What is intended in this canon is not to deny the power – which is ordinary, proper, and immediate – that the bishops have in their churches, but precisely to reinforce and defend that power in the sense expressed by *Lumen gentium 27*." Molano, II/1

²⁸ Of course, the Pope is also limited by natural and divine law, a fact that introduces a wide range of limitations on papal power, even within the Church. Granfield, *LIMITS OF THE PAPACY* at 62.

²⁹ *See also* Andrés Gutiérrez, *CÓDIGO DE DERECHO CANÓNICO* at 176 (commenting on canon 331, "lest [papal power] be confused with despotism or arbitrariness, the Pope must always respect the will of Christ, the constitution of the Church, the sacraments, Revelation, the College of Bishops, and the fundamental rights of the faithful.").

³⁰ Granfield, *LIMITS OF THE PAPACY* at 62 (stating that the Pope is "bound by the constitution of the Church and by certain doctrinal and structural restraints"); Bouyer, *CHURCH OF GOD* at 387; Andrés Gutiérrez, *CÓDIGO DE DERECHO CANÓNICO* at 176; *see also Communio notio* no.12; de la Hera, II/1 *EXEGETICAL COMMENTARY* at 772.

EXEGETICAL COMMENTARY at 601; *see also* 1983 CODE c.381 § 1.³¹ The issue is not one of “right” over a particular Church; it is, instead, the duty of the Pope to prevent abuses by the episcopate and to protect the universal Church.³²

51. The exercise of papal power under canon 333 must therefore be limited by the principle that “within the Church particular Churches hold a rightful place; these Churches retain their own traditions, without in any way opposing the primacy of the Chair of Peter, which presides over the whole assembly of charity and protects legitimate differences, while at the same time assuring that such differences do not hinder unity but rather contribute toward it.” *LG* 13; *see also* 1983 CODE c.381 § 1. The Pope’s power over particular churches “has no reason to be exercised continually (it is not ordinary in the common sense but rather in the technical sense).” Molano, II/1 EXEGETICAL COMMENTARY at 601. Instead, the canonical provisions must be interpreted by constraints of scripture, tradition, custom, and underlying principles. As Bishop Zinelli of the Deputation of the Faith stated during Vatican I:

If he [the Pope] should as it were multiply his presence and should day after day and without regard for the local bishop tear down what the latter has prudently ordained, then he would be using his power to tear down and not to build up.

³¹ *See also* Ratzinger, CALLED TO COMMUNION at 100 (“[T]he successor of Saint Peter must discharge his office in such a way that it does not stifle the special gifts of the single local Churches or compel them into a false uniformity but, rather, allows them to play an active part in the vital exchange of the whole.”); Green, *Pastoral Governance Role of the Diocesan Bishop* at 491 (“The current law states that in exercising his office the pope is to reinforce and vindicate the authority of the diocesan bishop (*LG* 27). Far from weakening the bishop’s authority or replacing him in the diocese, the pope is rather to support him in his ministry.”); CATECHISM OF THE CATHOLIC CHURCH 895 (stating that the Pope’s “ordinary and immediate authority over the whole Church does not annul, but on the contrary confirms and defends that of the bishops”); Paralieu, *GUIDE PRATIQUE* at 124 (“Far from being opposed to the power of Bishops, papal power fortifies and guarantees the proper, ordinary, and immediate power of a Bishop over the particular Church that has been committed to him.”) (my translation); Faccani, *CHIESE PARTICOLARI* at 15, *citing* Mosconi, *Potestà* at 6-31; De Paolis, *La Curia Romana a Servizio della Chiesa* at 149-83; Beyer, *Pastor Bonus* at 17-43; Herranz, *Power of Governance* at 19-20.

³² *See* Arrieta, GOVERNANCE STRUCTURES at 104 (stating that the power of the Pope “is a question of obligations that must be fulfilled rather than subjective rights”); *see also* Green, *Pastoral Governance Role of the Diocesan Bishop* at 498 (“The canonical system is structured in part to preclude possible abuses of episcopal power.”); Paul VI, *De Episcoporum muneribus* at 467 (power is exercised for the good of the entire flock of the Lord); Pinto, *COMMENTO AL CODICE DI DIRITTO CANONICO* at 199-200.

Granfield, *LIMITS OF THE PAPACY* at 115-16. In no sense, therefore, does the Code envision the continuous or daily exercise of ordinary power or control by the Pope in local dioceses.³³ The purpose of the Pope's universal authority "is not to absorb the apostolic responsibility of the local bishop," but rather to further the ministry of unity for the good of the entire Church. Granfield, *LIMITS OF THE PAPACY* at 120. It is only by considering "all the relevant theological-canonical variables" that the tension between authority and autonomy in the structure of the Church is reduced and the potential for conflict is avoided. Green, *Pastoral Governance Role of the Diocesan Bishop* at 492.

52. In short, the notion of "absolute and unqualified power and control" by the Holy See over local dioceses is contrary to the basic principles of the structure of the Church, including collegiality, communion, unity, and the ordinary and proper power of local bishops. As a matter of theology and canon law, there is no basis for the contention of Plaintiff and his declarants with regard to diocesan bishops.

B. Religious Orders

53. The contention by Plaintiff and his declarants poses different problems with regard to religious orders. Before describing how the contention of "absolute" Holy See power over religious orders is mistaken, I will provide brief necessary background.

54. The roots of religious life may be traced to the Gospels, and religious orders in the Catholic Church may be traced at least to the third and fourth centuries, with the monks of early

³³ See Molano, II/1 EXEGETICAL COMMENTARY at 596 (stating that Code provisions are formulated "to avoid the impression that the pope may continuously and arbitrarily meddle in the affairs that are the competence of bishops in their dioceses"); Granfield, *LIMITS OF THE PAPACY* at 117 ("The Pope does not exercise daily and continual power in a diocese and should not intervene arbitrarily.").

Christianity.³⁴ Modern religious orders evolved in the twelfth and thirteenth century, with the rise of the Orders of Mendicants (including, for example, the Franciscans and the Dominicans).

55. Members of religious orders (known simply as “religious”) live in common, observing the vows of chastity, poverty and obedience. 1917 CODE c.487; 1983 CODE c.573 § 2.³⁵ Religious freely assume this manner of life “in institutes of consecrated life which are canonically established by the competent ecclesiastical authority.” 1983 CODE c.573 § 2. There are many institutes of consecrated life in the Catholic Church, *id.* c.577,³⁶ and there is great variety amongst religious institutes and religious life.³⁷ In general, however, a religious institute during the relevant time period was defined as “a society approved by legitimate ecclesiastical authority in which the members, according to the laws of their own institute, pronounce public vows . . . which tend to evangelical perfection.” 1917 CODE c.488 1°; *see also* 1983 CODE c.607 § 2. An “order” is a religious institute “in which solemn vows are pronounced.” 1917 CODE c.488 2°.³⁸ A “religious institute of pontifical right” is a religious institute “that that has secured approval or at least a decree of praise from the [Holy] See.” *Id.* c.488 3°.³⁹ Since at least the rise

³⁴ Cf. PC 1 (“[F]rom the very beginning of the Church men and women have set about following Christ with greater freedom and imitating Him more closely through the practice of the evangelical counsels, each in his own way leading a life dedicated to God. Many of them, under the inspiration of the Holy Spirit, lived as hermits or founded religious families, which the Church gladly welcomed and approved by her authority.”).

³⁵ These three evangelical counsels are discussed in greater detail below. *See infra* at ¶¶ 115-25.

³⁶ As of 2008, there were at least 1,200 religious institutes of pontifical right. *See generally* Bunson, 2009 CATHOLIC ALMANAC 458-493, drawing in part on recent editions of the *Annuario Pontificio*. There are also many individual religious in the world: in the late 1970s, there were “over one million women religious in the world – one sister, that is, for every 250 Catholic women – and . . . about 270,000 men religious.” MR 1.

³⁷ Cf. PC 3 (“The manner of living, praying and working should be suitably adapted everywhere . . . to the modern physical and psychological circumstances of the members and also, as required by the nature of each institute, to the necessities of the apostolate, the demands of culture, and social and economic circumstances.”).

³⁸ A solemn vow is a lifelong commitment to chastity, poverty and obedience.

³⁹ Cf. 1917 CODE c.492 § 2 (“A Congregation of diocesan right, even though over the course of time it becomes spread over several dioceses, nevertheless, it remains diocesan for so long as it lacks

of mendicant religious orders over eight hundred years ago, most religious institutes have chosen to divide themselves into provinces, which are in turn constituted of several religious houses grouped together under a superior known as the “provincial.” 1917 CODE c.488 6°; *see also* 1983 CODE cc.608-612, 621.⁴⁰ They have done so due to their geographical expansion and their growth in members, in order to better manage their own internal governance.

56. Here, the relevant religious institute is the Order of Friar Servants of Mary (“Servite Order”). The Servite Order was not created by the Holy See; it was, instead, founded by seven men in 1233 in Florence, Italy. Benassi, *SHORT HISTORY OF THE SERVITE ORDER* at 21. The Servite Order received the approval of the Dominican Pope Benedict XI on February 11, 1304, 71 years after its founding. *Id.* at 17.⁴¹

57. Plaintiff’s assertion that the Holy See has “unqualified power” over religious orders and religious order priests, and Doyle’s claim that the Pope has “absolute” power over the Catholic Church (including religious orders), appears based upon the description of the Pope’s authority under Canon 331 (discussed above)⁴² and under canon 499 of the 1917 CODE (canon 590 of 1983 CODE). Doyle Decl. ¶ 15. It is true that the Code of Canon Law provided that “[a]ll religious, as to a supreme Superior, are subject to the Roman Pontiff, to whom they are bound to obey even in virtue of the vow of obedience.” 1917 CODE c.499 § 1; *see also* 1983 CODE c.590 §

pontifical approbation or testament of praise, and it is fully subject to the jurisdiction of the Ordinary according to the norm of law.”).

⁴⁰ The “essential constitutive elements [of a province] are the following: a) at least three houses . . . ; b) their own means of subsistence and autonomy (vocational, formative, economic, etc.); c) a circumscribed and flexibly understood territory; d) a provincial superior; e) a system of good governance, communal life and apostolate . . . ; and f) canonical establishment by a formal decree” Andrés Gutiérrez, *II/2 EXEGETICAL COMMENTARY* at 1632-33; *see also* Gambari, *RELIGIOUS LIFE* at 526 (“The province has its own personality and a certain autonomy. . . . Normally the concept of province presupposes a certain self-sufficiency regarding persons, works, government and finances.”).

⁴¹ I know of no religious institute created by the Holy See. Instead, by its canonical approbation, the Holy See affirms that an existing institute meets the criteria for recognition set forth by canon law.

⁴² Plaintiff cites the 1917 CODE’s precursor to canon 331 in his opposition. *See* Pltf.’s Opp. at 9.

2. Nevertheless, Plaintiff and Doyle present a deeply erroneous view of the relationship between the Church hierarchy and religious institutes. I respectfully suggest, moreover, that any attempt by a court to draw civil law conclusions from such broad statements in the canon law would inevitably embroil a court in highly complex issues of religious doctrine, theology and church governance.

58. I will make two observations at the outset. First, it is simply impossible to read a canon such as canon 590 (the one relied upon by Doyle) and expect to draw from it an accurate conclusion of the relationship between the Catholic Church's hierarchy and religious orders.⁴³

For example, a leading commentary states the following regarding canons 590-596:

To better understand their scope, apart from keeping in view the distinction between exempt and non-exempt institutes and between clerical and lay institutes, it is likewise necessary to consider another series of concepts or realities. In effect, an internal order and external order operates in each institute. There exists, moreover, an external power (hierarchy) that has an influence on the internal order or governance, and an external power or hierarchy that is exercised only over the external order of the institute. Along with this external power is the internal power or hierarchy that operates fundamentally in the internal order, but with canonical reflections in the external work of religious subjects. That internal power is manifested doubly: personally and collegially through the superiors and the chapters.

Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1518. These are complicated relationships that have developed over the course of more than a millennium under an array of circumstances. As Rincón-Pérez makes clear, they cannot be reduced to the simplistic formulae advanced by Plaintiff and his declarants.⁴⁴

⁴³ The difficulty in drawing accurate conclusions from broad statements of law is not, of course, limited to the canon law system. By rough analogy, one could not understand the full meaning of the Fifth Amendment's Due Process Clause simply by reading the plain text of the Constitution.

⁴⁴ Such reductionist approaches invariably miss crucial distinctions. For example, while Plaintiff's formulation asserts only that institutes are subject to the Pope's supreme authority, canon 590 provides that institutes are also subject to the supreme authority of the College of Bishops. *See* Hite, HANDBOOK ON CANONS 573-746, at 46 (stating, with regard to canon 590, that "[t]he supreme authority of the Church by definition includes the Roman Pontiff and the college of bishops"); *see also* Koluthara, RIGHTFUL

59. Second, canon 590 “transcends the simply juridical norm and has theological and spiritual implications.” Gambari, RELIGIOUS LIFE at 466.⁴⁵ The connection between a particular member of a religious order and the Pope is primarily spiritual and theological. Any attempt to comprehend the nature and parameters of the relationship between a religious and the Pope would, for example, require an understanding of the religious vow of obedience (1917 CODE c.499 § 1; 1983 CODE c.590 § 2), which – as set forth in more detail below – would inevitably entail an intrinsically religious inquiry. *See infra* at ¶¶ 115-25.

60. Plaintiff and Doyle’s characterization of the Pope as the “unqualified” and “absolute ruler” of religious orders also ignores the core feature of the relationship between religious orders and Church hierarchy: while religious orders, like all Catholic entities, have a deep theological and spiritual relationship with the Pope and the Holy See, religious orders are autonomous and operate as such. To explain the autonomy of religious orders, I begin with basic theology relating to the position of religious orders within the Catholic Church.

61. Religious orders, unlike dioceses, “are not a part of the constitutional structure of the Church, nor are they the institutional version of a fundamental state without which the Church could not exist.” Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1455. Religious orders have their own place in relation to “the divine and hierarchical structure of the Church” (LG 43); “the state which is constituted by the profession of the evangelical counsels, though it is

AUTONOMY OF RELIGIOUS INSTITUTES at 89; Rincon-Perez, II/2 EXEGETICAL COMMENTARY at 1519 (“It is important to make clear . . . that the supreme authority of the Church to which § 1 refers, is not only the Pope in his primatial function, but also the Episcopal College, which, in union with its head and never without that head, has supreme and full power over all the Church (c.336) and, therefore, over all institutes and their members.”).

⁴⁵ *See also id.* at 138 (discussing the “theological and pastoral” bond between religious and the Pope); Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 97 (stating that the relationship between the Pope and religious “ought to be translated into a deep spiritual communion with his person,” “submission to his Magisterium,” and “generous cooperation in his ministry as Pastor of the universal Church”).

not the hierarchical structure of the Church, nevertheless, undeniably belongs to its life and holiness.” *LG* 44; *see also Ad gentes* 18. Religious orders are “an integral part of the Church’s life,” *VC* 3, and the “consecrated life, present in the Church from the beginning, can never fail to be one of her essential and characteristic elements, for it expresses her very nature.” *VC* 29; *see also Congregavit nos in unum Christi amor* 8 (“It is therefore impossible to understand religious community unless we start from its being a gift from on high, from its being a mystery, from its being rooted in the very heart of the blessed and sanctifying Trinity, who wills it as part of the mystery of the Church, for the life of the world.”). According to the doctrine and theology of the Catholic Church, religious orders exist “in accordance with the Divine Plan.” *PC* 1.

62. Under the theology of the Catholic Church, the divine foundation of religious life is directly linked to an individual charism – that is, the “original inspiration of the founder.” Gambari, *RELIGIOUS LIFE* at 123.⁴⁶ “The West has . . . known, down the centuries, a variety of other expressions of religious life, in which countless persons, renouncing the world, have consecrated themselves to God through the public profession of the evangelical counsels in accordance with a specific charism and in a stable form of common life, for the sake of carrying out different forms of apostolic service to the People of God.” *VC* 9. Each religious institute – for example, the Franciscans and the Dominicans – has a distinctive character; “the character proper to each institute entails a particular style of personal sanctification and an apostolic style.” Gambari, *RELIGIOUS LIFE* at 47; *see also MR* 11 (“There are many Religious Institutes in the

⁴⁶ While it is based upon the original inspiration of the founders, a charism is dynamic and evolving. *See* 1983 CODE c.677 § 1 (“Superiors and members are faithfully to hold fast to the mission and works which are proper to their institute. According to the needs of time and place, however, they are prudently to adapt them, making use of new and appropriate means.”); Gambari, *RELIGIOUS LIFE* at 47-48 (“For its members it constitutes a dynamic patrimony undergoing a continual renewal, a treasure which must bring forth fruits.”).

Church, each differing one from the other according to its proper character.”). As stated by one leading commentator:

The characteristics of an institute do not form a theoretical system but a living, working reality, a community made up of those who share the same charism. The institute thus understood acquires an individuality so precise that it constitutes not only a juridical *personality*, but also one which is theological, spiritual and apostolic. It is a vital part of an organic whole: the Church. It is coordinated with all the other members of the Church, in the fulfillment of their common vocation to spread the kingdom of God.

Gambari, RELIGIOUS LIFE at 125 (emphasis in original). As a matter of religious doctrine and theology, the charism of religious institutes is a gift from God: “This is a splendid and varied testimony, reflecting the multiplicity of gifts bestowed by God on founders and foundresses who, in openness to the working of the Holy Spirit, successfully interpreted the signs of the times and responded wisely to new needs.” VC 9.⁴⁷

63. The divine gift of charism serves as a critical check on the exertion of authority over religious institutes by the Church hierarchy. That is because “[t]he charism, by its very nature, demands a rightful autonomy.” Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 26.⁴⁸ “[E]ach Institute is recognized as having a rightful autonomy, enabling it to follow its own discipline and to keep intact its spiritual and apostolic patrimony.” VC 48. It is because of charism that “each Institute has its own identity, its own life and its own mission.”

Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 27. As a gift of the Holy Spirit,

⁴⁷ See also VC 5 (stating that the Holy Spirit “in every age shows forth the richness of the practice of the evangelical counsels through a multiplicity of charisms”); Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 26-27 (“The term charism is used in theological circles today to signify the works of the Holy Spirit in the Church, and generally to the consecrated life to denote gifts received from the Holy Spirit to the Institutes of Consecrated life.”).

⁴⁸ In general, autonomy can be defined as “the exercise of the right to freedom and self-determination enjoyed by individuals and groups within and *vis-a-vis* a higher group or authority.” *Id.* at 25. “Autonomy is “clearer in the pontifical religious institutes than in the diocesan ones,” and the “maximum expression of . . . autonomy can be found in the pontifical clerical institutes of consecrated life.” *Id.* at 62.

charism implies autonomy; it is “fidelity to the charism which entitles [religious institutes] to a certain freedom of action in what regards the internal life of the institute, in view of protecting and developing their own doctrinal, spiritual and apostolic patrimony.” Gambari, *RELIGIOUS LIFE* at 466.

64. In fact, the role of the Church hierarchy is to *protect* the charism – and with it the autonomy – of religious institutes. VC 48. The Church hierarchy “has the responsibility to do what is in its power to ensure that institutes grow and flourish according to the spirit of their founders and to their sound traditions.” 1983 CODE c.576. The founders’ spirit, special aims and sound traditions must “be faithfully held in honor” by all in the Church. PC 2; *see also* VC 36; LG 45. “The very charism of the Founders appears as an experience of the Spirit, transmitted to their disciples to be lived, safeguarded, deepened and constantly developed by them, in harmony with the Body of Christ continually in the process of growth. It is for this reason that the distinctive character of various religious institutes is preserved and fostered by the Church.” MR 11 (citations and quotations omitted). Each “founder or foundress, each patrimony, each vision and tradition is to be respected with its autonomy.” Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 28.⁴⁹ The authority of the Church hierarchy is used “to ensure that the institutes develop and flourish in accordance of the spirit of their founders for building up the Body of Christ.” Gambari, *RELIGIOUS LIFE* at 52.⁵⁰ The Church hierarchy, in other words, is bound to guarantee the rightful autonomy of religious institutes. *Id.* at 466.

⁴⁹ In this context, the term “patrimony” refers to spiritual patrimony. McDermott, *Institutes of Consecrated Life* at 747.

⁵⁰ *See also* Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 223-224 (“A religious institute, a gift of the Holy Spirit to the Church, being recognised by the Church, has from its own existence a rightful autonomy. It is innate to its character. Since a religious institute is a depository of God’s gift, the Church authorities do not ‘create’ them but ‘receive’ them. It is this ‘givenness’ of religious charisms that determines of itself the nature and the limits of the hierarchy’s authority over them. It is this givenness that decides the necessity of the rightful autonomy for all the institutes of religious life.”).

65. The autonomy derived from theology and religious doctrine is firmly recognized and protected in the canon law. “A true autonomy of life, especially of governance, is recognised for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the [spiritual] patrimony described in can. 578.” 1983 CODE c.586 § 1; Gambari, RELIGIOUS LIFE at 470 (stating that “the Code recognizes the rightful autonomy of institutes”); Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1501 (“Canon 586 recognizes a *true* autonomy for each institute.”); McDermott, *Institutes of Consecrated Life* at 753 (stating that each institute “enjoys a rightful autonomy of life, particularly in governance through which it orders its life and ensures proper discipline of the members”).⁵¹ “The right for rightful autonomy radiates the whole life style of a religious institute, for example, mode of prayer, style of action, well-tuned formation, the members’ right for separation from the institute, the institute’s right to see to the expulsion of its members in grave necessity, its rights over the administration of temporal goods, etc.” Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 224-25. The rightful autonomy of religious institutes limits the legitimate authority of the Holy See. *Cf.* 1983 CODE c.593 (stating that the authority of the Holy See over institutes of pontifical right is “without prejudice to can. 586”); *see also* Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1534 (stating that the “power of the Apostolic

⁵¹ *See also, e.g.*, 1983 CODE c.134 § 1 (establishing that religious superiors “possess ordinary executive power” over members of their religious institute); c.596 § 1 (superiors of religious institutes of pontifical right “possess ecclesiastical power of governance for both the external and internal forum”); c.1341 (ordinaries of religious institutes empowered to initiate penal actions and impose penal sanctions). Although the autonomy of religious institutes is more explicit in the 1983 CODE, it was – as will be seen below – clearly recognized in the 1917 CODE as well. *See also* Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1499 (“The autonomy of life and governance that c.586 recognizes for all the [religious institutes] is not a substantially new or unknown principle in the canonical order. Since time immemorial each institute has been governed by its own rules and constitutions, seeking to safeguard its own spirit and identity in the body of ecclesial life.”); *cf. id.* at 1500 (stating, with regard to canon 586’s provision regarding autonomy, that “[i]t cannot be emphasized enough that this is a matter of formal recognition and not of an administrative concession by the ecclesiastical authority. That recognition responds, therefore, to the prior existence of an *ius nativum* to autonomy, which was founded on the constitutional principle that emanated from the *conditio libertatis* of the faithful.”).

See is limited by autonomy”); *id.* at 1503 (stating that “the exercise of this external power, including that of the Holy See, is not absolute but is limited equally by the lawful autonomy of each institute”).⁵²

66. In support of their contention that religious institutes are controlled by the Holy See, Plaintiff cites broad standards governing such institutes in the Code of Canon Law. The authority of the Church hierarchy to provide broad standards for religious institutes can be traced back to the earliest periods of Christianity. The Council of Chalcedon (451), the Council of Trullo (692), the second Council of Nicea (787) and the Council of Trent (1545-1563) each developed core standards governing religious life. Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 8-9. These standards do not, however, erode the autonomy of religious institutes. Indeed, one of the principles underlying the 1983 CODE was “that the common law should contain only the general principles leaving it to the institutes suitable freedom to apply the principles in accord with their own particular purpose and spirit.” *Id.* at 76. The same held true under the 1917 CODE. *See* Grajewski, *Supreme Moderator* at 163-164 (“The great number of Institutes with their individual purposes and the diverse means of attaining their ends are an insurmountable obstacle for providing common legislation suitable for all. Consequently, the barest minimum is to be found in the tract of law for religious in the Code.”).⁵³ The Code of

⁵² The precise parameters of the autonomy of religious institutes *vis-à-vis* the hierarchy are, by their very nature, impossible to describe completely in legal terms. *See* Hite, *HANDBOOK ON CANONS* 573-746, at 42 (“The just autonomy of the institute is the necessary corrective to unwarranted hierarchical influence. The level at which real collaboration, communication, and cooperation should take place cannot be mandated in law: these living relationships are far more complex and need greater attention than a legal minimum.”); *cf. Directives on Formation in Religious Institutes* at 94 (“[The] internal order [of religious institutes] enjoys a true autonomy, but it is necessarily exercised within the framework of organic ecclesial communion.”); *MR* 13(c) (“The correct degree of such autonomy and the concrete determination of competency are contained in common law and in the Rules or Constitutions of each institute.”).

⁵³ There are many examples of the broad standards provided by the Code for religious institutes. *See, e.g.*, 1917 CODE cc.496, 516 § 1, 562, 571 § 1, 593; 1983 CODE cc.610 §§ 1-2, 619, 624 §§ 1-3, 625 § 1, 627 §§ 1-2, 631 § 1, 661.

Canon Law “limits itself to outlining the general elements and leaves the rest up to” the proper law of the religious institutes themselves. Gambari, *RELIGIOUS LIFE* at 71.⁵⁴

67. In fact, although Plaintiff points to the Code as evidence of Holy See “control,” Pltf.’s Opp. 8-21, the provisions of both the 1917 and 1983 Codes were indisputably designed to provide religious institutes with autonomy. Far from seeking to mandate centralized “control” over religious institutes, the Code of Canon Law provides for institutes to develop their *own* norms regarding a wide range of key issues. This approach was necessary to preserve the charism of each institute, which was seen as best accomplished by allowing institutes to develop and follow their own norms. VC 36 (“[I]n every charism there predominates ‘a profound desire to be conformed to Christ to give witness to some aspect of his mystery.’ This specific aspect is meant to take shape and develop according to the most authentic tradition of the Institute, as present in its Rule, Constitutions and Statutes.”).⁵⁵ In order to “protect more faithfully the vocation and identity of each institute, the fundamental code or constitutions of the institute are to contain . . . basic norms about the governance of the institute, the discipline of the members, the admission and formation of members, and the proper object of their sacred bonds.” 1983 CODE c.587 § 1; *see also* McDermott, *Institutes of Consecrated Life* at 754; Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1506. The central role played by the constitutions and other norms⁵⁶ of religious institutes is evident throughout both Codes. 1917 CODE cc.504, 505, 508,

⁵⁴ *See also id.* at 76 (“In defining the content of the constituent codes, the Church allows freedom and flexibility.”) (citations omitted).

⁵⁵ *See also* VC 37 (stating that “the Rule and Constitutions provide a map for the whole journey of discipleship, in accordance with a specific charism confirmed by the Church”).

⁵⁶ “The proper law of an institute is not only composed of the fundamental code, which has constitutive and stable character, but by the rest of the norms established by the competent authority of the institute and properly collected in other codes, denominated by different names: complementary codes, directories, statutes, regulations, etc.” Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1507. Neither “the general directory nor the remaining complementary norms need approval by the competent authority of the Church.” *Id.*

511, 516 § 1, 532, 543, 553, 557, 562, 571 § 1, 580 §§ 1, 3, 593; 1983 CODE cc.598 §§ 1-2, 607 § 2, 609 § 1, 617, 622, 623, 624, 625, 627 §§ 1-2, 631, 632, 635 § 2, 638 §§ 1-2, 650 § 1, 659 § 2, 662; *see also, e.g.*, Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 79-85 (discussing autonomy of religious institutes and the discretion of members of religious institutes to enact their own laws).⁵⁷

68. A religious institute's autonomy is not only evident from its clear authority to enact its own proper law with regard to a wide range of issues; it is also clear from the institute's authority to structure its own government, choose its own superiors, and make a wide range of major governmental decisions. Institutes have the "right to have a basic, defined structure of government that co-ordinates and sees to the realization of the style of life, of [the] apostolate particular to the institute." Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 69.⁵⁸ That includes authority to structure the institute's own collegial bodies: the "institute's own law is to determine in greater detail matters concerning other chapters and other similar assemblies of the institute, that is, concerning their nature, authority, composition, procedure and time of

⁵⁷ To ensure compliance with the broad parameters of universal law and fidelity to the institute's charism, the constitutions developed by institutes of pontifical right (such as the Servite Order) must be – in accordance with a constant norm that has been in place for centuries – approved by the Holy See. Rincón-Pérez, *II/2 EXEGETICAL COMMENTARY* at 1507. It is not true that, following approval of a constitution, "any changes in the institute must receive the permission of the Holy See." Affidavit of Thomas P. Doyle, docket no. 242, dated Sept. 8, 2010, ¶ 13. Amendments *to a constitution* – in another words, fundamental changes to the institute – requires Holy See approval. 1983 CODE c.587 § 2; *see also id.* c.583; Rincón-Pérez, *II/2 EXEGETICAL COMMENTARY* at 1507. A religious institute is otherwise free to change its proper law without Holy See approval; indeed, the Code expressly specifies that the institute's norms "can be conveniently reviewed and adapted according to the needs of time and place." 1983 CODE c.587 § 4.

⁵⁸ Koluthara, *RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES* at 224 ("The right to governance for the religious institutes on the one hand is defensive because it has to safeguard its patrimony in the Church from the external, undue encroachments, and also to keep watch against self-dissipation. On the other hand, it is positive in the sense that it is only by having a well-organised internal government that the religious institutes grow in their own character and the specific purpose of their founder whereby they flourish in the Church.").

celebration.” 1983 CODE c.632;⁵⁹ *see also id.* cc.631 § 2, 633 § 1; Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 78 (“An institute’s laws determine the [general] chapter’s composition, scope and order of business.”).⁶⁰ When the general chapter is in session, it constitutes the supreme authority of the religious institute, tasked with major decision-making powers regarding a host of issues. 1983 CODE c.631 § 1.⁶¹ It is difficult to overstate the importance of collegial bodies to religious institutes, whether they are convened at the general, provincial or house level. 1983 CODE c.602.⁶² That is particularly true of a religious institute like the Servite Order, since collegiality and fraternity provide a core principle of its charism. Ross, CHARISM OF THE SERVANTS OF MARY at 20-22.⁶³

69. A major task of the Servite Order’s general chapter is to elect the Order’s prior general. 1940 SERVITE CONST. art. 621. Similarly, each Servite provincial chapter elects a provincial. *Id.* art. 596. The long-standing authority to *elect* its own superiors – first exercised over seven hundred years ago (Benassi, SHORT HISTORY OF THE SERVITE ORDER at 39-40) – is an important indicator of the Servite Order’s autonomy, particularly given the power that such

⁵⁹ The same held true under the 1917 CODE. Hite, HANDBOOK ON CANONS 573-746, at 73.

⁶⁰ *See also* Grajewski, *Supreme Moderator* at 132 (stating that the full delineation of a general chapter’s powers must be provided in the institute’s special legislation); Morrissey, II/2 EXEGETICAL COMMENTARY at 1670 (“The Code allows each institute to establish, according to need, various participatory bodies such as commissions, councils or working groups”); Hite, HANDBOOK ON CANONS 573-746, at 77-78 (stating that “the rights and duties of the provincial chapter, of the provincial superior, and of the provincial council are determined by the institute, that is, by its general constitutions and proper law, and by the provincial statutes”). These canons, of course, “respect entirely the autonomy of each institute” Morrissey, II/2 EXEGETICAL COMMENTARY at 1671.

⁶¹ *See also* Hite, HANDBOOK ON CANONS 573-746, at 90; Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 78; Grajewski, *Supreme Moderator* at 132, 164; Heston, *Some Aspects of Government in Religious Communities* at 47.

⁶² Although not necessarily “collegial” in a canonical sense, councils also play an important role in the governing of religious institutes. *See, e.g.*, 1983 CODE c.627 §§ 1-2; Smith, *Governance of Institutes* at 788, 790.

⁶³ The Order of Friar Servants of Mary first held a general chapter in 1263, and there “are numerous indications [from the thirteenth and fourteenth centuries] that the friars had a very collegial form of government” from the very beginning. Ross, *Charism of the Servants of Mary* at 30-31.

superiors enjoyed in the religious institute and over each of its individual members. 1917 CODE cc.501-502; 1983 CODE cc.596 § 1, 617.⁶⁴

70. There are many other indicia of the autonomy of religious institutes, including with regard to the selection of members, the formation of members, and day-to-day control over religious life. I will discuss some of these in further detail below. The important point here, though, is that Plaintiff and his declarants' view that religious orders are under the "absolute" and "unqualified" control of the Pope and the Holy See is quite extreme and is, so far as I can find, without support among canonists or theologians of religious life. As a matter of theology, religious doctrine and ecclesiastical governance, the charism of a religious institute – its gift from God – must be respected and protected by the Church hierarchy. To develop and maintain their charism, religious institutes enjoy a rightful autonomy from the hierarchy. That autonomy is recognized throughout the Code of Canon Law, including in provisions that reflect institutes' authority to develop their own law, structure their own government, and elect their own superiors. The central feature of religious institutes is not their "control" by the hierarchy, but quite the reverse – their rightful autonomy from the hierarchy of the Church.

71. There are other key canonical principles that render Plaintiff and Doyle's contention of the Holy See's "absolute" and "unqualified" power over religious institutes erroneous. The first is the principle of subsidiarity. In general, "the principle of subsidiarity means that the superior legislative authority should not undertake what the smaller and lower authorities can do by themselves and by their own initiative." Koluthara, *RIGHTFUL AUTONOMY*

⁶⁴ See also Hite, *HANDBOOK ON CANONS 573-746*, at 74; McDermott, *Institutes of Consecrated Life* at 753; Smith, *Governance of Institutes* at 780; Andrés Gutiérrez, *II/2 EXEGETICAL COMMENTARY* at 1616.

OF RELIGIOUS INSTITUTES at 54-55.⁶⁵ Religious institutes, particularly those (like the Servite Order) that divide themselves first into provinces and then into local houses, are a manifestation of the principle of subsidiarity within the Church:

In institutes with centralized government and a superior general, the numerical growth of the members and houses gives rise to the need to constitute the province, an intermediate organism between local communities and the institute itself or the general government. The movement toward decentralization and the principles of subsidiarity and flexibility in action were basic reasons for the constitution of provinces, according to the example already given in past centuries by the mendicant orders. Today other factors also enter in: the respect owed to different cultures and populations; the need of an authority in the place for adaptations of concrete circumstances; the necessity to deal with the hierarchy and other organisms regarding problems that concern the houses of the institute in a given region. The criterion regarding the degree of development of the institute in a region is the distance from the center, integrated by other criteria: differences of culture and environment, political situation.

Gambari, RELIGIOUS LIFE at 525 (citations omitted).⁶⁶ The principle of subsidiarity serves as an important restraint on the Church hierarchy's exercise of authority over religious institutes, particularly with regard to events at the provincial and local levels.⁶⁷

⁶⁵ See also Gambari, RELIGIOUS LIFE at 489 ("Subsidiarity implies attributing to the superior, organism and persons the faculties or powers required for the effective and normal fulfillment of their task, so as to avoid too-frequent and unnecessary recourse to higher authorities. From subsidiarity [local superiors] derive a certain autonomy of action, a more adequate response to the fulfillment of the office entrusted to them, and a greater efficiency. It can be called self-sufficiency without, however, applying to the term the meaning of isolation or the rejection of any intervention by other authority.").

⁶⁶ See also Hite, A HANDBOOK ON CANONS 573-746, at 88; McDermott, *Institutes of Consecrated Life* at 753; Smith, *Governance of Institutes* at 784 ("Institutes with a more centralized government may give considerable authority to the supreme moderator. In other institutes, whose organizational structure provides for provinces or regions, more authority may reside at a lower level with provincial superiors or, occasionally, with local superiors."); Grajewski, *Supreme Moderator* at 79 ("If the matter is of local interest, the local superior is the immediate authority competent to exercise jurisdiction; if it is more than local interest, so that it involves the common good of a province, then the provincial obtains competency; if the matter transcends the provincial limits, then jurisdiction is reserved to the supreme moderator."); Heston, *Some Aspects of Government in Religious Communities* at 38-39.

⁶⁷ It is worth noting that subsidiarity, including its application and theological groundings, has been the subject of debate. While some view it as an immanent component of *Lumen gentium*, others have treated it as a doctrine that is not so much a part of Catholic theology but a grafting on of an extra-theological explanatory framework that nevertheless forms part of the Magisterium. See Burkhard, *Interpretation and Application of Subsidiarity in Ecclesiology* at 279-342 (compare Franz Klüber's view of *Soziallehre* at 288 with Otto Karrer's view that subsidiarity is a "veritable central idea" of *Lumen*

72. Second, custom and tradition play a crucial role in limiting the hierarchy's intervention in the affairs of religious institutes. "In the Catholic Church, the concept of tradition has a time-honored place and involves the handing on not only of the content of the faith, but also time-proven ways for living out that faith." Hite, *HANDBOOK ON CANONS* 573-746, at 37; *see also, e.g.*, 1917 CODE cc.29, 1323 § 1; 1983 CODE cc.6 § 2, 23-28, 578, 619, 750. The relationship between the Holy See and the Servite Order has evolved over 700 years. As early as 1263, the Order's autonomy was affirmed when it held its first general chapter and elected its own prior general. That long history and tradition of the Servite Order's autonomy, particularly against the backdrop of the moderating influence of wider custom and tradition in the Church with regard to religious institutes, restrains any exercise of "absolute" and "unqualified" power by the Church hierarchy.

73. Third, the relationship between the Church hierarchy and religious orders is governed by principles of communion and unity. Both of these concepts rest on deeply theological and doctrinal foundations, requiring, for their proper understanding, the application of the hermeneutics of theological (especially ecclesiological) principles as well as canonical techniques. However, in brief, it may be observed that there is a "particular bond of communion" between religious institutes and "the Successor of Peter in his ministry of unity and missionary universality." VC 47; *see also* VC 41-42, 53; MR 2. Religious institutes have "the particular task of spreading the spirituality of communion, first of all in their internal life and then in the ecclesial community, and even beyond its boundaries." VC 51. The internal order of religious institutes "enjoys a true autonomy, but it is necessarily exercised within the framework of organic ecclesial communion." *Directives on Formation in Religious Institutes* at 94. The

gentium with Cardinal Rosalio José Castillo Lara's more skeptical view, reported at 327, that subsidiarity may be ecclesologically "superfluous"); *see also* Leys, *Structuring Communion* at 84-123.

Holy See's exercise of authority over religious institutes – far from being “absolute” and “unqualified” – must be consistent with principles of communion and unity within the Catholic Church.

74. Fourth, the Pope's authority over religious institutes can only be exercised when it is “for the advantage of the Church or of the faithful.” *LG 27*. The Pontiff's actions with regard to religious institutes should be in furtherance of “the necessities of the entire flock of the Lord and in consideration of the common good.” *LG 45; see also 1983 CODE c.591*.

75. Finally, Plaintiff and his declarants' contention of “absolute” and “unqualified” Holy See authority over religious institutes ignores the relationship between religious institutes and the *local* Church hierarchy – diocesan bishops. The relationship between religious institutes and diocesan bishops has at times been marked by tensions: “Some of the relations were less than cordial because sometimes the orders emphasized their independence while scorning the function of the bishop and other times, because the bishops themselves abusively interfered in the life and governance of the monasteries and convents.” Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1521. Nevertheless, the relationship is central to the life of the Church, and it requires a careful balancing by both religious order superiors and the diocesan bishop:

It is helpful to recall that, in coordinating their service to the universal Church with their service to the particular Churches, Institutes may not invoke rightful autonomy, or even the exemption which a number of them enjoy, in order to justify choices which actually conflict with the demands of organic communion called for by a healthy ecclesial life. Instead, the pastoral initiatives of consecrated persons should be determined and carried out in cordial and open dialogue between Bishops and Superiors of the different Institutes. Special attention by Bishops to the vocation and mission of Institutes, and respect by the latter for the ministry of Bishops, with ready acceptance of their concrete pastoral directives for the life of the Diocese: these are two intimately linked expressions of that one ecclesial charity by which all work to build up the organic communion – charismatic and at the same time hierarchically structured – of the whole People of God.

VC 49.⁶⁸ Regulation of the delicate relationship between religious institutes and diocesan bishops is a prominent feature of both Codes. In the 1917 CODE, for example, the diocesan bishop had authority over religious institutes and their members with regard to a wide range of topics. *See* 1917 CODE cc.106 6°, 131 § 3, 344, 454, 456, 465, 471 § 2, 472 1°, 475 § 1, 476 § 4, 477, 480, 486, 497, 500, 512 § 2 2°, 513, 533 § 1 4°, 608, 609 § 3, 612, 616 § 2, 618 § 2 2°, 619, 631 §§ 1-2, 997 §§ 1-2, 1162 § 4, 1334, 1336, 1382, 1425 § 2.⁶⁹ The relationship between religious institutes and the local diocesan bishop is another reason why Plaintiff and Doyle’s simplistic “absolute ruler” formulation does not reflect the reality of Church polity.⁷⁰

76. In short, whether with regard to diocesan bishops or to religious orders, Plaintiff and his declarants’ view that the Holy See exercises “absolute” and “unqualified” power and control rests on a gravely mistaken understanding of Catholic Church polity – one that cannot be separated from complex issues of theology, religious doctrine, and ecclesiastical governance.

⁶⁸ *See also* MR 17 (“Regarding the relations between bishops and religious, therefore, in addition to the differences in functions and charisms the concrete difference existing within nations must likewise be carefully considered.”) (citations omitted); MR 18 (“Religious, then, even if they belong to an institute of pontifical right, should feel themselves truly a part of the ‘diocesan family’ and accept the duty of necessary adaptation. They should foster local vocations both for the diocesan clergy and for religious life. Furthermore, they should form candidates for their congregation in such a way that these really live according to the actual local culture. At the same time, however they should be watchful that there be no deviation from the missionary call inherent in the religious vocation, or from the unity and distinctive character of each institute.”) (internal citation omitted); Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 37 (“it is clearly the duty of the bishops to exercise their authority in all that pertains to the Church; on the other hand, however, it is equally clear that in such an important and delicate task, the hierarchy should proceed with due respect for what the Spirit of God has done and continues to do in the institutes of consecrated life.”); *see also* *Ad gentes* 18, 30; *Ecclesiae sanctae* 25, 29-31, 33; McDermott, *Institutes of Consecrated Life* at 753.

⁶⁹ The same holds true under the 1983 Code. *See, e.g.*, 1983 CODE cc.397, 520 §§ 1-2, 557, 678 § 1, 681 § 1, 682, 683.

⁷⁰ In this regard, I note that Archbishop Howard – the local diocesan bishop in Portland, Oregon – is the one who undertook the investigation of Ronan.

VIII. Plaintiff's Contention that All Power in the Catholic Church is "Delegated" from the Pope

77. Plaintiff claims that "the Holy See is a traditional monarchy, which means that it holds all authority in the first instance and any authority held by others within the institution is delegated from the Holy See." Pltf.'s Opp. at 9. *citing* 1917 CODE c.218. Plaintiff's assertion is mistaken.

78. I begin my analysis of Plaintiff's contention by observing that the Holy See is not a "traditional monarchy" that "holds all authority in the first instance." To begin with, the Pope, assisted by his Curia, is part of a structure of ecclesiastical governance that shares supreme power with the College of Bishops. 1983 CODE cc.330-341, 381.⁷¹ Moreover, the notion that it "holds all authority" is, for all of the reasons discussed above with regard to diocesan bishops and religious, without support in the canon law. *See supra* at ¶¶ 32-76.

79. With regard to Plaintiff's notion – apparently based upon a fundamental misinterpretation of 1917 CODE c.218 – that "any authority held by others within the institution is delegated from the Holy See," Plaintiff is again seriously mistaken. As with the "absolute" authority contention, I will examine this proposition in two contexts: diocesan bishops and religious orders. Preliminarily, though, I note that the position on delegation of authority asserted by Plaintiff (namely, that all authority in the Church is delegated by the Pope) is inconsistent with the position Doyle took, and took correctly, regarding the classic distinctions between ordinary and delegated power in his commentary on marriage law in the CLSA COMMENTARY (1985) at pages 794 and 795, discussing canons 1109 and 1111 on jurisdiction for marriage. There, Doyle explains that "ordinary power" is that which is attached to an office and which officers exercise in their own name, while "delegated power" is conferred much more

⁷¹ In addition, a "traditional monarchy" involves a reign for life and by hereditary right. THE AMERICAN HERITAGE DICTIONARY. The papacy is not, of course, hereditary.

narrowly (typically to express persons and only for express instances). At no point does Doyle suggest that a priest's or bishop's authority to witness marriages – a very common example of jurisdictional exercise of authority in the Church – is the exercise by them of a power delegated by the Pope. The extreme view of authority in the Church taken by Plaintiff is utterly without support by any modern Catholic canonist or ecclesiologist.

A. Bishops

80. Canon 381 § 1, of the 1983 CODE provides that “[a] diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority.” Canon 381 incorporates the principle of a “positive presentation of the powers of the episcopal office,” along with the “principle of subsidiarity by which bishops and other infra-universal leaders will be given more discretionary authority.” Renken, *Particular Churches and Their Groupings* at 519.⁷² The bishops “govern the particular churches entrusted to them by their counsel, exhortations, example, and also by their authority and sacred power.” *LG 27; see also LG 23* (“The individual bishops, who are placed in charge of particular churches, exercise their pastoral government over the portion of the People of God committed to their care, and not over other churches nor over the universal Church.”). “[C]are for the particular churches or dioceses is the specific function of the bishops.” de la Hera, II/1 EXEGETICAL COMMENTARY at 769; *see also* Arrieta, GOVERNANCE STRUCTURES at 205 (“The diocesan bishop heads the local Church and is responsible for its governance.”). Under canon 381, “the diocesan bishop has in his diocese all the power needed for the exercise of his pastoral office.” de la Hera, II/1 EXEGETICAL COMMENTARY at 771; *see also* Arrieta, GOVERNANCE STRUCTURES at 206 (“The diocesan bishop,

⁷² *See also* Paraliu, *GUIDE PRATIQUE* at 137.

in his own diocese, possesses all the power required to accomplish the pastoral function entrusted to him (c. 381 CIC), so that he can perform all the acts of governance necessary or useful for governing the diocese.”).⁷³

81. The bishop’s power and authority is of divine origin.⁷⁴ As explained by one commentator:

Those who preside over [the particular churches] do so by virtue of divine law, in that divine law is in fact the proper, ordinary and immediate power with which each of them in their diocese exercises their pastoral office: the office as head of the particular churches was an apostolic office included in the mission that the apostles received from Christ. They had the office as head of the particular churches by divine law. Inasmuch as the bishops are their successors, the office as head of the particular church is possessed by each of the diocesan bishops by divine right. Although the manner of electing and appointing is a human right, the office and the functions and powers that it includes are by divine right and the bishops receive them from Christ, in such [a] way that the diocesan bishops can properly be called the vicars of Christ.

de la Hera, II/1 EXEGETICAL COMMENTARY at 769. As Herranz explains, the spiritual significance of a bishop’s authority renders analogies with civil offices misleading:

⁷³ In representing and governing the local diocese, bishops are also “the visible principle and foundation of unity in their particular churches, fashioned after the model of the universal Church, in and from which churches comes into being the one and only Catholic Church. For this reason the individual bishops represent each his own church, but all of them together and with the Pope represent the entire Church in the bond of peace, love and unity.” *LG* 23; see also Molano, II/1 EXEGETICAL COMMENTARY at 576 (“[T]he formula of the Second Vatican Council – the Church in and formed out of the Churches (*Ecclesia in et ex Ecclesiis*) – is inseparable from this other formula: the Churches in and formed out of the Church (*Ecclesiae in et ex Ecclesia*). Clearly the relationship between the universal Church and the particular churches is a mystery and cannot be compared to that which exists between the whole and the parts in a purely human group or society.”). Moreover, while they govern their particular Churches, bishops should also “be mindful, in administering ecclesiastical property, of the needs not only of their own dioceses but also of the other particular churches, for they are also a part of the one Church of Christ.” *Christus Dominus* 6; *Apostolorum Successores* 13 (“By virtue of his membership in the episcopal College, the Bishop is solicitous for all the Churches.”); CATECHISM OF THE CATHOLIC CHURCH 886 (“[A]s a member of the episcopal college, each bishop shares in the concern for all the Churches.”).

⁷⁴ See *LG* 27 (stating that bishops are “vicars and ambassadors of Christ” and that bishops “personally exercise [their proper, ordinary and immediate power] in Christ’s name”); *LG* 21 (stating that “bishops in an eminent and visible way sustain the roles of Christ Himself as Teacher, Shepherd and High Priest, and . . . act in His person”); *Apostolorum Successores* 1 (stating that the bishop is the “Vicar of the ‘great shepherd of the sheep’ (*Hebrews* 13:20)”).

In a purely natural society the person or persons invested with jurisdiction (head of State or government, representatives, senators, or governors, etc.) receive their respective powers without any particular spiritual or supernatural gift being added to their human qualities. In the best of situations only an awareness of a greater responsibility is added to their presumed intelligence and experience. Whereas in the Church, bishops receive a stable gift or charism of the Holy Spirit with episcopal consecration

Herranz, *Power of Governance* at 17-18.

82. The bishop has “ordinary” power. 1983 CODE c.381; *see also* LG 27. The Code defines ordinary power as that which “by virtue of the law itself is attached to a given office.” 1983 CODE c.131. In contrast to “ordinary power” stands “delegated power” (*id.*), a concept with which canon law, being based on Roman law, is quite familiar. As a result, “the power of the diocesan bishop in his diocese in fact lies in the episcopal office” and bishops “are not delegates of the Roman Pontiff in the governance of their dioceses.” de la Hera, II/1 EXEGETICAL COMMENTARY at 771.⁷⁵

83. The “power of the diocesan bishop is [also] *proper*. He administers the diocese in his own name, not as a representative of the Roman Pontiff, but as vicar or delegate of Christ. This is in contrast to . . . vicarious power” Arrieta, GOVERNANCE STRUCTURES at 207.⁷⁶ Indeed, that point is emphasized in *Lumen gentium* itself, which stated that “[t]he pastoral office or the habitual and daily care of their sheep is entrusted to [bishops] completely; nor are they to be regarded as vicars of the Roman Pontiffs, for they exercise an authority that is proper to them, and are quite correctly called ‘prelates,’ heads of the people whom they govern.” LG 27.⁷⁷

⁷⁵ *See also* Green, *Pastoral Governance Role of the Diocesan Bishop* at 472, 482 (“Episcopal authority is *ordinary*; it pertains to the office by the law itself (c.131, § 1) and is not delegated by any higher human authority.”).

⁷⁶ *See also* Renken, *Particular Churches and Their Groupings* at 519 (stating that the power of the diocesan bishop is “*proper* (exercised in his own name, not vicariously in the name of another)”).

⁷⁷ At one point, Doyle states that “[t]he pope has complete and absolute authority over the entire worldwide Catholic Church in the three main areas of government: judicial, legislative ad [sic] executive.” Doyle Decl. ¶ 13. To the extent that Doyle is seeking to imply that only the Pope has legislative,

84. All modern commentators agree that a bishop is not a vicar or agent of the Pope.

As stated by Archbishop Arrieta:

In studying the pastoral office, the central point that emerges is the divine origin of the bishop's power as head of the particular Church. The diocesan bishop receives 'all the ordinary, proper and immediate power acquired for the exercise of his pastoral office' in the diocese . . . , save the questions reserved to the supreme authority of the Church.' Bishops represent Christ the Head in the community and their attributions have an original character that is not deriving from other ecclesiastical authority. Therefore, the Council affirms that these pastors, *i.e.*, diocesan bishops 'exercise a power that is their own,' and are not considered as 'vicars of the Roman Pontiff' (LG 27).

Arrieta, GOVERNANCE STRUCTURES at 52-53.^{78, 79} The bishops do not act "on behalf of" the Pope or the Holy See; instead, they exercise the ordinary and proper power they possess in their own right.⁸⁰

executive and judicial power in the Church, he is incorrect. A diocesan bishop, for example, governs "the particular church entrusted to him with legislative, executive, and judicial power according to the norm of law." 1983 CODE c.391 § 1; *see also* See also Arrieta, GOVERNANCE STRUCTURES at 209 ("According to [1983 CODE] c.391 the diocesan bishop may use three juridical functions of governance – legislative, executive and judicial – to rule the portion of the people of God entrusted in him."); *see also* Paraliou, *GUIDE PRATIQUE* at 140. As Herranz notes, "in the democratic state, the *threefold division of power* is understood as mutual control and balance of social forces. The Houses (Parliament, Senate) exercise legislative power in a collegial way, inasmuch as they represent the people, the primary holders of such power. Executive power resides in the administrative branch, while the court is the holder, at various levels, of judicial power. Both administrative branch and the court act according to the norms and power that the people themselves have entrusted to them. It is obvious that in the Church, where power comes not from the people but from God and is structured by him on the constitutional level, things are understood differently." Herranz, *Power of Governance* at 24.

⁷⁸ *See also* Green, *Pastoral Governance Role of the Diocesan Bishop* at 491 ("The diocesan bishop is not simply a lower level ecclesiastical functionary but rather the subject of all ordinary, proper, and immediate power in his diocese."); Renken, *Particular Churches and Their Groupings* at 519 ("A diocesan bishop possesses in his diocese all the ordinary, proper, and immediate power to perform his pastoral ministry. This teaching reflects the doctrine in *Lumen gentium* 27, which explains that bishops are not to be considered vicars of the Roman Pontiff, but that they exercise the power they possess in their own right and are true prelates of the people they govern. They are vicars and legates of Christ, and their power comes from him."); de la Hera, II/1 EXEGETICAL COMMENTARY at 772 ("[T]he creation of new dioceses does not imply the result of deconcentration of a part of the functions of the papal office, which would imply that the power of diocesan bishops would become vicarious. Neither could the pope ignore the diocesan organization of the universal Church and exercise his office as the supreme pastor through vicars representing him throughout the world, even if these vicars are titular bishops. The figure of the diocese and that of the diocesan bishop belong to the constitutional structure of the Church itself."); CATECHISM OF THE CATHOLIC CHURCH 895 ("[T]he bishops should not be thought of as vicars of the Pope."); Andrés Gutiérrez, CÓDIGO DE DERECHO CANÓNICO (commenting on canon 381, "a bishop, like

B. Religious Superiors

85. “There is a profound analogy between the office of the bishop and that of the religious superior.” Gambari, *RELIGIOUS LIFE* at 513 n.6. The “power exercised by religious ordinaries is very similar to that which is exercised by bishops.” Keene, *Religious Ordinaries and Canon 198*, at 44.⁸¹ In particular, religious superiors of clerical institutes of pontifical right – including the Servite Order’s prior general and provincials – had *ordinary* authority under the canon law, just like diocesan bishops. 1917 CODE c.198 § 1; 1983 CODE cc.131, 596.⁸² As stated above, ordinary power is “that which is attached to an office by law.” 1917 CODE c.197 § 1; 1983 CODE c.131 § 1. It is the opposite of “delegated power,” which is that “which is granted to a person *but not by means of an office.*” 1983 CODE c.131 § 1 (emphasis added); 1917 CODE c.197 § 1; *see also* Grajewski, *Supreme Moderator* at 64 (affirming that “[a]ll power in the church is either ordinary or delegated; that list is exhaustive; ordinary power is attached to the office; [and] delegated power is not attached to the office but is committed to a person”). In

the pope, exercises ordinary, proper, and immediate power in the name of Christ whose vicar he is, not that of the Pope”).

⁷⁹ Although this declaration emphasizes ecclesial values generally identified with Vatican II, and therefore analyzes episcopal authority through the prism of *Lumen gentium* and the 1983 Code of Canon Law, it would be incorrect to view Vatican II as a radical departure from the episcopal traditions which *Lumen gentium* sought to illuminate and deepen. Indeed, the centrality of the bishop’s role, while less fully articulated prior to Vatican II, was a powerful part of pre-conciliar theology and episcopal practice as well. *See* Lynskey, *GOVERNMENT OF THE CATHOLIC CHURCH* at 22-27; *see also id.* at 27, *citing* Bouscaren & Ellis, *CANON LAW*; Herranz, *Power of Governance* at 19 (citing statements of Pope Leo XIII).

⁸⁰ It is worth noting that bishops are not “ambassadors” of Popes. *Cf.* 1983 CODE cc.362-367. While the Pope enjoys the power of legation under international law, that power is exercised through the figure of the “Nuncio,” or “Apostolic Delegate,” who is a representative of the Pope to foreign governments and to bishops in various regions of the world. In no way does a local bishop have, or enjoy, such powers based upon his being part of the College of Bishops. *See generally* 1983 CODE cc.362-367 (describing legal role of pontifical legates); *see also* Oliveri, *LEGATI PONTIFICI* at 251-81.

⁸¹ *See also* Grajewski, *Supreme Moderator* at 164 (“The quasi-episcopal powers enjoyed by the supreme moderator are radically the same as episcopal jurisdiction.”).

⁸² *See also* Smith, *Governance of Institutes* at 781 (“Superiors possess power by virtue of their office”); *id.* at 755, 782-83; Gambari, *RELIGIOUS LIFE* at 501; Grajewski, *Supreme Moderator* at 64, 73.

short, by the plain terms of the Code itself, the notion that the power of religious superiors in office is “delegated” by the Holy See is false.

86. In addition, the power of religious superiors is *proper* – it is exercised in their name and in the name of their institute, and *not* in the name of either the Holy See or the Pope. The 1917 CODE provided that religious superiors enjoyed “dominative power” over their subjects, including (with respect to clerical exempt religious institutes like the Servites), “ecclesiastical jurisdiction both for the internal forum and for the external.” 1917 CODE c.501 § 1.⁸³ That power was *proper* to the office of the religious superior (whether general, provincial or local). Grajewski, *Supreme Moderator* at 67; Gambari, RELIGIOUS LIFE at 499; Andrés Gutiérrez, II/2 EXEGETICAL COMMENTARY at 1618; *see also* Heston, *Some Aspects of Government in Religious Communities* at 37.⁸⁴ When religious superiors act, they do not do so on behalf of or in the name of the Holy See or the Pope.

IX. Plaintiff’s Contentions Relating to Church Hierarchy and Governance

87. Wall claims that “[i]n the Roman Catholic Church there is only one hierarchy: the Pope also referred to by various titles such as the Holy See, Roman Pontiff, Apostolic See and the Bishop of Rome.” Wall Decl. ¶ 6. Wall also claims that “[a]ccording to the teachings of Jesus Christ, complete governance and jurisdiction is entrusted to one person, the Roman Pontiff, successor of Saint Peter and Bishop of Rome. (Canons 218, 219.)” *Id.*; *see also* Doyle Decl. ¶ 13 (“The Roman Catholic Church is governed by the pope.”). Neither assertion is correct.

⁸³ The existence of dominative power held by religious superiors reflects “the constant teaching of the Church” that can be traced back to the seventh century. Grajewski, *Supreme Moderator* at 67.

⁸⁴ That superiors are not papal “delegates” is of course accurate as a matter of canon law, but – particularly in light of the number of religious superiors in a wide variety of institutes throughout the world – it is also a practical necessity. *See, e.g.*, Keene, *Religious Ordinaries and Canon 198*, at 44 (“It would be very inconvenient for the Roman Pontiff to rule these various communities immediately either personally or through individual delegates.”).

88. Wall's contention that "there is only one hierarch" in the Catholic Church is erroneous. There is only one *Pope* in the Church, but there are thousands of hierarchs, each of whom holds one or more ecclesiastical offices entailing a wide range of interrelated rights and duties. *See, e.g.*, 1983 CODE cc.330-572 (describing the "Hierarchical Constitution of the Church"). To reduce the hierarchy of the Catholic Church to a single individual is a gross mistake.

89. Nor is it true that "complete governance and jurisdiction is entrusted to one person, the Roman Pontiff." Wall Decl. ¶ 6. As stated above, the College of Bishops is also "the subject of supreme and full power over the universal Church." 1983 CODE c.336. And many other individuals in the Church hold powers of governance, including, for example, diocesan bishops. *See, e.g.*, 1983 CODE c.375 § 1 (stating that bishops "are constituted Pastors in the Church, to be the teachers of doctrine, the priests of sacred worship and the ministers of governance"); 1983 CODE c.391 § 1 ("The diocesan Bishop governs the particular Church entrusted to him with legislative, executive and judicial power, in accordance with the law.").⁸⁵

⁸⁵ *See also* LG 21 ("Episcopal consecration, together with the office of sanctifying, also confers the office of teaching and of governing, which, however, of its very nature, can be exercised only in hierarchical communion with the head and the members of the college"); CD 15 ("bishops are the principal dispensers of the mysteries of God, as well as being the governors, promoters, and guardians of the entire liturgical life in the church committed to them"); Gómez-Iglesias, II/1 EXEGETICAL COMMENTARY at 809 ("Canon 391 contemplates precisely the power of governance or jurisdiction as a means through which the bishop governs the diocese."); Le Tourneau, II/1 EXEGETICAL COMMENTARY at 748 (stating that the bishops' "office as ministers for governance is stated throughout the Code"); Renken, *Particular Churches and Their Groupings* at 511 ("The office of bishops originates from divine institution, and confers the powers to sanctify, teach, and govern – powers to be exercised in hierarchical communion with the head and other members of the college of bishops."); *id.* at 527 ("Every bishop is a minister of governance").

X. Plaintiff's Contentions Relating to the Relationship Between the Holy See and Religious Orders

90. Plaintiff and his declarants make a range of contentions relating to the relationship between the Holy See and religious orders. To the extent that such contentions have not already been addressed above, I respond to them as follows.

91. Plaintiff states that the "Latin version of [the] 1940 [Servite] Constitution specifically acknowledged that the Constitution was approved by the Holy See." Pltf.'s Opp. at 13; Doyle Decl. ¶ 20. Plaintiff argues that the Holy See's approval shows that it had "control of [the Servite] Order's Constitution." Pltf.'s Opp. at 13.

92. While Plaintiff is correct that the Holy See's approval of the Servite Order's constitution was required under canon law, *cf.* 1983 CODE c.587 § 2, the conclusion he draws therefrom reveals a fundamental lack of understanding as to why this was so.

93. "Since time immemorial each institute has been governed by its own rules and constitutions, seeking to safeguard its own spirit and identity in the body of ecclesial life." Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1499. The constitution is "the practical instrument through which the patrimony of an institute of consecrated life is preserved and lived." McDermott, *Institutes of Consecrated Life* at 753; *see also* Gambari, RELIGIOUS LIFE at 619 ("[E]ach society must be committed to safeguarding its own identity, in accord with the norm of can. 578 -- an identity which must be faithfully outlined in the constitutions.")⁸⁶ "The fundamental code (constitutions) contains the essential elements describing the patrimony of the institute and the basic norms pertaining to governance, temporal goods, formation, incorporation, the proper object of the sacred bonds, and the discipline of members." McDermott, *Institutes of Consecrated Life* at 754.

⁸⁶ *Cf.* 1983 CODE c.578 ("The whole patrimony of an institute must be faithfully preserved by all. This patrimony is comprised of the intentions of the founders, of all that the competent ecclesiastical authority has approved concerning the nature, purpose, spirit and character of the institute, and of its sound traditions.").

94. “The drafting and modification of the constitutions is ordinarily the prerogative of the [the religious order’s] general chapter.” Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1507. Religious orders are afforded “freedom and flexibility” in defining the content of constitutions. Gambari, RELIGIOUS LIFE at 76; *see also* Koluthara, RIGHTFUL AUTONOMY OF RELIGIOUS INSTITUTES at 76 (stating that canon law contains “only the general principles leaving it to the institutes suitable freedom to apply the principles in accord with their own particular purpose and spirit”). Consistent with these principles, the Latin introduction to the Servite Order Constitution makes clear that the 1940 Constitution was developed and revised by Servite leaders, Servite commissions, Servite general councils, and Servite general chapters. Stano Decl., Exh. 1. The Servite Order Constitution’s purpose is described as leading the members toward holiness (in the spirit of the Order), glorifying God, honoring the Blessed Virgin, and promoting the welfare of the people of God. *Id.*

95. “The necessity of pontifical approval . . . for each constitution has been a constant and universal norm in the recent centuries.” Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1507. The approval is necessary to ensure that the constitution adheres to the institute’s sacred patrimony. *See* McDermott, *Institutes of Consecrated Life* at 754 (“The fundamental code [constitutions] describes the gift of the Holy Spirit to the Church and contains the essential elements through which it is preserved and developed. Therefore, its approval and any changes in it are reserved to the competent ecclesiastical authority.”).⁸⁷ In other words, far from indicating a method of “control,” the Holy See approval seeks to ensure that the essential spiritual patrimony of the institute is

⁸⁷ *See also* PC 2 b (“It redounds to the good of the Church that institutes have their own particular characteristics and work. Therefore let their founders’ spirit and special aims they set before them as well as their sound traditions—all of which make up the patrimony of each institute—be faithfully held in honor.”).

adequately preserved.⁸⁸ In the Latin introduction to the Servite Constitution, the Pope's approval of the Servite Order Constitution is described in religious terms as approval from the "Vicar of Christ," and nothing in the introduction suggests that the terms of Constitution were dictated by the Holy See. Stano Decl., Exh. 1.

96. Doyle observes that a religious order's constitution "cannot contain any laws that are contrary to the general law of the church." Doyle Decl. ¶ 20. His assertion is correct. *Cf.* 1917 CODE c.489. It is also self-evident. All Catholic entities, clerics and individuals are bound to follow the law of the Church. If religious orders were permitted to follow laws "contrary to the general law of the church," the very Catholicity of the Church would be profoundly undermined.

97. Wall claims that a religious superior "is to carry out the laws, policies and customs promulgated by the Roman Pontiff. Any and all questions of fact and interpretation are reserved solely to the Roman Pontiff." Wall Decl. ¶ 10. It is difficult to discern what Wall is referring to, since he provides neither any citation nor any explanation of what he means with respect to "[a]ny and all questions of fact and interpretation." As noted above, it is true that a religious superior – like any member of the Catholic faithful – must follow the law of the Church. Yet it is decidedly incorrect that "all questions of fact and interpretation are reserved solely to the Roman Pontiff." Religious superiors routinely (and independently) resolve questions of fact and interpret canonical provisions. In fact, as set forth *infra* ¶¶ 136-37, the Servite Constitution itself envisioned that superiors would do so with regard to, *inter alia*, issues involving the discipline of religious clerics.

⁸⁸ Moreover, the Holy See's approval of a religious institute's constitution includes respecting the institute's true autonomy. *Cf.* 1983 CODE c.586 § 1 ("A true autonomy of life, especially of governance, is recognised for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in can. 578.").

98. Plaintiff states that “[i]n nearly any decision of import by a Servite Superior, the individual Servite Priest has the right to appeal the decision to the Holy See.” Pltf.’s Opp. at 18. Plaintiff neglects to mention that *all* members of the Catholic Church, including laypersons, have the right to appeal to the Holy See. *See* 1917 CODE c.1569 § 1 (“it is fundamental to every member of the faithful throughout the catholic world that they have the right of sending any case, criminal or contentious, in any level of trial and at any stage of the proceeding, to the Holy See for adjudication and of introducing it there”); *see also* 1983 CODE c.1417 § 1. Plaintiff also neglects to mention that canon 1569 provided that “[r]ecourse interposed to the Apostolic See . . . does not suspend the exercise of jurisdiction by the judge who has already begun to judge it, except in cases of appeal; therefore the [first] judge can continue to pursue the case even to definitive sentence unless the Apostolic See calls the case to itself.” 1917 CODE c.1569 § 2; *see also* 1983 CODE c.1417 § 2. In other words, notwithstanding the right of recourse to the Holy See, the matter remained before the local judge unless the Holy See called the case to itself.⁸⁹

99. Wall asserts that “[i]n a continued demonstration of Papal authority, the Holy See in 1274 AD at the Council of Lyons abolished all religious orders that do not have explicit approval of the Holy See.” Wall Decl. ¶ 16. First, it is patent that the action taken in 1274 at the Second Council of Lyons was taken not by Holy See, as asserted by Wall, but rather, by an Ecumenical Council. In fact, the action taken by the bishops at the Second Council of Lyons (in its canon 23) was taken expressly in furtherance of action taken by the assembled bishops nearly 60 years earlier during the Fourth Lateran Council (1215) in its canon 13. *See generally* Schroeder, DISCIPLINARY DECREES OF THE GENERAL COUNCILS at 254-55 (IV Lateran) and 351-

⁸⁹ The right to petition the Holy See is not unlike the right to petition the United States Supreme Court. Every United States citizen has the right to petition the Supreme Court for certiorari in any given case. 28 U.S.C. § 1254(1). That does not, of course, somehow transform the United States government into the “employer” of all who can petition the Supreme Court for relief.

53 (II Lyon). Second, the prohibitions enacted in both councils were put in place in order to reduce the ecclesiastical confusion arising from the then-recent and rapid multiplication of mendicant religious orders during the preceding two hundred years, the consequent dissipation of religious institutional focus and energies, and the financial burdens occasioned for the lay faithful by having so many needy religious institutes. This conciliar policy, grounded in good ecclesial order, had, contrary to Wall's assertion, nothing to do with a Roman demonstration of papal authority.

100. Wall also claims that “[i]n his sixteenth century decree, *Nullus ominio* [sic], Pope Clement VIII gave a direct order to all Servite Priests on how to conduct every aspect of their lives including maintaining their business records.” Wall Decl. ¶ 19. The papal document “*Nullus omnino*” (and not “*Nullus ominio*,” as cited by Wall) was not in any sense “a direct order” telling Servite clerics “how to conduct every aspect of their lives.” Instead, it was a fairly typical recital of papal concerns that religious orders follow universal canon law and their own constitutions in the conduct of their religious affairs. As for what Wall claims was a chief concern of *Nullus*, namely “maintaining business records,” I cannot tell which passage of *Nullus* Wall might have in mind, for I see no language in *Nullus* concerning “business records.”

XI. Plaintiff’s Contentions Relating to the Selection and Admission of Religious Order Priests

101. Plaintiff contends that “the Holy See controlled whether Ronan could enter training for the priesthood” by “setting the standards for those that enter studies for a religious order.” Pltf.’s Opp. at 11, *citing* 1917 CODE cc.542, 544, 555; *id.* at 11-12, *citing* 1917 CODE cc.948-1011. I have several observations regarding Plaintiff’s contention.

102. First, the Code of Canon Law is the law of the Catholic Church. For the reasons I have already stated, it does not reflect “control” by the Holy See. *See supra* ¶¶ 27-31.

103. Second, the Code – including the provisions cited by Plaintiff – provided only broad standards for selection,⁹⁰ leaving the specific regulations to be set forth in the proper law of the religious institutes, including that of the Servite Order. *See, e.g.*, 1917 CODE cc.543; *see also* 1917 CODE cc.948-1011; *cf.* 1940 SERVITE CONST. arts. 203, 205-06, 208-10, 213-15.⁹¹

104. Third, canon law provisions placed selection of religious clergy firmly in the hands of religious superiors and diocesan bishops. *See, e.g.*, 1917 CODE cc.964 2°, 965, 966, 967, 970, 973 §§ 2-3, 995 § 1, 996 § 3, 997 § 2. And the Code placed the authority to select members to a religious order on religious superiors. *See, e.g.*, 1917 CODE c.543 (“The right of admitting to the novitiate and to subsequent religious profession, whether temporary or perpetual, pertains to Superiors with the vote of the Council or Chapter, according to the special constitutions of each religious [institute.]”); 1917 CODE c.571 § 1; 1983 CODE cc.641-642; Hite, HANDBOOK ON CANONS 573-746, at 117 and ff.⁹²

⁹⁰ Plaintiff himself describes the provisions as requiring that a candidate “be at least fifteen years old, single, [not] a diocesan priest, and has to join of his own free will.” Pltf.’s Opp. at 11.

⁹¹ The same holds true of the two instructions attached as Exhibits 13 and 14 to the Finnegan Decl., which contain broad standards and reflect pastoral considerations. *See, e.g.*, Finnegan Decl., Exh. 13, at 479 (“religious Superiors should regard as addressed to themselves those most weighty and oft-repeated words of the Apostle by which he warns Bishops of their strict obligation to test the candidates again and again before admitting them to sacred orders: ‘Impose not hands lightly upon any man, neither be partaker of other men’s sins’ (I Tim. v, 22); and ‘Let these [deacons] also first be proved; and so let them minister, having no crime’ (I Tim. iii, 10).”); *id.* at 480 (“Superiors shall allow no one to take orders as long as they have not made sure by careful testing, of his moral character, piety, modesty, chastity, inclination for the clerical life, progress in ecclesiastical studies, and religious discipline”); Finnegan Decl., Exh. 14, at 461 (“The canonical fitness of the candidate for bearing the obligations of the institute must be evinced by *positive arguments*, and it must consist in all the requirements and, according to differences in age, all the physical, intellectual and moral qualities, either of nature or of grace, whereby a young man is rightly prepared for the worthy acceptance and performance of religious and priestly obligations”) (emphasis in original) (citations omitted); *id.* (“Candidates should not be admitted to religious seminaries except after careful investigation and the securing of detailed information on each individual.”); *id.* at 462 (“in case of doubt as to fitness, it is certainly unlawful to proceed further for there is involved something on which the welfare of the Church and the salvation of souls depend in a special manner, and in which, consequently, the safer opinion must always be followed.”).

⁹² *See also* Andrés Gutiérrez, II/2 EXEGETICAL COMMENTARY at 1693 (“The norm specifically sets the right of admission to the novitiate . . . by determining that the organ of governance that has and exercises that right is the major superiors [of the religious institute.] Neither local superiors nor councils,

105. Finally, I have reviewed the documents relating to Ronan in the above-captioned action. Based upon my review of said documents, the 1940 Servite Constitution, and the 1917 CODE, Andrew Ronan's selection as a candidate, novice and member of the Servite Order was made by members of the Servite Order itself (in particular, members of the Our Lady of Sorrows Province), and not by the Holy See or the Pope. *See* Lena MTD Decl., Exhs. 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13.⁹³

XII. Plaintiff's Contentions Relating to the Training and Education of Religious Order Priests

106. Plaintiff contends that the Holy See "controlled the education of potential priests," including the education of Ronan. Pltf.'s Opp. at 11, *citing* 1917 CODE cc. 553-54; *see also id.* at 19.

107. I have four observations regarding Plaintiff's contention that the Holy See "controls" the education of religious order priests. First, the contention erroneously assumes that the Code is the Holy See's law, rather than the law of the Catholic Church. *See supra* ¶¶ 27-31. Second, canons 553 and 554 in fact directly contradict Plaintiff's contention. Canon 553 provides that the novitiate in a religious institute starts "by taking up the habit or in another manner prescribed *in the constitutions [of the religious institute].*" 1917 CODE c.553 (emphasis

nor the chapters, nor superiors foreign to the institute can set the rights of admission to the novitiate."); *id.* at 1694 (stating that the norm "is based on the nature of the free society that makes up the institutes"); Smith, *Governance of Institutes* at 806 ("[D]ecisions regarding admission appropriately pertain to the major superior.").

⁹³ Plaintiff relies upon the fact that a canonical dispensation was received from the Holy See in 1943 to allow Ronan to enter the Servite Order's novitiate. Pltf.'s Opp. at 10. By the time that a dispensation was sought from the Holy See, Ronan had already by 1943 been enrolled for three years in the St. Philip High School in Chicago, Illinois, which was operated by the Our Lady of Sorrows Province of the Order of Friar Servants of Mary. Lena MTD Decl., Exh 2. Before the Province could admit Ronan to its novitiate following his graduation from the Province's high school, recourse to the Holy See was necessary to remove formally a canonical impediment resulting from Ronan's prior departure from the minor seminary of the Archdiocese of Chicago. *Cf.* 33 *ACTA APOSTOLICAE SEDIS* 371 (1941). However, while recourse was canonically required given Ronan's prior departure from the minor seminary, the Province itself selected, admitted and received Ronan into its novitiate. Lena MTD Decl., Exhs. 10, 13.

added). Canon 554 merely requires Holy See approval for the erection of a novitiate; that canon nowhere provides for any Holy See control over the novitiate, and the 1917 CODE explicitly provided that the “office of supervising the formation of novices belongs *to the Master*⁹⁴ *alone, and to him alone the governance of the novitiate looks.*” 1917 CODE c.561 § 1 (emphasis added); *see also* 1917 CODE cc.562, 588 § 1.⁹⁵ Canon 256, also cited by Plaintiff, only provided for the general oversight of the Holy See’s Congregation over Catholic universities and seminaries. 1917 CODE c.256. It would no more have “controlled” the education of Ronan than the United States Department of Education “controls” the education of a high school or college student in the United States.

108. Third, the Servite Order’s 1940 Constitution contained numerous, detailed provisions regarding the formation of members of the Order. *See, e.g.*, 1940 SERVITE CONST. arts. 217, 223-24, 240-42, 246-50, 265, 268, 270-71.

109. Finally, I have reviewed the documents relating to Ronan in the above-captioned action. Based upon my review of said documents, the 1940 Servite Constitution, and the 1917 CODE, decisions regarding Ronan’s education were made by members of the Servite Order (in particular, members of the Our Lady of Sorrows Province), and not by the Pope or the Holy See. *See* Lena MTD Decl., Exhs. 2, 14, 15, 19, 20, 23, 28, 29, 37, 75, 76, 77.

⁹⁴ The Master, of course, was a member of the religious institute itself. 1917 CODE cc.559-60.

⁹⁵ *See also* 1983 CODE c.650 § 1 (“The object of the novitiate demands that novices be formed under the supervision of the director of novices, in a manner of formation to be defined by the institute’s own law.”); c.650 § 2 (“The governance of the novices is reserved to the director of novices alone, under the authority of the major Superiors.”); 1983 CODE cc.652 § 1, 659 §§ 2-3, 661; Andrés Gutiérrez, II/2 EXEGETICAL COMMENTARY at 1723 (“It is established that the proper law [of the religious institute] will make a formation plan for the novices, inspired by the nuclear objective of the novitiate, in which will predominate the principle that the formative regimen depends only on the figure of the director of novices, under the authority of the major superiors.”); Hite, HANDBOOK ON CANONS 573-746, at 148 (“It is the responsibility of the director and the assistants to discern and test the vocation of the novices and to gradually form them to faithfully lead the life proper to the institute.”); *id.* at 162 (“It is up to the institute to define its program of formation in proper law.”); *id.* at 188; Gambari, RELIGIOUS LIFE at 230; Smith, *Governance of Institutes* at 816-17.

XIII. Plaintiff's Contentions Relating to the Regulation of the Conduct of Religious Order Priests

110. Plaintiff contends that the Holy See “controls” the conduct of priests. Pltf.’s Opp. at 12. As examples, Plaintiff states that the “Holy See dictates that a religious order priest must wear certain clothes.” *Id.* Plaintiff also claims that the Holy See prohibited Ronan from marrying, visiting suspicious women, posting bond, practicing medicine, being a notary, holding public office, gambling, hunting, volunteering for the army, or engaging in business for himself. Pltf.’s Opp. at 12-13 *citing* Finnegan Decl., Exh. 12, canons 132, 133, 137, 139, 138, 141, 142.⁹⁶

111. I begin with the same observation I made with regard to the two prior contentions: the Code of Canon Law reflects the general law of Catholic Church, gathered over many centuries, and is not the product of the Holy See’s desire to “control” life in the Catholic Church. *See supra* ¶¶ 27-31. For example, as noted above, the canonical provision preventing priests from getting married dates back to ancient times, and the other types of standards for priests identified by Plaintiff – such as the prohibition on gambling – similarly date back to the early fifth century. Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 9-11. Such provisions reflect what it means to be a priest under the law of the Church and Catholic tradition, and they are based on religious doctrine or pastoral concerns.⁹⁷

⁹⁶ Wall states that “[i]n essence, the Roman Pontiff determines and supervises the acceptable behavior of a religious order cleric such as Andrew Ronan O.S.M. 24 hours a day, seven days a week, and 365 days a year.” Wall Decl. ¶ 7. Such an absurd assertion only serves to underscore why Wall cannot be taken seriously as an expert on Roman Catholic canon law.

⁹⁷ *See, e.g.,* de Otaduy, Jorge, in II/1 EXEGETICAL COMMENTARY ON THE CODE OF CANNON LAW (A. Marzoa et al. eds., 2004), at 379 (“Unseemly behavior detracts from the clerical state; in other words, it is contrary to the dignity and social reputation that the sacred ministry deserves. . . . An adequate understanding of the ontology of the ministerial priesthood and its sacred purpose naturally leads to the perception of what could be unbecoming to the specific status of the clergy.”); *id.* at 394 (stating that military service is deemed “foreign to [clerics’] condition as dispensers of the mysteries of God and as true priests of the New Testament.”); *id.* at 383 (stating that the canon precluding business activity prohibits “those practices [that] would transform the cleric into a businessman ” and seeks to avoid “the negative effects which ordinarily arise from such behavior on a pastoral level.”).

112. With regard to the claim that the Holy See “dictates” that a religious order priest “must wear certain clothes,” canon 596 in fact accords discretion to *the religious institute* to determine the proper clothing for its members. 1917 CODE c.596. The Servite Order, in its 1940 Constitution, did just that. *See* 1940 SERVITE CONST. art. 113 (“[A]ll members of our order must wear the tunic, scapular and cowl. These should be black in color and made of wool.”).⁹⁸

113. Regarding Plaintiff’s reliance on canons 138-140, the canons again contain only broad standards. *See* 1917 CODE c.138 (“Clerics shall entirely abstain from all those things that are indecent to their state”); c.139 § 1 (“They should avoid those things that, while not indecent, are still alien to the clerical state”); c.140 (“Where there is danger of scandal, especially in public theaters, clerics should avoid shows, dances, and spectacles.”). The canons also provide for certain exceptions at the discretion of religious superiors. 1917 CODE cc.138, 139 §§ 3-4. And the religious institute’s proper law provided far more detailed regulation of the conduct of religious members and a great deal of discretion to the local superior in that regard. *See, e.g.*, 1940 SERVITE CONST. arts. 13, 22-23, 27, 79-80, 82, 84-85, 87-91, 96-98, 101-06, 516.

114. Finally, I have reviewed the documents relating to Ronan in the above-captioned action. Based upon my review of said documents, the 1940 Servite Constitution, and the 1917 CODE, Ronan was supervised by his Provincial and other members of his Province, and not by the Pope or the Holy See. *See, e.g.*, Lena MTD Decl., Exhs. 67, 68, 74, 87, 91.

⁹⁸ *See also* 1940 SERVITE CONST. art. 114 (“The collar of the tunic should cover the neck; the tunic should be sewed from the waist down and the sleeves should be closed. A black belt should be used as a cincture. The buckle should be plain and made of bone or iron. Only a rosary of the Seven Dolours may be worn on the belt; it should be placed on the right side. The mantile should cover the whole body; it must be plain, not pleated.”); art. 115 (“The tunic, scapular and mantle should be long enough to reach the instep, but not drag the ground. They should not be too full, but in proportion to the size of each individual.”); arts. 116-122.

XIV. Plaintiff's Contentions Relating to the Vows Professed by Religious Order Priests

115. Plaintiff's declarants focus on the vows pronounced by members of religious orders. Wall casts the vows made by Ronan at religious profession as a "contract" whose "terms . . . are controlled by the Holy See." Wall Decl. ¶ 24; *see also id.* (stating that one of the "contractual term[s]" was "Poverty"). Doyle claims that "[t]he member does not pronounce vows to the provincial but to the Church, pope and order *through* the one receiving the pronouncement of vows." Doyle Decl. ¶ 18 (emphasis in original). Wall and Doyle also emphasize Ronan's vow of obedience, which they claim rendered Ronan's relationship with the Holy See as "much more than the relationship of an employer to an employee." Doyle Decl. ¶ 26; *see also* Doyle Decl. ¶¶ 15, 18, 19; Wall Decl. ¶ 9.

116. Neither Plaintiff nor his declarants sets forth the vows undertaken by Ronan. However, the Servite Order's Constitution set forth the following vow for simple profession (which lasted three years):

I, Brother N., son of N., known in the world as N., having worn the habit of novices in the order of servants of the Blessed Virgin Mary for one complete year and having completed by N. year, freely, willingly and with certain knowledge, without being included by any force, fear, or error, make profession of simple vows, and I promise Almighty God, the Blessed Virgin and you most Reverent Father General (or "you very Reverent Father Provincial" . . .) of the Servants of the Blessed Virgin Mary and your successor . . . to preserve obedience and chastity and to live without anything of my own, in accordance with the rule of St. Augustine and our Constitution, and according to the prescripts of the sacred canons, for three years So help me God and these His Holy Gospels.

1940 SERVITE CONST. art. 257. The documents relating to Ronan also reveal that he made the following written record of simple profession (*cf.* 1940 SERVITE CONST. art. 258):

I, Andrew Ronan, freely and willingly renounce the world, and wish to devote myself to the Order of the Servants of Mary. In taking this step, I have not been forced or deceived; I am fully aware of the obligations of the religious state, the Rule of St. Augustine, and the Constitutions of the Order. Furthermore I have the firm purpose of devoting myself to the clerical state in religion.

Lena MTD Decl., Exh. 18. With regard to solemn profession – a vow made for life – Ronan provided the following sworn testimony prior to profession:

I, the undersigned *Andrew M. Ronan*, student of the Order of Servants of the Blessed Virgin Mary, in that I have presented to the superiors a petition to pronounce solemn vows, which in its time will be followed by promotion to the sacred order of the subdiaconate, having diligently considered the matter in the presence of God, and having taken an oath, testify that:

- 1) I labor under no coercion or force and am not driven by fear in pronouncing solemn vows and in receiving holy order, but that I greatly desire them spontaneously and want to embrace them and the obligations attached to them with full freedom of will.
- 2) I declare myself fully aware of all of the obligations attached to solemn profession and following from sacred order, which I spontaneously embrace, and with God helping, I propose to follow throughout the course of my life.
- 3) That chastity and celibacy prescribed by law, I declare myself to understand clearly, and will observe to the end of life. With God's help, I firmly assert [this].
- 4) Finally with sincere faith I declare myself to be continuously bound, according to the norm of the sacred canons, and most obediently compliant with all those things to be proposed to me, according to the discipline of the Church, ready to render others an example of virtue, whether in work or word, and indeed so that, by the taking up of such offices, I might be considered worthy to receive the deserts promised by God. Thus do I testify and swear, over the Holy Gospels of God, which I touch with my hand.

Lena MTD Decl., Exh. 132; *see also* 1940 SERVITE CONST. art. 272. The Servite Order Constitution then provided for the following profession of vows:

I, Brother N., son of N., known in the world as N., who made profession of simple vows N. years ago in the order of servants of the Blessed Virgin Mary having completed my N. year, not being induced by force, fear, or any error, but willing, freely and with certain knowledge, make profession of solemn vows, and I promise Almighty God and Blessed Mary and you most Reverent Father General" (or "you very Reverend Father Provincial" . . .) of the order of Servants of the Blessed Virgin Mary and your successors . . . to observe obedience and chastity and to live without anything of my own according to the rule of St. Augustine and the Constitutions of the Servants of Mary, and in accordance with the prescripts of the sacred canons, during my whole life. So help me God and these His holy Gospels.

1940 SERVITE CONST. art. 274.

117. I have several observations regarding Plaintiff and his declarants' characterization of the profession of vows by members of religious orders.

118. First, Wall is wrong in stating that the "terms" of religious profession are "controlled by the Holy See." The three evangelical counsels that are at the heart of religious life – chastity, poverty and obedience – are based upon the teaching and life of Jesus Christ. *See, e.g.,* McDermott, *Institutes of Consecrated Life* at 743 ("Through profession of the evangelical counsels, both clerics and laity seeks a closer imitation of the chaste, poor, and obedient Christ and strive for the perfection of charity in a permanent form of life.").⁹⁹ The evangelical counsels have a history that traces back to the origins of Christianity itself. *See* McDermott, *Institutes of Consecrated Life* at 745 ("Throughout the centuries countless men and women as hermits, monastics, mendicants, apostolic religious, and secular persons have dedicated themselves through a total self-offering to live these evangelical counsels in imitation of Christ. Through this total self-offering, the person manifests the Trinitarian and Christological characteristics which should mark every Christian life.").

119. Second, Doyle's claim that the vows are made to the Church, the pope and the order "through" the provincial is also incorrect. A vow is made to God, not to the Church

⁹⁹ *See also id.* at 745 ("Christ lived and taught the evangelical counsels of chastity, poverty and obedience."); 1983 Code c. 573 § 1 ("Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely under the action of the Holy Spirit, and are totally dedicated to God, who is supremely loved. By a new and special title they are dedicated to seek the perfection of charity in the service of God's Kingdom, for the honour of God, the building up of the Church and the salvation of the world. They are a splendid sign in the Church, as they foretell the heavenly glory."); VC 1 ("By the profession of the evangelical counsels the characteristic features of Jesus – the chaste, poor and obedient one – are made constantly 'visible' in the midst of the world and the eyes of the faithful are directed towards the mystery of the Kingdom of God already at work in history, even as it awaits its full realization in heaven."); VC 31 ("Consecrated persons, who embrace the evangelical counsels, receive a new and special consecration which, without being sacramental, commits them to making their own - in chastity, poverty and obedience - the way of life practised personally by Jesus and proposed by him to his disciples.").

hierarchy or to a religious order. *See* 1983 CODE c.1191 §1 (“A vow is a deliberate and free promise made to God, concerning some good which is possible and better.”).¹⁰⁰

120. Third, Wall’s characterization of the profession of vows as something akin to the making of a civil “contract” ignores the deeply religious nature of the act of profession. As explained by one commentator:

Profession is the act in which a Christian pledges himself by public vows of chastity, poverty and obedience, to follow Christ, virginal, poor and obedient; the Church makes exactly the same offering and in her name presents it to God, who accepts it. The act of profession inaugurates religious life and contains within itself the vital energy required to bring about the growth, the flowing and the maturation of the entire religious life of the professed, contained in seed form in the act of profession itself. The whole mystery of religious life develops from this act, understood as a consecration to God in a religious institute, to which the one who makes profession gives himself in accordance with the rules and constitutions of the institute.

Gambari, RELIGIOUS LIFE at 245. The act is a “covenant with God,” and “may be compared with birth or adoption, which is the basis for membership in a family.” Gambari, RELIGIOUS LIFE at 246.¹⁰¹ Profession “remains distinct from contracts with an economic content; it is basically spiritual and moral in nature. It is understood and accepted with the ends proper to religious life.”

Gambari, RELIGIOUS LIFE at 261 n.14.

¹⁰⁰ *See also* 1917 CODE c.1307; Gambari, RELIGIOUS LIFE at 108 (“For the religious state in the strict sense, the pledge of the vow is given directly to God as an expression of the virtue of religion; it therefore has the nature of a religious act similar to sacrifice, which is the highest act of religion. . . .”); *id.* at 246 (“There are three active participants in profession: God, who has called and accepted the vows; the one who has pronounced the vows; and the Church, which, through the person representing the institute, receives the vows and presents them to God in the institutes’ own name, uniting them to the Eucharistic Sacrifice and consecrating the professed.”) (citations omitted).

¹⁰¹ *See also* PC 5 (“Members of each institute should recall first of all that by professing the evangelical counsels they responded to a divine call so that by being not only dead to sin (cf. Rom. 6:11) but also renouncing the world they may live for God alone. They have dedicated their entire lives to His service. This constitutes a special consecration, which is deeply rooted in that of baptism and expresses it more fully.”); Gambari, RELIGIOUS LIFE at 246 (“Profession results from these three converging actions: the *covenant* proposed by God and accepted by the religious is ratified by the Church, in which the will of God and that of man meet and merge.”).

121. Plaintiff relies heavily on the vow of obedience made during religious profession to argue that Ronan was a Holy See employee. Pltf.'s Opp. at 1, 8, 9, 19, 23, 26 n.7, 27, 29. I make the following remarks in response.

122. As stated above, an individual who undertakes solemn profession makes three vows: a vow of chastity, poverty and obedience. Each of the vows is deeply religious and spiritual. The vow of chastity, “embraced for the sake of the Kingdom of heaven, is a sign of the world to come, and a source of greater fruitfulness in an undivided heart. It involves the obligation of perfect continence observed in celibacy.” 1983 CODE c.599. It is firmly rooted in the Bible. *See* Gambari, RELIGIOUS LIFE at 265 (“[C]hastity is the counsel most explicitly proposed by Jesus (cf. Mt. 19:12), most instilled by St. Paul (cf. 1 Cor. 7:32-35), first identified and embraced as a form of consecrated life (cf. Acts 21:9).”).¹⁰² Chastity is “the heart of religious life” and “cannot be separated from the holiness of the Church.” *Id.* at 269.

123. The vow of poverty is also profoundly religious. The “evangelical counsel of poverty in imitation of Christ who for our sake was made poor when he was rich, entails a life which is poor in reality and in spirit, sober and industrious, and a stranger to earthly riches.” 1983 CODE c.600.¹⁰³ “Poverty is above all spiritual.” Gambari, RELIGIOUS LIFE at 286.¹⁰⁴ Like

¹⁰² *See also id.* at 267 (“The vow of chastity is a promise to observe celibacy and total continence, that is to abstain from all acts forbidden by the sixth and ninth commandments as an expression of the love of God and neighbor.”); *id.* (“Perfect chastity is the eschatological sign of the kingdom of God: ‘It brings that surpassing excellence to which all human love should tend’ (ET 13).”); *PC* 12 (“The chastity ‘for the sake of the kingdom of heaven’ (Matt. 19:12) which religious profess should be counted an outstanding gift of grace. It frees the heart of man in a unique fashion (cf. 1 Cor. 7:32-35) so that it may be more inflamed with love for God and for all men. Thus it not only symbolizes in a singular way the heavenly goods but also the most suitable means by which religious dedicate themselves with undivided heart to the service of God and the works of the apostolate. In this way they recall to the minds of all the faithful that wondrous marriage decreed by God and which is to be fully revealed in the future age in which the Church takes Christ as its only spouse.”); McDermott, *Institutes of Consecrated Life* at 765 (“Through the profession of evangelical chastity, a person in imitation of Christ sacrifices marriage and those acts pertaining to the marriage state for the sake of the kingdom.”).

¹⁰³ *See also PC* 13 (“Religious should diligently practice and if need be express also in new forms that voluntary poverty which is recognized and highly esteemed especially today as an expression of the

the vow of chastity, the vow of poverty is grounded in the Bible. *See PC 13* (“By it they share in the poverty of Christ who for our sakes became poor, even though He was rich, so that by His poverty we might become rich (cf. 2 Cor. 8:9; Matt. 8:20).”); Gambari, *RELIGIOUS LIFE* at 284 (“Poverty has occupied a very special place in the covenant with God where the poor were considered God’s favorites. The Messenger of the Most High was sent to the poor, and chose poverty for himself in his birth, life and death.”). “The practice of this evangelical counsel has always held a special place in religious life, not only because it belongs to the essence of religious consecration, but also because it has been, in certain cases, the starting point of a religious vocation, and it has always been a wall of defense and the sign of a true religious life.” Gambari, *RELIGIOUS LIFE* at 284.

124. Like the vows of chastity and poverty, the vow of obedience is an inherently spiritual and religious vow. *Cf. Schneiders, Towards a Theology of Religious Obedience* at 84 n.4 (“The original and primary object of religious obedience . . . is spiritual rather than functional.”); Gambari, *RELIGIOUS LIFE* at 325 (describing obedience as “an act of worship”).¹⁰⁵ It, too, seeks to imitate Christ, in particular Christ’s obedience to the Father. *See, e.g., McDermott, Institutes of Consecrated Life* at 766 (“Christ’s obedience to the Father’s will even to

following of Christ.”); McDermott, *Institutes of Consecrated Life* at 765 (“Those who assume the evangelical counsel of poverty imitate Christ and commit to a life that is poor in fact as well as in spirit.”).

¹⁰⁴ *See also id.* at 294 (“Renunciation and spiritual and actual detachment from possessions is considered as a liberation; the state of powerlessness of a poor person is considered as wealth since it brings communion with Christ and gives us Christ himself.”); *id.* at 301 (“In a special way poverty is linked with the theological virtue of hope, since poverty places all its trust in God and counts on him for everything. It is connected also with faith and charity: voluntary poverty rests on the word of God, lives by him and for him, and has in him its treasure. By giving up possessions, one makes an act of faith and love to which the hundredfold is attached (Mk. 10:29).”).

¹⁰⁵ *See also id.* at 323 (“Obedience establishes an interpersonal relationship between man and God; by it man acknowledges God, accepts his sovereignty and offers him unconditional service. This becomes friendship with God, an expression of the theological virtues. Obedience is a witness to and a profession of faith in God; it must be given to the superiors in a spirit of faith and of love for the will of God.”); *id.* at 318 (“Obedience unites and binds the religious to the will of God in whatever way it may be manifested. It always implies a loving acceptance of the divine will, and therefore it is always obedience to God. Hence the dignity and strength of religious obedience is an expression of docility to the Holy Spirit.”).

his death on the cross is a central mystery of the Christian life and the motivating force for the sacred bond of obedience.”).¹⁰⁶ It is not servile, but filial. *See VC 21* (“Obedience, practised in imitation of Christ, whose food was to do the Father’s will (cf. *Jn* 4:34), shows the liberating beauty of a dependence which is not servile but filial, marked by a deep sense of responsibility and animated by mutual trust, which is a reflection in history of the loving harmony between the three Divine Persons.”).¹⁰⁷ Obedience, as the term is meant by the vow, is a deeply religious act tied directly to the relationship between God the Son and God the Father:

In an especially vigorous way this obedience reposes the obedience of Christ to the Father and, taking this mystery as its point of departure, testifies that there is no contradiction between obedience and freedom. Indeed, the Son’s attitude discloses the mystery of human freedom as the path of obedience to the Father’s will, and the mystery of obedience as the path to the gradual conquest of true freedom. It is precisely this mystery which consecrated persons wish to acknowledge by this particular vow. By obedience they intend to show their awareness of being children of the Father, as a result of which they wish to take

¹⁰⁶ *See also* 1983 CODE c.601 (“The evangelical counsel of obedience, undertaken in the spirit of faith and love in the following of Christ, who was obedient even unto death, obliges submission of one’s will to lawful Superiors, who act in the place of God when they give commands that are in accordance with each institute’s own constitutions.”); McDermott, *Institutes of Consecrated Life* at 766 (“authority and obedience practiced in institutes of consecrated life reflect the Father’s love of Christ and Christ’s obedience to the Father.”); Rincón-Pérez, II/2 EXEGETICAL COMMENTARY at 1562 (“The foundation for this obedience, its true reason for being, lies in the radical following of Christ, who took the form of a servant, learned obedience through suffering, and made the Cross the most sublime expression of His submission to the Father. Thus the following of Christ, who was obedient even unto death, is the root of the saving and apostolic fecundity of the obedience assumed by religious.”); *Directives on Formation in Religious Institutes* at 15 (“Religious obedience is at once an imitation of Christ and a participation in his mission. It is concerned with doing what Jesus did, and, at the same time, with what he would do in the concrete situation in which a religious finds himself or herself today.”); Gambari, RELIGIOUS LIFE at 313 (“Religious obedience is ultimately rooted in the divine Sonship of Christ and hence on the eternal procession of the Son from the Father and on his perfect love for the Father.”).

¹⁰⁷ *See also VC 92* (stating that for religious, “authority and obedience shine like a sign of that unique fatherhood which comes from God, of the brotherhood born of the Spirit, of the interior freedom of those who put their trust in God, despite the human limitations of those who represent him.”); Gambari, RELIGIOUS LIFE at 314 (“The whole of the life of Christ is shown in Scripture as a filial obedience to the Father, from the first moment he entered into the world to the last cry by which he commended his spirit into the hands of his heavenly Father, proclaiming the fulfillment of his plan: ‘Now it is finished.’ Obedience was his whole life-program so that he could say, ‘Doing the will of him who sent me is my food.’ Hence, this counsel springs from a life modeled on that of Jesus.”); *id.* (“Religious obedience stands out . . . as an oblation to God in a priestly, filial and sacrificial spirit, in imitation of Jesus who, in submission to his Father, accepted even death as a ransom for many. Thus, obedience is attentive to all the signs by which God manifests his will.”).

the Father's will as their daily bread (cf. *Jn* 4:34), as their rock, their joy, their shield and their fortress (cf. *Ps* 18:2). Thus they show that they are growing in the full truth about themselves, remaining in touch with the source of their existence and therefore offering this most consoling message: "The lovers of your law have great peace; they never stumble" (*Ps* 118:165).

VC 91. The vow of obedience is also closely connected with the unity of the community that forms the heart of religious life.¹⁰⁸

125. Given its reference to the vow of obedience, canon 590 – the canon relied upon by Plaintiff and his declarants – “transcends the simply juridical norm and has theological and spiritual implications.” Gambari, *RELIGIOUS LIFE* at 466. “The mystery of obedience . . . must be scrutinized and understood in a theocentric and christocentric perspective.” *Id.* at 327 n.5; *see also* VC 21 (“By practising the evangelical counsels, the consecrated person lives with particular intensity the Trinitarian and Christological dimension which marks the whole of Christian life.”). The parameters of the vow taken by a religious involve a “theological question [that] is complex,” and the “relationship of an institute’s structures of authority to the practices of

¹⁰⁸ *See* VC 92 (“Obedience, enlivened by charity, unites the members of an Institute in the same witness and the same mission, while respecting the diversity of gifts and individual personalities. In community life which is inspired by the Holy Spirit, each individual engages in a fruitful dialogue with the others in order to discover the Father's will. At the same time, together they recognize in the one who presides an expression of the fatherhood of God and the exercise of authority received from God, at the service of discernment and communion. Life in community is thus the particular sign, before the Church and society, of the bond which comes from the same call and the common desire - notwithstanding differences of race and origin, language and culture - to be obedient to that call. Contrary to the spirit of discord and division, authority and obedience shine like a sign of that unique fatherhood which comes from God, of the brotherhood born of the Spirit, of the interior freedom of those who put their trust in God, despite the human limitations of those who represent him. Through this obedience, which some people make their rule of life, the happiness promised by Jesus to "those who hear the word of God and keep it" (*Lk* 11:28) is experienced and proclaimed for the good of all. Moreover, those who obey have the guarantee of truly taking part in the mission, of following the Lord and not pursuing their own desires or wishes. In this way we can know that we are guided by the Spirit of the Lord, and sustained, even in the midst of great hardships, by his steadfast hand (cf. *Acts* 20:22-23).”); Gambari, *RELIGIOUS LIFE* at 324 (“It is, moreover, the beginning and source of unity among the brethren called by God to live and work together. Its unifying force stems more from theological than from juridical content. Through the superior, from whom all depend, the members of the institute meet one another in the saving will of God to which they are bound by the common vow of obedience. Thus, authority, like obedience, becomes a communitarian service.”).

obedience in institutes is not fully resolved in the Church.” Hite, HANDBOOK ON CANONS 573-746, at 47, 61. It is simply not reducible to the civil law terms urged by Plaintiff or his declarants.

XV. Plaintiff’s Contentions Relating to the Transfer and Assignment of Religious Order Priests

126. Plaintiff and his declarants make several assertions regarding the transfer and assignment of religious order priests. I will address each in turn.

127. Doyle claims that “[t]he Holy See does not ordinarily directly transfer . . . members of religious orders or diocesan priests. The usual practice is for the Holy See to order the proper superiors of the persons to order a transfer” Doyle Decl. ¶ 30. Doyle provides no citation for his claim that the Holy See “order[s]” religious superiors to transfer members of religious orders, and I am not aware of any canonical support for his assertion. Nothing in the 1917 or 1983 CODE provides for the Holy See’s involvement in the intra-province or intra-order transfer of a religious order priest. *Cf.* 1917 CODE c.632; 1983 CODE c.684. The Servite Order’s Constitution in fact expressly provided for the local superiors – and not the Holy See – to transfer members of religious orders. 1940 SERVITE CONST. arts. 283, 482. Moreover, I have reviewed the documents relating to Ronan, and none of the documents indicates that the Holy See was involved in the transfers of Ronan. Instead, the documents show that the transfers were undertaken by Ronan’s provincial. *See, e.g.*, Lena MTD Decl., Exhs. 31, 32, 71, 72, 99, 131.

128. With regard to assignments, Wall claims that “if a religious order priest does not want to be a Pastor of a parish, the Holy See can compel religious to parish work.” Wall Decl. ¶ 7, *citing* 1917 CODE c.297. Wall neglects to mention that canon 297 involved the unusual situation where a diocese had not been erected and where the territory was governed by Vicars

and Prefects Apostolic.¹⁰⁹ Canon 297 was not applicable in any of the geographical areas in which Ronan worked or lived.

129. Plaintiff asserts in his brief that “[t]he Holy See dictates the manner and rules for a religious order over priests [sic] hiring arrangements.” Pltf.’s Opp. at 12, *citing* Finnegan Decl., Exh. 12, Canons 597-99, 604. However, canons 597 through 599 and 604 address the cloisters in which religious men and women were to reside, and had nothing to do with “priests’ hiring arrangements.”

130. Wall states that “if the Holy Father determines there is need, he can order any priest under obedience to any assignment in the world.” Wall Decl. ¶ 13, *citing* 1917 CODE c.499. As stated above, such sweeping assertions ignore the animating principles underlying papal power and authority, and fail to recognize the primarily spiritual and theological relationship between the Pope and members of religious orders. *See supra* at ¶¶ 53-76.

131. Finally, Plaintiff relies upon the fact that a dispensation from the canon law was needed after Ronan’s Province elected him as master of novices in Benburb, Ireland, in 1953. Pltf.’s Opp. at 10, *citing* Finnegan Decl., Exh. 37. Based upon my review of the Ronan documents, in July 1953, the Provincial Diet elected Ronan, then 27 years old, to the position of Master of Novices and Postulants at Benburb. Lena MTD Decl., Exhs. 2, 43. Under the 1917 CODE, a master of novices of a religious order had to be 35 years old. *Cf.* 1917 CODE c.559 § 1. As a result, a dispensation from the Code’s general age requirement was necessary. *Cf.* 1917 CODE c.80.

¹⁰⁹ *See* 1917 CODE c.297 (“If there is a deficit of secular [priests], Vicars and Prefects Apostolic can compel religious, even exempt ones, attached to the vicariate or prefecture, having heard their Superior, to exercise care of souls, with due regard for particular statutes approved by the Apostolic See.”); *cf.* 1917 CODE c.293 § 1 (“Territories that are not erected into dioceses are ruled by Vicars or Prefects Apostolic; all of these are appointed only by the Apostolic See.”).

132. Based upon documents provided by the Holy See in this litigation, the Servite Order's Prior General communicated the Provincial's request for a dispensation to the Holy See on July 31, 1953. HS00014. On August 10, 1953, and based upon the Servite Order's request, the Holy See approved the dispensation utilizing a standard pre-printed form. HS00008.

133. Far from showing that the Holy See assigned religious order priests to specific positions, the Ronan documents demonstrate that the Province – and not the Holy See – assigned Ronan to the position of master of novices and postulants. Lena MTD Decl., Exhs. 2, 43. The Holy See's formal dispensation was necessary only because the Province's assignment was contrary to the canonical requirements for becoming a master of novices.

XVI. Plaintiff's Contentions Relating to Sexual Abuse and the Punishment of Religious Order Priests

134. Plaintiff and his declarants contend that the Holy See "controlled" the punishment of religious order priests accused of sexual abuse, including Ronan. Pltf.'s Opp. at 14-17. Plaintiff's generalized contention mischaracterizes the canonical system in place at the time Ronan was a priest.

135. As a matter of canon law, the discipline and punishment of a religious order priest was undertaken first and foremost within the religious order itself – either by the local prior, by the provincial, or by the prior general. *See O'Brien, Provincial Religious Superior* at 65 ("The principal duty of a Superior is to watch over the regular discipline, and to exert every effort that his subjects may attain the primary and secondary ends to the achievement of which their community must tend."); Smith, *Governance of Institutes* at 780, 781 ("Superiors may . . . exercise [their moral and legal] authority by restricting, penalizing, or dismissing members for

appropriate cause.”); *see also, e.g.*, 1917 CODE cc.518 § 1, 561 § 1, 630 § 2.¹¹⁰ Such discipline by religious superiors could be imposed either informally or through a formal canonical proceeding. *Cf.* 1917 CODE cc.665, 659, 661, 663-65, 668; *see also* 1983 CODE cc.695, 697, 699, 703 § 1.

136. Consistent with the Code of Canon Law, the 1940 Servite Constitution likewise placed the responsibility for the discipline of members of the Servite Order squarely on religious superiors, who were themselves members of the Order. *See, e.g.*, 1940 SERVITE CONST. art. 771 (“Let all prelates first of all remember as they function in their pastoral office that they have the duty of taking care for the discipline and correction of their subjects, watching over their conduct and using appropriate preventative remedies.”) (my translation), art. 772 (“Let prelates apply these remedies according to their conscience and discretion in accord with the decrees of the sacred canons and the Constitution of the Order, attentive to the gravity of delicts and circumstances.”) (my translation). The term “prelate” included the local prior,¹¹¹ the provincial,¹¹² and the prior general and his council.¹¹³

137. To provide a concrete example of the disciplinary measures available to religious superiors, assume that a superior deemed that a particular religious priest had abused a child and posed a danger to minors. The religious superior could have used his authority to order that the

¹¹⁰ The provincial has particular responsibility over the disciplining of members of a religious order. O’Brien, *Provincial Religious Superior* at 123 (“The very nature of the office of Provincial requires the enforcement of law obligatory on his subjects, particularly that of the Rule and the constitutions.”); *see also id.* at 61 (stating that the Provincial “must enforce regular discipline by means of canonical visitation, salutary correction, word, example, and prayer”).

¹¹¹ *See id.* art. 509 (stating that “[t]hose who are delinquent must be corrected by [the prior] in accordance with the decrees of the constitutions.”); *see also id.* arts. 514, 518-19, 724, 727, 774.

¹¹² *See id.* art. 471 (stating that the provincial is to “induce all to observe the constitutions by his words, example and corrections”); art. 476 (stating that the provincial “must always correct serious faults” and, in the case of very serious faults, “he shall determine all the facts and then refer the matter to the general who in turn shall pronounce a definite sentence”); *see also id.* arts. 477, 727, 777, 780-83, 784, 789, 820, 822.

¹¹³ *See id.* arts. 457(19), 814, 824, 826, 828.

priest (a) be confined to the monastery (*cf.* 1940 SERVITE CONST. arts. 79-80, 138, 141, 521, 763, 777); (b) be removed from his current assignment (*cf. id.* art. 482); (c) not interact with parishioners, including minors (*cf. id.* arts. 85, 141); (d) not offer public mass or celebrate the Liturgy of the Hours (*cf. id.* art. 776); and (d) not hear confessions (*cf. id.* arts. 64, 359-360, 758). The religious superior could also, *inter alia*, have ordered that the relevant community be warned that the priest posed a danger to children. A full range of restrictions was available to the religious superior, none of which would have required Holy See approval. *See, e.g., id.* arts. 822, 830; Smith, *Governance of Institutes* at 781.

138. Plaintiff relies on the 1922 and 1962 instructions (“*Crimen*”)¹¹⁴ to suggest Holy See “control” over the discipline of religious order priests accused of sexual abuse. Plaintiff’s contention is mistaken. Like the Code of Canon Law generally, *Crimen* affirmed the broad discretion religious superiors and local bishops held with regard to the discipline of religious order priests.

139. Canon law regarded (and regards) sexual misconduct by clergy with children as a criminal offense, and provided for the investigation, prosecution and punishment of such misconduct. 1917 CODE c.2359 § 2;¹¹⁵ *see also id.*, cc.2207, 2223 § 1. Book IV of the 1917 CODE, canons 1552-2194, set forth the procedures to be followed by ecclesiastical officials in the adjudication of canonical cases in general, and canons 1933-1959 treated specific issues within the canonical penal process.

¹¹⁴ All references to *Crimen* are to the English translation of the 1962 instruction attached hereto as Exhibit C.

¹¹⁵ Canon 2359 § 2 of the 1917 CODE states: “If they engage in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or engage in adultery, debauchery, bestiality, sodomy, pandering, incest with blood-relatives or affines in the first degree, they are suspended, declared infamous, and are deprived of any office, benefice, dignity, responsibility, if they have such, whatsoever, and in more serious cases, they are to be deposed.” *See also* 1983 CODE c.1395.

140. Shortly after promulgation of the 1917 CODE, Pope Benedict XV issued the *motu proprio Cum iuris canonici* (Sept. 15, 1917), alerting local ecclesiastical administrators to the possibility of “instructions” being issued by various Roman dicasteries whereby certain provisions of the 1917 CODE might “be more fully explained and appropriately enforced.” Instructions did not replace or supplant the Code, but rather complemented it by providing more detailed indications of how to proceed, or further elucidation regarding a particular aspect of the Code of Canon Law. *See generally* 1983 CODE c.34.

141. In 1922, and again in 1962, the Holy See issued two instructions that, to some degree, explicated the canonical process by which some cases of clergy misconduct were to be handled. These instructions, and especially that issued in 1962 under the title *De Modo Procedendi in Causis Sollicitationis* (popularly referred to as “*Crimen*” or “*Crimen Sollicitationis*”), are misunderstood in Plaintiff’s submissions.

142. First, although Plaintiff emphasizes *Crimen*’s confidentiality provisions (*see, e.g.*, Pltf.’s Opp. at 14, 16), *Crimen* did not introduce secrecy into the canonical penal process. Consistent with the inquiry-based nature of the Romanist legal systems,¹¹⁶ obligations of confidentiality were already part of the 1917 CODE. *See* 1917 CODE cc.364 § 2 n.3, 1623 § 1. *Crimen* did not broaden to a new group of persons these obligations beyond that which was

¹¹⁶ Among the many long-standing differences between the Romanist (civilian) and common law legal systems are their respective methods of investigating offenses and adjudicating disputes: civilian jurisdictions traditionally utilize an *inquisitio* or “inquiry-based” approach to the investigation and adjudication of cases, while the common law uses an “adversarial” approach. The “inquiry-based” approach in the civilian tradition is fundamentally different from the common law tradition in that it is the role of the investigative judges (or their delegates), rather than the representatives of the parties, to gather oral and written evidence. The fact-finding process takes place in a series of hearings conducted over time *in camera* rather than in a single concentrated “trial.” Because the civilian tradition provides for evidence to be accumulated over time, civilian jurisdictions typically impose confidentiality upon witnesses as to their testimony in order to prevent the contamination of other witnesses. This is in contrast to the common law system, which – at least insofar as to trials themselves (as opposed to, for example, grand jury proceedings) – values an adversarial cross-examination before juries and the public. In other words, while both systems have a long and successful tradition, they operate differently from one another and, in particular, have different ways of ensuring the integrity of evidence and just outcomes.

already established under the Code. Moreover, no new subject matter or topic requiring secrecy was covered by *Crimen* that was not already covered by the 1917 CODE. This was, of course, consistent with *Crimen* being a document designed to assist in the application of the law with respect to procedure, rather than changing the law promulgated by the 1917 CODE itself.

143. Second, when seeking to understand *Crimen*, it is critical to comprehend its context. Seventy of the seventy-five paragraphs in *Crimen* – almost the entire text – were devoted to procedural issues related to cases of solicitation in confession. *Crimen* described the crime of solicitation as follows:

The crime of solicitation occurs whenever a priest – whether in the act itself of sacramental confession, or before or immediately after confession, on the occasion or under the pretext of confession, or even apart from confession but in a confessional or another place assigned or chosen for the hearing of confessions and with the semblance of hearing confessions there – has attempted to solicit or provoke a penitent, whosoever he or she may be, to immoral or indecent acts, whether by words, signs, nods, touch or a written message, to be read either at that time or afterwards, or he has impudently dared to have improper and indecent conversations or interactions with that person

Crimen no. 1. As is clear from the definition, the crime of solicitation did not require any completed sexual acts, and covered situations involving penitents of any age (not just minors). Moreover, solicitation was a canonical – but not necessarily a civil – crime, and one distinct from whatever delicts might have taken place after the solicitation. Beal, *1962 Instruction Crimen sollicitationis* at 204. Under canon law, “[t]he very nature of the act of soliciting a person to commit a sexual sin in the context of sacramental confession marks it as an extremely grave violation of trust and a horrible abuse in the celebration of the sacrament.” *Id.* at 205. Canonically, the crime of solicitation was also particularly difficult both to prosecute and defend against because it involved examination of events and/or persons covered by the sacramental seal

of the confessional. *Crimen*'s confidentiality provisions must therefore be understood in light of the unique canonical problem posed by the crime of solicitation in the confessional.¹¹⁷

144. Third, and most importantly for our purposes, it is incorrect to state that *Crimen* reveals the Holy See's "control" over the discipline of religious order priests. In fact, consistent with the Code of Canon Law, *Crimen* provided *religious superiors* and/or *local bishops* with authority over the discipline of religious order priests. This is clear from the two paragraphs in *Crimen* regarding religious order priests. The first addressed the crime of solicitation in the confessional, and expressly provided that the local bishop was to be the judge in such matters and that the religious superior had a range of available disciplinary options:

The local Ordinary is judge in these causes for Religious as well, including exempt Religious. . . . Nonetheless, without prejudice to the right of the Ordinary, this does not prevent Superiors themselves, should they discover that one of their subjects has committed a crime in the administration of the Sacrament of Penance, *from being able and obliged to exercise vigilance over him; to admonish and correct him, also by means of salutary penances; and, if need be, to remove him from any ministry whatsoever.* They will also be able to transfer him to another place, unless the local Ordinary has forbidden it inasmuch as a complaint has already been received and an investigation begun.

Crimen no. 4 (emphasis added). The second paragraph relating to religious order priests addressed the "worst crime" – that is, homosexual acts and sexual abuse of prepubescent minors – and provided that "[a]gainst clerics guilty of these crimes, if they are exempt religious – and unless the crime of solicitation takes place at the same time – *Religious Superiors . . . can*

¹¹⁷ By contrast, the canonical offense known as *de crimine pessimo*, which includes homosexual acts and clergy sexual misconduct with children, was discussed only briefly in *Crimen*, specifically in Title V, *De Crimine Pessimo*, comprising just four paragraphs at the end of the seventy-four paragraph document. *Crimen* states that "[e]verything laid down up to this point concerning the crime of solicitation is also valid, with the change of those things which the nature of the matter necessarily requires [*mutatis mutandis*], for the *crimen pessimum*" *Crimen* no. 72; see also Beal, 1962 *Instruction Crimen sollicitationis* at 223 ("The phrase [*mutatis mutandis*] obviously authorized the local ordinary to adapt the language of the several formularies provided in the instruction to the context of the investigation and prosecution of cases involving the *crimen pessimum*, and to make other more or less superficial modifications to the procedure.").

proceed, according to the sacred Canons and their proper Constitutions, either administratively or judicially.” Crimen no. 74 (emphasis added). Thus, far from placing control with the Holy See, Crimen emphasized the duty of the religious superiors to handle such matters according to the Code of Canon Law and the religious institute’s own proper law.

145. It is not only in the paragraphs directly relating to religious order priests that local authority over discipline is emphasized in *Crimen*. In fact, *Crimen*’s procedural norms provide for local adjudication of cases involving priests, whether by the local bishop or, in non-solicitation cases, the priest’s own religious superiors. Under *Crimen*, the local tribunal enjoyed wide-ranging discretion and authority throughout the canonical process. *See, e.g., Crimen nos. 2, 5, 27-29, 31, 33, 42, 44, 47, 55, 62.*¹¹⁸

146. Finally, it is worth noting that an examination of the documents relating to Ronan confirms that the discipline meted out against him was not under the “control” of the Holy See. Rather, the documents show that the Provincial and the local bishop took various disciplinary actions in response to Ronan’s sexual misconduct, and that the Holy See was only informed that a formal investigation had been instituted against an unnamed religious order priest after Plaintiff’s abuse. *See, e.g., Lena MTD Decl., Exhs. 67-68, 74, 91, 99, 113, 133-35, 139-40.*

147. In short, contrary to showing Holy See “control” over the discipline of religious order priests, the Code of Canon Law, the Servite Constitution, *Crimen* and the Province

¹¹⁸ In addition, as a matter of canon law, a bishop or religious superior did not have to follow the formal process set forth in *Crimen*; he could, instead, treat the matter pastorally. *See, e.g., 1917 CODE c.2214 § 2* (“Let Bishops and other Ordinaries bear in mind that they are pastors and not prosecutors and that they ought so to preside over those subject to them so as not to lord it over them, but to love them as children and brethren and to strive by exhortation and admonition to deter them from what is unlawful, that they may not be obliged, should [their subjects] transgress, to coerce them by due punishments.”); *see generally* Augustine, COMMENTARY ON THE NEW CODE OF CANON LAW at 65; Abbo & Hannan, 2 SACRED CANONS at 797; *see also* 1983 CODE c.1341, and footnotes thereto; Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 192.

Documents all reveal that discipline was the responsibility of, and exercised by, religious superiors and the local bishop.

XVII. Plaintiff's Contentions Relating to the Dismissal from the Clerical State

148. Plaintiff contends that “[t]he Holy See has the right to fire priests and is the only entity that is able to exercise that right. The case of Ronan shows the Holy See’s exercise of the right to fire a priest. The word used by the Holy See to indicate firing is laicization.” Pltf’s Opp. at 21; *see also id.* at 10. Similarly, Wall states that “[i]t was the Holy See and only the Holy See that had the right to fire Ronan as a priest. The Servite Order did not have the power to fire Ronan and remove Ronan from the priesthood. The Holy See was the only one that could fire Ronan from the priesthood.” Wall Decl. ¶ 23; *see also* Wall Decl. ¶ 14.

149. As an initial matter, Plaintiff and his declarant’s contention is based upon a faulty understanding. No entity or individual, including the Holy See and the Pope, can “remove a priest from the priesthood.” As a matter of the theology and religious doctrine of the Catholic Church, the sacrament of Holy Orders, once received, leaves an indelible mark that remains on a man’s soul for eternity. *See* 1917 CODE c.211 § 1 (“sacred ordination, once validly received, can never be invalidated”); *see also* 1983 CODE c.290.¹¹⁹ Permanent dismissal from the clerical state does not mean that one is no longer a priest.¹²⁰

¹¹⁹ This is a long-standing doctrine of the Catholic Church. Council of Florence, November 22, 1439, in Denziger, SOURCES OF CATHOLIC DOGMA at 695; and Council of Trent, March 3, 1547, in Denziger, SOURCES OF CATHOLIC DOGMA at 852; *see also* Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 206-07 (“A theological or intrinsic reduction of clerics to the lay state such as would involve the loss of the sacramental character . . . does not exist in the Church and never did [A] cleric who has received a hierarchical order cannot be truly and internally expelled from the clerical state and be reduced to the lay state.”); Sweeney, *Reduction of Clerics to Lay State* at 41 (“It is an article of divine faith that the Sacrament of Holy Orders imprints upon the soul a character, that is, a certain spiritual and indelible mark. It is also an article of divine faith that this character is imprinted in the reception of the priesthood, and consequently a priest could never again become a layman.”).

¹²⁰ For example, a priest who has been dismissed from the clerical state is permitted to hear the confession of, and grant absolution to, a person in danger of death. 1917 CODE c.882; 1983 CODE c.976.

150. There is another erroneous assumption underlying Plaintiff's contention. Plaintiff and Wall equate "laicization" – more accurately referred to as "dismissal from the clerical state"¹²¹ – as the equivalent of a "firing" in the context of civil employment. That is wholly incorrect. A religious order priest could be removed from any position or assignment – "fired," in effect – by a religious superior without any formal canonical process. On the other hand, a priest could be formally dismissed from the clerical state and yet remain in certain professional positions – not be "fired," in other words.¹²² The two terms are simply not coextensive, and it is erroneous to treat them as such.¹²³

151. Even leaving aside the foregoing, Plaintiff and Wall's contention is incomplete and misleading in several crucial respects. To understand why that is so, it is necessary to provide some background regarding dismissal from the clerical state.

152. In the penal system of the Catholic Church, dismissal from the clerical state "is the most severe vindictive punishment visited upon delinquent clerics. It brings to an end the clerical life of the delinquent; it is the legal destruction of clerical personality." Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 204; *see also* Sweeney, *Reduction of Clerics to Lay State* at 132 (stating that dismissal from the clerical state "is the most severe vindictive penalty which can be inflicted upon clerics"). Leaving aside circumstances wherein a priest's ordination was invalid – a situation that is not relevant here – there are only two methods by which a priest can be dismissed from the clerical state under the 1917 CODE: by

¹²¹ Dismissal from the clerical state was previously referred to as "laicization," "reduction to the lay state," or "degradation." It is now generally accepted that "dismissal from the clerical state" is the correct term, so as to avoid attaching derogatory implications to lay status.

¹²² For example, a priest who has a non-chaplain assignment in a hospital could be dismissed from the clerical state (for any number of reasons), but could remain employed within the hospital.

¹²³ I note that Wall himself petitioned the Holy See for dismissal from the clerical state. Nevertheless, he does not state in his declaration that he was "fired" as a priest by the Holy See. Instead, Wall states that "[i]n 1998 I voluntarily left active ministry, requested laicization, which Pope John Paul II granted on July 31, 1998." Wall Decl. ¶ 2.

a “penalty of degradation” or by “a rescript of the Holy See.” 1917 CODE c.211 § 1; *see also* Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 208. A priest could “never return to the lay state of his own accord.” *Id.*

153. Contrary to the implication of Plaintiff and Wall’s contention, from the earliest history of the Church, the right to impose the penalty of dismissal from the clerical state upon a priest was that of the priest’s ordinary. Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 38, 58-59, 80, 96, 97. That right was preserved under the 1917 CODE, whereby local bishops and religious superiors could dismiss priests from the clerical state for grave delicts. 1917 CODE cc.211, 1576, 2359 § 2; *Crimen* nos. 55, 62-63. The “emphasis on the proper ordinary further accentuates the fact that laicization is to be considered within the framework of the local Church to which the man belongs. Also this is in accord with the good administration and application of general laws, namely that they be applied by local authorities who are best able to appreciate the particular circumstances involved.” Forman, *Laicization of Priests* at 174.

154. The right of an ordinary to dismiss his priest from the clerical state was not – and never has been – absolute. Since the first centuries of the Catholic Church, canon law has provided important safeguards, including, for example, the priest’s right to be heard. Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 39, 59. And, also from early in Church history, priests enjoyed the right to recourse against dismissal from the clerical state to the Holy See, a recourse already called “an ancient custom” by Pope Leo the Great in 445 A.D. *Id.* at 39-40. The 1917 CODE codified the ancient right of recourse to the Holy See. 1917 CODE c.1569 § 1; Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 200. These legal safeguards were not an indicator of Holy See “control” over

individual priests; they were, instead, procedural rights that had long been deemed necessary to prevent what could otherwise be an abuse of power by individual ordinaries over priests.¹²⁴

155. The second method for dismissal from the clerical state was a rescript from the Holy See in response to a petition by the priest himself.¹²⁵ “The rescript of laicization was a ‘favor’ of the Holy See; it was never to be construed as a right of the cleric.” Schneider, *Loss of Clerical State* at 386. Such rescripts could be granted only for “grave cause.” Forman, *Laicization of Priests* at 109; see also Schneider, *Loss of Clerical State* at 387 (stating “the favor of the rescript for a return to the lay state for a priest is granted only for the most serious reasons”). Most frequently an intermediary, such as the priest’s ordinary, had to present the petition to the Holy See. Sweeney, *Reduction of Clerics to Lay State* at 122. While “remaining a method of laicization admitted by the law, the process of dispensation was not readily accessible, particularly to priests, and was always accompanied by restrictions.” Forman, *Laicization of Priests* at 110.¹²⁶

156. Issuance of rescripts does not show day-to-day “control” by the Holy See over priests. Indeed, it shows the opposite: it was an extraordinary legal procedure initiated by the priest himself, with the approval of the priest’s superiors. The petition was made after the underlying circumstances justifying the rescript already obtained, and it was granted only if such

¹²⁴ As early as 619 A.D., the Second Council of Seville stated the following regarding the possibility of such abuses: “For there are many bishops who condemn those clerics unheard, not by canonical authority but by tyrannical power. And just as they elevate some through favor, so through envy and hatred they reduce others and at the faint breeze of opinion they condemn for crimes which they do not prove. A bishop can alone give honors to priests . . . , but alone he cannot take them away These clerics then cannot be condemned by one judge, nor by one judge can they be deprived of the privileges of their rank” Findlay, *Canonical Norms Governing Deposition and Degradation of Clerics* at 59.

¹²⁵ A “rescript,” as its name implies, is simply “the response . . . given in writing in answer to a petition.” Sweeney, *Reduction of Clerics to Lay State* at 122; see generally 1917 CODE cc.36-62.

¹²⁶ According to the Province Documents, and given the grave circumstances of his case, Ronan was dismissed from the clerical state by means of such a rescript; he made a petition for dismissal, which was presented to the Holy See by his religious superiors.

circumstances satisfied the canonical legal standard of “grave cause,” as determined by religious doctrine. The rescript was a legal act that never occurred with the vast majority of priests, and that occurred only once even with regard to a successful petition to the Holy See for the rescript – since it resulted in the legal destruction of the clerical personality.

XVIII. Plaintiff’s Contentions Relating to Property and the Solicitation of Funds in the Catholic Church

157. Plaintiff and his declarants make a series of assertions relating to property and the solicitation of funds under the canon law. I will address each assertion in turn.

158. First, relying on a canonical provision stating that the Pope is the supreme administrator and dispenser of all ecclesiastical goods, Plaintiff argues that goods belonging to the Servite Order “were ultimately owned by the Holy See.” Pltf.’s Opp. at 20; *see also* Wall Decl. ¶ 13; Doyle Decl. ¶ 22.

159. Canon 1518 of the 1917 CODE provided that the Roman Pontiff “is the supreme administrator and dispenser of all ecclesiastical goods.” 1917 CODE c.1518; *see also* 1983 CODE c.1273. Canon law commentators agree that “[t]he supreme *auctoritas* of the Roman Pontiff over juridical persons and over ownership and other real titles does not mean that he is the owner.” Combalía, IV/1 EXEGETICAL COMMENTARY at 85.¹²⁷ Instead, “[o]wnership of ecclesiastical goods corresponds to the juridical person holding title thereto” – in this case, the Province or the local priory. *Id.*; SERVITE CONST. arts. 153, 161, 176.¹²⁸

¹²⁷ *See also* McKenna, CHURCH FINANCE HANDBOOK at 42; Sheehy, CANON LAW: LETTER AND SPIRIT at 709, 719; Coriden, CODE OF CANON LAW: A TEXT AND COMMENTARY at 862, 870; Maida & Carfardi, CHURCH PROPERTY, CHURCH FINANCES, AND CHURCH-RELATED CORPORATIONS: A CANON LAW HANDBOOK at 10; Bouscaren & Ellis, CANON LAW (4th ed. 1966) at 810; Abbo & Hannan, SACRED CANONS at 710-711.

¹²⁸ *See also* 1983 CODE cc.634, 1255; 1917 CODE cc.531, 1495; Kennedy, *Temporal Goods of the Church* at 1457 (“[A]ctual ownership resides in the juridic person which has legitimately acquired the goods.”); *id.* at 1456 (“In addition to particular churches, juridic persons include . . . religious institutes.”); Hite, HANDBOOK ON CANONS 573-746, at 100-01 (“The basic premise underlying the

160. In erroneously concluding that canon 1518 of the 1917 CODE (and 1273 of the 1983 CODE) provided for the Pope's ownership of all ecclesiastical goods, Plaintiff mistook a power of governance and jurisdiction for a power of ownership. The Pope's power over ecclesiastical property is one of governance and jurisdiction, and not ownership. *See, e.g., Kennedy, Temporal Goods of the Church* at 1458 ("Reference to the authority of the Roman Pontiff is simply a reference to the teaching and governing authority of the Pontiff in regard to the ownership and use of property dedicated to one or another of the Church's purposes. It is not a suggestion of ownership in the Roman Pontiff."); López Alarcón, IV/1 EXEGETICAL COMMENTARY at 13 ("The Supreme Pontiff's reach is defined by the supreme jurisdictional power that is his competence; that is, not in the nature of ownership, but with his status as supreme administrator and dispenser, he may perform all acts of ordinary and extraordinary administration over ecclesiastical goods within the competence of others."); *see also* Combalía, IV/1 EXEGETICAL COMMENTARY at 85.¹²⁹

161. Doyle asserts that "[a]lthough the pope does not engage in the direct management of all ecclesiastical property, he has the right and the authority to do so in any degree." Doyle Decl. ¶ 22. Doyle's claim ignores the principles underlying papal power and authority. *See supra* ¶¶ 32-76; *see also, e.g.,* Combalía, IV/1 EXEGETICAL COMMENTARY at 82 ("Perhaps one of [the] most outstanding characteristics in the regulation of the administration of ecclesiastical goods is the importance given to the principle of subsidiarity in this matter."). The Code of Canon Law – and the Servite Order's Constitution – provided for the day-to-day administration of ecclesiastical property by religious superiors within the Province. *See, e.g.,* 1917 CODE cc.516, 532; *see also*

religious institute's right to acquire, possess, administer, and alienate temporal goods is that it has been constituted a public juridic person, i.e. it has been given a corporate existence apart from the individual persons who comprise it.").

¹²⁹ In other words, Plaintiff's error is akin to claiming that a State in the United States owns all real property within its territory because it can exercise the power of governance and jurisdiction over such property – a fundamental error of law.

1983 CODE c.636; SERVITE CONST. art. 162; *see also id.* arts. 154, 156, 163, 164, 167, 172, 177, 178, 179. As supreme administrator and dispenser, the Pope’s involvement was one of general oversight,¹³⁰ and any intervention would have been a rare event. *See, e.g.*, López Alarcón, IV/1 EXEGETICAL COMMENTARY at 28 (stating that cases “in which the Roman Pontiff has had to intervene are rare and always in matters of the dispensing or redistributing of great amounts of goods”).¹³¹

162. Wall claims that “[e]very time Ronan presided at Mass in a parish a portion of that collection was sent to Rome. (Canon 341.)” Wall Decl. ¶ 25; *see also* Pltf.’s Opp. at 18. Canon 341 of the 1917 CODE has absolutely nothing to do with collections taken up at Mass. Neither does Canon 341 of the 1983 CODE. Moreover, most Masses are celebrated without any collection being taken up, and no “cut” or “percentage” of collections is taken from parishes by the Holy See.¹³²

163. Wall also claims that “[a] portion of this income would be paid as a tax or annual assessment on the net worth of the Servites which they report to the Holy See every five years in their Quinquennial report. (Canon 510.)” Wall Decl. ¶ 25; *see also* Pltf.’s Opp. at 18. The religious Quinquennial Report (indicated in Canon 510) should include a report on finances (I CANON LAW DIGEST 288), but I am aware of no provision by which a percentage of those reported

¹³⁰ *See* Combalía, IV/1 EXEGETICAL COMMENTARY at 84 (citations and quotations omitted) (“As supreme administrator, the Pope “*a*) issues norms; *b*) supervises extraordinary acts; *c*) is informed every five years by the bishops . . . and general superiors . . . of how their respective administrations are running. As steward, the Pope has the function of unifying the great diversity of patrimony that such an abundance of titles implies; he stipulates transfers between some of them, and under extraordinary circumstances, may even condone unduly made appropriations, publicly or in conscience (by means of the Apostolic Penitentiary).”).

¹³¹ *See also* Kennedy, *Temporal Goods of the Church* at 1474.

¹³² Special, free-will collections are announced and taken up only on a few Sundays a year. And while some of these collections go to the Holy See (see immediately below), it is not the responsibility of a parish priest to arrange for that transfer.

assets must be turned over the Holy See.¹³³ Canon 510, cited by Wall, contains no such requirement. 1917 CODE c.510.

164. Wall asserts that a “further source of revenue to the Holy See by Ronan” was a portion of Ronan’s income “earned from his work at schools.” Wall Decl. ¶ 25. I know of no mechanism by which a portion of a priest’s income must be sent to the Holy See. In fact, the Code of Canon Law clearly provided that any such income belonged to the Province, and not the Holy See. *See* 1917 CODE c.594 § 2 (“Whatever is acquired by a religious . . . is mixed with the goods of the house, province, or religious [institute], and every sort of money under title is to be deposited in the common safe.”); *see also* 1917 CODE c.580 § 2; 1983 CODE c.668 §3 (“Whatever a religious acquires by personal labour, or on behalf of the institute, belongs to the institute.”).¹³⁴ That is also what the Servite Constitution provided during the time that Ronan was a religious order priest. *See* SERVITE CONST. art. 153 (“Since we have a vow of poverty, no one is permitted to hold any property, howsoever obtained, either in his own name or in the name of the monastery. Everything must be held in common by the monastery, and the monastery must have full and free control of it. Rent and revenue must be turned over to the officials of the monastery.”); *see also id.* arts. 154, 278.

¹³³ Canon 1271 provides that “[b]y reason of their bond of unity and charity, and according to the resources of their dioceses, Bishops are to join together to produce those means which the Apostolic See may from time to time need to exercise properly its service of the universal Church.” 1983 CODE c.1271. However, the obligations of canon 1271 fall only on diocesan bishops, and not religious orders. 1983 CODE c.1271; *see also* Kennedy, *Acquisition of Goods* at 1472.

¹³⁴ Smith, *Obligations and Rights of Institutes and Their Members* at 836 (“After profession anything which a member acquires as a result of his or her work – e.g., stipends, salaries, bonuses, fees, royalties, and the like – belongs to the institute.”); Di Mattia, II/2 EXEGETICAL COMMENTARY at 1786 (stating that a member of a religious institute “is obliged to give to the institute the fruit of his labor and undertakings accomplished inside or outside the institute”); Hite, HANDBOOK ON CANONS 573-746, at 183 (“Everything a religious acquires by way of gift, offering, stipend, fee, salary, pension, insurance settlement, or similar manner, belongs to the religious institute and not the individual member.”); Gambari, RELIGIOUS LIFE at 290 (“Whatever a religious acquires through personal work or by reason of the institute is acquired for the institute.”).

165. Wall claims that “[i]n cases of invalid possession of goods or property by Religious, the property is acquired by the Holy See. (Canon 582.2.)” Wall Decl. ¶ 24. Contrary to Wall’s assertion, canon 582.2 was inapplicable to religious order priests in the Servite Order, since the Servite Order was permitted to acquire and possess property under its constitution.¹³⁵

166. Wall claims that Ronan “provided revenue to the Holy See annually through the Peter’s Pence collection,” which he claims “was formalized into law by Pope Pius IX on August 5, 1871 in the decree *Saepe Venerabilibus* [sic].” Wall Decl. ¶ 26. Peter’s Pence is a voluntary, free-will collection taken up once a year largely in parish churches (and not, contrary to Wall’s claim, by “every priest around the world”), by which the faithful contribute funds to enable the Pope to provide help to those in special need around the world. I know of no canonical or factual support for Wall’s assertion that Andrew Ronan “as a priest” was bound by the decree *Saepe Venerabilis*¹³⁶ or was otherwise required to “conduct this solicitation on behalf of the Holy See and to assure the funds were transferred to the Holy See.”

167. Doyle states that the Pope needed to approve transactions by the Province or the Servite Order involving the sale, gift or destruction of church property exceeding a specific value amount. Doyle Decl. ¶ 22. Doyle neglects to mention that article 170 of the Servite Order’s 1940 Constitution allowed any amount up to \$20,000 to be handled within the Province. According to the CPI Calculator of the Bureau of Labor Statistics of the United States

¹³⁵ See 1917 CODE c.582 (“After solemn profession, and with equal regard for specific indulgences of the Apostolic See, [regarding] all goods that regulars receive in any way: 1.° In Orders capable of possessing, [regulars] shall cede it to the Order or the province, or to the house according to the constitutions; 2.° In Orders not capable [of possessing], property is acquired by the Holy See.”); see also 1917 CODE c.531 (“Not [only] religious [institutes], but also provinces and houses, are capable of acquiring and possessing temporal goods with stable incomes or foundations, unless their capacity for these is excluded or restricted in the rules and constitutions.”); SERVITE CONST. arts. 153, 161, 176 (providing for the acquisition, possession and ownership of property).

¹³⁶ Cf. <http://www.papalencyclicals.net/Pius09/p9saepev.htm>.

Department of Labor,¹³⁷ that is the equivalent of \$327,702.86 in 2012 dollars – an extraordinary sum for a mendicant religious order.¹³⁸

XIX. Plaintiff’s Contentions Relating to Priests and Members of Religious Orders Other Than Ronan

168. Plaintiff and Doyle make a range of assertions relating to priests and members of religious orders other than Ronan. *See* Pltf.’s Opp. at 13, 15-17; *see also* Doyle Decl. ¶¶ 28-30.

169. Since Doyle provides no supporting citations, I do not know where Doyle obtained the information set forth in paragraphs 28 through 30. Nothing in his declaration provides assurance that his characterizations of individual cases are complete or accurate.¹³⁹

170. However, by the terms of Doyle’s Declaration itself, most of the cases cited by Doyle related to priests and members of religious orders who failed to adhere to Catholic doctrine.¹⁴⁰ Doyle’s descriptions demonstrate that when there is a significant divergence from doctrine, the Holy See may exercise its powers of governance and jurisdiction to preserve doctrinal uniformity within the Catholic Church. Such actions by the Holy See (among others) are critical – if priests or members of religious orders were permitted to diverge from Church teaching on matters

¹³⁷ http://www.bls.gov/data/inflation_calculator.htm

¹³⁸ The amount – which by 1965 was determined by the National Conference of Bishops (59 *ACTA APOSTOLICAE SEDIS* 374 no. 9 (1964)) – increased over the years in an effort to recognize the effects of inflation. The current amount is \$3 million. Smith, *Temporal Goods and Their Administration* at 803 n.75.

¹³⁹ Doyle claims that his examples show that the Holy See has directly intervened in the lives of individual bishops, priests and members of religious orders “many times” throughout history. Doyle Decl. ¶ 28. I note that Doyle identifies less than twenty examples covering a period of more than 80 years – roughly one case every four years.


¹⁴⁰ *See* Doyle Decl. ¶ 28(c) (discussing members of religious orders who placed a full-page advertisement in the New York Times “asking [t]he Catholic Church to reconsider its discussion on abortion”); ¶ 28(e) (discussing “heresy” by member of religious order); ¶ 28(g) (discussing prohibition against priest teaching theology in Catholic colleges and universities “because he disagreed with the church teaching on infallibility”); 28(h) (discussing priest who was “silenced” because of “his teaching on liberation theology”); ¶ 28(i) (discussing priest who was excommunicated “because he refused to retract a teaching that disagreed with the Church teaching on salvation outside the Catholic Church”); ¶ 28(j) (discussing members of religious order who were told to “publicly assent to the Church’s official teaching on homosexuality”); ¶ 28(k) (discussing religious order priest who was excommunicated for failure “to recant [a] statement he made in favor of the ordination of women to the priesthood”).

of theology and religious doctrine, it would severely undermine the essential unity of the Catholic Church itself.

171. Plaintiff relies upon canonical proceedings involving other priests accused of sexual abuse. Pltf.'s Opp. at 15-17. I have reviewed the relevant documents attached to the Finnegan Declaration. The documents involve penal proceedings under the 1983 CODE and/or the *Crimen* instructions discussed above. The proceedings, which occurred decades after the events relating to Ronan, are consistent with the canonical requirements set forth in the 1983 CODE and/or *Crimen*, and do not show the Holy See's "control" over the punishment of priests for the reasons set forth above. *See supra* ¶¶ 134-56.

Executed this 30 of April, 2012, at Saginaw, Michigan.

I swear under penalty of perjury that the foregoing is true and correct.


Dr. Edward N. Peters

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2012, I served a true and correct copy of the foregoing
**DECLARATION OF DR. EDWARD N. PETERS IN SUPPORT OF DEFENDANT HOLY
SEE'S REPLY TO PLAINTIFF'S OPPOSITION TO SECOND MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION** by:

— mail with postage prepaid, deposited in the U.S. mail at Portland, Oregon,
— hand delivery,
— facsimile transmission,
— overnight delivery,
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