STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT
CRIMINAL COURT DIVISION

State of Minnesota,

Plaintiff,

vs.

The Archdiocese of Saint Paul and Minneapolis,
a Minnesota Corporation
226 Summit Avenue
Saint Paul, MN 55102,

Defendant.

Court File No: 62-CR-15-4175

DEFENDANT'S MEMORANDUM SUPPORTING ITS MOTION TO DISMISS THE COMPLAINT

INTRODUCTION

The Archdiocese of Saint Paul and Minneapolis, a Minnesota religious corporation (the "Archdiocese Corporation"),[1] submits this Memorandum in support of its motion to dismiss the Gross Misdemeanor Criminal Complaint ("Complaint" or "Compl."). (Dkt. No. 1.)

As the Court is aware, the Archdiocese Corporation has already voluntarily agreed to Court-supervised protocols that are designed to protect children. Nevertheless, the State is pursuing the criminal prosecution of the Archdiocese Corporation for plainly religious decisions. In its Complaint, the State takes issue with the Church's decision to ordain as priest and assign Wehmeyer as pastor. The State's effort to criminalize the facts alleged in the Complaint is itself troubling and legally unsupported. First, never before has the State criminally charged a

[1] The Archdiocese Corporation is a religious corporation organized under Minnesota law for the purpose of managing the temporal affairs and property of the religious organization that operates under Roman Catholic Canon law in a twelve-county area including Ramsey County (the "Archdiocese"). The Archdiocese Corporation is governed by a board of directors, which includes the Archbishop as president *ex officio*. *See* Exhibit A to the January 29, 2016 Affidavit of Andrew F. Johnson ("Aff.").

corporation based on sexual abuse perpetuated by an individual. In fact, the State is treating the Archdiocese Corporation differently than other similarly situated organizations. Second, however one might judge the facts as alleged in the Complaint, they do not constitute a crime under Minnesota law. Indeed, the State's attempt to hold a corporation criminally liable for the sexual abuse of an individual is a violation of the Due Process Clause because there is no allegation the organization had prior knowledge that the individual had sexually abused minors. Third, the State's effort to criminally punish the Archdiocese Corporation for the plainly religious decision to ordain and to retain an individual as a priest and pastor—a decision that is made by the Archbishop personally in his religious capacity and not one made by the Archdiocese Corporation—plainly violates the United States Constitution and the Minnesota Constitution.

Curtis Wehmeyer, a former priest within the Archdiocese, pleaded guilty to abusing Victim 1, Victim 2, and Victim 3 at different times from 2008-2011. According to the Complaint, in June 2012, Archdiocesan officials learned of the sexual abuse from the Victims' mother and notified the St. Paul Police. Wehmeyer was criminally charged and pleaded guilty to those crimes and is now in prison.

Importantly, the Complaint does not allege that the Archdiocese Corporation knew Curtis Wehmeyer sexually abused children prior to June 2012. Nor does it allege that the Archdiocese Corporation knew Wehmeyer provided them with drugs, tobacco, or alcohol. The Complaint does not allege that the Archdiocese Corporation encouraged Wehmeyer to sexually abuse children or provide them with illegal substances. It does not allege any Archdiocese Corporation management knew of the abuse and approved, tolerated, or ratified it in any way. Nor does it allege that any Archdiocese Corporation employee specifically contributed to the abuse or

caused Wehmeyer to sexually abuse children or provide illicit materials. Instead, relying extensively on canon law, the Complaint points to the religious control the Archbishop (in his religious capacity) has over the decision to ordain, retain, and supervise priests as the basis for its assertion that the Archdiocese Corporation contributed to Curtis Wehmeyer's abuse of the Victims and their need for services. Not only is this an unprecedented theory of criminal liability, the Complaint does not allege control over Curtis Wehmeyer by the Archdiocese Corporation—a religious corporation created under the laws of Minnesota.

The State's legal theory of organizational criminal liability for the criminal actions of a non-employee, Curtis Wehmeyer, is without legal precedent. It is wholly unsupported by statute or Minnesota Supreme Court precedent and, indeed, violates numerous tenets of constitutional law. If the State's novel theory were adopted by the Court, it would establish an incredibly broad range of criminal liability for all types of organizations and organizational officials, including schools, civic organizations, and state officials, that have any degree of responsibility for the safety of children. The expanse of the State's theory of liability is almost without limit. As just one example, following the death of toddler Eric Dean, there was a public outcry based on the failures of the State's own child-protection systems. Brandon Stahl, *Lawmakers: Child-Protection System Failed Eric Dean*, StarTribune (Sept. 4, 2014). The State's system recorded 15 separate maltreatment reports, including physical abuse of the toddler, before he died in February 2013. *Id.* Clearly, the State and its agencies had failed to protect the child. Similar to Wehmeyer's fate, Dean's stepmother was criminally prosecuted for her actions. Brandon Stahl, *Eric Dean: The Boy They Couldn't Save*, StarTribune (Jan. 12, 2015). This case was far more egregious: the organization knew of, and documented, 15 separate instances of abuse, and failed

to protect the child. Yet there were no criminal charges of State child-protection agencies or officials for "failing to protect" children.

The State is limited to what criminal laws proscribe and the limits imposed by the United States Constitution and the Minnesota Constitution. This is particularly true in this case, where those who will suffer the consequences of any organizational liability—including the claimants and creditors in the bankruptcy—are not the individuals who are alleged to have failed to protect the Victims. The State cannot be allowed to usurp the authority of the legislature and the judiciary by creating and impermissibly expanding statutes and established precedent of organizational liability.

The legal failures of the State's Complaint against the Archdiocese Corporation are numerous and substantial. First, the Complaint fails to allege the Archdiocese Corporation committed the criminal offenses that were charged. It does not—and cannot—allege the requisite "direct causal link" between the Archdiocese Corporation's actions and Wehmeyer's crimes. It fails to allege facts that could establish that Wehmeyer was an agent acting on behalf of the Archdiocese Corporation when he sexually abused the Victims. It fails to allege facts that establish any individual in the Archdiocese Corporation management knew of Wehmeyer's criminal conduct and approved, tolerated, or ratified it. Indeed, the Complaint fails to allege that any Archdiocese Corporation employee or officials had the requisite knowledge or criminal intent to impose corporate liability under Minnesota law. Second, even if the Complaint did properly allege a crime, which it does not, the State's action to impose criminal liability based on the uniquely religious decisions plainly violates the United States Constitution and the Minnesota Constitution. Third, the charges are untimely because the Complaint was filed in June 2015, more than three years after the Archdiocese Corporation could have contributed to the abuse.

ARGUMENT

I. THE COMPLAINT FAILS TO ALLEGE FACTS THAT CONSTITUTE THE OFFENSES.

A complaint must be dismissed for lack of probable cause if it fails to contain allegations sufficient to "believe the charged offense has been committed and that the defendant committed it." Minn. R. Crim. P. 2.01. Dismissal for lack of probable cause is proper if the State lacks substantial, admissible evidence that would justify denial of a motion for acquittal—that is, if "the evidence is insufficient to sustain a conviction for the charged offense." *In re C.P.W.*, 601 N.W.2d 204, 207 (Minn. Ct. App. 1999). Likewise, a complaint that fails to state facts constituting the offense must be dismissed. Minn. R. Crim. P. 17, subd. 6(2)(d). Here, the Complaint must be dismissed for lack of probable cause, and because the State failed to state an offense.

Counts 1, 3, and 5 of the Complaint allege the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 1, Victim 2, and Victim 3, respectively, a violation of Minn. Stat. § 260C.425. (Compl. 1-2.)

The relevant portion of the statute provides:

> Any person who by act, word, or omission encourages, causes, or contributes to the need for protection or services is guilty of a gross misdemeanor.

Minn. Stat. § 260C.425, subd. 1(a).

Counts 2, 4, and 6 of the Complaint allege the Archdiocese Corporation encouraged, caused, or contributed to the delinquency or status as a petty offender of Victim 1, Victims 2, and Victim 3, respectively, which is prohibited by Minn. Stat. § 260B.425. (Compl. 1-2.)

The relevant portions of the statute provides:

> Any person who by act, word, or omission encourages, causes, or contributes to delinquency of a child or to a child's status as a juvenile petty offender, is guilty of a gross misdemeanor.

Minn. Stat. § 260B.425, subd. 1(a).

The State's attempt to prosecute the Archdiocese Corporation for violating these statutes, under a theory of corporate criminal liability, is novel and wholly unsupported by the statutes and relevant case law. It is unprecedented. Indeed, very few defendants have been charged in "contribution cases" under Minn. Stat. § 260B.425 or § 260C.425, or the statutes' predecessors. Since 1937, there are only seven reported criminal contribution cases. These cases all arose out of common factual scenarios. Almost every defendant directly provided alcohol or drugs to minors, which qualified the children as delinquents or petty offenders. *See, e.g.*, *State v. Lentz*, No. A06-723, 2007 WL 2102437 (Minn. Ct. App. July 24, 2007) (defendant convicted of contributing to delinquency and a child's status as a petty offender for providing alcohol to a 14-year-old and a 15-year-old); *State v. Sobelman*, 271 N.W. 484 (Minn. 1937) (bar owner guilty of allowing 16-year-old to remain in his bar, which qualified the child as a delinquent). In a handful of cases, the defendants also engaged in other illegal behavior with the children in addition to providing them with drugs or alcohol. *See State v. Hughart*, No. A05-1196, 2006 WL 923526 (Minn. Ct. App. Apr. 11, 2006) (defendant convicted of contributing to the delinquency of a minor by providing marijuana to and having sex with a 12-year-old); *State v. Pearson*, No. A04-1632, 2005 WL 2127467 (Minn. Ct. App. Sept. 6, 2005) (similar); *Peterson v. State*, 672 N.W.2d 612 (Minn. Ct. App. 2003) (defendant convicted under similar facts, though the conviction was later overturned due to procedural mistakes at the trial court); *State v. Hayes*, 351 N.W.2d 654 (Minn. Ct. App. 1984) (conviction for contributing to delinquency by providing liquor to minors and assisting them in burglary).

One reported case applies Minn. Stat. § 260C.425's criminalization of contributing to a child's need for protection or services. In *State v. Dennison*, a defendant was convicted for contributing to her children's need for protection or services by leaving her ten-year-old and her

seven-year-old home alone for an extended period of time while she was apparently at a bar. No. A03-799, 2004 WL 1775578 (Minn. Ct. App. Aug. 10, 2004). That conviction was overturned on appeal. *Id.*

Never before has a Minnesota corporation been charged with a contribution crime under Minn. Stat. § 260B.425 or § 260C.425. Unlike the cases above, the Archdiocese Corporation did not provide alcohol, pornography, or marijuana to Wehmeyer's Victims. Nor did the Archdiocese Corporation sexually abuse the Victims. The Complaint alleges the criminal conduct contributing to the Victims' delinquency and need for services was directly caused by Wehmeyer. To pursue charges under either of the criminal statutes at issue against the Archdiocese Corporation, the State must show that the Archdiocese Corporation itself "encouraged, caused, or contributed" to the Victims' need for protection or services or to their delinquency or status as petty offenders.

To meet that burden, under the plain meaning of the statutes as well as applicable case law, the State must allege and prove that the Archdiocese Corporation's actions were a significant and direct cause, rather than a mere tangential cause, of the Victims' delinquency or need for protection and services. Moreover, because the State seeks to impose criminal liability on a corporation, the State must allege that an Archdiocese Corporation employee committed a crime while acting within the scope of his or her employment and in furtherance of the Archdiocese Corporation's interests. Finally, the State must also allege that those criminal actions were known to the Archdiocese Corporation management and approved, tolerated, or ratified by management. As the State has failed to do so, the Complaint and all charges should be dismissed.

A. The Complaint Fails To Allege A Direct Causal Link Between A Defendant's Actions And The Offending End Result.

1. Courts Require a Direct Causal Link.

The Minnesota Supreme Court recently interpreted a statute similar to the ones at issue here. In *State v. Melchert-Dinkel*, the defendant was charged with "advis[ing], encourag[ing], or assist[ing] another in taking the other's own life." 844 N.W.2d 13, 16 (2014). Reviewing the defendant's conviction, the Court determined the statute was unconstitutionally overbroad to the extent it attempted to criminalize conduct which had no direct causal connection between the defendant and the offending end result (suicide). According to the Court, "[t]he ordinary definition of the verb 'encourage' is to 'give courage, confidence, or hope.'" *Id.* at 23 (citing *The New Shorter Oxford English Dictionary* 32 (1993)). The Court noted that "nothing in the definition[] of . . . 'encourage' requires a direct, causal connection" to the end result. *Id.* Based on this, the Court held that the assisted suicide statute violated the First Amendment to the extent it criminalized the "encouraging" or "advising" another to take his or her own life, because such speech was too "tangential" to the act of suicide. *Id.* at 23-24. Conversely, the portion of the statute that criminalized "assisting" suicide was upheld because "assist" requires "the most direct, causal links" between the offending conduct and the suicide. *Id.* at 23.

Melchert-Dinkel makes two things clear. First, the prohibition of "encouraging" is an unconstitutional violation of the First Amendment and is unenforceable. *Id.* at 23-24.

Second, a criminal prohibition on either "causes" or "contributes" must be construed as requiring a "direct, causal link" between some act, word, or omission by the Archdiocese Corporation and the Victims' abuse, delinquency, and need for protection or services. *Id.* at 23 (finding prohibition of "advising" and "encouraging" suicide unconstitutional because they did not require a "direct, casual connection to a suicide").

Consistent with the *Melchert-Dinkel* decision, courts across the country, in cases involving criminal statutes like those charged in the Complaint, have required the State to prove a direct causal link between a defendant's actions and the ultimate offending conduct. For example, in *State v. Flinn*, the West Virginia Supreme Court interpreted a misdemeanor contribution statute. 208 S.E.2d 538 (1974). The West Virginia statute prohibited individuals from "contribut[ing] to, encourag[ing] or tend[ing] to cause the delinquency or neglect of any child" through "any act or omission." *Id.* at 540. In evaluating what was required to prove causation, the court formulated a test whereby acts alleged to contribute to the delinquency of a minor must be of such a nature that "delinquency must be a reasonably certain result of the act complained of and reasonably sure to befall a certain child in a reasonable time." *Id.* at 552-53. The court held that "[t]he causal connection must be clear and a delinquent act must be reasonably sure to follow." *Id.* Thus, the complained of actions or omissions had to be: (1) reasonably certain to impact a specific child, (2) lead that child to a specific act of delinquency, and (3) be reasonably certain to occur within a limited amount of time. *See id.*

An Ohio court established similar requirements in *State v. Crary*. 155 N.E.2d 262 (Ohio C.C.P. 1959). There, the State alleged that by selling a lewd magazine to a 14-year-old, a shopkeeper violated a statute which forbid "acting in a way tending to cause delinquency." The court dismissed the charge after finding significant flaws with the statute, the required burden of proof, and the evidence presented. Specifically, the court held that:

> [n]o defendant may be deprived of life, liberty or property for doing something which might just possibly sometime, somewhere lead to some child's becoming delinquent. Possibility must give way to comparative if not absolute certainty. The delinquency which the law is trying to prevent ***must be fairly imminent, a reasonably certain result of the act complained of, reasonably sure to befall a certain child in a reasonable time*** . . . a single act or even a course of action which is merely likely or apt or liable to lead to a given child's overt act of

> delinquency is too remote a causative factor to warrant depriving a citizen of his liberty. Unless the causal connection be clear and a delinquent act be reasonably sure to follow, the judges refuse to be convinced beyond a reasonable doubt that the act complained of 'tends to cause' the delinquency of the child.

Id. at 265.

United States Supreme Court precedent supports the requirements established in *Flinn* and *Crary*. In *Vachron v. New Hampshire*, a defendant was convicted of "willfully contributing to the delinquency of a minor" because a child purchased an allegedly lewd button from a store the defendant operated. 414 U.S. 478, 478 (1974). The Supreme Court overturned the conviction because there was no evidence that the defendant personally sold the button to the minor, knew of the sale, or that he was even present at the time of the sale. *Id.* at 479-80. The Court held that the mere fact that the defendant operated the shop and controlled the premises "was in no way probative of the crucial element of the crime that he personally sold the minor the button or personally caused it to be sold to her." *Id.* at 480. Thus, the Supreme Court also required a direct causal link between a defendant's actions and the delinquent acts that allegedly result from them.

If the statutes at issue here are not read to limit criminal liability to conduct that directly and causally related to the offending end result, the statutes are both unconstitutional for vagueness. *See Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015) (a statute is unconstitutional if it "is so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement"); *see also State v. Wohlsol, Inc.*, 670 N.W.2d 292, 296-97 (Minn. Ct. App. 2003) (reading knowledge and managerial ratification requirement into statute prevented it from being unconstitutionally vague); *State v. Schriver*, 542 A.2d 686 (Conn. 1988) (vacating conviction under statute that prohibited taking "any act likely to impair the health or morals of any [minor] child" on the ground that the statute

was unconstitutionally vague because "the phrase 'any act' provides no guidance to potential violators . . . particularly because specific intent is not an element of the offense as charged in this case," while also holding that conviction under another section of the statute, required, at a minimum, "an act directly perpetrated on the person of a minor" (emphasis added) (subsequently superseded by statute as stated in *State v. James G.*, 268 Conn. 382 (Conn. 2004))); *State v. Hodges*, 254 Or. 21 (Or. 1969) (vacating conviction after finding catchall provision of delinquency statute unconstitutionally vague; concurring opinion suggesting that holding would also invalidate statute prohibiting "acts which encourage, cause or contribute to existing delinquency" due to a lack of particularity); *Flinn*, 208 S.E.2d at 552-53 (West Virginia Supreme Court requiring an intent requirement to be read into a contribution statute to save the statute from being unconstitutionally vague); *State v. Gallegos*, 384 P.2d 967 (Wy. 1963) (statute prohibiting causing, encouraging, aiding, or contributing to the endangerment of the health, welfare, or morals of a child unconstitutionally vague).

2. The Plain Meaning of the Statutes Requires a Direct Causal Link.

The statutory terms "encourage," "cause," and "contribute" are not defined by sections 260C.425 or 260B.425. However, courts construe "words and phrases . . . according to their common and approved usage." Minn. Stat. § 645.08, subd. 1. The common definitions of these terms also require a direct causal link between the defendant's conduct and the offending result.

i. *"Encourage"*

Black's Law Dictionary defines "encourage" as "[t]o instigate, to incite to action; to embolden; to help." (10th ed. 2014). Similarly, the Minnesota Court of Appeals has read "encourage" to mean "inspire with hope, courage, or confidence, to support, or to stimulate or spur on." *State v. Final Exit Network, Inc.*, No. A13-0563, 2013 WL 5418170, at *5 (Minn. Ct.

App. Sept. 30, 2013) (internal quotations omitted). Each of these definitions contemplates that the defendant has the specific intent to encourage a criminal end result.

The Complaint does not allege the Archdiocese Corporation "instigated" or "incited" Wehmeyer to commit these crimes in any way. Even so, *Melchert-Dinkel* holds that statutes may not criminalize merely "encouraging" illegal conduct. *See* 844 N.W.2d at 23-24 (severing provisions of statute that prohibited individuals from encouraging others to commit suicide). Thus, the portions of both Minn. Stat. § 260B.425 and § 260C.425 that attempt to prohibit acts, words, or omissions that "encourage" the need for protection or services or a child's delinquency—if not the entire statutes themselves—are unconstitutional. *Id.*

ii. *"Cause"*

Black's Law Dictionary defines "cause" as "[t]o bring about or effect." *Merriam-Webster Dictionary* defines "cause" as "to serve as a cause or occasion of," and "to compel by command, authority, or force." (11th ed. 2004). Under these definitions, the State must show that some act, word, or omission by the Archdiocese Corporation has a direct link, or "compelled," the Victims' abuse and need for protection and services.

This reading is in line with recent United States Supreme Court opinions. In *Burrage v. United States*, 134 S. Ct. 881, 887 (2014), the Supreme Court stated that "[w]hen a crime requires not merely conduct but also a specified result of conduct, a defendant generally may not be convicted unless his conduct is both (1) the actual cause, and (2) the 'legal' cause (often called the 'proximate cause') of the result." Actual causality "requires proof 'that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct.'" *Id.* at 887-88. Likewise, proximate cause "is applicable in both criminal and tort law," and

> is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct. . . . [P]roximate cause thus serves . . . to preclude liability in

> situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity . . . .

Paroline v. United States, 134 S. Ct. 1710, 1719 (2014) ("Given proximate cause's traditional role in causation analysis, this Court has more than once found a proximate-cause requirement built into a statute that did not expressly impose one." (internal citations omitted)).

Accordingly, to prove causation, the State must show that (1) Wehmeyer's abuse and the Victims' delinquency and need for services would not have occurred but for some act, word, or omission by the Archdiocese Corporation (actual causation), and (2) the Archdiocese Corporation's act, word, or omission foreseeably led to the Victims' abuse, delinquency, and need for services or protection (proximate cause). *See also Black's Law Dictionary* (defining "proximate cause" as "an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor," or "[a] cause that directly produces an event without which the event would not have occurred" and stating "'[t]he four 'tests' or 'clues' of proximate cause in a criminal case are (1) expediency, (2) isolation, (3) foreseeability, and (4) intention.'" (citing Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 823 (3d ed. 1982))). The State has not and cannot show the Archdiocese Corporation "caused" Wehmeyer to sexually abuse the Victims as that term is defined, based on the factual basis set forth in its Complaint.

iii. *"Contribute"*

Black's Law Dictionary defines a "contribution" as "[s]omething that one gives or does in order to help an endeavor to be successful." (Emphasis added.) Likewise, the last *Black's Law Dictionary* that defined "contribute" did so as: "to lend assistance or aid, or give something to a common purpose; to have a share in any act or effect; to discharge a joint obligation . . . . As applied to negligence signifies causal connection between injury and negligence, which transcends and is distinguished from negligent acts or omissions which play so minor a part in

producing injuries that law does not recognize them as legal causes." (6th ed. 1995.) Similarly, *Merriam-Webster Dictionary* defines "contribute" as "to help cause something to happen" or "to play a significant part in bringing about an end or result." Thus, the statute's use of "contribute" requires the State to allege that the Archdiocese Corporation "play[ed] a significant part in bringing about" Wehmeyer's abuse and the need for services or protection. Again, the State has not and cannot allege that the Archdiocese Corporation "contributed" to Wehmeyer's sexual abuse of the Victims by playing a "significant part in bringing about" Wehmeyer's criminal conduct, based on the facts set forth in its Complaint.

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Thus, the State fails to allege facts that legally support the State's assertion that the Archdiocese Corporation "encouraged, caused, or contributed" to the need for protection or services of Victim 1, Victim 2, and Victim 3 or their delinquency as those terms are defined under the law.

B. The Complaint Fails To Allege Direct Causation By An Agent Of The Archdiocese Corporation, And Fails To Allege Any Act In Furtherance Of The Archdiocese Corporation's Interests.

In addition to the foregoing elements of the offense, in Minnesota, a corporation cannot be guilty of a crime committed by its agent unless (1) the agent was acting within the scope of his employment, having authority to act for the corporation; (2) the agent was acting in furtherance of the corporation's business interest; and (3) the criminal acts were known to corporate management and were authorized, tolerated, or ratified by corporate management. *See State v. Christy Pontiac-GMC, Inc.*, 354 N.W.2d 17, 20 (Minn. 1984); CRIMJIG 3.24; *see also Wohlsol, Inc.*, 670 N.W.2d at 296-97 (to be consistent with the Constitution's due process requirement, corporation that operated bar where underage customers were served alcohol could not be criminally liable without evidence that managers knew of violations and "authorized,

tolerated or ratified sale of intoxicating liquor to minors"); *State v. Compassionate Home Care, Inc.*, 639 N.W.2d 393, 397-99 (Minn. Ct. App. 2002) (vacating conviction of corporation where trial court refused to offer corporate liability jury instruction and answer jury's question whether the company was liable for its employee's actions).

The Complaint alleges only one person, Curtis Wehmeyer, directly caused and contributed to the delinquency of Victim 1, Victim 2, and Victim 3, and their need for protection. The Complaint does not allege that Wehmeyer was an agent of the Archdiocese Corporation. He was not. As a pastor, Wehmeyer was an officer of The Church of the Blessed Sacrament of St. Paul, a separate religious corporation organized under Minnesota law.[2] There is no factual allegation that the Church of the Blessed Sacrament of St. Paul is legally subject to the Archdiocese Corporation's direction and control. Indeed, the Complaint does not, and cannot, allege that Archdiocese Corporation's Board of Directors had any control over the manner in which Wehmeyer performed his duties at Blessed Sacrament, or even the authority to discharge him and appoint a different pastor. The power to assign a priest belongs to the Archbishop in his religious capacity under canon law. Likewise, the Complaint does not, and cannot, allege the Archdiocese Corporation has ever owned or controlled the property owned by The Church of the Blessed Sacrament of St. Paul, including the grounds on which Wehmeyer abused the Victims in his personal camper.

In an effort to avoid these dispositive facts and allege the requisite agency under civil law principles, the Complaint asserts, "Defendant's control of its clergy and operations extends to the level of each local parish . . . ." (Compl. 4.) Nevertheless, the Complaint lacks a single factual

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[2] *See* Aff. Exhibit B, providing Minnesota Secretary of State filings showing that Blessed Sacrament Catholic Church in Saint Paul is an assumed name for an entity registered in good standing as The Church of the Blessed Sacrament of St. Paul.

allegation of how the Archdiocese Corporation and its governing Board of Directors controlled the conduct of priests in general or Wehmeyer specifically. In an unconstitutional effort to bolster the assertion of control, the Complaint relies on canon law and asserts that "[a]t ordination, each priest promises obedience to the Archbishop." (Compl. 4.) At best, this alleges that pursuant to canon law, the Archbishop, not the Archdiocese Corporation, had religious control over the parishes and priests. (Compl. 3.) The Complaint charges the Archdiocese Corporation, not the Archbishop. This is insufficient to survive a motion to dismiss for several reasons.

First, such a vow of obedience is to a religious position, the Archbishop, not the corporate organization of the Archdiocese Corporation. Second, the religious vow of obedience cannot render the Archbishop (let alone the Archdiocese Corporation) vicariously liable for any criminal act committed by a priest in a manner that is consistent with the Due Process Clause. Third, the First Amendment of the United States Constitution and the Minnesota Constitution forbid the State from relying on religious law, including a religious vow of obedience under canon law, as the basis for asserting that the Archdiocese Corporation is vicariously criminally liable for Wehmeyer's criminal conduct. *See State v. Bussman*, 741 N.W.2d 79, 92-95 (Minn. 2007) (*see infra*).

The lack of allegations sufficient to establish an agency relationship between Wehmeyer and the Archdiocese Corporation is itself fatal to the charges against the Archdiocese Corporation. Moreover, even if one were to assume *arguendo* that Wehmeyer was an agent of the Archdiocese Corporation, the Complaint still does not allege facts that would create organizational criminal liability for Wehmeyer's conduct under Minnesota Supreme Court precedent. The Complaint does not allege the criminal conduct occurred while Wehmeyer was

acting in his duties as a priest. To the contrary, the Complaint concedes the sexual abuse of the Victims occurred while Wehmeyer was camping with the Victims and while he was in his personal camper trailer, and accordingly, was not within the scope of his employment as a priest. (Compl. 4-5.) Nor does the Complaint allege facts supporting that Wehmeyer's criminal conduct furthered the interests of the Archdiocese Corporation, an entity that did not even employ him. *See State v. Final Exit Network, Inc.*, Jury Instructions, 19HA-CR-12-1718 (Minn. 1st Dist. Ct. May 14, 2015) (requiring "the agent(s) were acting within the course and scope of his or her employment, having the authority to act for the corporation with respect to the particular corporate business that was conducted criminally").[3]

C. The Complaint Fails To Allege The Archdiocese Corporation Management Knew Of The Criminal Conduct Or Approved, Tolerated, Or Ratified It.

Even assuming *arguendo* that Wehmeyer was an agent of the Archdiocese Corporation, which he was not, and that his criminal conduct was in furtherance of the corporation's interests, the State must still allege and prove the criminal acts were known to corporate management and were authorized, tolerated, or ratified by corporate management. *See Christy Pontiac-GMC, Inc.*, 354 N.W.2d at 20; CRIMJIG 3.24; *see also Compassionate Home Care, Inc.*, 639 N.W.2d at 397-98.

There is simply no allegation that Wehmeyer's sexual abuse of the Victims or his provision of alcohol, tobacco, and pornography to them was in any way known by any individual in the Archdiocese Corporation management, let alone that they "tolerated, authorized or ratified such conduct." To the contrary, when the corporate management learned of sexual abuse, it notified law enforcement. (Compl. 24.) Prior to that, the Complaint alleges that when corporate

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[3] *See* Aff. Exhibit C.

management found out about Wehmeyer's camping with the Victims, two Archdiocesan officials confronted him about his inappropriate actions that violated Archdiocese policy, which led to Wehmeyer apologizing. (Compl. 19-20.) Days later, the same Archdiocesan official spoke with the Victims' mother in an effort to establish "boundaries." (*Id.*) The State might argue that these efforts were insufficient to prevent the abuse (to the extent the abuse of Victim 3 was subsequent). Even so, that falls far short of alleging that Wehmeyer's criminal conduct was known or "authorized, tolerated or ratified," as is required under Minnesota jurisprudence to hold the organization criminally liable. In fact, because the Complaint does not allege that Wehmeyer abused any child prior to Victim 1, Victim 2, or Victim 3, or that anyone even accused him of abusing other children, the State's allegations are insufficient, as a matter of law, to satisfy even the more lax foreseeability test applied in civil negligence cases. *See Doe v. Columbia Heights School District*, A15-0713, 2016 WL 22407, at *6 (Minn. Ct. App. Jan. 4, 2016) (stating that "[s]exual abuse will rarely be deemed foreseeable in the absence of prior similar incidents" and granting summary judgment to school district whose employee sexually assaulted a student, in part, because it was not objectively reasonable to expect an employee with no prior history of abuse to assault a minor).

Indeed, the Complaint utterly fails to address how Wehmeyer's criminal actions were authorized, tolerated, or ratified by employees of the Archdiocese Corporation. *See Final Exit Network, Inc.* Jury Instructions (requiring "the criminal acts were authorized, tolerated, or ratified by corporate management. An act is ratified if, after it is performed, another agent of the corporation, having knowledge of the act and acting within the scope of employment and with the intent to benefit the corporation, approved the act by words or conduct").[4] The State simply

[4] *See* Aff. Exhibit C.

alleges that Archdiocesan officials allowed Curtis Wehmeyer to remain in ministry despite reports of conduct the State has called "troubling." This falls far short of authorizing criminal conduct by an agent. Moreover, the decision to assign Wehmeyer as a priest was a religious decision of the Archbishop in his religious capacity and not a decision of the Corporation. As such, the Complaint is insufficient to establish criminal organizational liability. Thus, even if all of the allegations in the Complaint are accepted as true, there is no direct causal link demonstrating that the Archdiocese Corporation knew of Wehmeyer's criminal conduct or caused, encouraged, or contributed to the delinquency of the Victims or their need for protection.

If the State's legal theory were accepted, the potential for strict criminal liability for corporate entities would be almost limitless. Without a requirement of knowing ratification or authorization, organizational employers would be strictly criminally liable for their employee's actions. For example, if a school knew that a teacher had a history of DUIs or depression or other "troubling" conduct, under the State's current theory, the school could be criminally liable—not simply civilly liable for negligence—if that teacher later physically or sexually assaulted a student, even if the school did not condone or know of the assault. For good reason, strict vicarious corporate criminal liability does not exist in this context, and the Court should not accept the State's invitation to create it.

D. The Complaint Fails To Allege the Archdiocese Corporation Had The Requisite Criminal Knowledge And Intent.

There are two separate legal reasons why the Complaint fails to allege the Archdiocese Corporation had the requisite knowledge and intent.

First, as set forth below, Minnesota Statute §§ 260B.425 and 260C.425 both require that a defendant intend that his actions will cause, encourage, or contribute to a child's need for protection or services.

Second, under separate Minnesota jurisprudence, a Minnesota corporation cannot be vicariously liable for the criminal actions of its agents, unless the corporation has knowledge and intent.[5] As the State fails to allege that the Archdiocese Corporation took any action with the intent that it would cause, contribute, or encourage Wehmeyer to sexually assault Victim 1, Victim 2, or Victim 3, or cause them to need protection or services or learned of Wehmeyer's criminal conduct prior to June 2012, the Complaint is deficient and should be dismissed.

1. Conviction of a Gross Misdemeanor Under Either Contribution Statute Require Intent.

While §§ 260B.425 and 260C.425 do not explicitly require intent, such a requirement is implied from the plain language and context of the statutes. As described above, "encourage," "cause," and "contribute" all focus on helping achieve an end result. There is no suggestion that the Legislature intended to criminalize accidently encouraging, causing, or contributing to a child's delinquency or need for protection or services. Indeed, reading "encourage," "cause," and "contribute" to require intent or knowledge is required by Minnesota law.

In *State v. Wohlsol, Inc.*, a corporation was charged with serving alcohol to minors under a statute that prohibited any liquor licensee, liquor store, or permit holder "to permit any person under the age of 21 years to drink alcoholic beverages on the licensed premises or within the municipal liquor store." 670 N.W.2d at 295. Although the statute was silent regarding intent, the Court of Appeals held that "the meaning of the word 'permit,' as used in [the statute], is clear and requires an element of knowledge of the violation such that the licensee authorized, tolerated or ratified sale of intoxicating liquor to minors before the licensee may be found criminally liable

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[5] *See Final Exit Network, Inc.* Jury Instructions (requiring a single agent have requisite knowledge and intent) (Aff. Exhibit C).

under the statute." *Id.* at 297. According to the Court, failing to read such a requirement into the statute would render it unconstitutional. *Id.* at 295, 297.

"Encourage," "cause," and "contribute" are all more demanding than a prohibition against simply "permitting" something to happen. Where "permit" encompasses merely allowing something to happen, encourage, cause, and contribute all require taking an active role in bringing about an end result. Accordingly, consistent with *Wohlsol*, §§ 260B.425 and 260C.425 must be read to require intent or knowledge that one's actions would lead to a child's delinquency or need for protection or services.

That the statutes must require intent or knowledge is supported by their history. Nearly 80 years ago, a predecessor misdemeanor statute was interpreted by courts as not requiring intent. *See State v. Sobelman*, 271 N.W. 484 (Minn. 1937); *State v. Lundgren*, 144 N.W. 752 (Minn. 1913). However, in 1999 the Legislature reclassified the contribution offenses from misdemeanors to gross misdemeanors, and enacted new statutes, Minn. Stat. §§ 260B.425 and 260C.425. The State undoubtedly will point to the jury instruction that does not list intent as an element of the offense. *See* CRIMJIG 13.100. Indeed, in *State v. Lentz*, which was a case where intent was not at issue, the Court of Appeals applied the instruction to Minn. Stat. § 260B.425 without independent analysis of whether intent was required. *See* 2007 WL 2102437 (defendant convicted of contributing to delinquency and a child's status as a petty offender for providing alcohol to a 14-year-old and a 15-year-old). Because the jury instruction fails to reflect the more recent jurisprudence of the Minnesota Supreme Court and the United States Supreme Court, it should be rejected. *See State v. Peterson*, 673 N.W.2d 482, 484 n.1 (Minn. 2004) ("The CRIMJIGS are published by a committee of the Minnesota District Judges Association. The

content of these guides does not control over statutory or case law."). To do otherwise would violate the Due Process Clause and precedent.

This reclassification of the statute as a gross misdemeanor matters because there is an important distinction in criminal jurisprudence between misdemeanors on the one hand, and felonies and gross misdemeanors on the other. Namely, because of increased penalties, felony and gross misdemeanor statutes generally require proof of intent. The Minnesota Supreme Court recently held that unless there is clear legislative intent to the contrary, Minnesota law requires proof of intent for criminal statutes imposing gross misdemeanor or felony liability. *State v. Ndikum*, 815 N.W.2d 816, 822 (Minn. 2012) (gross misdemeanor and felony penalties warrant a *mens rea* requirement); *State v. Neisen*, 415 N.W.2d 326, 329 (Minn. 1987) ("[I]f criminal liability, particularly gross misdemeanor or felony liability, is to be imposed for conduct unaccompanied by fault, the legislative intent to do so should be clear."). Applying this black-letter principle, the Minnesota Supreme Court has regularly read an element of intent into statutes imposing gross misdemeanor or felony liability that are otherwise silent on *mens rea*. *See Ndikum*, 815 N.W.2d at 822 (possession of a pistol in public); *In re Welfare of C.R.M.*, 611 N.W.2d 802, 810 (Minn. 2000) (possession of a knife at school); *State v. Al-Naseer*, 734 N.W.2d 679 (Minn. 2007) (criminal vehicular homicide); *State v. Oman*, 110 N.W.2d 514, 520 (Minn. 1961) (selling and possessing obscene materials); *see also State v. Wenthe*, 865 N.W.2d 293, 302 (Minn. June 24, 2015), ("We [the Minnesota Supreme Court] are particularly hesitant to dispense with mens rea when doing so would result in a strict liability offense.").

The United States Supreme Court also recently reiterated the long-standing principle that criminal statutes require intent. *See Elonis v. United States*, 135 S. Ct. 2001 (2015). In fact, the United States Supreme Court has frequently counseled that while small penalties like fines and

short jail sentences "logically complement[] the absence of a *mens rea* requirement," "imposing severe punishments for offenses that require no *mens rea* would seem incongruous." *Staples v. United States*, 511 U.S. 600, 606, 616-17 (1994) (also stating that "offenses that require no *mens rea* generally are disfavored"); *see also Dennis v. United States*, 341 U.S. 494, 500 (1951) ("The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American jurisprudence.").

Sections 260B.425 and 260C.425 do not address intent, let alone expressly assert a legislative intent to create a strict liability offense. As such, under Minnesota Supreme Court precedent, they must be interpreted to require criminal intent. *See Ndikum*, 815 N.W.2d at 822; *C.R.M.*, 611 N.W.2d at 810; *Wenthe*, 865 N.W.2d at 302 (courts should not create a strict liability offense without explicit direction from the Legislature).

Reading an intent element into Minn. Stat. §§ 260B.425 and 260C.425, is also consistent with how similar contribution statutes have been interpreted by courts in other states. For example, in *State v. Flinn,* the West Virginia Supreme Court evaluated a contribution statute which provided that "[a] person who by any act or omission contributes to, encourages or tends to cause the delinquency or neglect of any child, shall be guilty of a misdemeanor . . . ." 208 S.E.2d at 540. The defendants, who were charged with providing alcohol to and having sex with minors, challenged the statute on the grounds that it was unconstitutionally vague. In an apparent effort to save the statute, the court held that an intent requirement must be read into the statute to render it constitutionally definite, stating:

> although not specifically set out in the statutory language, [the delinquency contribution statute] requires an element of intent before a person can be guilty of contributing to, encouraging or tending to cause the delinquency or neglect of a child.

208 S.E.2d at 552; *see also In Re S.S.W.*, 767 N.W.2d 723, 729 (Minn. Ct. App. 2009) (suggesting in *dicta* that parents could not be liable for a child's need for protection or services unless they "cause[d] or knowingly contributed to the child's physical abuse" (emphasis added)). Accordingly, intent has been required even in similar statutes with lesser penalties.

2. Conviction of a Corporation Requires Knowledge and Intent.

In addition to the foregoing, even if the Court concludes Minn. Stat. §§ 260B.425 and 260C.425 do not themselves require intent, where the State seeks to apply criminal liability for the actions of another under a theory of vicarious liability—as the State does here—there is a separate line of Minnesota jurisprudence that requires allegations of corporate knowledge and intent to create vicarious criminal liability for a corporation. Specifically, the Minnesota Supreme Court has bluntly stated:

> in Minnesota, no one can be convicted of a crime punishable by imprisonment for an act he did not commit, did not have knowledge of, or give express or implied consent to commission thereof.

State v. Guminga, 395 N.W.2d 344, 349 (Minn. 1986) (vicarious liability statute imposing gross misdemeanor penalties upon employers for employees' actions held to be unconstitutional); *see also Wohlsol*, 670 N.W.2d at 296-97 (requiring knowledge requirement to be read into statute before company could be criminally liable for actions of its employees). Thus, the absence of an allegation of corporate intent and knowledge of Wehmeyer's criminal conduct renders the prosecution unconstitutional. *See Wohlsol*, 670 N.W.2d at 296-97; *Guminga*, 395 N.W.2d at 349.

Based on these facts and the case law above, an element of intent must be read into §§ 260B.425 and 260C.425's prohibition of "encouraging, causing, or contributing to the need for protection or services" or "to delinquency of a child or to a child's status as a juvenile petty offender" by "act, word, or omission."

3. The Complaint Fails To Allege that the Archdiocese Corporation Knew of Wehmeyer's Criminal Conduct or Intentionally Encouraged, Caused, or Contributed to Wehmeyer's Sexual Assaults, the Victims' Need for Protection or Services, or Their Delinquency.

The Complaint should be dismissed because it fails to allege that the Archdiocese Corporation knew of Wehmeyer's criminal conduct or intended any of its acts, words, or omissions to encourage, cause, or contribute to the Victims' delinquency or need for protection or services.

Even accepting every allegation as true for purposes of this motion, the Complaint does not allege that the Archdiocese Corporation knew Wehmeyer sexually abused minors or that he provided them with illicit materials, let alone that it intended to advance those purposes. The State commits 18 pages of its Complaint to allegations aimed at supporting its position that the Archdiocese Corporation "by its acts, words or omissions in the handling of Wehmeyer contributed to the need for services for victims in this case." (Compl. 6-24.) The allegations, even if taken as true, do not support that the legal conclusion that the Archdiocese Corporation possessed the requisite intent:

Date	Ramsey County Allegation
2004	Bishop Piche advised that Wehmeyer used the students' bathroom. Piche instructs all staff, including Wehmeyer, not to use the students' bathroom. Wehmeyer used the bathroom again. (Compl. 7.)
May 2004	McDonough learns that Wehmeyer approached two adult men who appeared youthful at a Barnes and Noble Book Store and engaged them in sexual talk. (Compl. 7-8.) Archdiocese Corporation asks St. Luke's to evaluate Wehmeyer. The report to the Archdiocese Corporation concludes that Wehmeyer has a "sexual disorder, not otherwise specified; unintegrated sexuality." (Compl. 8-10.)
February 2005	Archdiocese Corporation learns Wehmeyer was cited for loitering in Crosby Park in January 2004 with three other men. (Compl. 6-7.)
February 2005	McDonough learns of an incident when Wehmeyer was a seminarian in Jerusalem in which Wehmeyer did not have interest in an offer for female prostitutes and was taunted for being a homosexual. (Compl.11-12.)
July 28, 2006	A Ramsey County sheriff's deputy reports to Fr. McDonough that Wehmeyer was seen in the parking lot of a park that police contend is commonly used as a place where adult men seek sexual encounters. McDonough meets with Wehmeyer. (Compl.16.)
Sept. 29, 2009	During a camping trip, Wehmeyer tells Fr. M.M. that Wehmeyer previously took the Victims camping. Wehmeyer allegedly put his hand on M.M.'s knee, which made M.M. concerned for his safety because he was not same-sex attracted. Fr. M.M. reports what Wehmeyer told him to Vicar General Sirba and Bishop Piche. Fr. M.M. purportedly tells Piche he thinks Wehmeyer is a "predator." Following notification, Sirba then spoke with Wehmeyer and the Victims' mother regarding appropriate "boundaries." (Compl. 17-19.) Wehmeyer was arrested for DUI. The police received a report that Wehmeyer purportedly asked 18-year-olds where they live, go to school and "if they wanted to party with him." There is no allegation the Archdiocese Corporation received the police report. (Compl. 18.)

Aug.-Sept. 2010	Fr. D.B. went camping with Wehmeyer and two victims at Savannah Portage State Park. According to D.B., one of the Victims slept in Wehmeyer's bed. Wehmeyer says the sleeping arrangement occurred after the two boys had been arguing. Fr. D.B. reports this information to Bishop Piche. No sexual misconduct is observed and no allegation of sexual misconduct is made. Piche reportedly says Wehmeyer has "many skeletons" in the closet. (Compl. 20-21.)
Jan. 2011	Two Archdiocesan officials learn of the following regarding Wehmeyer: (1) he had been camping with children, (2) he offered a child an unsupervised tour of the rectory, (3) he had made the following comment: "If I were going to snatch a kid, it would be somebody like him." (Compl. 20-21.) Another Archdiocesan official also receives numerous complaints regarding Wehmeyer's drinking, anger, temper, and outbursts. (Compl. 23.)
June 2012	The Archdiocese Corporation learns of Wehmeyer's abuse and reports it to the Saint Paul Police Department. (Compl. 24.)

Even accepted as true, these factual allegations do not assert that anyone in Archdiocese Corporation management knew of Wehmeyer's criminal conduct with the Victims, prior to June 2012, and authorized, tolerated, or ratified it with the intent to benefit the Archdiocese Corporation. Indeed, they fell far short. The remaining allegations include topics as wide ranging as: (1) whether 20 years before the abuse Wehmeyer was a good candidate for the priesthood for reasons wholly unrelated to child abuse (including his work ethic, academic proficiency, anxiety, and depression); (2) a loitering citation not involving children; (3) remarks to adults who were allegedly "younger- looking;" (4) failing to submit written reports allegedly required under the POMS system; (5) incidents suggesting Wehmeyer may have been a homosexual; (6) failing to run an out-of-state background check that would have turned up the DUI the Archdiocese Corporation was not aware of; (7) whether Wehmeyer was ill-suited to manage a parish merger; and (8) years after the abuse Wehmeyer was struggling in his ministerial responsibilities and personal life. None of these allegations have any bearing on

whether the Archdiocese Corporation or anyone could have predicted and prevented Wehmeyer's abuse of the Victims. *See Columbia Heights School District*, 2016 WL 22407, at *6 (holding "[s]exual abuse will rarely be deemed foreseeable in the absence of prior similar incidents"). Indeed, even if these allegations are accepted as true, they fail to establish the Archdiocese Corporation knew of Wehmeyer's criminal conduct or intended to authorize or even tolerate the criminal conduct.

There is no allegation that the Archdiocese Corporation had knowledge that Wehmeyer abused the Victims or other minors before it learned of the abuse, and reported it, in June 2012. There is no allegation that the Archdiocese Corporation approved of, or gave its permission, for Wehmeyer to go camping with the Victims or provide them with drugs, tobacco, and alcohol.

Moreover, the Complaint establishes that the Archdiocese Corporation responded to these events in an attempt to impede any misconduct. Archdiocesan Corporation personnel convened a meeting and instructed Wehmeyer not to use the boys' restroom. (Compl. 7.) Archdiocese Corporation personnel told Wehmeyer that he was not allowed to camp with the Victims. (Compl. 16, 19.) Archdiocese Corporation personnel explicitly told the Victims' mother that she should not allow her kids to camp with Wehmeyer. (Compl. 19.) Wehmeyer was required to undergo a mental health evaluation. (Compl. 8-10.) Wehmeyer was forced to enroll in a monitoring program. (Compl. 12-15.) Whether these efforts were successful in preventing the abuse is irrelevant to the criminal analysis.

With the benefit of hindsight, the State contends that the Archdiocese Corporation should have done more, but such assertions amount to negligence at best.[6] That is simply insufficient to

[6] Indeed, the Complaint explicitly asserts the negligence standard. *See* Compl. 14 ("Defendant knew or should have known that its POMS monitoring program was ineffective, inadequate and essentially 'window dressing.'" (emphasis added)).

satisfy criminal liability under sections 260B.425 or 260C.425. Negligence is not sufficient for a gross misdemeanor conviction. *See Rogers v. United States*, 422 U.S. 35, 47 (1975) (Marshall, J., concurring) (stating courts "have long been reluctant to infer that a negligence standard was intended in criminal statutes"); *Wohlsol*, 670 N.W.2d at 296-97 (requiring knowledge before company could be criminally liable for actions of its employees); *Guminga*, 395 N.W.2d at 349 (vicarious liability without knowledge is unconstitutional). Because the State does not allege that the Archdiocese Corporation knew of the criminal conduct or intended its acts, words, or omissions would encourage, cause, or contribute to the Victims' delinquency or need for protection or services, the Complaint fails to allege a required element of its claims and the charges should be dismissed.

II. THE STATE'S ACTION THROUGH ITS CRIMINAL COMPLAINT VIOLATES THE UNITED STATES CONSTITUTION AND THE MINNESOTA CONSTITUTION.

Even if the Complaint alleged facts that constituted the crimes alleged, the power of the State to prosecute a religious corporation for uniquely religious decisions is further constrained by the First Amendment of the United States Constitution and the Minnesota Constitution, which prohibit the State from interfering with the "free exercise" of religion. Indeed, this basic freedom limits the Court's subject matter jurisdiction. Notwithstanding these plain and well-understood limits on State power, which are central to our nation's freedom of religion, the State is nevertheless pursuing a criminal action against a religious corporation based on the decision of the Catholic Church to ordain and to retain Curtis Wehmeyer as a priest and pastor. The fact that the State is criminally prosecuting a religious corporation does more violence to these constitutional protections than virtually all of the cases in which courts have addressed the Establishment Clause. The criminalization of decisions to ordain any individual as a priest under canon law is without precedent. By its very nature, the criminal action brought by the State is

designed to punish a Church for the decision to ordain and to assign a priest—to criminally punish a Church for religious decisions the State contends were incorrect. No matter how one might feel, as a citizen, about a church's internal governance and religious decisions, the State is expressly prohibited by the United States Constitution and the Minnesota Constitution from taking action regarding those decisions. Were the State permitted to proceed in this criminal case, other religious organizations would be chilled in their own religious decisions for fear of state action. This is precisely the danger the Constitution protects against.

A. The Complaint Is Based On Religious Decisions, Doctrines, And Policies.

Relying exclusively on canon law and the authority of the Archbishop under canon law, the Complaint asserts the Archdiocese Corporation, a religious corporation, "contributed to the need for services" by (1) ordaining Wehmeyer as a priest, (2) promoting him to pastor at Blessed Sacrament where the Victims were parishioners and retaining him as pastor, and (3) failing to supervise Wehmeyer as a priest. (Compl. 6-24.) As set forth below, each of these bases requires investigation, interpretation, and evaluation of church doctrine, religious decisions, canon law, and church policies and programs ("religious evidence").

1. The Complaint Alleges that the Archdiocese Corporation Should Not Have Ordained Wehmeyer.

The State alleges that the Archdiocese Corporation criminally "contributed" to Wehmeyer's sexual assault of the Victims when it ordained Wehmeyer a priest even though the Archbishop "[was] alerted [that] Wehmeyer [was] not a good fit for priesthood." (Compl. 6.) Specifically, the Complaint alleges that prior to admitting Wehmeyer to the seminary, seminary officials knew that Wehmeyer "had a history of abusing alcohol and marijuana, experimented with other drugs, was promiscuous with men and women, was on medication for low-level depression, and was in therapy." (Compl. 6.) The Complaint also alleges that seminary officials

had concerns about Wehmeyer while he was training for the priesthood, including that he "had trouble functioning in social settings, had difficulty making decisions, vented his frustrations in ineffective and misguided ways, and appeared needy and distant." (Compl. 6.)

According to the State, the decision to ordain Wehmeyer as a priest is a proper basis to hold the Archdiocese Corporation criminally liable for Wehmeyer's subsequent criminal conduct.

2. The Complaint Alleges Wehmeyer Should Not Have Promoted or Retained.

The Complaint also alleges the Archdiocese Corporation criminally "contributed" to Wehmeyer's sexual assault of the Victims based on Wehmeyer's assignment as a parochial administrator at Blessed Sacrament Parish in Saint Paul and his promotion to pastor of Blessed Sacrament and St. Thomas the Apostle Church. (Compl. 15, 17.) According to the State, the Archdiocese Corporation can be held criminally liable for this religious judgment of the Archbishop to assign and promote Wehmeyer as priest. Indeed, the Complaint goes through, in great detail, what some individuals within the Church knew and what was possibly knowable to the Church thru diligence. The very nature of this effort demonstrates the State's improper effort to substitute its own judgment and to punish the religious determination to assign Wehmeyer as a priest.

3. The Complaint Alleges that the Archdiocese Corporation Failed To Properly Supervise Wehmeyer.

Finally, the Complaint alleges that the Archdiocese Corporation criminally "contributed" to Wehmeyer's sexual assault of the Victims based on how it implemented its own policies and procedures for supervising priests. (Compl. 12-30.) Among other things, the Complaint alleges that the following eleven church programs, policies, and bodies were generally insufficient or insufficient with respect to Wehmeyer: (1) First Sexual Abuse of Minors Policy (Compl. 26);

(2) Understanding Sexual Issues in Ministry (Compl. 26); (3) Background Check Policy (Compl. 17, 26); (4) Clergy Review Board (Compl. 26-27); (5) Charter for the Protection of Children and Young People (Compl. 27); (6) VIRTUS Training (Compl. 21, 27-28); (7) Promoter of Ministerial Standards Program ("POMS") (Compl. 12-15, 21, 28); (8) Essential Norms for Diocesan/Eparchial Policies (Compl. 28); (9) Restoring Trust: With God All Things Are Possible (Compl. 28-29); (10) Justice in Employment (Compl. 29); and (11) Acceptable Use and Responsibility for Electronic Communications (Compl. 29). The Complaint alleges, among other things, that these "policies and procedures lacked enforcement and institutional oversight," and thus criminally contributed to the Victims' delinquency and need for services. (Compl. 25.) Again, the facts alleged in the Complaint reflect the State's effort to superimpose its judgment on how the Church make determinations regarding who should be a priest and whether they are fit for ministry.

B. The State's Criminal Action, As Set Forth In The Complaint, Violates The United States Constitution and The Minnesota Constitution.

The First Amendment of the United States Constitution, which applies to the states through the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. 1; *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The United States Supreme Court interprets the First Amendment as prohibiting state action that fosters excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971). In application, the Establishment Clause prohibits the State from "inquir[ing] into or review[ing] the internal decision making or governance of a religious institution." *Odenthal v. Minn. Conf. of Seventh-Day Adventists*, 649 N.W.2d 426, 435 (Minn. 2002) (explaining that the Establishment Clause limits investigation, interpretation, and evaluation of religious decisions, doctrines, and policies (citing *Jones v. Wolf*, 443 U.S. 595, 602 (1979)). In

other words, "[w]hen claims involve 'core' questions of church discipline and internal governance, the [United States] Supreme Court has acknowledged that the inevitable danger of governmental entanglement precludes judicial review." *Black v. Snyder*, 471 N.W.2d 715, 720 (Minn. Ct. App. 1991) (citing *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 717, 721 (1976)). That government entanglement arises through "the official judicial act of conviction." *State v. Bussmann*, 741 N.W.2d 79, 94 n.8 (Minn. 2007). Moreover, as the Minnesota Supreme Court has acknowledged, a "district court's evidentiary rulings allowing the admission of [religious] testimony may themselves [be] sufficient state action to entangle the court with religion." *Id.* (emphasis added.)

The Minnesota Constitution, for its part, affords "distinctly stronger" protection than its federal counterpart, precluding "even an infringement on or an interference with religious freedom." *State v. Hershberger*, 462 N.W.2d 393, 397 (Minn. 1990). Under either the United States or Minnesota Constitution, the question is one of subject matter jurisdiction. *See J.M. v. Minn. Dist. Council of Assemblies of God*, 658 N.W.2d 589, 594-95 (Minn. Ct. App. 2003). The Minnesota Supreme Court interprets both the United States and Minnesota Constitutions as protecting against prosecutions based on investigation, interpretation, and evaluation of church policies and decisions. Of course, the danger of entanglement and the consequences of such entanglement are much greater in this case than in most. Not only does the Court need to assess religious evidence, but the action itself seeks to criminally punish a religious corporation for its decision to ordain and retain a priest.

In *State v. Bussmann*, the Minnesota Supreme Court considered whether a Catholic priest's conviction under Minn. Stat. § 609.344, subd. 1(*l*)(ii) (2006) (the "clergy sexual conduct statute"), violated the Establishment Clause, "based on the admission of extensive evidence

concerning religious doctrine and church policies and practices." 741 N.W.2d at 81 (emphasis added). In that case, the State had offered, and the district court had allowed, "extensive evidence regarding the Catholic Church's doctrine on the religious power of priests over parishioners; the Church's official policy on counseling and pastoral care; the Church's concerns about priest sexual misconduct; and the Church's official investigation and findings regarding [the priest's] behavior." *Id.* at 92-94 (explaining, in more detail, that testimony had described: (1) the "Catholic Church doctrine concerning the power of priests over parishioners," (2) "potential abuses of that power in religious terms," (3) the "concern of the Catholic Church with the increased number of complaints about sexual conduct," (4) "the Catholic Church's response [to that concern], which includes training, public education, financial, emotional, and spiritual assistance to victims, and support for efforts to create civil and criminal remedies for violations," (5) that "the Church's most important solution to the growing number of complaints was to name the perpetrator and to declare the conduct wrongful," (6) "religious training that [the priest] had received and the complaints that had been made to the Church about [the priest's] behavior," and (7) the "determination by the Catholic Church that [the priest] had violated his priestly authority").

The Minnesota Supreme Court admonished the State and the lower court: "[V]irtually all of this testimony lacked foundation to connect it to any secular standard, was irrelevant to any secular standard, was inadmissible hearsay evidence, and was highly prejudicial." *Id.* at 93. Based on the admission of that evidence alone, the Court reversed the priest's conviction, stating:

> [T]he [district] court allowed the religious doctrine of the Catholic Church to become entangled with the criteria set out in the [criminal statute] for determining the criminality of [the priest's] conduct. The jury's verdict was based on this evidence, and was unavoidably entangled with the religious doctrine introduced into evidence by the state.

Id. at 94-95. The Court then awarded the priest a new trial. *Id.* at 95.

Other Minnesota cases are in accord: the correct examination of whether a claim can be resolved neutrally, and thus not present entanglement issues, is to determine whether the evidence upon which the claim is based is secular. *See, e.g.*, *State v. Wenthe*, 839 N.W.2d 83, 84, 92-95 (Minn. 2013) (reiterating that the State should be restricted in its use of religious evidence to avoid the risk "that the jury may . . . assess[] the criminality of the defendant's conduct based on religious doctrine and not on the secular elements in the statute," but upholding Wenthe's conviction on the ground that the evidence presented in *Wenthe* was "vast[ly] relevant [and had] secular purposes," and thus "the nature of that evidence [wa]s qualitatively and quantitatively different from the evidence the State presented in *Bussman*"); *Olson v. First Church of Nazarene*, 661 N.W.2d 254, 263-66 (Minn. Ct. App. 2003) (allowing employment-based claims that did not involve examination of religious doctrines or practices to go forward, but holding that claims that required examination of "a religious entity's determination of what information about church members its congregation is entitled to know and how that information is provided to the congregation risks excessive entanglement"); *J.M. v. Minn. Dist. Council of Assemblies of God*, 658 N.W.2d 589, 594-95 (Minn. Ct. App. 2003) (holding that determinations of how information regarding a pastor's former employment "should be used in a hiring decision would force the court into an examination of church doctrine governing who is qualified to be a pastor" and thus "the district court does not have subject matter jurisdiction over . . . claims involving . . . hiring"). *Cf. C.B. ex rel. L.B. v. Evangelical Lutheran Church in Am.*, 726 N.W.2d 127, 137 (Minn. Ct. App. 2007) (holding that the court has subject matter jurisdiction over claims that "do not require us to interpret doctrinal matters").

C. The Court Is Without Subject Matter Jurisdiction And The State's Criminal Action Must Be Dismissed.

The State's case as set forth in the detailed Criminal Complaint falls squarely into the subject matter the Minnesota Supreme Court has held to be protected by the Constitution. Moreover, this case—unlike the others—is brought by the State against a religious corporation in an effort to punish a uniquely religious decision. The Complaint bases the State's charges primarily and substantially on church doctrine, religious decisions, canon law, and church policies and programs. Thus, to reach a conviction here, the jury and the Court will necessarily have to make impermissible interpretations and evaluations of religious evidence.

First, the decision to ordain or promote a priest is religious in nature, and evaluation thereof causes excessive entanglement. *See, e.g.*, *J.M.*, 658 N.W.2d at 594 ("[Appointment and discharge] claims are fundamentally connected to issues of church doctrine and governance." (quoting *Black*, 471 N.W.2d at 720) (alterations in original)). Second, evaluation of the decision to retain a priest, and the decisions relating to the management of the priest, causes excessive entanglement. *See id.* For example, the Complaint criticizes the Archdiocese Corporation's recommendation that no workplace disclosure regarding Wehmeyer be made. (Compl. 22.) But just as it is a religious decision, protected from court evaluation, whether to disclose to a congregation certain information regarding a church member, so too is the Archdiocese Corporation's determination about what workplace disclosures to make regarding its clergy. *See Olson*, 661 N.W.2d at 265-66. Third, evaluation of a church's policies and response to allegations of misconduct cause excessive entanglement. *E.g.*, *Bussman*, 741 N.W.2d at 93; *Odenthal*, 649 N.W.2d at 436; *Olson*, 661 N.W.2d at 265-66.

Moreover, the same type of evidence that the Minnesota Supreme Court ruled inadmissible in *Bussmann* and focused on in *Wenthe* provides the basis of the State's charges

here. For example, and as discussed above, the Complaint is replete with allegations relating to "concerns about priest sexual misconduct" as they relate to Wehmeyer, other priests, and the Catholic church at large (*e.g.*, Compl. 6, 7-9, 11-16, 25-38). *Wenthe*, 839 N.W.2d at 92. Likewise, the Complaint does not simply mention the "official policies of the Catholic church." The State spends five full pages describing those policies and various programs (*e.g.*, Compl. 12-17, 19-21, 25-29). *Id.* In addition, the Complaint criticizes the Archdiocese Corporation's "response to allegations of sexual misconduct" (*e.g.*, Compl. 7-10, 12-15, 19, 23, 24-29). *Id.* Finally, the Complaint highlights the "religious training" Wehmeyer received (*e.g.*, Compl. 6, 12-14). *Id.* The above evidence lacks any connection to secular standards and is highly prejudicial. *Bussmann*, 741 N.W.2d at 93. The nature and extent of the facts alleged in the Complaint far exceed the concerns identified by the Minnesota Supreme Court in *Bussmann* and *Wenthe*: the State is asking the Court and a jury to pass judgment on a religious corporation for a religious judgment based on religious evidence. It is unprecedented. The risks of a chilling effect on churches is without equal. Decisions by the Court regarding the admissibility of the evidence risk improper infringement; a verdict is plainly unconstitutional and must not be allowed. *Bussmann*, 741 N.W.2d at 94-95.

III. THE CHARGES ARE UNTIMELY AND MUST BE DISMISSED.

Even if the Complaint could survive the substantial legal deficiencies outlined above, it is also untimely. The Complaint was filed on June 3, 2015. Counts 1, 3, and 5 of the Complaint allege the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 1, Victim 2, and Victim 3, in violation of Minn. Stat. § 260C.425. (Compl. 1-2.) Counts 2, 4, and 6 of the Complaint allege the Archdiocese Corporation encouraged, caused, or contributed to the delinquency or status as a petty offender of Victim 1, Victim 2, and Victim 3, which is prohibited by Minn. Stat. § 260B.425. (Compl. 1-2.)

Neither of the statutes the Archdiocese Corporation allegedly violated contain a unique statute of limitations. *See* Minn. Stat. §§ 260B.425, 260C.425. Accordingly, the criminal code's default limitation period applies. Pursuant to the default rule, a criminal complaint must be "filed in the proper court within three years after the commission of the offense." *See* Minn. Stat. § 628.26(k).

While the Complaint does not specify which allegations pertain to which charges, the only allegations relating to the Victims' delinquency and status as juvenile delinquents are that Wehmeyer provided them with pornography, alcohol, cigarettes, and/or marijuana. Specifically, the only accusations supporting the § 260B.425 contribution charge are that:

- Throughout the summer of 2010 Wehmeyer provided Victim 1 with marijuana and beer, and showed him pornographic videos and still images on a laptop;
- In July or August 2010, "Wehmeyer provided Victim 1 and Victim 2 with beer and cigarettes, and offered them marijuana;"
- "[W]hile on a camping trip in 2009, Wehmeyer provided Victim 3 with beer, alcohol, and marijuana;"
- Wehmeyer provided alcohol and marijuana to Victim 3 on a camping trip in Wisconsin "in the summer of 2011."

(Compl. 4-5.)

Whether or not the Archdiocese Corporation somehow caused or contributed to Wehmeyer's decision to provide illicit materials to the Victims, the criminal charges against the Archdiocese Corporation concern conduct that occurred more than three years before the Complaint was filed on June 3, 2015. Indeed, Wehmeyer last provided these illicit materials to one of the Victims in 2011, four years before the Complaint was filed. (Compl. 4-5.) Pursuant to statute of limitations, the charges are untimely and must be dismissed. *See* Minn. Stat. § 628.26(k) (criminal complaints must be filed "within three years after the commission of the offense").

Counts 1, 3, and 5 of the Complaint, which allege that the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 1, Victim 2, and Victim 3, are also untimely. The Victims' need for protection or services appears to be predicated solely upon Wehmeyer's sexual abuse. *See* Compl. 5 ("Because of Wehmeyer's abuse, Victim 1 and Victim 2 have received extensive counseling, treatment and other services."). Nevertheless, the Complaint alleges that the last instance of abuse occurred in 2011. The allegations of abuse are as follows:

- Throughout the summer of 2010, Wehmeyer sexually abused Victim 1;
- Wehmeyer abused Victim 1 and Victim 2 in July or August 2010;
- Wehmeyer touched Victim 3 inappropriately in 2008;
- Wehmeyer abused Victim 3 in 2009;
- Victim 3 was abused again in 2011.

(Compl. 4-5.)

As the Complaint was filed on June 3, 2015, the State can only prosecute criminal acts, words, or omissions that occurred on or after June 3, 2012. *See* Minn. Stat. § 628.26(k). Even if the Archdiocese Corporation somehow encouraged, caused or contributed to Wehmeyer's abuse —which it did not—and thus contributed to the Victims' need for protection or services, that conduct was completed by the last act of abuse in 2011. Despite learning of the abuse in June 2012, the State failed to file the Complaint until June 3, 2015, more than three years after any possible alleged criminal act of contributing could have occurred.

The Complaint notes the Archdiocese Corporation reported the Victims' abuse when it learned of it on June 20, 2012. (Compl. 24.) The only allegation regarding any act, word, or omission arguably taken by the Archdiocese Corporation from June 3 through June 22, 2012, is that on June 6, Archbishop Nienstedt wrote a memo stating that he reviewed Wehmeyer's

chemical health assessment, referred Wehmeyer to continue counseling and stated that Wehmeyer was making progress. (Compl. 23.) The Complaint does not—and cannot—allege that this memo in any way contributed to the Victims' sexual abuse or to Wehmeyer's provision of illicit materials to the Victims, all of which had occurred more than a year earlier. Simply put, the Archdiocese Corporation cannot "encourage, cause, or contribute" to something that has already occurred. Accordingly, the latest date the Archdiocese Corporation could have "encouraged, caused, or contributed" to the victims' abuse, delinquency, or status as juvenile petty offenders was in the summer of 2010 (the first two victims) and the summer of 2011 (the third victim). As both dates fall well outside the three-year statute of limitations, they are not actionable.

Accordingly, the charges against the Archdiocese Corporation are untimely, and the Complaint must be dismissed.

CONCLUSION

For all of the foregoing substantial reasons, the Archdiocese Corporation respectfully requests that the Court dismiss the Complaint.

Dated: January 29, 2016

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