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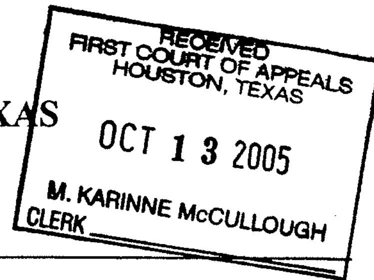
IN THE COURT OF APPEALS

FOR THE FIRST DISTRICT OF TEXAS

AT HOUSTON



HARVEST HOUSE PUBLISHERS, JOHN ANKERBERG,

and JOHN WELDON,

Defendants / Appellants

v.

THE LOCAL CHURCH, ET AL.,

Plaintiffs / Appellees

On Appeal from the 80th Judicial District Court
Harris County, Texas

BRIEF OF *AMICUS CURIAE* THE INSPIRATIONAL NETWORK, INC. IN SUPPORT OF DEFENDANTS / APPELLANTS' APPEAL

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IDENTITY OF *AMICUS CURIAE*

The Inspirational Network, Inc. is the owner and operator of INSP—The Inspiration Network, a 24-hour-a-day television network that currently serves more than 2,000 cable systems across the United States, with a growing subscriber base of more than 20 million households. INSP—The Inspiration Network features a wide variety of ministry programming from numerous denominations, as well as children's programs and original and exclusive music. INSP—The Inspiration Network telecasts Biblically-based programs that attempt to make a positive difference in people's values, behavior and their relationship to God and their fellow man. Its inspirational programming is truly diverse and ethnically balanced. Its program lineup is also informative and educational, including programming that specifically addresses both differing beliefs among various faiths and religious freedoms under the First Amendment to Constitution of the United States. For instance, on the program American Religious Town Hall, a panel of religious leaders from different faith groups discuss the beliefs of different faiths on various subjects. On ACLJ This Week, host and lawyer Jay Sekelo discusses the legal protection of religious freedoms in the United States.

The Inspirational Network, Inc. is also the owner and/or operator of three other television networks: Inspirational Life Television ("i-Lifetv"), a digital television network launched in June 1998 that provides Christian lifestyle

programming that is distinct from INSP—The Inspiration Network's programming and that currently has more than 6 million digital cable television subscribers in 190 markets covering all 50 states; La Familia Cosmovision, a digital television network targeted to Hispanic families with programming that honors the traditional values of the Hispanic family and reflects the diversity of Hispanic culture; and Inspiration Network International ("INI"), a television network available to 42,000,000 homes throughout Europe, North Africa and the Middle East through two Direct-to-Home (DTH) satellites that provides ministry programming from the U.S. and Europe.

In addition, The Inspirational Network, Inc. is a publisher of books and recordings, as well as extensive Internet content. All of the books published by The Inspirational Network, Inc. focus on the application of religious principles in daily life. The Inspirational Network, Inc. also publishes a monthly periodical called *Inspiration Today,* which addresses topical religious subjects and issues. In total, all material published, printed, or electronically published by The Inspirational Network, Inc. addresses matters of religious discussion and interest.

INTEREST OF *AMICUS CURIAE*

Like Appellants Harvest House Publishers and authors John Ankerberg and John Weldon (collectively "Harvest House"), The Inspirational Network, Inc. and its subsidiaries (hereinafter collectively "INSP") disseminate material of interest

and importance to the Christian community. Speaking to millions of people in the United States and worldwide who embrace inspirational values, INSP presents television programming and distributes printed, recorded and electronic information that is committed to traditional Judeo-Christian beliefs, featuring inspirational diversity with programs that reflect Catholic, Jewish and a wide variety of Protestant perspectives. Since 1990, cable television viewers, and more recently people who turn to the Internet for information, have come to rely upon INSP for quality inspirational programming and information that is diverse and ethnically balanced.

As a source and distributor of extensive content relevant to the Christian community, The Inspirational Network, Inc., as both a religious speaker and a member of the press, has a significant interest in the free speech implications of the lower court's decision. Because The Inspirational Network, Inc. is not a party to the case, its immediate concern is not on the relatively focused issues addressed by Harvest House in its Motion for Summary Judgment, with regard to *Encyclopedia of Cults and New Religions* (hereinafter the "Encyclopedia"). Rather, The Inspirational Network, Inc. will provide the Court with a broader perspective regarding the import of the Court's decision to free speech and religious exercise jurisprudence. Participation by The Inspirational Network, Inc. will provide the Court with additional information and perspective on the free speech and religious

exercise issues raised in this appeal that will aid the Court in resolving the issues pending before it, and that may not be presented by the parties themselves.

Any and all fees incurred in connection with the preparation of this brief have been or will be paid solely by The Inspirational Network, Inc. to its own undersigned counsel.

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STATEMENT OF THE CASE

The Inspirational Network, Inc. hereby incorporates by reference the Statement of the Case submitted by Appellants Harvest House Publishers, John Ankerberg and John Weldon, on or about July 5, 2004.

ISSUES PRESENTED

1. Does the Excessive Entanglement doctrine under the First Amendment to the U.S. Constitution prevent courts from deciding the merits of this defamation claim under Texas law when it is necessary for the Plaintiffs / Appellees to travel through the gateway of the word "cult," which is a religious word dealing with opinions and "issues of fact," thus forcing the Court to delve into ecclesiastical matters?

2. Did the trial court err in denying summary judgment to Harvest House because Harvest House established that Plaintiffs / Appellees are public figures and negated actual malice as a matter of law?

STATEMENT OF FACTS

The Inspirational Network, Inc. hereby incorporates by reference the Statement of Facts submitted by Harvest House on or about July 5, 2004, and the Statement of Facts submitted by *Amicus Curiae* National Religious Broadcasters.

SUMMARY OF ARGUMENT

This case turns on the First Amendment to the Constitution of the United States. Like Appellant Harvest House Publishers and the *amici curiae* who have submitted briefs in support of the Appellants, *amicus* The Inspirational Network, Inc. and its subsidiaries are media entities and First Amendment speakers on issues of national, religious and spiritual importance. By creating and distributing television programming and other printed, recorded and electronic information that offers spiritual engagement and guidance to its viewers, listeners and readers, The Inspirational Network, Inc. and its subsidiaries exercise both the religious freedom and the freedom of speech that are guaranteed to them, and to other First Amendment speakers, under the U.S. Constitution. Like many others who engage in spiritual discussion in the marketplace of ideas, The Inspirational Network, Inc. welcomes and respects those who would challenge its message through the protected medium of speech.

Appellees (collectively the "Local Church")[1] have worked overtime to turn a *religious doctrinal dispute,* which is protected by the U.S. Constitution, into a *defamation dispute.* They have further muddied the waters by claiming that they are not being sued over being called a "cult," but rather claim that they have been

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[1] Appellees are collectively identified as the "The Local Church" throughout this brief, except with respect to individual Appellee "The Local Church unincorporated association" and with respect to the "Local Church Movement," which is separately defined in the brief.

accused of murder, rape, child sacrifice, and the like, when in truth, the religious terms "cults and new religions" are the gateway through which all of their legal arguments in this case must travel. The Court is being asked by The Local Church to ignore not only the religious context from which the entire book was written, but also to ignore the definitions of the words "cults" and "new religions" used by the authors in the introduction of the book. While The Local Church takes issue with a very small number of isolated words in the Encyclopedia that have to do with negative or criminal conduct, none of these words are ever used in reference to them. Rather, The Local Church's sole means of alleging defamation is to use the word "cult" as a gateway between the allegedly defamatory words and the unrelated mention of their organization in the book.

The lower court's decision poses a grave threat to The Inspirational Network, Inc., its subsidiaries and affiliated companies, and other religious speakers because it chills – indeed, endangers – the freedom of media entities to freely discuss the nature of God and the way Americans and people around the world choose to worship. Consistent with their litigious past, The Local Church is attempting to misuse the courts as a sword, rather than as a shield, to silence opposing points of view. To allow this case to proceed to trial, even without a verdict in The Local Church's favor, imperils First Amendment speakers and will impose a chilling effect on religious debate and free speech across the country.

It is clear from the record that the trial court erred in denying summary judgment to Harvest House. First, the Excessive Entanglement doctrine under the First Amendment prevents the Court from deciding the merits of The Local Church's claim. Courts in this country have long avoided interference in ecclesiastical matters and theological debates. In particular, courts – including Texas courts – may not render decisions where an element of a claim requires inquiry into the truth or falsity of religious dogma. Because The Local Church's defamation claim arises from the statement that *some* cults have been known to exhibit negative behavior, and from the fact that The Local Church unincorporated association happens to appear on one-and-a-half pages in a voluminous 731-page book along with 56 other religious groups, then ultimately, the Court is being asked to delve into matters of religious beliefs. The trial court cannot render a decision on the merits in this case without deciding the truth of the parties' respective religious beliefs. As such, summary judgment should have been granted to Harvest House.

Furthermore, the language at issue is incapable of giving rise to a claim for defamation under the undisputed evidence presented in the case. The Local Church admits that The Local Church unincorporated association and the Living Stream Ministry are public figures, and the evidence shows that the individual churches are public figures as well. Accordingly, in order to prevail at trial, The

Local Church would need to prove "actual malice" on the part of Harvest House. Because Harvest House has proven the absence of actual malice as a matter of law, its Motion for Summary Judgment should have been granted.

ARGUMENT

I. THE LOWER COURT SHOULD HAVE DISMISSED PLAINTIFFS' CLAIMS UNDER THE EXCESSIVE ENTANGLEMENT DOCTRINE

A. Courts Have Long Avoided Interference in Ecclesiastical Matters and Theological Debates

The Local Church's case depends on the allegation that Harvest House included The Local Church in an book about "cults." The Local Church relies on the use of the word "cult" in order to somehow tie together a connection between the allegedly defamatory words at issue and the mention of their organization. Without this contrived "link," The Local Church has absolutely no way to allege that defamation took place. The Excessive Entanglement Doctrine prevents The Local Church from establishing that link in the courts.

The Encyclopedia is a religious book that deals almost exclusively with issues of doctrine. Fundamental to this nation's constitutional jurisprudence is the principle that the First Amendment "severely circumscribes" the role of the courts in controversies over religious doctrine and practice. *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 709, 96 S. Ct. 2372, 23801 (1976). Even when courts attempt to resolve mere property disputes between rival church

groups, "there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs." *Id.* at 709. Without limits on the exercise of judicial authority over such disputes, the Supreme Court has noted, "the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Id.* at 710.

Texas courts, like the U.S. Supreme Court, have rigorously applied these principles under the rubric of "excessive entanglement," abstaining from interference in disputes between religious groups when interpretation of religious doctrine is at issue. In 1996, for example, this Court affirmed the dismissal of defamation and intentional infliction of emotional distress claims brought by a priest against a defendant bishop and diocese for statements made indicating that the priest had been "excommunicated." *Tran v. Fiorenza,* 934 S.W.2d 740 (Tex. App., 1st Dist., 1996). The Court reasoned that determining the "truth," for defamation purposes, of the church's statement that the priest had been excommunicated invariably would concern "ecclesiastical matters," thus potentially intruding into the realm of, *inter alia,* theological controversy or the conformity of church members to standards of morality. *Id.* at 743. Accordingly, this Court held that, under the First Amendment, the trial court correctly had granted summary judgment to the defendant bishop and diocese. *Id.* at 744.

This Court is not alone in the Courts of Appeals in applying "faithfully" the principles behind *Milivojevich.* For example, in *Turner v. Church of Jesus-Christ of Latter-Day Saints,* the Dallas Court of Appeals refused to decide various tort and contract claims alleged by a former missionary against the Mormon church, reasoning that a decision would violate both the Establishment and Free Exercise clauses. 18 S.W. 3d 877 (Tex. App., 5th Dist., 2000) (upholding summary judgment in favor of the defendant church). In particular, the Dallas Court of Appeals rejected the missionary's claims, which were based on the church's revocation of his "Temple Recommend" status and privileges, because such status was based on an individual's history of adherence to church doctrine – an impermissible inquiry by courts under the First Amendment. *Id.* at 895-96. The Court also dismissed the missionary's claims alleging inadequate training by the church, noting that allowing such claims to be litigated would require the courts to consider whether such training rendered him prepared to preach the gospel of the church, constituting excessive government involvement in "the religious activity of training missionaries." *Id.* at 892.

Other Texas Courts of Appeals have reached similar conclusions. *See, e.g., In re Pleasant Glade Assembly of God,* 991 S.W.2d 85, 89 (Tex. App., 2nd Dist., 1998) (dismissing tort claims brought by a parishioner against a church that "would involve a searching inquiry into Assembly of God beliefs and the validity

of such beliefs"), *withdrawn by the court upon plaintiffs' bankruptcy filing,* 1998 Tex. App. LEXIS 7545 (Dec. 3, 1998), 1999 Tex. App. LEXIS 219 (Jan. 13, 1999), *aff'd in part and rev'd in part on other grounds,* No. 2-02-264-CV, 2005 Tex. App. LEXIS 4457 (Tex. App., 2nd Dist. June 9, 2005); *Patterson v. Southwestern Baptist Theological Seminary,* 858 S.W.2d 602, 605-06 (Tex. App., 2nd Dist. 1993) (affirming dismissal of a priest's wrongful termination suit because the seminary's bylaws identified "largely religious criteria," including whether priests were faithful members of the church and subscribed to church doctrine, as employment requirements). In many instances, these decisions even concluded that the trial court lacked subject matter jurisdiction in the first instance simply because the claims raised the potential for "excessive entanglement" of the courts into religious matters. *See, e.g., Hawkins v. Friendship Missionary Baptist Church,* 69 S.W.3d 756, 758-59 (Tex. App., 14th Dist., 2002) (concluding trial court lacked subject matter jurisdiction over an ecclesiastical matter); *Williams v. Gleason,* 26 S.W.3d 54, 59-60 (Tex. App., 14th Dist., 2002) (same); *Dean v. Alford,* 994 S.W.2d 392, 395-96 (Tex. App., 2nd Dist., 1999) (same).

B. Courts May Not Render Decisions Where an Element of a Claim Requires Inquiry into the Truth or Falsity of Religious Dogma

In the present case, the element of the claim that requires the Court's inquiry into religious matters is the usage of the word "cult." The authors made it very clear in the Encyclopedia that "for our purposes, and from a Christian perspective,

a cult may be briefly defined as 'a separate religious group generally claiming compatibility with Christianity, but whose doctrines contradict those of historic Christianity and whose practices and ethical standards violate those of biblical Christianity'" (p. xxii). Thus, given this definition and given the fact that The Local Church is using the word "cult" as a bridge between the allegedly defamatory words and the mention of their organization, this case is religious in nature.

The long history of such cases in the Texas courts makes it clear that both the federal courts and the Texas judiciary carefully and consistently avoid any intrusion upon ecclesiastical affairs. This is even more critical when a case, like the one presently before this Court, requires the judiciary not only to *intrude* upon ecclesiastical matters, but to *make findings* regarding the truth or falsity of religious doctrine – and ultimately to make determinations about a book or a word that is religious in its substance, meaning and context.

At the heart of this nation's Establishment clause jurisprudence lies the oft-quoted principle, cited by the U.S. Supreme Court well over a century ago: "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones,* 80 U.S. 679, 728 (1872). It is well beyond the purview of the courts to consider the validity of individual beliefs. As

the Supreme Court has consistently recognized, the freedom of belief is one of the guiding principles on which the Constitution was originally drafted:

> Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.... The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views.

United States v. Ballard, 322 U.S. 78, 86-87, 64 S. Ct. 882, 886-87 (1944).

Ballard concerned a jury instruction issued in a criminal trial for mail fraud to disregard the truth of the defendants' religious beliefs, as claimed in the literature the defendants distributed through the mail. Those beliefs included claims that the defendants had been selected as divine messengers, and that they had attained the power to heal others. *Id.* at 79-80. The Supreme Court concluded that the trial court properly withheld from the jury "all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents," noting that: "The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain." *Id.* at 87. Thus, as the Court held in *Ballard,* the First

Amendment precludes the courts from deciding the truth or falsity of religious doctrine.

In *Tilton v. Marshall*, the Texas Supreme Court applied *Ballard* and reached this same conclusion in 1996, holding that both the U.S. and Texas Constitutions precluded a fact finder from deciding the truth or falsity of certain religious representations, upon which claims of fraud, conspiracy and intentional infliction of emotional distress were based. *See Tilton v. Marshall,* 925 S.W.2d 672 (Tex. 1996). In *Tilton,* Pastor Robert Tilton claimed that "the Holy Spirit [was] prompting [him]" to make televised demands for donations, that he would "personally and actually read, touch and pray" over prayer requests accompanied by monetary donations, and that the donor would thereby receive whatever he or she had requested. *Id.* at 676, 679. Certain members, who made considerable donations based on Tilton's claims, sued for fraud, conspiracy, and intentional infliction of emotional distress. The Texas Supreme Court noted that as a rule, "no claim of fraud may be made if it rests on a representation of religious doctrine or belief – even if insincerely made." *Id.* at 678. Applying this principle, the Court first concluded that the plaintiffs could not prevail on theories of fraud or conspiracy to the extent that such claims were based on the truth or falsity of Tilton's religious representations, such as his representations that he was moved by the Holy Spirit to demand money from them, and that God would manifest himself

in their lives if they "worship[ped] him with sacrificial offerings." *Id.* at 679-80. The Court also rejected the possibility of *any* recovery by plaintiffs for intentional infliction of emotional distress, a claim that requires proof that a defendant's conduct was outrageous and extreme, because "[w]e would expect too much to ask any trier of fact to disregard consideration of the truth or falsity of a religious representation when deciding whether it is outrageous and extreme." *Id.* at 681.

Following the Texas Supreme Court's ruling in *Tilton,* the Dallas Court of Appeals reached the same conclusion in 1999 with respect to claims later brought against the same defendants for negligent misrepresentation and breach of fiduciary duty. *Smith v. Tilton,* 3 S.W.3d 77 (Tex. App., 5th Dist., 1999). The Court upheld summary judgment for defendants on these claims, noting that: "One of the elements of a negligent misrepresentation claim is that the defendant supplied false information. Thus, proving negligent misrepresentation as alleged by appellant requires the trial court to inquire into the truth or falsity of appellees' representations of religious beliefs."[2] *Id.* at 85-86. The Court similarly reasoned: "Any inquiry into whether appellees breached any fiduciary obligations would necessarily involve the truthfulness or falsity of the representations." *Id.* at 87.

[2] The Dallas Court of Appeals did, however, reverse the grant of summary judgment to defendants on these claims to the extent that letters mailed to the plaintiff included representations about the amount of money she and/or her husband previously had pledged to the church. *Smith,* 3 S.W.3d at 87-89.

The rule established in *Tilton* must apply here because, like the fraud, negligent misrepresentation, intentional infliction of emotional distress, and breach of fiduciary duty claims at issue in *Tilton*, The Local Church's defamation claim would require the Court to inquire into the truth or falsity of The Local Church's representation of religious beliefs. As with fraud and misrepresentation, falsity is an element of any libel claim under Texas common law. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 580 (Tex. 1994) (stating that "defamatory statements must be false in order to be actionable"). When it becomes clear, as in *Tilton* and *Smith,* that a court cannot determine whether an element of a claim is met without deciding the truth or falsity of a defendant's religious belief, the claim must be dismissed as barred by the First Amendment.

Texas is far from alone in refusing to allow its courts to be the arbiters of religious truth. For example, the Supreme Court of Alaska ruled in 2001 that a defamation claim based on allegations similar to those at issue in the present case were barred by the First Amendment:

> Living Word's allegedly defamatory statements in this case – that Wasilla Ministries is a "cult" and that Sands is a "cult recruiter" – are pronouncements of religious belief and opinion. Because these are not factual statements capable of being proven true or false, they are not actionable as a basis in a defamation claim.... It is not factually verifiable whether a certain church is a "cult" or whether church members are "cult recruiters." Instead, these are statements of religious belief and opinion. Therefore, if [plaintiff's] complaint

> could be construed to contain a cause of action for defamation, this cause of action is not actionable under the First Amendment.[3]

Sands v. Living Word Fellowship, 34 P.3d 955, 960 (Alaska 2001) (internal citations omitted). A federal district court in New York previously had reached the same conclusion in a defamation action brought by the Church of Scientology, dismissing as barred by the First Amendment a defamation claim based in part on the representation that Scientology "may be one of the most powerful religious cults in operation today…." *Church of Scientology of California v. Siegelman,* 475 F. Supp. 950, 955 n.14 (S.D.N.Y. 1979). In *Siegelman,* the Court also reached this conclusion on more factually-oriented, less overtly religious statements that, for example, "Scientology does not lead people beyond faith to absolute certainty it leads them to levels of increasingly realistic hallucination," and that "personal interviews with former Scientology higher-ups…are replete with allegations of psychological devastation, economic exploitation, and personal and legal harassment of former members and journalists who speak out against the cult." *Id.* at 955 nn. 13, 14.

[3] Other courts have reached the same conclusion when considering defamation claims based on representations that, for example, a defendant was a bigamist or had misrepresented his status as a priest. *See Hartwig v. Albertus Magnus College,* 93 F. Supp. 2d 200, 218-19 (D. Conn. 2000) (dismissing defamation claim based on priest's former employer's statement that priest had been terminated for falsely representing his status as a priest, where resolution turned on canon law interpretation of whether ordained priests remain priests for life); *Klagsbrun v. Va'ad Harabonim of Greater Monsey,* 53 F. Supp. 2d 732, 740-42 (D. N.J. 1999) (dismissing a defamation claim on First Amendment grounds because "to ascertain whether the statements were defamatory, this court must ask whether Seymour Klagsbrun was in fact engaged in bigamy *within the meaning of the Orthodox Jewish faith*" (emphasis in original), which "by its very nature necessitates an inquiry into religious doctrine"); *see also Anderson v. Worldwide Church of God,* 661 F. Supp. 1400, 1401 (D. Minn. 1987) (dismissing, on First Amendment grounds, fraud claim based on representation that the world was coming to an end).

C. The Lower Court Cannot Render a Decision on the Merits in This Case Without Running Afoul of the First Amendment

In the present case, the problem with the trial court's refusal to dismiss the Complaint is that the exercise of jurisdiction by the court *demands* that the defendant authors and publisher "answer to" the court "for the verity of [their] religious views." *Ballard,* 322 U.S. at 86-87. The Local Church accuses Harvest House of defamation through identifying The Local Church as a "cult." In its Petition, The Local Church alleges: "the Encyclopedia's introduction specifically attributes [certain activities] to "cults" *and therefore to Plaintiffs....* " (Petition, ¶ 16.) Thus, all of the specific activities that The Local Church claims that Harvest House ascribed to it arise from The Local Church's fundamental allegation that Harvest House identified it as a "cult." As such, The Local Church's claims are similar to the defamation claims made in *Siegelman* and *Sands*. *Siegelman*, 475 F. Supp. 950; *Sands,* 34 P.3d 955. Just as the courts did in *Siegelman* and *Sands,* this Court should dismiss the claim against Harvest House in order to avoid violating the First Amendment.

In its brief, Harvest House argues persuasively that none of the statements at issue regarding conduct is specifically "of and concerning" The Local Church. To the contrary, the statements made in connection with The Local Church are strictly doctrinal in nature and have to do with religious opinion. The Court could not classify these statements as defamatory without engaging in an inquiry into the

verity of the parties' respective religious beliefs. Furthermore, the Introduction to Harvest House's publication uses the word "cult" as "a religious term," and notes that the term " 'spiritual counterfeits' or 'heretical groups' is just as fitting and in some ways more preferable" than the word "cult." (Introduction, at XXI.) The Introduction also cites to *Webster's Third New International Dictionary* (unabridged), and notes that only the following definitions from that source are "applicable to the topics in this Encyclopedia." (*Id.* at XXII.) Among those definitions is "a religion regarded as unorthodox or spurious."[4] (*Id.*)

As the Supreme Court of Alaska recently recognized in *Sands,* courts cannot render judgment on whether the word "cult" is defamatory without running afoul of the excessive entanglement doctrine. 34 P.3d at 960. For this Court to decide the truth or falsity of whether The Local Church can properly be identified as a "cult," the Court would have to decide whether The Local Church adheres to beliefs that are "spurious," "counterfeit" and false. Similarly, The Local Church claims defamation based on the assertion in the Encyclopedia's "Doctrinal Appendix" that such cults "universally promote idolatry" through "worship of a false concept of God or . . . worship of an actual idol." (Doctrinal Appendix, at 721.) To render judgment on these issues, the Court would be forced to decide, as

[4] The other "applicable" definitions are even less offensive or harmful: "(1) religious practice: worship; (2) a system of belief and ritual connected with worship of a deity or a spirit, or a group of deities or spirits; (3) the rites, ceremonies and practices of a religion as the *cultus* of Roman Catholicism, involving ceremonial veneration paid to God, Virgin Mary or the saints . . . (6) excessive devotion to a person, idea or thing." (Introduction, at XXII.)

a matter of jurisprudence, which of the parties believes in the true God. This would amount to a trial of heresy, a result that would be anathema to the Constitution. *See United States v. Ballard,* 322 U.S. 78, 86-87, 64 S. Ct. 882, 886-87 (1944) ("Heresy trials are foreign to our Constitution"); *Watson v. Jones,* 80 U.S. 679, 728 (1872) ("The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect").

For these reasons, the trial court's Order should be reversed, and the court below should be ordered to grant summary judgment to Harvest House.

II. THE DISCUSSION OF THE LOCAL CHURCH IN THE ENCYCLOPEDIA IS CONSTITUTIONALLY PROTECTED UNDER THE FIRST AMENDMENT

The United States Supreme Court has long recognized that a different standard applies when a public, in contrast to a private, plaintiff asserts a defamation claim. In *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the Court established that for public officials, the "constitutional guarantees require . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 279-80. In its holding, the Court recognized "[t]he general proposition that freedom of

expression upon public questions is secured by the First Amendment," and that "debate on public issues should be uninhibited, robust, and wide-open, [including even] vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Id.* at 269, 271. The Court subsequently expanded that doctrine to apply to *public figures*, as well as to public officials. *See Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155 (1967).

A. The Individual Local Churches Are Public Figures

Both the U.S. Supreme Court and the U.S. Court of Appeals for the Fifth Circuit have provided guidance regarding classification of a defamation plaintiff as a "private" individual or as a "public figure," and, in turn, the standard of proof to apply based on that classification. In the present case, all of the Appellees are "public figures" as defined by the Supreme Court and the Fifth Circuit, and the constitutional protections afforded by *Curtis* therefore apply.

In *Gertz v. Robert Welch, Inc.*, the Supreme Court appreciated the fact that private individuals are most vulnerable to injury to reputation, do not relinquish any interest "in the protection of [their] own good name," and "consequently [have] a more compelling call on the courts for redress of injury inflicted by defamatory falsehood." 418 U.S. 323, 345 (1974). Public figures, on the other hand, enjoy greater opportunities to refute falsehoods in order to minimize reputational harm, have greater access to "channels of effective communication,"

and in most cases "voluntarily expose[] themselves to increased risk of injury from defamatory falsehoods concerning them." *Id.* at 344. In addition,

> [public figures] assume[] roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Id.

The U.S. Court of Appeals for the Fifth Circuit, on appeal from the District Court for the Southern District of Texas, identified two groups of public figures: "general-purpose" and "limited-purpose." *See Trotter v. Jack Anderson Enterprises, Inc.*, 818 F.2d 431, 433 (5th Cir. 1987) (citing *Gertz*, 418 U.S. at 351). In *Trotter*, the court defined general-purpose public figures as individuals who "'achieve such pervasive fame or notoriety that [they] become[] a public figure for all purposes and in all contexts.'" *Id.* at 433 (citing *Gertz*, 418 U.S. at 351). On the other hand, "'absent clear evidence of general fame or notoriety in the community, and pervasive involvement in the affairs of society,'" an individual is more likely a limited-purpose public figure. *Id.* Such individuals "thrust[] themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved, or because they voluntarily inject themselves or are drawn into a particular public controversy." *Id.* (internal citations omitted).

Appellees conceded the public figure status of at least two parties, The Local Church unincorporated association, and Living Stream Ministry, a California non-profit corporation (collectively the "Local Church Movement" or "the Movement").[5] The Local Church Movement is a prime example of what the Supreme Court and the Fifth Circuit envisioned as a general-purpose public figure. The Movement was first founded in the 1920s by Watchman Nee in China, and was imported to the U.S. by Witness Lee in the 1960s. Today, there are approximately 25,000 members of the Movement in over 300 U.S. cities. (3rd Sup.CR 170.) This not only "thrusts" The Local Church into the public arena, but also demonstrates its "especial prominence" in society's affairs.

The Local Church Movement's continued and "pervasive involvement" in the long-standing debate over religious legitimacy further establishes it as a general-purpose public figure. Although The Local Church claims that the *Encyclopedia of Cults and New Religions* includes defamatory remarks against the church, it would be hypocritical to afford it relief when The Local Church itself has criticized orthodox religions. For decades, The Local Church has vigorously thrust itself into public religious debate by criticizing and condemning orthodox Christianity and other religions. Witness Lee, the founder of the Local Church here in the Untied States, in one of his hundreds of books, stated emphatically, "In

[5] 3 RR 64.

the eyes of God, Christendom is a great whore, an evil woman who has mixed worldly, demonic, satanic, and devilish things with the good things of Christ to produce a hellish mixture." (Witness Lee, *Revelation, Volume 1* [Anaheim, CA: Living Stream Ministry, 1999], p. 142.) Lee's criticisms, which are numerous and continue to receive widespread circulation via radio, Internet and the printed page, are expansive and extend to all of Roman Catholicism and all other Christian denominations: "We do not care for Christianity, we do not care for Christendom, we do not care for the Roman Catholic church, and we do not care for all the denominations, because in the Bible it says that the great Babylon is fallen. This is a declaration. Christianity is fallen, Christendom is fallen, Catholicism is fallen, and all the denominations are fallen. Hallelujah!" (Witness Lee, *The Seven Spirits for the Local Churches* [Anaheim, CA: Living Stream Ministry, 1989], p. 97.) It simply cannot be disputed that The Local Church Movement is a "public figure" in the purest constitutional sense of the term, given its consistent, repeated intervention in public religious debate.

What is at issue here is whether the individual local churches named as plaintiffs in the lawsuit – The Church in Houston, The Church in San Antonio, the Church in Beaumont, *et al.* – also merit "public figure" status. Based on the evidence proffered in this case, the Court must conclude that they are public figures as well. As the record shows, almost all of the individual local churches

have their own websites that invite the general public to worship with them. *See, e.g.*, <www.churchindallas.org,> <www.churchinhouston.org,> *et al.* Through pages such as "Beliefs," "Testimonials" and "Links," these websites publicize The Local Church's teachings and the beliefs and experiences of each church's individual members, inviting the public to join in their religious beliefs and practices. Each local church also publicizes its regular meeting times and locations, and in many instances notifies the public regarding its other activities in the respective community. *See, e.g.*, <www.churchinplano.org/pagecontactus.php>; <www.churchinplano.org/pageactivities.php>;<www.churchinplano.org/pagecampuswork.php>.

Perhaps most significantly, many individual local churches also advertise weekly or even daily radio broadcast programs over local radio stations. The Church in Houston, for example, lists on its website a daily program, weekdays at 9:30 a.m. on KTEK, at 1110 AM. *See* <www.churchinhouston.org/contact/index.htm >. Other Texas plaintiffs list broadcasts on other stations at different times within their respective communities. *See, e.g.*, < www.churchinbeaumont.org/contact/index.htm> (broadcasting on Saturdays and Sundays at 8:00 a.m. on KOLE, 1340 AM);

<www.churchindallas.org/contact/index.htm> (broadcasting on Sundays at 5:30 a.m. on KSKY, 660 AM).

By broadcasting their belief systems and inviting others to worship with them, these entities interpose themselves into very public arenas and actively *invite* public interaction and response. Religious legitimacy represents one of the most contentious and heated disputes that has endured for centuries. In an often-cited opinion, the Supreme Court reasoned that:

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940). Religious groups, in particular, are at the forefront of these controversies, as their legitimacy embodies the heart of some of these debates. Thus, just as politicians are public figures in the realm of political belief, religious groups should be considered public figures in the realm of religious belief, especially when the issue involves their very existence. *See Church of Scientology Int'l v. Behar,* 238 F.3d 168, 173 (2d Cir. 2001) (noting that the plaintiffs, the Church of Scientology, conceded that they are a "public figure" in their defamation suit); *see also Gospel Spreading Church v.*

Johnson Publ'g Co., Inc., 454 F.2d 1050, 1051 (D.C. Cir. 1971) (finding that the Gospel Spreading Church was a public figure based on its efforts to play an influential role in society through its substantial congregations, and receipt of special constitutional and statutory rights and exemptions, rendering its activities of "public or general concern").

In addition to the individual public activities of these individual local churches within their respective communities, the churches also overtly associate with The Local Church Movement, incorporating the Movement's teachings and writings into their own websites and thereby *benefiting* from the public activities and public involvement of the Movement, an avowed public figure. For the Court to allow these individual churches to benefit from The Local Church Movement's involvement in the public arena, while shielding them from the higher burden of proof imposed when the constitutional rights of a free press are implicated, would undermine the very purpose of the qualified immunity afford to the press.

Moreover, it would be unjustifiably inconsistent for the Court to find on the one hand that the words at issue in this suit were "of and concerning" individual local churches that are not mentioned in the Encyclopedia, but on the other hand that the individual local churches are not public figures like The Local Church Movement. Appellees cannot have it both ways. If the individual churches truly are separate and distinct entities, then the Encyclopedia discussion about the

"Local Church" does not reference the individual local churches, and there is no need to reach consideration of Harvest House's qualified immunity for those churches. Otherwise, if the various individual local churches are *not* separate and distinct entities, then the Court must find that *all* of the Appellees are public figures – as they have already conceded with respect to The Local Church unincorporated association and Living Stream Ministry.

B. The Undisputed Evidence Offered by Appellants Clearly Establishes the Absence of Any Constitutional Malice by Defendants / Appellants as a Matter of Law

Because all of the individual local churches, as well as The Local Church unincorporated association and the Living Stream Ministry, are public figures, in order to prevail at trial, they would have to prove that Harvest House acted with actual malice. *See New York Times v. Sullivan,* 376 U.S. 254, 279-80 (1964). The Texas Supreme Court has acknowledged that "actual malice" in the context of First Amendment protections differs from traditional common-law malice, in that it does not include ill will, spite or evil motive. *See Casso v. Brand,* 776 S.W.2d 551, 558 (Tex. 1989); *see also New Times v. Isaacks,* 146 S.W.3d 144, 161 (Tex. 2004) (stating "the phrase actual malice is unfortunately confusing in that it has nothing to do with bad motive or ill will, but rather is a shorthand to describe the First Amendment protections for speech injurious to reputation" (internal citations omitted)), *cert. denied,* 125 S. Ct. 2557 (2005).

Because this is an appeal of the denial of a motion for summary judgment, the burden to prove the absence of actual malice is on Harvest House. The record reflects that Harvest House has met that burden of proof. In its Motion for Summary Judgment, Harvest House established the absence of any malice as a matter of law, through undisputed evidence that the alleged "defamatory" text was drafted *before* any discussion of or references to The Local Church were even added to the Encyclopedia, thereby negating the possibility that The Local Church was maliciously targeted. Thus, Harvest House more than satisfied its burden of proof on this issue, entitling it to summary judgment. *See Hearst Corp. v. Skeen,* 159 S.W. 3d 633, 637 (Tex. 2005) (reversing Fort Worth Court of Appeals and finding that a libel defendant who negated actual malice as a matter of law was entitled to summary judgment).

The Local Church, by contrast, has offered nothing to counter the proof established by Harvest House. In its responsive brief, The Local Church bases its argument on repeated assertions that Harvest House was "predisposed" to reach a negative conclusion about The Local Church, implying that author John Weldon bore ill will towards The Local Church and thus inviting the Court into error. Moreover, The Local Church's "predisposition" claims are not supported by any case law that a predisposition can support a finding of actual malice. Although The Local Church cites *Curtis Publ'g v. Butts* for this principle, neither one of the

two consolidated cases addressed in that opinion turned on a defendant's "predisposition." 388 U.S. 130 (1967). Rather, in the first case, the Court considered whether a publisher had engaged in "highly unreasonable conduct" by ignoring contradictory sources. *Id.* at 155. In contrast, the Court *reversed* a finding of defamation liability in the second case, noting that the reporter's "dispatches in this instance, with one minor exception, were internally consistent...." *Id.* at 158-59. Notably, The Local Church itself argues that Harvest House's "predisposition" was based on its consistent, unwavering past conclusions about The Local Church. The Local Church offers no counter-evidence, nor does it even suggest, that Harvest House had any contradictory evidence in its possession that was ignored.

The facts proffered by The Local Church are more analogous to the facts in *Westmoreland v. CBS, Inc.*, 596 F. Supp. 1170 (S.D.N.Y. 1984). In that well-known case, General William Westmoreland, Commander of the U.S. Military Assistance Command in Vietnam from 1964-68, sued CBS and several of its news employees and consultants for defamation based on the allegation in a documentary that the General ordered his intelligence officers to underestimate the size of the enemy troops. *Id.* The court acknowledged that it was undisputed that one of the defendants had "persistently harbored and advanced his accusations" and "vigorously promoted the views expressed in the documentary" from 1967

through the 1982 broadcast, that a second defendant reached the same conclusions as early as 1975, and that CBS undertook its research "with the objective of confirming [the first plaintiff's accusations…." *Id.* at 1172, 1173. The plaintiff General argued that CBS's investigation was "designed to confirm a hostile premise rather than to find the truth," *id.* at 1173, just as The Local Church argues here that Harvest House was "predisposed" towards its ultimate conclusions. Notably, the *Westmoreland* court denied the plaintiff's motion for summary judgment. Finding that the undisputed facts did not support a finding of constitutional malice, the Court ruled that:

> The qualified immunity of *New York Times* protects the press against a public official's libel action based on lack of thoroughness or predisposition as long as the defendant is not shown to have published recklessly or in the belief that its assertions were false. It is difficult to conceive of an investigation conducted in so thorough a fashion that it would not be vulnerable to after-the-fact charges of inadequacy…. [A]s for bias of the reporter, in the sense of *a determined effort to confirm a previously formed suspicion*, this *does not establish malice.* Reporters of course investigate where their suspicions lie. *A previously informed belief rebuts as much as it establishes constitutional malice, as it tends to demonstrate sincerity.*

Id. at 1173-74 (emphasis added) (internal citations omitted).

Here, The Local Church charges that author John Weldon spent over ten years conducting research for anti-cult watch groups and editing related materials for distribution on college campuses. (Pltfs. Brief, at 37.) As in *Westmoreland v. CBS,* Mr. Weldon's extended research and consistent conclusions from that

research demonstrate his sincerely held beliefs and the *absence* of malice on his part.

The remainder of The Local Church's accusations of "malice" in its Brief rely on documents that were not properly before the trial court, are not now part of the record evidence in this case, and cannot be given any consideration on appeal. For example, The Local Church relies heavily on a document that purportedly contains the standards of the Evangelical Christian Publishers' Association ("ECPA"). As Harvest House noted in its objections before the trial court, that document has not been authenticated and constitutes inadmissible hearsay. However, even if the Court were to consider the document, The Local Church's reliance on it undercuts its own argument. In fact, the document lays out standards that were clearly followed by Harvest House in its publication of the material at issue. The first such standard or principle, for example, is purportedly founded on a quotation from Ephesians 4:29: "Do not let any unwholesome talk come Out Of Your mouths, but only what is helpful for building others up according to their needs, that it may benefit those who listen." According to the document, ECPA applies this language in guiding its members that "Our communication should seek to benefit others…." Yet The Local Church, while arguing that Harvest House Publishers failed to follow ECPA principles, nevertheless characterizes Harvest House Publishers as "a publisher intent on crusading against cults, and determined

to warn readers of their 'dangers'" (Pltfs. Brief, at 40), an allegation that is entirely *consistent* with the purported ECPA principles on which it relies.[6]

The unauthenticated ECPA standards further require that members "Proclaim the truth in love," such that "[e]very word we speak or write will serve to uphold the truth." *Id.* In fact, "truth" is precisely what this case is about: whether The Local Church's beliefs are "unorthodox." For the Court to decide whether Harvest House Publishers has adhered to ECPA publishing standards would, again, require the Court to render judgment on ages-old theological disputes – a judgment the Court cannot, and should not, reach.

CONCLUSION

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943). The lower court could not reach the merits of The Local Church' claim without making determinations about religious orthodoxy and the parties' competing beliefs about the nature of worship and God. The courts, however, have

[6] The Local Church also relies heavily on a California Superior Court decision, *Lee v. Duddy,* No. 540-585-9 (Super. Ct., Alamada Cty., dated June 27, 1985). This Court should not give it any weight because it constitutes a *default* victory by The Local Church in an unrelated defamation suit. In fact, the judge appears to specifically acknowledge that his findings were based entirely on the plaintiffs' evidence, with *no* cross-examination or contrary evidence presented by the defendant.

never been the correct forum for those determinations. To the contrary, those determinations can be "reached by free trade in ideas – that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which [society's] wishes can safely be carried out." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). The Local Church is an active participant in the marketplace of ideas. If The Local Church is to obtain acceptance of its beliefs and practices, it must do so by using the marketplace to persuade the public rather than by using the courts to silence commentators or critics.

For the foregoing reasons, The Inspirational Network, Inc. respectfully requests that the Court reverse the decision and order of the trial court denying Harvest House's Motion for Summary Judgment and render judgment in favor of Harvest House.

Respectfully submitted,

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Dated: October 12, 2005

CERTIFICATE OF CONFERENCE

I, Adam S. Caldwell, do hereby certify that:

1. Appellants Harvest House Publishers, John Ankerberg, and John Weldon, through their mutual counsel J. Shelby Sharpe, have consented to the participation of The Inspirational Network, Inc. in this case as an *amicus curiae* and to the filing of this brief, in particular.

2. On or about June 8, 2005, Appellees filed an opposition to the motions for admission *pro hac vice* of counsel Burt A. Braverman and Adam S. Caldwell, counsel to *amicus curiae* The Inspirational Network, Inc.. (The Court has since granted those motions.) In their opposition, Appellees represented that they refuse to consent to the participation of The Inspirational Network, Inc. as an *amicus curiae* in this proceeding. Accordingly, any further efforts to obtain consent from Appellees would be futile.

October 12, 2005

Adam S. Caldwell

Adam S. Caldwell

CERTIFICATE OF SERVICE

I, Maria C. Moran, do hereby certify that on the 12th day of October, 2005, I caused a copy of the foregoing Brief of *Amicus Curiae* The Inspirational Network, Inc. in Support of Defendants' / Appellants' Appeal to be served by first class mail upon:

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