STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

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 REPLY MEMORANDUM SUPPORTING ITS MOTION TO DISMISS THE COMPLAINT

INTRODUCTION

The State's March 21, 2016 Response to Defendant's Motion to Dismiss ("Response Brief" or "State's Resp.") makes two things plain: First, its prosecution of The Archdiocese of Saint Paul and Minneapolis, a Minnesota Corporation ("Archdiocese Corporation"), is built on principles of law never before adopted by Minnesota courts. In numerous ways—regarding the interpretation of the charged offenses, the statute of limitations, corporate criminal liability, and bedrock First Amendment doctrine—the State asks the Court to adopt new interpretations and legal doctrines to keep its prosecution of a religious corporation afloat. Second, the State's case is premised on its deep disapproval of the manner in which prior religious officials fulfilled their canonical duties to the Church and the faithful. Notably, the State did not bring charges against these officials, presumably because it determined that it could not sustain charges against the

individuals for any criminal conduct.[1] Instead, it charged a religious corporation for the canonical decisions made by a former Archbishop and other church leaders to "permit[] Wehmeyer to be put into and left in a position [as a priest]." (State's Resp. 19.) The decision to prosecute an organization rather than the purported wrongdoers is even more misguided in this case, because the consequences of any conviction of a corporation are borne by the current employees, creditors, and faithful, not the allegedly culpable former officials. In the context of the first ever prosecution of a religious corporation by the State of Minnesota, the Court must, and should, follow the Rule of Law.

In the face of the numerous deficiencies set forth in the Archdiocese Corporation's January 29, 2016 Motion to Dismiss ("Motion to Dismiss," or "Mot. to Dismiss"), the State responds by seeking leave to amend its Complaint. This itself is an admission that its original Complaint was legally deficient.[2] Even if the Court were to permit the State to amend its

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[1] Nevertheless, the State repeatedly, and improperly, asserts "culpability" for individuals who have not been charged, oftentimes based on hearsay, double hearsay, and triple hearsay of witnesses that the State hasn't even interviewed. *See, e.g.*, State's Resp. 20 (former Archbishop's culpability); State's Resp. 23 (a church official "too, by what he said, did and omitted to do with Wehmeyer encouraged, caused or contributed to Wehmeyer's sexual abuse"). It is worth noting that it is improper for a prosecutor to allege that an uncharged individual committed a crime. *In re Smith*, 656 F.2d 1101, 1106-07 (5th Cir. 1981) ("no legitimate governmental interest served" by the government's public allegation of wrongdoing by an uncharged party). Although the individuals in question have publicly denied many of these allegations, for purposes of the Motion to Dismiss, the Archdiocese Corporation will assume *arguendo* that the State could adduce evidence relating to each contention. Even so, the State still fails to allege a crime by the Archdiocese Corporation.

[2] The State asserts that its "ongoing investigation revealed additional facts." Yet an examination of the State's supporting affidavit reveals that virtually all of the exhibits were obtained by the State before the Complaint or in the summer of 2015. Among these purported "new" facts asserted by the State to support its claims is a September 2009 911 call in which a caller notified the police regarding Wehmeyer and his concern that "kids stay safe." What is actually notable about this "new" assertion is that law enforcement did not communicate the concern to the Archdiocese Corporation or apparently take any other action to protect kids

deficient Complaint, the State makes no new allegations that are relevant to the elements of the charged offense or that cure the State's deficient prosecution. Instead, the State recites 15 pages of salacious innuendo in an effort to obscure the legal deficiencies with its prosecution. The State alludes to a "robust," "personal" relationship between the former Archbishop and Wehmeyer. The State alludes to the former Archbishop's sexual orientation—a wholly irrelevant inquiry in a criminal prosecution. The State alludes to claimed comparisons between the "misconducts of Wehmeyer and misconduct attributed to [the former] Archbishop." Relying on innuendo and canon law, the State asserts criminal liability based on its contention that the former Archbishop failed to fulfill his canonical duties.

None of these new facts address the elements for establishing corporate criminal liability under well-established Minnesota secular law: Did the Archdiocese Corporation directly cause Wehmeyer's abuse of the Victims, which resulted in their delinquency and need for protection and services? Did the Archdiocese Corporation know of Wehmeyer's criminal sexual abuse of minors prior to June 2012? Did the Archdiocese Corporation specifically approve or ratify that criminal conduct? These are the relevant inquiries according to the Minnesota Supreme Court. On the requisite elements of the charged offenses, the State remains notably silent. But in the context of a criminal prosecution, the law matters.

Despite the Minnesota Supreme Court's express direction to prosecutors not to "engraft religious standards on to the statute," the prosecutors here do just that: they contend that the former Archbishop and other church leaders are guilty of a crime because they negligently failed to fulfill their canonical duties. Such an effort not only fails to comport with the statutes and

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notwithstanding the concern. According to the State's theory of criminal liability, this failure—by law enforcement—"contributed" to Wehmeyer's abuse.

secular law principles at issue, it plainly violates the United States Constitution and Minnesota Constitution. The State's lack of concern for the First Amendment limitations on its authority is evident in its belittling of the Archdiocese Corporation as "hiding" behind the First Amendment. The State should know better. If individuals committed a crime, charge them. Here, however, in plain violation of the United States Constitution and Minnesota Constitution, the State seeks to impose criminal liability on a religious corporation for the plainly canonical decisions to "permit[] an individual to be put into and left in a position [as a priest]."

To be sure, the inclusion of the sexual innuendo in the State's Response is plainly damaging to the reputations of individuals the State chose not to charge, and who, therefore, cannot defend themselves from the State's allegations in this action. Nevertheless, the new allegations—even if they could be proven to be true—fail to establish organizational criminal liability for the Archdiocese Corporation. There were crimes committed, and those crimes were committed by Curtis Wehmeyer, who has been convicted. If there are claims of corporate negligence, those are civil claims properly addressed in other proceedings, not a criminal prosecution.

ARGUMENT

I. THE COMPLAINT FAILS TO ALLEGE FACTS THAT CONSTITUTE THE OFFENSES CHARGED BY THE STATE.

A. The State Ignores The Statutory Elements And Instead Tries To Recast Its Case.

The State's argument starts with the assertion: "This case is about a religious corporation that failed to protect children from the scourge of clergy sexual abuse." (State's Resp. 18.) The State encourages the Court that "focusing on Wehmeyer avoids the core substance of the case." (State's Resp. 18.) Instead, the State claims the crime was "to continue to expose the victims to Wehmeyer." (State's Resp. 49.) These assertions are at odds with the statutes the State charged.

Consistent with the statutes that were charged, the Complaint alleges the Archdiocese Corporation "encourage[ed], caus[ed], or contribut[ed]" to the Victims' delinquency and need for protection based on Wehmeyer's conduct. (Compl. 1-2.) According to the Complaint, the Victims' delinquency and need for protection were directly caused by Wehmeyer's criminal conduct. (*See* Compl. 5. ("Because of Wehmeyer's abuse, VICTIM 1 and VICTIM 2 have received extensive counseling, treatment and other services," and "due to Wehmeyer's actions, Victim 3 received counseling, treatment, and other services").) Thus, the precise issue presented by the charges is whether the Archdiocese Corporation is criminally liable for "encouraging, causing or contributing" to the criminal conduct of Curtis Wehmeyer and the resulting consequences of that conduct.

The State's effort to recast its charge to "failing to protect" is wrong and disingenuous. The State did not, and cannot, charge the Archdiocese Corporation with Neglect or Endangerment of Child, as prohibited by Minn. Stat. § 609.378. *See* Minn. Stat. § 609.378 (limiting culpable parties to "parent[s], legal guardian[s], or caretaker[s]"). Nevertheless, that gross misdemeanor statute is instructive. It prohibits "[a] parent, legal guardian, or caretaker [from] knowingly permit[ting] the continuing physical or sexual abuse of a child." *See id.* subd. 1(a)(2) (emphasis added). The State's effort to redefine the scope of its Complaint and the statutes it charged, Minn. Stat. §§ 260B.425 and 260C.425, to include "continu[ing] to expose the victims to Wehmeyer," is an improper and illegal attempt to broaden the scope of the legislative determination to (i) cover only certain individuals with criminal liability for "Endangerment" and (ii) establish criminal liability for permitting sexual abuse of a minor only when it is done by covered individuals "knowingly." The State's effort here—to hold a religious

organization criminally liable for alleged endangerment—is improper, illegal, and unconstitutional.

In its 50 pages, the State largely ignores the statutory language of the charged offenses ("encourages, causes or contributes") and the case law that interprets that language. The State does not, and cannot, cite one case brought under these statutes against any type of organization. It simply contends that the Archdiocese Corporation is guilty because it knew priests had abused children in the past, it knew Wehmeyer presented "red flags" in terms of his fitness for ministry, and it failed to take adequate steps to protect the Victims. That might be a civil allegation at best; it has no place in a criminal prosecution.

The charging statutes require the State to allege and prove that the Archdiocese Corporation "encourage[d], cause[d], or contribute[d]" to the Victims' need for protection or services, and delinquency. Minn. Stat. §§ 260B.425, 260C.425; *see also* Compl. 1-2 (Counts 1, 3, and 5 charging that the Archdiocese Corporation "by act, word, or omission encouraged, caused or contributed to the need for protection or services" of Victim 1, Victim 2, and Victim 3; and Counts 2, 4, and 6 charging that the Archdiocese Corporation "by act, word, or omission encouraged, caused or contributed to the delinquency or status as a juvenile offender" of Victim 1, Victim 2, and Victim 3). To do so, the State must also allege and prove (1) causation, (2) corporate liability, and (3) intent.

B. The Complaint Fails To Allege Facts That Establish Direct Causation.

The State alleges that the Archdiocese Corporation is criminally culpable because it "permitted Wehmeyer to be put into and left in a position [as a priest] to sexually abuse children." (State's Resp. 19.) Thus, the question for the Court is whether ordaining and

retaining Wehmeyer as a priest meets the standard for "cause" or "contribute" as those terms are understood by Minnesota courts in the context of a criminal statute.

The State does not meaningfully contest the Archdiocese Corporation's interpretation of the causation required under the contribution statutes. Both courts and the plain language of the contribution statutes require the State to allege a direct, causal link between some act or omission on the part of the Archdiocese Corporation, and the resulting need for protection or services, or delinquency. (Mot. to Dismiss 8-17.) As the United States Supreme Court recently explained, "[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." *Burrage v. United States*, 134 S. Ct. 881, 887-88 (2014) (citations omitted).

As such, the State must allege and prove both actual and proximate causation—or, in other words, a direct, causal link. *See, e.g.*, *State v. Melchert-Dinkel*, 844 N.W.2d 13, 23 (Minn. 2014) (holding that a criminal prohibition on "assisting" requires a "direct, causal connection" to the offending end result); *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)); *see also Vachron v. New Hampshire*, 414 U.S. 478, 480 (1974) (holding that the State had failed to prove, under a contribution statute, "the crucial element of the crime that [the defendant] personally sold the minor the [delinquency-causing] button or personally caused it to be sold to her" (emphasis added)); *State v. Flinn*, 208 S.E.2d 538, 552-53 (W. Va. 1974) (holding that a statute prohibiting "contribut[ing], encourag[ing], or tend[ing] to cause the delinquency or neglect of any child" through "any act or omission" required that a "causal

connection . . . be clear and a delinquent act . . . be reasonably sure to follow"); *State v. Crary*, 155 N.E.2d 262, 265 (Ohio C.C.P. 1959) (holding that a statute prohibiting "acting in a way tending to cause delinquency" required that "[t]he delinquency which the law is trying to prevent . . . be fairly imminent, a reasonably certain result of the act complained of, reasonably sure to befall a child in a reasonable time").[3]

By this legal standard, the State has not sufficiently alleged causation. Instead, it merely asserts the Archdiocese Corporation is criminally culpable based on the actions and omissions of the former Archbishop and other religious leaders when they "permitted Wehmeyer to be put into and left in a position [as a priest] to sexually abuse children." (State's Resp. 19 (emphasis added).) As a matter of law, permitting an individual to act in a role does not render the permitting party the "cause" for conduct undertaken by the individual while in that role. *See*

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[3] Without a direct, causal link, the contribution statutes are void for vagueness. *See Johnson v. United States*, 135 S. Ct. 2551 (2015) (holding that criminal statutes must not be unconstitutionally vague); *see also 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) (later superseded by statute); *State v. Hodges*, 254 Or. 21 (Or. 1969) (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).

The State contends the discussion of *Melchert-Dinkel* is inapplicable. (State's Resp. 31-37.) To the contrary, the *Melchert-Dinkel* decision provides significant guidance to the Court in the interpretation of statutory language of similar criminal statutes. In *Melchert-Dinkel*, even after the State demonstrated the compelling interest prong of the strict scrutiny test (as the State argues here), the Minnesota Supreme Court still held that a prohibition on "encouragement" or "advise" fails to meet the narrowly tailored prong of the test because the terms do not require a "direct, causal connection" to the underlying result. 844 N.W.2d at 23-24. The Court upheld the prohibition on "assist," because the term did require a "direct, causal connection."

Black's Law Dictionary (defining "cause" as "[t]o bring about or effect"); *Merriam-Webster Dictionary* (11th ed. 2004) (defining "cause" as "to serve as a cause or occasion of," and "to compel by command, authority, or force").[4] The State's contention simply does not meet the causation standard. *See, e.g.*, *Burrage*, 134 S. Ct. at 887-88. On this ground alone, the Complaint fails to state an offense against the laws of the State of Minnesota.

C. The Complaint Fails To Allege Facts Supporting Corporate Criminal Liability Under Minnesota Law.

The State argues that the Archdiocese Corporation may be held liable under two purported theories of corporate criminal liability: the doctrines of *respondeat superior* and the collective knowledge doctrine. (State's Resp. 1.) The State's position is contrary to Minnesota law and misapprehends the collective knowledge doctrine.

The State's analysis of *respondeat superior* is incomplete and contrary to the governing Minnesota Supreme Court precedent. According to the Minnesota Supreme Court, to establish corporate liability, the State must allege the following: (1) the agent who committed the crime 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 interests; and (3) the criminal acts were known to corporate management and were authorized, tolerated, or ratified by corporate management. *State v. Christy Pontiac-GMC, Inc.*, 354 N.W.2d 17, 20 (Minn. 1984).

Although the Complaint makes clear that it is Wehmeyer's criminal conduct that caused the Victims' delinquency and need for protection, the State makes no effort to address how

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[4] The Minnesota Court of Appeals has held that mere "permission," without knowledge of the criminal conduct, is insufficient to hold a corporation criminally liable. *See State v. Wohlsol, Inc.*, 670 N.W.2d 292, 297 (Minn. Ct. App. 2003) (holding that a criminal conviction of a corporate employer for "permitting" underage drinking without knowledge and intent would implicate constitutional limits).

Wehmeyer is an "agent" of the Archdiocese, other than by reference to his vow of obedience to the Archbishop under canon law. There is no allegation that Wehmeyer was an employee of the Archdiocese Corporation, because he was not; he was an officer of the parish corporation. Instead, the State erroneously asserts the Archdiocese Corporation "is more correctly viewed as a parent corporation to 187 subsidiaries." (State's Resp. 2). This assertion is entirely premised on principles of canon law, not secular law. The assertion is flatly contradicted by the parishes themselves (including the parish at issue, Blessed Sacrament), which filed a pleading in the bankruptcy court asserting that the parishes are, in fact, separate corporations under Minnesota secular law. *See* Apr. 4, 2016 Affidavit of Joseph Dixon ("Dixon Affidavit" or "Dixon Aff.") Ex. A ("Each parish is separately incorporated under Minnesota Statutes Section 315.15 as a parish corporation and is a legally distinct entity from the Archdiocese.").

Even assuming arguendo that the State adequately alleged that the Archdiocese Corporation's decision to ordain and retain Wehmeyer as a pastor was a direct cause of the Victims' delinquency and need for protection and services, and that Wehmeyer was an employee of the Archdiocese Corporation, according to *Christy Pontiac-GMC, Inc.*, the Complaint is still deficient because State must also allege the corporate officers knew of the relevant criminal conduct—namely, Wehmeyer's sexual abuse of the Victims and his provision of alcohol and tobacco to them. *See also Final Exit Network, Inc.* Jury Instructions (stating that criminal acts are ratified by corporate management "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") (Dixon Aff. Ex. B); *State v. Wohlsol, Inc.*, 670 N.W.2d 292, 295 (Minn. Ct. App. 2003) (requiring employer knowledge of

criminal conduct to establish guilt of "permit[ing]" underage drinking). The Complaint and the alleged Supplemental Facts do not do so.

The State attempts to circumvent this deficiency by relying on the collective knowledge doctrine.[5] First, the State acknowledges that the collective knowledge doctrine has never been adopted by Minnesota courts. (State's Resp. 25.) Indeed, the concept of collective knowledge was rejected by a Minnesota district court in the recent *Final Exit* case, when the court instructed the jury it must find "another agent of the corporation, having knowledge of the [criminal] act and acting within the scope of employment and with intent to benefit the corporation, approved the act." (Dixon Aff. Ex. B).

Second, even if the Court were to adopt the collective knowledge doctrine for the first time ever in Minnesota for purposes of considering whether the State has properly alleged knowledge and intent, the Complaint still fails. The State only alleges that different Archdiocese Corporation officers knew of "red flags" related to Wehmeyer. (State's Resp. 27-29.) These "red flags" include issues as irrelevant as Wehmeyer's sexual orientation, Wehmeyer's camping with the Victims contrary to church policy, that the Archdiocese Corporation did not request records pertaining to a DUI, and that some individuals at the Archdiocese Corporation opposed Wehmeyer's promotion to pastor. (State's Resp. 20-24.) Even if there is evidence Wehmeyer was not fit for ministry under canonical standards, that does not constitute knowledge of his criminal conduct. Even in a civil case, as a matter of law, "red flags" do not constitute

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[5] The State wrongly asserts the collective knowledge doctrine is a separate basis for corporate liability distinct from the principle of *respondeat superior*. Even the primary case cited by the State recognizes that the collective knowledge doctrine is a principle for establishing the element of corporate knowledge and intent. *See United States v. Bank of New England, N.A.*, 821 F.2d 844, 855-56 (1st Cir. 1987); *see also* 1 Banking Crimes § 6.63 (collective knowledge used to satisfy *mens rea* element in corporate criminal cases).

"knowledge" that someone will commit child abuse. *See Doe v. Columbia Heights School District*, 873 N.W.2d 352, 360 (Minn. Ct. App. 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). Of course, the bar is set higher in the criminal context. More to the point, without an allegation that the Archdiocese Corporation knew of the sexual abuse, the State fails to meet the requisite legal threshold set forth by the Minnesota Supreme Court in *Christy Pontiac-GMC, Inc.*

Further, the State's own investigation proves that the Archdiocese Corporation lacked the requisite knowledge. In the course of its investigation, the State considered whether to charge the Archdiocese Corporation with failure to report. Under Minn. Stat. § 626.556, a person can be criminally charged if that person is covered by the statute and "knows or has reason to believe that a child is being neglected or physically or sexually abused . . . or has been neglected or physically or sexually abused within the preceding three years," and fails to report that abuse within 24 hours of acquiring the knowledge or belief. *See* Minn. Stat. § 626.556, subd. 3 (emphasis added). In a January 28, 2014 memo, the Ramsey County Attorney's Office stated its determination that it could not charge the Archdiocese Corporation with failure to report because that "it is clear that the Archdiocese reported the abuse within 24 hours of receiving the abuse information directly from Child C." (Dixon Aff. Ex. C.) Even in June 2015, after additional investigation, the Ramsey County Attorney's Office still did not bring a charge alleging that anyone "knew or has reason to believe" that a child was neglected or physically or sexually abused and failed to report that abuse. Accordingly, the State itself has acknowledged that the

Archdiocese Corporation did not have knowledge or reason to believe a child was sexually abused more than 24 hours prior to its report to law enforcement in June 2012.

The Complaint should be dismissed because it fails to allege the corporation knew and approved of an employee's criminal conduct.[6]

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

The State relies on these improper methods of proving corporate liability to avoid the true knowledge and intent elements required by State law. The State argues that "[i]ssues of intent are not an appropriate basis for dismissal." (State's Resp. 46-47.) This, too, is contrary to Minnesota law, which requires the State to allege the relevant elements to establish criminal liability. *See State v. Suess*, 52 N.W.2d 409, 416 (Minn. 1952) (indictment must positively put forth every essential element of the crime). Dismissal is appropriate where a complaint fails to allege the appropriate level of scienter.

As set forth in the Archdiocese Corporation's Motion to Dismiss, there are three separate bases to require knowledge and intent as an element of the offense. First, the plain language of the statutes (including the definitions of "encourage," "cause," and "contribute") all focus on helping achieve an end result, indicating that the defendant must intend the end result. (*See* Mot.

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[6] The State's contention that it adequately alleged corporate liability by alleging that Wehmeyer presented "red flags" but was allowed to remain a priest would, if adopted by the Court, result in far-reaching policy implications for organizations of all natures. For example, school officials could be prosecuted for allowing a "problem student" to remain in the classroom, if that problem student assaulted another minor. *Cf.* Anthony Lonetree, *Teacher Injured in Central High Attack Was At Fault, District Alleges*, StarTribune (Apr. 1, 2016), http://startribune.com/teacher-injured-in-central-high-attack-was-at-fault-district-alleges/374194681/? (describing a civil complaint alleging "that the district knew that conditions at Central were dangerous and that a 16-year-old student was a danger to others").

to Dismiss 11-14.)[7] Second, Minnesota courts have ruled that a corporate organization cannot be held criminally liable for the acts of an employee unless there is evidence the employing organization knew of the criminal conduct. *Wohlsol, Inc.*, 670 N.W.2d at 295 (holding that a criminal conviction of a corporate employer for "permitting" underage drinking without knowledge and intent would implicate constitutional concerns). Finally, as noted above, according to the Minnesota Supreme Court in *Christy Pontiac-GMC, Inc.*, to establish corporate criminal liability, the State must also allege the corporate officers knew of, and approved, the relevant criminal conduct.

Instead of confronting its duty to allege and prove intent, the State argues "willful blindness" could sustain its burden. (State's Resp. 46-47.) There are at least two major problems with the State's attempted use of willful blindness. First, "willful blindness" is a means of proving knowledge. (Here, the State has failed to even allege the requisite element—namely, that any corporate officers knew of Wehmeyer's criminal conduct.) Second, the Minnesota Court of Appeals has rejected the application of "willful blindness" to criminal liability. In *State v. Thowl,* a defendant was convicted based on a willful blindness instruction. Noting that such an instruction had never been approved by a Minnesota appellate court, the Court of Appeals reversed the conviction, finding the instruction was improper and prejudicial.

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[7] As predicted, the State relies on CRIMJIG 13.100, which does not list intent as an element. The jury instruction, however, cites to *State v. Sobelman*, 271 N.W. 484 (Minn. 1937) and *State v. Lundgren*, 144 N.W. 752 (Minn. 1913), which were decided when a corresponding predecessor statute was only a misdemeanor. The Minnesota Supreme Court generally requires intent for gross misdemeanor crimes. *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).

Thowl, 2014 WL 2689901, at *3-5 (Minn. Ct. App. June 16, 2014).[8] The court expressed skepticism whether willful blindness instructions were ever appropriate in a criminal case under Minnesota law. *Id.* at *3-5 (finding "improper use of the willful blindness instruction . . . affect[s] constitutional rights because it creates a risk that the defendant will be convicted because he acted negligently or recklessly thereby relieving the government of its constitutional obligation to prove the defendant's knowledge beyond a reasonable doubt") (quoting *United States v. Barnhart,* 979 F.2d 647, 652 (8th Cir. 1992).[9]

Whether the State is required to allege knowledge and intent is ripe for adjudication because the State fails to assert the requisite knowledge and intent, and is plainly prosecuting this religious organization based on "red flags," and legal theories and principles never before adopted by Minnesota courts.

II. THE STATE'S PROSECUTION OF A RELIGIOUS ORGANIZATION FOR A RELIGIOUS DECISION TO ORDAIN AND RETAIN A PRIEST VIOLATES THE UNITED STATES CONSTITUTION AND MINNESOTA CONSTITUTION.

A. The State Depends On Unconstitutional, Religious Evidence.

The State properly acknowledges that a prosecution entangled in religious decisions, doctrines, or policies is unconstitutional:

> Indeed, under the entanglement doctrine, a state may not inquire into or review the internal decision making or governance of a religious institution . . . . In order

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[8] All unpublished cases cited in this memorandum are attached in alphabetical order to the Dixon Affidavit as Exhibit D.

[9] This risk is plainly intended by the State in this prosecution. The State's contends, "There is no evidence that a proper canonical investigation was ever conducted into charges of sexual abuse of a minor by Curtis Wehmeyer . . . [t]here is no valid or even remotely credible excuse that either of the archbishops or their collaborators, especially Fr. McDonough, could have put forth to explain this negligence." (Canon Law Expert Report ¶ 48 (also alleging "intentional bungling" of the Wehmeyer case)).

> to avoid entanglement issues, courts may not examine issues of religious doctrine or polity . . . .

(State's Resp. 41-42 (internal citations and quotation marks omitted)). The State concedes, as it must, that the Court may not examine "core questions of church discipline and internal governance," and that it is "the interpretation by the [Court] of internal church law that triggers a First Amendment violation." (State's Resp. 41-42 (internal citations and quotation marks omitted)); *see also Serbian E. Orthodox Diocese for the United States of America & Canada v. Milivojevich*, 426 U.S. 696, 715 (1976) ("Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria."). The State even acknowledges that the correct analysis here occurs under the third prong of the Establishment Clause test enunciated in *Lemon*: whether the prosecution requires state action that fosters excessive entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971).

Nevertheless, the State's Complaint (and, indeed, its Response) demonstrates that the prosecution of this religious organization depends on religious evidence and would require a secular court to decide issues about the meaning of purely religious concepts and doctrines, and then require a secular court to determine criminal liability based on the alleged failure to meet the court's understanding what those religious principles require. Every step of this process necessitates improper entanglement. The Complaint makes numerous references to "internal decision making," "religious doctrine," and "internal church law" to support its allegations that the Archdiocese Corporation failed to fulfill its canonical obligations and obligations under church policy. For example, the Complaint describes at length 11 different "church policies and procedures [designed] to prevent harm to children" that the State claims "were not followed with respect to Wehmeyer's conduct." (Compl. 25-29.) Other examples of allegations that the

Archdiocese Corporation failed to meet its religious obligations include: (1) a church policy that "all Diocesan employees" receive VIRTUS training, but that "Wehmeyer had not completed any of the ongoing VIRTUS training bulletins as required by the Defendant under its Safe Environment Program" and that Wehmeyer "acted contrary to VIRTUS training" (Compl. 12, 16, 21); (2) a description of the POMS program, and allegations that the program was "lax" and that "Wehmeyer did not comply with [its] monitoring criteria" (Compl. 12, 14-15); (3) a church policy on the scope of a parochial administrator's office, and allusions to whether Wehmeyer was appropriately promoted above that office (Compl. 15, 17); (4) a description of the church's Code of Pastoral Conduct and Wehmeyer's violations the code (Compl. 16); and (5) a church policy "that all Archdiocesan employees undergo a background check," but that the Archdiocese Corporation did not run a background check on Wehmeyer (Compl. 17).

Likewise, notwithstanding the constitutional prohibitions, in its Response, the State continues to ground its prosecution on religious decisions, doctrines, and policies. For example, the State alleges that: (1) "[u]nder canon law, the Archbishop enjoys virtually unlimited monarchical authority over and within the Archdiocesan structure" (State's Resp. 2 & n.1); (2) "[b]y very intentional design, such organizational structuring [of the church] accomplishes a core purpose of canon law . . . ." (State's Resp. 3); and (3) "[b]y virtue of his position, [as described within canon law, the former Archbishop was] the one person who made ultimate determination[s] about Wehmeyer's assignments, discipline and retention" (State's Resp. 20). The State plainly asserts that the Archdiocese Corporation is criminally liable because its highest agents, including the former Archbishop, failed in their canonical duties and "permitted Wehmeyer to be put into and left in a position [as a priest]." (State's Resp. 19.)

If there were any shred of doubt as to the import of religious doctrine to the State's case, that doubt is laid to rest by the State's reliance on its canon law expert. (*See* Mar. 20, 2016 Preliminary Expert Report by Thomas P. Doyle ("Canon Law Expert Report")). The State claims it has chosen this expert because of his "extensive knowledge of the Church's legal system and governing structure." (Canon Law Expert Report ¶ 11.) Indeed, the State relies exclusively on the Canon Law Expert Report to prove its theory of organizational liability. (Canon Law Expert Report ¶¶ 16-26, 49; *see also* ¶¶ 27-33 (Archbishop's scope of authority)). The State also relies on the Canon Law Expert Report to attack the canonical propriety of Wehmeyer's ordination, retention, and supervision, as well as the Archdiocese Corporation's response to allegations of abuse, by arguing that those actions do not meet canonical standards. (Canon Law Expert Report ¶¶ 45-48, 50-54 ("There is no evidence that a proper canonical investigation was ever conducted into charges of sexual abuse of a minor by Curtis Wehmeyer . . . .")).

Perhaps recognizing the constitutional quicksand on which its prosecution is built, the State vainly contends its prosecution is not "that the Archdiocese should have never ordained or promoted or retained Curtis Wehmeyer," but rather the "utter institutional failure of the Archdiocese to adequately deal with a priest who presented warning signal after warning signal." (State's Resp. 45.) Nevertheless, the State asserts the alleged failure under canon law, not secular law. Its Canon Law Expert Report asserts the following: (1) "[t]he only acceptable course of action with regard to Wehmeyer would have been to remove him from ministry and begin the process of dismissing him from the priesthood" (Canon Law Expert Report ¶ 50); (2) "Wehmeyer was not properly and responsibly scrutinized as a candidate for the priesthood" (Canon Law Expert Report ¶ 51); and (3) "records and files of the archdiocese clearly show that

these reports [of suspected abuse] were never properly and responsibly responded to" (Canon Law Expert Report ¶ 52).

The State's Response and Canon Law Expert Report make plain that the trial contemplated by the State necessarily will require the trier of fact to determine the contours of canon law and whether the Archdiocese Corporation and its officers complied with canon law, including examination of (1) the organization and hierarchy of the church (Canon Law Expert Report ¶¶ 16-20); (2) the scope and source of the Archbishop's power under canon law "to assign, transfer, remove or retire priests of his diocese," to "impose discipline such as suspension," to "remov[e]" priests, and to determine "who will be ordained to the priesthood," and his canonical obligation to exercise "proper discernment over the assignment of priests to pastoral duties, especially pastoral duties," and "to ascertain that the candidates possess the fundamental requirements for ministry" (Canon Law Expert Report ¶¶ 27-33); (3) internal church concerns about sex abuse and responses to sex abuse as dictated by canon law (Canon Law Expert Report ¶¶ 33-47); and (4) the purported failures under canon law in ordaining and retaining Wehmeyer as a priest (Canon Law Expert Report ¶¶ 50-53). No secular court can determine the meaning of these religious concepts, or base criminal liability thereon. Indeed, "the very process of inquiry" into such issues threatens the interests behind the Establishment Clause. *NCRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979).

In response to plain constitutional edicts, the State simply contends that it has a "compelling interest in protecting the health, safety, and welfare of children from sexual abuse." (State's Resp. 39-40.) No one disputes that the authority of the State to prosecute Wehmeyer for his criminal conduct. The issue in this case, however, is whether the prosecution of the Archdiocese Corporation for alleged canonical failures is constitutional.

B. The State Misconstrues Case Law In An Effort To Allege Religious Failings.

In an unsound effort to defend its prosecution, the State cites *Mrozka v. Archdiocese of St. Paul and Minneapolis*, 482 N.W.2d 806 (Minn. Ct. App. 1992). In *Mrozka*, a civil case, the court considered whether an award of punitive damages against the church was constitutional. *Mrozka*, 482 N.W.2d at 811-12. The court determined that the award of punitive damages did not cause excessive entanglement because that specific matter involved "purely secular disputes." Unlike *Mrozka*, the State's prosecution of the Archdiocese Corporation is not a secular dispute, but rather is dependent on canon law. *See, e.g.*, *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 7-8 (1929) ("Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them." (emphasis added)).

Moreover, since the *Mrozka* decision, the Minnesota Supreme Court has addressed the protections of the excessive entanglement prong of the Establishment Clause in the context of criminal prosecutions (of individuals). In *State v. Bussmann*, 741 N.W.2d 79 (Minn. 2007), and *State v. Wenthe*, 839 N.W.2d 83 (Minn. 2013), the Minnesota Supreme Court issued criminal decisions on the relevant First Amendment concerns raised by the State's prosecution here. The Supreme Court identified specific types of religious evidence that give rise to First Amendment limits on the State's authority:

> (1) the power imbalance resulting from the power of priests over parishioners; (2) the official policies of the Catholic Church regarding pastoral care; (3) concerns within the Catholic Church regarding sexual misconduct; (4) testimony relating to a church's response to allegations of sexual misconduct; and (5) the religious training the priest received.

Wenthe, 839 N.W.2d at 92. In both cases, the Minnesota Supreme Court articulated an overarching concern that introduction of this type of evidence would improperly enable a factfinder to judge a defendant against church doctrine. *Id.* at 95.

The State acknowledges this concern (State's Resp. 45 ("*Bussmann* and *Wenthe* stand for the proposition that the State cannot introduce evidence that would require a jury or the court to judge the Archdiocese's conduct against religious standards.")), but points to the opinion upholding the second *Bussman* trial. (State's Resp. 43-44 (describing that, on remand, the Minnesota Court of Appeals upheld some consideration of church evidence)). Notably, the State omits the critical portion of the second *Bussmann* opinion, which upheld the second trial because "[u]nlike the first trial, on retrial there was no testimony regarding Catholic Church doctrine, the power that priests have traditionally had over parishioners, or internal church procedures regarding allegations of abuse." *See State v. Bussmann*, No. A08-0858, 2009 WL 2015416, at *2 (Minn. Ct. App. July 14, 2009). Here, of course, the State alleges extensive evidence of church doctrine, the power of Archdiocese Corporation officials, and internal church procedures.

The State would have the Court believe that the allegations and evidence relied upon here are similar to that in the second *Bussmann* trial. In fact, the allegations in this case exceed even that allowed in the original *Bussmann* trial later overturned by the Minnesota Supreme Court. In this case, the State makes allegations regarding religious evidence that would not only allow judgment of the Archdiocese Corporation against canon law and church policies, or simply "intertwine[] religious doctrine with state law," but demand it. *See Bussmann*, 741 N.W.2d at 92.

The Canon Law Expert Report reflects that the State's case requires the factfinder to judge the Archdiocese Corporation based on church doctrine rather than secular statutes. Among other things, the State asserts:

- The Archbishop must ordain "only those . . . who have an integral faith, are motivated by a right intention, possess the required knowledge and enjoy a good reputation, good morals and proven virtues, and other physical and psychological qualities which are appropriate to the order to be received (canon 1029)." (Canon Law Expert Report ¶ 31.)

- The Archbishop is bound by canon law in his appointments to the ministry, and must ordain only those with "'sound doctrine and integrity of morals and endowed with a zeal for souls and other virtues; he should also possess those qualities which are required by the universal and particular law to care for the parish in question.' (Canon 521)." (Canon Law Expert Report ¶ 32.)

- The Archbishop must ordain only those whose "'suitability [is] clearly evident by means of some method determined by the diocesan bishop even by means of an examination.' (Canon 521, par. 2)." (Canon Law Expert Report ¶ 32.)

- "Sexual abuse of minors and of vulnerable adults is a specific crime in the Church's canon law (Canon 1395)." (Canon Law Expert Report ¶ 33.)

- "This crime is considered to be so grave that the canon itself specifies that if the case warrants it, the cleric is to be dismissed from the clerical state (Canon 1395)." (Canon Law Expert Report ¶ 33 (emphasis added).)

- "An early teaching document known as the *Didache* states quite directly that men are not to engage in sex with young boys . . . The earliest known canons or laws forbidding sex with young boys were passed at Synod of Elvira (AD 309) . . . ." (Canon Law Expert Report ¶ 35.)

- "The sexual abuse of a minor (under the age of 18) is a crime in the Church's legal system (canon 1395, 2 of the 1983 Code and canon 2359, 2 of 1917 Code) . . . . Since sexual abuse of a minor is a crime there is a process that is mandatory for the bishop to follow whenever he receives a report of abuse or the suspicion of abuse." (Canon Law Expert Report ¶ 45 (emphasis added).)

- "The bishop is obligated to initiate and supervise what is called the 'Preliminary Investigation' . . . . If it appears there is a possibility that the crime of sexual abuse has been committed the bishop must pursue a judicial process to prosecute the accused. The entire process is to be recorded in writing. The essential point is that the bishop must investigate the report. He is neglecting his duties in a number of ways if all he does is move the priest to another assignment while

allowing him to continue to unsupervised ministry." (Canon Law Expert Report ¶ 46 (emphasis added).)

- "If the bishop is aware of a report and fails to investigate it but instead simply reassigns or moves the priest, he could be charged with culpable negligence of an ecclesiastical office or misuse of power (canon 1389) and collaboration in the commission of an offense (canon 1329)." (Canon Law Expert Report ¶ 47 (emphasis added).)

All of these contentions, and indeed the State's theory of institutional failure, require a factfinder to judge the Archdiocese Corporation against church policy and canon law. As such, the State's entire prosecutorial effort is unavoidably unconstitutional. *Wenthe*, 839 N.W.2d at 95.

C. The State Also Misconstrues Non-Criminal, Civil Case Law.

In a final attempt to prove that its prosecution is constitutional, the State relies on opinions from civil matters: *Black v. Snyder*, 471 N.W.2d 715 (Minn. Ct. App. 1991), and *J.M. v. Minnesota District Council of Assemblies of God*, 658 N.W.2d 589 (Minn. Ct. App. 2003). Both are cases decided by the Minnesota Court of Appeals prior to the Minnesota Supreme Court's criminal decisions in *Bussmann* and *Wenthe*. The Archdiocese Corporation, for its part, has cited these cases for their recitation of long-standing First Amendment law—that the First Amendment protects against court examination of "church discipline and internal governance," and that "the question is one of subject matter jurisdiction." (Mot. to Dismiss 32-34). The State, on the other hand, cites the cases for their analysis and application of law to specific facts not found here.

In *Black*, a discharged pastor sued her previous-employer church, her supervising pastor at that church, and the synod for five causes of action: breach of contract, retaliation, wrongful termination, defamation, and sexual harassment. 471 N.W.2d at 718. The court held that the First Amendment precluded judicial review of the breach of contract, retaliation, wrongful termination, and defamation claims. *Id.* at 720. The court held that the sexual harassment claim

could go forward, however, because the claim was "unrelated to pastoral qualifications or issues of church doctrine." *Id.* at 721. In sharp contrast, the State's prosecution of a religious organization in this matter is directly (and improperly) premised on Wehmeyer's pastoral qualifications and whether Archdiocese Corporation officers complied with church doctrine.

Similarly, in *J.M.*, a parishioner sued her pastor, church, and church council based on the fact that she and the pastor entered a sexual relationship during the pastor's counseling of the parishioner. 658 N.W.2d at 592. The parishioner claimed the church had negligently hired and negligently retained the pastor, and that the church was liable as the pastor's employer. *Id.* at 593. The court held that the church's hiring decisions were protected by the First Amendment because "a determination of how . . . information 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." *Id.* at 594. The court allowed the negligent retention claim to go forward, however, because the court could determine whether an employment relationship existed by looking to the "neutral principles of the hierarchical structure of the church as set out in church documents." *Id.* at 595-56. In addition, the court emphasized that it could consider the negligent retention claim because doing so would not require investigation of "the role of the pastor within church hierarchy or the nature of [the pastor's] employment with the church." *Id.* at 597. Instead, the court "only need[ed] to evaluate what the church knew or should have known about [the pastor's] propensity to sexually violate parishioners with whom he was counseling, and, if there was such knowledge, whether the church's actions were reasonable considering the problem." *Id.* at 598. Again, in sharp contrast, the State's prosecution of the Archdiocese Corporation is not based on knowledge that Wehmeyer had a propensity to sexually abuse minors, but rather it is premised upon the alleged canonical failures of the former Archbishop and other church leaders. Accordingly, the

State's prosecution has put in front of the Court the exact evidence the *J.M.* court would not and could not examine.

* * *

It is also important to highlight a critical difference between this prosecution and every case ever addressed by a Minnesota court: this is a prosecution of a religious organization, not an individual who committed a crime provable by secular evidence. The very nature of this prosecution is an effort by the Ramsey County Attorney's Office to punish a religious organization for its decision to ordain a priest who then committed crimes against minors. That effort—for the State to hold a religious organization criminally punishable for religious decisions—has never been addressed by any court in the United States because it has never been attempted. For that reason alone, the Court should exercise great caution in allowing the State's novel and completely unsupported legal theories to proceed.

III. THE CHARGES ARE UNTIMELY AND MUST BE DISMISSED.

Finally, the charges are untimely. In an effort to excuse the untimeliness of its prosecution, the State ignores its own Complaint and the charged offenses and alters its theory of the case to one in which it charged the Archdiocese Corporation because it "continued to expose the victims to Wehmeyer" even after the abuse occurred. (State's Resp. 49.) As noted above, the State did not charge Neglect or Endangerment of Child. A review of the Complaint and the charged offenses reflects the true nature and timing of the offenses the State charged:

Count 1 of the Complaint alleges the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 1. (Compl. 1.) The Complaint alleges that Victim 1's need for protection and services arose directly out of Wehmeyer's abuse. (Compl. 5 ("Because of Wehmeyer's abuse, VICTIM 1 and VICTIM 2 have received extensive

counseling, treatment and other services.").) The Complaint alleges Wehmeyer sexually abused Victim 1 at the following times:

- Throughout the summer of 2010, Wehmeyer sexually abused Victim 1;
- Wehmeyer abused Victim 1 in July or August 2010.
- "VICTIM 1 reported that the last incident occurred one week before his 13th birthday."

(Compl. 4-5.)

Count 2 alleges that the Archdiocese Corporation encouraged, caused, or contributed to Victim 1's delinquency or status as a petty offender. (Compl. 1.) The only allegations relating to Victims 1's delinquency and status as a juvenile offender 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 . . . with beer and cigarettes, and offered them marijuana."

(Compl. 4-5.)

Count 3 alleges the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 2. (Compl. 2.) Again, the need for protection and services is an alleged result of Wehmeyer's sexual abuse. (Compl. 5 ("Because of Wehmeyer's abuse, VICTIM 1 and VICTIM 2 have received extensive counseling, treatment and other services.").) According to the Complaint, the abuse that necessitated Victim 2's need for services occurred on a camping trip in July or August 2010. (Compl. 4-5.)

Count 4 alleges that the Archdiocese Corporation encouraged, caused, or contributed to Victim 2's delinquency or status as a petty offender. (Compl. 2.) The only allegations relating to Victims 2's delinquency and status as a juvenile offender are that:

- In July or August 2010, "Wehmeyer provided . . . Victim 2 . . . with beer and cigarettes, and offered them marijuana."

(Compl. 4-5.)

Count 5 of the Complaint alleges the Archdiocese Corporation encouraged, caused, or contributed to the need for protection or services of Victim 3. (Compl. 2.) The Complaint alleges that Victim 3's need for protection and services arises directly out of Wehmeyer's abuse. (Compl. 5. ("Due to Wehmeyer's actions, Victim 3 received counseling, treatment, and other services.").) The Complaint alleges Wehmeyer sexually abused Victim 3 at the following times:

- ". . . in the early summer of 2008, he was in the camper along with Wehmeyer when Wehmeyer reached for a beer on the counter. While reaching around VICTIM 3, Wehmeyer brushed his hand over VICTIM 3's penis."
- ". . . while on a camping trip in 2009, . . . VICTIM 3 reported becoming intoxicated and waking up with Wehmeyer's hands in his pants."
- "VICTIM 3 reported that Wehmeyer abused him on a camping trip in the summer of 2011."

(Compl. 5.)

The sixth and final Count of the Complaint alleges that the Archdiocese Corporation encouraged, caused, or contributed to Victim 3's delinquency or status as a petty offender. (Compl. 2.) The only allegations relating to Victims 3's delinquency and status as a juvenile offender are that:

- ". . . while on a camping trip in 2009, Wehmeyer provided VICTIM 3 with beer, alcohol, and marijuana. VICTIM 3 reported drinking two cans of Heineken beer and six to eight shots of Jägermeister. VICTIM 3 also reported Wehmeyer instructing him on how to smoke marijuana from a pipe. VICTIM 3 reported becoming intoxicated . . ."
- "VICTIM 3 reported that Wehmeyer abused him on a camping trip in the summer of 2011. Victim 3 stated that on the night of the incident, Wehmeyer provided him with alcohol and marijuana, which resulted in VICTIM 3 becoming intoxicated."

(Compl. 5.)

Notwithstanding the State's efforts to recast its charges, the Complaint expressly charges the Archdiocese Corporation with contributing to specific crimes perpetrated by Curtis

Wehmeyer that brought about the Victims' status as juvenile delinquents and their need for protection. The State cannot now run from its own charging decisions. The Complaint was filed on June 3, 2015. Counts 1, 2, 3, and 4 are predicated on sexual abuse and provision of illicit materials that occurred in 2010, five years before the Criminal Complaint was filed. Counts 5 and 6 relate to conduct that last occurred in 2011, four years before the Criminal Complaint was filed. The State cannot argue that the Archdiocese Corporation "encouraged," "caused," or "contributed" to offenses that had already occurred. Accordingly, pursuant to the statute of limitations, all six Counts are untimely and must be dismissed. *See* Minn. Stat. § 628.26(k) (criminal complaints must be filed "within 3 years after the commission of the offense").

In another effort to circumvent the law, the State seeks to redefine its charge as a "continuing crime." (State's Resp. 49.) Nevertheless, "[a] crime is not continuing in nature if not clearly so indicated by the legislature." *State v. Lawrence*, 312 N.W.2d 251, 253 (Minn. 1981) (citing *Toussie v. United States*, 397 U.S. 112, 115 (1970)). The statutes charged in the Complaint do not state or even implicitly suggest they are continuing crimes. No Minnesota Court has held that they are continuing crimes. Nevertheless, the State attempts to recast the crime as "continu[ing] to expose the victims to Wehmeyer" by citing to *State v. Tahash*, 160 N.W.2d 139, 141 (Minn. 1968), which addresses a child neglect and abandonment prosecution. Yet, the State did not charge the Archdiocese Corporation with Neglect or Endangerment of Child. The Complaint alleges only that the Archdiocese Corporation caused and contributed to specific instances of sexual abuse and the provision of illicit materials, each of which occurred in 2011 and before.

Next, the State argues that limitations periods are tolled where a defendant's actions prevent discovery of a crime, either through threats and coercion or through fraudulent

concealment. (State's Resp. 49-51.) The State then details Wehmeyer's—and not the Archdiocese Corporation's—purported coercive actions and the attempts he made to conceal his offenses. (State's Resp. 49-50.) Wehmeyer is not the defendant in this case. The State fails to make a single allegation regarding how the Archdiocese Corporation prevented discovery of its alleged crimes. None of the cases cited by the State permit the extension of the limitations period against the Archdiocese Corporation on account of Wehmeyer's misconduct. Indeed, the Ramsey County Attorney's Office has already determined that the Archdiocese Corporation properly notified law enforcement within 24 hours of learning of Wehmeyer's sexual abuse of the Victims. (*See* Dixon Aff. Ex. C.)

Finally, in a last desperate effort to save its misguided prosecution, again without citing any applicable criminal law case, the State asks the Court to adopt a civil law theory, the "Fraudulent Concealment Doctrine." Such a doctrine is completely inapplicable. Moreover, it is factually unfounded and inconsistent with the Ramsey County Attorney's Office's own findings. *See* Dixon Aff. Ex. C.

Further, according to the United States Supreme Court, limitations periods are aimed at "encouraging law enforcement *officials promptly to investigate* suspected criminal activity" and protect defendants from facts becoming obscured by the passage of time. *Toussie*, 397 U.S. at 115-16 (emphasis added). According to the Complaint, the last occurrence of abuse occurred in the summer of 2011. The Archdiocese Corporation reported the abuse when it learned of it in June 2012. Therefore, even after the State learned of the abuse, the State waited almost three full years—and months after the Archdiocese Corporation had filed for bankruptcy—to file charges relating to the Archdiocese Corporation's alleged role in contributing to Wehmeyer's crimes.

The State offers three inconsistent dates on which it contends the limitations period began. The State's strained interpretation is contrary to the law and cannot overcome the simple fact that the last offensive conduct the Archdiocese Corporation is alleged to have contributed to occurred in 2011, four years before the State filed the Complaint. The charges are untimely, and the law requires dismissal of all charges.

CONCLUSION

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

Dated: April 4, 2016

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