

May 16, 2018

Justices of the Supreme Court of Texas
c/o Mr. Blake A. Hawthorne, Clerk
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas 78701

**Amicus Curiae Letter Submitted in Cause Number 17-1005
In re John Doe, pending in the Supreme Court of Texas**

Dear Mr. Hawthorne:

Please distribute this letter to the Justices of the Supreme Court of Texas for their consideration in Cause Number 17-1005. I encourage this Court to grant the Petition for Writ of Mandamus on the Dallas Court of Appeals' decision, which mistakenly barred John Doe's lawsuit because of misunderstanding ecclesiastical abstention.

I write as Founder and CEO of CHILD USA, an organization that conducts evidence-based legal, medical, and social science research to identify laws and policies to improve child protection. Our goal is to shine a light on the better pathways to protect all children, as *you can do right now* if you agree to hear this important case about students' rights.

Through years of study and litigation, I have learned that religious freedom does not include a right to harm children, even when religious institutions say it does. The First Amendment's Religion Clauses are not a refuge for criminal, tortious, or contract violations that harm children, students, or vulnerable adults. These laws are neutral and generally applicable and should apply to everyone. *Employment Div. v. Smith*, 494 U.S. 872 (1990); *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 654 (Tex. 2007). They also serve the compelling interest in the protection of children from harm.



Children are individuals with civil rights under the Constitution. *Maryland v. Craig*, 497 U.S. 836 (1990); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). The law should not protect or fail to deter harm to children. Nonetheless, in this case the Dallas Court of Appeals refused to let a contract and tort case proceed against a school that falsely accused John Doe of marijuana use, *even though no religious issues were involved*. *In re Episcopal School of Dallas, Inc.*, --- S.W.3d ---, 2017 WL 4533800 (Tex. App.—Dallas Oct. 11, 2017, pet. pending). Although this Court has made quite clear that secular lawsuits about harm to individuals can and should proceed, dismissing students’ suits too easily is a recurring problem in the Courts of Appeals. *See, e.g., C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 396 (Tex. 2007), *but see In re Vida*, 04-14-00636-CV, 2015 WL 82717 (Tex. App.—San Antonio 2015, orig. proceeding) (dismissing age-related case) and *In re St. Thomas High School*, 495 S.W.3d 500 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (dismissing case of parents’ false accusations against a teacher). By wrapping itself in putative religious liberty claims, despite the fact this school is not organized or run by a religious entity, the school has attempted to immunize itself from liability for harm to children.

Such dismissals leave students without an opportunity to honestly contest their schools’ mistreatment of them. Religion should not offer schools such strong protection to harm, when courts can hear and resolve both sides of the dispute based on neutral principles of law. *Jones v. Wolf*, 443 U.S. 595 (1979).

Overly expansive application of the so-called “ecclesiastic abstention” doctrine to legal disputes has done harm to children in the past, and continues to do so today. Courts should be the first place of refuge for students who are harmed by misconduct hiding behind religion. Thus, I ask you to continue to build a child-centered society that will help kids thrive and hold adults who harm them accountable, just as this Court has throughout the earlier sex abuse and child mistreatment scandals. The state’s children need this Court’s protection from an erroneous and dangerous decision below.

We have not received any monetary contribution for preparation or submission of this letter.

We appreciate your consideration of this important matter.

Sincerely,

/s/ Marci A. Hamilton

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CERTIFICATION OF AMICUS

I certify on behalf of Amicus Curiae that neither I nor Leslie Griffin has received any monetary contribution for the preparation of submission of this brief.

/s/ Marci A. Hamilton

MARCI A. HAMILTON

CERTIFICATE OF COMPLIANCE

I certify on behalf of Amicus Curiae that the body of this Amicus letter contains 697 words according to the word count feature of the software used to prepare this Amicus letter.

/s/ Marci A. Hamilton

MARCI A. HAMILTON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this letter has been sent to the following counsel of record via electronic service on May 16, 2018.

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