

CATHOLIC LEAGUE AMICUS CURIAE BRIEF

The following is an excerpt from the motion to accept the Catholic League amicus curiae brief. The league was represented by Kathleen Gallagher, Devin Winklosky, and Russell Giancola of Porter Wright Morris & Arthur LLP from Pittsburgh, Pennsylvania.

The Catholic League has a unique perspective on the issues in this case and its brief would assist the Court in its consideration of the pending questions. Specifically, the Catholic League request to file the accompanying *amicus* brief to address (a) the damage the grand jury reports may cause to specifically-targeted religious institutions and their members, (b) the potential for the misuse of the grand jury process by government officials with unchecked executive power, and (c) the need for reform to Pennsylvania's investigating grand jury process.

This case presents issues of vital, immediate, and increasing concern to the Roman Catholic Community. In 2016, the Pennsylvania Office of Attorney General convened the Fortieth Statewide Investigating Grand Jury to examine alleged sexual abuse of minors by clergy in the Catholic Church in six dioceses across the Commonwealth. Notably, the Attorney General excluded all other religions, private non-sectarian institutions, and public sector entities from the Grand Jury's inquiry, choosing to single-out and focus solely on the Roman Catholic Church.

Unquestionably, child sex abuse should be investigated and rooted out; the question remains, however, as to why the use of the Statewide Investigating Grand Jury – a formidable government tool with broad powers – was deliberately limited to investigating only Catholic entities. Such government

sanctioned religion-based targeting is alarming for many reasons, foremost because it violates the rights of Catholics under the Pennsylvania and United States Constitutions.

On August 14, 2018, an Interim-Redacted Report ("Report") of the Grand Jury was issued. The recent and dramatic public release of this Report, the circumstances surrounding its release, the subsequent extra-judicial statements of the Attorney General publicly condemning the Catholic Church and named individuals, and the resulting intense and continuing negative media attention targeted exclusively at the Catholic Church raise significant issues directly affecting the reputation of the Catholic Church and its members.

Even before the Report was released, the Attorney General knew of flaws in the Report, but chose to ignore them, opting instead for sensationalism at the expense of innocent citizens. For example, the Report states that "[i]n the late 1980s, the victim confronted [Charles J.] Ruffenach regarding the abuse. Ruffenach denied the allegations." This statement is demonstrably false as Charles J. Ruffenach died in 1980.

Likewise, the Report contains an allegation of abuse by George Wilt that purportedly occurred in 1961 at St. Bernard Parish. This allegation, too, is false – Wilt was not assigned to St. Bernard until 1968. The Report also contains an allegation of abuse claiming to have occurred over 65 years ago based on nothing more than a hearsay phone call from a victim's spouse to the Diocese of Greensburg. The caller could not recall the priest's name and could only provide the name of the parish. Based solely on a list of priests assigned to the parish around the time, and without further explanation or investigation, the Report names two priests as perpetrators. The Attorney General took no action to verify the veracity of these allegations; he simply presumed that the false or grossly speculative accounts were true and publicized them accordingly.

One may forgive an investigative mistake by the grand jury of lay people, but the refusal by the Attorney General to acknowledge or correct critical errors affecting the truthfulness of a grand jury report and the reputations of innocent citizens is highly problematic. Such conduct constitutes either wanton indifference to justice or deliberate tactics calculated to malign the Catholic Church.

The Attorney General was alerted to additional flaws in the Report, but chose to ignore them as well. At least one passage claimed that Cardinal Wuerl wrote the phrase “circle of secrecy” on a document, but this was demonstrably false and the apparent product of poor investigative and analytical work: it was not Cardinal Wuerl’s handwriting. This misattribution was twice brought to the attention of both the Senior Deputy Attorney General and the Attorney General before the Report’s release. But they refused to correct the record. Again, the refusal by the Attorney General to acknowledge or correct a critical error specifically brought to his attention demonstrates his goal was not to produce an accurate report but a negative one. He took an oath to uphold the Constitution but has ignored its protections based on context.

These regrettable circumstances are compounded by the Attorney’s General’s relentless public statements targeting the Catholic faith. At his carefully orchestrated press conference following its release, Attorney General Shapiro stated he would help provide a “full picture of what transpired in the shadows over the decades” and asserted that the Catholic Church had a “pattern” of conduct that entailed “abuse, den[ial] and cover-up.” He stated to the public that “Church leaders in every one of the six dioceses handled complaints of sexual abuse the same way for decades – by covering it up.” The Attorney General has also tweeted about a “systematic cover-up” of abuse and misconduct by “leaders of the Church.”

Later, on separate occasions, the Attorney General publicly

claimed that both Cardinal Wuerl and Bishop Zubik were “not telling the truth,” although the basis for this claim is unknown; whether it is his personal opinion or the opinion of grand jurors, neither are established fact. He also accused Bishop Trautman of knowing about and covering up the abuse by a priest who has been criminally charged, but the Commonwealth’s own presentment against the alleged offender makes clear that Bishop Trautman had no knowledge of any abuse while the accused priest was in ministry.

These statements are not presented as the opinion of lay jurors. Instead, Attorney General Shapiro has presented them as a reliable and accurate portrayal of the facts and conclusive determinations of guilt, despite his knowledge of their potential inaccuracy and questionable veracity. Indeed, the entire Report has been treated as fact, directly contrary to the Attorney General’s characterization of its content as “lay opinions” to this Court.

The Attorney General’s public statements about the content of the Report apply a different and unfair standard of justice to members of the Catholic clergy, encouraging the public and the media to rush to judgment and accept his accusations and conclusions without more. As a result, they have been convicted of crimes for which they have never been charged and without the vital Constitutional safeguards afforded other citizens—without a fair trial, without jurors hearing evidence or defenses to the allegations lodged against them, and without facts being proved beyond a reasonable doubt.

Not one of the accused priests had the chance to test the veracity of these allegations before the Report’s release, yet due to the Attorney General’s comments, all of them were condemned in the eyes of the public. Some members attempted to rectify this problem through appropriate legal means, but prior to and following the release of the Report, Attorney General Shapiro publicly shamed and intimidated individual Catholics and their lawyers who were seeking to litigate their

rights under the Pennsylvania and United States Constitutions. Such tactics are inappropriate for any officer of the court, but are particularly troubling coming from the chief law enforcement officer of the Commonwealth of Pennsylvania. This attack on due process and the rule of law should be of grave concern to this Court and all citizens of Pennsylvania.

The Report, and especially the extra-judicial statements of the Attorney General regarding the Report, constitute a targeted public condemnation of the Catholic Church and countless named individuals. And the Catholic Church has faced profound negative consequences as a result: Protesters have organized around Catholic churches and clergy members' homes; clergy have been physically attacked; a school that bore a distinguished Cardinal's name has been defaced; national media outlets have decried the Catholic Church and its clergy members, calling for their resignations; and other states' attorneys-general are launching similar Catholic-targeted investigations, including New York, New Jersey, Illinois, Missouri, Nebraska, and New Mexico.

All of these consequences rely on one premise, the presumed guilt of those identified in the Report. A premise not proven, but promoted by the Attorney General. And all of this, in turn, is the result of the flawed Statewide Investigating Grand Jury process that is currently before this Court.

The process is flawed in numerous ways. Among other things, the grand jury was convened outside of the applicable statutory parameters; the Report was proffered not only as an investigative tool, but explicitly as a form of "recourse;" and the Report was publicized absent any due process. Most states do not allow grand jury reports to be publicized without some minimal due process to verify the report's veracity. Ultimately, the current process facilitates convictions without indictments.

This flawed process provides the Office of Attorney General

and Attorney General Josh Shapiro free reign to continue to present the Report as a conclusive adjudication of facts. With the grand jury dissolved and the supervising judge dismissed, there is no check on the Attorney General's conduct. Without oversight, the Attorney General can continue his media campaign singling out and degrading the Catholic Church without constraint. As a result of this faulty system, the underlying court orders in the pending cases fail to constrain the proper use of the Report, enabling an ongoing violation of the Catholic Church's constitutional right to reputation.

The Catholic League seeks to assist this Court by highlighting the significant adverse impact of the grand jury process, the release of the Report, and the related conduct of the Pennsylvania Attorney General to the fundamental rights of Catholics in Pennsylvania. The Attorney General has intentionally singled-out the Catholic Church and made repeated inflammatory and misleading official public statements regarding the Catholic Church, and his misuse of the Report has had a profound negative impact on the Catholic Church's constitutionally protected right to reputation. At issue is whether the Commonwealth may lawfully use investigating grand juries in such a manner to target and disparage a particular religious organization.