

No. 01-04-00231 CV

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS AT HOUSTON

HARVEST HOUSE PUBLISHERS, JOHN ANKERBERG, and JOHN WELDON,

Appellants
(Defendants below)

vs.

THE LOCAL CHURCH, LIVING STREAM MINISTRY, ET AL.

Appellees
(Plaintiffs below)

**BRIEF OF AMICUS CURIAE CLW COMMUNICATIONS GROUP, INC.
AND PRECEPT MINISTRIES INTERNATIONAL**

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IDENTITY OF AMICUS CURIAE

Amicus Curiae are CLW Communications Group, Inc., through its publishing division AMG Publishers ("AMG") and Precept Ministries International ("Precept Ministries").

AMG is a division of CLW Communications Group, Inc. ("CLW"). AMG is a publisher of religious and secular books and materials. CLW is affiliated with AMG International, a religious organization dedicated to spreading the gospel by meeting the spiritual and physical needs of people all over the world, particularly in foreign countries. The principal offices of AMG, CLW and AMG International are located at 6815 Shallowford Road, Chattanooga, Tennessee 37421.

Precept Ministries publishes Bible study materials, and produces video and audio programs which reach over 100 countries and are intended to teach Biblical perspectives on a variety of religious and secular topics facing Christians today. Precept's offices are located at 7325 Noah Reid Road, Chattanooga, Tennessee 37422.

Counsel for Amicus Curiae, AMG and Precept Ministries, is Anthony A. Jackson, Chambliss, Bahner & Stophel, P.C., 1000 Tallan Building, Two Union Square, Chattanooga, Tennessee 37402-2500. Attorney Jackson is licensed to practice law in the state of Tennessee, license number 014364. Attorney Jackson is also licensed to practice before the United States Supreme Court, and the United States Courts of Appeal for the Sixth and Ninth Circuits, and in various United States District Courts. Mr. Jackson is applying for *pro hac vice* admission for participation in the Texas Court of Appeals in this appeal.

All fees for the preparation and filing of this brief have been paid by Amicus Curiae, AMG and Precept Ministries.

INTEREST OF AMICUS CURIAE

Like Appellants, Amicus Curiae AMG and Precept Ministries publish information to the Christian community. AMG and Precept Ministries distribute materials around the globe, including in Texas. As publishers of religious materials, AMG and Precept Ministries have a strong interest in protecting the free speech rights of publishers, particularly those who publish and distribute religious and related materials. As publishers of religious materials distributed throughout the country, AMG and Precept Ministries are particularly concerned with assuring that the constitutional rights of freedom of expression and freedom of worship are consistently interpreted and protected. While neither AMG nor Precept Ministries are parties to this litigation, a ruling from this Court affirming the trial court's denial of summary judgment could have a chilling effect on AMG's and Precept Ministries' ability to spread the gospel and distribute religious materials in the State of Texas as well as throughout the United States.

While the Appellants are to a certain extent competitors of AMG and Precept Ministries, AMG and Precept Ministries nevertheless have a strong interest in protecting their rights as Christian publishers to engage in vigorous debate and discussion of theological issues. AMG and Precept Ministries wish to be heard by this Court so that the Court might be better informed regarding the concerns of other publishers of religious materials with respect to the outcome of this case. While AMG and Precept Ministries will briefly describe some of the facts of this case relevant to the amicus curiae, AMG and Precept Ministries will focus more on the broader constitutional implications of this case and the potential chilling effect of a ruling adverse to the authors and publishers by this Court.

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I. STATEMENT OF THE CASE.

AMG and Precept Ministries incorporate by reference the Statement of the Case submitted by Appellants.

II. ISSUES PRESENTED.

1. Does the Excessive Entanglement doctrine of the First Amendment to the U.S. Constitution prevent the Court from deciding the merits of this case when doing so would require the Court to delve into ecclesiastical matters?

2. Did the trial court err in denying summary judgment because Harvest House established as a matter of law that Plaintiffs/Appellees are public figures, the allegedly offending statements were published without actual malice and are not defamatory when read in context?

III. STATEMENT OF FACTS.

AMG and Precept Ministries incorporate by reference the Statement of Facts submitted by Harvest House and the Statement of Facts submitted by Amicus Curiae National Religious Broadcasters.

IV. SUMMARY OF THE ARGUMENT.

The Excessive Entanglement doctrine found in the First Amendment to the United States Constitution prevents courts from deciding cases which would require inquiry into matters of faith. The very process of determining whether the Appellees have been defamed will necessarily involve the court in matters of religious debate. While the Appellees attempt to dress up their arguments in largely non-religious terms, it is clear to any reader of the allegedly defamatory publication that, at its core, this is truly a religious dispute. Reduced to the meat of the matter, the Appellees are offended because they have been labeled a cult. Whether one group is or is not a cult is a theological debate and the Excessive Entanglement doctrine found under

the First Amendment prohibits courts from delving into issues of faith. The trial court erred in refusing to dismiss this case.

But even if the trial court were not prevented by the Excessive Entanglement doctrine from deciding this case, the Appellants were entitled to summary judgment because the Appellants proved the Appellees were public figures and that the allegedly offending words were published without actual malice. Publishers must be allowed "breathing room" to publish debate on public issues. Such publications may include vehement, caustic, and sometimes unpleasantly sharp attacks. But no matter how vehement, no matter how caustic, and no matter how unpleasantly sharp an attack is made on public figures, such as the Appellees, public figures must prove constitutional malice. The Appellants proved that they published without actual malice, and the Appellees cannot show otherwise.

The trial judge also erred in denying summary judgment because a reasonable and dispassionate reader would not read the allegedly offending statements to impute wrongdoing to the Appellees. Indeed, the allegedly defamatory statements simply do not refer to the Appellees, and a reasonable and detached reader would not find otherwise. The trial judge erred in failing to apply this fundamental tenet of First Amendment jurisprudence.

V. **ARGUMENT.**

A. **The Trial Judge Should Have Granted Summary Judgment Because The Excessive Entanglement Doctrine Prevents Courts From Delving Into Theological Debates.**

Federal and state courts across the country have repeatedly held that civil courts lack subject matter jurisdiction to rule on matters that, at their core, are theological in nature. Courts have repeatedly refused to entertain suits such as the one at bar, holding that courts of law lack jurisdiction over an action where the inquiry into the merits would involve excessive entanglement in religious affairs.

The First Amendment to the United States Constitution provides in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

This phrase is broken down into two clauses: the first is referred to as the Establishment Clause, and the second as the Free Exercise Clause. The entanglement doctrine, which prohibits excessive governmental entanglement with religion, "springs from the Establishment Clause." *L.L.N. v. Clauder*, 563 N.W.2d 434, 440 (Wis. 1997). Excessive entanglement occurs when courts attempt to resolve matters which, at their core, involve doctrinal disputes. *Konkle v. Henson*, 672 N.E.2d 450, 454 (Ind. Ct. App. 1996) (citing *Lemon v. Kurtzman*, 409 U.S. 602 (1971)).

At its heart, this case presents a doctrinal debate. The Appellants published a theologically based encyclopedia describing beliefs and practices the authors deemed cult-like. The Appellees are but one of many religious organizations mentioned in the encyclopedia (none of whom else were sufficiently offended to file suit or even complain to the Appellants). On page 6 of their Complaint ("Plaintiffs' Original Petition"), the Appellees reveal the gravamen of their complaint:

None of the Plaintiffs' [sic] are a "cult" and none has engaged in the type of despicable conduct that the Encyclopedia attributes to cults. Yet, by virtue of their inclusion in the book, Plaintiffs' [sic] stand accused of such conduct and bear the stigma of the accusation.

In *Sands v. Living Word Fellowship*, 34 P.3d 955 (Alas. 2001), the Alaska Supreme Court recently held that the terms "cult" and "cult recruiter" are statements of theological belief and may not be acted upon by courts of law. The court there explained:

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. To ascertain whether a statement is factual, courts consider "the type of language used, the meaning of the statement in context, whether the statement is verifiable, and the broader social circumstances in which the statement was made." 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 Sands's complaint could be construed to contain a cause of action for defamation, this cause of action is not actionable under the First Amendment to the U.S. Constitution.

Id. at 960.

The Alaska Supreme Court's statement that the term "cult" is a statement of religious belief and opinion is particularly important here. The very work at issue is the Encyclopedia of Cults and New Religions. It is a theological work focusing on comparative religion. The authors explain in detail why they believe various religious groups should be considered cults. The overriding point of the publication is to explore the authors' views of Biblical truth and the variants from that truth by groups denominated by the authors as cults. It is the type of charge often made by a person or group with a certain theological perspective against a person or group with a different theological position. And it is exactly the type of theological dispute courts cannot and will not adjudicate.

The Alaska Supreme Court was not the first court to recognize that the term "cult" is a theological term and is not actionable in a defamation action. In *Church of Scientology of California v. Siegelman*, 475 F. Supp. 950 (S.D.N.Y. 1979), a federal district court dismissed a claim brought by the Church of Scientology against a critic who had labeled Scientology as "one of the most powerful religious cults in operation today...". *Id.* at 955. The *Siegelman* court dismissed the case as raising a theological matter of opinion. The court recognized that the statements were barred from court scrutiny by the First Amendment.

Not only is the term "cult" a theological and belief-based term and therefore not actionable under the First Amendment, it is also a vigorous epithet. The United States Supreme Court has repeatedly held that epithets and expressions of contempt are statements of opinion, protected by the First Amendment. *See, e.g., Greenbelt Pub. Ass'n v. Bresler*, 398 U.S. 6, 13-14 (1970) (accusing one of "blackmail" is constitutionally protected as "no more than rhetorical hyperbole, a vigorous epithet..."); *Letter Carriers v. Austin*, 418 U.S. 264, 285-86 (1974) (use of the term "scab" is "merely rhetorical hyperbole, a lusty and imaginative expression of the contempt felt by [the speakers]"). No matter how vigorous or offensive the term "cult" may be to some, it is still a term of theological opinion protected by the First Amendment.

Here, the Appellees complain about being called a cult. But they also attempt to couch their complaint in secular terms. Offended parties often dress up theological disputes as civil wrongs. And courts just as often see through the attempt and decline jurisdiction or dismiss such claims as not actionable under the First Amendment to the United States Constitution.

For example, in *Howard v. Covenant Apostolic Church*, 705 N.E.2d 385 (Ohio Ct. App. 1997), members of a church claimed that the plaintiff, a fellow church member, had been "sleeping around," was in league with Satan, and had lied about certain matters involving the church and its members. *Id.* at 388. The plaintiff filed suit against the church members and the church, alleging defamation, infliction of emotional distress, and other causes of action. The defendants moved to dismiss because the statements about the plaintiff were made in a theological context.

Like the Appellees herein, the plaintiff there argued that the allegedly defamatory statements were made without interpretation of religious doctrine or beliefs and that the court could examine such issues without reference to religious beliefs. The trial court saw through the

dispute and recognized that at its heart, the case involved a theological dispute. Finding it lacked jurisdiction over such matters, the trial court dismissed the case.

On appeal, the Ohio Court of Appeals affirmed, finding that the plaintiff's claims "are beyond the scope of review by a secular tribunal." *Id.* at 388. The court recognized that "all of the statements alleged by appellant to be defamatory arose out of the underlying dispute between him and the church regarding the propriety of his conduct" and that the allegedly defamatory statements made by church members were "inextricably intertwined with ecclesiastical or religious issues over which secular courts have no jurisdiction." *Id.* at 388-89.

Here, it is perfectly clear that all of the statements alleged by the Appellees to be defamatory arose out of an underlying dispute over theological matters. Again, the publication at issue is clearly a theological work. And as in *Howard*, the statements made by the authors of the work are "inextricably intertwined with ecclesiastical or religious issues over which secular courts have no jurisdiction." *Id.* at 388-89.

State ex rel Gaydos v. Blaeuer, 81 S.W.3d 186 (Mo. Ct. App. 2002), is another case in which a court has recognized that the First Amendment prohibits civil courts from adjudicating essentially religious disputes dressed up as defamation actions. The plaintiff in *Gaydos* was a former parochial school principal whose employment contract was not renewed after a parish priest and several parishioners made disparaging remarks about her. The remarks included claims that the principal was an ineffective leader, that she was being improperly influenced by a former priest, and that she was having an adulterous relationship with the former priest. The defendants moved for summary judgment, but the trial court denied the motion. On interlocutory appeal, the Missouri Court of Appeals reversed, finding that the defendants were entitled to summary judgment under the First Amendment.

The *Gaydos* court found that the First Amendment "stands as a limitation on civil court jurisdiction over disputes which are either essentially religious in nature or sufficiently intertwined with church polity as to constitute a threat of entanglement with religious doctrine or practice." *Id.* at 192. The court also found that "to allow the defamation claims to be litigated would be to allow civil court jurisdiction to enter the backdoor of the religious entity in question and allow judicial probing of procedure and church polity, with an outside fact-finder sitting in judgment on whether the viewpoint, values, politics, and educational practices of the diocese" were valid. *Id.* at 196. The court also concluded that to allow the defamation suit to go forward would "have a chilling effect" on religion and on the "communication of important ideas and candid opinions." *Id.* at 198.

This "chilling effect" envisioned by the Missouri court applies equally here. Publishers of theological works must be given "breathing room" to explore matters of faith. Courts have studiously avoided entanglement with religion even where parties, such as the Appellees herein, have attempted to couch their claims in mostly secular terms. But where, as here, the controversy at its heart is one involving theological or doctrinal disputes, courts have refused to elevate form over substance and have refused to wear blinders to the fact that freedom of religious expression is at stake.

Amicus Curiae AMG and Precept Ministries are publishers of religious works whose authors must be given "breathing room" to explore matters of faith. Should the trial court's denial of summary judgment in the case at bar stand, authors and publishers of theological works will be restrained from publishing matters of deeply held religious belief for fear of offending some party who will use the civil court system to oppose theological points of view or will use the courts to oppose discussions that may include elements of non-religious statements that, at

heart, have their origin in religious matters. The marketplace of ideas will necessarily be restrained, and freedom of speech on one of our most cherished liberties, freedom of religion, will be impaired. As the Supreme Court has recognized, "[t]he First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State. The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private's fear, which itself is promised freedom to pursue that mission." *Lee v. Weisman*, 505 U.S. 577, 589 (1992).

If the trial court's denial of summary judgment stands, the promised freedoms of the First Amendment will be lost, and authors and publishers will publish critical theological works at their peril. The First Amendment forbids this type of restraint and this type of chilling effect. The only remedy is dismissal of the Appellees' claims as repugnant to the First Amendment. The trial court erred in refusing to do so.

B. The Trial Court Erred In Denying Summary Judgment Because Harvest House Established That Plaintiffs/Appellees Are Public Figures, That The Allegedly Offending Statements Were Published Without Actual Malice And That The Statements Are Not Defamatory When Considered In Context.

Even if the Appellees could demonstrate that their claims will not involve the Court in excessive entanglement with religion, they are still defeated because the Appellants established as a matter of law that Appellees are public figures, the language in question when read in context was published without constitutional malice and the language is not capable of a defamatory meaning as to Appellees when read by the hypothetical, reasonable reader.

The United States Supreme Court has held the First and Fourteenth Amendments guaranteeing freedom of speech and press prohibit a public official from recovering damages for

defamatory false words relating to his official conduct unless the public official proves that the statement was made with "actual malice." *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), the Supreme Court held that the "actual malice" standard applies equally to "public figures" as it does to public officials.

During oral argument on the motion for summary judgment at the trial level, lead counsel for The Local Churches admitted that The Local Church and Living Stream Ministries are public figures. 3 RR 64. The Appellants demonstrated to the trial court and in briefing to this Court that the remaining Appellees are also public figures. As such, the "actual malice" standard applies to all of the claims asserted by the Appellees.

In the defamation context, "actual malice" is something of a misnomer; "actual malice" in this constitutional sense means only (1) publication despite knowledge that the statement was false, or (2) publication with reckless disregard for whether the statement was false. *New York Times*, 376 U.S. 254. "Actual malice has nothing to do with bad motive or ill will." *Bentley v. Bunton*, 94 S.W.3d 561, 590 (Tex. 2002) (quoting *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 666 n.7 (1989)). And "imposing liability on the basis of the defendant's hatred, spite, ill will, or desire to injure [is] 'clearly impermissible.'" *Letter Carriers*, 418 U.S. at 281. The Texas Supreme Court recently correctly observed that "actual malice concerns the defendant's attitude toward the truth, not toward the plaintiff." *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 162 (Tex. 2004).

The "reckless disregard" standard is not an objective one. Rather, "[r]eckless disregard is a subjective standard, focusing on the defendant's state of mind." *New Times*, 146 S.W.3d at 162. "Mere negligence is not enough. Rather, the plaintiff must establish 'that the defendant in fact entertained serious doubts as to the truth of the publication,' or had a 'high degree of

awareness of...[the] probable falsity' of the published information." *Id.* (quoting *Bentley v. Bunton*, 94 S.W.3d 561, 591 (Tex. 2002). Constitutional malice "generally consists of '[c]alculated falsehood.'" *Id.* (quoting *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964)).

"Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubt as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). And, "failure to investigate does not in itself establish bad faith." *Id.* at 733. *See also, Bentley*, 94 S.W.3d at 595 ("failure to investigate, by itself, is no evidence of actual malice").

When a defendant moves for summary judgment in a defamation case brought by public figures, the question is "whether a genuine issue of actual malice exists – that is, whether the evidence presented is such that a reasonable jury might find that actual malice has been shown with convincing clarity." *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986) (emphasis added). A public figure "is required to prove actual malice by clear and convincing evidence." *Morgan v. Tice*, 862 F.2d 1495, 1500 (11th Cir. 1989) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974)).

The United States Supreme Court and the Texas Supreme Court have repeatedly ruled that "freedoms of expression require 'breathing space.'" *See, e.g., Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 772 (1986); *New York Times*, 376 U.S. at 272; *New Times, Inc.*, 146 S.W.3d at 153. This breathing space is provided by a constitutional rule that allows public figures to recover for libel or defamation only when they can prove both that the statement was false and made with the requisite level of culpability. *Id.*

The fact that society may find speech offensive is not a sufficient reason for suppressing it. "Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 55-56 (1988) (quoting *FCC v. Pacifica Foundation*, 438 U.S. 726, 745-46 (1978)).

This Court must "consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-opened, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks" on public figures. *New York Times*, 376 U.S. at 270; *New Times*, 146 S.W.3d at 154.

In addition to the protections offered authors and publishers by the actual malice standard, authors and publishers are also protected by the gatekeeping role courts are required to take in assessing whether allegedly offending statements are defamatory. Courts have repeatedly held that "[w]hether a publication is capable of a defamatory meaning is initially a question for the court." *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 114 (Tex. 2000); *New Times*, 146 S.W.3d at 155. The appropriate inquiry for the court is objective, not subjective. Thus, the question is not whether some actual readers were misled, as they inevitably will be, but whether the hypothetical reasonable reader could be." *New Times*, 146 S.W.3d at 157.

Even where a party submits declarations from a few people who state that they understood the publication to convey a defamatory meaning, that does not raise a question of fact as to the view of the average reader. *Id.* (quoting *San Francisco Bay Guardian v. Superior Court*, 17 Cal. App. 4th 655 (1993)). "The question is not one that is to be answered by taking a poll of readers but is to be answered by considering the entire context in which the offending material appears." *Id.*

The Texas Supreme Court has recently recognized that "[i]ntelligent, well-read people act unreasonably from time to time, whereas the hypothetical reasonable reader, for purposes of defamation law, does not." *Id.* at 158. Also, "courts must analyze the words at issue with detachment and dispassion, considering them in context and as a whole, as the reasonable reader would consider them." *Id.* Texas courts "cannot impose civil liability based on the subjective interpretation of a reader who has formed an opinion about the article's veracity after reading a sentence or two out of context; that person is not an objectively reasonable reader." *Id.* at 159.

Virtually all of the statements the Appellees allege to be defamatory are found in the Introduction to the publication. The Introduction never mentions any of the Appellees. The Appellees are discussed in a chapter titled "The Local Church" which is but one and a quarter pages long. The Appellees do not complain of any of the statements contained in the chapter concerning them. Rather, they complain of general statements made dozens of pages away in the Introduction which does not mention them. They also complain of a brief mention of them in the Doctrinal Appendix, but these citations are more than a dozen pages separated from any of the allegedly defamatory words, and hundreds of pages from the chapter about them.

As the Texas Supreme Court has observed, the question is not whether some actual readers of the publication were in fact misled (on which point, incidentally, the Appellees have not offered any evidence), the question is whether the hypothetical, reasonable reader could be misled. *New Times*, 146 S.W.3d at 157. The hypothetical, reasonable reader would not conclude that an Introduction, which nowhere mentions the Appellees, somehow directly accused the Appellees of wrongdoing.

The Texas Supreme Court's observation that courts must analyze allegedly defamatory words with detachment and dispassion, considering them in context and as a whole, as the

reasonable reader would consider them, applies directly to the case at bar. When viewed in the cold light of reality, with detachment and dispassion, a hypothetical, reasonable reader would not understand the publication to accuse the Appellees of the wrongs at issue.

Amicus Curiae AMG and Precept Ministries are very concerned about the precedent that will be set should this Court allow the trial court's denial of summary judgment to stand. If this Court allows the case to go forward, it will have a chilling effect on publishers such as AMG and Precept Ministries, who will fear that any criticism of any doctrine, practice, or group will subject them to defamation claims.

For example, if AMG or Precept Ministries were to publish a work that criticizes the practices of some unnamed and/or hypothetical groups in one part of the work, will they be subjected to litigation if the work simply mentions a religious group in an entirely different part of the publication? If the portion of the publication mentioning the group by name is not even alleged to be defamatory, will AMG and Precept Ministries be subjected to litigation if they publish works which make critical remarks in another portion of the publication which in no way refers to the offended group?

The practical effect of letting this case go forward will be to create an atmosphere of self-censorship in which publishers of religious materials will live in fear of publishing anything critical of any group, practice, or doctrine. The "breathing room" referred to by the United States and Texas Supreme Courts will be choked. And the profound national commitment to the idea that debate on public issues should be uninhibited, robust, and wide open will be severely undermined. Religious publishers in particular will be subjected to fear of publishing any vehement, caustic, or unpleasantly sharp attacks on public figures as the Appellees. In fact, they will necessarily engage in self-censorship of any critical statements made of any group.

The fact that the Appellees find the speech offensive is no reason for suppressing it. Indeed, "if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection." *Hustler Magazine, Inv. v. Falwell*, 485 U.S. at 55-56. This constitutional principle applies not only to commentary by Hustler Magazine on the Reverend Jerry Falwell, but also applies to religious publishers commenting on other religious groups, their doctrines and their practices.

A hypothetical, reasonable reader would not interpret the allegedly offending materials to defame the Appellees. But even if the Appellees could somehow meet their burden on this point, the Appellants still proved as a matter of law that they published without actual malice. The trial court was presented with undisputed deposition testimony and affidavit evidence from the Appellants that at the time they published the allegedly defamatory statements, they did not intend to accuse the Appellees of any criminal acts and they certainly did not know of any falsity of any statements that were made regarding the Appellees. Indeed, the Appellants state that they continue to believe in the truthfulness of every statement that was actually made concerning the Appellees.

The Appellants also demonstrated to the trial judge that they did not entertain substantial doubts as to the truthfulness of any matters published concerning the Appellees. The Appellees failed to prove otherwise. At most, the Appellees attempted to offer weak and inconclusive evidence of a supposed failure to investigate. But failure to investigate, even where proven, does not rise to the level of actual malice. And here, there was nothing to investigate, because the allegedly offending statements were not written in reference to the Appellees. Therefore, the trial judge erred in not entering summary judgment in favor of the Appellants.

VI. CONCLUSION.

Amicus Curiae AMG and Precept Ministries are very concerned that the trial court's refusal to grant summary judgment to the Appellants will inhibit free theological discussion and debate. If allowed to go forward, the trial court will become entangled in a religious dispute dressed up by the Appellees as a secular matter. Civil courts are prohibited by the First Amendment from becoming entangled in religious debate. But even if the trial court were not forbidden from entering this theological dispute, the trial court should have granted summary judgment to the Appellants because a dispassionate and hypothetical reasonable reader would not read the publication as defamatory to the Appellees. And even if the publication were somehow defamatory, the Appellants demonstrated that they published without actual malice.

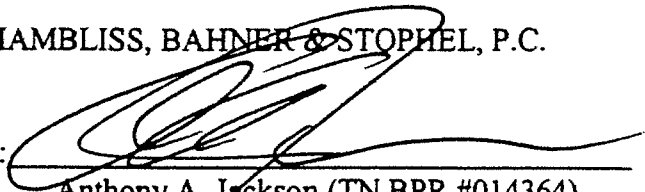
Freedom of religion and freedom of speech are too precious of liberties for courts to restrain. The chilling effect of letting this case go forward would result in tragic self-censorship. Publishers of religious works must be allowed breathing room to publish matters touching on theological debate. The trial court erred in declining to uphold the bedrock liberties guaranteed by the First Amendment.

Dated: October 24, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing "Brief of Amicus Curiae CLW Communications, Inc. and Precept Ministries International" was delivered via United States Mail, postage prepaid and properly addressed to the following counsel of record:

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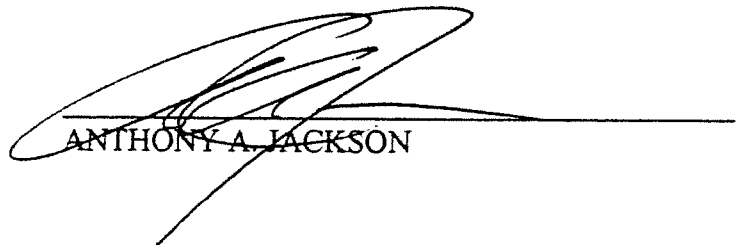
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