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Via Federal Express

The Supreme Court of Texas
Supreme Court Building
201 West 14th Street, Rm. 104
Austin, Texas 78701

RE: No. 06-0527, The Local Church, Living Stream Ministry, et al. v. Harvest House Publishers, John Ankerberg and John Weldon, Original Proceeding, in the Supreme Court of Texas, Austin, Texas

Brief of *Amicus Curiae* in Support of the Petition for Review of The Local Church, Living Stream Ministry, et al.

To the Clerk of the Supreme Court of Texas:

Amici file this *amicus curiae* letter brief in support of Petitioners The Local Church, et al.'s Petition for Review, according to Texas Rules of Appellate Procedure, Rule 11. Amici are various Christian publishers and broadcasters who are part of a growing movement to maintain the high standards of Christian publishing and broadcasting. As Christian publishers and broadcasters we have a vested interest in protecting the freedom of speech and the press, yet we also recognize that to preserve the rights of all citizens in our society, the law places certain limits on that freedom. Those limits should require that both religious and secular publishers and broadcasters exercise their freedom responsibly. This is especially true when allegations of criminal or immoral activities are made against persons or groups generally unknown to most members of our society. All publishers and broadcasters have a legal responsibility not to damage reputations through the attribution of criminal or abhorrent conduct, even under the cloak of religious opinion.

Amici have paid all legal fees and costs associated with this brief. Amici's offices are located at multiple locations.

Amici urge this Court to grant review.

- I. **Granting review in this case will permit this Court the opportunity to strike the appropriate balance between the First Amendment rights of religious publishers and broadcasters on the one hand, and the right of religious organizations to be free from unsubstantiated denigration of their reputations on the other.**

"Determining whether a defamatory statement may serve as the predicate for an action in damages depends on balancing the First Amendment's vital guarantee of free and uninhibited discussion of public issues with the important social values that underlie defamation law and society's pervasive and strong interest in preventing and redressing attacks upon reputation." *Milkovich v. Lorain Journal Co.*, 497 US 13. In fact, as noted in *Milkovich*, "[S]tatements that contain or imply assertions of provably false facts [even if given under the guise of opinion] will likely be actionable." *Id.* While the present case may appear to be a straightforward example of protecting the freedom of a religious entity to criticize another, close examination of the context and book text reveal otherwise. Previous amici and the Defendants claim their book is solely about religious opinion and have

expressed concern that if the Plaintiffs in this case prevail, an injurious effect upon existing freedom of speech would occur.

We also share an unwavering commitment to this crucial freedom but disagree that requiring responsible publishing practices that comport with libel laws will have a “chilling effect” on free speech.

The following excerpts from the back cover of *Encyclopedia of Cults and New Religions* (“ECNR”): “up-to-date facts”; a “valuable reference book”; “Encyclopedia” based on a “highly respected research team” with “advanced degrees” state more than religious opinion. ECNR attributes to “cults” objectively verifiable criminal and immoral behaviors including murder, human sacrifice, rape, prostitution, physical harm, and financial fraud. If the book only addressed “doctrinal and apologetics” issues, the introduction would have no need to mention concerns about “legal problems.”¹ Unsupported criminal accusations aimed at individuals or identified groups² constitute defamation per se no matter what part of a book it appears in.³ *Rawlins v. McKee*, 327 S.W.2d 633 (Tex. App. – Texarkana 1959).

By not considering the non-theological definition of the term “cult” in ECNR, and ruling that “cult” — a word defined to include behavior — is solely “ecclesiastical” and not capable of defamatory meaning, the Court of Appeals’ decision raises serious concerns about enhancing free speech for certain groups at the expense of others.

The appellate ruling raises the disturbing specter of majority religious voices with access to powerful publishing and media outlets being able to silence the voices of smaller minority Christian religious groups. We are concerned about critics who can now paint groups with whom they disagree theologically with the secular attributes associated with “cults” without accountability to libel laws. The court has, in effect, provided a legal “assist” to religious authors and publishers not presently enjoyed by secular ones. The potential long-term effect will be for defamation to become acceptable practice in the normal discourse of religious speech. We are concerned that the delicate balance between free speech and the reputations of others will be upset by powerful majority voices who can potentially denigrate their competition in the marketplace of ideas by impugning them under the guise of “religious” doctrine to inhibit genuine religious discourse.

II. Both religious and secular publishers should be subject to the same legal standard of defamation. Both Christian churches and secular organizations should enjoy the same protections from defamation when falsely accused of criminal or abhorrent conduct.

The appellate ruling could result in a different (lower) standard of defamation for religious publishers and broadcasters than for secular media, when commenting on Christian churches and ministries. The Court of Appeals’ opinion effectively holds that, under the rubric of “cult as a religious term,” religious authors and their publishers can paint⁴ churches and ministries with accusations of secular criminal conduct – accusations that would in any nonreligious context be actionably defamatory. Reversing the Court of Appeals will not harm First Amendment rights of any publishers or broadcasters because a reversal would merely conform to existing defamation law,

¹ ECNR, pp. XXVI-XXVII.

² Lloyd J. Jassin and Steven C. Schechter, *The Copyright Permission and Libel Handbook: A Step-by-Step Guide for Writers, Editors, and Publishers* (New York: John Wiley & Sons, Inc., 1998), p. 136.

³ *Ibid.*, p. 130.

⁴ Undeniably, ECNR itself asserts, “a far darker picture could have been painted.” P. IX, ECNR.

properly balancing one's freedom of speech with one's right to retain their reputation, regardless of religious persuasion or lack thereof.

If the Court of Appeals' decision is not reversed, churches and ministries, but not secular organizations, can be stained with libelous accusations as long as they occur within a purportedly religious context as a cloak for defamation. This will damage the free practice of religion in our country and abroad, allowing accusations to be made in the religious sphere that would not be tolerated by the courts outside of a purported religious context and making the courts an ally of those who seek to limit the freedoms of others.

III. The Court of Appeals' ruling tends to undermine the efforts of the Evangelical Christian Publishers Association ("ECPA") and Zondervan Publisher's Green Ribbon campaign, both of which promote standards of ethics for religious publishers, in particular the standards of defamation and the importance of protecting others' reputation from false accusation.

The ECPA, in which both Petitioner Living Stream Ministry and Respondent Harvest House Publishers are members, recognizes the responsibility of publishers in its "General Principles and Practices." ECPA members agree to abide by these principles and practices including: "In all our dealings, we will work to strengthen and support one another, acting charitably toward all, and never intentionally seek to damage another's reputation" and "As members of ECPA, we will seek to document all sources and validate all research."⁵

Zondervan, a leading Christian publisher, recently initiated a campaign called the Green Ribbon Campaign to promote higher standards in publishing. Those standards state that: "As the world's leading Christian publisher, Zondervan Publishing House recognizes that the right to free speech is one of the most important and fundamental rights of liberty. We support the right to free speech in all its forms. We also call for responsibility in exercising this right."⁶ The standards also include the statement that: "Good citizens know they're accountable for their actions... There are those, however, who tend to forget that they also are held accountable for their words. That's how laws against libel and slander are sustained. As those involved in Christian media, we recognize the custodianship of public trust that is ours and value the reputation and integrity of our industry."⁷

We subscribe to these standards and urge the Court to promote and uphold these standards in the Christian publishing arena. While we are understandably concerned about any unnecessary restriction of freedom of speech, we are also concerned about irresponsible practices by religious publishers and broadcasters. Merely because a publication or broadcast is made in the "religious" context, does not mean that a publication or broadcast should enjoy blanket immunity from the laws of libel. An appropriate balance is necessary. This case provides an ideal vehicle to define that balance. For the sake of minority religious voices that deserve to be heard, we pray the Court will grant review and strike the appropriate balance between the important competing interests at stake in this case. As Justice Stewart noted in *Rosenblatt v. Baer*, 383 U.S. 75, 86, 86 S.Ct. 669, 676, 15 L.Ed.2d 597 (1966):

⁵ ECPA General Principles and Practices, http://www.ecpa.org/membership_information.php.

⁶ The Zondervan Publishing House Green Ribbon Campaign for Responsibility in Free Speech, <http://penta2.ufrgs.br/gereseg/censura/green/greenzon.htm>

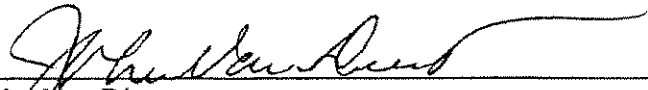
⁷ *Id.*

“The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being — a concept at the root of any decent system of ordered liberty.”

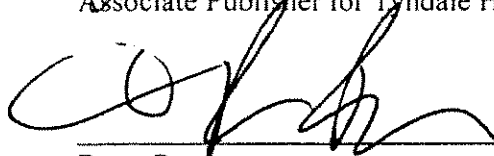
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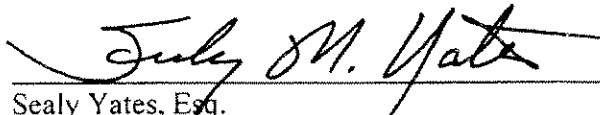
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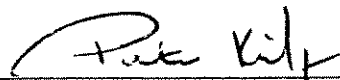
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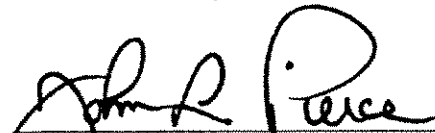
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served in accordance with the Texas Rules of Appellate Procedure to the following parties on August 9, 2006, via Federal Express:

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