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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: Blake Hawthorne, Clerk of the Supreme Court of Texas:

Under Rule 11 of the Texas Rules of Appellate Procedure, Amici file this *amicus curiae* letter brief in support of Petitioners The Local Church, Living Stream Ministry, et al.'s Petition for Review. Amici, Derek H. Davis, J.D., Ph.D.; Rodney Stark, Ph.D.; James M. Dunn, Ph.D.; Edwin S. Gaustad, Ph.D.; J. Gordon Melton, Ph.D.; Stuart Wright, Ph.D.; Ronald B. Flowers, Ph.D.; Mark G. Toulouse, Ph.D.; H. Newton Malony, Ph.D.; Rev. Jerry Smith, Latham Springs Baptist Encampment; James D. Faubion, Ph.D., and Williams L. Pitt, Jr., Ph.D., are various individuals and organizations who are concerned about the detrimental effect the Court of Appeals' ruling will have on the religious practice of small religious groups.

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

Amici join in and adopt the Statement of the Case, Statement of Jurisdiction, and Statement of Facts contained in Petitioners The Local Church, Living Stream Ministry, et al.'s Petition for Review.

Amici urge this Court to review the January 5, 2006 Appellate Court decision granting summary judgment to defendants. We concur with the arguments advanced by *amicus curiae* submitted with this petition and write separately to emphasize the detrimental effect this ruling may have on religious freedom in America.

- I. **In ruling that a factual encyclopedia accusing religious organizations of criminal conduct and abhorrent practices through the word "cult" is incapable of defamatory meaning, Amici are concerned the Court of Appeals painted with too broad of a brush. The Court should review this case to properly balance the First Amendment's vital guarantee of free and uninhibited discussion of public issues with the important social values underlying defamation law and strong interest in preventing and redressing unsubstantiated charges of criminal and immoral behavior made against smaller churches in America.**

Amici's professional studies and years of experience in the field form the basis for their concern regarding the use of the term "cult" in scholarly and lay publications such as the *Encyclopedia of Cults and New Religions* ("ECNR") that is the subject of this lawsuit. Using "cult" as a code word to impute crimes and immorality to groups labeled as cults, as was done here in *ECNR* has been a topic of concern for Christian apologists and secular scholars who write about religious movements and the social consequences that result from the use of the term in that fashion. Existing literature in the sociology of religion and related fields leaves little doubt that the general public and "institutional elites" understandably have a negative view of "cults."

Scholars often cite two reasons for this negative perception. First, "anti-cultists" or the "anti-cult movement," a series of mostly secular organizations and individuals united by their opposition to groups they consider to be "cults," have been successful in convincing the general public of the danger of "cults" based on events like Jonestown and Waco. Many scholars describe these stereotypes as constituting an "anti-cult mythology" fueling a fear that the crimes and depravity of a few groups is actually characteristic of all groups labeled "cults." *ECNR* reports this "mythology" as fact by including many of the most extreme and improbable charges—such as participation in financial fraud, beatings, murder, rape, and worse—in its section describing the "Characteristics of Cults," and then ascribing such abhorrent conduct to named groups in *ECNR* by labeling them all as "cults."

Second, the print and television media often use sensationalism in describing "cults" and rely heavily on cult stereotypes that include murder, drug-use, financial fraud, etc. Minority religions lose their chance at a fair hearing as soon as the *ECNR* label "cult" is successfully applied to them. It is virtually impossible for such small religious organizations, regardless of the true nature of their religious beliefs and practices, to rid themselves of the stigma of such an opprobrious label. The term "cult" has become laden with negative connotations among the general public and media. For the better part of two decades, many scholars, due to the potentially negative consequences arising from irresponsibly wielding the term "cult," have advocated dropping its use altogether.

Merely using the word to describe a group elicits negative, stereotypical images about what the group is like before any factual information has been obtained. The word "cult" dehumanizes the religion's members and their children. It strongly implies that these people are deviants and they are seen as crazy, brainwashed and duped by their leader(s). Scholars acknowledge that the term "cult" immediately calls to the public mind visions of

such notorious groups as the Branch Davidians and Jonestown. Thus, the use of the term "cult" as a descriptor in academic literature is an "ethical breach" for modern social scientists. The ECNR authors recognized the secular connotations of the term when they state that the term "cult" has "value for secularists unconcerned with theological matters yet very concerned about the consequences of cults."¹ The Court of Appeals' opinion effectively holds that, under the rubric of "cult as a religious term," authors and their publishers can tar² and paint groups they deem cults with accusations of secular criminal conduct—that would in any other, nonreligious, context be actionable defamation.

- II. **Though the plaintiffs did not base their suit on wrongfully being called a "cult" per se, the Court of Appeals' broad holding that accusing the plaintiffs of being a "cult" renders ECNR non-actionable even though objectively verifiable characteristics, crimes and bad acts are attributed to the term "cult" is against the weight of the law in Texas and other jurisdictions.**

In the Texas Court of Appeals case of Hooper v. Pitney Bowes, Inc., 895 S.W.2d 773 (Tex.App. – Texarkana 1995), a sales manager was accused by her branch manager and other employees of "cult-like" activity and being in the occult. The Texas Court of Appeals expressly held that false accusations of being a "cultist," or "cult-like" or "occult" (similar to the allegations in the present case at bar) are indeed defamatory. In that regard, the court stated: "In these times, a high degree of opprobrium has attached to terms such as 'cultist,' '[and] 'occult'.... False accusations against or characterizations of persons using those and similar terms, we believe, can certainly be considered to be beyond all bounds of decency and to be atrocious and utterly intolerable in a civilized society." Thus, to be falsely accused of cult status is defamation in this state. To be falsely accused of being an organization that is identifiable as a cult because it commits specific illegal and immoral acts is no less defamatory. That the offending publication also contains statements that are theological in nature does not insulate Appellants from liability for statements that falsely accuse Appellees of specific bad acts.

Then, in Landmark Education v. Conde Naste, 1994 WL 836356 (N.Y. Sup.) (1994), the plaintiffs alleged defamation by their inclusion as a "cult" and by the combination of individual statements and juxtaposition of words and statements that attributed certain practices to the identified cults in the article. The court noted that:

The interspersed facts and opinions throughout the article ...concerning cults tars all the groups covered by the [article] with the same brush with language that appears to be libelous per se as it addresses the office, profession or trade of plaintiff.... [S]tatements that contain or imply assertions of provably false facts will likely be actionable." Immuno AG v. Moor-Jankowski, 77 NY2d 235, 245, quoting Milkovich v. Lorain Journal Co., 497 US 1. In applying the previously outlined test it cannot be questioned that cult has a precise meaning which is

¹ ECNR, p. XXI.

² Indeed, the book itself states that "a far darker picture could have been painted." ECNR, p. IX.

readily understood as it was defined in the article. The statements made are capable of being proven true or false as "the Forum's" procedures can be matched against the defined qualities of cults. [T]his Court believes it is for a jury to determine whether the words directed generally to the "cults" covered in the [article] would lead the reasonable reader to believe, in the context of the whole [article] that the plaintiffs had indulged in these practices. *New Testament Fellowship v. E.P. Dutton & Co.*, *supra*; *Landmark Education v. Conde Naste*, *supra* (emphasis added).

Next, in *NT Missionary Fellowship, v. E.P. Dutton & Co., Inc.*, 112 A.D. 2d 55 (1985), a defamation lawsuit was brought based on a book entitled, Let Our Children Go—an account of cults that program young people with brainwashing. The court noted that "the book tars all of the groups covered by the book with the same brush, and that no innuendo is necessary to bring out the **defamatory** character of such words." *Id.* at 57-58 (emphasis added). It is for a jury to determine whether these words, directed generally to the "cults" covered in the book, would lead the reasonable reader to believe, in the context of the whole book, that the plaintiffs had indulged in these practices. *Id.* at 57-58 (emphasis added).

Finally, in *Kennedy v. Children's Service Society of Wisconsin*, 17 F. 3d 980 (1994), adoptive parents brought suit against an adoption agency after it declined their request to adopt a child because the agency believed that the adoptive parents were members of a cult. In affirming the district court that *being identified as a member of a cult could be defamatory*, the court of appeals held: "In the end...it is clear that Gaunt's statements that the Kennedys were unsuitable parents because they belonged to a cult could give rise to a claim of defamation." *Id.* at 984 (emphasis added).³

The cases cited by the court below and their amici regarding "cult" being a religious term are distinguishable from the case at bar. For example, *Sands v. Living Word Fellowship*, 34 P. 3d. 955 (2001), is an exclusively religious dispute in which competing church groups were involved with the recruitment of an individual for their respective groups. The court noted there were "doctrinal differences" between the churches and, distinct from *ECNR*, no accusations of the group being a cult with certain harmful practices were made. Also, *Trans v. Fiorenza*, 934 S.W.2d 740, 742 (Tex. App. 1st Dist. 1996), is distinguishable as it involved a religious dispute involving the excommunication of a Bishop from the Catholic Church. The case did not involve any accusations of being labeled a "cult" with abhorrent practices and has no precedential value here.

³ See also *Tuman v. Genesis Associates*, 935 F. Supp. 1375 (1996). Plaintiffs sued for slander based on being identified as members of a satanic cult. *Pratt v. Nelson*, 127 P.3d 1256 (2005). The court did not dismiss based on the term "cult" being one of "religious opinion."

III. By holding that wrongfully being labeled "cult" is not actionable when crimes or abhorrent conduct are attributed to the term, the Court of Appeals has upset the balance between an entity's rights to free speech versus the protection of the reputation and religious liberties of small churches.

The Court of Appeals' decision could be extremely detrimental to the free practice of religion in America and abroad, denying religious groups protections from defamation provided to other citizens. Based on a portion of the Introduction, the court concluded that *ECNR* "centers on doctrinal and apologetic issues" and thus, wrongly concluded that "[b]eing labeled a 'cult' is not actionable because the truth or falsity of the statement depends upon one's religious beliefs." (Emphasis added.)

However, knowing that many in their audience would **not** be swayed by mere appeals to theology, the *ECNR* authors resorted to extreme charges to achieve desired rhetorical effects including ritual murder, human sacrifice, child molestation, drug smuggling and prostitution — accusations applied generally to the "cults" named in *ECNR*. This is done to generate public animosity, to justify official intervention and override legitimate concerns about religious liberty.

The historical precedent of baseless allegations causing targeted groups to be shunned, scorned, and persecuted — in some cases by government action — is part of *ECNR*'s stated intention — to promote "intolerance" toward the groups it identifies as "cults" and to bring about governmental action to limit their freedoms. This intolerance is promoted, not based on religious beliefs, but on the damages those labeled as "cults" purportedly do:

During the twentieth century, tens of millions of lives were damaged or ruined by the cults. One wonders, do the 'tolerant' care? Anyone who wishes can be tolerant of the kinds of things described in this encyclopedia. That is their right, even if it is coming back to haunt the rest of society. But that does not mean that others have no right to be critical of the beliefs and practices of those whom they think are detrimental to individuals and to society, especially if good evidence exists in support of such claims.⁴

Although the authors and publisher knew the potential for tragic consequences from false accusations, they chose to paint the groups in *ECNR* as cults in the darkest possible terms. For example, consider these statements from the *ECNR* introduction: "Indeed, had we wished to do it, a far darker picture could have been painted" (p. IX). "[W]hat is recorded is merely the tip of the iceberg" (p. XXVI). "There are many documented things that we could not even mention or discuss in this work" (p. XXVI). These statements far the 57 specifically identified groups in *ECNR* which were chosen out of "thousands" according to the authors for their impact on society.

If the Court of Appeals' decision is upheld, religious groups can be wrongly painted with libelous accusations as long as reference is made to theological issues. This will damage

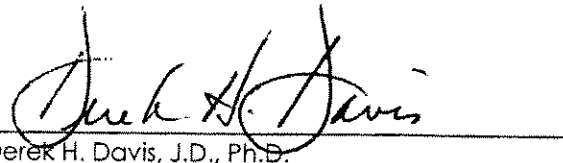
⁴ *ECNR*, p. XX.

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 that would make the courts an ally of those who seek to limit the freedoms of others.

Respectfully submitted,



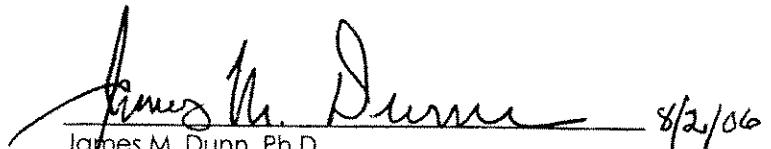
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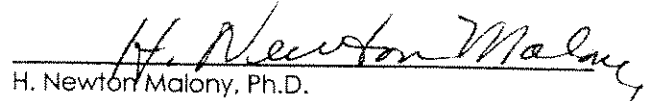
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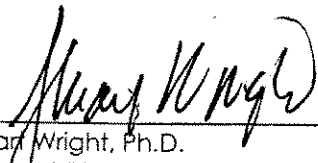
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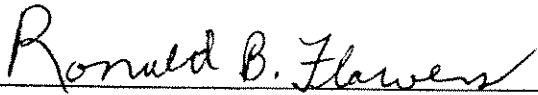
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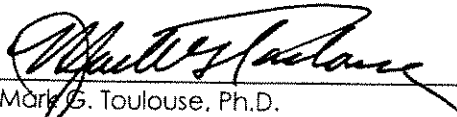
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CERTIFICATE OF SERVICE

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 12, 2006, via U.S. certified mail:

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