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Responding Party: Corporation of the
Catholic Archbishop of Seattle
Hearing Date: July 12, 2024
Hearing Time: 1:30 p.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Petition to Enforce the
Investigative Subpoena of:

No. 24-2-10392-9 SEA

The Complex Litigation Division of the
Washington State Office of the
Attorney General,

CORPORATION OF THE
CATHOLIC ARCHBISHOP OF
SEATTLE'S OPPOSITION TO
STATE OF WASHINGTON'S
PETITION TO ENFORCE
INVESTIGATIVE SUBPOENA

Petitioner.

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1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 The Archdiocese condemns all acts of sexual abuse. It stands behind the United
3 States Conference of Catholic Bishops’ (“USCCB”) *Charter for the Protection of*
4 *Children and Young People*. In the preamble, the bishops acknowledge that “[t]he sexual
5 abuse of children” by some clergy, “and the ways in which these crimes and sins were
6 addressed, have caused enormous pain, anger, and confusion.”¹ The bishops expressed
7 their recommitment to the protection of children.

8 In objecting to this subpoena, the Archdiocese’s commitment to the protection of
9 children and the elimination of child sexual abuse remains steadfast. The Archdiocese has
10 and will continue to produce documents relating to this issue in the context of civil
11 discovery applying neutral principles of tort law, and will likewise continue to report
12 allegations of sexual abuse to law enforcement and cooperate in criminal investigations.
13 But the AGO’s subpoena and petition here incorrectly—and unconstitutionally—rests on
14 the fundamentally flawed premise that a partisan, elected, executive official has
15 supervisory jurisdiction over the Catholic Church. This the Archdiocese cannot accept, as
16 it would violate the state and federal constitutions. By objecting, the Archdiocese seeks to
17 rein in a partisan elected official who untenably claims that the legislature’s limitation of
18 his own authority should be discarded. Upholding the AGO’s purported authority would
19 condone the misuse of Washington’s Charitable Trust Act (“CTA”) as a tool to interfere
20 with church governance and religious exercise. This result is foreclosed by the CTA
21 itself, the legislature’s intent in enacting it, and the federal and state constitutions.

22 In truth, the AGO simply wants wide-ranging discovery into the Archdiocese’s
23 response to sexual abuse, discovery beyond what a litigant could get in a tort suit.
24 Because it has no lawful means to obtain such materials, it purports to use the CTA,

25 ¹ See USCCB, *Charter for the Protection of Children and Young People*, at 1–5 (rev. June
26 2018) (“Charter”), available at <https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf>.

1 claiming for itself a role in determining whether the use of funds has in fact comported
2 with the purpose of the Archdiocese’s charitable trust: to advance and benefit the Catholic
3 religion. But the Archdiocese’s response to the abuse of children is essentially pastoral
4 and suffused with religious and doctrinal considerations. *See, e.g.*, Declaration of
5 Benjamin Altenhofen (“Altenhofen Decl.”) ¶¶ 25–29. Whether this response has been in
6 keeping with the Catholic faith—e.g., the religious purpose of the Archdiocese—is a
7 determination governmental authorities may not constitutionally adjudge or become
8 entangled in. Governmental determinations of whether acts by church officials truly
9 “benefit religion” would impermissibly intrude on church governance and religious
10 exercise in violation of the First Amendment and article 1, section 11. It is for this very
11 reason that the legislature, when enacting the CTA and amending it over the years, has
12 expressly excluded from its scope “religious corporations duly organized and operated in
13 good faith as religious organizations, which have received a declaration of current tax
14 exempt status from the government of the United States.” RCW 11.110.020(2)(b)(ii).
15 The Court should decline to enforce the subpoena.

16 II. STATEMENT OF FACTS

17 A. The Archdiocese Is Organized as a Corporation Sole, With the Archbishop 18 Holding Archdiocesan Property in Trust for the Purpose of the Catholic Church in Seattle

19 The Archdiocese of Seattle is organized as a corporation sole under chapter 24.12
20 RCW. The corporation sole is a device “to enable bona fide religious leaders to hold
21 property and conduct business for the benefit of a religious entity.” IRS Rev. Rul. 2004-
22 27, 2004-1 C.B. 625, 2004 WL 389673 (Mar. 22, 2004); *Corporation*, Black’s Law
23 Dictionary (11th ed. 2019) (defining “corporation sole” as “a continuous legal personality
24 that is attributed to successive holders of certain monarchical or ecclesiastical positions,
25 such as kings, bishops, rectors, vicars, and the like”). “Since the corporation sole is the
26 incorporation of the head or presiding office of an organization, it generally operates

1 without directors or members except the current holder of the office.” 1 Fletcher
2 Cyclopedia of the Law of Corp. § 50.

3 Washington’s Corporation Sole Act enables a “bishop ... of any church or
4 religious denomination in this state” to become a corporation sole. RCW 24.12.010. Any
5 property held by a bishop in an official capacity is deemed to be held “in trust for the use,
6 purpose, benefit, and behoof of his or her religious denomination[.]” RCW 24.12.030.
7 Pursuant to this act, the Archbishop of the Archdiocese of Seattle holds property in trust
8 for the use, purpose, benefit, and behoof (e.g., advantage) of the Catholic Church. *See,*
9 *e.g., Bays Decl. Exs. A–E.*

10 It is well known that the Catholic Church “is hierarchical in nature” and that each
11 diocese “shares an identical faith and doctrine with other Catholic churches throughout the
12 world and all these churches look to the Pope in Rome as their ultimate earthly authority.”
13 *Wheeler v. Roman Catholic Archdiocese of Boston, 378 Mass. 58, 389 N.E.2d 966, 967*
14 *(1979).* Under Catholic canon law, a bishop or archbishop “in the diocese entrusted to
15 him has all ordinary, proper, and immediate power which is required for the exercise of
16 his pastoral function except for cases which the law or a decree of the Supreme Pontiff
17 [e.g., the Pope] reserves to the supreme authority or to another ecclesiastical authority.”
18 *Altenhofen Decl. ¶ 16.*

19 **B. Charitable Trusts Hold Property for Charitable Purposes**

20 As a corporation sole, the Archbishop holds church property in trust for the
21 purposes of advancing the Catholic religion. Because the advancement of religion is a
22 charitable purpose, the trust is charitable in nature, as are trusts for the purposes of
23 relieving poverty, advancing knowledge or education, promoting health, or those
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1 established for governmental or municipal purposes, or other purposes beneficial to the
2 community. Restatement (Second) of Trusts §§ 368–74.²

3 **C. Washington Adopts the Uniform Charitable Trust Act**

4 While the terms of a private trust may be enforced by the beneficiaries, public
5 charitable trusts, which lack specified persons benefitting from the trust, did not have the
6 same private enforcement mechanism available. While attorneys general had some
7 authority to enforce public charitable trusts at common law, they were like store managers
8 lacking invoices or inventory lists. The existence of such trusts was often unknown, the
9 relevant trust instruments were not typically filed or recorded, and trustees had no duty to
10 furnish trust information to the attorney general. William H. Wicker, *Charitable Trusts*,
11 11 Gonz. L. Rev. 1, 11 (1975). It was estimated that large sums entrusted to charitable
12 uses had been forgotten or fallen into obsolescence. *See id.* It was hoped that a
13 registration requirement could enable enforcement or the application of cy pres,³ thereby
14 returning such funds to public benefit. *See id.* at 5–12.

15 To that end, in 1954, the National Conference of Commissioners on Uniform State
16 Laws promulgated the Uniform Supervision of Trustees for Charitable Purposes Act
17 (“Uniform Act”). *Id.* The Uniform Act created a system requiring charitable trusts to be
18 registered or recorded and for regular reports to be submitted to the Attorney General, *id.*
19 at 11–12, enabling him or her “to compel the proper administration of funds held by
20 trustees and others for charitable purposes,” Unif. Act, prefatory note.

21 Not all charitable trusts fell within the Uniform Act’s reach. “Religious
22 organizations were specifically exempted from the Uniform Act to avoid encroachment
23

24 ² Washington courts look to the Restatement (Second) of Trusts as persuasive. *See, e.g.,*
25 *Conservation Nw v. Comm’r*, 199 Wn.2d 813, 824, 514 P.3d 174 (2022) (citing Restatement).

26 ³ “Cy pres” is “the equitable doctrine under which a court reforms a written instrument
with a gift to charity as closely to the donor’s intention as possible, so that the gift does not fail.”
Cy pres, Black’s Law Dictionary (11th ed. 2019).

1 into constitutionally protected areas,” as were corporations organized and operated
2 primarily for educational or hospital purposes. *See* Stephen P. Rader, *Government*
3 *Protection of Church Assets from Fiscal Abuse: the Constitutionality of Attorney General*
4 *Enforcement Under the Religion Clauses of the First Amendment*, 53 S. Cal. L. Rev. 1277,
5 1280 (1980) (citing Unif. Act § 3).

6 In 1967, Washington joined the growing list of states to adopt the Uniform Act.
7 Laws of 1967, Ex. Sess., ch. 53. The purpose of the CTA was to “facilitate public
8 supervision over the administration of public charitable trusts and similar relationships
9 and to clarify and implement the powers and duties of the attorney general with relation
10 thereto.” *Id.* § 1. As with the Uniform Act, Washington expressly exempted religious
11 corporations and their affiliates from its reach. *Id.* § 2. Also exempted were educational
12 institutions, hospitals, banks, and certain nonprofit foundations. *Id.*

13 Exempting religious organizations prevented the AGO from scrutinizing whether
14 the organization’s activities are consistent with its religious doctrine. Such an inquiry
15 would involve impermissible governmental intrusion and entanglement into matters of
16 faith and doctrine. Americans had long regarded the doctrine of cy pres as “an instrument
17 of religious persecution.” *See* Elias Clark, *Charitable Trusts, the Fourteenth Amendment*
18 *and the Will of Stephen Girard*, 66 Yale L.J. 979, 995 & n.61 (1957) (describing 1754
19 English chancery case in which the chancellor declared a trust to support the Jewish
20 religion void and instead sent the funds to a Christian foundling home and concluding that
21 “[a]lthough the colonists were not always above engaging in religious persecution
22 themselves, they were not disposed to bring with them a concept so associated with the
23 absolute power of the King”); Jeffrey G. Sherman, *Can Religious Influence Ever Be*
24 *“Undue” Influence?*, 73 Brook. L. Rev. 579, 592 (2008) (observing that the Crown as
25 *parens patriae* would seek to strike down Catholic trusts and courts might “save” such
26

1 trusts “by applying cy pres and directing the trustees to use the trust funds for an Anglican
2 purpose that the court considered similar”).

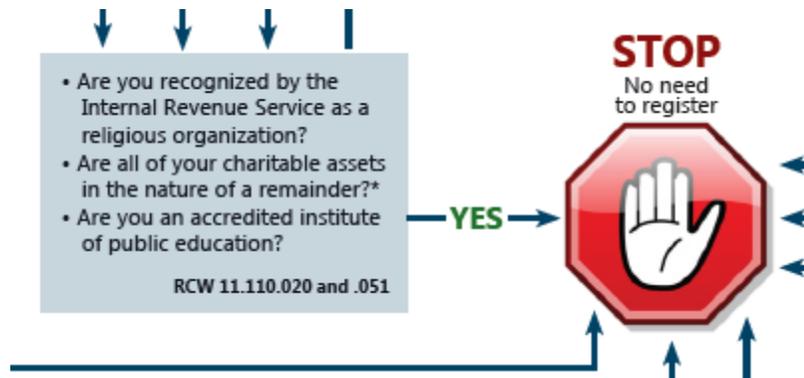
3 From that dark legacy of religious persecution, across the country “all registration
4 statutes [like the CTA] exclude religious corporations, trusts or other religious
5 organizations from their coverage, apparently to avoid any question about the
6 constitutionality of the supervisory legislation, and in some states other exceptions are
7 provided.” George G. Bogert, *Bogert’s The Law of Trusts and Trustees* (“Bogert on
8 Trusts”) § 411.

9 **D. The CTA Exempts Religious, Educational, and Nonprofit Entities**

10 As presently codified, the CTA exempts from the AGO’s supervisory and
11 enforcement reach—by excluding from the definition of “trustee”—all “religious
12 corporations duly organized and operated in good faith as religious organizations, which
13 have received a declaration of current tax exempt status from the government of the
14 United States[.]” RCW 11.110.020(2)(b)(ii). The Archdiocese is such an organization
15 and has a current declaration of tax exempt status from the IRS. Declaration of Sara
16 Elizabeth Jones (“Jones Decl.”) ¶¶ 2–9.

17 Because the Archbishop, as a religious corporation sole, is specifically excluded
18 from the definition of a “trustee” under the CTA, the Archdiocese is exempt from the
19 CTA entirely, including its requirements to register a charitable trust, submit an inventory,
20 and file a tax return, and is not subject to the AGO’s investigative or enforcement powers
21 under the CTA. *See* RCW 11.110.051–.120. The religious exemption is clear cut and
22 established. Indeed, the Secretary of State has published a flow chart to help charitable
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1 trusts determine if they should register, making clear that qualifying religious
2 organizations are exempt:



10 Declaration of Theresa DeMonte (“DeMonte Decl.”) **Ex. A.**

11 In Washington, similar exemptions, safeguarding free exercise and separation
12 principles, apply to charitable solicitations, *see* RCW 19.09.020(2) (exempting “churches
13 and their integrated auxiliaries” from the definition of “charitable organization”), and to
14 religious nonprofit corporations, *see* RCW 24.03A.050 (“To the extent religious doctrine
15 or canon law governing the internal affairs of a nonprofit corporation is inconsistent with
16 [the act], the religious doctrine or canon law controls to the extent required by the United
17 States Constitution, the state Constitution, or both”).

18 Religious organizations are not the only entities exempt under the CTA. Also
19 exempted are nonprofits and any “educational institution which is nonprofit and
20 charitable, having a program of primary, secondary, or collegiate instruction comparable
21 in scope to that of any public school or college operated by the state of Washington or any
22 of its school districts.” RCW 11.110.020(2)(b)(i), (iii). The Archdiocese is by definition
23 not a “trustee” under the CTA, and the AGO lacks the authority provided in RCW
24 11.110.100 *et seq.* to investigate or subpoena the Archdiocese.

1 **E. Attention to the Issue of Child Sexual Abuse Has Led to Meaningful Reforms**
2 **Across the Nation to Better Protect Children**

3 Because the subpoena seeks information about child sexual abuse in the
4 Archdiocese, some background on this issue provides helpful context.

5 **1. Child sexual abuse comes to the forefront in the 1970s.**

6 In the 1970s, increasing “[m]edia coverage of child sex abuse and child
7 pornography propelled Congress to Act.” Dawinder S. Sidhu & Kelsey Robinson, *Child*
8 *Pornography and Criminal Justice Reform*, 43 *Cardozo L. Rev.* 2157, 2173 (2022). As
9 part of this national awakening to the seriousness and prevalence of this issue, in 1978,
10 child pornography went from being largely unregulated to becoming a federal crime. *Id.*
11 at 2172–73. While it may be surprising that action was not taken earlier, “contemporary
12 awareness of widespread sexual abuse of children dates back only to the late 1970s[.]”
13 Jon R. Conte, *Child Sexual Abuse: Awareness and Backlash*, 4 *Sexual Abuse of Children*,
14 224, 224 (1994). “Prior to the 1970s there was a paucity of research on the prevalence
15 and effects of sexual abuse,” but as reporting laws went into effect, the prevalence and
16 magnitude of the problem came to light. John E.B. Myers, *A Short History of Child*
17 *Protection in America*, 42 *Fam. L.Q.* 449, 456, 461 (2008).

18 **2. Deficiencies in institutional responses to child sexual abuse become the**
19 **subject of widespread media attention in 2002.**

20 In early 2002, the Boston Globe published results of its investigation into sexual
21 abuse by Boston’s Catholic clergy and missteps by church leadership. The story received
22 widespread international media attention, won the paper a Pulitzer prize, and inspired the
23 biographical drama film *Spotlight*.

24 The situation in Boston had a ripple effect across the nation. While the vast
25 majority of priests had no allegations against them, a small minority of clergy had
26 committed atrocious and criminal acts against children, exploiting their positions of trust
 and power to victimize the most vulnerable. In Maryland, a grand jury investigation led to

1 a report concluding that the Archdiocese of Baltimore had “conflated pedophilia with
2 alcoholism and other substance use disorders,” leading it to “exhibit[] a misplaced reliance
3 on ‘treatment[.]’”⁴ That theme was repeated in many dioceses.

4 The continued exposure and attention brought to this issue has shown that it has
5 arisen in every sector of society. Groups as diverse as the Boy Scouts of America, the
6 Baptist Church, boarding schools, families, and Brooklyn’s ultra-orthodox Jewish
7 community have all been confronted with the reality of child sexual abuse occurring in
8 their ranks. Research shows that this problem is no more prevalent among Catholic clergy
9 than it is in other segments of the public. Pat Wingert, *Priests Commit No More Abuse*
10 *than Other Males*, Newsweek (Apr. 7, 2010) (discussing research).

11 **3. The Archdiocese of Seattle intensifies its efforts to prevent child sexual**
12 **abuse and to provide pastoral care to victims beginning in the 1980s.**

13 This Archdiocese formalized its commitment to safeguarding children from sexual
14 abuse by clergy in the 1980s, convening a “Blue Ribbon Panel Committee” to advise on
15 policies and procedures for handling claims and preventing further abuse. *See* Declaration
16 of Caitlin Moulding (“Moulding Decl.”) ¶ 7. Those who report allegations are offered
17 pastoral care.⁵ In 2002, the Archdiocesan Review Board was created as a consultative
18 body to advise the Archbishop in fulfilling his pastoral and canonical responsibilities
19 relating to allegations of sexual abuse of minors. *Id.* ¶ 21. A Case Review Board was
20 established in 2003 by Archbishop Alexander Brunett as another consultative body to
21 make recommendations on priests returning to ministry and the imposition of sanctions.

23 ⁴ Attorney General’s Report on Child Sexual Abuse in the Archdiocese of Baltimore,
24 Interim Public Release, at 2 (Apr. 2023), *available at*
25 [https://www.marylandattorneygeneral.gov/reports/OAG_Redacted_Report_on_Child_Sexual_Abu](https://www.marylandattorneygeneral.gov/reports/OAG_Redacted_Report_on_Child_Sexual_Abuse.pdf)
26 [se.pdf](https://www.marylandattorneygeneral.gov/reports/OAG_Redacted_Report_on_Child_Sexual_Abuse.pdf) (last visited June 30, 2024).

⁵ Pastoral care refers to the spiritual care a Christian bishop or priest, or the church as a
body, extends to the faithful—analagized in scripture as a “flock” of sheep—in imitation of Jesus
Christ, who is imaged in the gospels as the good shepherd. John 10:14.

1 *Id.* ¶ 23. In 2006, the functions of the Case Review Board were merged into the Review
2 Board. *Id.* ¶ 24.

3 Beginning in January 2016, Archbishop Peter Sartain released a list of “credibly
4 accused” clergy and religious “to continue to encourage victim survivors of sexual abuse
5 by those working on behalf of the Church to come forward.” *Id.* ¶ 26. As presently
6 constituted, 33 Archdiocesan priests are listed (of which 24 are deceased) relating to
7 allegations going back decades. *Id.*

8 The Archdiocese’s response to child sexual abuse is deeply and inextricably
9 intertwined with its religious mission, is guided by canonical and pastoral considerations,
10 and is inspired by religious teaching. *See, e.g.,* Altenhofen Decl. ¶¶ 25–29 & Ex. C, at 6
11 (“Let there now be no doubt or confusion on anyone’s part: For us, your bishops, our
12 obligation to protect children and young people and to prevent sexual abuse flows from
13 the mission and example given to us by Jesus Christ himself, in whose name we serve.”);
14 *see also* Thomas P. Doyle, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31
15 *Fordham Urb. L.J.* 549, 556 (2004) (“The Code [of Canon Law] contains legislation that
16 deals directly with sexual abuse, and procedures for dealing with accusations of such
17 abuse.”). Thus, constitutionally-protected religious exercise pervades the Archdiocese’s
18 response to this issue, which is fundamentally a religious response.

19 Of course, the Archdiocese is subject to neutral principles of criminal and tort law.
20 It reports allegations of sexual abuse to law enforcement, cooperates in criminal
21 investigations, and complies with civil discovery obligations. It is notable that the AGO’s
22 petition devotes many pages to discussing the case of former priest Michael Cody, to
23 suggest this situation justifies AGO intrusion into the Archdiocese’s pastoral response.
24 *See* Pet. 7–14. This argument ignores the fact that multiple lawsuits related to Cody have
25 been litigated, including up to the point of trial, thousands of pages of documents have
26 been produced in discovery, numerous Archdiocesan officials have testified, and many

1 millions in settlements have been paid out. Declaration of Keith A. Talbot ¶¶ 2–7.
2 Cody’s reprehensible crimes against children, and any neglect on the part of the
3 Archdiocese, his former employer, has received a full airing without the AGO’s
4 involvement and with the standard use of civil process.

5 **F. The AGO Serves an Investigative Subpoena in July 2023 Seeking Records**
6 **Unrelated to the Subject Matter of the CTA.**

7 In July 2023, the AGO served an investigative subpoena addressed to Archbishop
8 Paul Etienne, purporting to exercise investigative authority under the CTA. Bays Decl.
9 **Ex. F.** The subpoena seeks documents spanning more than eight decades: starting January
10 1, 1940, to the present. *Id.* Among other things, the subpoena seeks “[a]ll records
11 regarding all individuals” on the Archdiocese’s list of those with credible accusations
12 (many of whom are deceased), all documents relating to any training about sexual
13 misconduct or sexual abuse, all documents relating to the Archdiocesan review of such
14 allegations, all policies relating to sexual misconduct, and all counseling and treatment
15 records for any individuals ever accused of sexual abuse or misconduct, and information
16 about any settlements relating to sexual abuse or misconduct. *Id.* Notably, this subpoena
17 purportedly brought pursuant to the CTA ***does not seek financial or accounting records.***

18 The Archdiocese’s general counsel objected to that subpoena in August 2023.
19 Bays Decl. **Ex. G.** During a conference held in September 2023, the Archdiocese
20 indicated its willingness to voluntarily cooperate with providing documents, despite
21 contesting the CTA’s application. *See* Declaration of William J. Crowley (“Crowley
22 Decl.”) ¶ 6. The AGO agreed to a tiered approach in which the Archdiocese would
23 produce documents in exchange for the AGO’s legal analysis of its authority to issue the
24 subpoena to the Archdiocese under the CTA. *Id.* On October 20, 2023, the AGO sent
25 some case citations purportedly to justify its subpoena authority under the CTA. *Id.* ¶ 7 &
26 **Ex. B.** Counsel responded that the citations were inadequate to address the exemption,

1 but produced documents responsive to subpoena nos. 7 and 8 on November 3, 2023. *Id.* ¶
2 8 & Ex. C.

3 **G. The AGO Refuses to Disclose the Investigation as the Archdiocese Requests,
4 Issues a Second Subpoena, then Moves to Enforce**

5 In February 2024, counsel for the Archdiocese reached out to the AGO to invite
6 the AGO to announce the investigation. *Id.* ¶ 10. The Archdiocese proposed that the
7 Attorney General would make that announcement in a joint press conference with
8 Archbishop Etienne, who would affirm the Archdiocese’s commitment—regardless of the
9 CTA’s reach—to voluntarily cooperate to provide a reasonable and helpful production in
10 the interest of transparency and accountability. *Id.* In April, the AGO declined the
11 invitation and indicated it would supplement the subpoena. *Id.* ¶ 12.

12 The second subpoena, served on April 10, 2024, included the same requests as the
13 first. *Compare* Bays Decl. **Ex. F with Ex. H.** Additionally, perhaps having realized that a
14 subpoena purportedly under the CTA requesting *no* accounting documents would look
15 rather strange to a court, the AGO tacked on several items seeking certain financial
16 records and governing documents. *Id.* **Ex. H** (nos. 24–28). Objections were served on
17 April 24, 2024. *Id.* **Ex. I.** At a meet and confer on May 6, 2024, the parties confirmed
18 their disagreement on whether the CTA provided authority to issue the subpoena. *See id.*
19 ¶ 14. On May 9, 2024, the AGO abruptly filed this petition without warning and
20 immediately held a press conference at 11:00 a.m. the same day, during which the
21 Attorney General called upon the Archdiocese “to lead by example” and “follow the
22 teachings of Jesus.” He further opined that the Archdiocese “need[s] to start by doing
23 that.”⁶ Plaintiffs’ lawyer Michael Pfau, whose firm bio notes he is “a highly sought-after
24 advocate for child sex abuse victims” and whose firm has focused on lawsuits against the

25 ⁶ Attorney General Press Conference (May 9, 2024, 11:00 a.m.)
26 <https://tvw.org/video/attorney-general-bob-ferguson-press-conference-2024051129/>, at 38:35; *see*
DeMonte Decl. **Ex. B.**

1 Archdiocese, walked across the stage behind the podium before the press conference
2 began. *Id.* ¶ 16 & Ex. I.

3 III. ARGUMENT AND AUTHORITY

4 A. The CTA Exempts the Archdiocese as a Religious Corporation

5 Under the guise of exercising its investigative and enforcement authority under the
6 CTA, the AGO seeks to embark on a fishing expedition into Archdiocesan documents
7 going back more than eight decades. Far from having anything to do with the Catholic
8 Church's disposition or treatment of trust assets, the requested records largely relate
9 instead to the Archdiocese's response to child sex abuse by its clergy and religious—a
10 response grounded in faith and doctrine. It hopefully goes without saying that the
11 Archdiocese regards child sex abuse as an extraordinarily grave moral evil and civil
12 wrong. The Archdiocese supports civil remedies and the criminal prosecution of those
13 who were involved with or perpetrated such acts; it has and will continue to work with
14 victims and families of victims to rectify any civil or moral failings occurring within its
15 ranks. It will continue to cooperate in responding to criminal investigations or discovery
16 in civil actions, as it has for decades. Further, the Archdiocese has and follows policies
17 that require reporting to law enforcement when it receives allegations that a child or
18 vulnerable adult has suffered abuse.

19 But the AGO's purported authority to issue the subpoena here cannot be sustained.
20 It is an abuse of a statute that exempts religious corporations like the Archdiocese. It is an
21 overreach into ecclesiastical and doctrinal matters by a partisan politician during an
22 election year. If the AGO's ostensible investigative power were sustained in these
23 circumstances, nothing would prevent the AGO from reviewing *all* documents—prayer
24 requests, spiritual journals, internal emails regarding doctrinal disputes—to determine if
25 activities comported with the organization's religion. Such intrusion and entanglement in
26 the internal affairs of a religious organization impairs free exercise.

1 The CTA’s plain language excludes from the definition of “trustee” all “religious
2 corporations duly organized and operated in good faith as religious organizations, which
3 have received a declaration of current tax exempt status from the government of the
4 United States.” RCW 11.110.020(2)(b)(ii). The AGO does not dispute the Archdiocese is
5 such a corporation. There is no question it is organized as a religious corporation sole and
6 operates in good faith for that purpose, as the articles of incorporation reflect. Bays Decl.
7 **Exs. A–E.** And it has a current declaration of tax-exempt status from the IRS. *See Jones*
8 *Decl. Ex. A.* These facts place the Archdiocese squarely within the statutory exemption
9 from registration and filing requirements and from AGO investigation and enforcement.

10 Positing that “[t]he CTA’s religious exemption is not an exemption for sexual
11 abuse,” Pet. 18, the AGO submits that the CTA enables investigation of sexual abuse
12 occurring by clergy for religious organizations. It is true the CTA does not exempt
13 *conduct*, it exempts *entities*. But it does not follow that the CTA therefore empowers the
14 AGO to investigate sexual abuse, or, for that matter, any other activity of an exempt
15 religious organization. The CTA does not address and cannot redress sexual abuse: that is
16 the domain of criminal prosecutions or civil tort suits, to which religious organizations
17 generally are subject. Thus, exempting religious organizations from the CTA does not, as
18 the AGO suggests, “put religious organizations beyond public scrutiny.” *Id.*

19 **B. The Legislature’s Exemption Depends on the Nature of the Trust, Not the**
20 **Nature of a Particular Activity of the Trust**

21 While conceding that the exemption serves to protect religious freedom, the AGO
22 contends that the exemption cannot apply when an investigation relates to “obviously *non-*
23 *religious*” conduct. *Id.* 16–17 (acknowledging the exemption is designed to “respect[]
24 religious entities’ self-governance and use of funds held in trust for religious purposes”
25 and “to respect religious freedom and maintain the separation of church and state,
26 ensuring that churches’ use of trust funds for religious purposes is not second-guessed by
government officials”). The AGO’s syllogism is: (1) the corporation sole holds property

1 to benefit and advance the Catholic religion; (2) covering up sexual abuse does not do
2 this; and (3) therefore the exemption cannot apply.

3 This logic is wrong twice over. First, it incorrectly posits that an exempt religious
4 organization's every activity must be suffused with a religious motive—as judged by the
5 AGO—or the exemption is lost as to that activity. Second, if this method of analyzing
6 each activity were credited, the CTA exemptions would soon become meaningless.

7 A religious corporation necessarily does a number of mundane things that do not
8 themselves constitute the exercise of religion: issue paychecks, purchase printer paper,
9 refill toilet paper dispensers in a church bathroom, prepare sandwiches to serve to the
10 youth group, and so on. But each of these activities, when undertaken by a religious
11 corporation, is proper to its purpose as a religious corporation engaged in managing its
12 affairs. Similarly, exempt educational institutions engage in many activities that do not,
13 of themselves, have an educational purpose: stocking a supply room, arranging for an
14 electrical inspection, mowing the lawn, listening to a parent complain about a tuition
15 increase, and so on. Nevertheless, the school is exempt from the CTA as to *all of its*
16 *activities* because of its status as an educational institution having a program of
17 instruction. *See* RCW 11.110.020(2)(b)(iii).

18 Whether a charitable trust is exempt from the CTA does not depend on an activity-
19 by-activity analysis. Rather, whether it is exempt depends on its status. “Religious
20 organizations,” “nonprofit corporations,” and “educational institutions” operating
21 programs of primary, secondary, or collegiate instruction are exempt from the CTA.
22 RCW 11.110.020(2)(b). Of course such organizations engage in a variety of activities,
23 some of which are imperative to their mission, and others of which are less central.
24 Regardless of the specific activity, the exemption remains when undertaken by an exempt
25 entity.

26 If it were otherwise, the exemption would be meaningless. Indeed, the core

1 purpose of the CTA is to prevent financial mismanagement and obsolescence of public
2 trust assets. RCW 11.110.010 (stating purpose of CTA is to supervise “the
3 administration” of public charitable trusts). Obviously, financial mismanagement of any
4 type is not consistent with a religious, educational, or nonprofit purpose. Yet, exempt
5 trusts need not register, file reports, or be subject to AGO investigation or enforcement for
6 financial mismanagement. If the legislature’s exemption is to mean anything at all, it
7 means that the AGO cannot investigate or enforce such trusts pursuant to the CTA *for*
8 *these activities, which would sap support from such entities’ core mission.* A fortiori, if
9 the AGO is not empowered to investigate financial mismanagement of exempt entities, it
10 also cannot investigate, under the CTA, other conduct that the AGO subjectively believes
11 is untethered from the trust’s religious mission.

12 Equally flawed is the AGO’s argument that the investigation at hand has nothing
13 to do with “faith,” “doctrine,” or “church government”: areas the AGO concedes are
14 shielded from governmental interference. Pet. 19. The Church’s processes to prevent
15 abuse reflect and incorporate matters of faith and doctrine, and the canonical process
16 involved in reviewing abuse allegations, offering pastoral care to victims, and disciplining
17 clergy (a process that can include laicization or being placed on permanent prayer and
18 penance) is grounded in and inextricably intertwined with church doctrine and
19 government. Altenhofen Decl. ¶¶ 25–29.

20 The Archdiocese acknowledges and deeply regrets that in past decades, church
21 administration did not always respond to reports of abuse the way it does today—
22 reporting allegations to law enforcement, immediately removing the alleged perpetrator
23 from ministry, and facilitating the Review Board’s consultation with the Archbishop. But
24 its prior responses, no matter how flawed, still involved actions subsumed in church
25 governance, doctrine, and application of canon law. *See id.* ¶¶ 6–33. Whether those
26 precepts were applied correctly according to Catholic doctrine is not something that the

1 AGO or any governmental official can adjudge consistently with the constitutional
2 guarantee of religious freedom. The CTA exemption applies based on the nature of the
3 entity, not the nature of the entity’s conduct.

4 **C. The Legislature’s Exemption Is Consistent with the Purposes of the Trust Act**
5 **to Provide Oversight of Unchecked Charitable Trusts**

6 The legislature had good reason for its exemptions. The CTA was enacted over
7 concerns about trust settlors who would set up public charitable trusts—frequently,
8 testamentary trusts—only to have that trust go dormant, or to have an individual trustee
9 violate the terms of the trust with no repercussions. The Uniform Act references how
10 George Bogert, the author of well-known treatises on trusts and a member of the National
11 Conference of Commissioners on Uniform State Laws, had published an article in the
12 Michigan Law Review that detailed the need for charitable trust legislation. Unif. Act,
13 prefatory note. In this article, Professor Bogert opined that “it would be wise” to limit the
14 application of the act to cases “where the dangers of inactivity and dormancy are greatest,
15 and to exclude the other cases from the scope of the act, where the chances of neglect and
16 abuse are relatively slight.” George Gleason Bogert, *Proposed Legislation Regarding*
17 *State Supervision of Charities*, 52 Mich. L. Rev. 633, 653 (1954).

18 Consistent with this advice, the Uniform Act exempted trusts where the dangers
19 were slight, including religious, educational, and hospital charitable corporations. *See*
20 Unif. Act, prefatory note & § 3. The initial Washington CTA followed suit. Laws of
21 1967, Ex. Sess., ch. 53, § 2.

22 What these exempted charitable trusts have in common is a decreased risk of
23 malfeasance and dormancy. Many if not most charitable trusts arise when wealthy
24 individuals establish testamentary or inter vivos trusts for charitable purposes as diverse as
25
26

1 beautifying a city through statuary,⁷ planting endangered trees, or promoting the study of
2 the Polish language. Such trusts truly benefit “the public” at large, and—lacking any
3 discernable beneficiaries to hold the trust accountable or other checks on expenditures—
4 merit AGO oversight. *See Bogert, Proposed Legislation, supra*, at 633 (“If a trust has as
5 its object the care of the poor, those persons who are chosen to secure the necessities of
6 life under it are not in reality beneficiaries of the trust but only the instrumentalities
7 through which the state receives the social advantage of seeing that its citizens do not
8 suffer want.”).

9 By contrast, educational institutions providing a program of secondary instruction,
10 or charitable hospitals providing care, have checks that obviate the need for AGO
11 oversight, unlike the truly “public” charitable trusts.⁸ Their revenues derive largely from
12 those who receive their services (tuition paid by students or medical insurance advanced
13 for patients). These consumers can hold the trust accountable by going elsewhere. And
14 those non-consumer philanthropists who donate to schools or hospitals typically do so
15 because they are impressed with the administration and services provided. And, of
16 course, private schools and hospitals are subject to laws regarding instruction or medical
17 care, respectively, providing a regulatory check on their activities. *See, e.g.*, chapter
18 28A.195 RCW (private schools), chapter 70.41 RCW (hospital licensing and regulation).

19 An Illinois court acknowledged that such features make certain charitable trusts
20 “self-executing,” decreasing the need for AGO enforcement. *See People ex rel. Scott v.*
21

22 ⁷ A \$1 million testamentary trust established in 1905 to beautify Chicago through statuary
23 was famously used to fund a building for the Chicago Art Institute, against the settlor’s plain
24 intent. *See Luis Kutner, The Desecration of the Ferguson Monument Trust: The Need for*
25 *Watchdog Legislation*, 12 DePaul L. Rev. 217, 217 (1963) (“Many millions of dollars have been
26 donated to charitable trusts by public-minded citizens, only to have been covertly used by the
trustees or administrators for their own purposes.”).

⁸ Indeed, the CTA has drawn this distinction textually, proclaiming that the CTA’s
purpose “is to facilitate public supervision over the administration of *public* charitable trusts,”
RCW 11.110.010 (emphasis added).

1 *George F. Harding Museum*, 58 Ill. App. 3d 408, 374 N.E.2d 756, 762–63, 15 Ill. Dec.
2 973 (1978). In evaluating Illinois’ statute that exempted educational institutions running
3 schools, the court rejected a constitutional challenge. *Id.* The court reasoned that unlike a
4 trust for educational purposes that did not include a school, an educational institution
5 operating a school “benefit[s] an identifiable segment of society: its students, who often
6 pay tuition” and that:

7 The Illinois act, exempting charitable trusts which operate schools, is
8 merely a recognition that charitable trusts for the operation of schools bear
9 self-executing characteristics, whereas charitable trusts which generally
10 promote “education” do not. It is obvious the purpose of the Act is to
11 provide some method of reporting for those trusts whose assets have been
12 devoted to the public use. In our opinion the statute applies uniformly to
13 those types of trusts and is not “patently arbitrary.”

14 *Id.* at 763.

15 Such “self-executing characteristics” are fully present with respect to religious
16 corporations operated as religious organizations. Donors are typically the faithful, who
17 implicitly consent to the organization’s governance, mission, and administration. How
18 such funds are to be expended is often determined with reference to ecclesiastical
19 considerations, rather than through neutral accounting principles a court could review.

20 And because the exemption requires that religious organizations have a current
21 declaration of tax exempt status from the IRS, such religious organizations—like hospitals
22 or schools—are subject to other regulatory oversight. It is notable that the IRS, in keeping
23 with First Amendment concerns, has special restrictions on church tax audits, allowing tax
24 inquiries only if “an appropriate high-level Treasury official reasonably believes (on the
25 basis of facts and circumstances recorded in writing) that the church” may not be exempt
26 or is carrying out an unrelated trade or business subject to taxation. 26 U.S.C. § 7611.
Even then, such examination may be made only to the extent necessary to determine the
liability for and amount of any tax, or to determine whether the organization claiming to
be a church truly is a church. *Id.* Records that can be sought are limited to “corporate and

1 financial records.” *Id.*

2 The Washington legislature could reasonably determine that an apolitical body like
3 the IRS is better suited to providing a check on the financial affairs of religious
4 organizations than the elected, partisan Attorney General. Also, congregants will
5 withhold donations if their desire for accountability or transparency is not met.

6 Given these self-executing characteristics, the religious exemption, as with the
7 exemption for educational institutions,⁹ is fully consistent with the purposes of the CTA.
8 By contrast, the AGO’s proposed investigation into what it describes as the purported
9 “conceal[ment] and facilitat[ion of] the sexual abuse of children,” Pet. 19, has *nothing to*
10 *do with the purposes of the CTA*, an act focused on financial records, not sexual abuse or
11 other conduct unrelated to trust administration. The AGO provides no answer to the
12 question of how its investigation coheres with the CTA’s purpose.

13 **D. The Exemption Does Not Violate Washington’s Privileges and Immunities**
14 **Clause**

15 The AGO contends that respecting the legislature’s exemption here would result in
16 an as-applied violation of Washington’s privileges and immunities clause. *See* Const. art.
17 I, § 12. For the reasons explained below, the AGO’s arguments fail.

18 **1. The AGO cannot prove unconstitutionality as applied to this case.**

19 Under our constitution, the Attorney General is the chief legal advisor of state
20 officers. Const. art. III, § 21. Under our code, the Attorney General must be served with
21 any proceeding calling into question the constitutionality of a statute and has a right to be

22 ⁹ It is notable that the CTA also exempts nonprofit corporations governed by chapter
23 24.03A RCW. That act provides protections for nonprofit religious corporations to safeguard
24 against abuse by the AGO, *see* RCW 24.03A.954, who is generally empowered to investigate the
25 administration of other nonprofits, *see* RCW 24.03A.950. But the AGO cannot investigate or
26 commence any action against a religious corporation unless the corporation consents, or unless the
basis for the AGO’s actions are its knowledge of facts and circumstances that (1) property held by
the corporation has been or is about to be distributed (in excess of reasonable compensation) to its
members, directors, officers, or others with substantial influence over the corporation’s affairs, or
(2) that the corporation has no directors in office—in which case the investigation must be limited
to the question of whether the corporation has directors in office. RCW 24.03A.954.

1 heard. RCW 7.24.110. The Attorney General most typically *defends* duly-enacted
2 legislation from charges of unconstitutionality. This case presents the uncommon
3 circumstance of our Attorney General running to court to claim that a statutory exemption
4 purporting to limit his own authority is unconstitutional.

5 He bears a very heavy burden at the threshold. Our courts honor the legislature’s
6 role “as a coequal branch of government that is sworn to uphold the constitution” and
7 “assume the Legislature considered the constitutionality of its enactments and afford great
8 deference to its judgment.” *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 5
9 P.3d 691 (2000) (citation omitted) (“[T]he Legislature speaks for the people and we are
10 hesitant to strike a duly enacted statute unless fully convinced ... that the statute violates
11 the constitution.”). Courts presume statutes are constitutional and place “the burden to
12 show unconstitutionality ... on the challenger.” *City of Seattle v. Evans*, 184 Wn.2d 856,
13 861–62, 366 P.3d 906 (2015). That burden requires the challenger to show “that there is
14 no reasonable doubt that the statute violates the constitution.” *Fields v. Dep’t of Early*
15 *Learning*, 193 Wn.2d 36, 41, 434 P.3d 999 (2019) (lead opinion). An as-applied
16 challenge “is characterized by a party’s allegation that application of the statute in the
17 *specific context* of the party’s actions or intended actions is unconstitutional.” *Id.* at 46.

18 Article I, section 12 “was intended to prevent favoritism and special treatment for
19 a few, to the disadvantage of others.” *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d
20 769, 776, 317 P.3d 1009 (2014) (lead opinion). In analyzing this challenge under article I,
21 section 12, the Court first considers whether the exemption at RCW 11.110.020(2)(b)(ii)
22 “granted a privilege or immunity implicating a fundamental right and (2) if a privilege or
23 immunity was granted, whether the distinction was based on reasonable grounds.” *Woods*
24 *v. Seattle’s Union Gospel Mission*, 197 Wn.2d 231, 242, 481 P.3d 1060 (2021).

1 **2. The exemption does not grant a privilege or immunity.**

2 A “privilege or immunity” under article I, section 12 refers “alone to those
3 fundamental rights which belong to the citizens of [Washington] by reason of such
4 citizenship.” *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902). Here, the AGO claims
5 that its investigation implicates the purported fundamental rights to “pursue and obtain
6 happiness or safety,” Pet. 20, and to exist in “freedom from sexual abuse,” Pet. 22.

7 Even assuming there exists a fundamental right of state citizenship to be free from
8 sexual abuse, that right means freedom from such abuse *at the hands of or aided by the*
9 *government*. The constitution limits government intrusion or interference with
10 fundamental rights. Thus a statutory exemption of agricultural workers from overtime
11 constituted governmental interference with the fundamental right granted at article II,
12 section 35, providing such workers an affirmative constitutional right to laws protecting
13 their health. *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 519, 475
14 P.3d 164 (2020). And in *Woods v. Seattle’s Union Gospel Mission*, WLAD’s religious
15 exemption, as applied to an employee who was fired after informing his employer he was
16 involved in a same-sex relationship and wanted to someday marry a man, implicated the
17 employee’s fundamental right to define and express his sexual orientation and to marry.
18 197 Wn.2d at 243–44. The statutory exemption interfered with that right by enabling the
19 employer to take action against the employee based on the exercise of his fundamental
20 rights.¹⁰ By contrast, the Washington Supreme Court concluded there is no fundamental

21 _____
22 ¹⁰ The same is true with regard to the other cases the AGO cites on pages 22–23 of its
23 Petition in support of recognizing fundamental “safety-related rights”: those cases recognized only
24 a right to be free from harm at the hands of governmental actors. Thus *Ingraham v. Wright*, 430
25 U.S 651, 673 (1977), considered whether paddling students in public school violated the Eighth or
26 Fourteenth Amendments, concluding it did not. Similarly, *Doe v. Claiborne County*, 103 F.3d
495, 506 (6th Cir. 1998), recognized a due process right “to be free from sexual abuse at the hands
of a public school employee.” (Emphasis added). And the AGO’s citation to *In re Dependency of*
R.H., 129 Wn. App. 83, 88 & n.12, 117 P.3d 1179 (2005), for the principle that a minor child has a
fundamental right to health and safety, is inapt. That case involved dependency proceedings, not a
privileges and immunities analysis, and itself relied on RCW 13.34.020, which provides that the
health and safety of the child should prevail when in conflict with the parents’ legal rights.

1 right to be free from discrimination in *private* employment. *Ockletree*, 179 Wn.2d at 780
2 (upholding facial challenge to WLAD’s exemption of religious nonprofit organizations).

3 Here, the AGO fails to explain how exempting religious organizations from the
4 CTA’s reach implicates or infringes on this purported right to be free from sexual abuse in
5 the circumstances of this case. As discussed above, article I, section 12 protects against
6 the violation of fundamental rights by the government. Even if this right is fundamental
7 within the meaning of the privileges and immunities clause, the inability of the AGO to
8 subpoena records related to such abuse under the CTA does not implicate, much less
9 impair, this purported right. The purported fundamental right remains unaffected by the
10 CTA’s exemption. Moreover, the AGO fails to explain how it could have standing to
11 raise purported fundamental rights of individuals not present before the Court.

12 The AGO has failed to meet its heavy burden to establish beyond a reasonable
13 doubt that this case implicates a fundamental right of citizenship within the meaning of
14 article I, section 12. For this reason alone, the Court should reject the AGO’s
15 constitutional challenge.

16 **3. Even assuming the CTA grants a privilege or immunity, protecting**
17 **religious freedom provides reasonable grounds for exempting religious**
18 **organizations from the CTA’s reach.**

19 The second prong of the article I, section 12 inquiry asks whether a law
20 implicating a privilege or immunity is based on reasonable grounds. *Woods*, 197 Wn.2d
21 at 244. The AGO concedes that “the CTA’s religious exemption is constitutional on its
22 face.” Pet. 25. Indeed, reasonable grounds exist to justify the exemption in these
23 circumstances, even assuming a privilege or immunity were implicated.

24 The exemption serves the interest of religious freedom under the First Amendment
25 and article I, section 11 of Washington’s constitution, which is “stronger than the federal
26 constitution.” *Woods*, 197 Wn.2d at 251 (citation omitted). Both the free exercise clause
and the establishment clauses of the First Amendment preclude the government from

1 interfering with religious determinations. *See id.* at 247. The purpose of the free exercise
2 clause is “to secure religious liberty ... by prohibiting any invasions thereof by civil
3 authority.” *Sch. Dist. v. Schempp*, 374 U.S. 203, 223, 83 S. Ct. 1560, 10 L. Ed. 2d 844
4 (1963).

5 To this end, the First Amendment “gives special solicitude to the rights of
6 religious organizations.” *Hosanna-Tabor Evangelical Lutheran Church & Sch. v.*
7 *E.E.O.C.*, 565 U.S 171, 189, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012). Thus “religious
8 institutions are insulated from government intrusion on matters of ‘church government,’
9 which includes religious entities’ internal management decisions, such as the selection of
10 individuals who play key roles.” *Woods*, 197 Wn.2d at 248 (citing *Our Lady of*
11 *Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746, 140 S. Ct. 2049, 207 L. Ed. 2d
12 870 (2020)). Where a case “concerns government interference with an internal church
13 decision that affects the faith and mission of the church itself,” *Hosanna-Tabor*, 565 U.S.
14 at 190, the First Amendment is implicated.

15 The risks of governmental entanglement in religion are on full display in this case.
16 Invoking the CTA, the AGO contends it can supervise and enforce religious trusts in
17 general; here, the Archdiocese’s, to ensure every penny is spent in conformity with the
18 Archdiocese’s religious purposes as a corporation sole. The AGO would apparently
19 arrogate to itself the power to adjudge whether the Archdiocese is conforming to Catholic
20 faith and doctrine, and what church actions serve a religious purpose in keeping with the
21 nature of the trust.

22 This would amount to blatant entanglement in ecclesiastical and doctrinal matters.
23 The Archdiocese must be allowed to determine how to expend its funds in support of its
24 mission and purpose free from governmental intrusion. The Archdiocese must be free to
25 determine what acts are consistent with Catholic doctrine and practice, regardless of the
26 AGO’s opinion. The question of how—as a religious organization—to respond to sexual

1 abuse as a religious organization is strictly an ecclesiastical question to be resolved
2 through the channels of ecclesiastical government.¹¹ 1A Fletcher Cyclopedia of the Law
3 of Corp. § 80 (“[T]he question as to [a] religious leader’s failure to follow religious tenets
4 cannot be determined under neutral principles of law, and is thus not in the purview of the
5 civil courts.” (citations omitted)).

6 The AGO has proclaimed that its investigation aims to “ensure that appropriate
7 reforms have been made and are effective in preventing abuse” and to “honor survivors by
8 giving voice to their experiences and dignifying their journey towards recovery.” Bays
9 Decl. Ex. F. But whether “reforms” to the canonical process of taking action on abuse
10 allegations are “effective” implicates internal church decisions about ecclesiastical
11 matters. Such “government interference with an internal church decision that affects the
12 faith and mission of the church itself” offends the First Amendment. *See Hosanna-Tabor*,
13 565 U.S. at 190.

14 While the Archdiocese roundly denounces any “covering up” of sexual abuse, the
15 AGO’s claim that if such were done it would invalidate the trust, *see* Pet. 17, is incorrect.
16 Only illegal *purposes* of the trust as a whole, not illegal actions of a trustee or the trustee’s
17 agents, invalidate charitable trusts. *See* Restatement (Second) of Trusts § 377(d) (“If the
18 purposes for which a charitable trust is created are legal, the mere fact that it would be
19 possible to accomplish the purposes by illegal means does not make the charitable trust
20 invalid.”). Here, the purpose of the Archdiocese is to advance the Catholic faith, as even
21 the AGO grudgingly admits. Whether its methods are effective for that purpose has no
22 bearing on the underlying purpose or validity of the trust.

23 Moreover, the determinations about the church’s response, as a church, to sexual
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25 ¹¹ Of course, some religious officials may be subject to mandatory reporting laws. *See*
26 RCW 26.44.030. But determining compliance with such laws does not require an evaluation of
whether conduct comports with religion. In seeking to employ the CTA, the AGO claims the right
to determine whether the Archbishop’s actions comport with the religious purposes of the
Archbishop as the corporation sole of the Catholic Church in Western Washington.

1 abuse are for the Archbishop to make. Where a trust confers discretion upon the trustee,
2 the trustee's exercise "is not subject to control by the court, except to prevent an abuse by
3 the trustee of his discretion." Restatement (Second) of Trusts § 187; *see also* Restatement
4 (Third) of Trusts § 50(1) ("A discretionary power conferred upon the trustee to determine
5 the benefits of a trust beneficiary is subject to judicial control only to prevent
6 misinterpretation or abuse of discretion by the trustee."). But "what may constitute an
7 abuse of discretion by the trustee, depend on the terms of the discretion, including the
8 proper construction of any accompanying standards, and on the settlor's purpose in
9 granting the discretionary power and in creating the trust." Restatement (Third) of Trusts
10 § 50(2).

11 Here, those donating to the Archdiocese understand that it is a hierarchical church,
12 that the Archbishop is an ordained minister selected by the Pope, and that church
13 administrators will make decisions regarding preventing abuse of the faithful and
14 punishing abusers with reference to Catholic faith and doctrine. *See* Altenhofen Decl. ¶¶
15 6–33. Those realities are effectively terms of the trust, known to the faithful, who
16 delegate discretion to the Archdiocese to govern according to church law and have redress
17 within that system. *Id.* ¶¶ 30–33. A court cannot permissibly determine that the church
18 has abused its discretion on these ecclesiastical matters, nor can the AGO purport to
19 investigate church discretion on such topics.

20 It has long been established that Washington courts will defer to church authorities
21 in matters involving church property:

22 [T]he decision of the highest tribunal of a hierarchical church to which an
23 appeal has been taken should be given effect by the courts in a controversy
24 over the right to use church property.... [And] in the absence of fraud,
25 where a right of property in an action before a civil court depends upon a
26 question of doctrine, ecclesiastical law, rule or custom, or church
government, and the question has been decided by the highest tribunal
within the organization to which it has been carried, the civil court will
accept that decision as conclusive.

1 *Presbytery of Seattle, Inc. v. Rohrbaugh*, 79 Wn.2d 367, 372–73, 485 P.2d 615 (1971).
2 “Washington courts have extended *Rohrbaugh* to any civil dispute in a hierarchical church
3 with an internal dispute resolution process.” *Presbytery of Seattle v. Schulz*, 10 Wn. App.
4 2d 696, 699, 449 P.3d 1077 (2019). And even in the absence of a hierarchy, courts must
5 refrain from exercising jurisdiction when “the subject matter of the dispute concerns
6 ‘matters of ecclesiastical cognizance and polity.’” *Rentz v. Werner*, 156 Wn. App. 423,
7 437, 232 P.3d 1169 (2010) (applying doctrine of ecclesiastical abstention to affirm
8 dismissal where the claims concerned the power of a church minister and the church’s
9 membership policies) (citation omitted). Such ecclesiastical matters embrace “church
10 discipline, ecclesiastical government, or the conformity of the members of the church to
11 the standard of morals required of them.” *Watson v. Jones*, 80 U.S. 679, 733, 20 L. Ed.
12 666 (1871).

13 The reasonable grounds the legislature had for barring AGO investigations become
14 all the more plain when considering what AGO enforcement of a religious charitable
15 trust—the potential object of any investigation—would entail. Judicial remedies for abuse
16 of discretion or breach of duty include directing the trustee to make or refrain from
17 making certain payments, instructing the trustee on how to exercise discretion, rescinding
18 the trustee’s payment decisions, compelling a trustee to redress a breach of trust,
19 appointing a receiver, and removing the trustee and appointing a replacement.
20 Restatement (Second) of Trusts § 392 cmt. a; Restatement (Third) of Trusts § 50(b).

21 All of these remedies would impermissibly entangle government in religion. The
22 Court cannot remove the Archbishop and appoint a new “trustee”—to do so would violate
23 the Catholic doctrine of apostolic succession through which its bishops are ordained, a
24 doctrine central to the Catholic Church’s conception of its role as the church Jesus
25 established. *See* Altenhofen Decl. ¶ 13. Such a replacement would violate *Hosanna-*
26 *Tabor*’s precept that “[r]equiring a church to accept or retain an unwanted minister ...

1 interferes with the internal governance of the church, depriving the church of control over
2 the selection of those who will personify its beliefs.” 565 U.S. at 188.

3 Similarly, requiring the Archbishop to redress and punish sexual abuse in a
4 particular way, or to implement whatever reforms the AGO proposes, would interfere with
5 “a religious group’s right to shape its own faith and mission” in these circumstances. *Id.*;
6 *see* Bays Decl. Ex. F (July 26, 2023 letter from Attorney General Bob Ferguson to
7 Archbishop Paul Etienne stating that the investigation seeks to determine whether recent
8 reforms “are being implemented and whether they are effective”). The AGO may believe
9 the Archdiocese’s methods of providing pastoral care to victims, preventing sexual abuse,
10 encouraging victims to come forward, and disciplining its ordained clergy through
11 permanent prayer and penance or laicization are ineffective or misguided. *See* Moulding
12 Decl. But it is the Archbishop, as trustee and church leader, who is empowered to
13 determine such methods free of government interference.¹² (And court is the appropriate
14 forum for civil claims by victims or criminal prosecutions by local prosecuting attorneys.)
15 Because the subject matter of this investigation probes areas involving at their core the
16 exercise of religion, the CTA’s religious exemption as applied to the AGO’s investigation
17 does not offend article I, section 12. *See Woods*, 197 Wn.2d at 250 (“[W]e hold that
18 article I, section 12 is not offended if WLAD’s exception for religious organizations is
19 applied concerning the claims of a ‘minister’ as defined by *Our Lady of Guadalupe* and
20 *Hosanna-Tabor*”).

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¹² Though the AGO’s petition throws out that the Archdiocese (as opposed to abuser
priests formerly serving in the Archdiocese whose intentionally tortious and criminal conduct is
not attributable to the Archdiocese under the doctrine of respondeat superior) may have engaged in
“illegal” or “unlawful” acts, the Petition provides no factual or legal basis for any belief that the
Archdiocese’s actions violated any law.

1 ***

2 In sum, the CTA’s exemption of religious organizations does not implicate a
3 fundamental right of citizenship in the circumstances of this case. Therefore, there is no
4 privilege or immunity at stake, and article I, section 12 is not implicated. But even if it
5 were, article I, section 12 is not violated here, where the CTA’s religious exemption is
6 applied to an exercise of religion—a weighty reasonable ground justifying granting a
7 privilege or immunity.

8 The AGO has failed to meet its burden to show that applying the CTA’s religious
9 organizations exemption to its subpoena, in the circumstances of this case, is
10 unconstitutional beyond a reasonable doubt. This Court should therefore sustain the
11 exemption and dismiss the petition.

12 **E. The AGO’s Investigation Violates the Constitution**

13 In addition to the legislature’s exemption, the First Amendment and article I,
14 section 11 each independently foreclose the AGO’s proposed investigation under the
15 CTA, for largely the reasons stated above at Part III.D.3. The AGO ventures to judge
16 whether actions by the Archdiocese comport with the Catholic Church’s religious
17 purpose. This is not, as the AGO argues, a “neutral” standard or a neutral determination.
18 This case is therefore entirely unlike the cases holding that a religious entity must comply
19 with civil discovery demands seeking information about whether secular conduct was
20 negligent because it fell below the standard of a reasonable person. *See N.K. v. Corp. of*
21 *Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 175 Wn. App. 517, 543–
22 44, 307 P.3d 3730 (2013); *C.J.C. v. Corp. of Catholic Bishop of Yakima*, 138 Wn.2d 699,
23 728, 985 P.2d 262 (1999). Nor is it like *In re Catholic Bishop of Spokane*, where the court
24 concluded that application of civil law to characterize church property claimed by
25 “outsider” creditors did not infringe constitutional rights. 329 B.R. 304, 323 (Bankr. E.D.
26 Wash. 2005). Here, the AGO would apply a standard (are certain activities consistent

1 with a religious purpose?) that is *not* neutral and impermissibly entangles the government
2 in religion.

3 **F. The Subpoena Is Unduly Burdensome and Overbroad**

4 The Archdiocese raised objections to the subpoena as overbroad and unduly
5 burdensome and as calling for privileged information. Bays Decl. **Ex. I**. The parties have
6 not conferred regarding these burden, breadth, privilege, and time scope objections.
7 Crowley Decl. ¶ 14. And these objections are not addressed in the AGO’s petition, which
8 solely seeks to argue the AGO’s authority to issue a subpoena despite the CTA’s express
9 exemption of religious corporations.

10 But under CR 45, the issuer of a subpoena, including an investigative subpoena
11 under the CTA, must “take reasonable steps to avoid imposing undue burden or expense
12 on a person subject to that subpoena.” CR 45(c)(1). A court “shall” enforce this
13 affirmative duty. *Id.* Because the AGO carries the burden of taking reasonable steps to
14 avoid burden, even if the Court were to determine the subpoena could be issued, it should
15 require the parties to confer on reducing burden and, if any disputes remain, the Court
16 should accept briefing and hold a hearing before compelling compliance.

17 As it stands, the AGO has not complied with its duty to avoid unreasonable
18 burden. This grossly overbroad and burdensome subpoena seeks 84 years of documents,
19 including duplicative and redundant records. For example, Item 27 is so broad as to
20 require production of, among other things, a receipt from a 1942 purchase of lightbulbs
21 for a rectory attached to one of the 170 parishes in the Archdiocese, or the purchase of
22 printer paper twenty years ago for one of the Archdiocese’s 72 schools. *See, e.g.*, Bays
23 Decl. **Ex. H.**, at No. 27 (demanding copies of “all” the Archdiocese’s accounting records
24 including all receipts from January 1, 1940 to the present).

25 Even assuming arguendo the CTA applied to the Archdiocese, this type of fishing
26 expedition cannot be countenanced under CR 45. The Supreme Court of Washington has

1 observed that “[t]he Attorney General’s power to enforce charitable trusts is ... no broader
2 than, the power of enforcement enjoyed by beneficiaries of private trusts.” *State v.*
3 *Taylor*, 58 Wn.2d 252, 264, 362 P.2d 247 (1961). A beneficiary of a private trust is
4 entitled to an annual written itemized statement of current receipts and disbursements and
5 an itemized statement of all property held by the trustee. RCW 11.106.020. Within one
6 year after the last report, a beneficiary may ask for an accounting, which is not of right but
7 may be ordered based on “good cause shown.” RCW 11.106.040. Here too, in the
8 charitable trust context an attorney general’s investigative and enforcement power is not
9 unlimited as to time scope and breadth, but should be limited to the purpose of the CTA
10 and the reasonable necessity to review given documents (even if it applies here, which it
11 does not).

12 IV. CONCLUSION

13 For the foregoing reasons, the Archdiocese respectfully requests that the Court
14 deny the AGO’s petition.

15 * * *

16 I certify that this memorandum contains 9,982 words, in compliance with the
17 May 24, 2024 Order re Briefing Deadlines and Word Limits.

18 DATED this 1st day of July, 2024.

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