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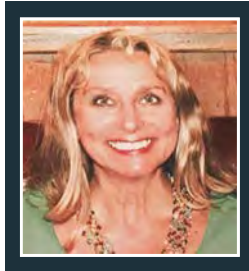
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## MESSAGE FROM THE BOARD PRESIDENT

By Debbie Swisher



**DEBBIE SWISHER**  
DFMC President  
Diocese of Lexington

Allow me to start by thanking you for entrusting me with this responsibility as President of the Diocesan Fiscal Management Conference and Chairman of the Board. For nearly 25 years now, DFMC has been a part of my life. This is my second term on the DFMC Board of Directors, and it is a humbling honor to be your President for this year.

Over the course of these past decades, I have enjoyed watching this organization grow and flourish. Our membership is larger today than ever before and includes members from the Canadian Maritimes to Australia. Our annual meetings have deepened offerings; be they spiritual, professional development, or social. Our capacity to project mission-advancing programming between annual meetings has grown considerably. CPE-granting webinars, the CDFM program that is experiencing a real rejuvenation, robust dialogue on our member-only website message board, and regional meetings throughout the United States are examples of how today the DFMC experience is truly year-round and constantly delivering benefit. Most valuable to me has always been the relationships I have found and nourished through DFMC: colleagues I can turn to when I need help, and friends that I can share good times with year after year.

DFMC is healthy and strong at this time. When I first joined the Board of Directors in 2020, we were still facing the challenges of COVID-19 daily. It was such a hard time for everyone in our Nation, and especially for the Church. That year, of course, we held a virtual DFMC conference and did our best to continue to deliver value. If I had been told then that DFMC would not only return to live, in-person conferences in 2021, but would grow the conference event and professional association to all-time record heights in the years that followed, I might have hesitated to believe it. But that is exactly what we have done, together, and we have no intention of slowing down now!

When we gathered in Nashville in 2021, the DFMC Board and our management team presented a forward vision for this organization. First, DFMC will actively encourage a more devoted practice of the Catholic Faith amongst its members, as called for in our constitution and as appropriate for senior lay executives within the Church. Secondly, the DFMC annual meeting event will deliver at an extremely high level each year and at spectacular venues, host an elite conference faculty, and provide memorable experiences for members and guests to share. Third, opportunities for DFMC members to enjoy continued value from their membership between annual meetings will expand. This focus on the fundamentals that have sustained DFMC for 54 years has served us well: the 2023 Denver annual meeting was by nearly every measure the most successful DFMC event ever. We saw the highest member registration and external support ever. Mission-celebrative elements like our first-ever Eucharistic Procession and the Shroud of Turin Special Exhibit enlivened the experience for all. Packed Masses, long lines at Confession, and a crowded Adoration Chapel revealed the authentic character of a diocesan officer and professional servant of the Church, and the rare quality of the people called to this vocation.

As a well-established institution within the Church and home for some of her most distinguished leaders, we seek to celebrate the rich legacy of service in the DFMC. In 2022 we launched the Saint Matthew Medal: the apex award presented by our organization recognizing zeal for Catholic evangelization, leadership in the profession, and giving back to others. The inaugural recipient of the Saint Matthew Medal – Jan Smith – embodied these qualities fully over the course of her storied 40-year career and many years as a top-level DFMC strategist and governor. In 2023, Tony Salgado received the second Saint Matthew Medal, and his unforgettable acceptance speech reminded us all of the importance and deeper meaning of our work. We on the DFMC Board are committed to recognizing long-term dedication to the Church and our profession, and excellence at work. We are also determined to appropriately honor those who sadly leave our family before any of us would like to see,

CONTINUED ON PAGE 2

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CONTINUED FROM PAGE 1

## MESSAGE FROM THE BOARD PRESIDENT

By **Debbie Swisher**

as we did when Bryan Coulter passed away in December, or more recently with the sad loss of Deacon Greg Henderson. We will ask our whole community to come together in prayer for them and their families, heartened by the faith that we will see each of them again one day in God's time.

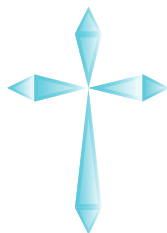
I am so excited for the year to come! Our Board has adopted a strategic goal of offering enough free CPE for applicable DFMC Conference members to earn the majority, or prayerfully all, of their needed continuing education hours through the DFMC. (We realize some requirements vary by state but we're working on it!) These CPE credits will not only be free of charge and easily accessible to you, but they will be intentionally designed to be relevant to the work of a Catholic fiscal officer. We will expand the delivery methods as well: The annual meeting, regional meetings, self-study courses which we will re-launch in the coming months, and through six (up from four) webinars with our higher education partners Catholic University of America Busch School of Business, The University of Notre Dame, and Villanova University School of Business Center for Church Management. We will continuously assess the quality and applicability of these courses to ensure that they are feeding the needs of the DFMC membership. The many lessons we took away from the Denver Conference will be applied to the 54th Annual DFMC Conference September 29th-October 2nd, 2024 at the Hilton Bayfront in San Diego. Please mark your calendars now for the San Diego Conference, and if possible bring your team from your office, and remember spouses or family members are welcome and encouraged to accompany you. San Diego is such a beautiful place to visit and we want your family to also be able to enjoy it.

In closing, let me first thank our esteemed Board of Directors that I have the privilege to lead, our Episcopal Moderator Bishop Knestout, and the DFMC Staff. We have a terrific team of smart, creative, hard-working people that love the Church and recognize the importance of professional services supporting it. Know that each of us think every day about how to help you succeed professionally, form strong relationships with your colleagues, and deepen your Faith. Your membership and involvement in DFMC are appreciated and valued. Thank you for trusting us with governance of this great association. I wish you and your family all the blessings available throughout this Lenten season, and a joyful Easter thereafter.

God Bless,  
Debbie Swisher





IN  
MEMORIAMDEACON  
GREG  
HENDERSON

**Deacon Greg Henderson**, who since 2017 had served as CFO of the Diocese of Tuscon, passed away on January 18 after a valiant battle with cancer. He was 66 years old. Deacon Henderson was a convert to Catholicism and a man of very strong Faith and love for the Lord. For more than 35 years he was married to Beatriz, with whom he had eight children: including his son Fr. Agustin, a Catholic priest. As a young man, Deacon Henderson served as a missionary in India and learned several local languages to aid in his evangelization there. He had a deep interest in the history of the early Church and was drawn particularly to the redemptive value of Christ's suffering on the Cross. He was ordained to the permanent diaconate for the Archdiocese of Santa Fe on July 12, 2003. The Hendersons moved to Tuscon in 2017.

Deacon Henderson's professional accomplishments were also remarkable. He is a graduate of Northern Arizona University where he was also a star basketball player for the Lumberjacks' Division I program. He worked in the private sector in Albuquerque as a fiscal manager and CFO for many years before his appointment as DFO in Tuscon by Bishop Emeritus Gerald F. Kicanas 6 ½ years ago. Deacon Henderson was active in DFMC and attended five DFMC Conference events. In 2022, The

New Outlook, the online newspaper of the Diocese of Tuscon, quoted Deacon Henderson: "God can use our life experiences to make us uniquely suited for reaching others He wants to reach. Suffering gives power and credibility to our story."

Eternal rest grant unto Deacon Greg, O Lord, and let Your perpetual light shine upon him. May his soul and the souls of all the faithful departed, through the mercy of God, rest in peace. Amen.

## Welcome to the DFMC!

*Please give a warm welcome to recent members to the DFMC.*

You can send them a welcome note on the DFMC Member Portal.

- **Ms. Anna Aufdenkampe**, Senior Accountant, Charleston
- **Mr. Erich Bangert**, Director of Risk Mgmt, Indianapolis
- **Ms. Laura Bates**, Director for School Finance, Fort Worth
- **Msgr. Francois Beyrouti**, Bishop, Melkite-Newton
- **Ms. Kathy Blauvelt**, Parish Accounting Manager, Rapid City
- **Ms. Barbara Bourdlaies**, Parish Auditor, Gaylord
- **Ms. Kelly Bruce**, Director of Planning and Oper, Charleston
- **Ms. Susan Cassese**, Parish Support Manager, Rockville Centre
- **Ms. Sue Crawford**, Accounting Mgr AR Cash Mgmt, Allentown
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- **Mr. Edward Kiss**, Chief Financial Officer, Byzantine-Parma
- **Mr. Ken Kolarik**, Finance Coordinator, Green Bay
- **Mr. Rob Kratoska**, Dir Parish School Fin Consulting, Milwaukee
- **Ms. Cindy Leonard**, Finance Director, Nashville
- **Ms. Jean Loe**, Administrative Assistant, Fargo
- **Ms. Denise Magyer**, Director of Financial Services, New York
- **Mr. Michael Martz**, Director of IT, Columbus
- **Mr. Tim May**, CFO Catholic Community Service, Seattle
- **Fr. Bryan McNeil**, Syncellus of Operations, Melkite-Newton
- **Ms. Sarah Montano**, Accountant, San Angelo
- **Fr. Thomas Moses**, Chancellor, Melkite-Newton
- **Ms. Sharon Murton**, Accountant, Byzantine-Parma
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- **Ms. Margie Rancano**, Controller, Miami
- **Mr. Rick Schuler**, Director of Treasury Services, New York
- **Ms. Brittany Schwebach**, Accountant, Fargo
- **Ms. Laura Soto**, Senior Accountant, Indianapolis
- **Ms. Melissa Stewart**, Accounting Spec Cemeteries Gactg, Allentown
- **Mr. Charlie Swanson**, Financial Operations Assistant, Superior
- **Mr. Michael Taute**, Staff Accountant, Austin
- **Mr. Andrew Thomas**, Auditor, Eparchy-Chicago
- **Ms. Valeria Vessels**, Grants Coordinator, Owensboro
- **Ms. Taryn Vogan-Bohrer**, Dir, Dev and Prop, Springfield-Cape Girardeau
- **Mr. Tim Winn**, Senior Accountant, Indianapolis
- **Mr. Gary Worth**, Director of Parish Training, New York
- **Ms. Audrey Young**, Bookkeeping Assistant, Ordinariate-Houston
- **Ms. Louise Zacher**, Director of Risk Mgmt Ins Srvcs, New York
- **Mr. Mark Zolinski**, Parish Finance Liaison, Saginaw

*New Member Update as of 2/27/24*

## DFMC MEMBER PROFILE: Jorge Montenegro

An Adventurous *Ecónomo Misionero*

by Jeanette Fast Redmond



**JORGE MONTENEGRO**  
Chief Financial Officer  
Diocese of San  
Bernardino

"I'm an adventurous person."

A spirit of adventure describes much of Jorge Montenegro's approach to life, learning, and ministry. Jorge is the CFO for California's Diocese of San Bernardino, a position he accepted in the summer of 2020, still early in the pandemic.

Jorge grew up in Costa Rica. He earned his BBA and accounting *licenciatura*, or degree, from the University of Costa Rica, where he also met his wife, Vera. He obtained

his CPA in Costa Rica and followed up with an MBA from the Technological Institute of Costa Rica.

Then, he says, "I wanted to solidify my English skills and look for more education."

So he moved to the United States, where he certainly found more education. In Texas, he earned yet another degree—an accounting master's from the University of Dallas—and became a certified internal auditor in the United States as well.

That continual focus on growth and learning is part of Jorge's spirit of adventure.

"I love to explore new things," he says. "Coming to the US opened up those doors, because I was able to consolidate my knowledge of English, which is kind of the universal language."

Like many diocesan finance officers, he began his career in corporate finance and accounting. He spent six years at KPMG, another six years for Procter & Gamble, and another three years for Mission Foods in Texas. Most of those positions involved accounting management and internal auditing.

"In my career, I was able to travel around the world to places that I never thought I would visit and meeting new people. So maybe that's part of adventures," he says.

All the while, he was asking God to guide his career path. He began discerning a vocation to the diaconate through the Diocese of Fort Worth when he discovered the diocese had created a new position for an internal auditor. He applied and was hired, breaking a new trail for himself and the diocese both.

"I was praying to God that I felt that I wanted to work for a not-for-profit," he recalls, explaining that the diocesan position was God's response to those prayers. "As usual, God caught me by surprise, because I never thought, 'Oh, the not-for-profit will be with you, God.'"

He spent 10 years at the Diocese of Fort Worth. About six years ago, he attended a DFMC conference and met Laura Clark, then the CFO for the Diocese of San Bernardino and a one-time DFMC president.

"I told her that when I came [to the United States] in 1999, I came to Southern California," Jorge says. "She told me, 'Hey, would you be interested to apply for the position of CFO [here]?' I said, 'Yeah, I mean, I will consider it,'" Jorge recalls. "So at the beginning of the year 2020, she called me and said, 'Here, the position is open, please apply.'" She was retiring and had thought back on their conversation.

So Jorge's next adventure took him and his family—including now 18-year-old son Santiago (Santi)—full circle, back to Southern California, where Jorge's own father still lives.

"God always has been driving my life in that sense," he explains. "I have been letting God to help me to move to my professional life as well as other things. But and he is the one who has guide me and put me where he believes that I can help him."

Jorge certainly sees finance and accounting as his ministry in helping God. "I'm the custodian of the Church treasures. So I feel that I am the one putting my work in action to keep them in balance."

"It's hard to find people in finance willing to work for not-for-profits first," he says. "I see that as my huge responsibility. I see Jesus one day asking me, 'OK, tell me what you did with my treasure.'" Jorge's words echo Jesus' Parable of the Talents (Matthew 25:14-30), in which the rich man rewards the servants who best invested his resources.

"I take this very seriously," Jorge says.

The British professor and writer Austin Ivereigh evidently agrees. The co-author of Pope Francis's 2020 book *Let Us Dream: The Path to a Better Future*, Ivereigh gave a speech in the diocese and signed books for the staff. In Jorge's copy of the book, Ivereigh wrote, "You are an *ecónomo misionero*"—a missionary economist.



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**DFMC MEMBER PROFILE - Jorge Montenegro**

At the same time, Jorge is still in the process of discerning a vocation to the diaconate. When he began that process in Fort Worth, Santi was still a child, and Jorge found it difficult to carve out necessary time and dedication while his son was still young.

Now in San Bernardino, with Santi about to graduate from high school, Jorge is in the second year of a three-year ministry formation program—the first requirement in the process of becoming a deacon. The process is nurturing all dimensions of his faith.

“We are diving into the Sacred Scriptures” this year, he says. “So that has helped me not only to know the faith here in San Bernardino, but it is helping me to build or nurture my faith, my love for Jesus.”

On top of that, he is thinking about pursuing a master’s degree in theology as well. For Jorge Montenegro, approaching life as one God-given adventure is the only way to live.

“I’m always looking forward to stay in contact with my faith and with Jesus,” he explains. “The first thing is praying . . . and obviously, receiving communion as many times as I can—I try not to only go on Sundays but also on business days—and praying the rosary.”

“Again, trying to always tie God to my life.”

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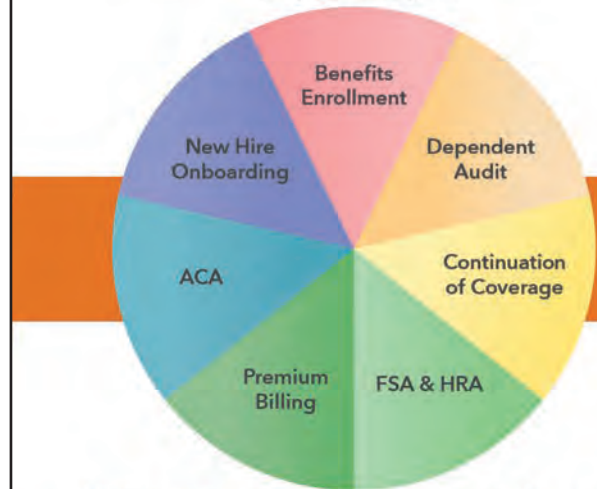
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## Federal Litigation

### **District Court Refuses to Dismiss Free Exercise Challenge to Exclusion of Parochial School Students from School District's Extracurricular Programs**

LA school district in Pennsylvania permits homeschooled and charter-schooled students residing in the district to participate in more than 100 extracurricular and co-curricular opportunities, including athletic programs, that are available to public school students, but denies the same opportunity to students at parochial schools.

The Religious Rights Foundation of Pennsylvania and parochial school parents challenged the exclusion on free exercise and other grounds.

On December 1, the district court denied the district's motion to dismiss the suit. Key to the ruling is the fact that the district allows secular exceptions (homeschooled and charter-schooled students) and therefore must allow a religious one (parochial school students):

[T]he Free Exercise Clause is clear: regardless of what reasons some parents may have for sending their children to a non-public school, a religious reason has the same value as a secular reason. If some exemptions are made, a school's refusal to make a religious one enforces a value judgment preferring secular conduct over religious conduct. Because Plaintiffs have adequately alleged that the policy in this case runs afoul of that basic principle, the Defendants' motion to dismiss is denied. —*M.M.*

***See: Religious Rights Foundation of Pennsylvania v. State College Area Sch. Dist.*, No. 23-CV-01144, 2023 WL 8359957 (M.D. Pa. Dec. 1, 2023).**

### **Supreme Court's Refusal to Hear Free Speech Challenge to Washington State Counseling Ban Sparks Dissent**

Washington State passed a law (SB 5722) banning counseling that is intended to help minors with gender dysphoria to accept their biological sex.

Brian Tingley, a licensed marriage and family counselor, challenged SB 5722 on free speech grounds. The Ninth Circuit rejected his challenge, holding that SB 5722 does not regulate speech at all, but only professional conduct.

On December 11, the Supreme Court denied Tingley's petition for certiorari by a 6-3 vote, just one vote shy of the four justices needed to grant cert.

Justices Thomas and Alito filed separate dissents from the order denying certiorari. Justice Kavanaugh joined neither dissent and filed none of his own, but the order recites that he would have granted the petition.

In his dissent, Justice Thomas notes that the Ninth Circuit's opinion creates a circuit split. See *Otis v. Boca Raton*, 981 F.3d 854 (11th Cir. 2020) (striking down a nearly identical municipal ordinance). Speech is not constitutionally unprotected merely because it is uttered by professionals. SB 5722 forbids counselors to speak with minors with gender dysphoria except to convey a state-approved message of gender affirmance. That is "viewpoint-based and content-based discrimination in its purest form," Justice Thomas writes. As a result, "SB 5722 is presumptively unconstitutional" and can be upheld only if it survives strict scrutiny.

He concludes:

The Ninth Circuit set a troubling precedent.... Although the Court declines to take this particular case, I have no doubt that the issue it presents will come before the Court again. When it does, the Court should do what it should have done here: grant certiorari to consider what the First Amendment requires.

In his dissent, Justice Alito writes:

This case presents a question of national importance. In recent years, 20 States and the District of Columbia have adopted laws prohibiting or restricting the practice of conversion therapy. It is beyond dispute that these laws restrict speech, and all restrictions on speech merit careful scrutiny. —*M.M.*

***See: Tingley v. Ferguson*, 144 S. Ct. 33 (2023) (denying certiorari).**

## Second Circuit Reinstates School's RLUIPA Lawsuit

Ateres Bais Yaakov Academy is a religious educational institution that provides secular and Orthodox Jewish religious instruction to girls in grades pre-K through 12. The Academy contracted to purchase property in Clarkstown, New York owned by Grace Baptist Church to establish an Orthodox Jewish School.

The deal fell through because of resistance from a citizens' group and town officials, including the town supervisor and zoning board.

The Academy sued the town, asserting claims under, among other things, the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc, et seq. The district court dismissed the case, concluding that it was not ripe because the zoning board had not issued a "final decision" on the Academy's application for the necessary permits.

The Second Circuit has now reversed.

Generally, lawsuits in the land-use context are not ripe until a landowner receives a final, definitive decision on a land-use application. But the finality requirement is "relatively modest." "[N]othing more than de facto finality is necessary." "So long as a plaintiff has submitted a meaningful application to municipal agencies to address its land-use controversy, and the municipal entity responsible for the relevant zoning laws has had an opportunity to commit to a position that by all accounts it intends to be final, the parties' dispute is sufficiently final for ripeness purposes." [Internal quotation marks and punctuation omitted.]

The town zoning board denied the Academy's request for a zoning variance and failed to respond to at least five letters from the Academy urging the board to schedule a hearing on the matter. In addition, the town's counsel informed the Academy in writing that the board "will not entertain any appeal by [the Academy] with respect to the ... property." These facts show that the board made a decision that was sufficiently final for ripeness purposes. —M.M.

*See: Ateres Bais Yaakov Academy v. Town of Clarkstown*, 88 F.4th 344 (2d Cir. 2023).

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## Federal Litigation

### Fifth Circuit Judges Spar Over Whether RLUIPA Allows Money Damages Against Officials Sued in Individual Capacities

Damon Landor, a devout Rastafarian, was briefly incarcerated in Louisiana. On religious grounds, he vowed not to cut his hair. The prisons where Landor was placed respected his vow, allowing him to wear a rastacap (a round, crocheted cap) over his long hair.

Three weeks before his scheduled release date, however, Landor was transferred to Raymond Laborde Correctional Center (RLCC). Upon arrival at RLCC, Landor explained that he was a practicing Rastafarian and handed the prison guard a copy of the Fifth Circuit's decision in *Ware v. Louisiana Department of Corrections*, 866 F.3d 263 (5th Cir. 2017), holding that Louisiana's policy of cutting the hair of Rastafarians violates the Religious Land Use and Institutionalized Persons Act (RLUIPA). The guard threw the decision into the trash (literally) and summoned the warden, who demanded that Landor hand over documentation from his sentencing judge that corroborated Landor's religious beliefs. When Landor couldn't instantly meet that demand, two guards took him to another room where they forcibly shaved his head.

Landor sued the warden and the head of the Louisiana Department of Corrections in their individual and official capacities. The district court held, at the motion to dismiss stage, that RLUIPA does not authorize an award of damages against government officials in their individual capacity. A panel of the Fifth Circuit agreed and affirmed, 82 F.4th 337 (2023), concluding that it was bound by earlier Fifth Circuit precedent.

By an 11 to 6 vote, the court of appeals has now denied Landor's petition for rehearing. Judges Ho and Oldham filed separate dissents. Judge Oldham wrote:

The panel held that RLUIPA does not allow prisoners to sue state prison officials in their individual capacities for money damages. With all due respect to my esteemed and learned colleagues, that result cannot be squared with *Tanzin v. Tanvir*, 592 U.S. 43 (2020). *Tanzin* held that individuals can sue for money damages under the Religious Freedom Restoration Act of 1993 ("RFRA"). The operative provisions of RFRA and RLUIPA are in haec verba, and both the Supreme Court and ours routinely interpret the statutes in parallel. Today, unfortunately for Landor, our court pits the statutes against one another. I respectfully dissent. —M.M.

**See: *Landor v. Louisiana Dept. of Corrections*, No. 22-30686, 2024 WL 439159 (5th Cir. Feb. 5, 2024) (denying petition for rehearing).**

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## Ministerial Exception Does Not Bar Defamation Claim Based on Statements to Third Party

The Episcopal Diocese of New Jersey employed Gideon Uzomechina to minister to persons struggling with drug and alcohol addiction or involved in gang activity. The Diocese later charged Uzomechina with financial and sexual misconduct, and ultimately terminated his employment.

After Uzomechina left the Diocese's employ, the Recovery Centers of America (RCA) hired him as a "Spiritual Counselor" to assist men and women with substance abuse problems. RCA terminated Uzomechina's employment, however, after it received allegedly false statements about him from the Diocese.

Uzomechina sued the Diocese and RCA. In his suit against the Diocese, Uzomechina claimed, among other things, defamation and a hostile work environment based on race.

The court granted the Diocese's motion to dismiss the hostile work environment claim under the ministerial exception. The court concluded that the ministerial exception bars employment claims by ministers even if the claim involves only intangible employment actions.

But the court refused to dismiss Uzomechina's defamation claim against the Diocese. To be sure, courts have held that the First Amendment shields statements made in the course of, or as a result of, an internal church investigation of ministerial misconduct, including statements to church members. But in this case, the allegedly defamatory statements were made to an outside secular entity, and the First Amendment does not shield such statements from defamation claims:

Consistent with other courts across the country ..., this Court finds that by sharing its internal disciplinary procedures and beliefs with a secular third-party, ... the Diocese ... subjected itself to the laws that govern the public realm. In other words, exercising jurisdiction over Plaintiff's claim will not second-guess or threaten [the Diocese's] decisions to investigate its clergy, find misconduct by a clergy member, or impose internal disciplinary measures against a member of the church. What it will threaten is a religious organization's ability to make false and defamatory statements about its clergy or members to the general public, outside of the organization's internal operations. The ministerial exception, therefore, is not applicable to Plaintiff's defamation claims. —*M.M.*

**Practice Point:** Though unpublished, the opinion includes a helpful analysis and citations to relevant cases.

*See: Uzomechina v. Episcopal Diocese of New Jersey*, No. 23-2914, 2024 WL 197752 (D. N.J. Jan. 18, 2024).

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## State Litigation

### Virginia Supreme Court Reinstates Lawsuit of Public School Teacher Who Objected on Religious Grounds to Using Student's Preferred Pronouns

Peter Vlaming taught French at a public high school in Virginia. One of his female students identifies as a male. Vlaming agreed to refer to that student by her preferred name and to avoid using third-person pronouns to refer to her, but was fired when he declined on religious grounds to refer to her as “he” or “him.”

Vlaming sued the school, claiming violations of the Virginia Constitution (free exercise, free speech, and due process), the Virginia Religious Freedom Restoration Act, and common law (breach of contract). He raised no federal claim.

The trial court dismissed the case without hearing any evidence.

The Virginia Supreme Court has now reversed, reinstating all of Vlaming's claims.

On the free exercise claim, the school argued that the case was properly dismissed because its policy of requiring gender affirmation is neutral and generally applicable. *Cf. Employment Division v. Smith*, 494 U.S. 872 (1990) (adopting this test for the federal Free Exercise Clause).

The Virginia Supreme Court concluded that neutrality and general applicability does not shield the school's policy from a free exercise challenge under the Virginia Constitution. “[T]he federal *Smith* doctrine is not and never has been the law in Virginia, and its shelf life in the federal courts remains uncertain.” *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1888 (2021) (Alito, J., concurring in the judgment) (“We should reconsider *Smith* without further delay”); *id.* at 1882 (Barrett, J., concurring) (“[T]he textual and structural arguments against *Smith* are more compelling” than historical arguments); *id.* at 1931 (Gorsuch, J., concurring in the judgment) (“*Smith* committed a constitutional error”).

Under the Virginia Constitution, religious liberty is entitled to protection unless it results in “overt acts against peace and good order.” The question is whether Vlaming's sincerely held religious beliefs caused him to commit overt acts that posed a substantial threat to peace and good order and, if so, whether the state's asserted interests could be satisfied by less restrictive means. —M.M.

*See: Vlaming v. West Point Sch. Bd.*, No. 211061, 2023 WL 8634968 (Va. Dec. 14, 2023).

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## Virginia Law that Forbids Realtor to Express Her Religious Beliefs Violates Free Speech Clause

Hadassah Carter is a licensed realtor in Virginia. Her work emails include a signature line reading: “For Faith and Freedom, Jesus Loves You, and with God All things are Possible.” Carter’s emails also include a “personal statement” that consists of a quotation from the Gospel of John (“For God so loved the world that He gave his only begotten Son, that whoever believes in Him should not perish but have everlasting life”).

Based on these statements, the Virginia Real Estate Board investigated Carter for alleged religious discrimination in violation of Virginia’s fair housing law. Following a conciliation agreement between the Board and Carter’s employer, Carter ceased to work as a professional realtor. She alleges that she now fears working in the real estate industry due to potential enforcement actions by the Board if she expresses her religious beliefs.

Carter sued the Board to vindicate her right to continue to include religious statements in her emails. The trial court has now granted Carter’s motion for summary judgment.

Virginia forbids discrimination on many bases, but any reference by a realtor to religion, national origin, sex, or race (but not other categories) is presumptively discriminatory:

For example, a realtor is presumed to be engaged in unlawful conduct by proclaiming, “Proudly serving the African American community for thirty years,” because a reference to race triggers the presumption of an illegal preference. However, a nearly identical statement, “Proudly serving the LGBT community for thirty years,” carries no presumption of unlawful intent, despite being an identical expression of pride in serving a distinct community, because a reference to sexual orientation carries no presumption [of illegality] under the statute.

Such an outcome, the court concluded, is arbitrary. The court construed the religious statements in Carter’s emails as an expression of her religious identity, which is constitutionally protected:

The text of the Virginia Fair Housing Law ... stands in sharp contrast to the freedom of Virginians and Americans to express their identity that lie[s] at the heart of the First Amendment.... Moreover, the [Fair Housing Law] ... restricts individual expression with a sweeping generalization so broad that any expression of individual identity related to religion, national origin, sex, or race is deemed tantamount to a desire to engage in unlawful discrimination.... Virginia’s presumption of animus ... inequitably and overbroadly inhibits ... [the] rights [of expression guaranteed by the First Amendment], and as such, it fails to give the breathing space that First Amendment freedoms require.

The state can forbid housing discrimination. “What it cannot do is rest upon a presumption that improperly and unconstitutionally restricts speech and expression.” –*M.M.*

**See: *Carter v. Virginia Real Estate Board*, No. CL 19-4150 (Va. Cir. Ct., City of Richmond, Jan. 24, 2024).**

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## Regulatory Issues

### USCCB Files Comments on Proposed TANF Regulations

On December 1, the USCCB filed comments on proposed regulations published by HHS's Administration for Children and Families on the Temporary Assistance for Needy Families (TANF) program.

In its comments, the USCCB supported HHS's proposal to establish a ceiling on the term "needy" so that it may not exceed a family income of 200 percent of the federal poverty guidelines. The Conference likewise supported the proposal to determine when an expenditure is reasonably calculated to accomplish a TANF purpose.

While supporting HHS's efforts to ensure that TANF funds are used lawfully and appropriately to best serve families in need, the Conference expressed concerns with an apparent effort to strip pregnancy resource centers of TANF funds based on flawed premises and misunderstandings as to what the centers do.

The complete text of the comment letter is available [here](#).

**See: 88 Fed. Reg. 67697 (Oct. 2, 2023).**

### USCCB Files Comments on Proposed OMB Regulations

On December 4, the USCCB filed comments on changes proposed by the Office of Management and Budget to its existing regulations on grants and agreements.

In its comments, the Conference objected to OMB's proposed deletion of regulatory language advancing the values of free speech, religious liberty, public welfare, and the environment, and the insertion in its place of language on discrimination on the basis of sexual orientation and gender identity.

The complete text of the comment letter is available [here](#).

**See: 88 Fed. Reg. 69390 (Oct. 5, 2023).**

### USCCB, CCUSA File Joint Comments on Proposed UC Regulations

On December 4, the USCCB and Catholic Charities USA submitted joint comments to HHS's Office of Refugee Resettlement on its proposed rule on the unaccompanied children program.

From the comments:

While this Proposed Rule is a step in the right direction ..., we note that not all elements of the Proposed Rule ... are consistent with the FSA [Flores Settlement Agreement].

Additionally, we are deeply concerned by and strongly oppose the Agency's attempts to codify its policy of facilitating abortions through this Proposed Rule. Relatedly, ORR's failure to adequately enshrine conscience protections within the regulatory text itself should be rectified in the Final Rule. We also note the use of ambiguous terminology throughout the proposed regulation and affirm that these terms should not be construed so as to conflict with the religious beliefs and moral convictions of a faith-based provider.

The complete text of the comment letter is available [here](#).

**See: 88 Fed. Reg. 68908 (Oct. 4, 2023).**

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## USCIS Issues Fee Increase in Final Rule

On January 31, the United States Citizenship and Immigration Services (USCIS) announced its fee increase final rule. The rule will generally increase the fees for immigration visa processing. This article focuses mainly on the fee increases that will affect Dioceses and religious communities when petitioning for foreign workers.

Some important things to note:

- The I-129 form should stay the same price, \$460, for R-1 visas and cap exempt H-1B visas.
- For those who are ineligible for cap exempt H-1 visas, the H-1B registration fee will increase from \$10 to \$215. This change is effective March 2025.
- DHS proposed an increase of \$600 on Form I-129 to be paid by the employer. Nonprofit organizations are exempt from this requirement.
- DHS is not exempting nonprofit organizations from paying the premium processing fee since it is an optional rather than mandatory fee, so this fee will need to be paid.
  - Form I-129 premium processing fees will increase from \$1,500 to \$1,685 for R-1 visas.
  - Premium processing fees for all other visa types will increase from \$2,500 to \$2,805.
  - Premium processing fee changes go into effect on February 26, 2024.
- Form I-360 increases to \$515.
- Form I-485 increases to \$1,440. Work authorization and advanced parole fees are being unbundled from the I-485 cost. Form I-765 will now have an additional cost of \$260 when filed jointly with Form I-485. Form I-131 will have to be paid in full (\$630) every time it is filed.
- The naturalization fee now has three considerations:
  - Online filing, the fee is reduced from \$725 to \$710.
  - Paper filing, the fee is increased from \$725 to \$760.
  - Reduced cost N400 applications have been expanded from 200% of the Federal Poverty Level (FPL) to cover those making less than 400% FPL. If religious workers qualify for this, the application cost for the N400 with the attendant I-942 is \$380.

The rule is effective April 1, 2024. It is possible that the rule may be challenged. If a TRO or preliminary injunction is issued, some of the fee changes will not go into effect. —C.C.V.

**See: USCIS, Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 Fed. Reg. 6194 (Jan. 31, 2024).**

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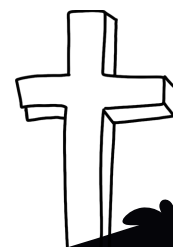
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## Publications

### Recent Publications on Religious Liberty

In a December 2023 article in the Yale Law Journal Forum, law professor Michael Stokes Paulsen of the University of St. Thomas discusses trends in the Supreme Court's treatment of religious liberty under the First Amendment.

Professor Paulsen notes the narrowing effect that recent Supreme Court decisions have had on *Employment Division v. Smith*, 494 U.S. 872 (1990), and the diminishing prospects of finding a case that will give the Court an opportunity to overrule what is left of *Smith*:

Overruling *Smith*, if it is to occur, ... might require a case where the government's action impairing religious liberty is unquestionably "neutral" as between religious and secular acts, treats religious conduct fully as well as *any* similar, permitted secular activity, involves a truly "generally applicable" rule, and provides for no exceptions or discretion as to its application. That might be a long wait.

Professor Paulsen points to (mostly positive) developments in the Court's understanding of institutional religious freedom:

The Court has been doing remarkably well [in its treatment of institutional religious liberty] ... over the past dozen years. On the autonomy of religious institutions in matters of internal doctrine, discipline, leadership, and teaching, the Court has, since 2012, embraced a strong, clear vision of religious liberty.

Professor Paulsen argues that *Christian Legal Soc'y v. Martinez*, 561 U.S. 661 (2010) (rejecting student religious group's constitutional challenge to public law school's non-discrimination rules), is an outlier, is irreconcilable with the Court's religious autonomy cases, and needs to be overruled.

In the same edition, law professor Stephanie Barclay of the University of Notre Dame has written an article in which, among other things, she answers questions raised by Justice Barrett in *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), as to how the Court should scrutinize free exercise challenges were the Court to overrule *Smith*.

For a comprehensive treatment of the history of, and Supreme Court cases on, religious liberty, see John Witte, Jr., Joel A. Nichols, & Richard W. Garnett, *RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT* (Oxford Univ. Press, 5th ed. 2022). Appendix 2 of the book lists and summarizes Supreme Court decisions on the Religion Clauses through 2021. Professor Garnett discusses the book in a USCCB podcast, found here:

<https://www.usccb.org/resources/religion-and-american-constitutional-experiment>. —M.M.

**See: Michael Stokes Paulsen, "Freedom for Religion," 133 YALE L.J. FORUM 403 (Dec. 4, 2023); Stephanie H. Barclay, "Replacing Smith," 133 YALE L.J. FORUM 436 (Dec. 4, 2023); John Witte, Jr., Joel A. Nichols, & Richard W. Garnett, *RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT* (Oxford Univ. Press, 5th ed. 2022).**

### USCCB Committee on Religious Liberty Issues Annual Report on Religious Freedom in the United States

On January 16, the USCCB's Committee for Religious Liberty released its first annual report on the state of religious freedom in the United States. The report is available here:

[Religious-Liberty-Annual-Report \(cld.bz\)](https://www.usccb.org/resources/religious-liberty-annual-report).

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## Other Developments

### Chief Justice Urges Caution Regarding AI in 2023 Year-End Report on the Federal Judiciary

Every year, Chief Justice Roberts releases a year-end report on the federal judiciary. In his recently issued 2023 report, he speaks about a major issue facing the federal court system and legal profession: Artificial Intelligence (AI). While proponents of AI tout its ability to bridge access to justice issues, there are potential downsides to the use of AI, the Chief Justice notes, such as relying on AI “hallucinations,” raising questions about the confidentiality/privileged nature of information shared in AI prompts, and the use of AI in criminal cases to assess flight risk, recidivism, and other largely discretionary decisions that involve predictions, raising concerns about due process, reliability, and potential bias.

“As AI evolves,” the Chief Justice writes, “courts will need to consider its proper uses in litigation. In the federal courts, several Judicial Conference Committees—including those dealing with court administration and case management, cybersecurity, and the rules of practice and procedure, to name just a few—will be involved in that effort.” –C.C.V.

**See: John Roberts, Chief Justice, 2023 Year-End Report on the Federal Judiciary (Dec. 31, 2023), available here:**

<https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>.

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# FUTURE ASSOCIATION MEETINGS

## Diocesan Fiscal Management Conference (DFMC)

**September 29 - October 2, 2024**

SAN DIEGO, CA - Hilton San Diego Bayfront

**September 28 - October 1, 2025**

PHILADELPHIA, PA - Philadelphia Marriott Downtown

**September 27 - 30, 2026**

LOUISVILLE, KY - Omni Louisville Hotel

## Catholic Cemetery Conference (CCC)

**October 1 - 3, 2024**

PROVIDENCE, RI - Omni Providence Hotel

## International Catholic Stewardship Council (ICSC)

**September 15 - 18, 2024**

NEW ORLEANS, LA - TBD

## Canon Law Society of America (CLSA)

**October 14 - 17, 2024**

ALBUQUERQUE, NEW MEXICO - The Clyde Hotel

## National Association of Church Personnel Administrators (NACPA)

**April 14 - 16, 2024**

KANSAS CITY, MO - Kansas City Marriott, Country Club Plaza

## Diocesan Information Systems Conference (DISC)

**June 24 - 27, 2024**

ORLANDO, FL - Loews Portofino Bay Hotel Universal Studios

## Conference for Catholic Facility Management (CCFM)

**April 7 - 10, 2024**

NASHVILLE, TN - Gaylord Opryland Resort & Convention Center

**April 27 - 30, 2025**

Covington - TBD

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## WHAT WOULD YOU LIKE TO SEE IN THE DFMC HERALD?



[www.dfmconf.org](http://www.dfmconf.org)

### The Herald Publication Schedule:

The **Herald** will accept notices and articles for future issues according to the following schedule:

<u>Deadline Date</u>	<u>Publication Date</u>
April 30 ..... <i>Spring Issue</i> .....	May 31
July 30 ..... <i>Summer Issue</i> .....	August 30
October 31 ..... <i>Fall Issue</i> .....	November 30
January 31 ..... <i>Winter Issue</i> .....	February 28

*We would appreciate your comments and input on items for future issues.*