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Clerical-Collar Crime: How Church Members Deal When Church Leaders Steal Church Property

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**CLERICAL-COLLAR CRIME: HOW CHURCH MEMBERS DEAL WHEN CHURCH
LEADERS STEAL CHURCH PROPERTY**

Preslie B. Grumbles[†]

Abstract

Christian churches will lose an estimated \$59 billion worldwide to embezzlement in 2022. Embezzlement and other white-collar crimes are property theft crimes characterized by the violation of another’s trust. This Comment names white-collar crimes committed exclusively by church leaders or officials “clerical-collar crimes.” Distinguishing clerical-collar crime from white-collar crime gives weight to and promotes future consideration of the unique problems that arise when church leaders and officials commit clerical-collar crime.

Although clerical-collar crime is subject to civil and criminal liability, this Comment focuses solely on victims’ experiences in bringing civil claims against perpetrators of clerical-collar crime in Texas and leaves clerical-collar crime prosecution and punishment to future study. This Comment begins by examining three reasons why churches are uniquely vulnerable to clerical-collar crime. Then, this Comment describes three civil claims church members can bring against perpetrators of clerical-collar crime, two challenges church members face in bringing those claims in Texas, and the difficulty of recovering stolen property due to the judgment-proof problem. This Comment concludes by making several recommendations to protect churches from clerical-collar crime and mitigate victims’ losses.

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I. INTRODUCTION

“You shall not steal.”¹

Sunday morning service was winding down at Cowboy Way Church on July 11, 2021.² Pastor Randall Free had one last announcement to make before he released the members of his small Southern Baptist³ congregation for lunch.⁴ He told the church he had been keeping a secret, not wanting to get their hopes up in case his plan fell through.⁵ Curious eyes and ears now trained on the pulpit, Pastor Free stood in front of his congregation and told them he had sold the church.⁶

Cowboy Way Church, also known as Cedar Cross Country Church, was incorporated in 2007.⁷ In January 2021, without telling the church or the church’s elders, Pastor Free and his wife, Michelle, removed two elders from the church’s board of directors and appointed Pastor Free as

1. *Exodus* 20:15 (NIV).

2. Matt Smith, *Petition Relays Pastor’s Defraud of Church*, CLEBURNE TIMES-REVIEW (Oct. 5, 2021), https://www.cleburnetimesreview.com/news/petition-relays-pastor-s-defraud-of-church/article_b8defc6c-25eb-11ec-9ef4-afda5beaa103.html [https://perma.cc/BK7B-4TT6].

3. *Cedar Cross Country Church*, DUN&BRADSTREET BUS. DIRECTORY, https://www.dnb.com/business-directory/company-profiles.cedar_cross_country_church.3f3e77f2b605097e31162d7bb235675c.html [https://perma.cc/W5CF-BKKM].

4. Smith, *supra* note 2.

5. *Id.*

6. *See id.*

7. *Cedar Cross Country Church*, OPENCORPORATES, https://opencorporates.com/companies/us_tx/0800866236 [https://perma.cc/Y2XB-HFMS].

the church's president, treasurer, director, and registered agent.⁸ They also appointed Michelle and a family friend unaffiliated with the church as the church's only other corporate directors.⁹ Then, in July, the Frees sold the church's facilities for over \$1 million.¹⁰ The Frees paid off the church's mortgage, bought themselves a \$515,000 home and some horses, and hid the remaining funds.¹¹

The members of Cowboy Way Church sued the Frees for conversion, theft, and breach of fiduciary duty.¹² The trial court granted the church a temporary injunction and appointed a receiver to collect the church's assets.¹³ In addition to the pending civil suit, the Frees were arrested on multiple criminal charges, including misappropriation of fiduciary property, tampering with evidence, theft, and money laundering.¹⁴

Unfortunately, stories like this one are not uncommon.¹⁵ The Center for the Study of Global Christianity estimates that Christian churches will lose \$59 billion worldwide to embezzlement in 2022,¹⁶ up from the almost \$53 billion lost in 2020.¹⁷ Embezzlement occurs when one steals or misappropriates property from someone who entrusted them with that property.¹⁸ Embezzlement is typically classified as a "white-collar crime."¹⁹ There is no universally agreed-upon definition of white-collar crime.²⁰ However, the federal government, which is primarily

8. Smith, *supra* note 2.

9. *Id.*

10. *Id.*

11. *Id.*

12. Plaintiff's Third Amended Petition at 1, 7, *Cowboy Way Church v. Free*, No. DC-C202100324 (413th D. filed Aug. 5, 2021).

13. Smith, *supra* note 2.

14. *Id.*

15. Walter Pavlo, *Fraud Thriving in U.S. Churches, But You Wouldn't Know It*, FORBES (Nov. 18, 2013, 6:51AM), <https://www.forbes.com/sites/walterpavlo/2013/11/18/fraud-thriving-in-u-s-churches-but-you-wouldnt-know-it/?sh=69a01498d9d4> [<https://perma.cc/Z66A-ZWXJ>].

16. STATUS OF GLOBAL CHRISTIANITY, 2022, IN THE CONTEXT OF 1900-2050, CTR. FOR STUDY OF GLOB. CHRISTIANITY, GORDON-CONWELL THEOLOGICAL SEMINARY (2022), <https://www.gordonconwell.edu/center-for-global-christianity/wp-content/uploads/sites/13/2022/01/Status-of-Global-Christianity-2022.pdf>, [<https://perma.cc/7L2L-4LAP>] (ecclesiastical crime is the "[a]mounts embezzled by top custodians" of Christian church funds).

17. Todd M. Johnson, *Tracking \$52.6 Billion in Ecclesiastical Crime*, GORDON-CONWELL THEOLOGICAL SEMINARY (Feb. 19, 2020), <https://www.gordonconwell.edu/blog/ecclesiastical-crime> [<https://perma.cc/M4K4-BTPW>].

18. *Embezzlement*, CORNELL L. SCHOOL LEGAL INFO. INST., <https://www.law.cornell.edu/wex/embezzlement> [<https://perma.cc/QKS6-SST6>].

19. Hartmut Berghoff & Uwe Spiekermann, *Shady Business: On the History of White-Collar Crime*, 60 BUS. HIST. 289, 289 (2018).

20. *Id.*

responsible for investigating and prosecuting white-collar crime,²¹ defines it as a class of non-violent property theft crimes committed by employees or government officials that involve the violation of someone's trust.²² In addition to embezzlement, common white-collar crimes include fraud, corruption, bribery, insider trading, money laundering, Ponzi schemes, and price-fixing.²³

This Comment names white-collar crimes committed exclusively by church leaders or officials "clerical-collar crimes."²⁴ Distinguishing clerical-collar crime from white-collar crime gives weight to and promotes future consideration of the unique problems that arise when church leaders and officials commit clerical-collar crime. Although white-collar crime and clerical-collar crime share certain fundamental characteristics,²⁵ clerical-collar crime is different because it is committed by a different class of perpetrators, has an identifiable set of victims, and implicates unique constitutional issues.

Church leaders and officials are not included in most descriptions of white-collar criminal offenders.²⁶ Edwin Sutherland, the sociologist who coined the term "white-collar crime" in 1939,²⁷ described white-collar criminals as primarily upper-class business and professional men.²⁸ Time and academia have eroded the class and gender distinctions.²⁹ Now, any employee, regardless of status or gender, can commit a white-collar crime.³⁰ Although descriptions of white-collar criminal offenders have expanded to include women and lower-level employees, the

21. See *White-Collar Crime*, Federal Bureau of Investigation, <https://www.fbi.gov/investigate/white-collar-crime> [<https://perma.cc/RU36-X668>].

22. See *id.*

23. See Berghoff & Spiekermann, *supra* note 19, at 289–90.

24. *Clerical collar*, WIKIPEDIA, https://en.wikipedia.org/wiki/Clerical_collar [<https://perma.cc/7S8Y-H8FE>] (last modified Nov. 12, 2021) (Clerical-collars are the white collars some church leaders wear around their necks.).

25. See *White-Collar Crime*, *supra* note 21 (Clerical-collar crimes are also non-violent property theft crimes involving the violation of someone's trust.).

26. See generally *White-Collar Crime*, *supra* note 21 (white-collar crimes are the "full range of frauds committed by business and government professionals."); Berghoff & Spiekermann, *supra* note 19 (white collar crimes are "committed mainly by corporations, their owners, executives or employees as well as government or municipal officials.").

27. Berghoff & Spiekermann, *supra* note 19, at 290.

28. Edwin H. Sutherland, *White-Collar Criminality*, 5 AM. SOCIO. REV. 1, 1 (1940).

29. See Paul M. Klenowski & Kimberly D. Dodson, *Who Commits White-Collar Crime, and What Do We Know About Them?*, in THE OXFORD HANDBOOK OF WHITE-COLLAR CRIME 101, 109–12 (Shanna R. Van Slyke et al. eds., 2016).

30. *Id.* at 105.

descriptions largely remain limited to business employees and government officials.³¹ Church leaders are rarely, if ever, included.³²

Further, unlike white-collar crime, clerical-collar crime targets a specific set of victims. One of white-collar crime's defining features is that because the crimes can cause injury to so many people, it can be difficult to identify all the victims.³³ For example, bribery among government officials can lead to inflated costs for public projects, resulting in higher taxes for an entire country.³⁴ Or, when fraud or embezzlement bankrupts a large company, thousands of employees can lose their jobs, and investors can lose billions of dollars.³⁵ Clerical-collar crime victims, on the other hand, are much easier to identify. They are the members of the perpetrating church leader or official's church.

Finally, clerical-collar crime implicates unique constitutional issues. For example, Texas courts often bar church members' civil claims against perpetrators of clerical-collar crime under the ecclesiastical abstention doctrine, a subject matter jurisdiction limitation grounded in the First Amendment.³⁶ Part III of this Comment discusses this issue at length.

This Comment aims to shed light on clerical-collar crime, its victims, and how it is currently addressed by Texas civil courts. Although perpetrators of clerical-collar crime are subject to civil and criminal liability, this Comment focuses solely on perpetrators' civil liability in Texas and leaves clerical crime prosecution and punishment to future study. Beginning with church members' private remedies emphasizes church members' perspectives and considerations when dealing with clerical-collar crime. Church members' perspectives and considerations are

31. *White-Collar Crime*, *supra* note 21 (white-collar crimes are the "full range of frauds committed by business and government professionals."); Berghoff & Spiekermann, *supra* note 19 (white collar crimes are "committed mainly by corporations, their owners, executives or employees as well as government or municipal officials").

32. *Id.*

33. Berghoff & Spiekermann, *supra* note 19, at 291.

34. *Id.*

35. *White-Collar Crime*, *supra* note 21; *Arthur Andersen Name Revived More Than a Decade After Collapse*, BBCNEWS (Sept. 3, 2014), <https://www.bbc.com/news/business-29041396> [<https://perma.cc/2XW8-PDNN>] (accounting firm Arthur Andersen collapsed following its conviction for its involvement in the Enron scandal, causing 85,000 employees to lose their jobs and shareholders to lose billions).

36. *Hawkins v. Trinity Baptist Church*, 30 S.W.3d 446, 453 (Tex. App.—Tyler 2000, rehearing denied); *El Pescador Church, Inc. v. Ferrero*, 594 S.W.3d 645, 654 (Tex. App.—El Paso 2019, no pet.); *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 601 (Tex. 2013).

important, as most victims of clerical-collar crime choose not to report the crimes to law enforcement but to resolve the matter privately.³⁷

Part II of this Comment examines three reasons why churches are uniquely vulnerable to clerical-collar crime. Part III describes three civil claims church members can bring against perpetrators of clerical-collar crime, two challenges church members face in bringing those claims in Texas, and the difficulty of recovering stolen property due to the judgment-proof problem. Part IV concludes by making several recommendations to protect churches from clerical-collar crime and mitigate victims' losses.

II. WHY CHURCHES ARE VULNERABLE TO CLERICAL-COLLAR CRIME

This Section examines three reasons why churches are uniquely vulnerable to clerical-collar crime: (1) the lack of external and internal financial oversight; (2) church members' unwillingness to report perpetrators; and (3) the trusting nature of religious communities.

A. Lack of Financial Oversight

Andrew Seidel, a constitutional law attorney who specializes in the intersection between the Constitution and religion,³⁸ described churches as "financial black holes."³⁹ Unlike other 501(c)(3) nonprofit organizations, churches do not have to file financial information with the Internal Revenue Service.⁴⁰ Seidel writes that the lack of transparency, reporting, and financial auditing makes churches "the most vulnerable entities to fraud and abuse."⁴¹

In addition to the lack of external financial oversight, churches that lack internal financial oversight are even more at risk for clerical-collar crime. Baptist churches can serve as one example. Baptist churches are congregational, meaning each church operates independently and is not subordinate to any higher religious authority.⁴² As such, Baptist churches have relatively more freedom in structuring their internal

37. Pavlo, *supra* note 15.

38. Andrew L. Seidel, <https://andrewlseidel.com> [<https://perma.cc/E9FX-5NEL>].

39. Andrew Seidel, *Churches Are Financial Black Holes. Here's What Congress Can Do About It*, THINKPROGRESS, (Dec. 20, 2018, 8:00 AM), <https://archive.thinkprogress.org/churches-susceptible-fraud-congress-file-financial-irs-93830e2be2cd> [<https://perma.cc/SE45-PXDE>].

40. *Id.*

41. *Id.*

42. Paul E. Martin, *Property Rights Among Factions in Independent Churches*, 7 BAYLOR L. REV. 425, 425-26 (1955).

church government and the roles and responsibilities of their church leaders and officials.⁴³ In some Baptist churches, church leaders or officials have complete or near-complete control over the church's finances with little to no oversight.⁴⁴ When access to and power over the church's assets sits in the hands of a few people, churches are increasingly vulnerable to fraud and property theft.

The Catholic Church is another example. Unlike Baptist churches, the Catholic Church is a hierarchical church.⁴⁵ In hierarchical churches, local congregations are subordinate to a national or global church organization.⁴⁶ In the Catholic Church, priests lead the local parishes, bishops lead the dioceses or groups of parishes, and the pope leads them all.⁴⁷ In 2007, a Villanova University survey found that 85% of participating Catholic dioceses lost church funds to embezzlement in the last five years. Of the 85%, 11% reported that more than \$500,000 had been stolen.⁴⁸ According to church ethics experts, the Catholic Church has some of the most extensive financial guidelines of any denomination, including a requirement to have an internal finance council.⁴⁹ However, the survey found that local parishes frequently ignore those guidelines.⁵⁰ According to the survey, only 3% of parishes conduct annual internal audits and 21% seldom or never conduct internal audits.⁵¹

The lack of financial oversight, external or internal, makes churches of all kinds vulnerable to clerical-collar crime. To reduce the risk of fraud and theft, churches should take steps to increase internal financial controls and oversight.

B. Unwillingness to Report Perpetrators

Churches are also vulnerable, in part, to clerical-collar crime because church members are often unwilling to report perpetrators to law

43. See E. Glenn Hinson, *Baptist Internal Governance*, 60 JURIST 46, 51 (2000).

44. John Brummitt, *Common Mistakes Pastors Make With Church Finances*, FREE WILL BAPTIST BD. RET. (Oct. 19, 2016), <https://boardofretirement.com/common-mistakes-pastors-make-with-church-finances> [<https://perma.cc/PN6A-7YHK>].

45. Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 ARIZ. L. REV. 307, 328 (2016).

46. *Watson v. Jones*, 80 U.S. 679, 722–23 (1872).

47. McConnell & Goodrich, *supra* note 45, at 328.

48. Laurie Goodstein & Stephanie Strom, *Embezzlement Is Found in Many Catholic Dioceses*, N.Y. TIMES (Jan. 5, 2007), <https://www.nytimes.com/2007/01/05/us/05church.html#:~:text=A%20survey%20by%20researchers%20at,than%20%24500%2C000%20had%20been%20stolen> [<https://perma.cc/9RPH-XZSC>].

49. *Id.*

50. *Id.*

51. *Id.*

enforcement, allowing perpetrators the opportunity to commit clerical-collar crimes again at another unsuspecting church. One study showed an estimated 95% of clerical-collar crimes go undetected or unreported.⁵² Dr. Todd Johnson, the director of the Center for the Study of Global Christianity, said church members do not report these crimes to law enforcement because they are reluctant to see their church leaders as “bad people.”⁵³ Instead, church members often choose to forgive their church leaders and resolve the matter among themselves.⁵⁴ How church members choose to respond to clerical-collar crimes is their prerogative. Forgiveness and compassion are often aspects of members’ faiths. However, by not reporting these crimes to law enforcement, church members afford perpetrators the opportunity to commit clerical-collar crimes again at other churches.

C. *Trusting Nature*

Church members often have a great deal of trust in their church leaders, making it difficult for them to believe their church leaders would violate that trust by stealing the church’s property.⁵⁵ The trust church members place in their church leaders, as well as others, is another reason why churches are uniquely vulnerable to clerical-collar crime and affinity fraud, a related crime involving the violation of church members’ trust.

Affinity fraud generally refers to investment scams that target groups such as religious communities, ethnic communities, and the elderly.⁵⁶ Affinity fraud and clerical-collar crime have three main similarities. First, victims of affinity fraud are often church members.⁵⁷ Second, affinity fraud involves the violation of church members’ trust.⁵⁸ Third, perpetrators of affinity fraud often enlist church leaders in their scams by convincing the church leader a fraudulent investment is legitimate.⁵⁹

52. Pavlo, *supra* note 15.

53. *Id.*

54. *Id.*

55. Goodstein & Strom, *supra* note 48.

56. *Affinity Fraud: How to Avoid Investment Scams That Target Group*, U.S. SEC. & EXCH. COMM’N (Oct. 9, 2013), <https://www.sec.gov/investor/pubs/affinity.htm#:~:text=Affinity%20fraud%20refers%20to%20investment,be%20%2D%20members%20of%20the%20group> [<https://perma.cc/M5KL-TTPB>].

57. *Id.*

58. *Id.*

59. *Id.*

Affinity fraud is particularly prevalent among the Church of Jesus Christ of Latter-Day Saints (“Church of Latter-Day Saints”) in Utah.⁶⁰ Utah has the highest rate of Ponzi schemes⁶¹ per capita in the United States, more than twice the rate of Florida, the state with the next highest rate, according to an analysis by a Salt Lake City investment fraud attorney.⁶² The analysis showed the population of Utah, of which two-thirds are members of the Church of Latter-Day Saints,⁶³ lost almost \$1.5 billion to Ponzi schemes over the past ten years.⁶⁴

In 2013, father-and-son duo Guy and Brent Williams stole more than \$100 million from members of the Church of Latter-Day Saints in Arizona, Utah, and Nevada.⁶⁵ Guy and Brent told the church members that their money would be used to make short-term loans to third-party borrowers at high interest rates and then pocketed the money.⁶⁶ There was no mention of whether the church members’ funds were returned, but Guy and Brent were sentenced to 12.5 and 7.5 years in prison, respectively.⁶⁷

Dixie State Sociology Professor Bob Oxley said investment scammers frequently target the Church of Latter-Day Saints because of the Church’s trusting and generous culture.⁶⁸ Tithing is a “natural and integrated aspect” of the Church’s religious beliefs and practices.⁶⁹ The

60. Sonja Hutson, *Why is Utah Home to So Many Ponzi Schemes?*, KUER (Dec. 30, 2019), <https://www.kuer.org/business-labor/2019-12-30/why-is-utah-home-to-so-many-ponzi-schemes> [<https://perma.cc/5BJ6-QUVL>].

61. *Ponzi Scheme*, U.S. SEC. & EXCH. COMM’N, <https://www.investor.gov/protect-your-investments/fraud/types-fraud/ponzi-scheme> [<https://perma.cc/YFW2-36EJ>] (“A Ponzi scheme is an investment fraud that pays existing investors with funds collected from new investors. Ponzi scheme organizers often promise to invest your money and generate high returns with little or no risk. But in many Ponzi schemes, the fraudsters do not invest the money. Instead, they use it to pay those who invested earlier and may keep some for themselves.”).

62. Hutson, *supra* note 60.

63. *Id.*

64. *Id.*

65. *Father and Son Convicted of Operating \$100 Million Ponzi Scheme That Targeted Members of the LDS Church*, DOJ DIST. ARIZ. (July 2, 2013), <https://www.justice.gov/usao-az/pr/father-and-son-convicted-operating-100-million-ponzi-scheme-targeted-members-lds-church> [<https://perma.cc/WBH2-W95A>].

66. *Id.*

67. Ray Stern, *Mesa Mormon-Scammers Duane Slade, Brent Williams and Guy Williams Sentenced to Prison*, PHX. NEW TIMES (Oct. 4, 2013), <https://www.phoenixnewtimes.com/news/ Mesa-mormon-scammers-duane-slade-brent-williams-and-guy-williams-sentenced-to-prison-6641865> [<https://perma.cc/4K84-MVGR>].

68. Hutson, *supra* note 60.

69. *Tithing and Charitable Donations*, NEWSROOM, CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://newsroom.churchofjesuschrist.org/article/tithing> [<https://perma.cc/D2YU-9PJR>].

Church often donates funds to various educational, humanitarian, and welfare efforts.⁷⁰ Perpetrators of affinity fraud rely on the Church's trusting and generous nature to convince members to invest in their scams.⁷¹

III. CIVIL LIABILITY FOR CLERICAL-COLLAR CRIME IN TEXAS

The previous Section examined three reasons why churches are uniquely vulnerable to clerical-collar crime. This Section reviews the remedies available to victims of clerical-collar crime under Texas civil law. Using the claims against the Frees as a framework, this Section describes three civil claims church members can bring against perpetrators of clerical-collar crime: conversion, theft, and breach of fiduciary duty. Then, this Section analyzes two challenges church members face when bringing these claims in Texas: (1) establishing ownership of church property; and (2) surviving the ecclesiastical abstention doctrine. This Section concludes by discussing the difficulty of recovering stolen property due to the judgment-proof problem.

A. Conversion, Theft, and Breach of Fiduciary Duty

The members of Cowboy Way Church sued the Frees for conversion, theft, and breach of fiduciary duty.⁷² Conversion is the unlawful exercise of "dominion and control" over a person's property in denial of or inconsistent with that person's property rights.⁷³ To succeed on a conversion claim, a plaintiff must prove four elements.⁷⁴ First, the plaintiff owned, possessed, or was entitled to possess the property.⁷⁵ Second, the defendant unlawfully "assumed and exercised control over the property" in denial of the plaintiff's property rights.⁷⁶ Third, the plaintiff demanded the defendant return the plaintiff's property.⁷⁷ Fourth, the defendant ignored the plaintiff's demand and refused to return the property.⁷⁸ If the plaintiff proves each of these elements, the plaintiff has two choices for

70. *Id.*

71. Hutson, *supra* note 60.

72. Plaintiff's Third Amended Petition at 1, 7, Cowboy Way Church v. Free, No. DC-C202100324 (413th D. filed Aug. 5, 2021).

73. Universal Plant Servs., Inc. v. Dresser-Rand Grp., Inc. 571 S.W.3d 346, 362–63 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

74. *Id.* at 363.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

remedy.⁷⁹ The plaintiff can request the property be returned and seek damages for loss of the property's use during the defendant's conversion, or the plaintiff can request damages in the amount of the property's fair market value at the time and place of the conversion.⁸⁰

Next, the Texas Theft Liability Act ("TTLA") imposes civil liability for criminal theft.⁸¹ To succeed on a TTLA theft claim, a plaintiff must prove the defendant committed theft as defined by the Texas Penal Code.⁸² The Texas Penal Code defines theft as the unlawful taking of another's property with the intent to deprive the owner of that property.⁸³ Under the TTLA, a plaintiff may recover "actual damages," an additional \$1,000 in damages, and court costs and attorney's fees.⁸⁴ The TTLA does not define actual damages, but Texas courts have held they are the damages that are "recoverable at common law."⁸⁵ Common law damages for theft are the same as conversion: the return of the property, damages for loss of the property's use, or the property's fair market value at the time and place of the conversion.⁸⁶

Lastly, a breach of fiduciary duty claim requires a plaintiff to prove three elements.⁸⁷ First, the defendant owed the plaintiff a fiduciary duty.⁸⁸ Second, the defendant breached that duty.⁸⁹ Third, the defendant's breach resulted in injury to the plaintiff or benefit to the defendant.⁹⁰ Fiduciary relationships giving rise to a fiduciary duty may be formal or informal.⁹¹ A formal fiduciary relationship arises where a person has a duty to act for or give advice to another person on matters within

79. *Wells Fargo Bank Nw., N.A. v. RPK Capital XVI, LLC*, 360 S.W.3d 691, 706 (Tex. App.—Dallas 2012, no pet.).

80. *Id.*

81. *Universal Plant Servs.*, 571 S.W.3d at 363.

82. *Travel Music of San Antonio, Inc. v. Douglas*, No. 04-00-00757-CV, 2002 WL 1058527 at *8 (Tex. App.—San Antonio May 29, 2002, pet. denied).

83. TEX. PENAL CODE ANN. § 31.03(a).

84. *Sw. Grain Co. v. Pilgrim's Pride S.A. de C.V.*, No. 13-07-00557, 2010 WL 2638483, at *7-8 (Tex. App.—Corpus Christi-Edinburg June 26, 2010, pet. denied).

85. *Dunn v. Jennings*, No. 06-19-000360CV, 2019 WL 4559096, at *12 (Tex. App.—Texarkana Sept. 20, 2019, no pet.).

86. *Id.* at *12; *Universal Plant Servs.*, 571 S.W.3d at 363.

87. *E-Learning LLC v. AT&T Corp.*, 517 S.W.3d 849, 861 (Tex. App.—San Antonio 2017, no pet.).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Gregan v. Kelly*, 355 S.W.3d 223, 227 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *Ferrara v. Nutt*, 555 S.W.3d 227, 243 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (citing *Areda v. S-W Transp., Inc.*, 365 S.W.3d 838, 841 (Tex. App.—Dallas 2021, no pet.)).

the scope of their relationship.⁹² Attorney-client, principal-agent, and trustee-beneficiary relationships are formal fiduciary relationships giving rise to a fiduciary duty in Texas.⁹³ An informal fiduciary relationship, on the other hand, arises where a person is accustomed to trusting in and relying on another, regardless of whether the relationship is moral, social, domestic, or personal.⁹⁴

B. Challenges to Bringing Claims Against Church Leaders in Texas

Church members face two challenges in bringing these claims against perpetrators of clerical-collar crime in Texas: (1) establishing ownership of church property; and (2) surviving the ecclesiastical abstention doctrine.

1. Church Property Ownership

To succeed on a claim for conversion or theft, church members must prove they are the rightful owner of the church's property over the church leaders or officials. This task is not as simple as it may sound. Church members generally do not enjoy individual property rights to church property. The rightful owner of church property depends on the type of church and the analytical approach the court applies when resolving church property disputes.⁹⁵

In jurisdictions that apply the hierarchical deference approach, local churches that are subordinate to a national or global church, like the Catholic Church,⁹⁶ will almost never establish rights to local church property over the higher church authority.⁹⁷ Under the hierarchical deference approach, courts refrain from adjudicating church property disputes and defer to the higher church authority's determinations.⁹⁸ If the higher church authority determines it owns the local church's property, the deference approach requires the court to abide by that determination.⁹⁹ The hierarchical deference approach stems, in part, from the idea

92. *Am. Med. Int'l, Inc. v. Guirintano*, 821 S.W.2d 331, 339 (Tex. App.—Houston [14th Dist.] 1991, no pet.); *Gregan*, 355 S.W.3d at 227.

93. *Am. Med. Int'l, Inc.*, 821 S.W.2d at 339; *Gregan*, 355 S.W.3d at 227.

94. *Gregan*, 355 S.W.3d at 227–28.

95. John A. Sparks, *Whose Church Is This? Church Property Disputes and the Civil Courts*, 1 GROVE CITY COLL. J.L. & PUB. POL'Y 19, 20–21 (2010).

96. McConnell & Goodrich, *supra* note 45.

97. Kathleen E. Reeder, *Whose Church Is It, Anyway? Property Disputes and Episcopal Church Splits*, 40 COLUM. J. L. & SOC. PROBS. 125, 135 (2006).

98. Sparks, *supra* note 95, at 25.

99. Reeder, *supra* note 97, at 131–32.

that in hierarchical churches, the higher church authority governs local churches and local churches are bound by its determinations, which should not be interfered with by civil courts.¹⁰⁰

Academics criticize the hierarchical deference approach for being fundamentally unfair.¹⁰¹ Proponents argue it is the “lesser of two constitutional evils” because it allows the court to abstain from meddling in religious affairs.¹⁰² However, in these cases, not taking a side is taking a side. By deferring to the higher church authority, courts relinquish complete adjudicatory control to one party to the litigation,¹⁰³ denying church members any means of recourse for potential malfeasance by higher church authorities.

Fortunately, most states reject the hierarchical deference approach, including Texas.¹⁰⁴ Texas follows the neutral principles of law approach in resolving church property disputes.¹⁰⁵ Under the neutral principles of law approach, courts use neutral principles of trust and property law to determine the rightful owner of church property by examining deed language, local church charters, state statutes, and church constitution provisions concerning the ownership and control of church property.¹⁰⁶

While the neutral principles of law approach better reflects the parties’ intent and expectations regarding church property,¹⁰⁷ the approach is not without criticism.¹⁰⁸ Some have argued that because many church documents were written long ago, the neutral principles of law approach does not consider current church members’ expectations and beliefs regarding church property.¹⁰⁹ Further, many church documents blend religious doctrine and secular business provisions, complicating the inquiry for courts already inclined to refrain from getting involved in religious affairs.¹¹⁰ In his dissent in *Jones v. Wolf*, Justice Powell wrote that attempting to read church documents “in purely secular terms [was] more likely to promote confusion than understanding.”¹¹¹

100. Valerie J. Munson, *Fraud on the Faithful? The Charitable Intentions of Members of Religious Congregations and the Peculiar Body of Law Governing Religious Property in the United States*, 44 RUTGERS L.J. 471, 493–94 (citing *Watson*, 80 U.S. at 729).

101. Reeder, *supra* note 97, at 134, 137.

102. *Id.* at 133.

103. *Id.* at 129.

104. *Masterson v. Diocese of Nw. Tex.*, 422 S.W.3d 594, 606–07 (Tex. 2013).

105. *Id.* at 607.

106. *Id.* at 603.

107. *Jones v. Wolf*, 443 U.S. 595, 603 (1979).

108. Reeder, *supra* note 97, at 129 (quoting John Fennelly, *Property Disputes and Religious Schisms: Who Is the Church?*, 9 ST. THOMAS L. REV. 319, 353 (1997)).

109. *Id.* at 130.

110. *Id.*

111. *Jones*, 443 U.S. at 612 (Powell, J., dissenting).

To avoid confusion and increase the likelihood of success on a potential conversion or theft claim in Texas, a church's governing documents should state clearly and in secular terms that the church's property belongs to the local church, as represented by a majority of its current members, and not any individual church leaders or officials.

2. Ecclesiastical Abstention

The second challenge church members face in bringing claims against perpetrators of clerical-collar crime in Texas is surviving the ecclesiastical abstention doctrine. The ecclesiastical abstention doctrine is a product of courts' interpretation of the Free Exercise Clause of the First Amendment. The Free Exercise Clause of the First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."¹¹² First articulated by the Supreme Court in *Watson v. Jones*, courts have construed the Free Exercise Clause to mean that they lack subject matter jurisdiction over matters concerning theological controversy, church discipline, internal church governance, or church members' adherence to religious practice or doctrine.¹¹³

Citing the ecclesiastical abstention doctrine, Texas courts have declined to hold a church member liable for breach of fiduciary duty. In *Hawkins v. Trinity Baptist Church*, a pastor was sued for breach of fiduciary duty after sexually exploiting a church member he was counseling.¹¹⁴ The court declined to recognize a fiduciary duty because doing so would require the court to define a reasonable duty standard for the pastor and evaluate his conduct against it, an endeavor likely prohibited by the Free Exercise Clause as Texas courts have interpreted it.¹¹⁵

Whether a church leader owes fiduciary duties to church members may depend on the capacity in which the church leader acts. While church leaders' specific duties and obligations to the church vary from faith to faith, most church leaders act in two, maybe three, primary capacities. First, church leaders are the congregation's spiritual leaders.¹¹⁶

112. U.S. CONST. amend. I.

113. *El Pescador Church, Inc. v. Ferrero*, 594 S.W.3d 645, 654 (Tex. App.—El Paso November 25, 2019, no pet.); *Masterson v. Diocese of N.W. Texas*, 422 S.W.3d 594, 601 (Tex. 2013).

114. *Hawkins v. Trinity Baptist Church*, No. 12-99-00438-CV, 2000 LEXIS 4807 at *2 (Tex. App.—Tyler July 7, 2000, no pet.).

115. *Id.* at *16.

116. *What Are the Job Duties of a Pastor?*, https://learn.org/articles/What_are_the_Job_Duties_of_a_Pastor.html [<https://perma.cc/K6RY-3Q62>].

They study scripture; prepare and deliver sermons;¹¹⁷ and perform religious rites, like baptisms, coming-of-age ceremonies, weddings, and funerals. Second, church leaders often act as faith-based counselors, providing one-on-one mental health services to church members in need.¹¹⁸ Third, depending on the faith and the individual church's structure, church leaders may act in some sort of administrative capacity, serving as a director or member of the church's corporate board or otherwise managing the church's business affairs.¹¹⁹

Church leaders do not owe fiduciary duties in their capacity as spiritual leaders. In *El Pescador Church, Inc.*, Hector Ferrero, the pastor and member of the church's board of directors was sued for breach of fiduciary duty.¹²⁰ The court held the trial court lacked the jurisdiction to hear the claim under the ecclesiastical abstention doctrine because the facts were "inextricably intertwined" with internal church governance, the pastor's role in church affairs, congregation membership, and the pastor's statements from the pulpit.¹²¹ The court cited one of the allegations, which claimed Hector "misused the pulpit to gain the control of the purse and power over the congregation for his sole benefit," as an example of the claim's fatal entanglement with the ecclesiastical abstention doctrine.¹²²

However, church leaders may owe fiduciary duties in their administrative capacity if the claims do not implicate ecclesiastical abstention. In *In re Thomas*, the court stated that the First Amendment does not protect religious leaders from all tortious conduct.¹²³ If a claim can be brought "without reference to a church's or its minister's doctrines, religious beliefs, church discipline, or governance, then the claim will not be barred by the First Amendment."¹²⁴ In *Thomas*, two factions of a small Baptist church disagreed over who should be the church's pastor and who should control the church's finances.¹²⁵ One faction sued the other

117. *Id.*

118. *Id.*; David Powelson, *The Pastor as Counselor: The Call for Soul Care*, 26 J. BIBLICAL COUNSELING 23, 23 (2012).

119. *What Are the Job Duties of a Pastor?*, *supra* note 116; Brummit, *supra* note 44.

120. *El Pescador Church, Inc. v. Ferrero*, 594 S.W.3d 645, 659 (Tex. App.—El Paso November 25, 2019, no pet.).

121. *Id.*

122. *Id.*

123. *In re Thomas*, No. 06-21-00106-CV, 2022 WL 126708 at *33 (Tex. App.—Texarkana January 13, 2022, no pet.) (mem. op.) (citing *Tilton v. Marshall*, 925 S.W.2d 672, 677 (Tex. 1996)).

124. *Id.* at *12.

125. *Id.* at *1.

for breach of fiduciary duty, among other claims.¹²⁶ The appellate court held the claim for breach of fiduciary duty was not automatically barred by ecclesiastical abstention.¹²⁷ If, after discovery, the evidence showed that the defendant made wrongful expenditures of church funds without implicating the church's doctrines, religious beliefs, church discipline, or church governance, then the plaintiff's claim would not be barred by ecclesiastical abstention.¹²⁸

Moreover, the court stated the plaintiffs based their breach of fiduciary claim on the church finance committee's duties to retain certain financial records, which were set forth in the church's bylaws.¹²⁹ The court claimed the trial court should be able to use the neutral principles of law approach to examine the church's bylaws and determine what the faction's duties were and whether the committee breached its duties.¹³⁰

At first glance, the *Thomas* decision is promising. It is the first instance in which a Texas court did not automatically bar a breach of fiduciary duty claim against a church leader under the ecclesiastical abstention doctrine.¹³¹ The decision leaves open the possibility that church leaders in Texas will owe church members fiduciary duties, at least in their administrative capacity, in the future. Further, by encouraging the trial court to apply the neutral principles of law approach and look to the church's bylaws to determine the church leaders' fiduciary duties, the *Thomas* court circumvents ecclesiastical abstention. By looking to churches' governing documents to define church leaders' fiduciary duties instead of defining a duty standard themselves, the court avoids risking violating the First Amendment.

One of the major critiques of the ecclesiastical abstention doctrine is that because state and federal courts apply it differently, the scope of the doctrine and how it will be applied to a particular fact situation is unclear.¹³² For example, unlike Texas, several states recognize the existence of a fiduciary relationship between a church leader and church members. In Indiana, the relationship between a pastor and parishioner is a formal fiduciary relationship that exists as a matter of law.¹³³ In

126. *Id.* at *3.

127. *Id.* at *12.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *The Expansion of the Ecclesiastical Abstention Doctrine – Why You Should Care*, HARV. C. R.-C.L. L. REV. AMICUS BLOG (Nov. 20, 2018), <https://harvardcrcl.org/the-expansion-of-the-ecclesiastical-abstention-doctrine-why-you-should-care> [<https://perma.cc/6CGM-RFW9>].

133. *Callaway v. Callaway*, 932 N.E.2d 215, 223 (Ind. Ct. App. 2010) (citing *Supervised*

Connecticut, a fiduciary relationship may arise if a church leader assumes special duties or obligations to the church member that indicate a unique degree of trust and confidence.¹³⁴ In Colorado and New Jersey, a fiduciary relationship may arise if a church leader engages in counseling with a church member.¹³⁵ In *Moses v. Diocese of Colorado*, the Colorado Supreme Court stated that the First Amendment does not grant religious organizations absolute immunity from civil liability and that breach of fiduciary duty is a viable civil action against a church leader.¹³⁶

The way Texas courts have historically applied the ecclesiastical abstention doctrine grants church leaders near-absolute immunity from fiduciary liability. Like the hierarchical deference approach under which courts refrain from adjudicating hierarchical church property disputes, barring church members' claims under ecclesiastical abstention denies church members civil recourse for malfeasance committed by church leaders or officials.

However, the development of the ecclesiastical abstention doctrine in Texas appears to be in flux. On one hand, there have been concerns that Texas is expanding the doctrine in unprecedented ways.¹³⁷ In two recent cases, Texas courts dismissed plaintiffs' claims against two schools simply because they were religious schools. The courts held that because the schools were religious schools, their decision-making was intertwined with religious doctrine, and the courts could not hear the claims under ecclesiastical abstention.¹³⁸ On the other hand, the *Thomas* decision signals a potential turn away from automatically barring claims based on ecclesiastical abstention by encouraging courts to look to churches' governing documents for fiduciary duty standards using the neutral principles of law approach.

The United States Supreme Court has stated that courts may not decline to hear claims under ecclesiastical abstention simply because religious organizations are involved. Courts should not refrain from hearing disputes they have jurisdiction over because doing so denies aggrieved parties their right to have their dispute adjudicated. The appropriation application of the ecclesiastical abstention doctrine involves weighing

Estate of Allender v. Allender, 833 N.E.2d 529, 533 (Ind. Ct. App. 2005)).

134. Ahern v. Kappalumakkel, No. CV010075617S, 2004 Conn. Super. LEXIS 524, at *23-24 (Super. Ct. Mar. 5, 2004).

135. *Moses v. Diocese of Colorado*, 863 P.2d 310, 321-22 (Colo. 1993); *F.G. v. MacDonell*, 696 A.2d 697, 702 (N.J. 1997).

136. *Moses*, 863 P.2d at 319-21.

137. *The Expansion of the Ecclesiastical Abstention Doctrine – Why You Should Care*, *supra* note 132.

138. *Id.*

two important competing interests: the freedom of religion and the rights of victims of clerical-collar crime. Under the current balance, victims of clerical-collar crime are being denied recourse in civil courts merely because the perpetrators are church leaders. Hopefully, future courts will follow the *Thomas* court's lead and look to the church's governing documents to define church leaders' fiduciary duties under the neutral principles of law approach. To aid the courts' inquiry, church members should state in church governing documents any fiduciary duties or responsibilities church leaders owe in secular terms. Potential claims for breach of fiduciary duty will be barred by ecclesiastical abstention if the church leader's duties are intertwined with religious doctrine.

C. Recovery and the Judgment-Proof Problem

The previous parts of this Section described the reasons why church members are vulnerable to clerical-collar crime, the civil claims church members can bring against perpetrators, and the challenges church members face in bringing those claims. This Section summarizes how, after church members bring their claims and win, they can attempt to recover their stolen property. Unfortunately, church members will often not recover property that cannot be simply returned to them because many defendants are "judgment-proof."

For most tort claims, courts award successful plaintiffs compensatory damages, or the amount equal to compensate the plaintiff for their loss.¹³⁹ For conversion and theft, compensatory damages are the amount equal to the property's fair market value at the time and place the property was converted or stolen.

After a plaintiff wins their lawsuit, they have several options to recover the money the defendant owes them.¹⁴⁰ First, a plaintiff may request a judgment lien on the defendant's real property.¹⁴¹ If the defendant sells any non-exempt property, the plaintiff may be able to get all or some of the money they are owed.¹⁴² Second, a plaintiff may request a

139. *Fails v. Basse*, No. 07-08-00445-CV, 2010 WL 877537, at *2 (Tex. App.—Amarillo 2010, pet. denied).

140. *Small Claims Cases*, TEX. STATE L. LIBR., <https://guides.sll.texas.gov/small-claims/collecting-a-judgment> [<https://perma.cc/26SV-C48G>]; *What Does It Mean If Someone is Judgment Proof?*, JUSTINIAN & ASSOCS., <https://www.justinian.com/legal-resources/texas-lawsuits-and-the-judgment-proof-defendant> [<https://perma.cc/LSG7-E7ZL>].

141. *Small Claims Cases*, *supra* note 140.

142. *Id.*

writ of execution.¹⁴³ A writ of execution allows the defendant's property to be seized and sold in order to satisfy the judgment.¹⁴⁴ Third, a plaintiff may request a writ of garnishment. A writ of garnishment orders a third party that holds the defendant's property, like a bank, to turn over the defendant's property to satisfy the judgment. Bank accounts and stocks may be subject to garnishment, but wages are typically exempt.

Regardless of how a plaintiff attempts to recover the judgment, they are not entitled to the defendant's exempted income or assets.¹⁴⁵ In Texas, exempted income includes wages, child support, Social Security benefits, veteran's benefits, unemployment benefits, and federal retirement benefits.¹⁴⁶ Exempted assets include household items up to \$30,000 in value for a single person or \$60,000 for a family, one vehicle for each licensed driver in the home, the homestead, and various tools and livestock.¹⁴⁷

A defendant is "judgment-proof" when they do not have the money to pay the judgment and do not own any assets beyond those exempted under the law.¹⁴⁸ Unfortunately, the majority of Americans are judgment-proof. According to a 2016 survey, 63% of Americans could not afford an unexpected \$500 bill.¹⁴⁹ If 63% of Americans do not have an extra \$500, they likely do not have sufficient assets to satisfy a judgment against them either.

Because most Americans are judgment-proof, many potential plaintiffs are out of luck.¹⁵⁰ There are not many options available when a defendant cannot satisfy a judgment. A plaintiff can renew a judgment after ten years in case the defendant's financial situation changes or can try to hold someone else accountable for the misconduct.¹⁵¹ Or, if the defendant has insurance, the plaintiff may try to sue the defendant for negligence. Liability insurance usually covers negligence and almost always excludes intentional torts.¹⁵²

143. *Id.*

144. *Id.*

145. *What Does It Mean If Someone is Judgment Proof?*, *supra* note 140.

146. *Id.*

147. *Id.*

148. *Small Claims Cases*, *supra* note 140; *What Does It Mean If Someone is Judgment Proof?*, *supra* note 140.

149. Aimee Picchi, *Most Americans Can't Handle a \$500 Surprise Bill*, CBS NEWS: MONEYWATCH, <https://www.cbsnews.com/news/most-americans-cant-handle-a-500-surprise-bill> [<https://perma.cc/7KRN-FX9Z>].

150. *Small Claims Cases*, *supra* note 140; *What Does It Mean If Someone is Judgment Proof?*, *supra* note 140.

151. *What Does It Mean If Someone is Judgment Proof?*, *supra* note 140.

152. Stephen G. Gilles, *The Judgment-Proof Society*, 63 WASH. & LEE L. REV. 603, 605 (2006).

IV. RECOMMENDATIONS

This Comment has addressed several reasons why churches are vulnerable to clerical-collar crime, the claims available to victims of clerical-collar crime, the challenges church members face in bringing those claims, and the challenges church members face in recovering on those claims. This Section provides six recommendations for church members to deal with some of these challenges, protect churches from clerical-collar crime, and mitigate victims' losses.

A. Fraud and Theft Detection and Prevention Training

People tend to believe something will never happen to them until it does. John Knapp, director of the Southern Institute for Business and Professional Ethics, says congregations tend to be in denial about the possibility of misconduct occurring.¹⁵³ Congregations often resist proposed seminars and trainings.¹⁵⁴ Clerical-collar crimes happen in churches of every kind and size. Churches should provide fraud and theft detection and prevention training for their elders, governing body, or finance committee. How a church chooses to respond to the discovery of a clerical-collar crime is their prerogative, but in order to respond, they must discover it in the first place. Two free online fraud detection and prevention resources are available here.¹⁵⁵

Those two resources, a website with a downloadable workbook and a YouTube video, are currently the only free resources available for church members to guard against clerical-collar crime. There are companies that provide training and auditing services, but smaller churches may lack the resources needed to pay for these services.¹⁵⁶ Attorneys who have experience counseling churches in these areas should begin creating and compiling free resources like what has been done for victims of *notario* fraud.¹⁵⁷ The American Bar Association's Fight Notario

153. Goodstein & Strom, *supra* note 48.

154. *Id.*

155. *Protecting Ministry Resources*, BROTHERHOOD MUTUAL, <https://www.brotherhood-mutual.com/resources/asset-protection/> [<https://perma.cc/8G6Z-S6GB>]; GuideOne Insurance, *How to Prevent Financial Fraud at Your Church | Webinar*, YOUTUBE (July 30, 2018), <https://www.youtube.com/watch?v=VbjOhd0pMvM> [<https://perma.cc/9W8A-UG8E>].

156. Todd M. Johnson, Gina A. Zurlo, & Albert W. Hickman, *Embezzlement in the Global Christian Community*, 13 REV. FAITH & INT'L AFFS. 74, 81–82 (2015).

157. *Fight Notario Fraud*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud [<https://perma.cc/DRX4-NREE>].

Fraud project was organized to combat *notario* fraud, or immigration consulting fraud.¹⁵⁸ The project's website provides victims with resources to spot and combat *notario* fraud, including examples of fraudulent advertising,¹⁵⁹ links to submit complaints to the Federal Trade Commission and the Executive Office of Immigration Review, and the information of free legal service providers in the area.¹⁶⁰ The website also provides resources for attorneys and law enforcement, including pleading and form templates, law enforcement referrals, articles and training guides, and an informational webinar on prosecuting immigration services fraud.¹⁶¹

Christian churches were on track to lose an estimated \$59 billion to embezzlement in 2022.¹⁶² If knowledgeable attorneys and members of the legal community consolidated their efforts to provide accessible detection and prevention resources to church members, that number might fall.

B. Oversight Boards

The nonprofit sector, which churches are a part of,¹⁶³ is equally plagued by fraud and theft.¹⁶⁴ In 2005, the Association of Certified Fraud Examiners estimated that nonprofit organizations lose around 6% of their revenue to fraud each year, resulting in annual total losses of \$40 billion.¹⁶⁵ Arguing that widespread nonprofit organization regulation

158. *Id.*

159. *About Notario Fraud*, AM. BAR ASS'N (Jan. 31, 2022), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/about_notario_fraud [<https://perma.cc/39TJ-GFEB>].

160. *Resources for Victims of Notario Fraud*, AM. BAR ASS'N (Jan. 31, 2022), https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud/victimresources [<https://perma.cc/RA6N-JG97>].

161. *Resources for Attorneys and Law Enforcement*, AM. BAR ASS'N, https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fight-notariofraud/attorneyresources [<https://perma.cc/DPH2-7HT3>].

162. STATUS OF GLOBAL CHRISTIANITY, 2022, IN THE CONTEXT OF 1900-2050, *supra* note 16.

163. *Non-profit Organizations*, CORNELL L. SCHOOL LEGAL INFO. INST., https://www.law.cornell.edu/wex/non-profit_organizations [<https://perma.cc/Y2W2-CM5R>] (Definitionally, churches are nonprofit organizations. Nonprofit organizations operate for purposes other than generating profits and in which no part of their income is distributable to the organization's members, directors, or officers).

164. Terri L. Helge, *Policing the Good Guys: Regulation of the Charitable Sector Through a Federal Charity Oversight Board*, 19 CORNELL J.L. & PUB. POL'Y 1, 3-4 (2009).

165. Janet Greenlee et al., *An Investigation of Fraud in Nonprofit Organizations: Occurrences and Deterrents*, (Hauser Ctr. for Nonprofit Orgs., Working Paper No. 35, 2006), https://cpl.hks.harvard.edu/files/cpl/files/workingpaper_35.pdf?m=1440179121.

reform is necessary to curtail these losses, Professor and Associate Dean of Texas A&M University School of Law Terri Helge proposed the creation of a new regulatory body: the Federal Charity Oversight Board.¹⁶⁶ The proposed Board would have the power to investigate and sanction nonprofit organizations for federal tax law violations, revoke organizations' tax-exempt status, and require organizations to report certain events that present opportunities for nonprofit organization asset theft, like mergers and self-dealing transactions.¹⁶⁷

The extent, and therefore, constitutionality of the proposed Board's powers over churches, is unclear. Helge writes that churches would be required to register with the Board,¹⁶⁸ but churches are not currently required to register with the Internal Revenue Service ("IRS"),¹⁶⁹ the principal regulator of nonprofit organizations.¹⁷⁰ Churches are also not required to apply for or receive recognition of their tax-exempt status.¹⁷¹ Churches that meet Internal Revenue Code Section 501(c)(3)'s requirements are automatically exempt.¹⁷² All churches are required to do is maintain accounting records in case of an audit,¹⁷³ and even then, Congress has limited when the IRS can audit churches.¹⁷⁴ The IRS may only initiate a church tax inquiry if a high-level Treasury Department official reasonably believes, based on a written statement of the facts and circumstances, that the church may not qualify for their exemption or may not be paying taxes on an unrelated or otherwise taxable activity.¹⁷⁵

This Comment agrees with Helge's contention that the current regulatory scheme is inadequate. The lack of transparency, reporting requirements, and auditing makes churches "the most vulnerable entities to fraud and abuse."¹⁷⁶ However, the First Amendment largely prohibits government regulation of church finances. Until, and even once, constitutionally acceptable regulatory reform occurs, churches should install their own internal oversight boards. Allowing only one person or a few people to have access to and control over church funds opens the door

166. Helge, *supra* note 164, at 8.

167. *Id.* at 76.

168. *Id.* at 73 n.493.

169. 26 U.S.C. § 508(c)(1)(A); Helge, *supra* note 164, at 22 n.129.

170. INTERNAL REVENUE SERV., PUBL'N 1828 CATALOG NO. 21096G at 2, TAX GUIDE FOR CHURCHES & RELIGIOUS ORGANIZATIONS (2015).

171. *Id.*

172. *Id.*

173. *Id.* at 25.

174. *Id.* at 31.

175. *Id.*

176. Seidel, *supra* note 39.

to fraud and theft. A separate finance committee, auditing committee, or financial oversight board is one step churches can take toward preventing clerical-collar crime.

C. Secular Governing Documents

Conversion and theft claims require church members to prove they are the rightful owner of church property over church leaders and officials. Under the neutral principles of law approach, Texas courts determine the rightful owner of church property by neutrally evaluating church property deeds, church charters, state statutes governing the holding of church property, and church constitution provisions concerning ownership and the control of church property.¹⁷⁷

Churches should update their governing documents and deeds to reflect their current intentions and expectations about who owns church property. Church members should ensure individual church leaders do not have unilateral control over church property.

A breach of fiduciary duty claim requires church members to prove church leaders or officials owe them a fiduciary duty. Texas courts have declined to hold that church leaders owe church members a fiduciary duty in their capacity as the congregation's spiritual leader or counselor because to hold otherwise would require the court to define a reasonable duty standard for church leaders, an endeavor prohibited under the ecclesiastical abstention doctrine. However, a breach of fiduciary duty claim against a church leader in their administrative capacity may be possible. A recent case from the Sixth Court of Appeals directed the trial court to apply the neutral principles of law approach and determine what the church leader's fiduciary duties were under the church's by-laws.¹⁷⁸ To avoid the court denying potential claims under ecclesiastical abstention, churches should state and describe church leaders' and officials' duties in the most secular terms possible. If the duties are grounded in religious doctrine or principles, the claim will likely be barred by ecclesiastical abstention.¹⁷⁹

177. *Masterson v. Diocese of Nw. Texas*, 422 S.W.3d 594, 606 (Tex. 2013).

178. *In re Thomas*, No. 06-21-00106-CV, 2022 WL 126708, at *6 (Tex. App. Jan. 14, 2022).

179. *Id.*

D. *Liability Insurance*

A majority of defendants in the United States are judgment-proof, meaning they do not have sufficient income or assets to pay a judgment against them. Church members can partially mitigate the judgment-proof problem by purchasing liability insurance or requiring church leaders or officials to carry liability insurance. There is professional liability insurance available for pastors and churches in Texas.¹⁸⁰ Pastor professional liability insurance may combine coverages, such as sexual abuse coverage and management liability coverage.¹⁸¹ Management liability insurance covers directors, officers, managers, and business entities' activities.¹⁸² Churches should be aware of any policy exclusions, such as intentional torts and policy limits. Any judgment in excess of policy limits would not be covered.¹⁸³

E. *Vet Investments and Charitable Donations*

Perpetrators of affinity fraud target churches because of their trusting and generous nature. Churches should rigorously vet any investment offers or requests for charitable donations for authenticity. Common indicators that an investment is a scam are when the seller: claims an investment is a limited-time offer creating a false sense of urgency; represents that others have already invested to create a false sense of security; or promises high, guaranteed investment returns with little or no risk.¹⁸⁴ One way to ensure the investment is legitimate is to research the seller.¹⁸⁵ Church members can look up a purported broker, financial advisor, or investment firm using the Financial Industry Regulatory Authority's BrokerCheck website at brokercheck.finra.org or the United States Securities and Exchange Commission's Investment Advisor Public Disclosure website, at adviserinfo.sec.gov.¹⁸⁶

180. *Pastoral Professional Liability Insurance*, IRMI, <https://www.irmi.com/term/insurance-definitions/pastoral-professional-liability-insurance> [<https://perma.cc/SMR9-PZP5>].

181. *Id.*

182. *Management Liability Insurance*, IRMI, <https://www.irmi.com/term/insurance-definitions/management-liability-insurance> [<https://perma.cc/V8YT-TPPN>].

183. Kyle D. Logue, *Solving the Judgment-Proof Problem*, 72 TEX. L. REV. 1375, 1376 (1994).

184. Robert D. Mitchell, *Ponzi Schemes: How to Detect and Avoid, How to Recover*, <https://www.mitchell-attorneys.com/ponzi-schemes> [<https://perma.cc/8FCP-QWGK>].

185. *Id.*

186. *Id.*

F. Clerical-Collar Crimes Victim Compensation Fund

Most states have crime victims' compensation programs that help victims of crime and their immediate families cover the financial costs associated with crime victimization, including medical and psychiatric expenses, lost earnings, and funeral expenses.¹⁸⁷ Victim compensation funds can also help supplement inadequate restitution payments.¹⁸⁸

Unfortunately, victims of clerical-collar crime are barred from most victim compensation programs in existence in the United States. Most victim compensation programs only cover victims of violent crime.¹⁸⁹ Texas's Crime Victims' Compensation Program, managed by the Office of the Attorney General,¹⁹⁰ is one such program. Texas's Crime Victims' Compensation Program requires victims to be a victim of a violent crime and requires the victim to report that crime to law enforcement.¹⁹¹ The program's eligibility requirements specifically state that property crimes are not covered.¹⁹²

Some have called for legislation adding victims of white-collar crimes to victims' compensation programs.¹⁹³ Current victims' compensation programs are funded by criminal offenders' fines and penalties,¹⁹⁴ but a 2018 survey revealed the American public strongly supports the implementation of taxpayer-funded victim compensation programs for financial fraud, consumer fraud, identity theft, and burglary.¹⁹⁵ Based on this finding, the researchers suggested legislatures extend victims' compensation funds to victims of white-collar crimes.¹⁹⁶

187. *Victim Compensation Fund*, CTR. FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/victim-compensation-fund/> [https://perma.cc/9M48-9JF5].

188. *Id.*

189. *Id.*

190. *Overview of Crime Victims' Compensation Program*, KEN PAXTON ATT'Y GEN. OF TEX., <https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program/overview-crime-victims-compensation-program> [https://perma.cc/FZ3E-NKB5].

191. *Eligibility for Crime Victims' Compensation Program*, KEN PAXTON ATT'Y GEN. OF TEX., <https://www.texasattorneygeneral.gov/crime-victims/crime-victims-compensation-program/eligibility-crime-victims-compensation-program> [https://perma.cc/2S4L-UCLZ].

192. *Id.*

193. Miranda A. Galvin et al., *Victim Compensation Policy and White-Collar Crime: Public Preferences in a National Willingness-to-Pay Survey*, 17 *CRIMINOLOGY & PUB. POL'Y* 553, 554 (2018).

194. *Id.*

195. *Id.* at 553.

196. *Id.* at 554.

Taxpayer-funded victim compensation funds are not the only option. Churches could create their own victims' compensation funds for victims of clerical-collar crime to help church members with litigation expenses or mitigate inadequate restitution or damage awards. Several Catholic dioceses have already created victims' compensation programs for priests' sexual abuse victims.¹⁹⁷

V. CONCLUSION

Clerical-collar crime occurs in churches of every kind. Distinguishing clerical-collar crime from white-collar crime is important to give weight to and promote future consideration of the unique problems that arise when church leaders and officials commit clerical-collar crime.

By focusing on perpetrators' civil liability and leaving clerical crime prosecution and punishment to future study, this Comment emphasized church members' perspectives and considerations when dealing with clerical-collar crime. This Comment began by examining the reasons churches are vulnerable to clerical-collar crime, including a lack of external and internal financial oversight, church members' unwillingness to report perpetrators, and the trusting nature of religious communities. Then, this Comment described three civil claims available to church members against perpetrators of clerical-collar crime: conversion, theft, and breach of fiduciary duty. This Comment analyzed three challenges church members face in bringing and recovering on those claims in Texas, including establishing ownership of church property, surviving the ecclesiastical abstention doctrine, and the judgment-proof problem. Finally, in order to help protect church members from clerical-collar crime and mitigate victims' losses, this Comment recommended church members and their legal counsel seek and compile fraud and theft detection and prevention training resources, install internal oversight boards, describe church property ownership and fiduciary duties in governing documents in secular terms, carry liability insurance, vet investments and charitable donations, and consider creating a Clerical-Collar Crimes' Victims' Compensation Fund.

197. Kelly Heyboer, *Catholic Fund Has Paid \$11M to N.J. Priest Sex Abuse Victims. Friday is the Last Day to Apply*, (Jan. 30, 2020) <https://www.nj.com/news/2020/01/catholic-fund-has-paid-out-millions-to-nj-priest-sex-abuse-victims-friday-is-the-last-day-to-apply.html> [<https://perma.cc/L6M4-T85C>] (New Jersey Independent Victim Compensation Program); *Compensation Funds for Catholic Church Sex Abuse Victims*, MENEÓ L. GRP., <https://www.abuselawsuit.com/church-sex-abuse/compensation-funds> [<https://perma.cc/6GKN-K334>].