

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
CIVIL ACTION NO. 3:04CV-338-H**

ELECTRONICALLY FILED

JAMES H. O'BRYAN, DONALD E. POPPE
and MICHAEL J. TURNER, Individually and
on Behalf of All Similarly Situated Victims of
Childhood Sexual Abuse Committed by Roman
Catholic Priests, Clerics or Agents of the Roman
Catholic Church

PLAINTIFFS

vs.

HOLY SEE, in its Capacity as a Foreign State
(State of the Vatican City), and in its Capacity as
an Unincorporated Association and Head of an
International Religious Organization

DEFENDANT

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**MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO TAKE DEPOSITION**

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Come the Plaintiffs, by counsel, and file this Memorandum of Law in support of their motion for leave to take the deposition of Pope Benedict XVI, formerly Joseph Cardinal Ratzinger.

INTRODUCTION

On March 24, 2010, the New York Times published an article entitled "Vatican Declined to Defrock U.S. Priest Who Abused Boys." See Laurie Goodstein, Vatican Declined to Defrock U.S. Priest Who Abused Boys, N.Y. Times, March 24, 2010 (attached hereto as Exhibit A). The article discusses the case of Father Lawrence C. Murphy, a priest who worked at a school for

deaf children in Wisconsin and who reportedly molested as many as 200 deaf boys during his tenure. See id.

Along with the article, the New York Times produced over 80 pages of internal Church correspondence and memorandum, uncovered in a Wisconsin lawsuit against the Archdiocese of Milwaukee. Importantly, these documents unequivocally link Pope Benedict XVI, formerly Joseph Cardinal Ratzinger, to child sexual abuse cases in the United States. Specifically, Pope Benedict XVI was Prefect (Head) of the Congregation of the Doctrine of Faith (“CDF”) from 1981 to 2005. These documents confirm that the CDF is the only department of the Holy See with the authority and competency to deal with issues of child sexual abuse by clergy. See Letter from Reverend Rembert G. Weakland, Archbishop of Milwaukee, to Gilberto Cardinal Agustoni, Prefect, The Supreme Tribunal of the Apostolic Signatura (March 10, 1997) (attached as Exhibit B); Letter from Gilberto Cardinal Agustoni, Prefect, The Supreme Tribunal of the Apostolic Signatura, to Reverend Rembert G. Weakland, Archbishop of Milwaukee (April 9, 1997) (attached as Exhibit C). These documents also confirm that Pope Benedict XVI, as Prefect of the CDF, was directly notified of allegations of child sexual abuse in the United States. See Letter from Reverend Rembert G. Weakland, Archbishop of Milwaukee, to Joseph Cardinal Ratzinger, Prefect, The Sacred Congregation for the Doctrine of the Faith (July 17, 1996) (attached as Exhibit D). Moreover, these documents confirm that the CDF, under Pope Benedict XVI’s lead, discouraged prosecution of accused clergy and encouraged secrecy to protect the reputation of the Church. See Letter from Reverend Lawrence C. Murphy to Joseph Cardinal Ratzinger, Prefect, The Sacred Congregation for the Doctrine of the Faith (January 12, 1998) (attached as Exhibit E); Letter from Tarcisio Bertone, Secretary, The Sacred Congregation for the Doctrine of the Faith, to Reverend Raphael Michael Fliss, Bishop of Superior (April 6, 1998) (attached as

Exhibit F); Letter from Reverend Raphael Michael Fliss, Bishop of Superior, to Tarcisio Bertone, Secretary, The Sacred Congregation for the Doctrine of the Faith (May 13, 1998) (attached as Exhibit G); Notes from Meeting with Tarcisio Bertone, Secretary, The Sacred Congregation for the Doctrine of the Faith (May 30, 1998) (attached as Exhibit H); Letter from Tarcisio Bertone, Secretary, The Sacred Congregation for the Doctrine of the Faith, to Reverend Rembert G. Weakland, Archbishop of Milwaukee (July 13, 1998) (attached as Exhibit I); Letter from Reverend Rembert G. Weakland, Archbishop of Milwaukee, to Tarcisio Bertone, Secretary, The Sacred Congregation for the Doctrine of the Faith (August 19, 1998) (attached as Exhibit J).

In light of this new documentary evidence which is supremely relevant to the allegations underlying Plaintiffs' Complaint, the necessity of deposing Pope Benedict XVI is clear. These documents directly implicate Pope Benedict XVI's involvement in the Holy See's decision to cast a shroud of secrecy over clergy sexual abuse cases in the United States.

PROCEDURAL BACKGROUND

On June 4, 2004, Plaintiffs, child victims of sexual abuse perpetrated by Catholic clergy, filed their Complaint against the Defendant Holy See. (Document Number 1). On April 4, 2005, the Holy See filed three motions to dismiss. (DN 27-29). Over the course of the next year and nine months, the parties extensively briefed and argued the issues raised by the Holy See in its motions. On January 10, 2007, this Court issued a Memorandum Opinion and Order denying the Holy See's motions with respect to the majority of Plaintiffs' claims. (DN 82-83). The Court then ordered the parties to proceed with their discovery obligations under Rule 26. (DN 84). However, before the parties could commence discovery, on January 17, 2007, the Holy See appealed the Court's order to the Sixth Circuit. (DN 85).

While on appeal, Plaintiffs filed with this Court a motion for leave to take the deposition of Pope Benedict XVI in order to perpetuate his testimony. (DN 92, 116). On October 21, 2008,

the Court denied Plaintiffs' motion stating that it was "constrained from acting on Plaintiffs' request" "while the question of the Holy See's immunity from suit and discovery [was] pending before the Sixth Circuit." (DN 117 at 2). On November 24, 2008, the Sixth Circuit affirmed this Court's rulings on the Holy See's motions to dismiss. (DN 118-119). On October 14, 2009, the Supreme Court of the United States denied Plaintiffs' petition for a writ of certiorari. (DN 134). As such, this Court is no longer "constrained from acting" as "the question of the Holy See's immunity from suit and discovery" is no longer pending on appeal.

On February 11, 2010, the parties participated in a scheduling conference with the Court to discuss the "next steps in the litigation." (DN 139). At that scheduling conference, Plaintiffs expressed their desire to "press forward with discovery, including . . . depositions of Vatican officials." (DN 139). The Holy See objected to such discovery. Therefore, Plaintiffs were instructed to "identify proposed depositions" including the identity of the "deponent and the precise scope of the proposed inquiry." (DN 139). On March 24, 2010, Plaintiffs complied and filed their statement of proposed depositions. (DN 144). Plaintiffs identified Pope Benedict XVI as a proposed deponent and outlined, in detail, the precise scope of Plaintiffs' inquiry. Specifically, Plaintiffs wish to inquire into Pope Benedict XVI's role as Prefect of the CDF. (DN 144 at 3-5). Plaintiffs anticipate the Holy See's objection to this deposition, and, as such, file this motion preemptively and in an effort to facilitate a speedy resolution of this timely issue.

ARGUMENT

Plaintiffs have already explained in detail the numerous reasons why the deposition of Pope Benedict XVI is warranted. So as not to waste this Court's time and resources, Plaintiffs incorporate by reference, as if set forth fully herein, the arguments advanced in its motion for leave to take Pope Benedict XVI's deposition to perpetuate his testimony (DN 92, 116), including both Declarations of Thomas P. Doyle, O.P., and the explanation provided in its statement of proposed depositions (DN 144).

In further support of their Motion, Plaintiffs reiterate the following. Plaintiffs' Complaint sets forth the Holy See's extensive control over clergy in the United States and the exercise of such control to enforce a policy prohibiting clergy from telling anyone about known or suspected instances of child sexual abuse. Pope Benedict XVI is at the center of this issue by reason of his former position as Prefect of the CDF. According to Thomas P. Doyle, O.P., J.C.D., C.A.D.C.,

Joseph Cardinal Ratzinger, now Pope Benedict XVI, is the most knowledgeable person alive regarding:

1. The Holy See's extent of knowledge of sexual abuse of minors by Catholic priests in the United States and throughout the world;
2. The Holy See's efforts to maintain complete secrecy of such sexual abuse;
3. The policies and procedures of the Roman Catholic Church promulgated and maintained by the Holy See to deal with complaints of sexual abuse of minors by Catholic priests.

(See Doyle Declaration, ¶ 8) (DN 92).

Father Doyle also states as follows:

1. The CDF has been made aware of the problem of sexual abuse of children by clerics from a variety of sources including reports and denunciations made to the CDF directly by lay people or bishops. **These reports and results of subsequent investigations remain secret, but would be known to Cardinal Ratzinger, now Pope Benedict, XVI.** (Doyle Declaration, ¶ 17).

2. In every Case handled by the CDF between 1981 and 2001, only Cardinal Ratzinger, now Pope Benedict XVI, would know the nature and magnitude of the problem of sexual abuse of minors committed by priests. (Doyle Declaration, ¶ 24).
3. From 1981 to 2005 information would have been submitted to Cardinal Ratzinger as head of CDF regarding the requested laicization of priests. The focus of laicization during that time was inappropriate sexual activity. **Proof of this activity was documented in cases sent to the CDF, and this information was reviewed by the Prefect of the CDF including Cardinal Ratzinger from 1981 to 2001.** (Doyle Declaration, ¶¶ 31-33).
4. **Cardinal Ratzinger is the only former head of the CDF alive and able to give testimony of the full extent of his and the CDF's knowledge of sexual abuse of minors by priests.** (Doyle Declaration, ¶ 32).
5. **Most of the activities of the various Vatican offices and congregations including the CDF, are carried out in secret, not just a secret from the world in general but secret even from U.S. bishops and cardinals.** Access to the files kept in the Vatican is severely restricted. **The highest degree and extent of this secrecy is that which surrounds the CDF.** (Doyle Declaration, ¶ 38).
6. **Cardinal Ratzinger, now Pope Benedict XVI, because of his service as Prefect of the CDF from 1981 to 2005 and his current position as Supreme Pontiff and Pope of the Roman Catholic Church, is the most knowledgeable living person regarding the secret files maintained by the CDF, the extent of each pope's knowledge and the U.S. Bishops' knowledge of sexual abuse by priests and the policies of the Holy See maintaining those records in secrecy.** (Doyle Declaration, ¶ 39).
7. **Regarding conversations and exchange of information regarding clergy sexual abuse between Cardinal Ratzinger and Pope John Paul II, only Pope Benedict XVI is alive and able to shed light on what Pope John Paul II knew, when he knew it, and what he did to respond.** (Doyle Declaration, ¶ 41).
8. Because of his unique position as former Prefect of the CDF, and now as Pope, Cardinal Ratzinger, now Pope Benedict XVI, is the most knowledgeable person alive regarding information of the Holy See's extent of knowledge of sexual abuse of minors by Catholic priests in the United States and the U.S. Bishop's roles in the cover-up of the sexual abuse. (Doyle Declaration, ¶ 48).

(See DN 92). Father Doyle's Declaration is clearly supported by the internal Church documents attached hereto as Exhibits B through J.

CONCLUSION

The reasons for deposing Pope Benedict XVI are quite clear. Pope Benedict XVI, formerly Joseph Cardinal Ratzinger, has extensive knowledge of relevant information known only to him by reason of his current position as Pope and his former position as Prefect of the CDF. He has been in a unique position since 1981 to be aware of secret documents, secret files and secret investigations by the CDF and the Pope regarding clergy sexual abuse. He has been uniquely positioned to be aware of the policies and procedures not only issued by the Church but those that were actually enforced by the Church regarding sexual abuse by the Catholic clergy, the cover-up of such sexual abuse by the Holy See, its officers and agents throughout the world including the United States and including Kentucky.

The internal Church documents attached as exhibits confirm what Plaintiffs have been alleging for several years: Pope Benedict XVI is intimately and uniquely tied to the issue of child sexual abuse by the clergy, and Plaintiffs are entitled to take his deposition. Under Pope Benedict XVI's lead, the CDF has been responsible for deliberately downplaying and cultivating a policy of secrecy regarding allegations of child sexual abuse. As such, Pope Benedict XVI, as Prefect of the CDF, should be made to answer the most unfortunate question as to why children have been left vulnerable to "avoid scandal." See Exhibit I.

For the reasons stated above, Plaintiffs' Motion for leave to take the deposition of Pope Benedict XVI should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this the 1st day of **April, 2010**, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system which will send a notice of the electronic filing to participating counsel.

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