

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,  
By LETITIA JAMES, Attorney General of the State  
of New York,

Plaintiff,

v.

DIOCESE OF BUFFALO, RICHARD J. MALONE,  
EDWARD M. GROSZ, and EDWARD B.  
SCHARFENBERGER, in his capacity as Apostolic  
Administrator for the Diocese of Buffalo,

Defendants.

Index No.

**Summons**

Date Index No. Purchased:  
November 23, 2020

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial because the Attorney General has an office located at 28 Liberty Street, New York, New York 10005.

Dated: November 23, 2020  
New York, New York

LETITIA JAMES  
Attorney General of the State of New York

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-against-

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**Complaint**

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Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully alleges as follows.

### **Preliminary Statement**

1. The Attorney General brings this lawsuit to obtain remedial and injunctive relief for the persistent violation of New York nonprofit law by the Diocese of Buffalo (the “Diocesan Corporation” or the “Diocese”). For nearly two decades, the Diocesan Corporation ignored standards established by the U.S. Conference of Catholic Bishops (“USCCB”) in June 2002 to address and prevent the sexual abuse of minors by U.S. clergy. In direct defiance of the USCCB’s public commitment to reform, the Diocesan Corporation, through the conduct of its senior leadership, evaded key provisions of these standards, ignoring requirements for the investigation and review of alleged clergy sexual abuse.

2. Complaints of sexual abuse against priests continued unabated at the Diocesan Corporation from 2002 forward. Rather than adequately investigate and formally review the allegations to determine if priests were qualified to maintain their clerical status, the Diocesan Corporation privately designated priests that it considered to have abused minors as “unassignable.” Some of these unassignable priests were removed from ministry or allowed to retire in anticipation or shortly after the adoption of the USCCB’s 2002 standards. The Diocese permitted these unassignable priests to remain incardinated without any meaningful supervision or monitoring. These tactics together amounted to a practice of non-compliance with the USCCB’s principles and procedures, and they operated to conceal the actual nature and scope of sexual abuse allegations in the Diocesan Corporation. When the Diocesan Corporation’s mishandling of specific cases was exposed, the Diocesan Corporation misled its beneficiaries about its response to sexual abuse allegations and the measures that its leaders had taken to

protect the public. The Diocesan Corporation now seeks bankruptcy protection principally because it faces hundreds of private claims arising out of its sexual abuse crisis and the inadequacy of its response.

3. As set forth below, through their actions and inactions in response to the sexual abuse crisis, the Diocesan Corporation and its two most senior leaders, Defendants former Bishop Richard J. Malone and former Auxiliary Bishop Edward M. Grosz, violated multiple provisions of the Not-for-Profit Corporation Law (“N-PCL”) and Estates, Powers and Trusts Law (“EPTL”). These provisions expressly require the Diocesan Corporation to operate in a manner consistent with the public policy of the State of New York and to properly administer itself. Malone and Grosz also failed to meet basic fiduciary duties of care and loyalty by ignoring the Diocesan Corporation’s own stated standards for addressing abuse allegations and preventing future abuse.

4. The Attorney General seeks injunctive relief to accomplish three objectives: provide mechanisms for independent review of the Diocesan Corporation’s response to alleged sexual abuse; require reporting to the Attorney General for a period of five years; and mandate external oversight of an appropriate remedial and compliance plan. This action also seeks to hold Bishop Malone and Auxiliary Bishop Grosz individually responsible for violating their secular duties as fiduciaries of the Diocesan Corporation by enjoining them from future service in a secular role as a director or officer of any charitable organization subject to New York law and by obtaining damages against and restitution from them for the waste of charitable assets caused by their misconduct.

5. In 2002 the USCCB acknowledged at the opening of its semi-annual meeting in Dallas, Texas that “[t]he Catholic Church in the United States is in a very grave crisis.” The

USCCB President described “a profound loss of confidence by the faithful in our leadership as shepherds, because of our failures in addressing the crime of the sexual abuse of children and young people by priests and church personnel,” and he confessed that specific actions and failures to act by Church leadership had contributed to the abuse. The USCCB committed at its 2002 meeting to implementing “policies that will ensure the full protection of . . . children and young people and . . . bring an end to sexual abuse in the church,” and it promised to match those policies with “an uncommon and persistent vigilance.” Bishop Malone and Auxiliary Bishop Grosz both attended the 2002 gathering and voted alongside fellow bishops to adopt the USCCB’s reforms as “a full and recommitted effort toward the protection of . . . children.” Those reforms were embodied in the USCCB’s 2002 *Charter for the Protection of Children and Young People* (“*Charter*”) and the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* (“*Essential Norms*”).

6. Sixteen years after the 2002 gathering, in 2018, the USCCB issued a nearly identical assessment of its sexual abuse crisis that acknowledged an alarming and troubling failure to change: since 2002, it explained, the sexual abuse by priests, deacons, and bishops had continued to feed a “crisis without precedent in our times.” Incidents of abuse, and the ways in which those crimes had been addressed, continued to cause enormous pain, anger, and confusion for victims, their families, and the entire Church. The institutional resistance that has prevented meaningful progress in the U.S. Catholic Church’s sexual abuse crisis for almost two decades is evident in the Diocesan Corporation’s own record of its operation since 2002.

7. In December 2019, roughly one year after the commencement of the Attorney General’s investigation (the “Investigation”), Bishop Malone resigned as the bishop of the Diocese, citing “tremendous turmoil” in the Diocese that reflected a “culmination of systemic

failings over many years in the worldwide handling of sexual abuse of minors by members of the clergy” and a “failure to regard these violations as grave offenses that warranted the full weight of civil and ecclesiastical justice.” At the time of his resignation, Malone had overseen the Diocesan Corporation and its response to sexual abuse allegations for more than seven years, working with Auxiliary Bishop Grosz throughout that period. During that time, they were responsible for reviewing allegations of sexual misconduct according to the standards that they had personally approved in 2002. Grosz also retired during the pendency of the Investigation.

8. The Investigation corroborated the failure that Bishop Malone admits. In extensive business records and sworn witness testimony from Malone and Auxiliary Bishop Grosz, the Investigation found that the Diocesan Corporation repeatedly evaded its responsibility to the Church, the Church’s mission, and its beneficiaries by failing to follow its own publicly-stated policies and procedures for addressing sexual abuse allegations. While the Diocesan Corporation claimed to have adopted and followed the *Charter* and the *Essential Norms*, the Investigation determined that the Diocesan Corporation did not do so and that it failed to take reasonable measures to respond to sexual abuse allegations. In particular, the Diocesan Corporation, Malone, and Grosz, in accordance with their respective roles, failed to:

- investigate or conduct timely, independent, sufficient, or reasonable internal investigations into allegations of the sexual abuse of minors;
- seek or reasonably document the assessments of allegations by an advisory board established to assist the bishop’s evaluation of sexual abuse claims;
- refer or timely refer unassignable priests to the Vatican authority with oversight of the adjudication of claims of clergy sexual abuse of minors;
- inquire into violations of the *Charter* and the *Essential Norms*;
- adequately monitor priests they believed had sexually abused minors;
- consider the risk that such priests could commit acts of abuse;

- prepare accurate business records regarding accused priests; and
- train personnel who had violated the *Charter*, the *Essential Norms*, or applicable standards of care.

9. The documents and testimony obtained during the Investigation confirm that Bishop Malone and Auxiliary Bishop Grosz repeatedly breached their fiduciary duties of care, loyalty, and fidelity to the Diocese's mission through their individual actions and omissions. In numerous cases, Malone and Grosz failed to properly examine or address individual complaints and disregarded the risks created by their decisions to avoid procedures required under Church law and the Diocesan Corporation's policies and procedures.

10. The Diocesan Corporation's compliance with the *Charter*, the *Essential Norms*, and its own policies and procedures is vital to ensuring the accountability and transparency that the Diocese owes its beneficiaries. The conduct discussed throughout this Complaint denied beneficiaries the promise of these critical, institutional reforms and violated clear standards of care and fiduciary loyalty required by New York law. For example, the Diocesan Corporation sheltered accused priests from adjudication and public disclosure by not referring them to the Vatican. The Diocesan Corporation also misused or wasted its charitable assets by supporting priests, who it considered to have committed sexual abuse. For these reasons, Court intervention is justified and necessary to ensure that the Diocesan Corporation and its leadership comply with their own mandates and governing law to address the tragic and longstanding crisis of sexual abuse and to ensure that the Diocesan Corporation properly addresses future allegations of abuse.

### **The Parties**

11. The Attorney General is responsible for overseeing New York nonprofit corporations, including entities that elect to incorporate under the provisions of the Religious



Corporations Law (“RCL”), and the conduct of their respective officers and other fiduciaries. Through this regulatory function, the Attorney General bears a unique authority and responsibility to enforce the fiduciary standards in New York law that require the Diocesan Corporation to adequately address institutional harms of the scale and magnitude of the clergy sex abuse crisis. The nature and scope of relief available to accomplish these functions under New York law is extensive: the N-PCL and EPTL empower this Court with broad discretion to fashion remedies that will ensure effective regulatory oversight across a wide variety of institutions and charitable purposes.

12. The Diocesan Corporation is the secular legal embodiment of the Diocese of Buffalo, a juridic person recognized under Roman Catholic canon law. The juridic person of the Diocese was canonically established in April 1847. Thereafter, a corporation was formed in October 1897 to constitute the Diocesan Corporation under New York law. That initial corporation was dissolved, and the Diocesan Corporation as it exists today was reincorporated in May 1951 by a special act of the New York State Legislature. This corporation is governed by the provisions of section 5 of the RCL, which give the trustees of the corporation “the custody and control of all the temporalities and property . . . belonging to the corporation”; require that they “shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, and with the provisions of law relating thereto, for the support and maintenance of the corporation”; and prohibit them from using such “property or revenues for any other purpose or divert the same from such uses.” The 1951 special act provides that the three trustees of the Diocesan Corporation are the bishop, vicar general, and chancellor. A vicar general is a priest appointed by a diocesan bishop to function as his principal deputy in the exercise of the bishop’s

administrative authority in a diocesan corporation. The chancellor is an official appointed by the diocesan bishop and primarily responsible for a diocese's maintenance of its files or archives.

13. The Diocese serves approximately 600,000 Catholics across 163 parishes in Western New York. Three bishops have led the Diocese since the USCCB adopted the *Charter* and the *Essential Norms* in 2002. Bishop Henry Mansell began his term in 1995 and held that position until he left in October 2003 to become the archbishop for the Archdiocese of Hartford, Connecticut. Bishop Edward Kmiec, who died in July 2020, succeeded Mansell from October 2004 to May 2012, and Bishop Malone served from August 2012 until his resignation in December 2019.

14. As noted, Defendant Bishop Malone served as the bishop of the Diocese for seven years until 2019. Prior to his installation in 2012, Malone served as the bishop and Apostolic Administrator of the Diocese of Portland, Maine for ten years and he also served as an auxiliary bishop in the Archdiocese of Boston from 2000 to 2004. Malone was a fiduciary in his roles as a trustee, officer, and *de facto* director and officer of the Diocesan Corporation.

15. Defendant Auxiliary Bishop Grosz served as an auxiliary bishop of the Diocese for thirty years until Pope Francis accepted his resignation in March 2020. Grosz was ordained as the Diocese's auxiliary bishop in 1990 under Bishop Edward Head. During his tenure, Grosz served as Diocesan Administrator from May to October 2004; a diocesan administrator temporarily governs a diocese pending the appointment of a bishop. As early as 1993, Grosz was involved in the Diocesan Corporation's response to allegations of sexual abuse of minors. At the request of each succeeding bishop, Grosz continued in this role. In sworn testimony, Bishop Malone indicated that Grosz served as the "point man" for the Diocesan Corporation's response to sexual abuse allegations. Grosz was a fiduciary in his roles as a trustee, officer, and

*de facto* director and officer of the Diocesan Corporation.

16. Defendant Bishop Edward B. Scharfenberger was appointed in December 2019 by Pope Francis to serve as the Diocese's Apostolic Administrator following Bishop Malone's resignation. As Apostolic Administrator, Scharfenberger generally maintains the same rights, offices, and faculties within the Diocese that belong to the bishop of the Diocese.

Scharfenberger is named as a defendant solely in his official capacity as Apostolic Administrator and not with respect to his role as the bishop of the Diocese of Albany.

17. Defendants Diocesan Corporation, Bishop Malone, and Auxiliary Bishop Grosz are collectively referred to as "Defendants."

### **Jurisdiction and Venue**

18. This Court has personal jurisdiction over the Diocesan Corporation because the Diocesan Corporation is a New York charitable organization and religious corporation. The Diocesan Corporation has purposely availed itself of the opportunity to incorporate, do business, and serve its charitable mission and beneficiaries in New York.

19. This Court has personal jurisdiction over Bishop Malone, Auxiliary Bishop Grosz, and Bishop Scharfenberger pursuant to N-PCL section 309 because each of them is "a director, officer, key person or agent of a [New York charitable] corporation."

20. Venue is properly set in New York County pursuant to CPLR sections 503 and 505 because the Attorney General has an office located in New York County.

### **Applicable Law**

21. The Attorney General brings this action on behalf of the People of the State of New York under the RCL, N-PCL, and EPTL against the Diocesan Corporation; Bishop Malone and Auxiliary Bishop Grosz, individually; and Bishop Scharfenberger in his capacity as

Apostolic Administrator.

22. The Diocesan Corporation is a religious corporation subject to the provisions of the RCL. The RCL applies “to every corporation formed under any . . . special act of this state which would, if it were to be formed currently under the laws of this state, be formed under [the RCL].” RCL § 2-a. Under section 2-b(1) of the RCL, the Diocesan Corporation is also subject to the N-PCL, except for certain sections not relevant here.

23. Pursuant to section 717 of the N-PCL, directors, officers, and *de facto* directors and officers of a corporation organized under the N-PCL are obligated to discharge the duties of their positions “in good faith and with the care [of] an ordinarily prudent person.” This statutory provision is a codification of the fiduciary duties of due care, loyalty, and obedience to mission owed by directors and officers to a corporation. Pursuant to RCL section 2-b(1), the bishop and senior officers of the Diocesan Corporation are subject to N-PCL section 717.

24. Fiduciaries of New York corporations governed by the N-PCL have a duty to comply with governing law and to assure that those corporations comply with governing law. Pursuant to section 1101(a)(2) of the N-PCL, such regulated corporations may not engage in unauthorized actions nor “carr[y] on . . . [their] business in a persistently . . . illegal manner, or by the abuse of its powers contrary to the public policy of the state.”

25. Pursuant to RCL section 2-b(1), together with N-PCL section 112(a)(1), the Attorney General is authorized to bring an action to restrain the Diocesan Corporation from carrying on unauthorized activities, including activities in violation of the Penal Law or the public policy of the State of New York. The Attorney General may also seek an accounting for the neglect of, failure to perform, or other violation of a director’s or officer’s duties related to the management and disposition of corporate assets. N-PCL § 720(a).

26. The EPTL also applies to this action. As a corporation that holds and administers property for a charitable purpose, the Diocesan Corporation is a “trustee” subject to the provisions of the EPTL. Bishop Malone and Auxiliary Bishop Grosz, as officers of the Diocesan Corporation, are also “trustees” under the EPTL. Pursuant to the EPTL, each director, officer, trustee, or fiduciary of a charitable corporation, including the Diocesan Corporation, has an obligation to properly administer that corporation’s assets, to avoid waste, and to adhere to their fiduciary duties.

27. Pursuant to EPTL section 8.1-4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of any charitable corporation subject to the EPTL, including the Diocesan Corporation.

### **Overview of the Complaint**

This Complaint is comprised of the following sections: **Section I**, the background on the crisis of clergy sexual abuse and the policies and procedures adopted in 2002 by U.S. dioceses, including the Diocesan Corporation, for addressing allegations of clergy sexual abuse of minors; **Section II**, an overview of the Investigation; **Section III**, a summary of the factual bases for the Attorney General’s claims of (a) improper administration of and unauthorized activities by the Diocesan Corporation and (b) breach of fiduciary duty by Bishop Malone and Auxiliary Bishop Grosz; **Section IV**, the Diocesan Corporation’s efforts to mislead the public and its beneficiaries about its handling of sexual abuse allegations, further demonstrating the Diocesan Corporation’s improper administration; **Section V**, twenty-five detailed case studies demonstrating the Diocesan Corporation’s failure to respond to complaints of clergy sexual abuse in conformity with its own policies and procedures or New York law; and **Section VI**, the Attorney General’s causes of action.