ABUSE, MEDIATION AND THE CATHOLIC CHURCH: HOW ENFORCING AND IMPROVING EXISTING STATUTES WILL HELP VICTIMS RECOVER

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I. INTRODUCTION

Allegations of sexual abuse at the hands of religious figures is an epidemic that has spread throughout the United States and abroad. In the United States alone, U.S. bishops have reported receiving allegations of abuse committed by 6,115 Catholic priests, or 5.6 percent of the 109,694 active U.S. priests since 1950. The U.S. bishops also reported receiving allegations from 15,235 victims, or 2.6 victims per priest; however, this figure is universally acknowledged to be low. Some estimates put the number of victims in the United States at over 280,000.

Despite these substantial figures, the true extent of the problem remained largely unknown until 2002, when a series of abuse scandals erupted in the Boston Archdiocese. Reports from Boston sent a ripple through the public conscience, and since then the United States has seen an unprecedented increase in the number of victims coming forward and accusing clergy members of abuse, or concealing abuse. Because the number of victims coming forward has risen so dramatically in the last decade, and for a variety of

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3 See Data on the Crisis: The Human Toll, supra note 2.

4 Id.

5 Id.

6 See Christy Cox, Abuse in the Catholic Church, Dart Center for Journalism & Trauma (Apr. 7, 2003), http://dartcenter.org/content/abuse-in-catholic-church.

tactical and logistical reasons, mediation has become a key method of redressing claims and compensating victims.

This Note will begin by examining how the mediation process between the Catholic Church and victims of sexual abuse in the United States operates, and how it can be improved. Next, this Note will examine the most common legislative enactments used to curtail child sexual abuse, and explore how these statutes have affected the mediation and settlement process. Finally, this Note will propose several changes State legislatures and the Federal government can make to compensate more victims, give victims a better chance of recovery, and to protect the public from future harm at the hands of sex-offenders within the Church. This Note will also demonstrate how rigorous enforcement of existing statutes, with mediation and settlement in mind, will ultimately help more victims recover.

II. Why Mediation? Why Now?

Between the 1940s and 1990s, priests in the Los Angeles Archdiocese sexually abused at least 500 minors. By 2007, fifteen civil trials against the Archdiocese were set to take place in Los Angeles courts, with 508 named plaintiffs. However just days before the first of these trials was set to begin a settlement was reached, through mediation, that ended all litigation and saved the Los Angeles Archdiocese from complete bankruptcy. The resulting agreement produced the largest monetary figure awarded to sexual abuse victims in the history of the United States, in which the

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9 Id.
10 One of the most difficult questions to answer when dealing with claims of sexual abuse is determining what kind of outcome is most preferred: compensating the abused, punishing the abuser, or ensuring that the abuser does not abuse more victims?
13 Id.
14 Id. ("[T]he previous largest settlement of abuse cases in the United States since 2002 was the $1.57 million the Boston Archdiocese agreed to pay to 983 claimants in several different settlement agreements. The Archdiocese of Portland, Ore., agreed to pay $129 million to 315 claimants; the Diocese of Orange, Calif., agreed to pay $100 million to 90 claimants, and the Diocese of Covington, Ky., settled with 350 claimants for $85 million.").
Archdiocese agreed to pay a total of 660 million dollars, or approximately 1.3 million dollars per victim. In addition to the monetary compensation, the Archdiocese also agreed to meet privately with any victim of abuse who so asked, help pay for counseling, and to release over 10,000 private personnel files of clergy members that “tracked the problems of accused priests and the church hierarchy’s reaction to them.”

While news of this settlement, and ones like it, are staggering in terms of the number of victims and amount of compensation, a fact that is often overlooked is that these agreements are frequently reached through mediation, usually at the behest of the Church. In addition, despite the apparent victory for the 508 victims in Los Angeles, both the mediation process itself and the terms of the settlement were plagued with problems for victims created intentionally by the Archdiocese to limit financial damage and avoid public disclosure of evidence of sexual abuse by the clergy.

Given that so many abuse claims are settled through mediation, and that the mediation process and subsequent settlement agreements are riddled with problems, it is important to first examine: (1) why mediation has become so prevalent in this area and what problems exist with the process, and (2) how state governments and the federal government have addressed the problems of Church sexual abuse, and how government action has impacted the mediation process.

15 Id.
16 Id.
A. Victims and the Church, Generally

Evidence shows that the total number of abuse victims who have come forward thus far is over fifteen thousand, and sources suggest there are several hundred thousand victims in total in the United States. Since the 1960s there have been less than 42 civil trials in the United States against members of the Church for the abuse of children, out of over 3,000 potential cases. Instead, nearly every case of abuse has been resolved out of court, and at least one source estimates the total amount of settlement money to be almost three billion dollars, paid out to over four thousand victims.

B. The Attractiveness of Mediation

A fact that is often overlooked by the media and the public is that mediation is a frequent means used to redress sexual abuse claims against the Church. Mediation for abuse claims is attractive for many of the reasons mediation is attractive in other areas of the law; mainly privacy, efficiency, cost, and finality. Given that most Archdioceses in the United States seek mediation and settlement in lieu of the courts and litigation, any assessment of the pitfalls of mediation must begin with what mediation should aim to achieve, and why the Church, and some victims, prefer mediation over other forms of resolution.

1. The Purpose of Victim-Church Mediation

When discussing the resolution of sexual abuse claims, reconciliation for the victim should be the primary focus of concern. The victim in each case has been through a tremendously traumatic
experience that has profound, long-term effects, and mediation should serve to compensate these victims, facilitate therapeutic relief, and provide closure. Mediation should also focus on protecting future victims, holding the abusers accountable, and holding the Church and any Church officials who may have concealed the scandal, accountable as well.

2. The Typical Victim-Church Mediation Session

Victim-Church mediation follows the same general format in every Archdiocese. Ideally, a Bishop or other clergy member represents the Church and attorneys or mediation professionals represent the victims. Either an intra-Church mediator, or an independent mediating body facilitates the mediation. The session begins with a healing stage, in which victims are usually permitted to make statements recounting their abuse and experiences dealing with abuse throughout their lifetime, and Church officials are permitted to respond. Compensation, both monetary and otherwise, is then discussed. Once an agreement is reached, members of the Church formally apologize, address any and all grievances victims may have, and agree to privately meet with any victims who wish to do so. Finally, the compensation plan is put in place, which can include both monetary and non-monetary awards, such as official apologies, therapy allocutions and release of private church documents. These settlement agreements may also include additional noneconomic conditions that change [the] behavior of the Church, including “statement[s] concerning pedophile pastors in a newsletter or other news outlet explaining what happened and alerting other possible victims to seek help. It might [also] in-
include a discussion of adequate punishment [for the abusers], such as seeking criminal punishment, defrocking, or removing [the priest] from any setting where children are involved.\textsuperscript{36}

3. The Church’s Public Position on Mediation

Archdioceses in the United States have taken the position that mediation should be utilized over any other form of abuse dispute resolution.\textsuperscript{37} It has been suggested that the Church favors mediation for several reasons. First, there are Constitutional concerns,\textsuperscript{38} in that litigating disputes regarding Church practices and Church officials entangles the courts in religious affairs in impermissible ways.\textsuperscript{39} These beliefs are centered on the First Amendment’s Establishment and Free Exercise clauses, in that the Church (and most religious groups) believes any law placing a burden on religious traditions or practices to be violative of the Constitution and the separation of Church and State.\textsuperscript{40} In essence, the Church is worried that if cases of abuse go to trial, and victims avail themselves of the courts rather than the mediation process, judges and juries will be forced to delve deeply into Church practices and may ultimately come to decisions that conflict with the fundamental tenets of Catholicism.\textsuperscript{41} Religious groups are always concerned with Courts becoming involved in religious affairs on any level, and therefore the Church will fight tooth and nail to prevent the courts from resolving any religious dispute.\textsuperscript{42}

\textsuperscript{36} Id.

\textsuperscript{37} See Mozingo, \textit{supra} note 17. See also Rosenblatt, \textit{supra} note 8, at 127.

\textsuperscript{38} U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]”).

\textsuperscript{39} See Rosenblatt, \textit{supra} note 8, at 127. See also Employment Div., Dep’t of Human Res. of Oregon v. Smith, 494 U.S. 872 (1990) (holding that neutral, generally applicable laws may be applied to religious institutions despite an incidental burden on religious practices).


\textsuperscript{41} For an in-depth analysis of the intersection of religious institutions and the U.S. legal system, see \textsc{Marc} Hamilton, \textit{God vs. the Gavel: Religion and the Rule of Law} (2005).

Second, “[o]thers claim mediation is a consequence of the Church’s tenets of conciliation and forgiveness.”43 In this vein, the Church purportedly favors mediation because it focuses not only on resolution of complicated disputes, but also on moving the parties forward and putting the past behind them, rather than focusing on punishment.44 Here, the Church claims that public trials are purely adversarial, and lack the subtitles necessary to truly heal victims of abuse.45 In addition, Church mediation sessions often provide victims the opportunity to discuss their experiences and frustrations directly with Church officials, to interact with other victims, and to openly discuss non-monetary compensation. Jury trials do not offer or allow such opportunities, and therefore the Church claims courts are not conducive to the healing process and should be avoided.46

Third, the Church claims to favor mediation because it not only allows victims to heal in ways trial proceedings do not, but affords clergy members the opportunity to express their true feelings and remorse without fear of retribution.47 This kind of experience, some argue,48 ultimately helps repair relationships between the Church and victims of abuse. In addition, this element of mediation is also in line with the tenants of forgiveness and healing at the core of Catholic values.49 The Church claims it wants to help victims and abusers to heal and move past cases of abuse, rather than simply relying on punishment and financial compensation.

Finally, the Church has stated that using mediation instead of the Courts allows the Church to create and refine a uniform pastoral response to the abuse crisis, rather than litigating on a case-by-case basis.50 The rationale behind this assertion is that mediat-

45 See Janine Geske, Symposium Presentation: Restorative Justice and the Sexual Abuse Scandal in the Catholic Church, 8 Cardozo J. Conflict Resol. 651 (2007) (discussing restorative justice as a mechanism for healing in victim-church abuse cases); see also Nadia Marie Alexander, Global Trends in Mediation 416 (2006) (discussing conciliation and forgiveness as the core tenets of victim-Church mediation).
46 See sources cited supra note 45 and accompanying text.
47 Id.
48 Id.
tion will allow the Church to more easily address future abuse claims by refining its response to such claims over time, rather than simply preparing for trials. For all of these reasons, the Church claims that mediation is more beneficial for victims and allows for a more successful dispute resolution process.

4. Lack of Precedential Value

While the Church’s use of mediation may be based in part on the concerns stated above, the Church clearly favors mediation for more tactical, and ultimately problematic reasons. First, mediation is private and has no precedential value, which affords the Church a greater opportunity to conceal the true extent of its behavior and crimes. This is an obvious advantage over traditional litigation, where discovery brings a plethora of official documents into public view and the burden of precedent weighs heavily on future claims. In mediation, the Church is able to avoid subpoenas and can bargain with victims regarding what sorts of documents should be released. Most importantly, the results of mediation sessions cannot be used against the Church when mediating future claims of abuse.

5. Lack of Accountability, Privacy and Consolidation

Second, the Church favors mediation because it inevitably focuses more on preventing information from reaching the public than it does on compensation, accountability and reconciliation.

had taken between 1982 and 1987 regarding clergy sexual abuse. He claimed that, by 1985, the Church had ‘a uniform response to allegations of child sexual abuse’ including ‘immediate removal of the alleged offender; referring the alleged offender for professional medical evaluation; dealing promptly with the concerns of victims and family members to offer solace and support; making efforts to protect the confidential nature of the claim; and complying with obligations of law to notify authorities.’

51 Id.
52 Id. See generally Rosenblatt, supra note 8 (discussing the Church’s use of mediation in sexual abuse cases).
53 Id. See Rosenblatt, supra note 8, at 127-35 (discussing some of the problems caused by victim-Church mediation).
54 See Rosenblatt, supra note 8, at 127-35; see also Alexander, supra note 45, at 416 (discussing the recent trend of the Church favoring mediation).
55 See Rosenblatt, supra note 8, at 130 (citation omitted).
56 See Hamilton, supra note 19. See also Rosenblatt, supra note 8, at 127-35, Marcie Hamilton, The Case for Abolishing Child Abuse Statutes of Limitations, and for Victims’ Forgoing Settlement in Favor of a Jury Trial, FINDLAW (July 17, 2003), http://writ.corporate.findlaw.com/hamilton/20030717.html (‘Among other benefits, abolishing child abuse statutes of limitations may prompt confessions - confessions that the victims desperately need to hear - and settlement. That is exactly what occurred in one case after California retroactively extended its child abuse
especially when many victims are mediating simultaneously.\(^{57}\) While victim-Church mediation sessions do include healing stages, clergy apologies, and non-economic agreements aimed at holding the Church accountable and preventing future abuse, these elements are merely symbolic and ultimately lack the clout found in formal jury pronouncements.\(^{58}\) For instance, in the Los Angeles settlement in which 508 victims settled for 660 million dollars,\(^{59}\) the Archdiocese settled essentially on the eve of trial, when it appeared that the Cardinal would have to testify regarding his obvious knowledge of a great deal of abuse. In other words, the settlement was a tactic to keep a further lid on damaging information. Thus, despite the settlement, relatively little information, especially given the amount that is still under the sole control of the Archdiocese, has reached the public.\(^{60}\)

Therefore, mediation sessions prevent any real accountability on the part of the Church hierarchy.

In this vein, a third reason the Church favors mediation is because the information that is revealed during mediation must remain private. Mediation allows the Church to shield abusers from public punishment and persecution, and information revealed during mediation regarding concealment by Church officials is required to remain confidential.\(^{61}\) The Church will usually cite privacy and confidentiality as being beneficial to victims, who do not want their identities revealed in court or to the media. However, the Archdiocese ultimately benefits more than the victims from such an agreement.\(^{62}\) Again looking to Los Angeles as an example,\(^{63}\) the procedural history of the civil cases against the statute of limitations.”; Infallible Does Not Mean Unaccountable, CATHOLICA (Feb. 14, 2009), http://www.bishopaccountability.org/news2009/01_02/2009_02_14_Catholica_InfallibleDoes.htm.

\(^{57}\) See L.A. Archdiocese, supra note 14 and accompanying text.

\(^{58}\) See Hamilton, supra note 56. (“[V]ictims should think twice before accepting a settlement in lieu of a trial. As difficult as a trial may be for victims, it offers an opportunity to have their community—via the jury—express its outrage on their behalf, which can have a strong healing effect. In [Dallas abuse cases], for instance, the victims—once isolated—through the trial found supporters to condemn the Church’s wrongs in no uncertain terms. Victims may, in the end, find greater satisfaction in airing the crimes and wrongs to a jury of persons from their community—not just to the attorneys negotiating their settlement. It is hard for a settlement to match the justice rendered by that Dallas jury in 1997—and more victims should persevere to seek that kind of justice, which they deserve.”).

\(^{59}\) See L.A. Archdiocese, supra note 12.

\(^{60}\) Hamilton, supra note 19 (“The end result was a settlement, not hundreds of trials, which would have released mountains of information to the public.”).

\(^{61}\) See Rosenblatt, supra note 8, at 130.

\(^{62}\) Id.

\(^{63}\) See L.A. Archdiocese, supra note 12.
Church demonstrate that the “church hierarchy succeeded in getting many claims consolidated together, so as to avoid individual litigation. Many survivors wanted their day in court and opposed consolidation.”64 However, by consolidating claims, the Church was able to push mediation upon the victims by asserting that mediation would be less complex than a civil case with several hundred plaintiffs, and that the monetary payouts would be virtually the same.65

6. The Balance of Power

Next, the Church favors mediation because of the inherent imbalance of power between victims of sexual abuse, abusers, and members of the clergy.66 Mediating religious disputes is unlike mediating other disputes in that victims are often deeply dedicated to their religious beliefs, faithful to Church doctrine and involved in Church activities, or were so immersed at the time of abuse. In this way, members of the clergy are often seen as powerful, religious authorities in the eyes of abuse victims and such omnipresent authority can be difficult to confront when trying to mediate openly and honestly.67 Victims are unwilling to describe their abuse in detail, want to avoid confronting their abuser and are intimidated by long and drawn out mediation sessions. In addition, the Church often retains more information about the abuser and has more financial resources, which enable it to wait for an agreeable result.68 This process ultimately benefits the Church, because while the court system has recognized safeguards to prevent this kind of power imbalance, mediation often lacks such protection.69

7. Failure to Adhere to Agreements

In addition, while churches may adhere to the financial provisions of mediation agreements, they often violate other non-eco-

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64 Hamilton, supra note 19; see also Hamilton, supra note 56. (“One advantage of a jury trial is that it can place responsibility exactly where it belongs. For instance, the Dallas diocese lost a civil trial based on Rudy Kos’s sexual abuse. The jury found that the diocese had committed fraud and engaged in a conspiracy to cover up the sexual abuse, and awarded the plaintiffs $119.6 million. When it rendered its verdict, the foreman read the following brief statement: “Please admit your guilt and allow these young men to get on with their lives.” The courtroom, by all accounts, erupted in applause.”).
65 See sources cited supra, note 64 and accompanying text.
66 See Rosenblatt, supra note 8, at 130-33.
67 Id.
68 See generally Hamilton, supra note 19.
69 See Rosenblatt, supra note 8, 130-35.
nomic provisions. For example, most settlement agreements reached through mediation include requirements that the Archdiocese produce internal, potentially incriminating Church documents and personnel records. However, after agreeing to these terms, Church lawyers fight the release of such records and spend years in court trying to prevent certain documents from being released.

8. Financial Maneuvering

Finally, it has been alleged that bishops and archdiocese conceal the extent of their funds and maneuver their wealth in dishonest ways in an effort to appear less solvent while abuse cases are pending. For example, lawyers representing abuse victims have claimed that the “archdiocese in Milwaukee moved $130 million from its book so it wouldn’t have to pay victims of church sex abuse.” It addition, it was also claimed that these funds were transferred only after sex abuse lawsuits were filed. In response, Archbishop Timothy Dolan, who led the Milwaukee Archdiocese between 2002 and 2009, stated that $55 million was part of a cemetery trust while “[t]he other $75 million . . . belonged to the parishes and was simply returned to them.” While no formal charges have been filed against Dolan or the Milwaukee Archdiocese, concealment of church funds is a very real concern for victims seeking just compensation.

III. THE LEGISLATIVE RESPONSE

Traditionally, state and federal laws relating to the protection of children and sexual abuse did not contemplate the impact these laws have on mediation and the settlement process as a whole. However, due to the explosion of sexual abuse claims against the

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70 See Mozingo & Spano, supra note 17.
72 See Jen Chung, Archbishop Dolan Calls Missing Funds Claims “Ludicrous,” GOHAMI ST DAILY (Feb. 14, 2011, 10:17 AM), http://gothamist.com/2011/02/14/archbishop_dolan_calls_missing_fund.php (Plaintiff’s lawyers stated: “It can’t be a coincidence. It has to be another attempt to conceal, to hide, to run and to be less than transparent.”).
Church in the last few decades, many states have quickly drafted legislation that gives victims a greater chance at relief.\textsuperscript{77} While these legislative changes are a step in the right direction, they concentrate first and foremost on opening the courts to victims and still largely ignore the fact that most abuse claims are settled privately.\textsuperscript{78} Therefore, it is important to examine what kinds of statutes and policies state governments—and the federal government—currently have in place, what impact these statutes currently have on abuse settlements and how they can be improved.

It should also be noted that a large part of improving victim recovery relies on simply enforcing statutes that already exist. Prosecutors are notoriously hesitant and unwilling to litigate against the Church.\textsuperscript{79} The following examination of state and federal legislation should also serve to remind prosecutors that rigorous enforcement of existing statutes has an impact well beyond jail time for child abusers.\textsuperscript{80} With this in mind, the following statutes are scrutinized with a view toward the use of mediation and settlement; something lawmakers and prosecutors may forget or never consider.

\section*{A. Statutes of Limitation}

In the context of filing lawsuits, states differ on the statute of limitations period during which sex abuse victims can file. Recently, many states have amended their statute of limitations to allow victims a greater window to report these crimes, although some states have only done so prospectively (only regarding future cases), while others have done so retroactively (regarding past


\textsuperscript{78} See Chaput, \textit{supra} note 77.

\textsuperscript{79} See Terry \textit{et al}., \textit{supra} note 1; see also Marci Hamilton, \textit{Shockingly, Only 2% of Catholic Clergy Sexual Abusers Were Ever Jailed: A Demonstration that the Self-Policing of Criminal Behavior Will Never Work}, FINDLAW (Mar 11, 2004) (“[T]he shocking and most telling [statistic in the John Jay Report was] the percentage of abusers who were ever incarcerated—only 2% (3% were prosecuted and convicted but apparently, of those, a third either will not serve time, or have yet to serve time). . . .”).

\textsuperscript{80} \textit{Id}.
cases of abuse).\textsuperscript{81} Connecticut has one of the longest retroactive statute of limitations in the United States, which allows for reporting 30 years after a person reaches the age of 18, or 48 years old. Other states have taken different approaches. States like Alaska, Delaware, Maine, and Florida have abolished their statutes of limitation entirely, but only prospectively.\textsuperscript{82}

The United States Supreme Court has weighed in on this issue.\textsuperscript{83} According to the Supreme Court in \textit{Stogner v. California}, no government may revive a criminal claim that is time-barred; to do so, the Court held, is unconstitutional under the Ex Post Facto clause, which bans certain retroactive laws. But the states can - and ought to — do so with respect to civil claims against the perpetrators and those who assisted them. They can do so by opening a ‘window,’ during which civil claims are not subject to the defense of the statute of limitations.\textsuperscript{84}

California and Illinois have created such a “window” for civil claims, which has resulted in a large number of previously barred claims being brought to court and ultimately mediated.\textsuperscript{85} In California, these statutory reforms have already identified “over 300 previously secret child predators.”\textsuperscript{86} As of the date this Note was written, similar bills are pending in Arizona, Connecticut, New York, and Wisconsin.\textsuperscript{87}

Legislatures mainly extend statutes of limitation to allow victims a greater possibility of recovery and to create more accountability amongst the Church.\textsuperscript{88} Similarly, legislatures should also consider the affect these statutes have on mediation and settlements. Improving these statutes have greatly increased the amount of litigation against the Church on behalf of sexual abuse victims.

\textsuperscript{82} \textit{Id}.
\textsuperscript{84} Marci Hamilton, \textit{The Laws We Need to Pass to Properly Punish Child Abuse}, FINDLAW (Jun. 16, 2005), http://writ.news.findlaw.com/hamilton/20050616.html.
\textsuperscript{85} \textit{Id}.
\textsuperscript{86} Marci Hamilton, \textit{Learning From the Vatican’s Problems: What the U.S. Must Do to Protect Children Now}, HUFFINGTON POST (Mar 31, 2010), http://www.huffingtonpost.com/marci-hamilton/learning-from-the-vatican_b_520668.html (“Lengthening, or even eliminating, statutes of limitation (SOLs) is a costless way for the states to do so, while balancing the scales of justice for victims. States like Alaska, Maine, and Delaware simply eliminated SOLs. In California, such reformation yielded the identities of over 300 previously secret child predators. And right now, similar bills are pending in Arizona, Connecticut, New York, and Wisconsin.”).
\textsuperscript{87} \textit{Id}.
\textsuperscript{88} \textit{See generally} sources cited supra note 56 and accompanying text.
and have received vehement admonition from Church officials across the country. Such responses indicate that the Church is worried—and rightly so—about extending statutes of limitation.

More importantly, extending statutes of limitation has also had a tremendous impact on the mediation process itself. Extending these statutes has resulted in hundreds of new abuse claims being filed each year, many based on abuse that occurred many years earlier. The Church has responded by scrambling to resolve these claims as quickly and quietly as possible, without the public condemnation that occurs at trials. As a result, more victims are having their claims mediated and settled privately, and the Church is more receptive to releasing private documents, defrocking priests and committing to real, substantive change; if only to save Archdiocese from bankruptcy and continued embarrassment. This phenomenon suggests that extending statutes of limitation as far as possible would continue to promote real change within the Church and would give more victims the relief they seek and deserve.

Unfortunately, the Church has invested significant time and resources to ensure that statutes of limitation are not extended and “window” legislation is not made into law. First, “such legislation typically has no chance, because the Catholic bishops pay their lobbyists . . . big bucks to kill such bills.” For example, “the New York Senate has never passed window legislation even though the

90 See Terry, supra note 1.
91 See, e.g., Laurie Goodstein & Sam Dillon, Bishops Proceed Cautiously in Carrying Out Abuse Policy, N.Y. TIMES, Aug. 18, 2002, at A1 (“The American bishops are asking the Vatican to alter some provisions in canon law for the church in the United States, including dropping the church’s statute of limitations on sexual abuse cases.”).
93 See Amy S. Clark, Iowa Diocese Files For Bankruptcy, CBS NEWS (Oct. 2006) (“Bishop William Franklin said the diocese was left with no other alternative to settle more than two dozen claims against priests accused of sexual abuse. He said the move would ensure the financial health of the church.”). See also Arthur H. Rotstein, Tucson Diocese Emerges from Chapter 11 Protection, ASSOCIATED PRESS, Sept 21, 2005, available at http://www.azcentral.com/arizonarepublic/local/articles/0921diocese21.html (“Bishop Gerald F. Kicanas and Susan Boswell, the diocese’s lead lawyer in the bankruptcy proceedings, said the diocese has sent a check for $15.7 million to begin the settlement trust, or pool, to be used to compensate victims abused by priests.”).
General Assembly has three times.\textsuperscript{95} Senators who sided with the Catholic Church submitted “substitute bill[s] that [were] supposed to be more ‘fair’ to the Church but which, in fact, cut out the vast majority of victims.\textsuperscript{96} In addition, New York Senators who once supported such bills eventually caved under pressure,\textsuperscript{97} and in some cases the bills were simply blocked outright by the Senate majority leader.\textsuperscript{98} As a result, despite public outcry for reform, New York remains without any “window” legislation and victims who seek to resolve their abuse cases in New York are unable to reap any of the benefits such legislation would provide.

B. \textit{Mandatory Reporting Statutes}

State child abuse reporting statutes fall within one of three general categories as related to the clergy-communicant privilege (confession).\textsuperscript{99} The first kind of statute specifically mentions clergy or religious figures as not being exempt from mandatory reporting. This means that if a clergy member hears a confession regarding sexual abuse, whether by the victim or the priest, he is required to report it to the authorities.\textsuperscript{100} The second kind of statute includes clergy in a catchall provision requiring any person to report.\textsuperscript{101} Finally, the third kind of state statute preserves “the clergy-communicant privilege by affirmatively exempting members of the clergy from reporting”. The Church has lobbied heavily for this third option and has won exemption in many states.\textsuperscript{102} Mandatory-reporting statutes for clergy members are often compared to similar communicant privileges in place for doctors, lawyers and psycholo-

\textsuperscript{95} Id.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{100} See Arnold, supra note 99, at 878.
\textsuperscript{101} Id.
\textsuperscript{102} Id.
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gists. However just like the privilege between these professionals and their clients, exceptions can be made if the clergy member knows the person confiding is going to abuse another victim.

Similar to statutes of limitation, legislatures and prosecutors are often unaware of the effect mandatory reporting statutes have on mediation and settlement. Stringent mandatory reporting statutes, if enforced, have the obvious effect of bringing more cases of abuse to light. This means that if members of the Church hierarchy are sufficiently worried about being prosecuted for not reporting known abuse, they will likely reveal offending priests sooner so as to avoid being prosecuted themselves. Thus, future victims can be spared and past victims can begin the process of filing their claims and receiving just compensation.

In addition, states that currently require mandatory reporting for the clergy, whether specifically or in a catchall phrase, have shied away from prosecuting Church hierarchy. If these states enforced their already-existing reporting statutes against the Church and religious figures, it would bring more cases to light and force the Church to actually resolve many claims that would have otherwise gone unnoticed. However, more troubling is the fact that there are states that specifically exempt religious officials from reporting. These states have been slow to respond to the Church

103 Id.
104 Id.
105 See Marci Hamilton, The Federal Investigation into the Catholic Church’s Los Angeles Archdiocese Based on Allegations of a Coverup of Child Sex Abuse: Why the Grand Jury Probe Should Be Welcomed, Not Criticized, FINDLAW (Feb. 5, 2009), http://writ.news.findlaw.com/hamilton/20090205.html (“We have an epidemic of child sexual abuse, which is attributable in part to a lack of imagination and sometimes political will on the part of prosecutors and courts.”).
106 Id. (“[H]undreds of trials . . . would have released mountains of information to the public.”).
107 See Marci Hamilton, It’s Time For A RICO Prosecution of the Catholic Church: Governor Keating’s Forced Resignation Shows the Church Will Not Reform Itself, FINDLAW (Jun. 19, 2003), http://writ.news.findlaw.com/hamilton/20030619.html (“Some brave local and county prosecutors are going after the Church’s crimes in the interests of the children who have been hurt so terribly. But others foolishly continue to trust the Church to set things right itself - something it has had the opportunity to do for decades, and never really tried, let alone succeeded in.”).
108 Arnold, supra note 99, at n.136 (“States maintaining the clergy-communicant privilege in full include: Alaska, Arkansas; Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Maryland, Minnesota, Montana, New Mexico, New York, Ohio, Oregon, South Dakota, Utah, Virginia, and Vermont. States that simply include clergy members among the other listed professionals with a duty to report are: Arizona, California, Colorado, Connecticut, Illinois, Massachusetts, Michigan, Mississippi, Montana, North Dakota, Pennsylvania, South Carolina, and Texas. Finally, states that utilize a catchall phrase, such as ‘any person[,]’ to include clergy members are: Delaware, Indiana, Kentucky, Nebraska, Nevada, New Jersey, Oklahoma, Tennessee, Wisconsin, and Wyoming.”) (citation omitted).
abuse crisis. An exemption for religious figures fosters an environment in which predators feel protected and free to continue their abusive behavior. More importantly, when fewer cases of abuse are being reported, it means that fewer victims are able to recover.

Next, because so many mediation agreements include provisions requiring the Church to release confidential documents, bolstering mandatory reporting statutes will solve some of the accountability problems that currently plague the mediation process. First, if mandatory reporting statutes are actually used to prosecute Church officials, the Church will likely want to report abuse as early as possible, rather than have the lack of reporting come to light through release of official documents many years later. The Church has been shaken by the recent scandals and many Archdioceses have gone bankrupt. Therefore, it is undoubtedly in the Church’s best interest to avoid future humiliation and to demonstrate that it is cooperating with law enforcement and actively trying to solve the abuse problem by reporting such incidents. If the Church actually fears being prosecuted for failing to report, it will likely report to avoid continued disgrace. This process translates into more accountability during mediation, as the Church will either have less to hide or will be more willing to disclose, for fear of prosecution.

Second, mandatory reporting will also increase accountability. If victims successfully receive Church documents through mediation agreements, these documents could be used to identify Church officials who concealed abuse in the past. Although statutes of limitation may have expired, and these officials may no longer be prosecuted for failing to report, at least the identity of the officials has been revealed so they can be monitored by watch groups or the government. In addition, should new cases of abuse emerge, and these same officials again fail to report, additional evidence can be brought against these officials at trial and used by victims when mediating.

1. Problems and Limitations on Mandatory Reporting

Unfortunately, mandatory-reporting statutes are potentially problematic due to the effect they have on other groups apart from

110 See e.g., Clark, supra note 93; Rotstein, supra note 93.
111 See Calkins, supra note 29, at 397-99.
112 For example, Bishop Accountability keeps track of all abuse cases and settlements in the United States, and also examines and catalogues any documents released by the Church.
religious officials and medical professionals. Most notably, groups that fight for the rights of battered spouses and victims of abusive relationships often oppose mandatory reporting statutes. In essence, mandatory reporting statutes potentially promote retaliation when an abusive spouse or partner is involved, and hold victims liable for failing to report child abuse even though they may suffer greater harm by reporting the crime.

However, with this problem in mind, legislatures could draft a relatively simple solution. Mandatory reporting statutes could potentially be amended to excuse from the reporting requirement any person who reasonably and objectively believes that physical harm will be a direct result of reporting the crime. Such a change would exempt battered spouses from having to report, but would not exempt religious officials and other professionals from their duty. Some states have already taken this approach, to varying degrees.

C. Revocation of Tax-Exempt Status

Extending statutes of limitation and strengthening—or simply enforcing—mandatory reporting statutes are likely the most plausible changes legislatures can make. However, more powerful changes have been suggested, which would have a profound effect on both the Church and on victims of child sex abuse. First and foremost,

nonprofit, charitable institutions that have the benefit of tax-exempt status should lose that privilege—on both the state and federal level—if they foster or cover up child abuse, or fail to report it to the local authorities. Remember, this status is a privilege, not a right: When it’s abused, it should be revoked.

While revoking tax-exempt status may seem like a radical proposal, there is precedent for this kind of reform. Most notably, the

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114 Id. (“Many in the medical community oppose [mandatory reporting laws], arguing that reporting might not always be in the best interest of the patient, and, when mandated to act against his or her clinical judgment, the physician might end up causing more harm than good.”).
116 See Arnold, supra note 108.
117 See Hamilton, supra note 84.
118 Id.
Supreme Court in *Bob Jones University v. United States* revoked the tax-exempt status of a religious university that was discriminating in their admission practices based on race.\(^{119}\) The Court did not doubt that the University was sincere in their belief that Christianity required the races to remain separate. However, the Court still held that the privilege of tax-exempt status did not have to be extended to institutions that chose to discriminate, whether religious or not.\(^{120}\)

Applying this same reasoning, religious organizations and non-profit institutions that harbor sex offenders, fail to report abuse, or conceal sexual crimes should not be permitted to maintain their tax-exempt status.\(^{121}\) As far as mediation is concerned, revocation of tax-exempt status is perhaps the most powerful incentive there is for an Archdiocese to be open and honest and to meet all of the victims needs. First, the threat of losing tax-exempt status will prompt the Church to deal with any and all claims of abuse immediately, rather than allowing them to stall or conceal abuse. This means that more abusive priests will be ousted, more victims will be discovered and more mediation will take place. Next, once mediation does take place, revocation of tax-exempt status will incentivize honest behavior and bargaining on the part of the Church. For instance, if during mediation an Archdiocese agrees to release incriminating documents, but fails to do so, the state could revoke the church’s tax-exempt status for failing to adhere to the terms of a mediation agreement and for concealing sexual abuse.

In addition, revocation of tax-exempt status could become a powerful bargaining tool during mediation. If an Archdiocese honestly fears the loss of tax-exempt status, prosecutors could agree that as long as the Church is open and honest during mediation, and honors the provisions of a settlement agreement, its tax-exempt status will remain intact regardless of what information is un-

\(^{119}\) See *Bob Jones Univ. v. United States*, 461 U.S. 574, 602-04 (1983) (“The Government’s fundamental, overriding interest in eradicating racial discrimination in education substantially outweighs whatever burden denial of tax benefits places on petitioners’ exercise of their religious beliefs. Petitioners’ asserted interests cannot be accommodated with that compelling governmental interest, and no less restrictive means are available to achieve the governmental interest.”).

\(^{120}\) Id.

\(^{121}\) See Meghan J. Ryan, *Can the IRS Silence Religious Organizations?*, 40 Ind. L. Rev. 73, 78 (2007) (“In the context of religious organizations, courts have readily approved the IRS’s revocation of tax exempt statuses when flagrant political activity has been at issue. Courts have not, however, had the opportunity to rule in situations involving less egregious activity by religious organizations.”).
covered in official documents. Therefore, the Church will choose the lesser of two evils; it will release scandalous documents and in exchange, will keep its tax-exempt status. Unfortunately, as seen in other areas of the law, both prosecutors and the IRS have been reluctant to revoke the tax-exempt status of churches, even when they blatantly violate tax-exemption rules.\textsuperscript{122} Therefore, the government must be willing to revoke the tax-exempt status of churches if they want to improve victim-church mediation sessions and hold the Church truly accountable for its actions.

\textbf{D. Federal Prosecutions}

In addition to statutes of limitation, mandatory reporting laws and revocation of tax-exempt status, federal and state prosecutors have powerful and proactive tools in their arsenal that could be used to fight child abuse.\textsuperscript{123} These laws focus on organized fraud and conspiracy,\textsuperscript{124} and could be used to combat Church sexual abuse and to foster and improve mediation. First, there is the federal RICO statute, which prosecutes based on patterns of criminal behavior and conspiracy to commit criminal behavior.\textsuperscript{125} Similarly, mail, wire and honest services fraud statutes are typically used to prosecute individuals who commit fraud related to business activities,\textsuperscript{126} such as mobsters or white-collar criminals. It is clear that these statutes could also be applied to members of the Church who perpetrate or conceal abuse and use mail, email, or telephones to

\textsuperscript{122} See Vaughn E. James, \textit{Reaping Where They Have Not Sowed: Have American Churches Failed to Satisfy the Requirements for the Religious Tax Exemption?} 43 Catholic Lawyer 29 (2004).

\textsuperscript{123} See 18 U.S.C. \textsection 1346 (tools include actions for mail, wire, and honest services fraud); see also Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. \textsection 1961–1968 [hereinafter “RICO”].

\textsuperscript{124} Id.

\textsuperscript{125} Id.

\textsuperscript{126} See Neder v. United States, 527 U.S. 1 (1999) (To commit wire fraud, one must (1) devise, or intend to devise, a scheme or artifice to defraud another person on the basis of a material representation, (2) do it with the intent to defraud, and (3) do it through the use of interstate wire facilities (i.e. telecommunications of any kind)).
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do so.127 These statutes can also serve as grounds for civil cases, and can be used against private individuals in civil courts.128

1. RICO Prosecutions

First, the Racketeer Influenced and Corrupt Organizations Act (“RICO”) is a federal law that creates criminal punishment and a civil cause of action for acts performed as part of an ongoing criminal enterprise.129 In essence, RICO is used to punish persons who engage in a pattern of racketeering activity as part of a larger criminal endeavor.130 Although most often associated with the Mafia,131 RICO has been used both criminally and civilly in a wide variety of areas including major league baseball,132 the prosecution of fraudulent healthcare providers,133 and to combat corrupt labor

127 See Hamilton, supra note 84 (“For instance, when a church sends out mail asking parishioners to welcome a new priest without disclosing his history of abuse in another parish, that may well be mail fraud. And phone calls that involve lies that do damage may well count as wire fraud.”).

128 See Dan Slater, From Coaches to Church Officials, An Honesty Law Gets a Workout, W.S.J. ONLINE (Feb. 5, 2009), http://online.wsj.com/article/SB123379864724350423.html (“Now federal prosecutors in Los Angeles are investigating the largest Roman Catholic archdiocese in the U.S., according to people familiar with the matter. They say that the honest-services law is one possible weapon federal prosecutors could use against church officials, if they find sufficient evidence of criminal activity to bring charges. Though they may not end up bringing charges, investigators are looking into whether Cardinal Roger Mahony, who heads the Catholic Archdiocese in Los Angeles, and other top church officials tried to cover up the sexual abuse of minors by priests.”); See also Rob Dreher, Mitered in the Mob? What RICO Lawsuits Could Mean for the Catholic Church in the United States, NATIONAL REVIEW (Mar. 28, 2002), http://old.national review.com/dreher/dreher032802.asp.

129 18 U.S.C. § 1961–1968 (In part, the law racketeering is defined as any violation of state statutes against gambling, murder, kidnapping, extortion, arson, robbery, bribery, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in the Controlled Substances Act); Any act of bribery, counterfeiting, theft, embezzlement, fraud, dealing in obscene matter, obstruction of justice, slavery, racketeering, gambling, money laundering, commission of murder-for-hire, and several other offenses covered under the Federal criminal code (Title 18)).


133 See Ramon Bracamontes, Public Corruption: Feds Allege Bribery, Kickbacks, El PASO TIMES, Sept. 2010 (“Two lawyers and several current and former elected officials used a scheme of bribes and kickbacks to obtain contracts for Access HealthSource, a local health-care provider.”).
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unions. Under RICO, a person who is a member of an enterprise that has committed any two of 35 listed crimes within in a 10-year period can be charged with racketeering, and can face a fine and up to 20 years in prison per offense. In addition, “RICO also permits a private individual harmed by the actions of such an enterprise to file a civil suit” and collect damages. Finally, RICO creates a cause of action in both state and federal courts. However, as discussed below, federal prosecutions would have the largest impact on mediation between the Church and victims of abuse.

Of the 35 predicate crimes that can be used to make out a RICO racketeering violation, those most applicable to the Catholic Church and the sexual abuse scandal are kidnapping, dealing in obscene material, obstruction of justice, slavery, trafficking in persons, and sexual exploitation of children. Therefore, to be guilty of racketeering under RICO, members of the Church must have committed at least two of these offenses as part of a pattern of racketeering activity. Based on these crimes, RICO could easily be applied “to the activities that more than a few Catholic priests have engaged in, and to the apparent cover up that the Church hierarchy has facilitated for many years.”

For decades Church members have abducted and abused children, and the Church has conspired to conceal these acts and obstruct both state and federal investigations. Therefore, RICO could easily be used against the Catholic Church.

In addition to providing more criminal and civil remedies for victims of abuse, RICO could also aid in the mediation process between the Church and victims. First, as it currently stands, abuse investigations and mediation sessions are almost exclusively con-

136 Id.
137 Id.
139 See § 1465 (relating to obscene matter), § 1503 (relating to obstruction of justice), § 1510 (relating to obstruction of criminal investigations), § 1511 (relating to the obstruction of State or local law enforcement) §§ 1581–1592 (relating to peonage, slavery, and trafficking in persons) §§ 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children).
140 THE RAVEN WATCH, supra note 138.
141 See generally TERRY, supra note 1.
fined to individual states. This means that prosecution of Church members and officials has been left in the hands of state prosecutors and victims are forced to mediate with individual archdiocese in each state. However, despite the best efforts of many local prosecutors, most states are still reluctant to bring substantive charges against high-ranking Church officials for the cover up of sexual abuse. Due to this reluctance, victims are hindered during mediation, as high-ranking Church officials likely feel insulated from criminal convictions and are less willing to comply with victim’s demands.

With this in mind, federal RICO prosecutions could have a profound effect on the Church mediation process. First, “[a] federal RICO prosecution would force the Church to confront its problems more directly by forcing it to face a federal prosecutorial juggernaut, as opposed to isolated local actions.” Therefore, if there were a real threat of federal charges for sexual abuse and concealing sexual abuse, the Church would be forced to take such claims more seriously because the stakes in a federal case are higher than in state courts. Specifically, in the federal criminal regime, evidentiary rules are often more strict than their state court counterparts. In addition, there are strict sentencing guidelines, federal judges have broad sentencing discretion, and once offenders have been sentenced parole is not available. As a result, the fear of federal prosecutions would incentivize reporting cases of abuse rather than concealing them and being more open with information regarding abusive priests.

142 See Hamilton, supra note 107.
143 Id.
144 Id.
145 For a good explanation of the differences between state and federal evidentiary rules as related to sex offenders, see Susan K. Smith, Victims Given More Protection Under Federal Rules, HARTFORD & AVON, CT (2002), http://www.smith-lawfirm.com/Rule415.html (“Rules 413, 414 and 415 of the Federal Rules of Evidence were adopted as part of the Violent Crime Control and Law Enforcement Act of 1994 (more commonly known as the Violence Against Women Act of 1994) and became effective in July of 1995. Rules 413 and 414 specifically provide that in any case in which the defendant is accused of sexual assault or molestation, the defendant’s commission of any other similar offenses is admissible “for its bearing on any matter to which it is relevant.” Rule 415 specifically extends the rule to any civil cases arising out of sexual assault or molestation.”).
147 Id.
148 Id.
In terms of mediation, the threat of federal RICO prosecutions would put profound pressure on the Church and would give victims of abuse more power at the bargaining table. First, if the Church felt as though they were vulnerable to RICO prosecutions, both criminally and civilly, the Church would be more receptive to victim’s demands. In this way, the Church would be more inclined to release confidential documents and would be more forthright with information regarding abuse and the concealment of abuse by Church hierarchy. Next, a federal RICO prosecution would make archdiocese across the country equally vulnerable to criminal and civil sanctions, and would therefore force the Church to create a general method of dealing with these prosecutions. This process may also force the Church to create an overarching approach to mediation, rather than the individualized approaches currently undertaken by each independent archdiocese.

2. Mail Fraud, Wire Fraud, and Honest Services Fraud Statutes

In addition to RICO, federal mail, wire and honest services fraud statutes, as well as federal conspiracy statutes, could also be used to prosecute abusive priests and church officials who conceal abuse.149 Under these statutes, individuals who utilize the mail or wires to violate a federal law or defraud the United States can be found guilty of mail and wire fraud.150 In addition, individuals who defraud the government of honest services, namely through bribery of public officials, can be found guilty of federal crimes as well. Finally, if two or more persons conspire to commit these crimes, they can be convicted under federal conspiracy laws.151 These statutes are powerful tools used by prosecutors to prosecute a wide variety of criminal conduct.152

In the context of child abuse, it is clear that these statutes could be used to prosecute both abusive priests and church officials. First, abusive priests have undoubtedly utilized mail, telephones and e-mail to solicit and conceal their abusive behavior, and many abusive priests did so over many decades to hundreds of victims.153 Next, Church officials have also conspired to conceal

149 See 18 U.S.C. § 1343 (mail and wire fraud); see also 18 U.S.C. § 371 (conspiracy to commit offense or to defraud United States).

150 Id.

151 Id.


cases of abuse.\textsuperscript{154} Church officials transferred abusive priests to different parishes to avoid prosecution,\textsuperscript{155} concealed documents highlighting abuse, and buried reports of abuse from victims.\textsuperscript{156} In addition, it is also clear that Church officials utilized the mail, telephone lines, and e-mail to achieve these ends,\textsuperscript{157} and as such they could be prosecuted under the federal mail, wire, honest services and conspiracy statutes.\textsuperscript{158}

In the context of mediation, prosecution of abusive priests and Church officials under mail, wire, honest services fraud and conspiracy statutes would put increased pressure on the Church in ways similar to RICO prosecutions mentioned above. The threat of federal prosecution for these crimes would increase Church accountability, make the Church more receptive to victim demands, and would force the Church to create a unified national approach to abuse mediation. However, in addition to these benefits, prosecution under mail, wire, honest services and conspiracy statutes would also criminalize a broader range of Church activity.\textsuperscript{159}
therefore the Church would be more exposed to criminal and civil sanctions. As a result, the threat of prosecutions under these statutes would force the Church to take victims and victim mediation more seriously, as federal charges would almost certainly result from cases of abuse and concealment of abuse.

3. The Current State of Federal Prosecutions

Unfortunately for victims, the Federal government has not yet attempted to use either RICO, mail and wire fraud, or conspiracy statutes to prosecute Church officials.\footnote{See Hamilton, supra note 107.} As a result, victims have been forced to rely on state and local prosecutions, which have been largely ineffective thus far.\footnote{Id.} However, the recent focus on Church abuse in the United States and abroad has put greater pressure on the federal government to come up with a solution.\footnote{See Jim Gilbert, Breach of Faith, Breach of Trust: The Story of Lou Ann Soontiens, Father Charles Sylvestre, and Sexual Abuse Within the Catholic Church, iUniverse (2010).} As a result, some scholars speculate that federal prosecutions of priests and Church officials may soon occur.\footnote{See, e.g., Corey Rayburn Yung, The Emerging Criminal War on Sex Offenders, 45 Harv. C.R.-C.L. L. Rev. 435 (2010).} Hopefully such predictions will come to fruition, as Federal prosecutions can put pressure on the Church in ways state investigations cannot, which will result in dramatic changes to the mediation and settlement process between victims of abuse and the Church as a whole. However, it should also be noted that the federal government is unlikely to indict every abusive priest and conspiring archdiocis overnight. These prosecutions are complicated, time consuming and often politically motivated,\footnote{See Hamilton, supra note 105.} and as a result any change to the current federal prosecutorial system will likely be gradual, if it occurs at all.

E. Constitutional Considerations

Finally, if mandatory reporting statutes, statutes of limitation, revocation of tax-exempt status, or federal organized crime laws are used to prosecute Church officials to the fullest extent possible, the Church would likely claim such laws to be unconstitutional and violative of the First Amendment, namely the Establishment and Free Exercises Clauses.
The Establishment Clause of the First Amendment provides that “Congress shall make no law respecting an establishment of religion.” The Establishment Clause has been interpreted to mean that the Government may neither establish a national or state recognized religion, nor prefer one religious group to another. In essence, the government must remain separate and neutral when it comes to religion.

Under the three-part Establishment Clause test set forth by the Supreme Court in *Lemon v. Kurtzman*, to satisfy the Establishment Clause a governmental practice or statute must (1) reflect a clearly secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) avoid excessive government entanglement with religion. Here, it is clear that strengthening mandatory reporting laws, extending statutes of limitation, revoking Church tax-exempt status and prosecuting Archdioceses under federal organized crime laws does not violate any of the *Lemon* prongs, and thus does not violate the Establishment Clause. Such laws would reflect the clear secular purpose of protecting children and punishing pedophiles, do not have a primary effect of either advancing nor inhibiting the practice of religion, and do not force the government to become overly entangled with religious practices or beliefs. Such laws will be applied in precisely the same way they are already applied to pedophiles and corrupt organizations across the country every year.

Next, under the applicable constitutional standards, a law triggers the protections of the Free Exercise Clause if it “discriminates against some or all religious beliefs, or regulates or prohibits conduct because it is undertaken for religious reasons.” Specifically, “[a] law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.” But where the law is neutral, even if enforcement of the law incidentally burdens religious practices, the government need only demonstrate a rational basis for its enforcement. Given this, it is clear that the legal changes this Note proposes do not violate the Free Exercise Clause. Such laws would not apply exclusively to

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165 U.S. CONST. amend. I.
168 Id. at 546.
169 See Employment Div., Dep’t of Human Res. of Oregon v. Smith, 494 U.S. 872, 886 (1990) (“To permit [a narcotics law exemption for religious uses of peyote] would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”) (citation omitted).
religious groups and would thus be neutral in character, and would only incidentally burden religious practices, if burdening them at all. Therefore, with the constitutional issues addressed, changes to—and enforcement of—these laws should be seriously considered if substantive improvements in the victim-church mediation and settlement process are to occur.

IV. WHERE WE STAND AND MORE THAT MUST BE DONE

State governments and the federal government cannot attack problems of rampant sexual abuse without understanding and addressing the mediation and settlement sessions that so often occur between victims and Archdiocese. In many cases, by simply enforcing existing laws—such as statutes of limitation and mandatory reporting laws—most states can generate more victim-Church settlement discussion, increase accountability on the part of the Church, promote open and honest mediation, and incentivize the Church to adhere to mediation and settlement agreements. Furthermore, by creatively and aggressively applying other existing statutes—such as tax-exemption laws, RICO, and other fraud statutes—governments can create powerful incentives for the Church to mediate, produce potentially incriminating documents and oust abusive priests. However, despite these possibilities, states with outdated sexual abuse statutes need to advance their laws, and timid prosecutors need to take a stand against the Church. By making these changes and prosecuting existing laws, governments will enable victims to recover to the fullest extent possible and the Church will be forced to institute real, substantive change.