Case No. 15-1779

United States Court of Appeals for the Sixth Circuit

TAMESHA MEANS,

Plaintiff-Appellant,

v.

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, a not-for-profit corporation; STANLEY URBAN; ROBERT LADENBURGER; and MARY MOLLISON,

Defendants-Appellees.

On Appeal from the
United States District Court for the Western District of Michigan

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 15-1779 Case Name: Tamesha Means v. U.S. Conference of Catholic Bishops, Stanley Urban, Robert Ladenburger, and Mary Mollison

Name of counsel: Daniel S. Korobkin

Pursuant to 6th Cir. R. 26.1, Tamesha Means
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

   No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

   No.

CERTIFICATE OF SERVICE

I certify that on July 15, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT REGARDING ORAL ARGUMENT

Ms. Means requests oral argument because this important case raises questions about whether those who author and enact hospital policies that limit the provision of medical care can be held liable for harm caused to patients as a result of those policies, regardless of the hospital's religious affiliation.

JURISDICTIONAL STATEMENT

On November 29, 2013, Plaintiff-Appellant Tamesha Means filed this diversity action under 28 U.S.C § 1332 in the United States District Court for the Eastern District of Michigan. Compl., R. 1, Page ID # 1. Ms. Means, a resident of Michigan, asserted that Defendants Stanley Urban, Robert Ladenburger, and Mary Mollison, individuals who are current or former chairs of Catholic Health Ministries (hereinafter "Individual Defendants" or "CHM Defendants"), and the United States Conference of Catholic Bishops ("USCCB"), residents of Pennsylvania, Colorado, Wisconsin, and Washington, D.C., respectively, acted negligently under Michigan law in drafting, promulgating, and adopting a hospital policy that prohibited her from receiving the medical treatment and information she needed as she miscarried. The United States District Court for the Eastern District of Michigan granted Defendants' Motion to Change Venue to the Western District of Michigan on March 31, 2015. E.D. Mich. Op., R. 31, Page ID # 700.

USCCB then moved to dismiss the case for lack of personal jurisdiction, and the Individual Defendants moved to dismiss for failure to state a claim and lack of subject matter jurisdiction. On June 30, 2015, the District Court granted Defendants' motions and entered a final order dismissing the case. W.D. Mich. Op., R. 54, Page ID # 1431. Ms. Means filed her Notice of Appeal on June 30, 2015, within the time allotted by Federal Rules of Appellate Procedure 3 and 4(a). Pl.'s Notice of Appeal, R. 57, Page ID # 1457. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in holding, in contravention to well-established precedent, that the Individual Defendants did not owe a duty to Ms. Means when imposing hospital policies that prevented Ms. Means from receiving proper medical care.

2. Whether the District Court erred in misapplying the church autonomy doctrine to hold that the Individual Defendants are shielded from liability because of their religious affiliation.

3. Whether the District Court erred in holding that it did not have personal jurisdiction over USCCB.

4. Whether the District Court erred in holding that the Eastern District of Michigan was not a proper venue and in transferring the case to the Western

District of Michigan.

STATEMENT OF THE CASE

I. Ms. Means Suffered Harm After Seeking Treatment at a Hospital that Adhered to Policies Written by USCCB and Adopted by the Individual Defendants.

On December 1, 2010, when Ms. Means was only 18 weeks pregnant, her water broke and she began having contractions. Compl. ¶¶ 13, 16, R. 1, Page ID # 4. She immediately went to the only hospital in her county, Mercy Health Partners ("MHP") in Muskegon, Michigan. *Id.* ¶¶ 14–15, R. 1, Page ID # 4. Although Ms. Means did not know it at the time, MHP was bound by the Ethical and Religious Directives for Catholic Health Care Services ("Directives"), a health care policy drafted by Defendant USCCB and adopted for MHP, and the larger health care system MHP belongs to, by the Individual Defendants. *Id.* ¶¶ 60, 74, 89, R. 1, Page ID ## 9, 11, 13. These Directives prohibit MHP staff from terminating a pregnancy, even when necessary to assist a woman who is miscarrying. *Id.* ¶ 57, R. 1, Page ID #8.

Upon arrival, Ms. Means was given an ultrasound and was diagnosed with preterm premature rupture of membrane ("PPROM"). *Id.* ¶ 18, R. 1, Page ID # 5. She was then given pain medication, discharged from the hospital, and told to return to the hospital for her regularly scheduled doctor's visit -- eight days later. *Id.* ¶¶ 25–26, R. 1, Page ID # 5.

While at home, Ms. Means was in such severe pain that she was generally unable to eat or sleep. *Id.* ¶ 31, R. 1, Page ID # 6. She also started bleeding and running a fever. *Id.* ¶¶ 32–33, R. 1, Page ID # 6. Ms. Means returned to MHP the next morning. *Id.* ¶ 32, R. 1, Page ID # 6. Although her medical records indicate that her physician already suspected that she had contracted a significant infection, Ms. Means was sent home again without appropriate medical care or even any information about her condition, health risks, or available treatment options. *Id.* ¶¶ 34–36, 38, R. 1, Page ID # 6.

Ms. Means returned to MHP that evening, still in extreme pain. *Id.* ¶ 41, R. 1, Page ID # 7. MHP again prepared to discharge her without providing appropriate medical care or information about her condition or treatment options. *Id.* ¶ 42, R. 1, Page ID # 7. As MHP staff prepared the discharge paperwork, the feet of Ms. Means's fetus exited her cervix and she began to deliver a breech birth. *Id.* ¶ 43, R. 1, Page ID # 7. The baby died a few hours later. *Id.* ¶ 45, R. 1, Page ID # 7. The placental pathology report revealed that after her water broke, Ms. Means had contracted acute chorioamnionitis and acute funisitis, serious medical conditions that threatened her health. *Id.* ¶¶ 47–49, R. 1, Page ID # 7.

At no time did MHP inform Ms. Means that there was virtually no chance her fetus would survive, or that there was a high risk to her health if she continued the pregnancy. *Id.* ¶¶ 21–22, 34–35, 42, R. 1, Page ID ## 5–7. Nor did the

hospital ever tell her that completing the miscarriage by terminating the pregnancy was the safest course and the standard of care. *Id.* ¶¶ 22, 36, 42, R. 1, Page ID ## 5–7.

In 2013, a public health researcher working on a federally funded public health project on infant and fetal mortality discovered that MHP had failed to induce labor and terminate the pregnancy for several women who were in the process of miscarrying and had been diagnosed with PPROM. *Id.* ¶ 54, R. 1, Page ID # 8. Ms. Means was one of those women. *Id.* ¶ 56, R. 1, Page ID # 8. When the researcher discussed this issue with an MHP administrator, the administrator told the researcher that MHP's actions were proper because MHP, as a matter of policy, adheres to the Directives. *Id.* ¶¶ 55, 57, R. 1, Page ID # 8.

The Directives state that abortion -- which is defined as "the directly intended termination of pregnancy before viability or the directly intended destruction of a viable fetus" -- "is never permitted." *Id.* ¶ 67, R. 1, Page ID # 10. The Directives do not contain an exception for miscarriages, or any other condition that threatens the life or health of the pregnant woman. *Id.* ¶ 57, R. 1, Page ID # 8. These policies further state that abortion services are not to be provided, "even based upon the principle of material cooperation." *Id.* ¶ 67, R. 1, Page ID # 10. Under these rules, MHP physicians and other staff members may not assist in the termination of a pregnancy even in situations where a woman is miscarrying and

completing the miscarriage by terminating the pregnancy is necessary to protect a patient's health. *Id.* ¶¶ 68, 115, R. 1, Page ID ## 10, 19–20. The Directives also do not allow MHP employees to inform patients about the availability of and/or need for pregnancy termination even when failure to provide this information places the pregnant woman at risk of harm. *Id.* ¶¶ 69–70, R. 1, Page ID ## 10–11.

II. The CHM Defendants' Negligent Acts Caused Ms. Means's Injury.

Defendant Stanley Urban is the current chair of Catholic Health Ministries ("CHM"), an unincorporated association headquartered in the Eastern District of Michigan. *Id.* ¶ 73, R. 1, Page ID # 11. Defendants Robert Ladenburger and Mary Mollison were the Chairs of CHM in 2010 and 2009, respectively. *Id.* ¶¶ 80–81, R. 1, Page ID # 12. Because CHM is not incorporated, its members, including Defendants Urban, Ladenburger and Mollison, are CHM's representatives for the purposes of litigation and are liable for the decisions CHM made. *See* Mich. Comp. Laws § 600.2051(2).

CHM governs Trinity Health, a health care system headquartered in Michigan that operates multiple hospitals, including MHP. Compl. ¶¶ 82, 88, 91–92, R. 1, Page ID ## 12–13. Trinity Health's corporate documents state that its board of directors will be composed of the same individuals who are members of CHM. *Id.* ¶ 93, R. 1, Page ID # 13. Thus, each CHM member, including each

individual CHM Defendant, is also a member of Trinity's Board of Directors for the duration of their CHM membership.

As the governing entity of the health care system of which MHP is a part, CHM has the authority to set policies for MHP, such as hospital protocols related to the provision of health care, including pregnancy termination. *Id.* ¶¶ 91, 116, R. 1, Page ID ## 13, 18. Pursuant to that authority, CHM made the decision to require MHP to abide by the Directives. *Id.* ¶ 11, R. 1, Page ID # 4. CHM made that decision in the Eastern District of Michigan. *Id.* ¶¶ 11, 74, R. 1, Page ID ## 4, 11. In 2009, Defendant Mollison implemented this decision when she signed CHM's amended by-laws that require the hospital system within its control, Trinity Health, to follow the Directives. *Id.* ¶¶ 85–86, R. 1, Page ID # 12. In turn, that same year, Trinity Health amended its articles of incorporation to require its hospitals, including MHP, to conduct their activities "in a manner consistent with" the Directives. *Id.* ¶¶ 91–92, R. 1, Page ID # 13.

III. USCCB Wrote the Directives and Required Michigan Catholic Hospitals to Be Bound by Them.

USCCB drafted and promulgated the Directives that govern the provision of certain aspects of health care at all Catholic hospitals, including more than fifteen such hospitals in Michigan alone. *See id.* ¶¶ 60–61, R. 1, Page ID # 9. These Directives are, in their own words, "concerned primarily with institutionally based Catholic health care services . . . and address the sponsors, trustees, administrators,

chaplains, physicians, health care personnel, and patients or residents of these institutions and services." Pl.'s Opp'n to USCCB's Mot. to Dismiss, Ex. 1, R. 46-2, Page ID # 1092. Indeed, Catholic health care entities, such as MHP, are required to adhere to the Directives. The Directives themselves state: "Catholic health care services *must* adopt these Directives as policy, *require adherence* to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel." Compl. ¶ 62, R. 1, Page ID # 9 (emphasis added); *see also id.* ¶ 64, R. 1, Page ID # 10 ("Employees of a Catholic health care institution *must* respect and uphold the religious mission of the institution and adhere to these Directives." (emphasis added)).

To ensure the Directives are adhered to, USCCB conducts trainings on these policies, including in Michigan. Pl.'s Opp'n to USCCB's Mot. to Dismiss, Ex. 21, R. 46-22, Page ID ## 1331–32. The Directives are also "reviewed periodically by [USCCB] . . . in order to address new insights from theological and medical research or new requirements of public policy." *Id.*, Ex. 1, R. 46-2, Page ID # 1092. An example serves to illustrate the point: In 2010, in response to an Arizona Catholic hospital's decision to perform an abortion to save a woman's life, Defendant USCCB issued a statement entitled "The Distinction Between Direct Abortion and Legitimate Medical Procedures." *See id.*, Ex. 2, R. 46-3, Page ID #

1133. The purpose of the statement was to "clarify" any "doubt" within Catholic hospitals as to what constitutes "illegitimate and legitimate medical procedures . . . in cases where the mother's health or even life is at risk during a pregnancy" and to affirm that the life-saving abortion in question was not permissible under the Directives. *Id.* This clarification, issued just six months before Ms. Means was denied appropriate medical treatment for her miscarriage at MHP, was disseminated nationwide through USCCB's own media outlet, Catholic News Service. *See id*., Ex. 3, R. 46-4, Page ID # 1138.

IV. Procedural History

Ms. Means filed her Complaint against the CHM Defendants and USCCB in the Eastern District of Michigan. Compl., R. 1, Page ID # 1. In her Complaint, Ms. Means alleged that USCCB acted negligently in drafting the Directives with the intent and purpose that all staff members at Catholic hospitals, such as MHP, adhere to them even when doing so violates the applicable standard of care and causes patients harm. Ms. Means further alleged that the CHM Defendants acted negligently in adopting and implementing the Directives as policy for all staff members at MHP.

The CHM Defendants filed a motion to change venue to the Western District of Michigan on January 31, 2014. CHM Defs.' Mot. to Change Venue, R. 13, Page ID # 48. USCCB concurred in that motion and also moved to dismiss the

action for improper venue on February 20, 2014. USCCB's Mot. to Dismiss for Improper Venue, R. 17, Page ID # 73. USCCB then filed a motion to dismiss based on lack of personal jurisdiction on March 12, 2014. USCCB's Mot. to Dismiss for Lack of Personal Jurisdiction, R. 23, Page ID # 247. On March 31, 2015, the District Court granted the CHM Defendants' motion to change venue and transferred the case to the Western District of Michigan. E.D. Mich. Op., R. 31, Page ID # 700. USCCB filed another motion to dismiss for lack of personal jurisdiction on April 13, 2015. USCCB's W.D. Mich. Mot. to Dismiss, R. 39, Page ID # 755. The CHM Defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim and lack of subject matter jurisdiction on April 23, 2015. CHM Defs.' Mot. to Dismiss, R. 42, Page ID # 875. The District Court granted both motions on June 30, 2015. W.D. Mich. Op., R. 54, Page ID # 1431. Ms. Means timely filed her notice of appeal to this Court on June 30, 2015. Pl.'s Notice of Appeal, R. 57, Page ID # 1457.

STANDARDS OF REVIEW

This Court reviews *de novo* a district court's dismissal of parties or a complaint pursuant to Federal Rules of Civil Procedure 12(b)(2) or (b)(6). *Bird v. Parsons*, 289 F.3d 865, 871 (6th Cir. 2002). Moreover, this Court "should review de novo a district court's interpretation of state law in diversity cases." *Berrington v. Wal-Mart Stores, Inc.*, 696 F.3d 604, 607 (6th Cir. 2012). This Court also

reviews constitutional law questions *de novo*. *Cutter v. Wilkinson*, 423 F.3d 579, 584 (6th Cir. 2005). Additionally, this Court "review[s] *de novo* the district court's . . . determination of whether a case is filed in an improper venue." *Kerobo v. Sw. Clean Fuels, Corp.*, 285 F.3d 531, 533 (6th Cir. 2002) (citing *First of Mich. Corp. v. Bramlet*, 141 F.3d 260, 262 (6th Cir. 1998)).

A district court's decision to transfer a case to a different district pursuant to 28 U.S.C. § 1404(a) is reviewed for abuse of discretion. *See Smith v. Aegon Co. Pension Plan*, 769 F.3d 922, 933 (6th Cir. 2014) (citing *Bramlet*, 141 F.3d at 262).

SUMMARY OF ARGUMENT

The main legal principle underlying this case is well established. Hospital policymakers are directly liable for the harms that result to patients as a result of their policies. Michigan's appellate courts, as well as the courts in several other jurisdictions, have stated so explicitly. This common-sense doctrine exists for an important reason, as illustrated by Ms. Means's case. The primary reason that Ms. Means was denied proper care during her miscarriage is because of a hospital policy -- namely the Directives -- that Defendants wrote and chose to impose on MHP. If this policy had not been in place, MHP and its doctors would have been able to provide Ms. Means with the standard of care and save her from incurring infections and suffering severe harm. As such, Defendants should be held accountable for their actions.

The District Court ignored this basic tort principle followed by the Michigan courts and other jurisdictions, and held that Defendants did not owe a duty of care to Ms. Means, asserting that there is "little case law" directly on point from Michigan courts. This was legal error. The standard for assessing whether common law supports Ms. Means's claim does not turn on the *quantity* of cases, but rather the holdings in the state's highest and appellate courts, *dicta* in those courts, and decisions from other jurisdictions. A proper examination of those cases unequivocally demonstrates that the policymakers for MHP -- here, the CHM Defendants -- owed a duty to Ms. Means to refrain from adopting harmful hospital policies.

The District Court also erred by radically expanding the church autonomy doctrine beyond the narrow confines of Supreme Court precedent to hold that it was divested of jurisdiction because the Defendants are religiously affiliated and the Directives are religious "doctrine." The Supreme Court developed the church autonomy doctrine under the Free Exercise and Establishment Clauses to prevent secular courts from resolving *intraorganizational* religious controversies. Thus, the doctrine has been applied in very different circumstances from the instant action, such as cases involving warring factions of a church both claiming to be the "true" representative of the church. The Supreme Court has never intended or allowed that doctrine to be used -- as the District Court did here -- to shield from

liability a heavily government-regulated, secular industry like a healthcare institution that happens to be owned by a religiously affiliated entity. This is particularly true given that this case does not involve an "intraorganizational" dispute: Defendants run a hospital -- not a church -- that is open to patients of all faiths. Ms. Means was a member of the public seeking a secular service -- emergency hospital care. The church autonomy doctrine has no application here.

The District Court likewise erred in holding that it needed to interpret religious doctrine to assess Ms. Means's claim. To the contrary, Defendants do not dispute that the Directives prohibit the termination of pregnancy even to save the woman's life or health. As with any negligence case, the court here need only determine whether a hospital policymaker has a duty to adopt and enforce reasonable policies to ensure patient safety and whether the adoption of a policy that prevented hospital staff members from performing a necessary procedure to protect Ms. Means's health and life is a breach of that duty which caused her harm.

Furthermore, the District Court erred in concluding that it lacked personal jurisdiction over USCCB. As a threshold matter, USCCB waived that defense by not raising it in its first responsive pleading. Even if not waived, the defense is without merit. Ms. Means met her burden at this pre-discovery stage of the litigation of establishing a *prima facie* argument for personal jurisdiction over USCCB: USCCB purposefully directed its actions toward Michigan by drafting

and promulgating the Directives with the express intent that the Directives govern patient care at Michigan's Catholic hospitals, including Ms. Means's hospital; Ms. Means's claim arises from this activity that USCCB purposefully directed toward Michigan, namely that the Directives prohibited MHP from providing her proper care; and personal jurisdiction over USCCB is reasonable given that Ms. Means is a Michigan resident and USCCB would not be burdened by having to defend the case in Michigan.

Lastly, the District Court erred in concluding that venue was improper in the Eastern District of Michigan and in transferring the case to the Western District of Michigan. Ms. Means's unrebutted factual allegation that the hospital policy at issue was adopted for implementation at MHP in the Eastern District of Michigan is sufficient at the pleadings stage to demonstrate that a substantial part of the events or omissions giving rise to her claim took place in that District and, thus, that venue is proper there. Further, the District Court abused its discretion in transferring the case to the Western District of Michigan, as it failed to hold Defendants to their high evidentiary burden to support transfer and improperly shifted the burden to Ms. Means to demonstrate why venue should not be changed.

ARGUMENT

I. The District Court Erred in Holding that Ms. Means's Negligence Claim Against the CHM Defendants Is Not Cognizable Under Michigan Law.

Ms. Means filed a negligence claim against the CHM Defendants under established Michigan law for adopting and imposing a policy at MHP that prevented her physicians from providing treatment and information consistent with the standard of care while she was miscarrying, leading her to develop a severe infection that could have led to her death and causing her to suffer prolonged, severe physical and emotional pain and suffering.

She pled the following four essential elements of a negligence claim under Michigan law: (1) the defendant owed a legal duty to the plaintiff, (2) the defendant breached or violated the legal duty, (3) the plaintiff suffered damages, and (4) the breach was a proximate cause of the damages suffered. *Biegas v. Quickway Carriers, Inc.*, 573 F.3d 365, 374 (6th Cir. 2009) (citing *Schultz v. Consumers Power Co.*, 506 N.W.2d 175, 177 (Mich. 1993)).

In a diversity case such as this one, "a federal court must apply the law of the state's highest court." *Garden City Osteopathic Hosp. v. HBE Corp.*, 55 F.3d 1126, 1130 (6th Cir. 1995). And, "[i]f . . . the state's highest court has not decided the applicable law, then the federal court must ascertain the state law from 'all relevant data,'" which include a "state's appellate court decisions" as well as a "state's supreme court *dicta*, restatements of law, law review commentaries, and the majority rule among other states." *Id.* (internal citations omitted).

Michigan's appellate courts, as well as courts in other jurisdictions, explicitly sanction a cause of action in negligence against hospital policymakers, such as the one that Ms. Means alleged against the CHM Defendants. *See*, *e.g.*, *Theophelis v. Lansing Gen. Hosp.*, 384 N.W.2d 823, 824 (Mich. Ct. App. 1986); *Chesser v. LifeCare Mgmt. Servs., L.L.C.*, 356 S.W.3d 613, 633–635 (Tex. App. 2011). This cause of action recognizes that hospital policymakers can be liable separate and apart from treating providers for their independent policymaking actions that result in patient harm, and contains the tacit understanding that such policymakers thus have an independent duty to those patients. *See Theophelis v. Lansing Gen. Hosp.*, 424 N.W.2d 478, 480 n.3 (Mich. 1988) (distinguishing "those claims by plaintiffs which were directed to hospital policies and procedures as opposed to those claims which rested directly upon negligent acts of [the nurse and doctor] and are referred to as 'vicarious liability' claims").

By holding that Ms. Means's Complaint failed to state a claim against the CHM Defendants with regard to the first element of a negligence cause of action -- duty -- the District Court erred in two fundamental respects.[1]

[1] Defendants did not contest Ms. Means's allegations regarding breach and injury. Although the District Court did not reach the question of proximate cause, it is clear that Ms. Means has sufficiently pled the existence of that element at the motion to dismiss stage. Unlike duty, which is a question of law, proximate cause is typically a question of fact to be decided by the jury. *Transp. Dep't v. Christensen*, 581 N.W.2d 807, 811 (Mich. Ct. App. 1998).

First, the District Court failed to recognize that under Michigan law, the CHM Defendants,[2] by setting hospital policy for MHP, owed a duty of care to patients not to adopt policies that would foreseeably result in harm to MHP's patients. Under Michigan law, hospital policymakers owe a duty of care to patients, and a patient (such as Ms. Means) has a common-law cause of action against hospital policymakers (such as CHM) if the patient is harmed as a proximate result of the policymakers' negligence. In *Theophelis*, which involved claims against individual medical providers and a hospital itself for the wrongful death of a patient, the Michigan Court of Appeals recognized that an independent negligence claim may lie against hospital policymakers for harm that results from a hospital's policies and procedures, but vacated the jury's verdict for the plaintiff, finding the trial evidence could not support the claim in that particular case. 384 N.W.2d 823. The Michigan Supreme Court subsequently affirmed that such a claim was cognizable, explaining that "independent negligence" includes "those claims by plaintiffs which were directed to hospital policies and procedures as opposed to those claims which rested directly upon negligent acts of [the nurse and doctor] and are referred to as 'vicarious liability' claims." 424 N.W.2d at 480 n.3. The Michigan Court of Appeals again recognized the existence of this claim in

[2] Under Mich. Comp. Laws § 600.2051(2), members of an unincorporated association, such as the CHM Defendants, are individually liable for the acts of the association.

May v. Mercy Memorial Nursing Center. *See May v. Mercy Memorial Nursing Center*, No. 280174, 2009 WL 131699, at *8–9 (Mich. Ct. App. Jan. 20, 2009) (recognizing claim of "direct institutional liability or independent negligence" against hospital policymakers) (citing *Theophelis*, 424 N.W.2d at 480 n.3).

This type of independent negligence claim arising out of a hospital policy is precisely the claim that Ms. Means has brought against the CHM Defendants. Ms. Means alleges that the CHM Defendants imposed a policy at MHP that prevented hospital staff members from providing her with the treatment and information that she needed.

After expressly acknowledging that this negligence claim against the CHM defendants "may be cognizable" under Michigan law, W.D. Mich. Op., R. 54, Page ID # 1450, the District Court then proceeded to discount Michigan precedent altogether, concluding that the negligence claim should be dismissed because Ms. Means had offered only a "little case law" in support of claim, *id.* R. 54, Page ID # 1449. This was error because the legal cognizability of a claim does not turn on the quantity of cases a plaintiff cites. *See Garden City Osteopathic Hosp.*, 55 F.3d at 1130. Ms. Means cited two Michigan Court of Appeals decisions that clearly recognize that a negligence claim against hospital policymakers is cognizable under Michigan law, as well as a Michigan Supreme Court decision affirming the existence of the claim. In failing to acknowledge the precedential value of these

cases, the District Court abdicated its responsibility to properly apply Michigan law, as it has been construed by its appellate courts. [3]

Second, even assuming *arguendo* there was no applicable Michigan precedent, the District Court further erred in failing to consider analogous cases in other jurisdictions, which Ms. Means cited in her brief, to determine how the Michigan Supreme Court would likely rule on this issue. *Id.*

Like Michigan, case law from other jurisdictions sanctions the basic tort principle that hospital policymakers owe hospital patients a duty of care. For example, in *Armstrong v. A.I. Dupont Hospital for Children*, a plaintiff sued a hospital's foundation, among others, for direct negligence and alleged that the foundation failed "to formulate, adopt and enforce adequate rules and policies to assure quality care for the decedent to make certain that defendants would assess and treat the decedent in accordance with the standard of care . . . ." 60 A.3d 414, 420–21 (Del. Super. Ct. 2012). This was a separate cause of action from the one the plaintiff pursued against the hospital for its negligent policymaking acts. *See id.* at 415 (listing defendants).

[3] The fact that the discussion of the "independent negligence" claim in *Theophelis* is in a footnote does not diminish its importance, contrary to the District Court's suggestion. W.D. Mich. Op., R. 54, Page ID # 1449. Rather, the discussion of the "independent negligence" claim against a hospital policy maker is in a footnote because the Michigan Supreme Court found the claim uncontroversial and it was not the subject of the appeal. *Theophelis*, 484 N.W.2d at 481.

Likewise, the Texas Court of Appeals upheld a jury finding of negligence against a management company that, like the CHM defendants, was responsible for setting policy at the hospital it managed. *Chesser v. LifeCare Mgmt. Servs., L.L.C.*, 356 S.W.3d at 635. That court explained:

> A hospital or a corporate health care provider may be liable for injuries arising from the negligent performance of a duty that the hospital or corporate health care provider owes directly to the patient . . . . One such duty is the duty to use reasonable care in formulating the policies and procedures that govern the hospital's medical staff and nonphysician personnel.

Id. at 629.

Similar to the case at bar, the management company in *Chesser*, LMS, did not provide medical services itself but was instead a type of "umbrella" organization over the hospital. *Id.* at 626. According to the documentary evidence in the record, which the plaintiff ultimately obtained *after* the motion to dismiss stage:

> LMS's own records . . . establish that LMS as the management company for Hospital was responsible for drafting, implementing, and enforcing compliance with policies and procedures at Hospital. By virtue of the governing board bylaws, LMS controlled the board, and the board was expressly "responsible for the quality of care" and "quality improvement mechanisms" at Hospital.

Id. at 631. Thus, the fact that the management company had policymaking responsibilities for the hospital and also controlled the hospital's board of

directors, which was responsible for patient care, was sufficient to demonstrate a duty from the management company to the hospital's patients. *Id*.

Like the plaintiff in *Chesser*, Ms. Means has sufficiently alleged, based on CHM's own documents that she has been able to obtain *pre-discovery*, that: CHM has policymaking responsibility for MHP, Compl. ¶¶ 86–87, 91–92, R. 1, Page ID ## 12–13; the members of CHM are the same members as Trinity Health's board of directors, *id*. ¶ 93, R. 1, Page ID # 13; and MHP was required to conduct its hospital business (which is patient care) according to the mandates set forth by Trinity Health, *id*. ¶ 89, R. 1, Page ID # 13. As in *Chesser*, these allegations are sufficient to demonstrate a duty from CHM to MHP's patients, such as Ms. Means. *See also Corleto v. Shore Mem'l Hosp.*, 350 A.2d 534, 537 (N.J. Super. Ct. Law Div. 1975) (allowing independent claim to proceed against hospital's board of directors based on negligent supervision of staff); *Broder v. Corr. Med. Servs., Inc.*, No. 03-75106, 2008 WL 704229, at *3 (E.D. Mich. Mar. 14, 2008) (denying motion to dismiss constitutional claim against prison medical director for devising and implementing medical policies).

The above-cited cases all support the principle articulated by the Michigan Supreme Court in *Theophelis*: a hospital patient has an independent negligence cause of action arising out of hospital policies and procedures against the hospital's policymaking entity, regardless of the entity's organizational structure.

Here, Ms. Means has stated a claim that the CHM Defendants are liable under the "independent negligence" theory for hospital policymakers because the CHM Defendants adopted and implemented the Directives as hospital policy for MHP. The CHM Defendants themselves admit that CHM has a "mandate to adopt the Directives for Trinity Health facilities," and that MHP is one of those facilities. CHM Defs.' Reply Br., R. 50, Page ID # 1416. As Ms. Means alleged in her Complaint, the Directives state that they are a "policy" and Catholic health care services must "require adherence to them within the institution as a condition for medical privileges and employment, and provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel." Compl. ¶ 62, R. 1, Page ID # 9. Therefore, there can be no dispute, and certainly not at the motion to dismiss stage, that the CHM Defendants adopted the Directives as mandatory hospital policy for MHP, the hospital where Ms. Means sought treatment, and its staff members. Under Michigan law, this subjects the CHM Defendants to liability for independent negligence. The District Court's decision to the contrary should be reversed.

II. The District Court Erred in Dismissing Ms. Means's Complaint Under the Church Autonomy Doctrine.

Almost three decades ago, Justice Rehnquist articulated the outer bounds of the church autonomy doctrine, also known as the ecclesiastical abstention doctrine, and warned courts to refrain from expanding it. Specifically, he said that although

the Court has recognized "constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes . . . , this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes." *Gen. Council on Fin. & Admin. of the United Methodist Church v. Super. Ct. of Cal.*, 439 U.S. 1355, 1372 (1978) (Rehnquist, Circuit Justice). More importantly, "'[n]othing [the Court has] said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public.'" *Id.* at 1373 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940)).

If the District Court's expansion of the church autonomy doctrine in this case is allowed to stand, religious organizations would have the ability to cause significant harm to members of the public, and then hide behind their religious affiliation to avoid accountability. This is impermissible, and the District Court's decision should be reversed.

The Supreme Court developed the church autonomy doctrine to bar civil courts from resolving disputes involving "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required by them." *Watson v. Jones*, 80 U.S. 679, 733 (1871). The risk inherent in civil adjudication of such controversies is that

courts could entangle themselves with "essentially religious controversies," *Serbian E. Orthodox Diocese for the U.S. & Can. v. Milivojevich*, 426 U.S. 696, 709–10 (1976), which would lead to a violation of the First Amendment's Free Exercise and Establishment Clauses. Accordingly, the Court has invoked the doctrine where factions of a church were fighting over which one was the true representative of the church based on religious tenets, and thus had the right to occupy the church, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952), and in appeals from defrocked clergy seeking review of church discipline, *Milivojevich*, 426 U.S. 696.

But running a church is fundamentally different than running a hospital. Indeed, this case is a far cry from "intraorganizational" disputes involving religious schisms or internal discipline of a priest; specifically, this case does not require this Court to adjudicate any "religious controversy." Instead, what is at issue here is the CHM Defendants' role in setting policy for the operation of a hospital, which provides health care to people of all faiths, employs people of all faiths, receives public funding, and is heavily regulated under secular state and federal law.

Indeed, the fact that the hospital employs and serves people of all faiths is a critical factor. The Court has applied the church autonomy doctrine only to cases involving those who give their implicit consent to be bound by churches' ecclesiastical governance and religious doctrine, such as parishioners and church

employees. *See, e.g.*, *Watson*, 80 U.S. at 729 (noting that "[a]ll who unite themselves" in a church "do so with an implied consent" to be bound by church doctrine). The Court has never used the church autonomy doctrine to bar the claims of a person, like Ms. Means, who is neither a church employee nor a parishioner, but rather is a member of the public who faced an unforeseen medical crisis and sought a wholly secular service -- emergency medical care -- at a business that is open to the general public. Ms. Means was not aware of the Directives, and certainly did not consent to be bound by them.

Notwithstanding this well-established Supreme Court precedent limiting the church autonomy doctrine to internal, religious disputes, *see supra* at 23–24, the District Court extended the church autonomy doctrine to bar consideration of Ms. Means's basic negligence claim. By holding that it could not adjudicate whether the decision to adopt the Directives constituted negligence without first interpreting the Directives, the District Court erred for at least two reasons.

First, Defendants do not dispute that the Directives prohibited MHP from terminating Ms. Means's pregnancy. Absent such a dispute, there is simply no reason for the court to interpret the Directives.

Second, even if Defendants did make such an assertion, as they do with respect to the provision of information about her condition and treatment options, CHM Defs.' Mot. to Dismiss, R. 42, Page ID # 885 n.3, the court is nevertheless

permitted to adjudicate Ms. Means's claim. Ms. Means is not asking the court to determine the validity of the Directives or whether the Directives comport with religious teaching. Rather, the question in this case is whether, as secular matter, the CHM Defendants' decision to adopt a *hospital policy* that prohibits abortion caused Ms. Means harm. In other words, the fact-finder in this case need only determine whether it was reasonable for CHM to foresee that MHP would rely on the Directives it imposed to refuse to provide Ms. Means an abortion and/or information about her condition and treatment options.[4] Ms. Means has alleged that MHP did in fact rely on the Directives in that manner. *See, e.g.*, Compl. ¶¶ 2, 57, R. 1, Page ID ## 2, 8.

Furthermore, the Directives are not scripture; they are an external, public document, explicitly intended for "physicians, health care personnel, and patients or residents" of Catholic health care institutions, and they pertain to a secular service, namely the provision of health care. CHM Defs.' Mot. to Dismiss, Ex. B, R. 42-3, Page ID # 932. Therefore, although the court does not need to interpret the Directives to analyze the tort claim in this case, even if such interpretation were

[4] The Court has made clear that the mere fact that a civil court might be asked to examine religious doctrine is not problematic as long as the civil courts "take special care to scrutinize the document in purely secular terms." *Jones v. Wolf*, 443 U.S. 595, 604 (1979); *see also Martinelli v. Bridgeport Roman Cath. Diocesan Corp.*, 196 F.3d 409, 431 (2d Cir. 1999) (holding that church autonomy doctrine did not apply merely because the jury needed to consider church doctrine to resolve the secular legal claim).

required, doing so would not risk interference with church doctrine because of the unique nature of the Directives, compared to other cases that would have required the civil courts to interpret central religious tenets. *See, e.g.*, *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969) (holding that church autonomy doctrine applied because the courts were being asked to examine tenets of faith and determine whether one party failed to follow them).

Simply put, the legal analysis in this tort action is not affected by the fact that the Directives are based on Catholic doctrine. The court's legal analysis would be the same if the CHM Defendants had adopted the same rule for secular reasons.[5] Where, as here, a case can be resolved based on secular law, the church

[5] Indeed, religious motivation for an otherwise improper act cannot insulate a party from liability. For example, in *Lundman v. McKown*, 530 N.W.2d 807 (Minn. Ct. App. 1995), the Minnesota Court of Appeals allowed Christian Scientist healers to be sued in a wrongful death action after they let an eleven-year-old boy die of diabetes. Based on the healers' religious opposition to traditional medicine, they only prayed with the boy, and did not call 911 until after he died. The court held that the Christian Scientist healers could be sued for wrongful death, noting that they were "free to believe what they will — and to teach and preach what they believe. But, when beliefs lead to conduct, the conduct is subject to regulation. Here, regulation is necessary for the protection of children and [the healers'] conduct, though rooted in religion, is subject to state regulation." *Id*. at 818. Thus, contrary to the District Court's representation, W.D. Mich. Op., R. 54, Page ID # 1454, the Minnesota court did not find that the First Church owed no duty to the boy, but rather, as a factual matter, the First Church did not control the faith healers who let the boy die. *Lundman*, 530 N.W.2d at 825 ("there was never any agreement between [the faith healers and the First Church] that manifested either consent or a right of control"). Here, in contrast, CHM imposed the Directives on

autonomy doctrine does not apply. The Court refers to this as the "neutral principles of law" approach, and has held that it does not infringe on the First Amendment because it "relies exclusively on objective, well-established concepts of [secular law] familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Jones*, 443 U.S. at 603.

Following this approach, this Court refused to apply the church autonomy doctrine in a defamation case between two bishops, despite the fact that the defamatory comments arose in a sermon. *See Ogle v. Hocker*, 279 F. App'x 391 (6th Cir. 2008). This Court held that reviewing the sermon was appropriate because the sermon did not involve issues related to polity but rather contained secular cautionary tales. *Id*. at 396. This Court further noted that the "relevant question before us is whether the court would interfere with any matters of church doctrine or practice by ruling on this case." *Id*. The Court reasoned that there would be no such "interference" because the case did not present questions of whether the plaintiff's actions complied with church law or whether the defendant's statements were supported by doctrine. Rather, the Court held that the

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MHP, Compl. ¶¶ 86, 89, R. 1, Page ID ## 12, 13, which then led MHP to deny Ms. Means proper care based on the Directives, *id*. ¶¶ 56–57, R. 1, Page ID # 8.

claim could proceed because the "disputed issues can be resolved through application of secular standards without impingement upon church doctrine or practice." *Id*.; *see also Gen. Conf. Corp. of Seventh-Day Adventists v. McGill*, 617 F.3d 402, 408–09 (6th Cir. 2010) (holding that church autonomy doctrine did not apply in trademark dispute, which did not require the court to decide matters of doctrine but rather to apply neutral principles of trademark law).

Similarly, the Second Circuit employed the "neutral principles of law" approach when it held that the church autonomy doctrine was not implicated in a case against a Catholic Diocese for its role in covering up sexual abuse by one of the Diocese's priests. *Martinelli v. Bridgeport Roman Cath. Diocesan Corp.*, 196 F.3d 409 (2d Cir. 1999). The court held that the doctrine was not triggered because the jury was not asked to resolve any "disputed religious issue," despite the fact that it needed to determine, as a matter of fact, whether religious tenets gave rise to a fiduciary relationship between the victim of the sexual abuse and the Diocese. *Id*. at 431. The court reasoned that a "proposition advanced by a particular religion . . . cannot be considered by a jury to assess its truth or validity or the extent of its divine approval or authority, but may be considered by the same jury to determine the character of the relationship between a parishioner and his or her bishop." *Id*. The court noted that there is an "obvious distinction between the proper use of religious principles as facts and an improper decision that religious

principles are true or false." *Id*. Ultimately, the court concluded that the plaintiff's claim could proceed because it was brought under secular law, not church law, and the plaintiff's claim "neither relied upon nor sought to enforce the duties of the Diocese according to religious beliefs, nor did it require or involve a resolution of whether the Diocese's conduct was consistent with them." *Id*.

These principles apply with equal, if not greater, force here. Indeed, not only does this case not involve an intraorganizational dispute or a dispute between a parishioner and her church, but on top of that, Ms. Means is only asking the court to assess her legal claim using neutral, secular principles of tort law. Indeed, the District Court acknowledged that it is "competent" to adjudicate medical care policies implemented by MHP or Trinity Health. W.D. Mich. Op., R. 54, Page ID # 1453. In either case, the courts only need to use secular law to resolve the controversy. Thus, because this case can be resolved through application of secular standards, namely tort law, the church autonomy doctrine is not implicated. *See Presbyterian Church*, 393 U.S. at 449 (stating that civil courts may use "neutral principles of law" in deciding church property disputes); *see also Malicki v. Doe*, 814 So. 2d 347, 361 (Fla. 2002) (applying neutral principles of tort law to religious organizations, and holding that the court would grant "no greater or lesser deference to tortious conduct committed on third parties by religious organizations" than those committed by non-religious organizations).

Finally, allowing Defendants to harm members of the public without recourse would give them preferred treatment to the detriment of others, which would itself raise serious Establishment Clause concerns. The Supreme Court has held that if the government relieves religious entities of legal obligations, the government can cross the line into an impermissible accommodation of religion; this is true particularly where, as here, third parties are burdened. *See, e.g., Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (holding that when applying the Religious Land Use and Institutionalized Persons Act courts must take into account the burdens imposed on non-beneficiaries); *Est. of Thornton v. Caldor, Inc.*, 472 U.S. 703, 709–10 (1985) (refusing, under the Establishment Clause, to give every employee the right to be free from work on her Sabbath regardless of the burden on the employer and employees).

Insulating from liability religious entities that harm others -- in this case, subjecting Ms. Means to prolonged physical and emotional pain and suffering and causing her to develop a severe infection that could have led to her death -- is inappropriate and, as Justice Rehnquist noted, has never been sanctioned by the Court. *Gen. Council on Fin. & Admin. of the United Methodist Church*, 439 U.S. at 1372. For all of these reasons, the District Court's decision that the church autonomy doctrine bars adjudication of this case should be reversed.

III. The District Court Erred in Holding that it Lacked Personal Jurisdiction over USCCB.

Ms. Means has alleged that Defendant USCCB drafted the policy at issue here -- which directs healthcare systems to violate the standard of care -- with the express purpose of having Catholic health care systems, such as MHP, follow it. This policy, Ms. Means alleges, which was negligently adopted for MHP by the CHM Defendants, consistent with USCCB's intent, prevented MHP staff members from providing her with treatment for her miscarriage that conformed to the standard of care which caused her to develop a severe infection and resulted in her suffering prolonged, severe physical and emotional pain and suffering.

Although USCCB did not raise the defense of personal jurisdiction in its first pleading before the District Court, as required by both the Federal Rules of Civil Procedure and this Court, the District Court erroneously determined that USCCB had not waived this defense and allowed it to raise it in its second pleading. W.D. Mich. Op., R. 54, Page ID # 1439. The District Court then determined that USCCB was not subject to personal jurisdiction in Michigan because it did not draft the Directives in Michigan or have a direct legal relationship with Ms. Means or any business entities in Michigan. *Id*., R. 54, Page ID # 1443.

As demonstrated below, the District Court's rulings on both the waiver and substantive personal jurisdiction issues are directly contrary to this Court's opinions and must be reversed.

A. USCCB Waived Its Personal Jurisdiction Defense.

This Court has explained that "a challenge to personal jurisdiction must be raised in the first responsive pleading or be waived." *Taubman Co. v. Webfeats*, 319 F.3d 770, 773 (6th Cir. 2003). USCCB argued below that this Court's well-established waiver rule should not apply because it filed a "special appearance," *see* USCCB's Special Appearance, R. 39-5, Page ID ## 809 -810, in the action and only "concurred" in its co-defendants' motion to change venue. There are two reasons why this argument must fail.

First, there is no precedent for allowing a so-called "special appearance" to be used to escape the consequences of waiver if the defendant is actually participating in the litigation beyond just filing an appearance, as is the case here. The District Court's holding that USCCB's "special appearance" automatically immunized USCCB from waiver, regardless of USCCB's participation in this litigation thereafter, should be rejected.

Second, USCCB did not merely "concur" with its co-defendants' motion to change venue. Instead, on February 20, 2014, USCCB filed a separate pleading from its co-defendants where it asked not only for a change in venue but also

sought to be *dismissed* from the action for improper venue -- a form of relief that USCCB's co-defendants had not themselves requested. USCCB's Mot. to Dismiss for Improper Venue, R. 17, Page ID # 85.[6] Under Federal Rule of Civil Procedure 12, an improper venue defense must be raised either in the defendant's answer or a pre-answer motion under Rule 12(b). USCCB's February 20, 2014 filing was not an "answer," and it sought relief from the court -- dismissal for improper venue. As such, it was a Rule 12(b) motion, regardless of how USCCB tried to style that pleading. USCCB was therefore required to include all of its 12(b) defenses in that pleading, including the defense of lack of personal jurisdiction. As Federal Rule of Civil Procedure 12(g) clearly states, "[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion."[7] USCCB failed to include its personal jurisdiction defense in its initial motion, and therefore that defense is waived. *See Taubman*, 319 F.3d at 773.

Accordingly, the District Court's decision on this issue should be reversed.

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[6] Specifically, USCCB's pleading states: "Defendant USCCB *requests* that it be dismissed from the case for lack of proper venue. *Alternatively*, the Conference concurs in the request for transfer of venue by co-defendants." USCCB's Mot. to Dismiss for Improper Venue, R. 17, Page ID # 85 (emphasis added).

[7] The exceptions listed in Federal Rule of Civil Procedure 12(h)(2) and (3) do not apply here.

B. USCCB Is Subject to Personal Jurisdiction in Michigan Based on the Activities that It Purposefully Directed Toward Michigan Which Form the Basis for Ms. Means's Negligence Cause of Action.

This Court has made clear that where a plaintiff has not yet had the opportunity to conduct discovery, as is the case here, a plaintiff need only demonstrate a *prima facie* showing of jurisdiction to survive a motion to dismiss. *Air Prods. & Controls, Inc. v. Safetech Int'l, Inc.*, 503 F.3d 544, 549 (6th Cir. 2007) (citing *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991)). This burden is "relatively slight." *Id.* Application of a *prima facie* standard is specifically contemplated to "prevent[] a defendant from 'defeat[ing] personal jurisdiction merely by filing a written affidavit contradicting jurisdictional facts alleged by a plaintiff.'" *Schneider v. Hardesty*, 669 F.3d 693, 697 (6th Cir. 2012) (internal citations omitted) (first alteration added). Accordingly, when utilizing the *prima facie* standard, a court is required to "view[] [the pleadings] in a light most favorable to the plaintiff" and "should not weigh 'the controverting assertions of the party seeking dismissal.'" *Air Prods.*, 503 F.3d at 549 (quoting *Theunissen*, 935 F.2d at 1459).

To determine whether specific personal jurisdiction exists over an out-of-state defendant, this Court utilizes the three-part test set forth in *Southern Machine Co., Inc. v. Mohasco Industries, Inc.*, 401 F.2d 374, 381 (6th Cir. 1968)[8]:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Ms. Means sufficiently pled each of these factors to meet her *prima facie* burden. In determining otherwise, the District Court misconstrued the facts underlying this Court's purposeful availment analysis in *Schneider*, as well as in other cases; erroneously held Ms. Means to a higher burden than the *prima facie* standard; and further failed to accept Ms. Means's allegations as true, but instead improperly accepted USCCB's contrary factual assertions.

1. The Purposeful Availment Prong Is Satisfied Because USCCB Purposefully Directed Its Activities to Michigan's Catholic Hospitals By Requiring Them to Follow the Directives.

The first inquiry for specific personal jurisdiction is "purposeful availment."

> Despite its label, [the "purposeful availment"] prong includes both purposeful availment and purposeful direction. It may be satisfied by purposeful availment of the privilege of doing business in the forum; by

[8] USCCB did not argue that personal jurisdiction is improper under Michigan's long-arm statute and this issue was not disputed below.

> purposeful direction of activities at the forum; or by some combination thereof.

Beydoun v. Wataniya Rests. Holding, Q.S.C., 768 F.3d 499, 506 (6th Cir. 2014) (alteration in original). This Court's opinion in *Schneider*, 669 F.3d at 701–03, demonstrates what constitutes "purposeful direction." That case involved a Utah investor who solicited multiple individuals nationwide, including an Ohio resident, to make investments in an enterprise that turned out to be part of a Ponzi scheme. The Utah investor then hired a Utah lawyer to draft letters to all of the investors assuring them that efforts were being undertaken to return their funds. The Utah lawyer drafted a general letter to this effect and provided it to his client, the Utah investor. The Utah investor then sent the letter to multiple individuals, including the Ohio resident. The Ohio resident sued both the Utah investor and his Utah lawyer for fraud in Ohio. *Id.* at 695–96.

On appeal, the issue concerned whether personal jurisdiction over the Utah lawyer was proper in light of his lack of a direct relationship with the Ohio resident and the fact that he had not sent the letter to Ohio that formed the basis of the fraud action. *Id.* at 702. This Court answered in the affirmative for two reasons: (1) the lawyer drafted the letter knowing that his client would "almost certainly" mail the letter to investors; and (2) the lawyer knew, or had access to, the names and addresses of the investors -- which this Court deemed sufficient to demonstrate that the lawyer knew where the investors were located. *Id.* at 702–03.

In other words, the Utah lawyer drafted the letter to impact a particular group of people, and the lawyer had reason to know that at least one member of that group resided in Ohio. These actions sufficiently demonstrated that the Utah lawyer purposefully directed his activities toward Ohio, despite the lack of a direct relationship or interaction with the Ohio resident.

Schneider illustrates two fundamental flaws in the District Court's holding below. First, under *Schneider*, it is irrelevant that USCCB drafted the Directives in Washington, D.C. W.D. Mich. Op., R. 54, Page ID # 1443. The lawyer in *Schneider* drafted the harmful letter in Utah, thousands of miles from the forum state of Ohio. The relevant question here, as in *Schneider*, is where USCCB intended for those Directives to be used. As demonstrated below, it is plain USCCB intended to require Catholic hospitals in Michigan to adhere to the Directives.

Second, if anything, the relationship between USCCB and the forum state (Michigan) here is far stronger and more tangible than the relationship between the Utah lawyer and Ohio (which was based on a single Ohio resident) in *Schneider*. As in *Schneider*, USCCB purposefully directed its activities toward Michigan by drafting and promulgating the Directives that govern patient care at all Catholic hospitals, including MHP in Michigan. Yet, unlike the Utah lawyer in *Schneider*, USCCB is not an otherwise disinterested party hired to draft the Directives on

someone else's behalf to impact unknown persons. USCCB decided, on its own volition, to draft a health care policy for Catholic hospitals nationwide, and it intended for that policy to affect patients at those hospitals, including in Michigan. Further, unlike the fraudulent letter in *Schneider*, the Directives are not merely a statement promising to undertake some sort of compensatory action in the future. The Directives are, as their name suggests, a mandate. They state unequivocally that "Catholic health care services *must* adopt these Directives as policy, *require* adherence to them within the institution as a condition for medical privileges and employment, and *provide appropriate instruction regarding the Directives for administration, medical and nursing staff, and other personnel.*" Compl. ¶ 62, R. 1, Page ID # 9 (emphasis added). And, unlike in *Schneider*, there is no need for the court to impute knowledge to USCCB that the Directives will reach Catholic hospitals in Michigan. When issuing the Directives and instructing all Catholic hospitals to follow them, USCCB certainly knew that there were numerous Catholic hospitals in Michigan and intended those hospitals to be bound by them.[9]

[9] For example, USCCB includes Trinity Health (MHP's parent company) in its IRS tax-exempt status, Pl.'s Opp'n to USCCB Mot. to Dismiss, Exs. 10–11, R. 46-11, 46-12, Page ID ## 1211, 1233; USCCB provided clarification of the primary Directive at issue here to Michigan bishops, *id*., Ex. 2, R. 46-3, Page ID ## 1138–40; and the Archbishop of Detroit sits on the USCCB Committee that drafted the Directives, *id.*, Ex. 12, R. 46-13, Page ID #1236.

In fact, USCCB has conducted trainings on the Directives *in Michigan*. Pl.'s Opp'n to USCCB Mot. to Dismiss, Ex. 21, R. 46-22, Page ID ## 1331–32.

Therefore, in concluding that Ms. Means had failed to satisfy the purposeful availment prong because there was no direct business relationship between USCCB and Ms. Means, the District Court took a cramped view of purposeful availment and purposeful direction that has been rejected by this Court. As *Schneider* demonstrates, the lack of a direct transactional relationship between the parties is immaterial where the defendant purposefully directed its activities at the forum state. [10] Here, USCCB issued health care directives governing all Catholic hospitals, knowing that such hospitals existed in Michigan and that patient care in that state would be directly impacted. Under the law of this Circuit, USCCB purposefully directed its activities at the forum state.

The District Court also improperly discounted other analogous cases involving for-profit corporations. W.D. Mich. Op., R. 54, Page ID # 1442. In those cases, the Supreme Court explained that to determine whether an out-of-state corporation has purposefully availed itself of the privilege of doing business in the forum state, courts must assess whether the corporation "indicate[s] an intent or

[10] The District Court made the same error in attempting to distinguish *Bennett v. J.C. Penney*, 603 F. Supp. 1186 (W.D. Mich. 1985), and improperly found that that the parties in that case, too, had a direct business relationship. However, no such relationship existed. *Id.* at 1188–89.

purpose to serve the market in the forum State" in such ways as "designing the product for the market in the forum State" or "establishing channels for providing regular advice to customers" in that state. *Asahi Metal Indus. Co., Ltd. v. Super. Ct. of Cal.*, 480 U.S. 102, 112 (1987).

Although this case involves a "product" -- the Directives -- created by a non-profit corporation rather than a physical piece of merchandise created by a for-profit corporation, the principle in *Asahi* applies with equal force: the primary consideration in the purposeful availment analysis is whether the out-of-state defendant intended for the product to be placed in the forum state. If the defendant designed the product to be used in the forum state, and its use causes the plaintiff harm in the forum state, then a finding of purposeful availment in the forum state is proper.

The same is true here. As discussed above, Ms. Means's allegations demonstrate that USCCB widely distributed its Directives and *intended* the Directives to be used at all Catholic hospitals, including Ms. Means's hospital in Michigan. That the Directives were then used by a Catholic hospital in Michigan -- a state with at least ten Catholic hospitals operated by Trinity Health alone, Pl.'s Opp'n to USCCB's Mot. to Dismiss, Ex. 16, R. 46-17, Page ID ## 1283–84 -- is not an accident but rather reflects the precise purpose for which the Directives were created.

Accordingly, Plaintiff has demonstrated that USCCB purposefully directed its activities toward Michigan, thus satisfying the first *Southern Machine* element for specific personal jurisdiction.

2. Ms. Means's Negligence Claim Arises from the Directives that USCCB Purposefully Directed Toward Michigan.

Ms. Means has also demonstrated that her negligence claim against USCCB arises out of the Directives that USCCB purposefully directed toward Michigan.

This Court has "articulated the standard for [the 'arising from'] prong in a number of different ways, such as whether the causes of action were 'made possible by' or 'lie in the wake of' the defendant's contacts . . ., or whether the causes of action are 'related to' or 'connected with' the defendant's contacts with the forum state." *Air Prods.*, 503 F.3d at 553 (internal citations omitted). Regardless of the precise terminology used, this Court has acknowledged that the "arising from" prong is a "lenient standard" and the plaintiff's "cause of action need not 'formally' arise from defendant's contacts" with the forum state. *Id.*

Instead of properly applying this lenient standard, the District Court made three key errors. First, the District Court improperly faulted Ms. Means for failing to show that her cause of action "arose from the USCCB's action *in Michigan*." W.D. Mich. Op., R. 54, Page ID #1444 (emphasis in original). That is not the proper standard. Rather, Ms. Means need only show that her cause of action arose

out of the activities that USCCB "purposefully directed" toward Michigan, which she has done. *See, e.g., Neal v. Janssen*, 270 F.3d 328, 333 (6th Cir. 2001) ("[W]hen a foreign defendant purposefully directs communications into the forum that cause injury within the forum, and those communications form the 'heart' of the cause of action, personal jurisdiction may be present over that defendant without defendant's presence in the state.").

For example, in *Schneider*, this Court had no difficulty finding that the "arising from" requirement was met despite the lack of direct activity by the defendant in forum state. Here, Ms. Means's cause of action specifically *arises from* the harm she incurred as a result of MHP following USCCB's Directives in Michigan.

Second, the District Court erred in concluding that Ms. Means's personal jurisdiction argument was based on nothing more than a "but-for theory of relatedness," whereby "[b]ut for the USCCB's drafting of Directive 45 prohibiting abortion, and but for Directive 5 mandating implementation of the Directives, and but for the implementation of the Directives at MHP at the intent of the USCCB, Plaintiff would not have suffered severe pain and anguish." W.D. Mich. Op, R. 54, Page ID # 1444. To support this contention, the District Court relied on this Court's decision in *Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499 (6th Cir. 2014).

Beydoun is easily distinguishable. In that case, the plaintiff filed suit in Michigan against his former employer, who was located in Qatar, claiming he had been falsely accused of causing his employer financial loss and wrongfully detained in Qatar by his employer. This Court found that it did not have jurisdiction over the Qatar defendants because the *only* connection the defendants had to the forum state was the plaintiff's initial job solicitation in Michigan, which was not at issue in the lawsuit; all of the plaintiff's harm occurred in Qatar. According to this Court, the plaintiff had essentially alleged that "but for the initial contact with Michigan, [the plaintiff] would never have moved to Qatar, and if [the plaintiff] had never moved to Qatar, he could not have been wrongfully blamed for [the defendant company's] financial losses and wrongfully detained for them." *Id.* at 507.

Here, by contrast, Ms. Means's cause of action arises from harm she incurred *in Michigan*, after USCCB purposefully directed its activities toward Michigan. *Beydoun* has no application here.

The third significant error committed by the District Court in its "arises from" analysis is that, instead of determining whether Ms. Means stated a *prima facie* claim, taking her allegations as true and construing all inferences in her favor, it did the opposite. Accepting the averments of USCCB as true, and ignoring the contrary allegations of Ms. Means, the court stated:

> Plaintiff misunderstands the fundamental distinction between the Roman Catholic Church, the USCCB, and the role of bishops . . . . The intent of the USCCB in Washington, D.C., is legally irrelevant to the analysis of proximate cause because only the local Michigan bishop could require MHP to adhere to Directive 45. The USCCB has no authority to require MHP or any Trinity Health affiliate to implement the Directives.

W.D. Mich. Op., R. 54, Page ID # 1445. The court thus concluded that "Plaintiff has not shown how her cause of action was proximately caused by the USCCB's in-state activities." *Id.* However, this is the precise opposite of what the *prima facie* standard demands. Ms. Means alleged that USCCB drafted the Directives and required MHP to adhere to them. Compl. ¶¶ 61–63, R. 1, Page ID # 9. This allegation must be accepted as true at this stage of the proceedings. *See Air Prods.*, 503 F.3d at 549 (citing *Theunissen*, 935 F.2d at 1459) (when utilizing the *prima facie* standard, a court is required to "view[] [the pleadings] in a light most favorable to the plaintiff" and "should not weigh 'the controverting assertions of the party seeking dismissal'"); *see also Schneider*, 669 F.3d at 697.[11]

The District Court further erred by incorporating proximate cause, a question of fact, into the personal jurisdiction analysis before Ms. Means had the opportunity to conduct discovery. The appropriate standard here is a *prima facie* demonstration that "'the operative facts of the controversy are . . . related to [Defendant's] contact with the state.'" *Beydoun*, 768 F.3d at 507 (quoting

[11] Further, the court declined to rule on Ms. Means's request for personal jurisdiction discovery, Pl.'s Opp'n to USCCB's Mot. to Dismiss, R. 46, Page ID # 1082, to further buttress her allegations if necessary.

Calphalon Corp. v. Rowlette, 228 F.3d 718, 723–24 (6th Cir. 2000)). Viewing Ms. Means's allegations as true, she has made a *prima facie* case of causation sufficient to exercise personal jurisdiction over USCCB. Ms. Means alleges that USCCB's Directives, which were intended to govern patient care at all Catholic hospitals, did in fact govern the care she received at her hospital. As a result, she did not receive the information and treatment she needed and suffered injury. These allegations show that Ms. Means's harm is the proximate result of the activities that USCCB purposefully directed toward Michigan (namely drafting and promulgating the Directives for Michigan's Catholic hospitals), and are sufficient to satisfy the lenient standard of the "arising from" prong.

3. Personal Jurisdiction over USCCB in Michigan Is Reasonable.

Finally, with respect to the reasonableness prong of personal jurisdiction, the District Court provided no explanation as to why Ms. Means failed to meet this requirement aside from stating that her purported failure to satisfy the "purposeful availment" and "arising from" requirements made jurisdiction over USCCB unreasonable. W.D. Mich. Op., R. 54, Page ID # 1446.

As outlined above, Ms. Means did meet her *prima facie* burden for both those prongs of the personal jurisdiction test. "An inference arises that the third factor is satisfied if the first two requirements are met." *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002). Therefore, the inference of reasonableness applies here.

Ms. Means has also demonstrated that jurisdiction is reasonable under the three-factor test utilized by this Court: (1) the plaintiff's interest in obtaining relief; (2) the interests of the forum state; and (3) the burden on the defendant. *Beydoun*, 768 F.3d at 508.

First, Ms. Means, a Michigan resident, has a strong interest in obtaining relief from the harm that occurred to her in Michigan. Second, the forum state of Michigan, which has extensive licensing requirements governing hospital operations to promote patient wellbeing, has great interest in ensuring that its residents are not being harmed. Third, there is no serious burden on the Defendant. However, even if a burden exists, given the ease of travel in the modern era, it is only a minimal one. *See McGee v. Int'l Life Ins. Co*., 355 U.S. 220, 223 (1957); *see also Youn v. Track, Inc.*, 324 F.3d 409, 420 (6th Cir. 2003) (quoting *Asahi*, 480 U.S. at 114) ("When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant."). Because such a minimal burden is outweighed by the other factors that support Michigan's jurisdiction over this matter, it is clear that jurisdiction over USCCB is reasonable here.

In sum, the District Court erred in concluding that it lacked personal jurisdiction over USCCB, and its decision on this issue should be reversed.

IV. The District Court Erred in Granting Defendants' Motion to Change Venue.

In discounting Ms. Means's well-pled allegations and concluding that venue was not proper in the Eastern District of Michigan under 28 U.S.C. § 1391(b)(2), the District Court erred as a matter of law. This holding is reviewed *de novo*. *Kerobo*, 285 F.3d at 533. The District Court also abused its discretion by misapplying the proper legal standard and improperly transferring the case to the Western District of Michigan pursuant to 28 U.S.C. § 1404(a). *See Smith v. Aegon Co. Pension Plan*, 769 F.3d 922, 933 (6th Cir. 2014).

A. Venue Is Proper in the Eastern District of Michigan as to All Defendants.

The federal venue statute provides for venue in "*a* judicial district in which *a substantial part* of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2) (emphasis added). In diversity cases, "the plaintiff may file his complaint in *any* forum where a substantial part of the events or omissions giving rise to the claim arose." *First of Mich. Corp. v. Bramlet*, 141 F.3d 260, 263 (6th Cir. 1998) (emphasis added). Thus, "[t]he fact that substantial activities took place in district B does not disqualify district A as proper venue as long as 'substantial' activities took place in A, too." *Id.* (internal citations and quotations omitted).

In determining whether venue is proper, the court must accept the facts in the complaint as true "to the extent they are uncontroverted by defendants' affidavits." *Home Ins. Co. v. Thomas Indus., Inc.*, 896 F.2d 1352, 1355 (11th Cir. 1990) (quoting *DeLong Equip. Co. v. Washington Mills Abrasive Co.*, 840 F.2d 843, 845 (11th Cir. 1988)); *see also Hancock v. Am. Tel. & Tel. Co.*, 701 F.3d 1248, 1260 (10th Cir. 2012) (in determining whether venue is proper, "[a]ll well-pleaded allegations in the complaint bearing on the venue question generally are taken as true, unless contradicted by the defendant's affidavits") (quoting Wright & Miller, Fed. Prac. & Proc. § 1352 (2004)). Likewise, the court must "draw all reasonable inferences and resolve factual conflicts in favor of the plaintiff." *Audi AG & Volkswagen of Am., Inc. v. Izumi*, 204 F. Supp. 2d 1014, 1017 (E.D. Mich. 2002); Wright & Miller, Fed. Prac. & Proc. § 1352 (3d ed.) (same).

Here, Ms. Means's factual allegations are sufficient to demonstrate that a substantial part of the events or omissions giving rise to her claim took place in the Eastern District of Michigan. As explained *infra*, Ms. Means has alleged that a principal act that forms the basis of her negligence claims is CHM's adoption of the Directives as MHP hospital policy.[12] She has alleged that the CHM Defendants made the decision to adopt the Directives as MHP policy in the Eastern District of Michigan. *See* Compl., ¶¶ 11, 74, R. 1, Page ID ## 4, 11. She has also

[12] The CHM Defendants have already admitted that they adopted the Directives as hospital policy for MHP. *See* CHM Defs.' Reply Br., R. 50, Page ID # 1416.

alleged, and provided evidentiary support to demonstrate, that at all times relevant to this matter, CHM was based either in Novi or Livonia, both cities in the Eastern District of Michigan. Pl.'s Br. in Opposition to CHM Defs.' Mot. to Change Venue, Ex. D, R. 22-5, Page ID # 243. CHM's adoption of the Directives for MHP, which prohibited Ms. Means from receiving the care she needed, underlies essential elements of Ms. Means's negligence claims against both the CHM Defendants and USCCB -- namely, breach and causation as to the CHM defendants and proximate causation as to USCCB. This critical event occurred in the Eastern District.

Defendants offered no evidence to rebut these allegations, effectively conceding that the Directives were adopted in the Eastern District. Yet despite these unrebutted allegations, the District Court determined venue was improper on the ground that *Ms. Means* had failed to meet her evidentiary burden.[13] E.D. Mich. Op., R. 31, Page ID ## 707–08. This was legal error. "In the absence of clear evidence to the contrary, the court must take as true" Ms. Means's allegation that CHM adopted the Directives in the Eastern District of Michigan. *Home Ins. Co.*, 896 F.2d at 1357. Given that this act was a substantial part of the acts giving rise to Ms. Means's claims against Defendants, and Ms. Means exceeded her

[13] As noted in *infra* at 55, the District Court also refused to allow Ms. Means to cure this purported deficiency and did not even rule on her timely request for discovery on venue.

evidentiary obligations by providing documentation to support her allegation that the act was undertaken in the Eastern District of Michigan, the District Court's ruling that venue was improper in that District should be reversed.

B. The District Court Abused Its Discretion in Balancing the § 1404(a) Factors in Favor of Defendants.

"A district court abuses its discretion when it applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608, 613 (6th Cir. 2002).

There are multiple factors that a district court may properly consider in assessing a motion to transfer under 28 U.S.C. § 1404(a), including: the plaintiff's choice of forum, convenience of witnesses, the location of relevant documents and relative ease of access to sources of proof, the convenience of parties, the locus of operative facts, the availability of process to compel the attendance of unwilling witnesses, and the relative means of the parties. *New York Marine and Gen. Ins. Co. v. Lafarge N. Am., Inc.*, 599 F.3d 102, 112 (2d Cir. 2010). But underlying a district court's analysis of these factors is the well-established principle that "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Reese v. CNH America, LLC*, 574 F.3d 315, 320 (6th Cir. 2009). Further, "the party requesting transfer carries the burden of

making out a strong case for transfer." *New York Marine*, 599 F.3d at 113 (internal citations omitted).

In this case, the District Court applied the wrong legal standard by placing the onus on Ms. Means to defend the propriety of her chosen forum rather than requiring Defendants to compellingly explain why transfer was warranted. For example, the District Court summarily accepted Defendants' arguments that the majority of witnesses who will be called in this case are MHP personnel in the Western District of Michigan. When Ms. Means countered that this case, at its core, concerns the hospital policy drafted and adopted by Defendants, and therefore the main witnesses will be members of CHM, which is located in the Eastern District, and members of USCCB, which is headquartered in Washington, D.C., the court faulted Plaintiff for "fail[ing] to substantiate this claim with any information." E.D. Mich. Op., R. 31, Page ID ## 710–711. However, the burden is on Defendants, not Ms. Means, and Defendants failed to rebut Ms. Means's argument about the principal witnesses in her case.

Similarly, with respect to the location of relevant documents, the District Court accepted Defendants' unsubstantiated claims that the only relevant documents are Ms. Means's medical records, which are located in the Western District. *Id.*, R. 31, Page ID # 711. Although Ms. Means explained that many relevant documents in the case would concern the drafting and adoption of the

Directives, the latter of which occurred in the Eastern District, the court again faulted her for not precisely identifying those documents, even though Ms. Means had not yet had the opportunity to conduct discovery.

The District Court's improper shifting of the burden of proof from Defendants to Ms. Means is evidenced by the other factors as well. Regarding the location of operative facts, the court accepted the defense position that all elements of Ms. Means's negligence claim occurred in the Western District, where the hospital is located, and discounted Ms. Means for not proving her allegation, at this pre-discovery stage, that CHM adopted the Directives in the Eastern District, despite the fact that Ms. Means provided evidence of CHM's location in the Eastern District. *Id.*, R. 31, Page ID # 713.

In addition, the District Court did not grant Ms. Means the appropriate deference for her choice of forum. As this Court has recognized, a "plaintiff's choice of forum should rarely be disturbed." *Reese*, 574 F.3d at 320 (internal citations and quotations omitted). Here, however, the District Court failed to give any weight *at all* to Ms. Means's choice of forum because (1) Ms. Means is a resident of the Western District of Michigan and (2) the court concluded that Ms. Means had not shown that a substantial part of the events or omissions giving rise to her claim occurred in the Eastern District. E.D. Mich. Op., R. 31, Page ID ## 714–15. Even if the District Court was correct that, "'where the plaintiff does not

reside in the chosen forum courts assign less weight'" to her venue choice, *id.* at 714 (quoting *Audi AG v. Shoken Conchworks, Inc.*, No. 04-70626, 2007 WL 522707, at *2 (E.D. Mich. Feb. 13, 2007)), this does not support the District Court's decision to *completely discount* the presumption in favor of Ms. Means's preferred forum. Furthermore, the District Court's conclusion that Ms. Means did not offer conclusive evidence, pre-discovery, to show that CHM adopted the Directives in the Eastern District is not sufficient to overcome even a weakened presumption where Defendants offered no evidence to the contrary. Again, the District Court erred in shifting Defendants' heavy burden to Ms. Means and weighing this factor against her.

In sum, the District Court, without addressing Ms. Means's timely request for venue discovery, required Ms. Means to satisfy an evidentiary burden that the case law clearly states is not hers to meet, and accepted Defendants' unsubstantiated claims regarding why venue is preferable in the Western District without holding them to the high evidentiary standard that appellate courts require. *New York Marine*, 599 F.3d at 113. While a decision to transfer under § 1404(a) is within a district court's sound discretion, *Kerobo*, 285 F.3d at 533, in this case the District Court abused its discretion by failing to hold Defendants to their heavy burden and shifting that entire burden onto Ms. Means. *See id.* ("A district court abuses its discretion when it . . . applies the law incorrectly."). Accordingly, the

District Court's decision to transfer the case to the Western District should be reversed.

In the alternative, this Court should vacate and remand to permit Plaintiff to conduct limited discovery on the question of venue. "[W]here issues arise as to . . . venue, discovery is available to ascertain the facts bearing on such issues." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978). In the proceedings below, Plaintiff timely requested that, in the event the District Court found the evidence supporting Plaintiff's choice of venue to be insufficient, Plaintiff be permitted opportunity to conduct limited discovery to support venue. *See* Pl.'s Br. in Opposition to CHM Defs.' Mot. to Change Venue, R. 22, Page ID # 212 n.8; Hr'g Tr., May 22, 2014, R. 32, Page ID # 756. Given that the District Court, albeit erroneously, based its rulings under both § 1391(b)(2) and § 1404(a) primarily on the need for additional evidence on this issue, its refusal to rule on Plaintiff's discovery motion was also an abuse of discretion. *See Home Ins. Co.*, 896 F. 2d at 1359 (concluding that plaintiff was entitled to venue discovery where additional evidence was needed to determine whether venue was proper and reversing district court).

CONCLUSION

Ms. Means suffered inhumanely and unnecessarily when she did not receive the hospital treatment and information dictated by the standard of care during her

miscarriage. The reason for her substandard care is the mandatory policy imposed on the hospital by the CHM Defendants and drafted by USCCB, which prevented hospital staff from assisting her. This negligence action was filed against these policymakers to hold them accountable for these actions. This type of negligence action is well-recognized in Michigan and several other jurisdictions and is not barred by the church autonomy doctrine, which concerns intraorganizational disputes, not secular healthcare tort matters.

Further, because Ms. Means's cause of action arises out of the activity that USCCB purposefully directed toward her Michigan hospital, personal jurisdiction in Michigan is proper.

Lastly, a substantial element of Ms. Means's negligence claims is the CHM Defendants' adoption of the Directives for her hospital. It is undisputed that this act took place in the Eastern District of Michigan. Accordingly venue in that district is proper and the District Court erred in transferring the case.

For all these reasons, the District Court's orders dismissing the case against the CHM Defendants for failure to state a claim, dismissing USCCB for lack of personal jurisdiction, and granting the motion to change venue should be reversed or vacated as appropriate, and the case remanded to the Eastern District of Michigan for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the word counting feature of counsel's word processing programs shows that this brief contains 13,954 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(A)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

/s/ Brooke A. Merriweather-Tucker

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2016 I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

/s/ Brooke A. Merriweather-Tucker

DESIGNATON OF RELEVANT DISTRICT COURT DOCUMENTS

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