IN THE UTAH SUPREME COURT

RIA WILLIAMS, Plaintiff/Appellant/Petitioner, v. **KINGDOM HALL OF JEHOVAH'S WITNESSES, ROY UTAH; WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK INC; HARRY DIAMANTI; ERIC STOCKER; RAULON HICKS; AND DAN HARPER**, Defendants/Appellees/Respondents.	**No. 20190422-SC** Appeal No. 20170783-CA District Court No. 160906025

On Petition for a Writ of Certiorari to the Utah Court of Appeals

Second Judicial District Court, Weber County, Honorable Mark R. DeCaria

PETITION FOR WRIT OF CERTIORARI

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Plaintiff/Appellant/Petitioner is Ria Williams. Defendants/Appellees/Respondents are Kingdom Hall of Jehovah's Witnesses, Roy, Utah, an unincorporated association; Watchtower Bible and Tract Society of New York, Inc.; Harry Diamanti; Eric Stocker; Raulon Hicks; and Dan Harper.

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QUESTION PRESENTED

Does the Establishment Clause of the First Amendment of the United States Constitution, as applied to Utah through the Fourteenth Amendment, bar all claims for intentional infliction of emotional distress arising out of religiously motivated conduct?

OPINION BELOW

The opinion of the court of appeals is reported at 2019 UT App 40.

JURISDICTION

The court of appeals issued its decision on March 21, 2019. On April 26, 2019, this Court granted an extension of time to file a petition for certiorari until May 22, 2019. This Court has jurisdiction pursuant to Utah Code § 78A-3-102(3)(a).

CONTROLLING PROVISIONS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I.

STATEMENT OF THE CASE

I. Nature of the Case, Course of the Proceedings, and Disposition in the Lower Courts

This case presents the important question—never before decided by this Court—whether the Establishment Clause of the First Amendment bars civil courts from adjudicating claims based on intentionally tortious, but religiously motivated, conduct. When Petitioner Ria Williams, a Jehovah's Witness, was 14 years old, she was raped three times. (R. 82–83.) Based on these events, elders of the Kingdom Hall (analogous to a local church) to which Ria belonged, Respondents here, opened an investigation into whether

Ria had committed the sin of having sex outside of marriage. (R. 78, 83.) In seeking to extract a confession from Ria that she had "consented" to her rape, Respondents repeatedly forced her to listen to an audio recording of the rape that her rapist had made—despite Ria crying, shaking, and begging them to stop. (R. 84.) Ria later brought suit for intentional infliction of emotional distress (IIED). (R. 85.)

The district court dismissed the complaint, and the court of appeals affirmed. Relying on this Court's decision in *Franco v. Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, 21 P.3d 198, the court of appeals held that the Establishment Clause prohibits "assess[ing] the 'outrageousness'" of Respondents' conduct, an element of an IIED claim. 2019 UT App 40, ¶ 16. This petition followed.

II. Factual Background

Petitioner Ria Williams was born into a family of Jehovah's Witnesses. (R. 79.) At all times relevant to this case, Ria's family was part of the congregation of Respondent Kingdom Hall of Jehovah's Witnesses of Roy, Utah ("Roy Kingdom Hall"). (*Id.*)

In 2007 and 2008, when Ria was 14 years old, 18-year-old Colin Williams, also a Jehovah's Witness, sexually assaulted and raped her multiple times. (R. 72, 82–83, 259 n.12.) The two had met in the summer of 2007 through a mutual friend. (R. 79.) In the ensuing months, Mr. Williams aggressively bullied Ria. (R. 80–82.) He then began a streak of sexual assaults. He first drove Ria to a parking lot, threatened to harm her and her family, and "proceeded to aggressively kiss her, touch her breasts skin to skin, and insert his fingers in to her vagina despite her protests." (R. 82.) Within two weeks of that assault, Mr. Williams raped Ria three times. (R. 82–83.)

After Mr. Williams raped Ria, Respondent Roy Kingdom Hall began investigating Ria for the sin of "porneia." (R. 83.) Jehovah's Witnesses define porneia as "unclean sexual conduct that is contrary to normal behavior," which includes sex between two people who are not married. (R. 78.) (quotation marks omitted). The investigation was conducted by four Elders of the Roy Kingdom Hall—Respondents Harry Diamanti, Eric Stocker, Raulon Hicks, and Dan Harper ("Respondent Elders")—who formed a "judicial committee." (R.83.) A finding that Ria committed porneia could result in "disfellowship," *i.e.*, her expulsion from the religious community. (R. 77–78.)

In April 2008, Respondent Elders summoned Ria (then 15 years old and accompanied by her mother and stepfather) for questioning. (R. 83–84.) After inquiring about Ria's interactions with Mr. Williams for 45 minutes, Respondent Elders made Ria listen to an audio recording that Mr. Williams had made that captured the sound of him raping her. (R. 84.) Respondent Elders repeatedly started the audio recording, stopped it to resume questioning Ria, and began playing it again in an effort to get Ria to confess the sexual activity was "consensual." (*Id.*)[1]

Respondent Elders continued to play the recording of Mr. Williams raping Ria despite Ria exhibiting unmistakable signs of distress. Ria began "crying" and "protesting" that Respondent Elders should "not force her to relive the experience of being raped." (*Id.*) In plain view of Respondent Elders, Ria was "physically quivering" from the trauma of having to listen to her assault over and over. (*Id.*) Disregarding Ria's evident pain,

[1] As the district court noted, Ria's age rendered her unable to consent to sexual activity under Utah law. (R. 259 n.12.) *See also* Utah Code § 76-5-401.1.

Respondent Elders continued to play the recording repeatedly until the interrogation ended after approximately four hours. (*Id*.) As a result of Respondent Elders' conduct, Ria suffered serious harm, including anxiety, difficulty sleeping and nightmares, loss of appetite, and poor performance in school. (R. 86, 207–08.)

In June 2009, the state Division of Child and Family Services filed a complaint against Respondent Elders with the Department of Human Services ("DHS"). (R. 85.) DHS convened an administrative hearing and found that Respondent Elders had engaged in "Emotional Maltreatment," defined as "subject[ing] a child to psychologically destructive behavior." (R. 85, 214.)

III. Procedural Background

In 2016, Ria initiated this lawsuit in the Second Judicial District Court for Weber County. Ria named as defendants Respondent Roy Kingdom Hall, Respondent Elders, and Respondent Watchtower Bible and Tract Society of New York, Inc., the organization responsible for national and international governance of the Jehovah's Witnesses.[2] (R. 72–73.) She asserted a claim of intentional infliction of emotional distress against all Respondents for the Elders' conduct in playing the audio recording.[3] (R. 85.) Liability for IIED exists when the defendant intentionally engages in conduct toward the plaintiff

> (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable person would have known that such would result; and his actions

[2] Ria also named as defendants Mr. Williams, who defaulted, and John Does 1–100. These defendants were not involved in the proceedings in the court of appeals.

[3] The complaint asserts additional bases for Ria's IIED claim as well as a claim of negligent infliction of emotional distress, which was dismissed. This petition does not seek review of the dismissal of those claims and theories.

> are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality.

Jackson v. Brown, 904 P.2d 685, 687–88 (Utah 1995).

The district court dismissed Ria's IIED claim as barred by the Establishment Clause. The court described Respondent Elders' conduct as "nothing less than reprehensible" and remarked that, "if this conduct had occurred in a secular setting, the Court would have no hesitation in sending this claim to the jury." (R. 261.) Nonetheless, the district court concluded that its "duty to protect freedom" required dismissal because the suit "implicate[d] . . . how a religion conducts its ecclesiastical disciplinary hearings." (*Id.*)

The court of appeals affirmed, resting its decision in large part on this Court's decision in *Franco*. The court of appeals recognized that *Franco*'s Establishment Clause analysis concerned only "negligence-based torts" and that "[s]ome tort claims do not run afoul of the Establishment Clause because they do not require any inquiry into church practices or beliefs." 2019 UT App 40, ¶¶ 13–14. Nonetheless, in the court's view, under *Franco*, "claims that require courts to interpret religious practices or beliefs" in any way must be dismissed under the Establishment Clause. *Id.* ¶ 16. Because Ria's IIED claim would require "interpret[ing] the 'outrageousness' of [Respondents'] conduct," the court concluded that the Establishment Clause requires its dismissal. *Id.* ¶¶ 16, 18.

The court of appeals also distinguished its earlier decision in *Gulbraa v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 2007 UT App 126, 159 P.3d 292. In that case, the court of appeals allowed an IIED claim to proceed over an Establishment Clause defense because the claim concerned "secular activity potentially

amounting to a violation of generally applicable civil law." *Id.* ¶ 22. The court found Ria's claim distinguishable because it "implicates religious activity not secular activity." *Williams*, 2019 UT App 40, ¶ 17.

REASONS FOR GRANTING THE PETITION

I. Summary of Argument

This Court has never decided how the Establishment Clause applies to intentional tort claims. In the absence of clear guidance, the court of appeals stretched the holding in *Franco* far beyond its original scope. *Franco* held only that the Establishment Clause precludes *negligence*-based claims of clergy malpractice. By their nature, such claims require interpreting the meaning of religious doctrines to determine how a "reasonable" clergyman would act and then imposing a court-devised *religious* standard of care that controls how religious actors carry out their duties. To protect against the unconstitutional entanglement of church and state that both steps involve, *Franco* held that the Establishment Clause requires dismissal of clergy malpractice claims.

Franco, however, did not apply this rule to intentional tort claims. Importantly, unlike the negligence-based claims in *Franco*, adjudicating the vast majority of intentional torts—including the IIED claim here—involves no interpretation of religious doctrine and thus risks no entanglement: adjudicating intentional tort claims normally requires the factfinder to judge religious actors' conduct against *secular*, not religious, standards. *See Gibson v. Brewer*, 952 S.W.2d 239, 249 (Mo. 1997) (en banc) ("[L]iability for intentional torts can be imposed without excessively delving into religious doctrine, polity, and practice."). The court of appeals failed to grasp this critical difference. The result is an

exceptionally broad holding—that the very act of judging religious conduct against secular standards is unconstitutional—that renders immune an array of injurious acts and imperils the application of general laws to religiously motivated conduct. This Court should grant the petition to answer the important question of how the Establishment Clause applies to intentional torts like the IIED claim asserted here. *See* Utah R. App. P. 46(a)(1), (4).

There are two additional reasons to grant the petition. First, the court of appeals' rule barring courts from assessing religious conduct against secular standards is in serious tension with this Court's decision in *Jeffs v. Stubbs*, 970 P.2d 1234 (Utah 1998). There, this Court rejected the argument that the Free Exercise Clauses of the federal and Utah constitutions preclude courts from "measur[ing] 'religious expression against secular standards of fairness.'" *Id.* at 1248. The decision below induces confusion by effectively nullifying *Jeffs* and settled free-exercise principles when a defendant invokes the Establishment Clause instead. *See* Utah R. App. P. 46(a)(3). Second, the decision below is incompatible with two earlier decisions of the court of appeals, both of which rejected Establishment Clause defenses to intentional tort claims asserted against religious entities when the claims did not require interpretation of religious doctrine or assessment of the truth or falsity of religious beliefs. Properly applying those cases' reasoning here would have yielded a different result. These inconsistent decisions warrant this Court's intervention. *Id.*

How the Establishment Clause applies to intentional torts is a recurring question with significant ramifications. The court of appeals has crafted a rule that has no basis in the Establishment Clause, is at odds with this Court's free exercise case law, and conflicts

with the court of appeals' earlier decisions. This doctrinal confusion deprives religious actors of clear guidance and victims, like Ria, of a remedy.

II. The Court of Appeals Ruled Erroneously on an Issue This Court has Never Decided.

A. *Franco* did not decide whether the Establishment Clause bars intentional tort claims based on religiously motivated conduct.

Franco did not resolve when the Establishment Clause applies to bar intentional tort claims based on religiously motivated conduct. *Franco* arose out of the sexual abuse of the plaintiff, a member of the Church of Jesus Christ of Latter-day Saints, by another church member. 2001 UT 25, ¶ 3. To cope with the abuse, the plaintiff sought "ecclesiastical counseling" from a local bishop and church president and eventually asked the church leaders to refer her to a "licensed mental health professional." *Id.* ¶ 22. The defendants made a referral but, in the plaintiffs' view, did so improperly because the counselor they recommended was not licensed. The plaintiff then sued for injuries stemming from the counseling and referral, asserting, among other claims, "(1) clerical malpractice; (2) gross negligence; (3) negligent infliction of emotional distress; (4) breach of fiduciary duty; [and] (5) intentional infliction of emotional distress." *Id.* ¶ 4.

This Court analyzed the plaintiff's negligence-based claims—all of which, this Court found, sounded in clergy malpractice—under the Establishment Clause of the First Amendment. *Id.* ¶ 17; *see* U.S. Const. amend. I. Government action is consistent with the Establishment Clause if it has a "secular legislative purpose," "neither advance[s] nor inhibit[s] religion," and does not "foster 'an excessive government entanglement with religion.'" *Id.* ¶ 13 (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971)). Focusing on

the third prong of the "*Lemon* test," the Court noted that "it is well settled that civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by . . . the entanglement doctrine." *Id.* ¶ 15. This includes claims for clergy malpractice, the Court concluded, as other courts have "uniformly" found. *Id.* ¶ 17.

This result stems from the nature of clergy malpractice as a *negligence*-based tort. First, because clergy malpractice is rooted in negligence, adjudicating such a claim would require a court to determine the appropriate standard of care. That necessitates "ascertaining whether the [defendant] performed within the level of expertise expected of a similar professional, i.e., a reasonably prudent bishop, priest, rabbi, minister, or other cleric in this state." *Id.* ¶ 23. Making that judgment, in turn, involves "evaluat[ing] and investigat[ing] religious tenets and doctrines," an impermissibly entangling inquiry. *Id.* ¶ 23; *see also F.G. v. MacDonell*, 696 A.2d 697, 703 (N.J. 1997) ("[D]efining such a standard would require courts to identify the beliefs and practices of the relevant religion and then to determine whether the clergyman had acted in accordance with them."); *cf. Jones v. Wolf*, 443 U.S. 595, 604 (1979) (explaining that civil courts cannot resolve religious "doctrinal issue[s]").

Second, even if a generalized standard could be devised, imposing a uniform duty for clergymen to follow would "embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs." *Franco*, 2001 UT 25, ¶ 23. Unlike laws that regulate conduct for society at large, this standard of care would, problematically, apply only to

religious actors and would pervade how they perform their clerical duties. *Cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (laws that target religious conduct are constitutionally suspect). Mandating compliance with such a standard would "establish an official religion of the state." 2001 UT 25, ¶ 23 (citation omitted). In light of these dual concerns, this Court affirmed the dismissal of the plaintiff's claims that sounded in clergy malpractice.

That is where this Court's consideration of the Establishment Clause ended. In dismissing the plaintiff's IIED claim, the *Franco* Court concluded that the plaintiff had not adequately pleaded the elements of an IIED claim because she failed to allege that the defendants referred her to the counselor "for the purpose of inflicting emotional distress" or that they knew the counselor was unlicensed or had "any other indication" that their conduct might cause emotional distress. *Id.* ¶¶ 27–29. Absent such allegations, this Court concluded that the defendants' actions could not be considered "outrageous and intolerable as a matter of law," and thus it was unnecessary to "reach the constitutional issue." *Id.* ¶¶ 29–30. Notably, this Court did not even suggest that judging the outrageousness of the defendants' conduct in their role as ecclesiastical counselors would, without more, qualify as an "interpretation" of "religious practices" that violates the Establishment Clause.

B. The court of appeals misapplied *Franco* and the Establishment Clause.

Franco provides a manageable and straightforward rule: courts cannot judge religious conduct against a *religious* standard of care. Doing so impermissibly requires interpreting religious doctrines and imposing the civil court's understanding of those doctrines as a standard of religious practice.

The decision below, however, stretched *Franco*'s limited holding to new territory. Although the court of appeals acknowledged that *Franco* concerned "negligence-based torts," it failed to appreciate the critical distinction between clergy malpractice claims and intentional tort claims like Ria's. Specifically, the court of appeals construed *Franco*'s rule against "interpret[ing] church law, policies, or practices" to bar "interpret[ing] the 'outrageousness' of [Respondents'] conduct." 2019 UT App 40, ¶¶ 12, 16; *see also id.* ¶ 16 (describing as unconstitutional "evaluat[ing] religious activity" and "assess[ing] the 'outrageousness' of a religious practice"). The court of appeals thus confused *Franco*'s holding that assessing conduct against *religious* standards is unconstitutional for one that encompasses assessing conduct against even *secular* standards, such as "outrageousness."

Franco's prohibition on "interpret[ing] church law, policies, or practices," properly understood, extends only to seeking to discern the meaning of religious doctrines and what practices those doctrines require or prohibit. It is that kind of inquiry that risks entanglement, not an inquiry into whether religiously motivated conduct violates a secular standard. This distinction explains why the U.S. Supreme Court has ruled that it is permissible for civil courts to adjudicate intra-church disputes by applying "neutral principles of law" (such as using trust principles to construe the language of deeds), *see Jones*, 443 U.S. at 602, but not by interpreting religious doctrine or law, *see, e.g.*, *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721 (1976) (a civil court may not "substitute[] its interpretation of the . . . Church constitutions" for that of a religious entity). And this distinction undergirds this Court's refusal in *Franco* to inquire into religious standards when dismissing the plaintiff's clergy malpractice claim, while nonetheless

assessing whether the plaintiff's allegations established "outrageous[ness]" as a matter of law for purposes of the IIED claim. Thus, *Franco* itself demonstrates that, contrary to the court of appeals' conclusion, there is nothing inherently impermissible about "interpreting" religiously motivated conduct under secular standards.

As a general matter, intentional tort claims require judging conduct against secular, not religious, standards.[4] For this reason, "liability for intentional torts can be imposed without excessively delving into religious doctrine, polity, and practice." *Gibson v. Brewer*, 952 S.W.2d 239, 249 (Mo. 1997) (en banc). Indeed, other courts have recognized that there is a material difference between negligence-based claims against clergymen and intentional torts. *See, e.g., id.* (dismissing negligence-based claims, but not IIED claim, under the First Amendment); *F.G.*, 696 A.2d at 702, 704 (observing that "courts have recognized claims for intentional torts against clergymen" and allowing claim of breach of fiduciary duty to proceed because it did "not require establishing a standard of care"); *see also Roppolo v. Moore*, 644 So. 2d 206, 208 (La. Ct. App. 1994) ("If sexual or other conduct of a priest violates *secular* standards, e.g., child molestation, this Court will impose whatever civil or criminal secular sanctions may be appropriate. But this Court has no authority to determine or enforce standards of religious conduct and duty.").

[4] There are occasional exceptions when intentionally tortious conduct may require interpreting religious doctrine. *See, e.g., Mammon v. SCI Funeral Servs. of Fla. Inc.*, 193 So. 3d 980, 986 (Fla. Dist. Ct. App. 2016) (affirming dismissal of fraud claim that would require the court "to determine what constitutes 'Jewish burial customs and traditions'"). The Establishment Clause analysis might apply differently in these cases.

Like the mine-run of intentional torts, adjudicating IIED claims requires no interpretation of religious doctrine. The "outrageousness" of the challenged conduct is judged against "generally accepted standards of decency and morality" without any inquiry into religious standards of outrageousness (if any exist) or how a person in a given religious congregation may view the challenged conduct. *Jackson*, 904 P.2d at 687–88; *see also, e.g.*, *Oman v. Davis Sch. Dist.*, 2008 UT 70, ¶ 53, 194 P.3d 956 (outrageousness is judged against what would be "utterly intolerable in a civilized society") (citation omitted).

Further, there is nothing unusual about Ria's IIED claim that would necessitate an impermissible inquiry into religious doctrine. Ria does not ask this Court to review whether Respondents appropriately opened an inquiry into porneia, whether that inquiry followed the rules for Jehovah's Witnesses disciplinary proceedings, or whether the ultimate outcome was proper—all questions of religious doctrine that Jehovah's Witnesses have the right to decide for themselves. Nor does Ria's claim ask a court to set a general "standard of care" for conducting religious disciplinary proceedings, as Respondents claimed below. (R. 284.) Rather, Ria contends that forcing a 15-year-old child to listen to an audio recording of her rape, in the face of her protests, crying, and trembling, is outrageous and intolerable behavior, no matter the setting, whether religious or otherwise. Because resolution of this claim requires no inquiry into church doctrine, it poses no risk of excessive entanglement.

The court of appeals' mistaken conclusion that the Establishment Clause bars all "interpretation" of religious practices thus has no foundation in the entanglement concerns *Franco* articulated. Had Respondent Elders broken into Ria's home to obtain "evidence"

or inflicted physical violence to extract a confession, the Establishment Clause would not shield their conduct from review. For the same reason, they were not free to, in effect, psychologically torture Ria by forcing her to listen to her rape to extract a confession. This Court should grant the petition to clarify how the Establishment Clause applies to intentional tort claims so that injurious conduct is not immunized where, as here, there is no actual risk of excessive entanglement.

C. The court of appeals' decision is in considerable tension with this Court's free exercise case law.

The court of appeals' rule that "assessing" religious conduct against the secular standard of "outrageousness" is impermissible under the Establishment Clause is also in tension with this Court's decision in *Jeffs v. Stubbs*, 970 P.2d 1234 (1998), which rejected a similar defense under the Free Exercise Clauses of the federal and Utah constitutions. This Court should clarify how the First Amendment applies to intentional torts to avoid the risk of inconsistent case law. *Cf. Franco*, 2001 UT 25, ¶ 42 (Durrant, J., concurring) (emphasizing the "mutually reinforcing dynamic" of the religion clauses).

Jeffs concerned a land dispute between two factions of the Priesthood Work, a religious movement formed to allow for the practice of plural marriage. Members had deeded their land to a church-run trust, but were encouraged to make improvements to the land on the promise that they could live there indefinitely. *Id.* at 1239–40. Following a dispute "over a doctrinal issue," one group took control of the trust and declared everyone tenants at will. *Id.* at 1240. A group of land claimants on the other side of the religious

dispute sued, claiming, among other things, that the defendants had been unjustly enriched by the improvements. *Id.*

On appeal, the defendants argued that the trial court's ruling in favor of the plaintiffs infringed their free exercise rights under the U.S. and Utah Constitutions in two ways. First, they argued that the court could not hear the plaintiffs' unjust enrichment claim at all because to do so would be "tantamount to judging the fairness of the [defendants'] religious practices." *Id.* at 1243. This Court rejected that argument, concluding that there was no basis to "limit the application of the doctrine of unjust enrichment solely because of the religious . . . motivation" of the parties where "no question of church doctrine" was involved. *Id.* at 1243–44.

Second, the defendants argued that the trial court's equitable remedy violated their free exercise rights because it "measure[d] religious expression against secular standards of fairness." *Id.* at 1248. Rather than deem any application of secular standards to religiously motivated conduct to be unconstitutional, as the court of appeals did in this case, the *Jeffs* Court performed a case-specific analysis, ultimately concluding that the remedy awarded was constitutional. *Id.* at 1249.

Jeffs also demonstrates that the decision below is in tension not only with Utah's free exercise jurisprudence, but also that of the U.S. Supreme Court. As *Jeffs* explained, in analyzing claims under the federal Free Exercise Clause, the U.S. Supreme Court has held that government action that burdens religious exercise is permissible if it is based on a "valid and neutral law of general applicability." *Id.* (quoting *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 879 (1990)); *see also Prince v. Massachusetts*, 321

U.S. 158, 170 (1944) (upholding convictions for violating Massachusetts' child labor laws against free exercise defense). In other words, the Free Exercise Clause is not offended when neutral, *secular* standards are applied to religious conduct. This principle recognizes that a contrary rule would "make the professed doctrines of religious belief superior to the law of the land." *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878) (rejecting free exercise defense to bigamy prosecution). As the Missouri Supreme Court, sitting en banc, has noted, the principle espoused in *Smith* "logically applies to intentional torts," and "[r]eligious conduct intended or certain to cause harm need not be tolerated under the First Amendment." *Gibson*, 952 S.W.2d at 248.

As *Jeffs* and the U.S. Supreme Court's jurisprudence make clear, the same principle that the court of appeals found required dismissal in this case—that religiously motivated conduct cannot be judged against secular standards—has been expressly *rejected* under the federal and Utah Free Exercise Clauses. The result is that the court of appeals' opinion arbitrarily provides total immunity for religiously motivated conduct when a defendant invokes the Establishment Clause. This Court should grant the petition to "resolve . . . [the] inconsistency in [the] legal standard[s]" in these cases. Utah R. App. P. 46(a)(3).

III. The Court of Appeals Has Ruled Inconsistently in Applying the Establishment Clause to Intentional Torts.

This Court's review is also warranted because the court of appeals' application of the Establishment Clause to intentional torts has yielded inconsistent results. *See* Utah R. App. P. 46(a)(3). In this case and two others, the court of appeals has attempted to draw a line between "secular activity"—for which a defendant may be liable—and religious

activity—for which a defendant is immune. After the decision below, where that line falls is unclear, and the court of appeals' decisions cannot be reconciled.

In the first case, *Hancock v. True Living Church of Jesus Christ of Saints of Last Days*, 2005 UT App 314, 118 P.3d 297, the court considered a fraud claim. The defendant church and its leaders promised the plaintiff that, if she donated money to the church, she would receive "property and support" and a "face to face meeting with Jesus Christ." *Id.* ¶ 3. The court of appeals ruled that, inasmuch as the fraud claim was based on "promises of future earthly benefits"—*i.e.*, property and support—it could proceed because the claim concerned only "secular activity potentially amounting to violations of generally applicable civil law." *Id.* ¶ 17. By contrast, the First Amendment barred her claim based on the allegation that the plaintiff "never met Christ face to face as promised," *id.* ¶ 17 n.2, consistent with courts' general refusal to determine the truth or falsity of religious belief. *See, e.g.*, *United States v. Ballard*, 322 U.S. 78, 86 (1944) (a person may not be "put to the proof of their religious doctrines or beliefs").

The court of appeals applied the "secular activity" principle again in *Gulbraa*. There, a mother took her children to Japan in contravention of a court order awarding custody to the plaintiff father. 2007 UT App 126, ¶ 2. The father contacted leaders of the LDS Church in Japan to ask that they not provide his eldest son with his priesthood ordinance without the father's consent. *Id.* ¶ 3. Despite promising to honor the father's request, the church provided the son with his priesthood ordinance. *Id.* ¶ 5. The defendant church then also instructed church leaders in Japan not to provide any information to the father about his children so that he could not travel to retrieve them. *Id.* ¶ 7.

The father sued, advancing a variety of tort and contract claims. The court of appeals concluded that the Establishment Clause barred the father's claims based on his son receiving his priesthood ordinance because deciding them would require determining, among other things, the father's "religious worthiness to participate" in the priesthood ordinance, a question that necessitates interpreting church doctrine. *Id.* ¶ 18. But the court allowed the father's IIED claim based on the church's directive not to provide him with information about his children's whereabouts to proceed because the court deemed "conceal[ing] the location" of the children to be "secular activity." *Id.* ¶ 22.

Gulbraa and *Hancock* established a relatively clear line between "secular activity" and religious activity. Where adjudicating a claim requires assessing the truth or falsity of a religious belief (whether a meeting with Jesus occurred in *Hancock*) or interpreting religious doctrine (the father's "religious worthiness" in *Gulbraa*), the Establishment Clause shields the religious actor from liability. Where it does not, the conduct constitutes "secular activity" that can serve as the basis for an adjudicable claim.

The decision below is incompatible with these holdings. Ria's claim depends in no way on the interpretation of religious doctrine or an evaluation of the truth or falsity of Respondents' beliefs. Although Respondent Elders may have been motivated by their beliefs in playing the recording, the same can be said of the "secular activity" in *Hancock*, where the fraud occurred in a context (raising church funds) that undoubtedly bore religious motivation. In *Gulbraa*, too, the actionable conduct concerned the oversight of church leaders and members, which was surely intertwined with religious concerns. This Court should grant the petition to eliminate this inconsistency in the court of appeals' case law.

IV. This Case Is an Ideal Opportunity to Decide an Important Question of Law.

How the Establishment Clause applies to intentional torts is a recurring question that the court of appeals repeatedly has confronted. *See, e.g.*, *Doe v. Corp. of President of Church of Jesus Christ of Latter-day Saints*, 2004 UT App 274, ¶¶ 6, 14, 98 P.3d 429 (noting that the district court dismissed claim under the Establishment Clause but affirming on other grounds). This Court should grant the petition to provide a clear rule that can be applied consistently going forward.

This case presents an excellent opportunity for this Court to do so. Apart from any Establishment Clause concerns, it is clear that Ria stated a valid claim against Respondents. As the district court found, Respondents' conduct was "reprehensible" and sufficient to send to a jury. (R. 261.); *cf.* Restatement (Second) of Torts § 46 cmt. e, ex. 6 (1965) (describing as an archetypal example of IIED a principal accusing a "schoolgirl" of "immoral conduct with various men," "bull[ying]" her for an "hour," and threatening "public disgrace"). The court of appeals' erroneous interpretation of the Establishment Clause therefore was dispositive.

Additionally, the consequences of allowing the court of appeals' decision to stand are significant. In banning any "assessment" of religious conduct against secular standards, the court of appeals immunized a large swath of harmful conduct from any judicial review whatsoever. The court of appeals' decision on its face applies to all religiously motivated conduct. *See* 2019 UT App 40, ¶ 15 (finding Ria's claim problematic because it "requires [the court] to assess religiously prescribed conduct"). It also applies regardless of whether the victim is a member of the wrongdoer's church.

Nor is the court of appeals' decision limited to IIED claims. Its logic extends to other intentional torts and unlawful conduct that involve secular standards. For example, nuisance claims require an inquiry into whether conduct is "indecent" or "offensive," Utah Code § 78B-6-1101(1); a cause of action for minors injured by pornographic materials requires determining whether the materials are "patently offensive," *id.* §§ 78B-6-2101(2)(b), 78B-6-2103(1); and the tort of battery includes an assessment of whether a reasonable person would consent to the challenged contact, *Reynolds v. MacFarlane*, 2014 UT App 57, ¶ 14, 322 P.3d 755. Courts' ability to apply these secular standards—and many others, such as the bigamy prohibition in *Reynolds* and the child labor regulation in *Prince*—to religiously motivated conduct will be, at best, in serious doubt.

The importance of the court of appeals' decision also must be considered against the reality that sexual abuse and assault are all too common problems in religious communities.[5] Overcoming trauma and social stigma to seek relief—whether from the assault itself or, as in this case, mistreatment in the aftermath—is difficult enough for victims as it is, especially young victims. The erroneous decision below provides yet another barrier to obtaining justice, and it should not be left uncorrected.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

[5] *See, e.g.*, Douglas Quenqua, The Atlantic, *A Secret Database of Child Abuse* (Mar. 22, 2019) (discussing sexual abuse allegations related to Jehovah's Witnesses); John Jay College of Criminal Justice, *The Nature and Scope of Sexual Abuse of Minors By Catholic Priests and Deacons in the United States 1950–2002* (2004).

DATED this 22nd day of May, 2019.

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CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of May, 2019, I caused two true and correct copies of the foregoing Petition for Writ of Certiorari to be served via first-class mail, with a copy by email, on:

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APPENDIX

Opinion of the Utah Court of Appeals

March 21, 2019

THE UTAH COURT OF APPEALS

RIA WILLIAMS,
Appellant,
v.
KINGDOM HALL OF JEHOVAH'S WITNESSES, ROY UTAH;
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK INC;
HARRY DIAMANTI; ERIC STOCKER; RAULON HICKS; AND
DAN HARPER,
Appellees.

Opinion
No. 20170783-CA
Filed March 21, 2019

Second District Court, Ogden Department
The Honorable Mark R. DeCaria
No. 160906025

John M. Webster and Matthew G. Koyle, Attorneys
for Appellant

Karra J. Porter and Kristen C. Kiburtz, Attorneys
for Appellees

JUDGE KATE APPLEBY authored this Opinion, in which
JUDGES JILL M. POHLMAN and DIANA HAGEN concurred.

APPLEBY, Judge:

¶1 Ria Williams appeals the district court's dismissal of her tort claims for negligent infliction of emotional distress and intentional infliction of emotional distress against defendants Kingdom Hall of Jehovah's Witnesses, Roy Utah; Watchtower Bible and Tract Society of New York Inc.; Harry Diamanti; Eric Stocker; Raulon Hicks; and Dan Harper (collectively, the Church). We affirm.

BACKGROUND

¶2 Williams and her family attended the Roy Congregation of Jehovah's Witnesses.[1] In the summer of 2007, Williams met another Jehovah's Witnesses congregant ("Church Member"). Williams and Church Member began seeing each other socially, but the relationship quickly changed and throughout the rest of the year Church Member physically and sexually assaulted Williams, who was a minor.

¶3 In early 2008 the Church began investigating Williams to determine whether she engaged in "porneia," a serious sin defined by Jehovah's Witnesses as "[u]nclean sexual conduct that is contrary to 'normal' behavior." Porneia includes "sexual conduct between individuals who are not married to each other." The Church convened a "judicial committee" to "determine if [Williams] had in fact engaged in porneia and if so, if was she sufficiently repentant for doing so." A group of three elders (the Elders)[2] presided over the judicial committee. Williams voluntarily attended the judicial committee with her mother and step-father. The Elders questioned Williams for forty-five minutes regarding her sexual conduct with Church Member.[3]

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1. "Because this is an appeal from a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure, we review only the facts alleged in the complaint." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 2, 21 P.3d 198 (quotation simplified).

2. Elders are leaders of local congregations and are responsible for the daily operations and governance of their congregations.

3. Williams alleged in her complaint that although church policy requires elders to conduct judicial committees to investigate

(continued…)

¶4 After questioning Williams about her sexual conduct, the Elders played an audio recording of Church Member raping Williams. Church Member recorded this incident and gave it to the Elders during their investigation of Williams. The recording was "several hours" in length. Williams cried and protested as the Elders replayed the recording. The Elders played the recording for "four to five hours" stopping and starting it to ask Williams whether she consented to the sexual acts. During the meeting Williams was "crying and physically quivering." Williams conceded she was able to leave but risked being disfellowshipped if she did.[4]

¶5 Williams continues to experience distress as a result of her meeting with the Elders. Her symptoms include "embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life," and spiritual suffering. Williams filed a complaint against the Church for negligence, negligent supervision, failure to warn, and intentional infliction of emotional distress (IIED).

¶6 In response to her complaint, the Church filed a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure. Williams filed an amended complaint dropping her negligence claims and adding a claim for negligent infliction of emotional distress (NIED) to the IIED claim. The Church filed a second motion to dismiss under rule 12(b)(6). The motion argued the

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(…continued)
claims of sexual abuse, the Church does not train them on how to interview children who are victims of sexual abuse.

4. Disfellowship is expulsion from the congregation. When someone is disfellowshipped, an announcement is made to the congregation that the member is no longer a member of the Jehovah's Witnesses, but no details are given regarding the nature of the perceived wrongdoing.

United States and Utah constitutions barred Williams's claims for IIED and NIED.[5]

¶7 After considering the motions and hearing argument the district court dismissed Williams's amended complaint. It ruled that the First Amendment to the United States Constitution bars Williams's claims for NIED and IIED. The court ruled that Williams's claims "expressly implicate key religious questions regarding religious rules, standards, . . . discipline, [and] most prominently how a religion conducts its ecclesiastical disciplinary hearings." Although the allegations in the complaint were "disturbing" to the court, it ruled that the conduct was protected by the First Amendment and adjudicating Williams's claims would create unconstitutional entanglement with religious doctrine and practices. Williams appeals.

ISSUES AND STANDARDS OF REVIEW

¶8 Williams argues the district court erred in dismissing her amended complaint. When reviewing appeals from a motion to dismiss, we "review only the facts alleged in the complaint." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 2, 21 P.3d 198 (quotation simplified). We "accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff." *Id.* (quotation simplified). We will affirm a district court's dismissal if "it is apparent that as a matter of law, the plaintiff could not recover under the facts alleged." *Id.* ¶ 10 (quotation simplified). "Because we consider only the legal sufficiency of the complaint, we grant the trial court's ruling no

5. The Church also argued Williams's claim for IIED failed because the conduct was not "outrageous" as a matter of law and her claim for NIED failed because Williams did not allege sufficient facts to support it.

deference" and review it for correctness. *Id.* (quotation simplified).

ANALYSIS

¶9 Williams argues the First Amendment to the United States Constitution does not bar her claim for IIED.[6] Specifically, she contends the Elders' conduct was not religiously prescribed and therefore adjudicating her claims does not violate the Establishment Clause.[7]

¶10 The First Amendment to the United States Constitution provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

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6. Arguments under both the Utah and United States constitutions were presented to the district court. But the court determined dismissal was required under the federal constitution and did not reach the state constitutional analysis. Williams focuses her arguments on appeal on the federal constitution and does not argue the district court erred in failing to consider the Utah Constitution. As a result we likewise focus our analysis on the federal constitution. *See State v. Worwood*, 2007 UT 47, ¶ 18, 164 P.3d 397 ("When parties fail to direct their argument to the state constitutional issue, our ability to formulate an independent body of state constitutional law is compromised."); *see also State v. Sosa*, 2018 UT App 97, ¶ 7 n.2, 427 P.3d 448 (stating that although arguments under both the state and federal constitutions were made to the district court, we will not consider both constitutions when the appellant only makes arguments under the federal constitution).

7. "[B]ecause the Establishment Clause is dispositive of the issues before us, we do not address the Free Exercise Clause." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 11 n.8, 21 P.3d 198.

thereof." U.S. Const. amend. I. These provisions are known as the Establishment Clause and the Free Exercise Clause and they apply to the states through the Fourteenth Amendment. *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 11, 21 P.3d 198 (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940)).

¶11 In *Franco*, the Utah Supreme Court applied what is known as the *Lemon* test to determine "whether government activity constitutes a law respecting an establishment of religion" under the Establishment Clause. *Id.* ¶ 13 (citing *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971)). This test requires the government action "(1) must have a secular legislative purpose, (2) must neither advance nor inhibit religion, and (3) must not foster an excessive government entanglement with religion." *Id.* (quotation simplified).

¶12 Courts focus on the third prong of the test, "excessive government entanglement," when looking to determine clergy liability for tortious conduct. *Id.* Entanglement "is, by necessity, one of degree" because not all government contact with religion is forbidden. *Id.* ¶ 14. "[T]he entanglement doctrine does not bar tort claims against clergy for misconduct not within the purview of the First Amendment, because the claims are unrelated to the religious efforts of a cleric." *Id.* But tort claims "that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred" by the entanglement doctrine. *Id.* ¶ 15.

¶13 Some tort claims do not run afoul of the Establishment Clause because they do not require any inquiry into church practices or beliefs. *Id.* ¶ 14. For example, "slip and fall" tort claims against churches have been upheld because the tortious conduct was "unrelated to the religious efforts of a cleric." *Id.* (citing *Heath v. First Baptist Church*, 341 So. 2d 265 (Fla. Dist. Ct. App. 1977)); *see also Fintak v. Catholic Bishop of Chi.*, 366 N.E.2d 480 (Ill. App. Ct. 1977); *Bass v. Aetna Ins. Co.*, 370 So. 2d 511 (La. 1979).

¶14 But the Utah Supreme Court has rejected tort claims against church entities for "clergy malpractice" as well as other negligence-based torts that implicate policies or beliefs of a religion. *Franco*, 2001 UT 25, ¶¶ 16–19. "[I]t is well settled that civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by the First Amendment under the entanglement doctrine." *Id.* ¶ 15. It is important that churches "have power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.* (quotation simplified).

¶15 Allowing Williams's claims in this case to be litigated would require the district court to unconstitutionally inject itself into substantive ecclesiastical matters. Williams argues she is not challenging the Church's ability to determine what constitutes "sinful behavior," its ability to convene a judicial committee to investigate whether a member has engaged in "sinful behavior," or its ability to punish members based on a finding of "sinful behavior." But Williams asks the factfinder to assess the manner in which the Church conducted a religious judicial committee, which requires it to assess religiously prescribed conduct. *See, e.g.*, *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 659 (10th Cir. 2002) (holding that a plaintiff's sexual harassment lawsuit was properly dismissed because the statements were "not purely secular disputes with third parties, but were part of an internal ecclesiastical dispute and dialogue protected by the First Amendment"); *Stepek v. Doe*, 910 N.E.2d 655, 668 (Ill. App. Ct. 2009) (holding that "resolving this [defamation] dispute would involve the secular court interfering with the Church's internal disciplinary proceedings" where the plaintiff's claim is based on the statements made in a disciplinary setting); *In re Goodwin*, 293 S.W.3d 742, 749 (Tex. App. 2009) (dismissing a claim for IIED against a church for the method in which it punished a member because it would "require an inquiry into the truth or falsity of religious beliefs" (quotation simplified)). Adjudicating Williams's claims would involve excessive government entanglement with the Church's

"religious operations, the interpretation of its teachings" and "the governance of its affairs." *Gulbraa v. Corp. of the President of the Church of Jesus Christ of Latter-day Saints*, 2007 UT App 126, ¶ 25, 159 P.3d 392. This subjects the Church to "judicial oversight in violation of the Establishment Clause of the United States Constitution." *Id.*

¶16 Williams argues the factfinder need not consider ecclesiastical matters to adjudicate her claim for IIED and that she merely seeks to utilize generally applicable tort law. But the issue is not whether the tort law itself is neutral and generally applicable. The issue is whether the tort law being applied is used to evaluate religious activity in violation of the Establishment Clause. In this case, Williams asks the factfinder to interpret the "outrageousness" of the Church's conduct in investigating her alleged sins. *See Russell v. Thomson Newspapers, Inc.*, 842 P.2d 896, 905 (Utah 1992) (noting the elements of IIED include intentional conduct by the defendant toward the plaintiff that is "outrageous and intolerable in that it offends generally accepted standards of decency and morality"). Because Williams's IIED claim asks the factfinder to assess the "outrageousness" of a religious practice, this violates the Establishment Clause. *See Franco*, 2001 UT 25, ¶ 15 (holding that claims that require courts to interpret religious practices or beliefs are barred by the Establishment Clause).

¶17 This case is distinguishable from *Gulbraa*, in which this court allowed the plaintiff's IIED claim against a religious entity to proceed. 2007 UT App 126, ¶ 22. In *Gulbraa* the plaintiff claimed emotional distress as a result of the church's conduct in concealing the location of his children. *Id.* This court held this allegation involved "secular activity potentially amounting to a violation of generally applicable civil law" and therefore was not barred by the Establishment Clause. *Id.* (quotation simplified). Unlike the IIED claim in *Gulbraa*, Williams's IIED claim directly implicates religious activity not secular activity. And although Williams claims distress under a generally applicable law, the distress she experienced arose out of the manner in which the

Church conducted a religiously prescribed judicial committee to investigate her alleged sins.

¶18 We conclude Williams's claim for IIED requires an inquiry into the appropriateness of the Church's conduct in applying a religious practice and therefore violates the Establishment Clause of the First Amendment.[8]

CONCLUSION

¶19 The district court did not err in dismissing Williams's complaint as violating the Establishment Clause of the First Amendment. We affirm.

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8. Williams's claim for NIED also violates the Establishment Clause of the First Amendment. She alleges that the Elders were not properly trained on how to conduct interviews of "minor victim[s] of rape," and argues the Church "should have realized [this] conduct involved an unreasonable risk of emotional, psychological, and physical damage to [Williams]." But these claims implicate the entanglement doctrine of the Establishment Clause in the same way her IIED claim does. *See Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 23, 21 P.3d 198 (dismissing a claim for NIED because the plaintiff's claim that the church "generally mishandled their ecclesiastical counseling duties" required the court to establish a standard of care "to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties" which "would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state" and therefore violates the First Amendment). Accordingly, we determine the district court did not err in dismissing it.

Opinion of the Second Judicial District Court for Weber County

August 10, 2017

IN THE SECOND JUDICIAL DISTRICT COURT, STATE OF UTAH
WEBER COUNTY, OGDEN DEPARTMENT

RIA WILLIAMS,

Plaintiff,

vs.

KINGDOM HALL OF JEHOVAH'S WITNESSES, ROY, UTAH, an unincorporated association, et al.,

Defendants.

RULING AND ORDER ON DEFENDANT'S MOTION TO DISMISS

Case No. 160906025

Judge Mark R. DeCaria

This matter came before the Court on Defendants Kingdom Hall of Jehovah's Witnesses, Roy, Utah; Watchtower Bible and Tract Society of New York, Inc.; Harry Diamanti; Eric Stocker; Raulon Hicks; and Dan Harper's (collectively referred to as Defendants) motion to dismiss filed February 13, 2017. Plaintiff filed a memorandum in opposition on March 2, 2017. Defendants filed a reply memorandum on March 24, 2017. Oral arguments were held on July 10, 2017. The Court has carefully reviewed the pleadings and briefs on this matter and is now prepared to enter its ruling. The Court hereby grants Defendants motion to dismiss.

ANALYSIS

This case arises from actions taken by Mr. Diamanti, Mr. Stocker, Mr. Hicks, and Mr. Harper[1] in the course of a religious judicial committee.[2] At the time of the judicial committee,

[1] Kingdom Hall of Jehovah's Witnesses, Roy, Utah and Watchtower Bible and Tract Society of New York, Inc. are alleged to be responsible for the training of the named defendants.

[2] Because this is a motion to dismiss under rule 12(b)(6), this Court will accept the allegations in the complaint as true for purposes of this motion and consider all reasonable inferences in favor of Plaintiff. Prows v. State, 822 P.2d 764, 766.

Plaintiff was fifteen years old.[3] However, at the time of the conduct which led to the judicial committee, Plaintiff was only fourteen years old.[4] This judicial committee was convened to determine if Plaintiff had engaged in pornea, defined by Jehovah's Witnesses as serious sexual sin.[5] At this committee, Plaintiff was subjected to intense scrutiny and harsh questioning for several hours.[6] As part of their interrogation of Plaintiff, the members of the judicial committee played an audio tape[7] which had been given to them by Defendant Williams.[8] [9] This audio tape contained a recording of Defendant Williams allegedly raping Plaintiff.[10] Members of the committee forced Plaintiff to listen to the tape, stopping it at different times and requiring Plaintiff to describe what was happening and repeatedly accusing her of consenting to the conduct.[11] [12]

Defendants argue that the question of whether or not their conduct was outrageous and intolerable in civil society cannot be reached because the conduct occurred in an ecclesiastical judicial committee and is thus protected by the First Amendment to the U.S. Constitution.[13] Defendants argue that allowing this case to go forward would require the Court to look at the law, policies, or practices of a religious institution. Such a review would, Defendants argue, violate the First Amendment.

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[3] Pl.'s Mem. 20.
[4] Def.'s Reply, Ex. 1, p. 4. Note that Plaintiff's age is listed only as fifteen in Plaintiff's memorandum in opposition.
[5] Am. Compl. 13, ¶ 50.
[6] Id. 14, ¶ 52 – 54.
[7] While the Court is aware that the legal definition of child pornography would not cover an audio recording without any visual aspect, it is still disturbing to this Court that Defendants apparently had no qualms with not only possessing but listening to the contents of an audio recording that included sexual conduct by a fourteen year old girl.
[8] Defendant Williams is not a party to this motion.
[9] Am. Compl. 13, ¶ 54.
[10] Id.
[11] Id. ¶ 55.
[12] It is worth noting that Defendant Williams was eighteen at the time the sexual conduct occurred. If Plaintiff was indeed only fourteen when the conduct heard on the tape occurred, she was legally unable to consent to have any sexual relations with the male who recorded the encounter.
[13] Defendants also argue that the Utah Constitution requires dismissal. Because this Court determines that dismissal is required under the federal constitution, it does not reach the state constitution question.

The First Amendment prohibits Congress from making any law "respecting an establishment of religion." U.S. Const. amend. I. Courts have interpreted this clause as applying to not only statutory law but also court action through civil lawsuits. Franco v. The Church of Jesus Christ of Latter-Day Saints, 2001 UT 25, ¶ 12, citing Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 191 (1960). In Lemon v. Kurtzman, the Supreme Court articulated a test to determine when governmental action constituted a "law respecting an establishment of religion." 403 U.S. 602 (1971). In order for governmental action to comport with the establishment clause of the First Amendment, the action: (1) must have a "secular legislative purpose"; (2) cannot advance or inhibit religion; and (3) "must not foster 'an excessive government entanglement with religion.'" Id. at 612 – 13. "In addressing the tort liability of clergy under the Establishment Clause, courts have focused on the "third prong" of the Lemon test, 'excessive government entanglement.'" Franco at ¶ 13.

The excessive entanglement doctrine does not forbid all governmental contact with religion. For instance, it does not forbid lawsuits involving clergy misconduct unrelated to the religious efforts of a cleric. Id. at ¶ 14. However, the law is well settled that the entanglement doctrine forbids tort claims requiring the court to "review and interpret church law, policies, or practices in the determination of the claims." Id. at ¶ 15. Accordingly, when a tort claim is brought against a religion, "the central inquiry involved is whether the causes of action alleged expressly implicate religious teachings, doctrines, and practices." Gulbraa v. Corp. of the Pres. of the Church of Jesus Christ of Latter Day Saints, 2007 UT App 126, ¶ 16.

As noted, not all governmental contact is forbidden. While religions are guaranteed nearly absolute freedom, they are not given carte blanche to engage in conduct that would pose a serious threat to public safety, health or welfare. Guinn v. Church of Christ of Collinsville, 775

P.2d 766 (Okla. 1989). Indeed, it is well settled that while the freedom to believe is absolute, the freedom to act is not. Cantwell v. Connecticut, 310 U.S. 296, 303. This is particularly true when children are involved. Where actions constitute a clear and present danger to the child, a state can intervene. Prince v. Massachusetts, 321 U.S. 158, 167. "Although one is free to believe what one will, religious freedom ends when one's conduct offends the law by . . . endangering a child's life." Lundman v. McKown, 530 N.W.2d 807, 817 (Minn. 1995). In that vein, a religious belief cannot justify actions that imperil children including withholding lifesaving medical care,[14] engaging child labor,[15] or failing to report child abuse.[16] [17]

Here, Plaintiff has alleged that Defendants caused her emotional distress by their actions during a religious judicial committee convened to determine if Plaintiff had engaged in sin. Plaintiff's claims expressly implicate key religious questions regarding religious rules, standards, and discipline, most prominently how a religion conducts its ecclesiastical disciplinary hearings. While the allegations are certainly disturbing, this Court is unable to disentangle Defendants conduct from the setting and context in which they took place. Further, nothing in the pleadings indicates Defendants conduct subjected Plaintiff to a clear and present danger. Though forcing a minor to listen to an audio recording of her alleged rape is nothing less than reprehensible, there is no showing that it endangered Plaintiff's life.

This case was a close call given the seriousness of the allegations. Indeed, if this conduct had occurred in a secular setting, the Court would have no hesitation in sending this claim to the jury. However, if we as jurists allow ourselves to abdicate our duty to protect freedom when we find the actions to be distasteful or even repugnant, we fail in our sacred duty to uphold and

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[14] Lundman at 817.
[15] Prince at 170.
[16] People v. Hodges, 13 Cal.Rptr.2d 412 (Cal. App. Dep't Super. Ct. 1992).
[17] Note that Utah's mandatory reporting requirement includes an exception for clergy if certain conditions are met. Utah Code Ann. §62A-4a-403.

protect the Constitution upon which this nation was founded. Despite this Court's revulsion at the allegations, it cannot hear this case without excessively entangling itself in religion, and thus declines to do so.

ORDER

On the basis of the forgoing ruling, Defendants' motion to dismiss is granted.

This order constitutes the final order of the court in this matter, and no further documentation of this order is necessary.

Dated this 10 day of August, 2017.

Mark R. DeCaria
District Court Judge