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.	PUBLIC Supreme Court No. 20190422-SC Appeal No. 20170783-CA District Court No. 160906025

On Writ of Certiorari to the Utah Court of Appeals

BRIEF FOR PETITIONER

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The current parties are Plaintiff/Appellant/Petitioner Ria Williams and Defendants/Appellees/Respondents 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.

The former parties are Defendants Colin Williams and John Does 1-100.

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INTRODUCTION

When Petitioner Ria Williams was 15 years old, four adult male Elders in her Jehovah's Witnesses congregation—each a Respondent here—played an audio recording of Ria being raped in an effort to extract from her a confession that she had sex outside of marriage. Upon hearing the recording, Ria cried, physically trembled, and pleaded with the Elders to stop forcing her to relive the scarring experience. They did not stop. Instead, they continued to play the recording, on and off, for hours. Predictably, Ria suffered humiliation, anxiety, nightmares, loss of appetite, and poor performance in school. To recover for these injuries, Ria brought this suit for intentional infliction of emotional distress.

The district court recognized that the Elders' conduct was "reprehensible" and stated that it would have "no hesitation in sending th[e] claim to the jury" if it had "occurred in a secular setting." Nonetheless, the court concluded that the Establishment Clause of the First Amendment required dismissal because Ria's injury occurred in the context of a religious disciplinary proceeding. The court of appeals went even further, holding that the Establishment Clause broadly prohibits courts from assessing whether any "religious activity" violates secular standards.

The decisions below rest on a fundamental misunderstanding of the Establishment Clause. The Clause's prohibition on government action "respecting

an establishment of religion" does not immunize intentionally tortious conduct—like the seriously harmful acts at issue here—simply because the tortfeasor has a religious motive or the conduct somehow relates to religious discipline. That rule, if allowed to stand, would give actors free rein to injure others under the guise of religious freedom—a proposition that the U.S. Supreme Court has rejected repeatedly for over a century, going back to its seminal decision that a religious motivation is not a valid defense to a bigamy prosecution. *See Reynolds v. United States*, 98 U.S. 145, 166–67 (1878) (observing that a contrary rule would also allow for "human sacrifices" and leave government to "exist only in name").

The dangers of immunity for religiously motivated acts are wide-ranging, even if confined to religious discipline. The constitutional right that the Elders claim to psychologically torture Ria to extract a confession would extend equally to other harmful means of obtaining evidence in the name of religious discipline—whether breaking into a congregant's home, forcing a congregant to endure sleep deprivation, or inflicting physical violence. Religious authorities would also be immune from liability for any injuries caused by the penalty they decide to hand down for a violation of religious law. They could imprison the offending congregant, distribute sexually compromising pictures or recordings, or administer a range of other psychological or corporal punishments. As this case illustrates, even minor children could not invoke the protections of Utah law once

the tortfeasor clears the minimal threshold of claiming a religious disciplinary motive.

Instead of paving the way for these harmful results, in the context of litigation involving a religious party, the Establishment Clause does exactly what its text suggests: it precludes courts from "establishing" religion by deciding a dispute over religious doctrine to declare that one side holds the "correct" understanding of the tenets of faith, thereby "interven[ing] on behalf of [a] group[] espousing particular doctrinal beliefs." *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 709 (1976). It is thus only when a plaintiff's claim depends on first convincing a court of the meaning or truth of religious doctrine that deciding the cause of action transgresses the Establishment Clause. By contrast, when a defendant violates an independent and religiously neutral principle of civil law, the Establishment Clause imposes no obstacle to relief even if that defendant asserts that he was motivated by a religious belief.

Ria's claim satisfies these principles. She does not challenge whether the Elders had a religious motivation for playing the recording or whether they properly followed the dictates of Jehovah's Witness disciplinary doctrine. Rather, Ria alleges only that, by subjecting a 15-year-old to a recording of her rape, in the face of her serious distress, the Elders violated the secular prohibition on conduct "utterly intolerable in a civilized community" embodied in the tort of intentional

infliction of emotional distress, *see* Restatement (Second) of Torts § 46 cmt. d, and therefore infringed on her rights under Utah law. The Establishment Clause does not prevent Utah courts from providing Ria with a remedy under these circumstances.

ISSUE PRESENTED

The issue presented is whether the Court of Appeals erred in affirming the dismissal of Petitioner's complaint on the ground that it was precluded by the Establishment Clause of the First Amendment to the United States Constitution.

This is a question of law that this Court reviews for correctness. *E.g.*, *State v. Davis*, 972 P.2d 388, 390 (Utah 1998). "Because this is an appeal from a grant of a motion to dismiss, [this Court] construe[s] the facts in the light most favorable to the . . . non-moving part[y]." *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 4 n.2, 416 P.3d 595, 600 n.2. Petitioner preserved the issue for review. (R. 134–37.)

STATEMENT OF THE CASE

I. Factual Background

Petitioner Ria Williams was born into a family of Jehovah's Witnesses. (R. 79.) Throughout her childhood, Ria belonged to various Jehovah's Witnesses congregations. (*Id.*) At the time of the events that are the subject of this litigation, Ria and her family were part of the congregation of Respondent Kingdom Hall of

Jehovah's Witnesses of Roy, Utah ("Roy Kingdom Hall"), a local unit of the Jehovah's Witnesses analogous to a local church. (R. 72, 76, 79.)

In the summer of 2007, when Ria was 14 years old, she began spending time with Colin Williams, an 18-year-old fellow Jehovah's Witness. (R. 72, 79, 259 n.12.) Ria and Mr. Williams shared a mutual friend, and Mr. Williams also knew Ria's sister. (R. 79, 81.) At that time, Ria made plans to go to the movies with Mr. Williams and their mutual friend. (R. 79.) The trip, however, quickly turned into something far different. Their friend could not attend, leaving Ria alone with Mr. Williams. (*Id.*) After the movie, Mr. Williams took Ria's cell phone and refused to drive her home or return her phone unless she kissed his cheek, which she declined to do. (*Id.*) In the ensuing months, Mr. Williams's bullying continued, consistently growing more aggressive and violent. (R. 80–81.)

Mr. Williams's conduct soon escalated into sexual violence against Ria. In December 2007, Mr. Williams compelled Ria to get in his car and drove her to a "secluded area," where he proceeded to "kiss her, and touch her breasts and between her legs over the clothes, despite [Ria's] protests." (R. 82.) Within two weeks of that first sexual assault, Mr. Williams raped Ria three times. (R. 82-83.)

After Mr. Williams's sexual assaults on Ria were reported to the Elders, Respondent Roy Kingdom Hall initiated an investigation into whether Ria had committed the sin of "porneia." (R. 83.) Jehovah's Witnesses define porneia as

"unclean sexual conduct that is contrary to 'normal' behavior"; the term includes sex between two people who are not married. (R. 78.) The Elders—Respondents Harry Diamanti, Eric Stocker, Raulon Hicks, and Dan Harper—formed a "judicial committee" to lead the investigation. (R. 83.) A finding by the committee that Ria had engaged in porneia would carry the potential disciplinary consequence of "disfellowship," i.e., expulsion from the religious community. (R. 77.)

In April 2008, the Elders summoned Ria for questioning in connection with their investigation. (R. 83–84.) The Elders first questioned Ria (who was accompanied by her mother and stepfather) for 45 minutes about her interactions with Mr. Williams, including whether Ria had voluntarily engaged in sexual activity with him. (R. 84.) Having failed to obtain the information they wanted, the Elders then played an audio recording that Mr. Williams had provided that captured the sound of one of the times he had raped Ria. (*Id.*) Ria had a visceral and visible reaction to the recording. (*Id.*) She began "crying" and pleading that the Elders "not force her to relive the experience of being raped." (*Id.*)

Ria's evident distress and clear protest failed to deter the Elders from continuing to play the recording. (*Id.*) The Elders repeatedly played the recording (stopping intermittently to question Ria) in an effort to get Ria to confess that she had consented to the sexual activity. (*Id.*) This pattern continued for at least four hours, all while, in plain view of the Elders, Ria continued crying and was

"physically quivering" from the trauma of having to listen to her assault over and over. (*Id.*) As a result of the Elders' conduct, Ria—who was then only 15 years old—suffered serious harm, including humiliation, embarrassment, anxiety, nightmares, loss of appetite, and poor performance in school. (R. 86, 207–08.) Ria sought psychological counseling and medical treatment, and she continues to experience distress from the Elders' actions. (R. 84, 86.)

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

II. Procedural History

Ria filed this suit in the Second Judicial District Court for Weber County in 2016. She 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 governance of Jehovah's Witnesses (collectively, "Defendants").[1] (R. 72–73.) Ria's amended complaint (the

[1] 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.

"Complaint") asserts a claim of intentional infliction of emotional distress ("IIED") against all Defendants for the Elders' conduct in repeatedly playing the recording, despite the obvious distress it was causing her.[2] (R. 85-86.) Liability for IIED exists under Utah law when the defendant engages in "outrageous and intolerable" conduct intending that it will cause severe emotional distress. *See Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 37, 56 P.3d 524, 535; *infra* at 15. Defendants moved to dismiss Ria's Complaint, arguing that she failed to state a claim and that, even if she did, the religion clauses of the United States and Utah Constitutions barred her claims. (R. 97.)

The district court granted Defendants' motion to dismiss under the Establishment Clause of the First Amendment to the U.S. Constitution. (R. 262.) The court declared that "forcing a minor to listen to an audio recording of her alleged rape is nothing less than reprehensible" and stated that it would have "no hesitation in sending this claim to the jury" if it "had occurred in a secular setting." (R. 261.) Nonetheless, and "[d]espite th[e] Court's revulsion at the allegations," the court held that the religious "setting and context" compelled the court to dismiss the Complaint. (R. 261–62.) According to the district court, the

[2] In addition, Ria brought a claim for negligent infliction of emotional distress, which was dismissed below. As noted in the petition for a writ of certiorari, Ria does not seek review of the dismissal of that claim.

Establishment Clause precludes any claim that "implicate[s]" how a religious organization conducts its disciplinary hearings. *Id.*

The court of appeals affirmed. The court acknowledged that the tort of intentional infliction of emotional distress is a "generally applicable law." *Williams v. Kingdom Hall of Jehovah's Witnesses*, 2019 UT App 40, ¶ 17, 440 P.3d 820, 824. But the court of appeals found this fact irrelevant under a broad reading of this Court's statement in *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 15, 21 P.3d 198, 203, that "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." According to the court of appeals, under *Franco*, it does not matter "whether the tort law itself is neutral and generally applicable" if "the tort law being applied is used to evaluate religious activity." *Williams*, 2019 UT App 40, ¶ 16, 440 P.3d at 824. Applying this perceived bar, the court concluded that merely "assess[ing] the 'outrageousness' of religious activity" violates the Establishment Clause. *Id.* Thus, because Ria's claim "arose out of the manner in which [the Elders] conducted a religiously prescribed judicial committee," the court of appeals concluded that dismissal was proper. 2019 UT App 40, ¶ 17, 440 P.3d at 825.

SUMMARY OF ARGUMENT

I. Ria's Complaint alleges a quintessential claim of intentional infliction of emotional distress. The Elders, four adult men, repeatedly played an audio recording of Ria, then a 15-year-old girl, being raped at the age of 14, notwithstanding that Ria was crying, physically shaking from distress, and pleading with them to stop. This is exactly the type of outrageous conduct for which the tort is designed to provide a remedy, as numerous other courts have recognized under similar circumstances. It is fitting, therefore, that the district court had "no hesitation" concluding that Ria had stated a claim as a matter of tort law.

II. Because Ria has stated a claim for intentional infliction of emotional distress, the only question at this stage of the proceedings is whether the Establishment Clause exempts Defendants from this generally applicable tort law. Where, as here, a tort claim merely seeks relief for conduct that infringes on an individual's rights under civil law and does not ask a court to resolve any disputed religious doctrinal matter, the answer is no.

A. The Establishment Clause does not bar claims that depend on generally applicable principles of tort law. As this Court has recognized, a claim violates the Establishment Clause under what is known as the "entanglement doctrine" when resolving the claim requires a court "to review and interpret church law, policies,

or practices." *Franco*, 2001 UT 25, ¶ 12, 21 P.3d at 203. This rule derives from, and is given additional content by, a series of cases in which the U.S. Supreme Court held that courts cannot resolve legal claims when doing so would require a court to decide a dispute about the "correct" interpretation of religious doctrine or determine the "truth" of a religious belief. Resolving those disputes would result in a court placing the weight of government authority behind one group's view of religion or crafting its own religious doctrine—precisely the type of sponsorship of religious sects and active involvement in religious affairs that the Establishment Clause forbids. But where a claim depends only on "neutral principles of law" that are "completely secular in operation," those dangers are absent and the Establishment Clause poses no barrier to relief. *See Jones v. Wolf*, 443 U.S. 595, 602–03 (1979).

B. Ria's claim depends on a neutral principle of law and does not violate the Establishment Clause. As a general matter, intentional torts are neutral principles of law. The standard applicable to a given intentional tort exists independent of the religious identity or motive of a defendant, and it applies to everyone in society, not just to religious actors or religious functions. Intentional torts therefore are unlike the negligence-based clergy malpractice claims that this Court held unconstitutional in *Franco* on the ground that such malpractice claims require a court to devise a religion-specific standard of care.

What is true of intentional torts generally is true of Ria's claim specifically. The outrageousness standard that applies to intentional infliction of emotional distress claims is the same society-wide standard regardless of religious context or motive, and it governs all actors, not just clergy. Indeed, the court of appeals acknowledged that the tort of intentional infliction of emotional distress is a "generally applicable law." *Williams*, 2019 UT App 40, ¶ 17, 440 P.3d at 825.

Moreover, there is nothing specific to Ria's allegations that alters this analysis. She does not question, for example, whether the Elders correctly followed Jehovah's Witness doctrine when they played the audio recording. The sole question that Ria's claim raises is whether the Elders violated the secular outrageousness standard and infringed her rights under Utah law (not religious law) in doing so. Deciding that question will not require Utah courts to "review and interpret" religious doctrine, and it therefore will not violate the Establishment Clause.

C. The rule that the court of appeals crafted to dismiss Ria's claim would have profound negative consequences. In affirming the dismissal of Ria's claim, the court of appeals reasoned that the Establishment Clause bars courts from applying tort law to "evaluate religious activity" even when using a neutral and generally applicable secular standard. *Williams*, 2019 UT App 40, ¶ 16, 440 P.3d at 824. This rule would immunize all religiously motivated conduct from the

application of secular standards, contrary to over a century of U.S. Supreme Court precedent under the Free Exercise Clause that makes clear that a religious motive does not excuse the violation of independent neutral principles of law. That settled case law—and the principle that a person's religious beliefs cannot place him above the law—is rendered devoid of meaning under the court of appeals' rule.

III. In addition to arguing (incorrectly) that Ria's claim is barred under the entanglement doctrine, Defendants also have argued that a church autonomy doctrine requires dismissal because Ria's injuries bear a connection to a religious disciplinary proceeding. Neither this Court nor the U.S. Supreme Court has ever recognized the expansive immunity doctrine that Defendants envision for tortious conduct that has any relation to religious discipline, and there is no basis for this Court to do so now.

A. Contrary to the broad church autonomy doctrine Defendants have advanced, the U.S. Supreme Court has rejected the proposition that civil courts cannot adjudicate a claim simply because it stems from an intra-church dispute. In explaining that courts may decide cases involving religious parties under neutral principles of law, the Court specifically rejected that the First Amendment requires "compulsory deference to religious authority in resolving church property disputes *even where* no issue of doctrinal controversy is involved." *Jones*,

443 U.S. at 605 (emphasis added). That conclusion applies with equal force to claims, like Ria's, that bear a connection to a church disciplinary matter but involve no questions of religious doctrine.

B. Defendants nonetheless place substantial emphasis on references in U.S. Supreme Court decisions to churches' authority to decide matters of discipline and control their internal affairs. But in each case where those references are found, the Court confronted a claim that required resolution of a disputed *religious* question, i.e., an "issue of doctrinal controversy." *Id.* These cases, in other words, stand for nothing more than the proposition that courts cannot resolve religious doctrinal matters related to discipline, just as they cannot resolve any other religious doctrinal matter.

IV. The immunity that Defendants seek for religiously motivated disciplinary conduct would generate dangerous results. Religious actors would be free to engage not just in the outrageous acts the Elders directed at Ria, but also in a range of other harmful conduct under a claim of pursuing religious discipline. For example, they could, without consequence, induce breaches of doctor-patient confidentiality or repeatedly strike a child in the face. These are not hypotheticals, but real cases that present just some of the misconduct that Defendants would have this Court immunize. *See Alberts v. Devine*, 395 Mass. 59, 73–74 (1985); *Ondrisek v. Hoffman*, 698 F.3d 1020, 1024 (8th Cir. 2012). The aims of the

Establishment Clause are not advanced by a doctrine that precludes victims, like Ria, from seeking relief for violations of their civil rights under such circumstances.

ARGUMENT

I. Ria Has Stated a Claim for Intentional Infliction of Emotional Distress

The district court concluded—and the court of appeals did not question—that Ria stated a claim for intentional infliction of emotional distress. That conclusion follows from a straightforward analysis of her claim.

The tort of intentional infliction of emotional distress provides a cause of action for persons injured by "outrageous and intolerable" conduct. *Jackson v. Brown*, 904 P.2d 685, 688 (Utah 1995). To state a claim, a plaintiff must allege that (1) the defendant's conduct was "outrageous and intolerable in that it offended generally accepted standards of decency and morality," (2) the defendant "intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress," (3) the plaintiff suffered severe distress, and (4) the defendant's conduct proximately caused that distress. *Prince*, 2002 UT 68, ¶ 37, 56 P.3d at 535 (citation and internal alteration omitted).

Ria's Complaint alleges a textbook IIED claim. In the midst of meeting with Ria—at the time, a 15-year-old girl who had suffered a series of dehumanizing sexual assaults—the Elders, four adult men, played an audio recording that

included "several acts of sexual misconduct perpetrated" against Ria when she was only 14. (R. 84). Unsurprisingly, Ria began "crying and physically quivering." *Id.* She "protest[ed]" that the Elders "not force her to relive the experience of being raped" by continuing to play the recording. *Id.* They did so anyway, repeatedly "stopping and starting" the tape for hours, exacerbating her clear emotional distress each time. *Id.* Ria was left suffering from a range of harms—humiliation, anxiety, nightmares, and loss of appetite—for which she was forced to seek professional help. (R. 84, 86, 207–08.)

By any measure, the Elders' conduct violated the prohibition on "outrageous and intolerable" conduct. *Prince*, 2002 UT 68, ¶ 37, 56 P.3d at 535. Indeed, multiple courts have found that similar mistreatment of an individual in a vulnerable state can constitute outrageous conduct. *See, e.g.*, *Crouch v. Trinity Christian Ctr. of Santa Ana, Inc.*, 253 Cal. Rptr. 3d 1, 15–16 (Ct. App. 2019) (grandmother "furious[ly]" "screamed" at her 13-year-old granddaughter, the plaintiff, and told her "it is your fault" upon learning plaintiff had been raped); *Brandon ex rel. Estate of Brandon v. Cty. of Richardson*, 261 Neb. 636, 658–61 (2001) (officer interviewing plaintiff-rape victim made numerous derisive and demeaning comments); *Drejza v. Vaccaro*, 650 A.2d 1308, 1316 (D.C. 1994) (detective "treated [plaintiff-rape victim] with derision," and "bullied" her into initially declining to press charges); *Dependable Life Ins. Co. v. Harris*, 510 So. 2d 985,

987, 989 (Fla. Dist. Ct. App. 1987) (insurance company employee accused disabled individual of being "a cheat and a fraud" and denied claim without justification); *Young v. Stensrude*, 664 S.W.2d 263, 265 (Mo. Ct. App. 1984) (co-workers played pornographic film for plaintiff without notice and made lewd comments throughout); *see also* Restatement (Second) of Torts § 46, cmt. f ("The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress."); *id.* § 46 cmt. e, ex. 6 (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 . . . unless she confesses").[3]

In light of the Complaint's allegations, the district court correctly described the Elders' conduct as "nothing less than reprehensible," proclaimed "revulsion" at the Elders' conduct, and recognized that, as a matter of tort law, the allegations were sufficient to send to a jury. (R. 261–62.)

II. Because Ria's Claim Depends on Neutral Principles of Law and Involves No Inquiry into Religious Doctrine, the Establishment Clause Poses No Barrier to Relief

Ria's claim for intentional infliction of emotional distress fits easily within the confines of the tort. Defendants nonetheless seek to shield themselves from

[3] This Court repeatedly has looked to the Restatement (Second) of Torts for guidance in defining intentional infliction of emotional distress. *See, e.g.*, *Schuurman v. Shingleton*, 2001 UT 52, ¶ 23, 26 P.3d 227, 233.

liability on the ground that the Elders' conduct is protected under the Establishment Clause because they injured Ria in the context of a religious disciplinary proceeding and had a religious motive. There is no merit to Defendants' request for an exemption from the application of the neutral principles of tort law at issue here. As case law from this Court and the U.S. Supreme Court makes clear, the Establishment Clause precludes tort liability when a claim requires a court to interpret and decide a question of religious doctrine—thereby placing the government's authority behind one side of a dispute over religious meaning—or punishes religious belief itself. But the Establishment Clause does not offer immunity for tortious conduct simply because the actor claims a religious motive for the conduct.

A. The Establishment Clause Does Not Preclude Adjudication of Lawsuits Where There Is No Dispute Over Religious Doctrine

The Establishment Clause of the First Amendment, as incorporated against the states, prohibits government action "respecting an establishment of religion." U.S. Const., amend. I. Through this directive, the Clause protects the freedom of religion by targeting "three main evils": "sponsorship, financial support, and active involvement of the sovereign in religious activity." *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971) (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970)). To determine whether government action runs afoul of these "evils," courts generally

employ the test set forth in *Lemon*, under which government action violates the Establishment Clause if it has no secular purpose, if it has the primary effect of advancing or inhibiting religion, or if it fosters 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." *Franco*, 2001 UT 25, ¶ 13, 21 P.3d at 203. As this Court explained, "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." 2001 UT 25, ¶ 15, 21 P.3d at 203 (emphasis added).

The test articulated in *Franco* derives from a series of U.S. Supreme Court cases addressing litigation involving religious parties. *See Franco*, 2001 UT 25, ¶ 15, 21 P.3d at 203 (citing *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696 (1976); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952)). The Supreme Court first addressed the authority of civil courts to adjudicate disputes involving religious parties in *Watson v. Jones*, 80 U.S. 679 (1871).[4] In that case, an antislavery and a proslavery faction of a Presbyterian Church in

[4] *Watson* was decided as a matter of federal common law, but the U.S. Supreme Court later "converted the principle of *Watson* . . . into a constitutional rule." *See Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 447 (1969).

Louisville, Kentucky, each declared itself the true congregation of the church with the right to exercise control over local church property, and the controversy spilled over into litigation in the civil courts. *Id.* at 684 & n.6, 717. In considering the case, the Court started from the premise that "[r]eligious organizations come before [civil courts] in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights . . . are equally under the protection of the law, and *the actions of their members subject to its restraint*s." *Id.* at 714 (emphasis added). Thus, the right to "practice any religious principle," the Court explained, is generally subject to the condition that doing so "not infringe personal rights." *Id.* at 728.

At the same time, the Court recognized that a "sound view of the relations of church and state under our system of laws" prevents civil courts from deciding disputes about the meaning of religious doctrine. *Id.* at 727. Because "[i]n this country . . . [t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect," religious organizations are free to decide "controverted questions of faith" themselves, free from civil court interference. *Id.* at 728–29. For that reason, the Court held it would be improper to question the decision of the hierarchical church—that is, the larger Presbyterian Church in the United States to which the two factions had belonged—that the antislavery faction was the true congregation under church law. *Id.* at 734. But the Court was careful

to explain that this freedom extended only to matters "ecclesiastical in [their] character." *Id.* at 733. It would not, for example, require a court to honor a religious entity's trial and sentencing of a member for murder or the church's decision in a property dispute between two individuals, unless that dispute somehow "depend[ed] on ecclesiastical questions." *Id.*

In subsequent cases, the Court has applied *Watson* to ensure that civil courts do not decide questions of faith and disputes over the meaning of religious doctrine. For example, in *United States v. Ballard*, the Court held that the Constitution's commitment to recognizing "no heresy" or "dogma" means that civil courts cannot determine the "truth or falsity" of any religious doctrine. 322 U.S. 78, 86–87 (1944). The Court therefore held that a mail fraud conviction cannot be based on allegedly false statements of religious belief. *Id.* at 88.

Likewise, in *Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevich*, the Court overturned a state court decision that resulted in reinstalling a defrocked bishop and undoing the Serbian Orthodox Church's reorganization of its diocese. 426 U.S. at 718. The Court explained that the state court, in reaching its decision, had violated the First Amendment both by "evaluat[ing] conflicting testimony concerning internal church procedures" to determine what process the bishop was due and by overruling the highest church authority's decision on whether the church constitutions permitted the

restructuring; each inquiry unconstitutionally involved interpreting church doctrine.[5] *Id.* at 718, 721–22; *see also, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171, 188–89, 195 (2012) (application of Title VII to wrongful-termination claim brought by minister violated the Establishment Clause because who "will minister to the faithful" is by definition an "ecclesiastical" question courts cannot decide); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 441, 449–50 (1969) (application of property law principle that made church's ability to control property dependent on whether the church had "departed from the tenets of faith" unconstitutionally required courts to examine religious doctrine); *Kedroff*, 344 U.S. at 109 (application of state law to replace church authorities with those who would more "faithfully carry out the purposes of the religious trust" violated First Amendment).

Conversely, the Court has been equally firm in holding that, when a claim does *not* require a court to decide a disputed religious question, the First

[5] The Court in *Milivojevich* referred to the structure of the diocese as a question of "church government" distinct from "faith and doctrine." 426 U.S. at 722. The constitutional flaw in the state court's analysis, however, remained that it had "substituted" its own interpretation of the church's rules (embodied in its the church's constitutions) in a manner that conflicted with and overruled church authorities. *Id.* at 721. For ease of reference, this brief uses the terms "church doctrine" and "religious doctrine" whether referring to matters of church governance, the definition of sin, disciplinary procedures, or any other subject of religious belief.

Amendment poses no barrier to adjudication. In *Jones v. Wolf*, a local congregation of the Presbyterian Church in the United States (PCUS) split into two factions, with each (as in *Watson*) claiming the right to control church property. 443 U.S. at 597–98. Although the Court reaffirmed that civil courts cannot "pass on questions of religious doctrine" or overrule a determination of the church hierarchy—what was considered in *Watson*—the Court also made clear that a case having its foundation in an intra-church dispute did not, on its own, prevent a civil court from deciding the matter. *Id.* at 605, 609. Rather, so long as a court applies "neutral principles of law" that are "completely secular in operation"—for example, whether deeds or corporate charters included "language of trust in favor of" the PCUS, to which one faction remained loyal—resolving the dispute would not run afoul of the First Amendment. *Id.* at 603–04; *see also Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 368 (1970) (per curiam) (finding no substantial federal question in case involving control of church property because the state court's "resolution of the dispute involved no inquiry into religious doctrine").

Together, these cases undergird the principle this Court articulated in *Franco*: whether the Establishment Clause bars a claim depends on whether it "entail[s] '[an] inquiry into religious doctrine.'" *Jones*, 443 U.S. at 603 (quoting *Md. & Va. Eldership*, 396 U.S. at 368); *see also Franco*, 2001 UT 25, ¶ 17, 21 P.3d at 204

(claims that require an "examination of religious doctrine, practice, or church polity" violate the First Amendment). In each of the foregoing cases where the U.S. Supreme Court held that the First Amendment required dismissal (as in this Court's decision in *Franco*, *see infra* at 27–28), resolving the plaintiffs' claims would have necessitated that a court answer a disputed *religious* question—such as which faction was the true church congregation, who was the true church leader, whether the religious belief was true, or how dioceses could or should be structured. Only if the plaintiffs had prevailed on those religious questions could they have then prevailed in their civil causes of action (or, in *Ballard*, the criminal prosecution). But to decide such questions, a court would have to choose sides in a dispute over ecclesiastical matters to "intervene on behalf of groups espousing particular doctrinal beliefs." *Milivojevich*, 426 U.S. at 709. That choice, in turn, would impermissibly place the state's imprimatur, and the weight of its authority, on the side of one group involved in a religious dispute. *Cf. Engel v. Vitale*, 370 U.S. 421, 429 (1962) ("These people [of the founding era] knew, some of them from bitter personal experience, that one of the greatest dangers to the freedom of the individual to worship in his own way lay in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services."). That is the type of "sponsorship" and "active involvement" in religious affairs that the Establishment Clause forbids.

But, as these cases also teach, those dangers are not present when a court refrains from deciding religious questions and instead relies on "neutral principles of law" to adjudicate a case. Neutral principles guarantee "nonentanglement and neutrality" with respect to competing sides in a dispute over religious questions. *Jones*, 443 U.S. at 604. A court's reliance on neutral principles therefore prevents the state from "'establishing' churches to which property [or any other right] is awarded." *Mary Elizabeth*, 393 U.S. at 449.

B. Ria's Claim Does Not Violate the Establishment Clause Because It Involves No Question of Religious Doctrine

Ria's claim does not cause the "excessive government entanglement" that the Establishment Clause forbids. The question Ria's claim presents is *not* whether the Elders followed Jehovah's Witness doctrine in playing the audio recording of her rape—an issue of religious doctrine that Ria does not dispute or ask the Utah courts to examine. Instead, the question is whether the Elders' religiously motivated conduct violates the neutral and secular outrageousness principle embodied in the tort of intentional infliction of emotional distress.

1. Intentional torts are neutral principles of law

As a general matter, intentional torts are neutral principles of law, and claims based on them yield no excessive entanglement. That is because intentional torts require courts to assess conduct against a secular, not a religious, standard that applies in the same form in each case and exists independent of any religious

motive for the harmful conduct. No element of a battery claim, for example, changes or is omitted merely because the attacker felt compelled by his faith to engage in violence. It follows that "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). For the same reason, a court adjudicating an intentional tort claim ordinarily need not choose sides in any dispute over religious doctrine.

Further evidence that intentional torts are "neutral principles of law" is found in their universal applicability to *all* members of society. The religious identity of a defendant, like a religious motive, has no bearing on the reach of a given intentional tort principle or the standard to be applied.

Consistent with this understanding, courts have frequently allowed claims based on intentional torts to proceed notwithstanding a First Amendment defense. *See, e.g.*, *Molko v. Holy Spirit Ass'n*, 46 Cal. 3d 1092, 1118, 1120 (1988), *superseded by statute on other grounds by* Cal. Civ. Proc. Code § 437c (allowing claims for fraud and IIED to proceed); *Bear v. Reformed Mennonite Church*, 462 Pa. 330, 334 (1975) (allowing intentional tort claim based on religious disciplinary action to proceed); *Gibson*, 952 S.W.2d at 248–49 (dismissing negligence-based claims, but not intentional torts, under the First Amendment); *Ondrisek*, 698 F.3d at 1023–24 (rejecting First Amendment defense to IIED, battery, and conspiracy claims).

Intentional tort claims also stand in marked contrast to the type of negligence claim aimed at the performance of religious functions—i.e., "clergy malpractice" claims—that this Court found barred by the Establishment Clause in *Franco*. *See* 2001 UT 25, ¶ 17, 21 P.3d at 204. There, the plaintiff alleged that, "during ecclesiastical counseling" with a bishop and Church stake president of the Church of Jesus Christ of Latter-day Saints, the plaintiff asked for a referral to a mental health professional to help her recover from abuse committed by another church member. 2001 UT 25, ¶¶ 3, 26, 21 P.3d at 200, 206. In response and unbeknownst to the plaintiff, the bishop and Church stake president referred her to an unqualified individual for the "'purpose' of protecting [the other church member] and the LDS church." 2001 UT 25, ¶ 26, 21 P.3d at 206. The plaintiff later sued, raising negligence-based claims and an IIED claim.[6] The church leaders sought dismissal, claiming that the First Amendment shielded them from liability for their conduct.

As noted above, in addressing the church leaders' defense, *Franco* looked to whether the plaintiff's claims required the resolution of a religious question and thus impermissibly entangled the courts in religious matters. As *Franco* makes

[6] As discussed below, this Court affirmed the dismissal of the plaintiff's IIED claim on the merits without reaching any constitutional issue. *See* 2001 UT 25, ¶¶ 25–30, 21 P.3d at 206–07; *infra* at 33.

clear, negligence-based clergy malpractice claims unconstitutionally "entangle the courts in the examination of religious doctrine, practice, or church polity" for two core reasons. *See* 2001 UT 25, ¶¶ 17–23, 21 P.3d at 204–06.[7]

First, clergy malpractice claims require courts to determine an appropriate standard of care against which the defendant's conduct must be judged. *See Franco*, 2001 UT 25, ¶ 23, 21 P.3d at 205; *see also, e.g.*, *Utah Local Gov't Tr. v. Wheeler Mach. Co.*, 2008 UT 84, ¶ 26, 199 P.3d 949, 955 (proof of breach of standard of care is an element of a negligence claim); *see also* Restatement (Second) of Torts § 282. In the context of a claim against a person performing a religious function, determination of that standard involves "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." *Franco*, 2001 UT 25, ¶ 23, 21 P.3d at 205. That task, in turn, requires a court to "evaluate and investigate religious tenets and doctrines" to determine whether the plaintiff's or the defendant's understanding of what their religion requires is correct—exactly what the Establishment Clause forbids. *Id.*

[7] As this Court also recognized in *Franco*, negligence claims that involve secular functions, such as maintaining safe premises, are not barred simply because the defendant is a church or the claim relates to religious activity. *See* 2001 UT 25, ¶ 14 (discussing, as an example, *Bass v. Aetna Ins. Co.*, 370 So.2d 511 (La. 1979), where a church was held liable for creating "an unreasonable risk of injury by not clearing aisles to make way for running 'in the Spirit,' a form of religious expression in that church").

Second, even if a generalized religious standard of care could be devised, imposing it on all members of the clergy would "embroil the courts in establishing the training, skill, and standards applicable for members of the clergy . . . in a diversity of religions professing widely varying beliefs." *Franco*, 2001 UT 25, ¶ 23, 21 P.3d at 206. That type of mandate would be the very opposite of a neutral principle of law: it would apply only to religious actors and would dictate a standard of conduct they must follow in performing only religious functions. *See, e.g.*, *Mary Elizabeth*, 393 U.S. at 441, 449–50 (striking down test that allocated property rights depending on whether church "departed from the tenets of faith" rather than pursuant to "neutral principles of law"); *cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (laws that target religious conduct are "not neutral" and are constitutionally suspect). At bottom, as this Court explained in *Franco*, enforcing compliance with a state-created religious standard of care would "establish an official religion of the state." *Franco*, 2001 UT 25, ¶ 23, 21 P.3d at 206; *see also Engel*, 370 U.S. at 435–36 (striking down state-mandated uniform school prayer).

Intentional torts, as explained, lack these two fatal characteristics. The standard for intentional torts is secular and can be ascertained without any analysis of religious doctrine. *See F.G. v. MacDonell*, 696 A.2d 697, 702, 704 (N.J. 1997) (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"); *cf. 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."). And the standard governing intentional torts applies to everyone, not merely to religious actors performing religious functions.

Of course, cases may arise where a plaintiff's specific allegations inject questions of faith or religious doctrine into the adjudication of an otherwise neutral principle of tort law. For example, a fraud claim typically poses no Establishment Clause problem, even if the defendant has a religious motive. *Cf., e.g.*, *Molko*, 46 Cal. 3d at 1119 (holding that church's fraudulent recruiting practices were actionable). But if the allegedly false statement is one specifically pertaining to religious belief or doctrine—for instance, whether a funeral was performed in accordance with Jewish burial customs, *cf. Mammon v. SCI Funeral Servs. of Fla. Inc.*, 193 So. 3d 980, 986 (Fla. Dist. Ct. App. 2016)—a court cannot entertain the claim without impermissibly declaring the truth or falsity of a religious belief. *See also, e.g.*, *Hancock v. True Living Church of Jesus Christ of Saints of Last Days*, 2005 UT App 314, ¶ 17 n.2, 118 P.3d 297, 300 n.2. In these cases, the neutral principle of tort law

ceases to be "completely secular *in operation*." *Jones*, 443 U.S. at 603 (emphasis added). But those case-specific allegations are properly addressed through case-specific analysis rather than categorical rules.

2. Ria's IIED claim depends on a neutral principle of law

The intentional tort claim that Ria asserts here is based on a neutral principle of law and involves no questions of religious doctrine. Indeed, the court of appeals acknowledged that IIED is a neutral principle of law just like any other intentional tort. *Williams*, 2019 UT App 40, ¶ 17, 440 P.3d at 825 ("Williams claims distress under a generally applicable law . . . ."). A single standard applies across the state to all actors: as described above, the tort imposes liability for "outrageous" conduct that is "utterly intolerable in a civilized community." Restatement (Second) of Torts § 46, cmt. d; *see also Jackson*, 904 P.2d at 687–88. There is no need to ascertain any religious standard of "outrageousness" because the standard does not change with the identity or motive of the defendant. Indeed, as discussed above, the IIED standard has been applied in multiple cases addressing analogous conduct aimed at vulnerable individuals but bearing no connection to religiously motivated conduct. *See supra* at 16–17 (collecting cases). The same standard governing outrageousness that applied in those cases, as both courts below recognized, applies here.

The outrageousness standard is thus a far cry from the problematic standard of care that would need to be created and applied in negligence-based clergy malpractice cases. Rather than prescribe a range of both affirmative obligations and negative prohibitions that an individual must follow in conducting religious functions, the outrageousness standard prohibits discrete conduct in *all* instances, regardless of religious context. The standard is no different from numerous other generally applicable standards that make certain conduct unlawful. For instance, a nuisance claim requires evaluating whether the injurious conduct is "indecent" or "offensive," Utah Code § 78B-6-1101(1); the tort of intrusion on seclusion necessitates determining whether the invasion of privacy "would be highly offensive to the reasonable person," *Stien v. Marriott Ownership Resorts, Inc.*, 944 P.2d 374, 378 (Utah Ct. App. 1997); 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, 759. Applying these laws to a religious actor no more requires a court to create a standard specific to religious conduct (a non-neutral principle) than does applying the outrageousness standard here.

This Court's analysis in *Franco* further illustrates that the IIED standard is a neutral and generally applicable principle of law that can be applied without crafting a religion-specific test or resolving issues of religious doctrine. Although

this Court rejected on Establishment Clause grounds the clergy malpractice claim that the plaintiff raised in *Franco*, this Court applied the ordinary, secular outrageousness standard to affirm the dismissal of the plaintiff's IIED claim without reaching any constitutional issue. 2001 UT 25, ¶¶ 25–30, 21 P.3d at 206–07. Notably, this Court did not craft any "ecclesiastical counseling"-specific standard in assessing the viability of the plaintiff's claim—or even suggest that such a standard might be necessary or appropriate—and, as a result, did not confront questions of religious doctrine or belief. *See also, e.g.*, *Nally v. Grace Community Church of the Valley*, 47 Cal. 3d 278, 299, 301 (1988) (declining to adopt clergy malpractice tort, in part because of First Amendment concerns, but deciding IIED claim on the merits).

Not only is the outrageousness standard a neutral principle of law as a general matter, but also there is nothing unique to adjudicating Ria's claim that would necessitate an inquiry into religious doctrine. Ria seeks civil court review only of the outrageousness of the Elders' conduct in repeatedly playing an audio recording of her rape in the face of Ria's crying, trembling, and protests. Adjudicating this claim does not involve determining—and Ria does not challenge—whether the Elders appropriately opened an inquiry into whether she sinned, whether that inquiry complied with any Jehovah's Witness rules governing disciplinary proceedings, whether Ria had capacity under Jehovah's

Witness doctrine to consent to sex, or whether the Elders' ultimate decision was correct. Those *are* questions of religious doctrine and belief, but they have no bearing on the success or failure of Ria's claim. Tellingly, although the district court ultimately (and incorrectly) dismissed Ria's IIED claim because of the "setting and context" from which it arose, the court found that the allegations of the Elders' conduct sufficiently stated a claim *without* delving into any questions of religious doctrine. (R. 261.)

The Supreme Judicial Court of Massachusetts' decision in *Alberts v. Devine*, 395 Mass. 59 (1985), is instructive on this point. After Alberts, a minister, began receiving psychiatric counseling, two of his superiors within the church induced Alberts's doctor to share confidential information about his medical condition. *Id.* at 61–62. The two superiors subsequently used that information to cause Alberts "not to be reappointed as minister." *Id.* at 62. Alberts sued his superiors for inducing his doctor to violate his duty of confidentiality. *Id.*

The Supreme Judicial Court rejected the superiors' First Amendment defense to Alberts's claim. The court explained, "A controversy concerning whether a church rule grants religious superiors the *civil* right to induce a psychiatrist to violate the duty of silence that he owes to a patient . . . is *not* a dispute about religious faith or doctrine nor about church discipline or internal organization." *Id.* at 73 (emphasis added). Thus, although the First Amendment

"preclude[d] judicial inquiry as to whether a church rule provided that [the superiors] had the right to seek medical information from Alberts's psychiatrist"—a religious question on which Alberts's claim did not depend—"it d[id] not follow that the religion clauses preclude the imposition of liability" for their decision to act on that claim of religious authority. *Id.*; *see also, e.g.*, *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 773 (Okla. 1989) (where plaintiff argued that "religiously-motivated acts" violated tort principles and "did not attack the [defendants'] disciplinary actions on the basis that they contravened established [church] polity," the "justification for judicial abstention" under the First Amendment was "nonexistent"); *Molko*, 46 Cal. 3d at 1115 (rejecting First Amendment defense where plaintiffs did "not challenge the truth or falsity of the Church's beliefs" and "challenge[d] only the Church's fraudulent conduct in implementing those beliefs").

Ria's claim is no different. Just as the defendants in *Alberts* engaged in tortious conduct to gather information on the basis of religious authority that the plaintiff did not dispute, the Elders did the same here. And Ria, like the *Alberts* plaintiff, argues only that such conduct violates secular principles of tort law. As a result, there is no risk of excessive entanglement, as the concerns driving Establishment Clause jurisprudence are absent: resolving Ria's claim will not force a civil court to decide between two competing interpretations of religious

doctrine or to craft a religion-specific standard of care. There is, in other words, no possibility that deciding Ria's claims will generate the "evils" of "sponsorship" or "active involvement" in religious affairs. *See Lemon*, 403 U.S. at 612.

C. The Court of Appeals' Rule Inappropriately Immunizes Religiously Motivated Conduct

The court of appeals did not determine that adjudicating Ria's claim would require resolving a doctrinal dispute. It also did not determine that the claim would involve judging the truth or falsity of any of Defendants' beliefs. Nor did it determine that the claim would involve crafting a religious standard. In fact, as noted, it acknowledged that IIED is "neutral and generally applicable." *Williams*, 2019 UT App 40, ¶ 16, 440 P.3d at 824. Nonetheless, the court found dismissal proper because adjudicating Ria's claim would require "the factfinder to assess the 'outrageousness' of a religious practice." *Id.* Put differently, the court of appeals ruled that, if injurious conduct bears a religious motive, the Establishment Clause prohibits courts from determining whether the conduct violates a secular standard.

There is no basis for the court of appeals' rule that a religious motive immunizes harmful conduct. The U.S. Supreme Court has repeatedly emphasized that the distinction between the "absolute" "freedom to believe" and the "freedom to act" is that the latter is "subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U.S. 296, 303–04 (1940). That distinction is integral to

a system of ordered liberty: to "excuse [a person's] practices . . . because of his religious belief . . . would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Reynolds*, 98 U.S. at 166–67. For this very reason, settled Free Exercise Clause jurisprudence rejects that "an individual's religious beliefs" "excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 878–79 (1990).

Rather, under the Free Exercise Clause (as under a proper understanding of the Establishment Clause), so long as a rule is "neutral" and "generally applicable"—i.e., a "neutral principle of law"—it may be enforced against an actor with a religious motive. *Id.* at 880. Accordingly, the U.S. Supreme Court held in *Prince v. Massachusetts*, 321 U.S. 158 (1944), that "a mother could be prosecuted under child labor laws for using her children to dispense literature in the streets, *her religious motivation notwithstanding*." *Smith*, 494 U.S. at 879–80 (emphasis added). Likewise, the U.S. Supreme Court has ruled that a religious motivation cannot shield a person from a bigamy prosecution, *Reynolds*, 98 U.S. at 166–67, or the regulatory consequences of using controlled substances, *Smith*, 494 U.S. at 890; *see also Cantwell*, 310 U.S. at 306 ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit

frauds upon the public."). And this Court, applying this case law, has rejected the argument that the Free Exercise Clause prohibits a court from "measur[ing] 'religious expression against secular standards of fairness'" embodied in unjust enrichment principles. *Jeffs v. Stubbs*, 970 P.2d 1234, 1248 (Utah 1998); *see also, e.g.*, *Gibson*, 952 S.W.2d at 248 (holding that *Smith*'s rule "applies to intentional torts"). The decision below renders meaningless this settled and consistent case law.

Furthermore, by undermining this well-established law, the court of appeals' rule would have expansive and disruptive practical consequences. Every neutral principle of law that regulates conduct in society requires a court to do what the court of appeals held was unconstitutional: "assess" or "evaluate" conduct against a secular standard. *Williams*, 2019 UT App 40, ¶¶ 15–16, 440 P.3d at 824. It is not just tort law that would be unenforceable under the court of appeals' rule but contract, property, regulatory, and even criminal law, too; indeed, recognition of this danger underlies the free exercise jurisprudence that the court of appeals' rule decimates. *See Smith*, 494 U.S. at 888 (explaining that granting immunity based on religious belief would result in "constitutionally required religious exemptions from civic obligations of almost every conceivable kind"); *see also, e.g.*, *Costello Pub. Co. v. Rotelle*, 670 F.2d 1035, 1049 (D.C. Cir. 1981) (rejecting "absolute exemption from the antitrust laws for economic pressure tactics, however predatory, that are religiously motivated").

Of equal importance, the immunity that the court of appeals provided to religiously motivated conduct is untethered from the purposes of the Establishment Clause. Where a tort principle is neutral and generally applicable—that is, where it applies to religious and non-religious actors and conduct alike—imposing liability on a defendant possessing a religious motive does not result in "excessive entanglement." That a defendant has a religious motive does not mean that a court must choose between competing interpretations of doctrine or in any other way "sponsor" one religious view to the detriment of another. Nor does prohibiting harmful conduct irrespective of religious motive yield "*active* involvement" in religious affairs. *Cf. Lemon*, 403 U.S. at 619 (finding excessive entanglement where state program resulted in "comprehensive, discriminating, and continuing state surveillance"); *Reynolds*, 98 U.S. at 163 (explaining that the First Amendment prohibits "the civil magistrate" from "intrud[ing] his powers into the field of opinion" but permits "civil government . . . to interfere when principles break out into overt acts against peace and good order").

* * *

Ria suffered severe emotional distress as a result of the Elders' conduct. She does not question whether that conduct comported with Jehovah's Witness principles or ask Utah courts to decide a religious matter, but simply seeks a remedy for the Elders' violation of the prohibition on "outrageous and intolerable"

conduct that applies in every other aspect of society. The mere existence of a religious motive underlying Defendants' conduct is insufficient to cloak their tortious actions with immunity. The Establishment Clause neither requires nor is furthered by a rule that denies Ria the relief she seeks.

III. No "Church Autonomy Doctrine" Immunizes the Elders' Conduct

Throughout this litigation, Defendants have asserted that, even if the entanglement doctrine does not preclude Ria's claim, the First Amendment nonetheless shields them from liability under a "church autonomy doctrine."[8] According to Defendants, this doctrine precludes courts from hearing any and all claims that bear a connection to religious disciplinary proceedings. Br. Opp. Cert. at 18–19. Neither this Court nor the U.S. Supreme Court has ever recognized the expansive doctrine that Defendants advance, and this Court should not do so now. The Establishment Clause does not require a rule that would bar a claim solely because of a connection to a religious disciplinary proceeding, *even when* the claim does not involve a dispute over religious doctrine or require determining the truth or falsity of religious belief.

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[8] The church autonomy doctrine also has been referred to as "ecclesiastical abstention," *Duncan v. Peterson*, 359 Ill. App. 3d 1034, 1043 (2005), and the "deference rule," *see Connor v. Archdiocese of Philadelphia*, 601 Pa. 577, 587 (2009). Defendants have based their understanding of a "church autonomy doctrine" on both the Establishment Clause and the Free Exercise Clause. To the extent Defendants ground this doctrine solely in the Free Exercise Clause, it is outside the question on which this Court granted certiorari.

A. The U.S. Supreme Court Has Rejected a Rule of Automatic "Compulsory Deference"

In addition to confirming that courts may adjudicate claims pursuant to neutral principles of law, the U.S. Supreme Court in *Jones v. Wolf* also rejected the central premise of the expansive autonomy doctrine that Defendants urge this Court to adopt. As described above, the claim in *Jones* arose from an intra-church dispute that led to litigation over the control of church property. 443 U.S. at 597. In remanding the case to allow Georgia courts an opportunity to decide the property dispute based on neutral principles of law, the Court rejected the argument of the dissent that, because the church was part of the larger and hierarchical Presbyterian Church in the United States, the First Amendment mandated deference to whatever decision resulted from an intra-church adjudication. *Id.* at 604–05. The Court found no merit in the dissent's position—which Defendants' argument mirrors—that "the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, *even where no issue of doctrinal controversy is involved*." *Id.* at 605 (emphasis added).

Although *Jones* concerned a property dispute, it applies with equal force here. There is no basis for recognizing an autonomy doctrine that provides more robust protection for claims relating to church disciplinary matters than for those

involving property disputes. *Cf. Bowie v. Murphy*, 271 Va. 127, 135 (2006) ("[W]here church property and *civil rights* disputes can be decided without reference to questions of faith and doctrine, there is no constitutional prohibition against their resolution by the civil courts." (citation omitted) (emphasis added)). The relevant inquiry is that on which this Court and the U.S. Supreme Court have focused in all cases concerning the constitutionality of adjudicating disputes between private parties: whether a claim presents an "issue of doctrinal controversy." *Id.*

B. A Church's Right to Decide Religious Disciplinary Matters Extends Only Insofar as Questions of Doctrine Are Presented

Disregarding *Jones*, Defendants have sought to ground their conception of an expansive church autonomy doctrine in the U.S. Supreme Court's references to religious organizations' ability to decide disciplinary issues. *See* Br. Opp. Cert. at 18. In the course of abstaining from overriding religious organizations' determinations of doctrinal questions, the U.S. Supreme Court has in some cases remarked that the First Amendment protects the right of religious organizations to "establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters." *Milivojevich*, 426 U.S. at 724; *see also Hosanna-Tabor*, 565 U.S. at 185; *Kedroff*, 344 U.S. at 115; *Watson*, 80 U.S. at 727. It is from such references to "discipline" and control over internal affairs that Defendants mistakenly derive their expansive autonomy doctrine. *See* Br. Opp. Cert. at 18.

Although the Court used broad language in these passages, it has never applied these words to grant the expansive immunity for tortious conduct that Defendants seek. *Cf. Walz*, 397 U.S. at 668 (cautioning against taking "sweeping utterances" about the religion clauses out of context). Far from establishing total immunity for any and all conduct relating to church disciplinary proceedings, the cases in which these statements are found—*Watson*, *Kedroff*, *Milivojevich*, and *Hosanna-Tabor*—merely reflect the principle that civil courts cannot interpret or devise doctrine related to religious discipline—just as they cannot decide other aspects of religious doctrine. In each case, the plaintiffs' claims required the reviewing court to decide a religious question. *See supra* at 21–22. None of these cases stand for the much broader rule that, so long as a defendant can ground tortious conduct in religious discipline, it has unrestricted authority to engage in that conduct without regard to otherwise applicable neutral principles of law.

Defendants have placed particular emphasis on *Hosanna-Tabor* to support the expansive doctrine they ask this Court to adopt, *see* Br. Opp. Cert. at 18–19, but that case offers them no help. There, the U.S. Supreme Court recognized a "ministerial exception" to Title VII that precludes ministers from suing on the ground that they were fired (or not hired) for discriminatory reasons. 565 U.S. at 188. The exception derives from the Founders' creation of the Establishment Clause to "ensure[] that the new Federal Government—unlike the English

Crown—would have no role in filling ecclesiastical offices." *Id.* at 183–84 (recounting history of state appointment of ministers). In view of this history and the reality that a minister "personif[ies] [a religion's] beliefs," the Court determined that the question of who will serve as a minister is a "matter 'strictly ecclesiastical.'" *Id.* at 188, 194 (quoting *Kedroff*, 344 U.S. at 119). The government has no more authority to decide this religious question through the application of anti-discrimination statutes than it does through the interpretation of religious texts or the tenets of faith. *Id.*; *cf. Kedroff*, 344 U.S. at 109 (rejecting that a state has authority to decide which minister will more "faithfully carry out the purposes of [a] religious trust").

Hosanna-Tabor thus provides no support for a doctrine barring all claims related to religious disciplinary proceedings. Like every other case discussed above, the claim in *Hosanna-Tabor* required a court to decide a religious question. It was because the plaintiff in *Hosanna-Tabor* was a minister that the First Amendment barred her Title VII claim, not because she was fired pursuant to the church's disciplinary process, *see* 565 U.S. at 179, a simple fact that, if controlling, would have rendered unnecessary the Court's multi-page analysis of the facts that qualified her as a minister, *see id.* at 191–94. Notably, the Court's holding still allows non-ministers to sue under Title VII statutes, and the Court expressly

disclaimed that it was deciding whether ministers could bring claims for "tortious conduct by their religious employers." *Id.* at 196.

For the same reasons that *Hosanna-Tabor* offers no support to Defendants' broad autonomy doctrine, the decision has no application to Ria's specific claim. Even assuming that the concerns that animated the *ministerial* exception apply to *membership* decisions, Ria does not allege that she was improperly removed from the Jehovah's Witnesses congregation—review of which is the most that *Hosanna-Tabor* could be said to preclude. Rather, she claims that, prior to making any decision, the Elders engaged in intentionally tortious conduct. That claim exists regardless of whether the Elders eventually disciplined Ria or found she had not sinned.

IV. Granting First Amendment Protection to the Elders' Conduct Would Set a Dangerous Precedent

Establishing an autonomy doctrine that cloaks tortious conduct in immunity so long as it bears a connection to disciplinary proceedings would, much like the court of appeals' rule, yield perverse consequences. Just as religious actors would be free to engage in the type of outrageous conduct that the Elders aimed at Ria to extract a "confession," they also would be free to inflict physical violence to secure favorable testimony or break into a congregant's home to obtain evidence. *Cf. Alberts*, 395 Mass. at 61–62 (defendants induced violation of doctor-patient

confidentiality to obtain harmful information used to prevent minister's reappointment). And the same freewheeling authority would extend to the punishment chosen—religious authorities could inflict psychological damage on, viciously beat, or even sexually assault a congregant in the name of religious discipline.

The doctrine could be easily abused. A religious actor need only claim a sincere religious disciplinary intent for tortious conduct to invoke the doctrine's protection. *See, e.g.*, *Ondrisek*, 698 F.3d at 1024–25 (defendant claimed that severe beatings—including "15 to 20 blows to [the plaintiff's] face" and "20 to 30 strikes from a paddle"—constituted religiously motivated discipline that presented "only ecclesiastical questions"); *Candy H. v. Redemption Ranch, Inc.*, 563 F. Supp. 505, 511 (M.D. Ala. 1983) ("The rules, which the defendants contend were based on religious beliefs, were often and vigorously enforced by corporal punishment, which in some instances was excessive and caused substantial and long-term injuries."); *cf. Fraley v. State*, 189 P.3d 580, at *8 (Kan. Ct. App. 2008) (unpublished) (defendant argued that marital rape was "an exercise of religious freedom").

In recognition of these dangers, numerous courts have held that the state has authority to impose liability for tortious conduct even when it bears a connection to religious discipline. For example, courts have rejected claims that the First Amendment protects a religious actor's right to engage in "corporal

punishment," even when it is a faith-based disciplinary decision. *See, e.g.*, *Ondrisek*, 698 F.3d at 1024–25; *Mich. Dep't of Soc. Servs. v. Emmanuel Baptist Preschool*, 434 Mich. 380, 386–88 (1990); *Health Servs. Div., Health & Env't Dep't of State of N.M. v. Temple Baptist Church*, 814 P.2d 130, 131, 134–35 (N.M. Ct. App. 1991); *Candy H.*, 563 F. Supp. at 517; *cf. Watson*, 80 U.S. at 733 (explaining that a religious authority has no legal right to imprison a congregant for murder—a sin under virtually any religion); *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1040 (7th Cir. 2006), *abrogated on other grounds by Hosanna-Tabor*, 565 U.S. 171 (2012) ("A church could not subject its clergy to corporal punishment."). Other courts, while not questioning the decision to exclude a person from a congregation or ministerial position, have entertained claims about conduct that accompanied the exclusion. *See, e.g.*, *Bear*, 462 Pa. at 334 (reversing dismissal of claim, among others, for tortious interference with a business relationship arising out of religious shunning); *Duncan v. Peterson*, 359 Ill. App. 3d 1034, 1046 (2005) ("Even if the reasoning behind defendants' decision to revoke the ordination . . . is not reviewable because it is 'steeped in matters of theological import,' we may review defendants' conduct in carrying out the revocation.").

These cases reflect that "a tortfeasor is not shielded from liability simply by committing his torts within the walls of a church or under the guise of church governance." *Banks v. St. Matthew Baptist Church*, 406 S.C. 156, 162 (2013); *cf. also*

Kant v. Lexington Theological Seminary, 426 S.W.3d 587, 596 (Ky. 2014) ("[T]he intent of ecclesiastical abstention is not to render civil and property rights unenforceable in the civil court simply because the parties involved might be the church and members, officers, or the ministry of the church." (internal quotation marks and alteration omitted)). A doctrine that immunizes religiously motivated disciplinary decisions in the manner Defendants claim not only would shield a range of harmful conduct from the reach of civil laws but also would do nothing to advance the aims of the Establishment Clause. Applying neutral principles of tort law to injurious conduct carried out with a religious disciplinary motive no more results in government sponsorship or active involvement in religious activity than does applying those laws to conduct bearing any other religious motive. *See supra* at 39. The Establishment Clause does not require the dangerous result Defendants seek.

* * *

Whatever "autonomy" the Establishment Clause confers on religious authorities, it does not provide them with a constitutional right to subject a minor to an audio recording of her own rape. Because adjudicating Ria's claim will not generate government action "respecting an establishment of religion," the Establishment Clause does not prevent her from pursuing compensation for the severe injuries Defendants inflicted on her when she was just 15 years old.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the court of appeals and reinstate Ria's claim for intentional infliction of emotional distress.

DATED this 12th day of November, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule of Appellate Procedure 24(a)(11)(A), the undersigned counsel for Petitioner certifies that the foregoing brief complies with the type-volume limitation of Rule of Appellate Procedure 11(g) and contains 11,606 words, excluding the list of all parties, table of contents, table of authorities, certificates of counsel, and addendum. Pursuant to Rule of Appellate Procedure 24(a)(11)(B), the undersigned counsel for Petitioner further certifies that the foregoing brief contains no non-public information prohibited by Rule of Appellate Procedure 21.

/s/ Robert Friedman
Robert Friedman

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of November, 2019, I caused two true and correct copies of the foregoing Brief of Petitioner to be served via first-class mail, with a copy by email, on:

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ADDENDUM

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Addendum A

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I.

Addendum B

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.

Addendum C

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