Nos. 23-CV-0836, 23-CV-0837 & 23-CV-0838

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION INTERNATIONAL, *et al.,*

Appellants,

v.

HYUN JIN MOON, *et al.,*

Defendants.

On Appeal from the Superior Court of the District of Columbia

BRIEF OF *AMICI CURIAE* CHILD USA, SURVIVORS NETWORK OF THOSE ABUSED BY PRIESTS, ZERO ABUSE PROJECT, AND PROFESSOR LESLIE C. GRIFFIN IN SUPPORT OF APPELLANTS AND URGING REVERSAL

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STATEMENT OF INTEREST & AUTHORITY OF *AMICI*

Amici are non-profit organizations and scholars with expertise in religion and the law and submit this brief pursuant to D.C. R. App. P. 29(a)(2).

Amici share a commitment to protecting vulnerable persons, including children and victims of sexual assault and abuse, from dangerous organizations that believe themselves to be above the rule of law. In their fight to hold bad actors accountable for the harm they have caused to third parties, *amici* have successfully countered the same First Amendment arguments that Defendants raise here. *Amici* urge this Court to reach the same conclusion in this case that courts across the nation have reached in child sexual abuse cases–that parties acting under the guise of religion are not immune from judicial oversight and ultimately civil liability under the First Amendment.

CHILD USA is a non-profit interdisciplinary think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good.

Survivors Network of those Abused by Priests ("SNAP") is a non-profit organization and the largest, oldest, and most active support group for those abused by religious and institutional authorities including priests, ministers, bishops, deacons, nuns, coaches, teachers, and others.

Zero Abuse Project is a 501(c)(3) corporation dedicated to protecting children from abuse and sexual assault that works to engage people and resources through a trauma-informed approach of education, research, advocacy, and technology. As recognized experts in the investigation and prosecution of child abuse cases, it equips multi-disciplinary teams and other professionals with the skills to identify abuse, intervene for children's safety, secure justice, and build resiliency.

Leslie C. Griffin is the William S. Boyd Professor of Law at the University of Nevada, Las Vegas. Professor Griffin holds a Ph.D. in Religious Studies from Yale University and a J.D. from Stanford Law School. She is known for her interdisciplinary work in law and religion and is co-author of Law and Religion: Cases and Materials (5th edition, 2022) and Learning Constitutional Law (Cognella Press, 2023).

INTRODUCTION

The First Amendment's Religion Clauses "aim to foster a society in which people of all beliefs can live together harmoniously." Am. Legion v. Am. Humanist Ass'n, 139 S. Ct. 2067, 2067 (2019). One of the keys to harmonious co-existence is the enforcement of the laws that prevent and deter harm to others. Yet the church autonomy theory being proposed by Defendants argues in favor of letting purported religious organizations manage their problems internally, without legal or judicial oversight, regardless of the harm that has or will result from their actions.

At one time courts blindly accepted these broad First Amendment claims without consideration as to the broader social implications. For too long, the failure to adjudicate claims where religion was superficially involved enabled institutional bad actors to seek shelter from the very laws that were designed to deter their harmful activities. The Catholic Church's clergy abuse era is strong testimony to the cost to society of religious institutions that seek to relegate themselves to the private sphere, where unchecked, they may harm untold numbers and obstruct the administration of justice.[1]

[1] See e.g., Kurt Erickson, More abuse survivors and witnesses step forward in Missouri Catholic clergy probe, ST. LOUIS POST-DISPATCH (Jan. 26, 2019), https://www.stltoday.com/news/local/govt-and-politics/more-abuse-survivors-and-witnesses-step-forward-in-missouri-catholic/article_0632d38e-b9e7-5a82-bbad-9b0f2ae8cfb2.html (showing survivors coming forward in Missouri); Andy Ostmeyer, Diocese Releases Names of Additional Priests Accused of Abusing

Today, courts recognize in more meaningful ways that the First Amendment is not a shield behind which religious adherents can escape liability for social wrongs they committed. The distinguishing and pervasive facts about sexual abuse across the country have changed the law's perspective on the range of religious freedom. It is no longer an open question whether purported religious institutions should be governed by the laws that govern everyone else in civil society, if it ever was; it is a proven necessity.

History illustrates the profound harm that can be done when institutional bad actors abuse broad constitutional freedoms. As courts across the country have done in child sexual abuse cases, this Court should reject Defendants claim that purported religious organizations are immune from judicial oversight and ultimately legal liability under the First Amendment for their actions that cause harm to third parties. Defendants are subject to the same neutral principles of tort and contract law as their

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Minors, JOPLIN GLOBE, (Apr. 2019), https://www.joplinglobe.com/news/diocese-releases-names-of-additional-priests-accused-of-abusing-minors/article_f8e24ae6-54b3-11e9-8418-33ed5d2d07d9.html (identifying 23 accused priests); see also Diocese of Jefferson City Updates List of Credibly Accused Clergy; Adds Two Names, Changes Status of One priest, Jefferson City, (Dec. 16, 2018), https://diojeffcity.org/blog/2018/12/16/diocese-of-jefferson-city-updates-list-of-credibly-accused-clergy-adds-two-names-changes-status-of-one-priest/ (showing updates to 2002 database examining records of bishops and identifying those who protected priests accused of sexual abuse and/or allowed them to continue working; 35 credibly accused religious leaders were on the list from the Diocese of Jefferson City).

secular counterparts and this Court may adjudicate claims at issue without interfering with religious freedom.

ARGUMENT

I. CHILD SEXUAL ABUSE CASES SHOW THAT THE CLAIMS AGAINST DEFENDANTS CAN BE HANDLED JUSTLY BY THE COURT WITHOUT INTERFERING WITH THEIR FIRST AMENDMENT RIGHTS

Though this case does not involve a claim of child sex abuse, litigation in that arena is instructive and should inform this Court's analysis here. Child sexual abuse within religious organizations is tragically widespread, touching every religion and denomination from the Roman Catholic Church, the Church of Jesus Christ of Latter-Day Saints, Jehovah's Witnesses, Judaism, Islam, and many others.[2] For decades, these trusted religious institutions systematically ignored laws that require allegations of abuse to be reported to law enforcement and then spent obscene amounts of time and money to cover up facts about their own crimes and endangerment of children.[3] Untold numbers of children needlessly suffered because of their actions.

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[2] See Marci Hamilton, The Waterloo for the So-Called Church Autonomy Theory: Widespread Clergy Abuse and Institutional Cover-up, 29 CARDOZO L. REV. 225, 225 (2007).

[3] See generally Reports of Attorneys General, Grand Juries, Individuals, Commissions, and Organizations, BISHOPACCOUNTABILITY.ORG (last visited April 1, 2024), https://www.bishop-accountability.org/AtAGlance/reports.htm (herein after "BISHOPACCOUNTABILITY.ORG").

The publicity surrounding the *Boston Globe's* groundbreaking investigative series into systemic child sexual abuse within the Boston Archdiocese and similar revelations that came to light about abusive priests around the world have emboldened victims to come forward with their stories of sexual abuse, many of them decades old, and to pursue civil action against their abusers and the religious organizations that enabled or concealed the abuse.[4]

As a first line of defense, religious organizations have attempted to draw child sexual abuse cases under the umbrella of the judicial abstention doctrine by broadly claiming that adjudication by the civil courts necessarily requires inquiry into their "internal affairs" and thus is a violation of their First Amendment rights to religious autonomy. See e.g., Listecki v. Official Comm. of Unsecured Creditors, 780 F.3d 731, 743 (7th Cir. 2015) (raising First Amendment defense to the application of bankruptcy law in a dispute over funds available to sex abuse victims); Bear Valley

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[4] Michael Rezendes, Church allowed abuse by priest for years, BOSTON GLOBE (January 6, 2002), https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html; see also BISHOPACCOUNTABILITY.ORG, *supra*; Doe v. Roman Catholic Diocese of Greensburg, 581 F.Supp.3d 176, 211-17 (D.C. Cir. 2022) (adjudicating claims of constructive fraud and civil conspiracy to commit fraud where plaintiff alleged church concealed child abuse); Redwing v. Catholic Bishop for Diocese of Memphis, 363 S.W.3d 436, 465-66 (Tenn. 2012) (adjudicating claims related to the Roman Catholic Church's fraudulent concealment of child sexual abuse by its clergy); Doe v. The Church of Jesus Christ of Latter-Day Saints, 90 P.3d 1147, 1213 (Wash. Ct. App. 2004) (adjudicating claims arising from church cover-up of abuse of two girls by their stepfather, later resulting in a $4.2 million jury award).

Church of Christ v. DeBose, 928 P.2d 1315, 1323 (Colo. 1996) (arguing that the First Amendment permitted a minister to engage in "inappropriate touching" of a child); In re Gothard, 2024 WL 739785 *8 (Tex. Ct. App. 2024) (raising a First Amendment defense to civil conspiracy claim related to religious teachings condoning child sexual abuse). This despite the fact many religious organizations have adopted internal policies and procedures intended to keep child sexual abuse a secret to be dealt with "internally as a matter of sin" and to be resolved through "repentance and prayer."[5] In attempting to evade judicial scrutiny, institutional bad actors often characterize secular disputes as religious and the underlying documents as "purely ecclesiastical" internal church communications about governance, religious doctrine, and the selection and retention of their ministers. Indeed, this is the very argument Defendants makes here. See The Family Federation for World Peace and Unification Intern. v. Moon, No. 2011 CA 003721 B (D.C. 2023) (arguing that the Court is "precluded from determining whether UCI's use of funds was

[5] VICE News, The Mormon Church Is Accused of Using a Victims' Hotline to Hide Sexual Abuse Claims (HBO), YOUTUBE (May 3, 2019), https://www.youtube.com/watch?v=P3OqvQw_-ko&feature=emb_title; see also Marci A. Hamilton, The Rules Against Scandal and What They Mean for the First Amendment's Religion Clauses, 69 MD. L. REV. 115, 119-26 (2009); Marci A. Hamilton, The "Licentiousness" in Religious Organizations and Why It Is Not Protected Under Religious Liberty Constitutional Provisions, 18 WM. & MARY BILL RTS. J. 953, 962-65 (2010) (explaining that in the Mormon LDS church's 1998 church handbook, church leaders were discouraged from cooperating in cases involving abuse).

wrongful or unjust because such a determination requires a constitutionally impermissible inquiry into contested matters of Unification Church doctrine, polity, and practice").

Contrary to the constitutional argument advanced by Defendants, in child sexual abuse cases across the country, courts have consistently held that the First Amendment does not shield purported religious organizations from judicial scrutiny, and ultimately from being held liable for their wrongdoing. See e.g., Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 431-32 (2d Cir. 1999); Sanders v. Casa View Baptist Church, 134 F.3d 331, 337 (5th Cir. 1998) (holding that the First Amendment did not categorically insulate religious relationships from judicial scrutiny where the plaintiffs' claims of sexual misconduct did not stem from religious doctrine); Doe v. Liberatore, 478 F. Supp. 2d 742, 774 (M.D. Pa. 2007) (granting summary judgment on breach of fiduciary duty claim brought against abusive priest and diocese defendants and finding claim did not offend First Amendment); Smith v. O'Connell, 986 F Supp 73, 81-82 (D. RI. 1997) (holding that defendants' exposure to tort liability for child sexual abuse did not violate their right to the free exercise of their religion nor did it create excessive entanglement between church and state because the case did not turn on interpretations of religious doctrine); Fortin v. Roman Catholic Bishop of Portland, 871 A.2d 1208, 1232 (Me. 2005) (explaining that the imposition of a fiduciary duty on Roman Catholic diocese

to protect child from sexual abuse by priest did not violate Free Exercise Clause); Malicki v. Doe, 814 So. 2d 347, 351 (Fla. 2002); Moses v. Diocese of Colorado, 863 P.2d 310, 321 (Colo. 1993) (finding the First Amendment did not bar plaintiff from seeking damages from Episcopal dioceses and bishop for injuries sustained from sexual assault by priest); Heroux v. Carpentier, 1998 WL 388298 *10 (RI. Super. Ct. 1998) (holding that the court could exercise jurisdiction over child sexual abuse claims to extent the plaintiffs' claims asserted failure of clergy to prevent harm at the hands of perpetrator priests).

If this Court were to accept Defendants' spurious First Amendment argument, it would effectively "cloak [religious] bodies with an exclusive immunity greater than that required for the preservation of the principles constitutionally safeguarded." Smith v. Privette, 495 S.E.2d 395, 398 (N.C. App. Ct. 1998). The First Amendment does not compel that result in child sexual abuse cases. Nor should it here.

Embracing Defendants claim to broad First Amendment immunity would be an affront to sound public policy and slap in the face to the individuals who have been needlessly harmed by parties acting under the guise of religion. To best protect our most vulnerable citizens, especially children, there must be some reasonable expectation and degree of assurance that these institutional bad actors

will recognize when they fall short of public expectations and be held meaningfully accountable.

II. DEFENDANTS BROAD CLAIMS OF IMMUNITY FROM NEUTRAL, GENERALLY APPLICABLE LAWS ARE INCOMPATIBLE WITH FIRST AMENDMENT DOCTRINE AND THE UNITED STATES' SYSTEM OF ORDERED LIBERTY

Defendants are asking this Court to exempt religious adherents from neutral, generally applicable laws and principles on a theory that the Religion Clauses demand it. Even the most extreme interpretation of the judicial abstention doctrine should not affect cases that seek to apply secular laws to secular conduct, even if committed by alleged religious actors. Defendants are subject to the same neutral principles of tort and contract law as their non-religious counterparts. To hold otherwise would place purported religious institutions in a preferred position over secular institutions, and effectively immunize them from legal accountability applicable to everyone else in civil society.

A. The First Amendment's Religion Clauses Do Not Position Purported Religious Organizations Above the Rule of Law

For decades, religious institutions have pushed aggressively for a maximalist view of "autonomy" as a way to avoid liability and responsibility for a range of harms.[6] But the so-called "church autonomy doctrine" is a legal fiction; it is not a

[6] MARCI A. HAMILTON, GOD VS. THE GAVEL: THE PERILS OF EXTREME RELIGIOUS LIBERTY, 45 (Cambridge U. Press 2014).

doctrine that has been adopted by the United States Supreme Court but rather an academic's phrase appearing in outdated law review articles cited in two footnotes in disparate Supreme Court cases. See Corp. of Presiding Bishop v. Amos, 483 U.S. 327, 341-42 n.2 (1987) (Brennan, J., concurring); Jones v. Wolf, 443 U.S. 595, 620, n. 8 (1979) (Powell, J., dissenting); see also, Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171, 196 (2012) ("We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers."); Bryce v. Episcopal Church in the Diocese of Colo., 289 F3d 648, 654 (10th Cir 2002) (applying ministerial exception but calling it "church autonomy"); Soc'y of Jesus of New England v. Com., 808 N.E.2d 272, 277-78 (Mass. 2004) (explaining that "church autonomy" is misnomer for "ministerial exception). In fact, the United States Supreme Court has a long and unbroken history of following the Framer's intent for "ordered liberty." See McDonald v. City of Chicago, 561 U.S. 742, 760-61, 764-67, 778, 787(2010); Milkovich v. Lorain Journal Co., 497 U.S. 1, 22 (1990); Bowen v. Roy, 476 U.S. 693, 701-02 (1986); Gertz v. Robert Welch, 418 U.S. 323, 341 (1974); Wisconsin v. Yoder, 406 U.S. 205, 215 (1972); Griswold v. Connecticut, 381 U.S. 479, 500 (1965) (Harlan, J., concurring); Kovacs v. Cooper, 336 U.S. 77, 87 (1949).

Defendants' maximalist view of autonomy would provide unqualified insulation from accountability for a range of harms, including child sex abuse. The Framers, however, never intended to provide an unrestricted license for religious entities to engage in harmful conduct under the auspices of religious freedom. See Reynolds v. United States, 98 US 145, 163 (1879) (discussing Madison's and Jefferson's view that "it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."). Rather, it was expected that religious institutions would conduct themselves in a manner consistent with the safety, peace, and order of the public.[7]

In that same vein, the unwavering position of the Supreme Court has been that a claim of religious conviction alone does not automatically confer upon its proclaimant a right to be free from government regulation. See e.g., Boerne v. Flores, 521 U.S. 507, 539–41 (1997) (Scalia, J., concurring) ("Religious exercise shall be permitted so long as it does not violate general laws governing conduct.") (citation omitted); Employment Div., Dept. Of Human Resources of Or. v. Smith, 494 U.S. 872, 878–79 (1990) ("We have never held that an individual's religious beliefs

[7] See Marci A. Hamilton, Religious Institutions, the No-Harm Doctrine, and the Public Good, 2004 BYU L. REV. 1099, 1194-95 (2004) (hereinafter "No-Harm Doctrine"); see also, Bob Jones Univ. v. United States, 461 U.S. 574, 603-05 (1983); United States v. Lee, 455 U.S. 252, 260 (1982) ("Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."); Davis v. Beason, 133 U.S. 333 (1890).

excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition."); Id., 494 U.S. at 882 (Brennan, J., concurring) ("If a legitimate legislature has duly enacted a law that makes certain conduct illegal because it harms particular individuals or the public as a whole, that determination cannot be overturned in the courts by claims that the motivation for the illegal conduct was religious. Nor can it be overturned based on the contention that the religious institution is naturally autonomous from the law."); Roy, 476 U.S. at 701-02 ("The First Amendment's guarantee that 'Congress shall make no law . . .prohibiting the free exercise' of religion holds an important place in our scheme of ordered liberty, but the Court has steadfastly maintained that claims of religious conviction do not automatically entitle a person to fix unilaterally the conditions and terms of dealings with the Government. Not all burdens on religion are unconstitutional."); Gillette v. United States, 401 U.S. 437, 461 (1971) ("Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government."); Cantwell v. State of Connecticut, 310 U.S. 296, 304 (1940) (finding that the Free Exercise Clause "embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.").

Indeed, the Court has repeatedly rejected broad claims of First Amendment immunity as inconsistent with our country's system of "ordered liberty." "[T]he very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests." Yoder, 406 U.S. at 215-16.

To be sure, the Court has *never* recognized an absolute right of religious institutions to be free from judicial oversight for their actions that "violate the laws of morality and property" or "infringe [on] personal rights." See Watson v. Jones, 80 U.S. 679, 727 (1871); see also Wolf, 443 U.S. at 608-09. The Supreme Court's overriding concern is to prevent courts from determining or directing religious entities and their believers on what to believe as a matter of faith. However, this concern does not extend to circumstances where the court is asked to determine whether a purported religious organization has engaged in harmful conduct. Lyng v. Northwest Indian Cemetery Protective Ass'n, U.S. 439 (1988); Lee, 455 U.S. at 255; Reynolds, 98 U.S. at 166-67. At a basic level, the Supreme Court's First Amendment jurisprudence reflects an orientation toward the common good where harm to third parties is the outer limit on the free exercise of religion.[8] It is this "no-harm" principle that underlies and justifies our criminal and civil laws that prohibit third-

[8] No-Harm Doctrine at 1194-95.

party harm.[9] At its core, it is a principle that recognizes the potential for great harm to the public good at the hands of those with abject power.

Here, Defendants seek to exploit the religious freedom guaranteed under our constitution by arguing for an expanded theory of ecclesiastical immunity that, if adopted, would allow wrongdoers to circumvent judicial oversight of their harmful conduct and, in effect, the rule of law, simply because of a religious affiliation. While courts have given great protection to the abstention exception in order to protect religious freedom, the exception "does not mean that religious institutions enjoy a general immunity from secular laws [.]" Our Lady of Guadalupe Sch. v. Morrissey-Berru, 140 S.CT. 2049, 2060 (2020). The resolution of the questions at issue does not implicate any Free Exercise or Establishment Clause concerns. The court need not interpret any religious doctrine, nor otherwise impermissibly entangle itself with religion, to conclude that Defendants engaged in fraud. Thus, it should stand that Defendants have no right to break the law under the Free Exercise Clause or any other First Amendment principle.

B. This Case Should Be Resolved According to Neutral, Generally Applicable Principles of Tort and Contract Law

Appropriately, the First Amendment does not preclude courts from hearing claims invoking generally applicable, neutral principles, where the law can be

[9] Id.; see also Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 709 (1985) (noting that religious accommodations must take account of third-party interests).

applied in a secular manner to religious conduct and not just beliefs. See Smith, 494 U.S. at 879 (quoting Lee, 455 U.S. at 263 (Stevens, J., concurring) (holding that the Free Exercise Clause does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'"). As explained by the Supreme Court, "[b]eliefs are absolutely protected, which leaves courts the task for which they are best equipped: applying 'neutral principles of law' to findings of fact regarding actions." Wolf, 443 U.S. at 604.

The neutral principles standard, first espoused in Jones v. Wolf, has the "primary advantage" of being "completely secular in operation and yet flexible enough to accommodate all forms of religious organization and polity" and thus "promises to free civil courts completely from entanglement in questions religious doctrine, polity, and practice." 443 U.S. at 602-04. Indeed, "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods." Id. at 606. As a matter of fact, the Supreme Court has held religious actors accountable for third-party harms under a variety neutral, generally applicable laws. See e.g., Smith, 494 U.S. at 879-880 (applying neutral principles of law to drugs and unemployment compensation); Jimmy Swaggart Ministries v. Bd. of Equalization, 493 U.S. 378 (1990) (applying

neutral principles of law to sales taxes); Lyng, 485 U.S. at 457-58 (applying neutral principles of law to federal oversight of federal lands); O'Lone v. Estate of Shabazz, 482 U.S. 342, 353 (1987) (applying neutral principles of law to prison regulation); Lee, 455 U.S. at 261 (applying neutral principles of law to social security taxes); Wolf, 443 U.S. at 604 (applying neutral principles of law to adjudicate a church property dispute); Braunfeld v. Brown, 366 U.S. 599, 609-10 (1961) (applying neutral principles to Sunday closing laws); Prince v. Massachusetts, 321 U.S. 158, 171 (1944) (applying neutral principles of law to child labor); Reynolds, 98 U.S. at 168 (applying neutral principles of law to polygamy). Similarly, the steps courts take to avoid entanglement between church and state do not apply to "purely secular disputes between third parties and a ... religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged." Gen. Council on Fin. & Admin. of United Methodist Church v. Superior Ct. of California, San Diego Cnty., 439 U.S. 1355, 1373 (1978).

Under the Free Exercise Clause, the Supreme Court has instructed that if burdening the exercise of religion is not the "object" of a law but is instead "merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." Smith, 494 US at 878. Otherwise, granting religious exemptions to neutral and generally applicable laws "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." Id. at 879 (citing Reynolds, at 166–67 (1879)). The Supreme Court's settled doctrine requires deference to and application of state laws that are neutral and generally applicable even if they burden purported religious conduct.

No entity is above the neutral, generally applicable laws like those at issue in this case—religious or not. In fact, holding religious actors harmless when they have harmed others is a preference for religion that is inconsistent with the Establishment Clause. Malicki, 814 So.2d at 365 (holding that failing to apply tort liability solely because of religion would have the impermissible effect of recognizing a religion in violation of the Establishment Clause).

This Court should clarify that neutral principles of law apply to this case and reverse the lower Court's dismissal which was based on its erroneous position that a determination as to whether Defendants use of funds was wrongful or unjust would require "a constitutionally impermissible inquiry into contested matters of Unification Church doctrine, polity, and practice." See Moon, No. 2011 CA 003721 B, at *5. While Defendants allege that their actions were made in furtherance of "the mission and activities of the Unification Church," Pls.' Compl. ¶ 117, that fact alone does not exempt them from judicial scrutiny. See Reynolds, 98 U.S. at 166-67. Upholding Defendants' position would expand religious immunity far beyond the bounds of controlling precedent, creating an exception to the rule of law that is

unacceptable in a democratic society. Would a bishop who murders a priest or parishioner as a form of religious discipline be immune from civil liability? Would a bishop who decides that payment of an electrician's bill for repairs to the chancery is not authorized under church law, be immune from a breach of contract action? In neither case can the answer be "yes." Drawing the line at self-dealing and the mishandling of corporate assets by religious actors makes no sense. If religious entities must obey the laws governing commercial transactions, they must also be subject to the laws that prevent unsavory business practices. Were this Court to hold otherwise, it would effectively grant protection to self-professed religious actors who operate with an intent to avoid legal obligations, thereby putting the most vulnerable members of our society at risk.

III. ANY EXPANSION OF RELIGIOUS AUTONOMY WOULD LEAD TO UNTENABLE RESULTS FOR VICTIMS OF CHILD SEXUAL ABUSE AND OTHER VULNERABLE PERSONS

If this Court were to adopt an expansive theory of church autonomy that immunizes purported religious actors from government regulation over issues involving self-proclaimed "internal affairs" or that permits these actors to escape liability for wrongs committed in the name of religion, the potential for its abuse—and harm to vulnerable persons, especially children — would be limitless. See e.g., U.S. v. Amer, 110 F.3d 873, 879 (2d Cir. 1997) (a father invoked religious liberty to shield himself against a child kidnapping claim); Perez v. Paragon Contractors

Corp., 2:13CV00281-DS, 9 (D. Utah, 2014) (FLDS Church invoked religious liberty to avoid complying with child labor claims); State v. Bent, 328 P.3d 677, 685 (N.M. Ct. App. 2013) (a believer invokes religious liberty to appeal a conviction for sexual contact with a minor).

It is common enough under the far narrower scope of the judicial abstention doctrine for purported religious actors to attempt to exploit the religious freedom our Constitution guarantees to escape liability for harming children. See e.g., Jacobson v. Massachusetts, 197 U.S. 11, 29 (1905) (finding that vaccination laws may be enforced notwithstanding "religious conviction" of objectors); George v. Int'l Soc. for Krishna Consciousness of California, 4 Cal.Rptr.2d 473, 498 (Cal. Ct. App. 1992) (raising a First Amendment defense to tort claim based on concealment of daughter from her mother); Listecki, 780 F.3d at 743; Redwing, 363 S.W.3d at 436; Roman Catholic Archbishop of L.A. v. Superior Court, 32 Cal. Rptr. 3d 209, 239-40 (Cal. Ct. App. 2005) (holding that First Amendment and clergy-penitent privilege do not bar disclosure of church documents related to allegations of sexual abuse by priests). Similar defenses to harmful conduct against minors would, under Defendants' proposed framework, grow not only in number but also in success. As a result, vulnerable children would be unprotected simply because the harm arises from so-called religious conduct or in the context of a religious institution. Child victims increasingly would have no forum to seek a remedy for the wrongs

committed by religious institutions; the deterrent effect of tort and criminal law would be muted; and consequently, wrongdoers would continue to feel empowered to exploit children. Indeed, "it is precisely this concept of autonomy that led religious institutions to believe that they had a right to handle repeated crimes in private and place their public image above the interests of vulnerable children" in the clergy sex abuse cases.[10] Fortunately, the U.S. Supreme Court has never held that they did.

It is especially concerning that Defendants seek immunity from fraud-based claims given the massive sexual abuse coverup problem in our religious institutions and the inability of victims to access justice for the same. Specifically, civil statutes of limitation for child sexual abuse have historically been unfairly short and victims' claims were time-barred long-before they were psychologically able to come forward.[11] That is a major reason why the public knew so little about the epidemic of child sexual abuse. However, most modern courts have embraced expanded use of fraud or fraudulent concealment principles to toll the limitations period in child sexual abuse cases by permitting otherwise time-barred actions to proceed where the defendant concealed the plaintiff's right of action. See, e.g., Doe v. Board of Educ. of Hononegah Community High School Dist. No. 207, 1375-76, 833 F Supp 1366

[10] See supra n. 6 at 38-80.

[11] See Marci Hamilton et. al., History of Child Sex Abuse Statutes of Limitation Reform in the United States, CHILD USA, (June 21, 2022), available at https://childusa.org/wp-content/uploads/2022/06/2022-06-03-2021-SOL-Report-.pdf.

(N.D. Ill. Sept. 30, 1993) (holding that while plaintiff may have known she was abused, there was nothing to suggest that she knew or should have known of the alleged acts or omissions on the part of the defendants to conceal or cover-up teachers sexual misconduct). In effect, these principles operate to restrict wrongdoers from inappropriately concealing material information and, in turn, leveraging a limitation period to cause an injustice. It has been instrumental to securing civil accountability from both secular and religious actors and revealing to the public the insidious ways in which trusted organizations had been enabling and hiding abuse. See, e.g., J.C. v. Society of Jesus, 457 F. Supp.2d 1201 (W.D. Wash. 2006) (holding that church's fraudulent concealment prevented their statute of limitations defense and denying summary judgement to church on damages claim brought by victim, who alleged that priest sexually abused him when he was a minor.); Martinelli v. Bridgeport Roman Catholic Diocesan Corp., 196 F.3d 409, 432 (2d Cir.1999) (applying Connecticut's fraudulent concealment statute created factual issue as to whether defendant diocese's knowledge of priest's sexual misconduct with another teenage boy during the same time period he was abusing the plaintiff and under a fiduciary duty to the plaintiff was sufficient to create a duty on the part of diocese to warn the plaintiff and his family such that the failure to warn would toll the statute of limitations); Wisniewski v. Diocese of Belleville, 943 N.E.2d 43, 74-75 (Ill. App. Ct. Jan. 13, 2011) (finding that the diocese failed to

disclose material facts concerning alleged sexual abuse victim's claim against it in light of the special relationship between the parties, for the purpose of applying the fraudulent concealment statute to extend the limitations period for filing a civil claim for sexual abuse against diocese); Doe v. Boy Scouts of Am., 66 N.E.3d 433, 453 (Ill. App. 1st Dist. 2016); Stratmeyer v. Stratmeyer, 567 N.W.2d 220, 221 (S.D. 1997).

Even so, victims of child sexual abuse face an uphill battle when it comes to satisfying the burden of proof on claims related to organizational coverups. "In alleging fraud, a party must state with particularity the circumstances constituting fraud[.]" Fed. R. Civ. P. 9(b); see also FTC v. Cantkier, 767 F. Supp. 2d 147, 151 (D.D.C. 2011) ("Rule 9(b) imposes a heightened pleading standard for fraud claims."). This "heightened pleading standard" requires that a plaintiff "provide a defendant with notice of the 'who, what, when, where, and how' with respect to the circumstances of the fraud." Stevens v. In Phonic, Inc., 662 F. Supp. 2d 105, 114 (D.D.C. 2009). This heightened pleading standard has enormous implications for victims' ability to access justice. Decades of scientific research on trauma makes clear that it is not reasonable to expect victims of child sexual abuse to remember details of a traumatic event or to recall such events in a consistent and

linear manner.[12] Simply put, this pleading standard requires victims to do that which behavioral psychology and cognitive-neuroscience research dictates is virtually impossible to access legal protections.

Victims who file claims based on institutional concealment of child sexual abuse also face additional challenges when it comes to establishing the "how." The information required for a victim to satisfy their burden of proof is often in defendants' exclusive control in the form of internal documents or policies unknown to the public. To this point, courts across the country recognize that such documents are critical to proving cases of institutional wrongdoing related to sexual abuse. See e.g., Roman Cath. Diocese of Jackson v. Morrison, 905 So.2d 1213, 1248 (Miss. 2005) (holding that there is no privilege under the First Amendment allowing the church to evade production of religious-oriented documents); Roman Cath. Archbishop of Los Angeles v. Sup. Ct., 31 Cal.Rptr.3d 209, 244 (Cal. App. Ct. 2005) (holding that grand jury's subpoenas duces tecum seeking documents relating to child sexual abuse committed by priests did not violate the Free Exercise and

[12] See Martin A Conway, Lucy V Justice & Catriona M Morrison, Beliefs about Autobiographical Memory … and why they Matter, 27(7) THE PSYCHOLOGIST 502 (2014); Svein Magnussen & Annika Melinder, What Psychologists Know and Believe about Memory: A Survey of Practitioners, 26(1) APPLIED COGNITIVE PSYCH. 54 (2012); Bremner, J., Traumatic Stress: Effects on the Brain, 8 DIALOGUES CLINICAL NEUROSCI. 445, 448-49 (2006) (explaining traumas impact on memory).

Establishment Clauses); Corsie v. Campanalonga, 721 A.2d 733, 737 (N.J. Super. Ct. 1998), rev'd in part, 734 A.2d 788 (N.J. Super. Ct. 1999) (holding that the First Amendment did not protect against the application of judicial discovery rules to uncover relevant material in personnel files related to alleged sexual misconduct); Hutchison v. Luddy, 611 A.2d 1280, 1292-93 (Pa. Super. Ct. 1992) (holding that discovery contained in the priest's file did not impermissibly intrude upon the practice of religion and the request documents were relevant to church officials' conduct).

The heightened pleading standard for claims of fraud coupled with the near absolute autonomy of alleged religious actors, if adopted, would make access to justice effectively impossible for claims related to child sexual abuse. As a result, religious institutions that fail to prevent or respond to reports of sexual abuse may continue to do so undeterred. Shutting the courthouse doors will also have broader implications—it will chill reports of sexual abuse as many victims will choose not to come forward if they see no avenue to justice.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court reject expansion of the judicial abstention doctrine and reverse the lower court decision dismissing the case.

Respectfully Submitted,

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I hereby certify that on this 30th day of April 2024, I served a copy of the foregoing amicus curiae brief in support of Petitioner and urging reversal on the following counsel of record via the Appellate E-filing System:

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District of Columbia
Court of Appeals

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Pursuant to Administrative Order No. M-274-21 (amended April 17, 2024), this certificate must be filed in all cases with all briefs and motions submitted in all cases designated with a "CV" docketing number, to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases. This form only needs to be filed once and should be filed under "Redaction Certification Form" on Ctrack.

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2. Any information revealing the identity of an individual receiving mental-health services.

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4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

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