No. _____

In The

Supreme Court of the United States

VALERIE HANEY,

Petitioner,

v.

CHURCH OF SCIENTOLOGY INTERNATIONAL AND RELIGIOUS TECHNOLOGY CENTER, DAVID MISCAVIGE, AND DOES 1-25,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, under the First Amendment, a court may subject a person who has rejected the faith to participate in a religious "arbitration" where arbiters must be members of that religion in good standing and must apply religious principles to resolve a dispute involving violations of civil law.

PARTIES TO THE PROCEEDINGS BELOW

Valerie Haney was the plaintiff below and is Petitioner here, and the Church of Scientology International, Religious Technology Center, David Miscavige, and Does 1-25 were Defendants and Real Parties of Interest below and are Respondents here. The Los Angeles County Superior Court was also a Respondent below.

RELATED CASES

Valerie Haney v. Superior Court of Los Angeles County, Respondent; Church of Scientology International et al., Real Parties in Interest, California Supreme Court. Judgment entered December 9, 2021.

Valerie Haney v. Superior Court of Los Angeles County, Respondent; Church of Scientology International, et al., Real Parties in Interest, Court of Appeal of the State of California, Second Appellate District, Division Five. Judgment entered October 22, 2020.

Valerie Haney v. Church of Scientology International; Religious Technology Center, and David Miscavige; and Does 1-25, California Superior Court, County of Los Angeles, Central District. Judgment entered January 30, 2020.

Valerie Haney v. Church of Scientology International; Religious Technology Center, and David Miscavige; and Does 1-25, California Superior Court, Count of Los Angeles, Central District. Judgment entered August 11, 2020.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The order of the California Supreme Court was entered on December 9, 2020, which denied Petitioner's Petition for Review, is not reported. The order of the Court of Appeals of the State of California, Second Appellate District, Division Five, was entered on October 22, 2020, which denied Petitioner's Petition for Writ of Mandate, is not reported. The opinions of the California Superior Court entered on January 30, 2020, which granted Respondents' Motions to Compel Religious Arbitration, and Petitioner's Motion for Reconsideration of that Order was entered on August 11, 2020, are not reported.

JURISDICTION

The California Supreme Court's decision was entered on December 9, 2020, denying Petitioner's Petition for Review. The California Superior Court's decision was entered on October 22, 2020, Denying Petitioner's Petition for Writ of Mandate. The California Superior Court's opinion granting Respondents' Motions to Compel Religious Arbitration was entered on February 18, 2020, and the Petitioner's Motion for Reconsideration of that Order was entered on February 18, 2020.

This Court has jurisdiction to review the opinion rendered below pursuant to the provisions of Title 28, U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I, provides in pertinent part,

> 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.

California Code of Civil Procedure Law § 1281.2, Order to Arbitrate Controversy; Petition; Determination of Court, provides in pertinent part,

> § 1281.2. Order to arbitrate controversy; petition; determination of court
>
> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> (a) The right to compel arbitration has been waived by the petitioner; or

> (b) Grounds exist for rescission of the agreement.
>
> (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

STATEMENT OF THE CASE

Nature of the Case

Petitioner was born into the Church of Scientology International ("Respondents") and lived on various Scientology bases throughout her childhood and into adulthood. During that time, and in the time since she escaped, she alleges that the actions of the Respondents gave rise to numerous civil claims, including

kidnapping, human trafficking, intentional infliction of emotional distress, and nine more claims.

In 2016, Petitioner "submitted written requests to leave" "seven times" but "[a]ll requests were denied." "On one occasion," Petitioner "was physically restrained and prevented from leaving." She eventually escaped successfully by hiding in the trunk of another person's car and left the Gold Base in San Jacinto, California, in November 2016.

Respondents lured Petitioner back under threat of loss of contact with her mother and brother, and she returned to the base. She was then forcibly held on the base and "forced to do everything with a 'handler,' including using the bathroom, showering, and sleeping." She was "made to do videotaped interrogations in which" she was "forced to make false confessions" and "provide false positive testimonials about [her] experiences with CSI."

Since Petitioner escaped from Scientology for the last time, defendants have "stalked, followed, surveilled, and harassed [Petitioner]," including following her vehicle, and in one instance, almost running Plaintiff off the road. After Petitioner fled Scientology, she was declared a "Suppressive Person." "In the eyes of Scientology," Petitioner "has committed Crimes and High Crimes including speaking with the media, spreading 'disaffection,' refusing to comply with the orders of the organization, reporting alleged crimes by Scientologists to law enforcement, and finally the act of bringing a lawsuit against Scientology."

Petitioner has rejected Respondents as her religion. In August of 2019, Petitioner brought civil claims against Respondents, but California courts have forced her to participate in Respondent's religious rituals to supposedly arbitrate her civil claims. The California Superior Court found in its January 30, 2020, Minor Order that the September 10, 2010, "Religious Services Enrollment Application, Agreement and General Release," signed by Petitioner eleven years ago–under conditions of duress, coercion, and unconscionability–states in relevant part:

> "**In accordance with the discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the Scientology religion**, and in accordance with the constitutional prohibitions which forbid governmental interference with religious services or dispute resolution procedures, should any dispute, claim or controversy arise between me and the Church, any other Scientology church, any other organization which espouses, presents, propagates or practices the Scientology religion, or any person employed by any such entity, which cannot be resolved informally by direct communication, **I will pursue resolution of that dispute, claim or controversy solely and exclusively through Scientology's internal Ethics, Justice and binding religious arbitration procedures, which include application to senior ecclesiastical bodies, including, as necessary, final submission of the dispute to the International Justice Chief of the**

> **Mother Church of the Scientology religion, the Church of Scientology International ("IJC") or his or her designee.**" (emphasis added)

The same Minute Order includes a finding that Petitioner is bound by the September 10, 2010 "Declaration of Religious commitment and Membership in the Sea Organization," which states in relevant part:

> "In the unlikely event that there should arise any dispute between me and the Church, any other Scientology church or related organization or any person serving as an officer, director, trustee or staff member of any such entity concerning my participation, in the past, the present or the future, in any Scientology Religious Service or with respect to the discipline, faith, internal organization and/or rules of Scientology, **I RECOGNIZE UNDERSTAND AND AGREE THAT ANY SUCH DISPUTE BY ITS VERY NATURE IS A MATTER OF RELIGIOUS DOCTRINE**, WHICH THEREFORE WILL AND MUST BE RESOLVED SOLELY AND EXCLUSIVELY BY THE ECCLESIASTICAL AUTHORITIES AND RELIGIOUS PROCEDURES OF SCIENTOLOGY." (emphasis added).

Finally, the January 30, 2020 Minute Order includes a finding that Petitioner is bound by the 2013 "Church of Scientology International Staff Commitment and General Release," which states in relevant part that she agreed to resolve any disputes through

"Scientology International Ethics, Justice and religious arbitration procedures exclusively," and agreed to exclude any remedies available in a "secular court of law." The California courts have repeatedly held that these Religious Arbitration Agreements provide the basis for the courts to force Petitioner to engage in religious "arbitration" that is controlled by the faith she escaped and rejects.

In forcing Petitioner to participate in this religious "arbitration," the California courts are prescribing to her religious beliefs and practices she consciously rejected. They are infringing on her right to reject a religion. The right to exit religion, enshrined in *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), is as important to the free exercise of religion as the right to enter or participate in a religion, and when the California courts blocked Petitioner from bringing her civil claims before them and redirected her to a religious service, they usurped her absolute right to choose the faith.

Relevant Proceedings Below

Petitioner in this case filed her initial Complaint alleging kidnapping, human trafficking, intentional infliction of emotional distress, and other claims in August of 2019, but a California court has yet to hold a hearing on the facts of her case or learn the merits of her case and never will, if the California Superior Court's Order of February 18, 2020 Granting

Respondents' Motion to Compel Religious Arbitration is allowed to stand.

Petitioner filed a motion for reconsideration in March of 2020, immediately preceding the court closures due to the COVID-19 pandemic, and a hearing on the same was delayed for months as a result. The California Superior Court eventually denied that motion following a hearing held on August 11, 2020, before the California Superior Court. Petitioner filed a Writ of Mandate with the California Supreme Court on September 19, 2020, within 30 days of that denial, which was denied.

REASONS FOR GRANTING THE PETITION

I. Courts are Split Over the Judicial Enforceability of Religious Arbitration Agreements to Disputes Involving Secular Legal Violations

This case requires Supreme Court clarification of an individual's right to exit religion and be free from coercion to participate in religious services in cases involving tort claims after rejecting the religion, under the First Amendment's inalienable and absolute guarantee against government prescription of belief. Lower courts have applied a variety of theories to the interplay between religious services dispute resolution agreements and the religious freedoms guaranteed by the First Amendment. Many courts have chosen to

avoid analysis of this issue and resolved religious arbitration disputes based on other grounds, while others have affirmed an individual's right to not be coerced by the courts into a rejected religion, applying neutral principles of law to decide the case.

Clarity, guidance, and predictability are needed from the nation's highest court to ensure there is a uniform rule guaranteeing the right to choose one's own religion, without government coercion. Forcing a former believer who has been called to another faith to participate in a religious arbitration ritual, controlled by religious leaders and applying religious principles and doctrines abandoned by the person violates the most basic principles of the First Amendment. Many religions, including Scientology, Judaism, and Christianity, regularly use and enforce religious arbitration procedures, rendering this a recurring issue of national importance. This case is distinct from those cases involving religious arbitration for believers in the faith. This Court needs to provide guidance on the constitutionality of forcing persons to undergo and comply with dispute resolution rituals demanded by the rejected faith.

A. Courts Are Split on the Application of First Amendment Principles to Disputes Involving Religious Arbitration Agreements

The First Amendment Religion Clauses circumscribe the role that civil courts may play in the

resolution of disputes between adherents that affect ecclesiology. For example, this Court has identified a robust right of religious organizations to choose their ministers. *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171, 174 (2012). As one lower court explained, "the Establishment Clause precludes civil courts from resolving disputes involving religious organizations whenever such disputes affect religious doctrine or church polity or administration," while "the Free Exercise Clause requires civil courts to defer to the decisions of the highest tribunals of hierarchical religious organizations on matters of religious doctrine, discipline, faith, and ecclesiastical rule, custom or law." *Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 353 (D.C. Ct. App. Mar. 10, 2005). The First Amendment, however, does not place religious organizations above the law or permit courts to trap individuals in a faith they have rejected. Courts may resolve disputes involving religious organizations according to "neutral principles of law" where their decisions are not premised upon determination of doctrinal matters, such as the rituals of worship or the tenets of faith. "Neutral principles of law" are secular, legal rules, the application of which does not entail theological or religious evaluation. *Jones v. Wolf*, 443 U.S. 595, 603-04 (1979).

There is settled jurisprudence that should guide how secular courts deal with religious tribunals and under what conditions a religious arbitration agreement or religious tribunal decision can be upheld by the secular courts. Yet, the lower courts have split on these issues.

While the action of a civil court enforcing religious arbitration or confirming or voiding a decision by a religious tribunal may seem to raise clear First Amendment concerns, the vast majority of court opinions reviewing the terms of religious arbitration agreements do not discuss this issue at all. For example, courts have side-stepped First Amendment issues by simply refusing to enforce religious arbitration agreements on public policy grounds. *See e.g. Matter of Teitelbaum*, 10 Misc.3d 659, 662 (N.Y. Sup. 2005) ("Arbitration agreements are unenforceable where substantive rights, embodied by statute, express a strong public policy which must be judicially enforced") (citing *Matter of Wertheim & Co. v. Halpert*, 48 N.Y.2d 681, 683 (1979)). Areas of the law that courts have found to be non-arbitrable as against public policy also include child custody matters, *Nestel v. Nestel*, 38 A.D.2d 942 (N.Y. Sup. Ct. Mar. 6, 1972) (judicial process is more broadly gauged and better suited where delicate balancing of interests of child is in issue); estate distributions, *Matter of Jacobovitz*, 58 Misc.2d 330 (N.Y. Sur. Ct. Dec. 9, 1968); *Matter of Berger*, 81 A.D.2d 584 (N.Y. Sup. Ct. April 6, 1981); and criminal violations. *Matter of Goldmar Hotel Corp.*, 283 A.D. 935 (N.Y. Sup. Ct. May 25, 1954).

Courts that have acknowledged the First Amendment concerns inherent in religious arbitration agreements have reached the opposite conclusion and held such agreements unenforceable on First Amendment grounds. For example, the Supreme Court of New York in *Sieger v. Sieger*, was asked to interpret a clause in

a marriage contract requiring that any dispute between the couple be settled "in accordance with the 'regulations of Speyer, Worms, and Mainz.'" 2005 WL 2031746, *50 (Sup. Ct., June 29, 2005). While the appellant claimed that the provision referred to a rabbinical court, the court refused to defer to his interpretation and compel arbitration. *Id*. at *51. It held that the ambiguity of the actual contract language precluded the application of neutral principles of contract law, and thus enforcement by a civil court would violate the Religion Clauses. *See also Aflalo v. Aflalo*, 685 A.2d 523, 541 (N.J. Super. Ct. Ch. Div. 1996) (refusing to enforce an agreement to arbitrate a religious divorce dispute before a beth din because doing so would "inappropriately entangle[] the civil court in the wife's attempts to obtain a religious divorce").

Notably, in *In re Ismailoff*, No. 342207, 2007 WL 431024, slip op. at 1 (N.Y. Sur. Ct. Feb. 1, 2007), a New York court addressed an executed irrevocable inter vivos trust that included the following arbitration provision:

> In the event that any dispute or question arises with respect to this Declaration of Trust, such dispute or question shall be submitted to arbitration before a panel consisting of three persons of the Orthodox Jewish faith, which will enforce the provisions of this Declaration of Trust and give any party the rights he is entitled to under New York law.

Id. at *1. The parties subsequently disputed the enforceability of the trust and one of the parties sought

to initiate arbitration proceedings. The New York court concluded that the arbitrator qualification provision was unenforceable, holding that the First Amendment, which prohibits courts "from resolving issues concerning religious doctrine and practice," rendered the provision requiring the selection of three arbitrators of Orthodox Jewish faith unenforceable. *Id*. at *2. The court held that because the First Amendment prohibits inquiry into religious questions, the court simply could not enforce the arbitrator qualification clause; doing so would have ultimately required judicial analysis over which prospective arbitrators were "of the Orthodox Jewish faith." *Id*.

Petitioner in *Garcia*, argued that the Florida court could not enforce an arbitration agreement where prospective arbitrators were to be Scientologists "in good standing with the Mother Church." *Garcia and Garcia v. Church of Scientology Flag Serv. Org., Inc. et al.*, No. 8:13-cv-220-T-27TBM, 2015 WL 10844160, *2 (M.D. Fla. Sept. 20, 2019). Determining which prospective arbitrators were "in good standing," presumably would require interrogation of religious doctrine, given that it seems most likely that interpreting and applying that standard both entails identifying what religious behaviors are necessary for good standing and then applying those religious standards to prospective arbitrators. As a result, the court should have determined that it would be unconstitutional to enforce the arbitrator qualification clause—just as it was in *In re Ismailoff*. Instead, the court refused to entertain this argument on First Amendment grounds, stating:

> "As compelling as Plaintiffs' argument might otherwise be, the First Amendment prohibits consideration of this contention, since it necessarily would require an analysis and interpretation of Scientology doctrine. That would constitute a prohibited intrusion into religious doctrine, discipline, faith, and ecclesiastical rule, custom, or law by the court. Indeed, Plaintiffs earlier acknowledged that "[t]he hostility of any Scientologists on [the arbitration panel] is . . . church doctrine." Accordingly, the Court has no jurisdiction to consider this argument."

2015 WL 10844160, at *11. Accordingly, in *Garcia*, the court coerced the plaintiff into religious rituals while simultaneously evading judicial review on other grounds.

In another case, before marriage, a wife entered into a written agreement in which she voluntarily agreed to rear the children of her marriage in a particular religious faith. *In re Marriage of Weiss*, 49 Cal. Rptr. 2d 339, 341 (Cal. Ct. App. 1996). When the wife divorced, her former husband asked the court to enforce the pre-nuptial agreement. The court declined. *Id*. at 347. It reasoned that enforcing such an agreement would "encroach[] upon the fundamental right of individuals to question, to doubt, and to change their religious convictions." *Id.* at 346-47. This right was so important that it could not be "bargained away"; *see also Abbo v. Briski*, 660 So. 2d 1157, 1159-61 (Fla. 4th D. Ct. App. Sept. 27, 1995) (declining to require divorcing spouse to rear children in a certain faith despite

the fact that, as condition of the marriage, the spouse agreed to convert to the faith in question).

Noting the holding in *Weiss*, California's Second District Court of Appeal held that enforcement of a religious upbringing agreement would offend free exercise. 49 Cal. Rptr. 2d 31, at 347 (1996).

There is no consistent application of First Amendment principles protecting individuals who have rejected a faith from being compelled into religious rituals. Further, courts inconsistently apply, and fail to apply, neutral principles of law to cases involving religious arbitration agreements and secular claims. This Court needs to intervene to affirm the individual's right to exit a religion, as well as to clarify when courts should use neutral principles of law to decide secular issues despite a previous religious arbitration agreement. No court should be permitted to coerce a person to participate in a religious ritual that person now rejects.

II. The First Amendment Free Exercise Clause Protects a Person's Absolute Right to Choose One's Religion, Including the Rights to Reject and Exit, Without Government Coercion

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof*." U.S. Const. amend. I (emphasis added). The right to believe as one chooses is

absolute, *Cantwell v. State of Connecticut*, as is the right to non-belief. 310 U.S. 296, 303 (1940) ("[T]he [First] Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be."). "Long-settled constitutional doctrine guarantee[s] religious liberty and equality to the infidel, the atheist, or the adherent of a non-Christian faith." *Cty. of Allegheny v. ACLU*, 492 U.S. 573, 590 (1989).

As this Court so eloquently stated: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S., at 642; *Reynolds v. United States*, 98 U.S. 145, 164 (1878).

The inalienable liberty interest protected by the Religion Clauses is, at its core, the individual's right to "freedom of conscience" which encompasses the right to "select any religious faith or none at all." *See generally* U.S. Const. amend. I; *Emp't Div. v. Smith*, 494 U.S. 872, 877 (1990); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *West Virginia State Bd. of Educ. v. Barnette*; *Cantwell*, 310 U.S., at 303-04; *see also Wallace v. Jaffree*, 472 U.S. 38, 50, 53 (1985); *Weiss*, 49 Cal. Rptr. 2d 31, at 347 (declining to enforce a pre-nuptial agreement because, to do so, would "encroach[] upon the fundamental right of individuals to question, to doubt, and to change their religious convictions."); *Zummo v. Zummo*, 574 A.2d 1130, 1146-48 (Pa. Super. Ct. 1990) (recognizing the "fundamental [constitutional] right of

individuals to question, to doubt, and to change their religious convictions" and that the "[r]eligious freedom . . . recognized by our founding fathers [was] to be inalienable" and thus could not be bargained way). There can be no meaning to the right to join a particular religion under the concepts of *Barnette*, *Cantwell*, *Emp't Div. v. Smith*, and *Reynolds*, if the freedom of conscience does not also comprehend the freedom to change one's religious beliefs and to exit from her religious faith as Petitioner has.

No government official, including a judge, may force a person who has rejected a faith to then participate in it. In fact, this Court has invalidated voluntary, private agreements when doing so violates the Constitution or public policy. *See e.g. Shelley v. Kraemer*, 334 U.S. 1, 19-22 (1948) (refusing to enforce a voluntary, private agreement to refrain from selling his property to buyers of a certain race). Lower courts have also rejected pleas by religious entities to prescribe religious service arbitration against those who left the religion behind.

The Religious Arbitration Agreements signed by the Petitioner in this case are unenforceable, because they bargained away Petitioner's absolute right to believe what she chooses; including her right to reject a religion or all religion. Subjecting Petitioner to the Respondents' religious rituals violates the First Amendment and makes the courts religious enforcers. The government act of compelling an individual who has escaped and rejected a religion to follow a particular

religion's principles and practices, by itself, results in the denial of core First Amendment rights.

A. Courts Lack the Power to Compel Those Who Have Rejected a Faith to Participate in a Religious Ritual

The Establishment Clause prohibits the government from compelling an individual to participate in religion or its exercise, or otherwise from taking action that has the purpose or effect of promoting religion or a particular religious faith. U.S. Const. amend. I; *Serbian Eastern Orthodox Diocese for the United States and Canada v. Milivojevich*, 426 U.S. 696, 712-20 (1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 449-50 (1969); *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 113-15 (1952); *see also Williams v. California*, 990 F.Supp.2d 1009 (C.D.Cal.2012), *aff'd*, 764 F.3d 1002 (9th Cir. 2014); *see also Sherbert v. Verner*, 374 U.S., at 404 (holding unconstitutional state law requiring believer to choose between her beliefs and benefits under the law); *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 305 (1963) ("The fullest realization of true religious liberty requires that government neither engage in nor compel religious practice."); *see also Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007) (noting government coercion to participate in religious activities "strikes at the core" of the First Amendment). Courts may not compel the exercise of religion in any forum, whether at a place of worship or in arbitration,

and it cannot interfere an individual's right to change their religious mind: "[t]he First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State." *Lee v. Weisman*, 505 U.S. 577, 589 (1992).

The constitutional prohibition on government coercion of religion has been applied in a variety of circumstances, including: (i) school prayer, (ii) probationers, parolees, and prisoners ordered to participate in rehabilitative programs that include religious prayers and exercises, and (iii) requirements that state employees attend conferences with religious presentations. *See* Rex Ahdar, *Regulating Religious Coercion*, 8 STAN. J. CIV. RTS. & CIV. LIBERTIES 215, 220-24 (2012) (listing examples).

This prohibition on government coercion also applies in this case. The lower courts have engaged in unconstitutional coercion by forcing the Petitioner—a former Scientologist—to now be subjected to a religious ritual to settle a secular dispute even if it is misleadingly labeled "arbitration," *Weisman*, 505 U.S., at 587, 588, 592; *Mitchell v. Helms*, 530 U.S. 793, 870 (2000) (Souter, J., Stevens, J., & Ginsburg, J., dissenting); *Amer. Legion v. Amer. Humanist Ass'n*, 139 S. Ct. 2067, 2096 (2019) (Thomas, J., concurring). No court may compel Petitioner, a non-believer, to participate in this religious arbitration ritual.

III. Forcing Petitioner to Undergo Religious Arbitration Governed by Arbitrators "In Good Standing" With Respondents Violates the Religion Clauses

Courts unconstitutionally establish religion when they force Petitioners like the one in this case to undergo a religious arbitration "in accordance with [Respondents'] principles of justice and fairness, and consistent with the ecclesiastical nature of the procedure and dispute." *Religious Services Enrollment Application, Agreement and General Release*, Sep. 10, 2010, ¶6(d). Likewise, courts misuse the ecclesiastical abstention doctrine when they use it to avoid resolving secular disputes according to neutral principles of law.

A. Enforcement of the Religious Arbitration Agreements Constitutes State Action that Violates the First Amendment's Religion Clauses

The lower courts' enforcement of a religious process demanded by the Respondents in order to resolve Petitioner's secular claims constitutes state action that delegates a core government function—civil justice—to a religious entity. It therefore violates basic First Amendment principles. *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist v. Grumet*, 512 U.S. 687, 710 (1994); *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 126 (1982); *see generally* Brian Hutler, *Religious Arbitration and the Establishment Clause*, 33:3 OHIO STATE J. ON DISPUTE RES. 338, 354 (2008). Although the First

Amendment offers broad protections to religious institutions and individuals, there are limits to its scope, especially regarding the powers governments may grant to religious institutions. *Larkin* at 122. The First Amendment may not be used as a shield to protect agreements that would fail if they were in secular agreements.

Petitioner does not challenge the arbitration agreements solely because of their religious nature. She also challenges the arbitration agreements because of the way in which the requirements of the process are weighted so heavily against her as to make them unconstitutional and unconscionable. *Higher Ground Worship Ctr. v. Arks, Inc.*, No. 1:11-cv-00077-BLW, 2011 WL 4738651, at *4 (D. Idaho Oct. 6, 2011). Enforcing the agreements in their current form categorically undermines the capacity of any former or current member of the Respondent's faith from the protections of neutral laws of general applicability. *Encore Prod., Inc. v. Promise Keepers*, 53 F.Supp.2d 1101, 1112 (1999) ("'Neutral principles' are secular legal rules whose application to religious parties or disputes do not entail theological or religious evaluations."). Under the Free Exercise Clause, the Supreme Court has held religious entities and believers accountable under numerous neutral, generally applicable laws. *See Emp't Div. v. Smith*, 494 U.S. 872 (1990); *United States v. Lee*, 455 U.S. 252 (1982); *Jimmy Swaggart Ministries v. Bd. of Equalization*, 493 U.S. 378 (1990); *Reynolds*, 98 U.S. 145 (1879); *O'Lone v. Estate of Sabazz*, 482 U.S. 342 (1987); *Gillette v. United States*, 401 U.S. 437 (1972); *Braunfeld v. Brown*, 366 U.S. 599 (1961);

Bowen v. Roy, 476 U.S. 693 (1986); and *Lyn v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988). "Neutral principles of law" are applicable to religious entities without violating the Establishment Clause or Free Exercise Clause. *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Stormans, Inc., v. Wiseman*, 794 F.3d 1064 (9th Cir. July 23, 2015); *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1032-32 (9th Cir. Mar. 8, 2004); *Miller v. Reed*, 176 F.3d 1202, 1207 (9th Cir. May 24, 1999); *Melanie H. v. Defendant Doe 1, et al.*, No. 04-1596-WQH-(WMc), Order at 11 (S.D. Cal., Dec. 2005); *Dayton Christian Schs., Inc. v. Ohio Civil Rights Comm'n*, 766 F.2d 932 (6th Cir. June 26, 1985), *rev'd* 477 U.S. 619 (1986). Instead of forcing Petitioner to undergo an unconscionable process, this Court should require application of neutral laws of general applicability for contracts, which would render the agreements in this case unenforceable.

B. Lower Courts Violated the Establishment Clause When They Compelled Petitioner to Participate in Proceedings Governed by Arbitrators "In Good Standing" With the Church of Scientology

The courts below violated the Religion Clauses of the First Amendment, when they compelled Petitioner to participate in proceedings governed by the laws of Scientology. They are coercing Petitioner to exercise religion by compelling her to participate in a process with the "intent that the arbitration be conducted in accordance with Scientology principles of

justice and fairness, and consistent with the ecclesiastical nature of the procedure and dispute." Moreover, the religious principles and practices mandated by the agreement do not enjoy a presumption of constitutionality simply because the agreement also refers to secular laws or has secular aspects. *See Warner v. Orange County Dept. of Prob.*, 115 F.3d 1068, 1076 (2d Cir. Sept. 9, 1996) (rejecting argument that secular aspects of Alcoholics' Anonymous (AA) meetings allowed government to compel attendance at AA meetings given that the meetings "included at least one explicitly Christian prayer"). "It is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise." *Weisman*, 505 U.S., at 587. The trial court overlooked this fundamental principle of constitutional law when it compelled Petitioner to arbitrate the dispute in accordance with the "faith," "custom," and "law of the Scientology Religion." *Religious Services Enrollment Application, Agreement and General Release*, Sep. 10, 2010, ¶6.

Indeed, compelling Petitioner to engage in religious arbitration results in religious coercion that is more pervasive and extensive than the coercion found unconstitutional in other contexts. For example, in *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000), this Court found that student-led and initiated prayer at a high school football game where attendance was voluntary was unconstitutionally coercive. *See* 530 U.S. at 311-12. Unlike the indirect coercion in *Santa Fe*, the courts below have compelled Petitioner to

comply with the ecclesiastical laws of Respondents. The fact that Petitioner may have voluntarily agreed to abide by the terms of the Religious Services Agreement when she was a member is inconsequential; even when individuals voluntarily agree to adhere to a set of religious principles and practices, the Constitution does not permit courts to act as enforcers of the faith or to sidestep their judicial obligation to decide neutral principles of law.

Not every private agreement into which a party knowingly and voluntarily enters may be enforced by a court. For example, the Constitution prohibits a court from enforcing a party's voluntary, private agreement to refrain from selling his property to buyers of a certain race. *See Kraemer*, 334 U.S., at 19-22. As one lower court aptly noted, "religious development is a lifelong dynamic process even when [one] continue[s] to adhere to the same religion, denomination, or sect." 49 Cal. Rptr. 2d 31 at 347 (emphasis added). Under the First Amendment, individuals may pick and choose their religious beliefs and practices—they are free to follow a particular religious practice one day, and they are free to abandon this religious practice the very next day. Petitioner has a right to exit a religious affiliation. *Weiss*, 49 Cal. Rptr. 2d 31, at 347; *Abbo v. Briski*, 660 So. 2d, at 1159; *Zummo v. Zummo*, 574 A.2d, at 1146-48. And when she does, she certainly does not thereby agree to forgo the future protection of civil, secular laws. Petitioner should not, as a nonbeliever, be coerced into undergoing a religious arbitration of her

secular claims of illegal harm. Many acts perpetrated against Petitioner as described in her complaint occurred after she left Scientology and no longer believed in its principles. The court-ordered requirement that she arbitrate such claims in a forum governed by the very religious principles Petitioner has renounced is a clear and flagrant violation of the Establishment Clause of the First Amendment.

C. The Courts Below Have Forced Participation in a Religious Ritual, Which Is a Misapplication of the Ecclesiastical Abstention Doctrine

The Religious Arbitration Agreements recite the "ecclesiastical nature" of any possible dispute and Respondents' requirement that any dispute be resolved in accordance with the "discipline, faith, internal organization, and ecclesiastical rule, custom, and law of the Scientology Religion and in accordance with the constitutional prohibitions which forbid governmental interference with religious services or dispute resolution procedures." *Religious Services Enrollment Application, Agreement and General Release*, Sep. 10, 2010, ¶6. The Agreements at issue are what a member of the faith would sign to memorialize their commitment to a particular religious faith. The Agreements purportedly bind Petitioner not to arbitration, in the traditional legal sense, but to the "religious procedures of Scientology." *Religious Services Enrollment Application, Agreement and General Release*, Sep. 10, 2010, ¶6(d). As such, they are unenforceable.

Petitioner's claims are secular in nature. Petitioner never entered into a secular arbitration agreement with Respondents; the Agreements require a religious services arbitration. Petitioner has since rejected the faith and now Respondents, by and through the courts, are attempting to force Petitioner back into the religious fold to be controlled by a panel of high-ranking Scientologists governed by Respondents' dogma. If required to participate in this religious ritual, Petitioner would be subjected to dispute resolution, where her treatment before the religious tribunal would depend on her religious affiliation and her standing in the religious community. Justice and true liberty require Petitioner to receive judicial application of neutral principles of law.

CONCLUSION

Whether a court may require a person who has rejected the faith to participate in a religious "arbitration" is an issue that has been raised repeatedly in the lower courts, is the subject of splits in authority among state and federal courts, and will continue to be an important issue that strikes at the heart to the First Amendment's absolute right to believe what a person chooses. For these reasons, Petitioner respectfully asks this Court to grant certiorari in this case.

In the alternative, Petitioner requests that this Court summarily reverse the decision below, because judicial coercion of the Religious Arbitration Agreements in this case violates Petitioner's First Amendment right

to choose a faith. The Agreements are unenforceable by the lower courts. Accordingly, the case should proceed according to the neutral principles of law she invoked in her complaint.

Respectfully submitted,

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