No. _____-SC

IN THE
SUPREME COURT OF THE STATE OF UTAH

RIA WILLIAMS,
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,
Respondents.

BRIEF OF AMICI CURIAE CHILD USA AND NATIONAL ASSOCIATION OF SOCIAL WORKERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF RIA WILLIAMS

John M. Webster
BARTLETT & WEBSTER
5093 South 1500 West
Riverdale, Utah 84405

Matthew G. Koyle
5093 South 1500 West
Riverdale, Utah 84405

Attorneys for Petitioner

Karra J. Porter
Kristen C. Kiburtz
Christensen & Jensen, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111

Attorneys for Respondents

Troy L. Booher (9419)
Beth E. Kennedy (13771)
John J. Hurst (11676)
ZIMMERMAN BOOHER
Felt Building, Fourth Floor
341 South Main Street
Salt Lake City, Utah 84111
tbooher@zjbappeals.com
bkennedy@zbappeals.com
jhurst@zbappeals.com
(801) 924-0200

Attorneys for Amici Curiae CHILD USA and National Association of Social Workers

Table of Contents

Statement of Interest and Identification of Amici Curiae 1

Jurisdiction 2

Opinion Below 2

Statement of the Issues, Standard of Review, and Preservation 2

Determinative Provisions 2

Reasons Why A Brief of Amici Curiae Is Desirable 3

1. The Church Harmed the Victim During Its Improper Investigation 4

2. Improper Sexual Assault Investigations Cause Long-Term Harm 5

3. IIED Claims Arise From Improper Sexual Assault Investigations 7

Conclusion 10

Addenda

A *Williams v. Kingdom Hall of Jehovah's Witnesses*, 2019 UT App 40, --- P.3d ---

Table of Authorities

Cases

Brandon ex rel. Estate of Brandon v. Cty. of Richardson,
624 N.W.2d 604 (Neb. 2001) 8, 9

Cavalier v. Catholic Univ. of Am.,
306 F. Supp. 3d 9 (D.D.C. 2018) 10

Chase v. Nodine's Smokehouse, Inc.,
360 F. Supp. 3d 98 (D. Conn. 2019) 8

Doe v. Emerson Coll.,
153 F. Supp. 3d 506 (D. Mass. 2015) 10

Doe v. Hartnett,
No. CV960134840, 2002 WL 1293354 (Conn. Super. Ct. May 8, 2002) 8

Drejza v. Vaccaro,
650 A.2d 1308 (D.D.C. 1994) 7

McGrath v. Dominican Coll. of Blauvelt, New York,
672 F. Supp. 2d 477 (S.D.N.Y. 2009) 10

Snyder v. Smith,
7 F. Supp. 3d 842 (S.D. Ind. 2014) 7, 9

Williams v. Kingdom Hall of Jehovah's Witnesses,
2019 UT App 40, --- P.3d --- 2, 4, 5, 10

Constitutional Provisions

U.S. Const. amend. I 2

Other

Campbell, R., *The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems*, 63 Am. Psychologist 8 (2008) 6, 7

Campbell, R., Wasco, S., Ahrens, C., Sefl, T., & Barnes, H., *Preventing the "Second Rape": Rape Survivors' Experiences with Community Service Providers*,
16 Journal of Interpersonal Violence 12 (2001) 6, 7

NASW Policy Statement: Crime Victim Assistance, Social Work Speaks (11th ed. 2018)..... 2

National Sexual Violence Resource Center, *Get Statistics: Sexual Assault in the United States*, www.nsvrc.org/statistics..... 6

Utah Commission on Criminal and Juvenile Justice, *No More Secrets Report* (2014)..... 6

Statement of Interest and Identification of Amici Curiae

CHILD USA is the leading nonprofit think tank working to end child abuse and neglect. It draws on the combined expertise of some of the nation's leading medical and legal academics to determine the best legal and public policies based on cutting edge social science and medical evidence. This is the swiftest way to provide justice and healing to past victims and to prevent abuse and neglect in the future. CHILD USA engages in high-level legal, social science, and medical research and analysis to derive the best public policies to end child abuse and neglect. Unlike an organization engaged in the delivery of direct services, CHILD USA produces the evidence-based solutions and information needed by policymakers, organizations, the media, and society as a whole to increase child protection and the common good.

The National Association of Social Workers and its Utah Chapter (NASW) is the largest membership organization of professional social workers in the world, with 120,000 members and chapters located in all fifty states and various other regions. NASW works to enhance the professional growth and development of its members, to create and maintain professional standards, and to advance sound social policies. NASW establishes professional standards, resources, and policies to support quality social work practices. In alignment with its mission, NASW supports policy advocacy at the local, state, and national levels to promote assistance for victims of crime and to facilitate their safety and

recovery from criminal victimization. NASW also supports advocacy for individual victims of crime to help them overcome obstacles, barriers, and loopholes that may impede or prevent them from obtaining needed services.[1]

Jurisdiction

The court has jurisdiction pursuant to section 78A-3-102(3) of the Utah Code.

Opinion Below

The Utah Court of Appeals' opinion in *Williams v. Kingdom Hall of Jehovah's Witnesses*, 2019 UT App 40, --- P.3d ---, is attached as Addendum A.

Statement of the Issues, Standard of Review, and Preservation

Amici adopt the statement of issues presented and standards of review as well as the statement of the case and statement of facts submitted by Ria Williams.

Determinative Provisions

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

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[1] *NASW Policy Statement: Crime Victim Assistance, Social Work Speaks* 61, 63 (11th ed. 2018).

Reasons Why A Brief of Amici Curiae Is Desirable

In *Williams*, the panel decided that a church is exempt from its intentional torts as long as the torts are religiously motivated. Ms. Williams' petition explains how the court of appeals erred.

Amici wish to explain why that error is important. Amici believe an amicus brief is desirable for the court to understand how revictimizing a sexual assault victim during an investigation causes long-term psychological and emotional harm.

As discussed below, revictimization is why courts in other jurisdictions allow sexual assault victims to bring claims for intentional infliction of emotional distress when investigators—whether police or university officials—interrogate a victim in a way that causes the victim additional harm. The question before this court is whether the rule is different when the investigators are church officials.

The court should grant the petition and reverse the panel's decision. If there is a First Amendment concern here, it is under the Free Exercise Clause. But under the Free Exercise Clause, a neutral and generally applicable law such as the tort law at issue here can apply to religiously motivated conduct. It would be odd if holding an actor to the same standard for an intentional tort, regardless of whether religiously motivated, were found to be an establishment of religion under the Establishment Clause. The only relevant analysis is under the Free Exercise Clause, and under that clause, the tort action may proceed.

1. The Church Harmed the Victim During Its Improper Investigation

In describing the underlying facts of this case, the panel omitted several significant details about the church's investigation. These facts are noted—and were dispositive—in the victim's case against the church elders before the Department of Human Services. That decision is part of the appellate record in this case at R.204-218.

Ordinarily, Amici would cite the decision and attach it as an addendum, but the decision is confidential under section 62A-4a-412 of the Utah Code. Amici therefore invites the court to review the decision to more fully understand the conduct at issue here. Amici believe that pages 206 and 207 of the appellate record are particularly helpful.

The facts - A fourteen-year-old church member was sexually assaulted and raped by another church member. 2019 UT App 40, ¶ 2. The church member insisted to church elders that the fourteen-year-old victim had consented to his assaults. [R.206.] Apparently believing that it would help his defense, the church member gave the church elders an audio recording of one of the rapes. [R.206.]

A group of three church elders, all men, responded by convening a "judicial committee" to determine whether the victim had consented to the assaults. *Id.* ¶¶ 1, 3-4. The elders brought the victim in for questioning. *Id.* ¶ 3. The victim participated because she knew that she risked being disfellowshipped if she did not attend and participate. *Id.* ¶ 4.

At the hearing, the elders revictimized her and caused her additional harm. They played the audio recording of her rape, pausing repeatedly to ask her questions and refusing to continue until she had answered. *Id.* ¶¶ 3-4. During all of this, the victim was shaking, crying, and begging for the elders to stop. *Id.* ¶ 4, [R.207]. The interrogation lasted more than five hours. 2019 UT App. 40, ¶ 4.

The victim sued the church and asserted a claim for intentional infliction of emotional distress. *Id.* ¶ 5. The district court dismissed her complaint, ruling that the church's conduct was protected by the First Amendment. *Id.* ¶ 7.

The panel opinion – The panel agreed and affirmed. *Id.* ¶ 18. The panel believed that because the church was conducting a "religious practice" when it committed the tort, the church could not be liable for the harm it caused the victim. *Id.* ¶¶ 16-18.

The petition - In her petition, Ms. Williams asks this court to clarify whether a church is in fact exempt from liability for its intentional torts whenever the intentional torts are religiously motivated. The petition explains how the panel erred. Below, Amici explain why the error is important.

2. Improper Sexual Assault Investigations Cause Long-Term Harm

Amici believe it is desirable for the court to understand the effects of secondary victimization that occur during help-seeking interactions after a sexual assault. This secondary victimization often occurs during an investigation into the sexual assault.

The sexual assault alone causes significant mental and emotional harm. Rape is one of the most severe of all traumas and causes many long-term negative outcomes such as posttraumatic stress disorder, depression, substance abuse, suicidality, repeated sexual victimization, and chronic physical health problems. Campbell, R., *The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems*, 63 Am. Psychologist 8, 703 (2008).

And sexual assault is prevalent, both nationally and locally. Nationally, 20% of women and 1.4% of men report being raped at some point in their lives. National Sexual Violence Resource Center, *Get Statistics: Sexual Assault in the United States*, www.nsvrc.org/statistics (last visited May 19, 2019). In Utah, 12.2% of women and 1.2% of men reported rape or attempted rape. Utah Commission on Criminal and Juvenile Justice, *No More Secrets Report*, 16 (2014).

But subsequent interactions with investigators can actually cause separate, additional harm. Beyond the trauma of the rape itself, negative help-seeking interactions after the assault leave victims feeling blamed, doubted, and revictimized. Campbell, R., Wasco, S., Ahrens, C., Sefl, T., & Barnes, H., *Preventing the "Second Rape": Rape Survivors' Experiences with Community Service Providers*, 16 Journal of Interpersonal Violence 12, 1240 (2001).

"These negative experiences have been termed the second rape, the second assault, or secondary victimization." *Id*. (citations omitted). This secondary victimization has been defined as "the victim-blaming attitudes, behaviors, and

practices engaged in by community service providers, which further the rape event, resulting in additional trauma for rape survivors." *Id*.

Secondary victimization is a widespread problem and happens to most victims, to some degree, who seek post-assault care. Campbell, R., *The Psychological Impact of Rape Victims Experiences with the Legal, Medical, and Mental Health Systems*, at 703. Generally, this secondary victimization occurs in the legal and medical systems. Studies have shown that police, prosecutors, judges, and doctors have ascribed to victim-blaming attitudes that include believing women provoked the rape or often lie about the occurrence of rape. Campbell, R., *Preventing the "Second Rape,"* at 1240.

3. IIED Claims Arise From Improper Sexual Assault Investigations

The harm that victims experience when they are revictimized during an investigation can form the basis of a claim of intentional infliction of emotional distress. Indeed, courts in other jurisdictions have expressly allowed sexual assault victims to bring IIED claims against investigators who "treat[] a victim with callousness and derision" and "propagate[] a 'blame the victim' attitude." *E.g.*, *Snyder v. Smith*, 7 F. Supp. 3d 842, 853, 874 (S.D. Ind. 2014).

As one court explained, "[s]uch alleged conduct, directed at a woman whose world has just been turned upside down as a result of a shattering and dehumanizing experience, [is] not merely obnoxious and insensitive. It [is] also extreme and outrageous." *Drejza v. Vaccaro*, 650 A.2d 1308, 1317 (D.D.C. 1994).

For example, a Connecticut court agreed that a sexual assault victim had sufficiently pled an IIED claim against police who investigated her assault. *Doe v. Hartnett*, No. CV960134840, 2002 WL 1293354, at *2 (Conn. Super. Ct. May 8, 2002). The police conduct in *Doe* mirrored the elders' conduct here. Although the police initially began to investigate the assault, "the police investigation shifted its focus from finding a suspect in the sexual assault to questioning the plaintiff about her own activities and character." *Id.* Their conduct "left her 'a trembling, emotional wreck.'" *Id.* She was "'devastated emotionally" and "had to undergo psychological counseling as a result." *Id.* These allegations were sufficient to support an IIED claim against the police. *Id.*; *see also Chase v. Nodine's Smokehouse, Inc.*, 360 F. Supp. 3d 98, 119 (D. Conn. 2019) (allegations were sufficient to support IIED claim against police who "treated [the victim] as though she was the assailant rather than a victim of sexual assault").

A Nebraska court reached the same conclusion when police interrogated a transgender man about the sexual assault he had endured. *Brandon ex rel. Estate of Brandon v. Cty. of Richardson*, 624 N.W.2d 604, 624 (Neb. 2001). Like the elders' questions here, the police in *Brandon* asked questions that blamed the victim for the assault. They questioned him about his consensual sexual experiences, and suggested that his choices had caused the attack. *Id.* at 612-13. They also forced him repeatedly to provide graphic details about the attack, presumably hoping to catch him in an inconsistency and making it clear that they did not believe

him. *Id.* The court held that the conduct was sufficiently outrageous to support an IIED claim. *Id.* at 625.

These courts emphasize the victim's vulnerability after enduring a sexual assault. One court noted that "the susceptibility of the plaintiff to emotional distress" was an "important factor[] in the outrageousness calculus." *Drejza*, 650 A.2d at 1317. The *Drejza* court therefore validated the sufficiency of an IIED claim against a police officer who "humiliated" and "bullied" a rape victim. *Id.*

Another court similarly highlighted "the plaintiff's emotional state immediately following a dehumanizing sexual assault on her" as "making the sting of [the investigator's] egregious behavior all the more traumatic." *Snyder*, 7 F. Supp. 3d at 873. Thus, the *Snyder* court also validated the sufficiency of an IIED claim against a police officer who "verbally abused" a sexual assault victim and "propagated a 'blame the victim' attitude." *Id.* at 853. And the court further explained that "it is our judgment that contemporary society has come to recognize the profound emotional scars left by sexual assault and to abhor the barbarity of a police officer's treating a victim with callousness and derision." *Id.* at 874.

But police are not the only people who investigate sexual assaults. University officials also play this role at times. And when University officials cause additional harm in doing so, they too can be liable for intentional infliction of emotional distress. Indeed, a New York court held that a student's complaint

sufficiently alleged an IIED claim against a college employee who investigated the student's rape. *McGrath v. Dominican Coll. of Blauvelt, New York*, 672 F. Supp. 2d 477, 492–93 (S.D.N.Y. 2009).

And other courts have recognize the validity of an IIED claim in the University context, even if the victim's complaints did not satisfy the pleading requirements. *E.g.*, *Cavalier v. Catholic Univ. of Am.*, 306 F. Supp. 3d 9, 41 (D.D.C. 2018); *Doe v. Emerson Coll.*, 153 F. Supp. 3d 506, 518 (D. Mass. 2015).

These courts therefore recognize that victims suffer the same harm during improper investigations into the crimes they have endured, regardless of the entity doing the investigation. Ms. Williams suffered that harm during the church's investigation into the sexual assaults she endured. The court should grant the petition and decide whether churches are liable for their tortious investigations just as police and universities are. The court's decision may thereby clarify the liabilities of religious institutions investigating reports of sexual assault.

Conclusion

CHILD USA and National Association of Social Workers ask this court to grant the petition for writ of certiorari filed by Ria Williams and review *Williams v. Kingdom Hall of Jehovah's Witnesses*, 2019 UT App 40, ___ P.3d ___.

DATED this 22nd day of May, 2019.

ZIMMERMAN BOOHER

/s/ Beth E. Kennedy
Troy L. Booher
Beth E. Kennedy
John J. Hurst
Attorneys for Amici Curiae CHILD USA and National Association of Social Workers

Certificate of Service

This is to certify that on the 22nd day of May, 2019, I caused the foregoing *Brief of Amici Curiae CHILD USA and National Association of Social Workers in Support of Petition for Writ of Certiorari of Ria Williams* to be served via email on:

John M. Webster
BARTLETT & WEBSTER
5093 South 1500 West
Riverdale, Utah 84405
jmwebsterlaw@hotmail.com

Matthew G. Koyle
5093 South 1500 West
Riverdale, Utah 84405
info@koylelaw.com

Attorneys for Petitioner

Karra J. Porter
Kristen C. Kiburtz
CHRISTENSEN & JENSEN, P.C.
257 East 200 South, Suite 1100
Salt Lake City, Utah 84111
karra.porter@chrisjen.com
kristen.kiburtz@chrisjen.com

Attorneys for Respondents

/s/ Beth E. Kennedy

Addendum A

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.