No. 20-1647

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

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

ARGUMENT

This Court has jurisdiction to review important federal questions properly raised at the state court level. A finding that this case was decided on adequate and independent state grounds would stifle Petitioner's federal claims. Despite Respondents' contentions, the "not pressed or passed upon" below rule cannot apply to halt this Court's consideration of certiorari, especially considering the lack of clarity associated with the rule and Petitioner's timely raising of constitutional issues in the Motion for Reconsideration. Lower court decisions do not rest on "adequate and independent" state law grounds necessary to bar this Court's review.

Lower courts inconsistently apply this Court's First Amendment jurisprudence in addressing arbitration and religious services agreements. This Court has an opportunity to clarify that it is a First Amendment violation to compel a non-believer who has left the faith into religious arbitration.

An individual's right to choose their faith, as well as their right to exit a religion, is an unalienable and absolute right that forms the bedrock of the First Amendment, and courts cannot interfere with it without violating the Establishment Clause. Rather, courts may apply neutral principles of law to resolve secular disputes.

I. PETITIONER'S CHARACTERIZATION OF THE ARBITRATION AGREEMENT AS A RELIGIOUS SERVICE OR RITUAL IS SUPPORTED BY THE RECORD

Petitioner correctly classified the religious arbitration required by the Agreements as a religious service or ritual. The Court stated that the Respondents, through the Declaration of Lynn R. Farny, acknowledged that Petitioner signed the Staff Covenant agreements and Religious Services Enrollment Applications, both of which "affirmed her dedication to Scientology and agreement to resolve disputes within Scientology." Farny Decl. in support of CSI Motion, Exhibits 7-10.

The Religious Services Enrollment Application Agreement and General Release *expressly* state that any dispute subject to the agreement would be, "by its very nature" "a matter of religious doctrine." Farny Decl. in support of CSI Motion, Exhibit 9. This language *alone* provides sufficient evidence on the record that the arbitration agreements were religious services or rituals, notwithstanding that the religious arbitration will be adjudged by members in good standing in the Church of Scientology and will be governed according to the doctrine and bylaws of the Church.

Furthermore, the trial court made no determination as to the credibility of some facts in Petitioner's Declaration, despite finding them to be conclusory. Respondents' claim that the trial court adopted the

statements in Respondents' witness declarations as fact is equally false.

II. THE FEDERAL QUESTION REGARDING VIOLATION OF PETITIONER'S FIRST AMENDMENT RIGHTS WAS APPROPRIATELY RAISED BY PETITIONER IN THE LOWER COURT AND THE "PRESSED AND PASSED UPON" RULE IS NOT A COMPLETE BAR TO THIS COURT'S REVIEW

None of Respondents' arguments support a jurisdictional bar to a grant of certiorari as this Court has held both that there is a "lack of clarity" surrounding the "not pressed or passed upon" below rule (*Illinois v. Gates*, 462 U.S. 213, 219 (1983)) and that nonconformity with a state procedural rule does not constitute an independent and adequate state ground barring this Court's review of the federal question. *Hathorn v. Lovorn*, 457 U.S. 255 (1982).

Petitioner appropriately raised this federal question in the state courts in her Motion for Reconsideration. Whether an appellate court should address constitutional arguments "rests within the court's discretion." *Lopez v. McMahon*, 205 Cal.App.3d 1510, 1520-21 (1988). California courts "have several times examined constitutional issues raised for the first time on appeal" or in cases where there are important issues of public policy, as is this case. *Hale v. Morgan*, 22 Cal.3d 388, 394 (1978); *Bayside Timber Co. v. Board of Supervisors*, 20 Cal.App.3d 1, 4-5 (1971).

The "not pressed or passed upon below" rule is not an insurmountable hurdle to this Court's review. *See Terminiello v. Chicago*, 337 U.S. 1 (1949); *see also Vachon v. New Hampshire*, 414 U.S. 478 (1974).

This Court has found that there is a "lack of clarity" as to the character of the "not pressed or passed upon below" rule. *Illinois v. Gates*, 462 U.S. 213, 219 (1983). This Court has acted under the assumption that its rule for not exercising jurisdiction to review federal issues "not pressed or passed upon" in state courts below is a prudential limitation, rather than a limitation on the Supreme Court's certiorari jurisdiction. *Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 79 (1988).

This Court must grant review of Petitioner's claim, which was appropriately raised in the state courts.

III. THE STATE COURT ORDERS DO NOT REST ON "ADEQUATE AND INDEPENDENT" STATE LAW GROUNDS AS THEY STIFLE PETITIONER'S FEDERAL CLAIM AND EVADE THE VINDICATION OF HER FEDERAL RIGHTS

A state court must make clear by a plain statement in its order, judgment, or opinion, that discussed federal law did not compel the result and that state law was dispositive for the decision to rest on adequate and independent state grounds. *See Michigan v. Long*, 463 U.S. 1032 (1983). To preclude review by this Court, the nonfederal ground must be broad enough, without

reference to the federal question, to sustain the state court judgment. *Murdoch v. City of Memphis*, 87 U.S. 590, 591 (1874); *Enter. Irr. Dist. v. Farmers' Mut. Canal Co.*, 243 U.S. 157, 164 (1917). Respondents contend that the state court orders here rest on adequate and independent state law grounds. Yet, the FAA controls the arbitration agreements and the state court compelling arbitration relied on federal law concerning the same and, more importantly, law related to the First Amendment protections of Respondents.

Federal questions and preserving constitutional rights of the Respondents were dispositive in the court's initial ruling compelling arbitration. There is not a fully adequate or independent state basis for the courts' rulings as they necessarily implicate First Amendment concerns.

California courts have examined constitutional issues raised for the first time on appeal, especially when the enforcement of a penal statute is involved,[1] the asserted error fundamentally affects the validity of the judgment,[2] or important issues of public policy are at issue.[3] *Hale v. Morgan*, 584 P.2d 512 (Cal. 1978); *People ex rel. Gascon v. HomeAdvisor, Inc.*, 49 Cal.App.5th 1073, 1085 (2020). Petitioner preserved the issue concerning infringement of her First Amendment right by

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[1] *E.g.*, *People v. Allen*, 115 Cal. Rptr. 839, 842 n. 2 (Ct. App. 1974).

[2] *E.g.*, *People v. Norwood*, 103 Cal. Rptr. 7, 10 (Ct. App. 1972).

[3] *E.g.*, *Bayside Timber Co. v. Bd. of Supervisors*, 97 Cal. Rptr. 431, 433 (Ct. App. 1971).

raising the federal question at the Motion to Reconsider. The state court very well could have chosen to take up the federal question properly raised by Petitioner, but instead chose to pass on it.

The Court of Appeals denied Petitioner's writ on procedural grounds by dismissing it as untimely. The state courts utilized state procedural grounds to trample on the constitutional rights of Petitioner. Rejection of a litigant's federal claim by state courts on state procedural grounds will ordinarily preclude Supreme Court review as an adequate independent state ground,[4] so long as the local procedure does not discriminate against the raising of federal claims and has not been used to stifle a federal claim or to evade vindication of federal rights. *See Davis v. Wechsler*, 263 U.S. 22, 24-25 (1923); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 455-58 (1958); *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964).

The state court's orders—based on state procedural grounds—did in fact discriminate against the raising of Petitioner's federal claim, stifled Petitioner's claim, and effectively evaded the vindication of Petitioner's constitutionally protected First Amendment rights.

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[4] *See Wolfe v. North Carolina*, 364 U.S. 177, 195 (1960).

IV. LOWER COURTS INCONSISTENTLY APPLY FIRST AMENDMENT PRINCIPLES TO DISPUTES INVOLVING COMPELLED RELIGIOUS ARBITRATION IN A MANNER THAT CONFLICTS WITH THIS COURT'S WELL-ESTABLISHED RELIGION CLAUSE JURISPRUDENCE

Civil courts have analyzed the legality of compelled religious arbitration inconsistently and in a manner conflicting with this Court's well-established First Amendment jurisprudence and thus the issue warrants review. *See* U.S. Sup. Ct. Rule 10.

While the action of a civil court enforcing religious arbitration or confirming or voiding a decision by a religious tribunal would seem to raise clear First Amendment concerns, the vast majority of court opinions reviewing the enforceability of religious arbitration agreements do not address this issue at all. *See*, *e.g.*, *Nestel v. Nestel*, 38 A.D.2d 942 (N.Y. Super. Ct. Mar. 6, 1972); *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); *Matter of Goldmar Hotel Corp.*, 283 A.D. 935 (N.Y. Sup. Ct. May 25, 1954). Other courts side-step First Amendment analysis 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).

Courts that have acknowledged the First Amendment concerns inherent in religious arbitration agreements have reached opposite conclusions about whether the court is precluded from applying neutral

principles of law to enforce the agreements or affirm an arbitral award. *See*, *e.g.*, *Sieger v. Sieger*, 2005 WL2031746, *50 (Sup. Ct. June 29, 2005); *see also*, *Aflalo v. Aflalo*, 685 A.2d 523, 541 (N.J. Super. Ct. Ch. Div. Feb. 29, 1996); *Dial 800 v. Fesbinder*, 12 Cal. Rptr. 3d 711, 724 (Cal. Ct. App. Apr. 28, 2004); *In re Ismailoff*, No. 342207, 2007 WL431024, slip op. at 1 (N.Y. Sur. Ct. Feb. 1, 2007); *but see Garcia v. Mother Church of Scientology Flag Serv. Org., Inc., et al.*, No. 8:13-cv-220-T-27TBM, 2015 WL10844160, *2 (M.D. Fla. Sept. 20, 2019); *Abbo v. Briski*, 660 So. 2d 1157, 1159-61 (Fla. 4th D. Ct. App. Sept. 27, 1995).

This Court should intervene to affirm the appropriate application of First Amendment principles to religious arbitration agreements.

V. AN ARBITRATION ORDER COMPELLING A NON-BELIEVER INTO RELIGIOUS ARBITRATION VIOLATES THE RELIGION CLAUSES OF THE FIRST AMENDMENT

The Trial Court Order enforcing the religious arbitration agreement requires review because compelling a non-believer into religious arbitration conflicts with this Court's Religion Clause jurisprudence.

A. This Court's Long Recognized First Amendment Jurisprudence Guarantees an Absolute Right to Choose One's Faith Which Includes the Right to Exit a Religion

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, as is the right to non-belief. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940); *Reynolds v. United States*, 98 U.S. 145, 167 (1878). "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).

"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." *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943); *see also*, *Wallace v. Jaffree*, 472 U.S. 38, 50, 53 (1985); *see also*, U.S. Const. Amend. I; *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 877 (1990); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); 634; *Barnette*, 319 U.S. 624; *Cantwell*, 310 U.S. at 303-04.

The freedom to choose any religion necessarily encompasses the freedom to change religions. *See In re*

Marriage of Weiss, 49 Cal. Rptr. 2d 339, 341, 347 (Cal. Ct. App. 1996); *Zummo v. Zummo*, 574 A.2d 1130, 1146-48 (Pa. Super. Ct. 1990). There can be no meaning to the right to join a particular religion under the concepts of *Barnett*, *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 one's religious faith as Petitioner argues here.

B. Courts May Not Compel Religious Arbitration for Secular Torts Arising After Petitioner Exited the Religious Relationship Without In Effect Choosing Petitioner's Faith, Thus Violating the Establishment Clause

The Establishment Clause prohibits a government official, including the judiciary, 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. *See generally*, 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), affirmed, 764 F.3d 1002; *Sherbert*, 374 U.S. at 404; *Sch. Dist. of Abington*

Twp. v. Schempp, 374 U.S. 203, 305 (1963); *see also*, *Inouye v. Kemna*, 504 F.3d 705, 712 (9th Cir. 2007); *Lee v. Weisman*, 505 U.S. 577, 589 (1992).

The Trial Court overlooked this principle of constitutional law when it compelled Petitioner to participate in religious arbitration wherein her secular tort claims must be resolved through application of "Scientology Doctrine." The requirement that she arbitrate such claims—long after having renounced Scientology no less—in a forum governed by the very religious principles she has rejected is forbidden by the Establishment Clause, and turns the court into an enforcer for a religious organization, coopting courts to marshal believers into their ranks. *See Lee*, 505 U.S. at 587.

Courts may not enforce faith, which is what happens when a court compels religious arbitration between participants and non-participants in a religion. Compelling Petitioner to arbitrate her secular disputes according to Scientology results in religious coercion far more pervasive and extensive than coercion found unconstitutional elsewhere. *See*, *e.g.*, *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000); *Warner v. Orange County Dept. of Prob.*, 115 F.3d 1068, 1076 (2d Cir. 1996); *Doe ex rel. Doe v. Elmbrook School Dist.*, 687 F.3d 840 (2012).

C. Courts May Not Coerce the Exercise of Religion By Using Their Judicial Power to Compel a Non-Believer to Comply With a Religious Arbitration Agreement Even if They Voluntarily Agreed to Comply at an Earlier Time

Petitioner's "consent" to a religious arbitration agreement does not preclude her from challenging the agreement on First Amendment grounds. (*See* Resp.'s Br. p.29 ¶3.) Courts decline to enforce voluntary, private agreements where public policy dictates the need for judicial enforcement. *See*, *e.g.*, *Shotts v. OP Winter Haven, Inc.*, 86 So. 3d 456, 474-75 (Fla. 2011); *Ridge Natural Res., L.L.C. v. Double Eagle Royalty, L.P.*, 564 S.W.3d 105, 138 (Tex. Ct. App. Aug. 24, 2018); *Loewe v. Seagate Homes, Inc.*, 987 So. 2d 758, 760 (Fla. 5th DCA 2008); *D&L Harrod, Inc. v. U.S. Precast Corp.*, 322 So. 2d 630, 631 (Fla. 3d DCA 1975). This Court has rejected enforcement of agreements when doing so would violate the Constitution or public policy. *See*, *e.g.*, *Shelley v. Kraemer*, 334 U.S. 1, 19-22 (1948).

Lower courts have rejected pleas by religious entities to prescribe religious service arbitration against rejecters of the faith. *See*, *e.g.*, *In re Meisels*, 807 N.Y.S.2d 268, 271 (N.Y. Sup. Ct. Nov. 10, 2005); *Nestel v. Nestel*, 38 A.D.2d 942 (N.Y. Sup. Ct. Mar. 6, 1972); *Matter of Jacobovitz*; *Matter of Berger*; *Matter of Goldmar Hotel Corp.*

Some courts have placed other public policy limitations on religious arbitration. For example, courts

have refused to confirm arbitration awards by a religious tribunal if contrary to public policy. *See*, *e.g.*, *Hirsch v. Hirsch*, 774 N.Y.S.2d 48, 49 (N.Y. Sup. Ct. App. Div. Feb. 17, 2004); *Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 N.Y.2d 321,327 (1999). The judiciary also does not permit religious tribunals to strip courts of their exclusive jurisdiction over all civil and criminal matters involving the parties. *See*, *e.g.*, *Rakoszynski v. Rakoszynski*, 174 Misc. 2d 509, 663 N.Y.S.2d 957, 961 (Sup. 1997).

States have long recognized the difference between a church outsider and a church insider. *See*, *e.g.*, *Hadnot v. Shaw*, 826 P.2d 978, 988 (Okla. 1992); *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 779 (Okla. 1989). "'The First Amendment clearly safeguards the freedom to worship *as well as the freedom not to worship.*'" *Doe v. First Presbyterian Church U.S.A. of Tulsa*, 421 P.3d 284, 290 (2017) *citing Guinn*, 775 P.2d at 776.

The government may not compel a person into religious arbitration for a religion to which the party no longer believes, and whose religious principles and rules they have rejected, even if that person previously agreed to abide by its principles. The liberty interest protected by the Religion Clauses simply may not be bargained away.

D. Courts Can Apply "Neutral Principles of Law" to Adjudicate Purely Secular Disputes Without Violating Respondents' First Amendment Rights

The First Amendment's guarantee that "Congress shall make no law. . .prohibiting the free exercise of religion" undergirds ordered liberty, but the Court has maintained that claims of religious conviction do not automatically entitle a person to unilaterally fix the conditions and terms of dealings with the Government. *Bowen v. Roy*, 476 U.S. 693, 701-02 (1986); *see also*, *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972).

The ministerial exception does not apply to Respondents because a court order to compel faith-based arbitration requires neither doctrinal interpretation nor theological analysis. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020). The First Amendment's Religion Clauses are not a refuge for criminal or tortious behavior that harms children or vulnerable adults.

This Court's important case, *Jones v. Wolf*, reminds us that secular legal issues can be reviewed on "purely secular terms." 443 U.S. 595, 604 (1979), and should not enforce a religion-infused adjudication of secular rights which threatens the integrity of secular law in violation of the Establishment Clause.

CONCLUSION

For the foregoing reasons, Petitioner prays this Honorable Court grant certiorari in this case, or summarily reverse the lower court decision to compel religious arbitration.

Respectfully submitted,

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