

No. 22-60

IN THE

Supreme Court of the United States

CHURCH OF SCIENTOLOGY INTERNATIONAL, RELIGIOUS
TECHNOLOGY CENTER & CHURCH OF SCIENTOLOGY
CELEBRITY CENTRE INTERNATIONAL,
Petitioners,

v.

CHRISSIE CARNELL BIXLER, CEDRIC BIXLER-ZAVALA,
JANE DOE #1 & JANE DOE #2,
Respondents.

On Petition for a Writ of Certiorari to the Court of
Appeal of California, Second Appellate District,
Division Five

**BRIEF FOR *AMICUS CURIAE* PROFESSIONAL
CHAPLAINS, INC. IN SUPPORT OF
PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

Professional Chaplains, Inc. is dedicated to counseling chaplains through the Gospel and providing the necessary education and training for quality care by the chaplaincy to support communities in times of personal and family crisis. Professional Chaplains supports the community in natural disasters by collecting material aid and addressing spiritual or psychological needs. It also provides educational programs for the prevention and rehabilitation of addictions and violence and works to strengthen the multicultural professional training of chaplains.

As a religious organization, Professional Chaplains appears in this case as *amicus curiae* to address how the ruling below has a chilling effect on binding agreements and contracts entered into by religious communities and represents an erosion of the Establishment and Free Exercise clauses of the First Amendment. Professional Chaplains submits that this Court should grant certiorari because the questions concerning the enforceability of religious arbitration agreements have far-reaching effects, and there is a compelling need for this Court's guidance on them.

¹ No part of this brief was authored in whole or in part by counsel for any party, and no person or entity has made any monetary contribution to the preparation or submission of this brief other than *amicus curiae* and their counsel. All parties were timely notified of *amicus curiae*'s intent to file this brief. The parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The decision of the California Court of Appeal is contrary to well-established principles of religious freedom and autonomy that have been followed since the founding of the United States: the recognition of a religion's right to be self-governing, including the respect and sanctity of agreements religions may enter into with members. Among those agreements, religions provide for ecclesiastical jurisprudence, including religious arbitration to settle disputes and claims. Agreements to settle disputes using ecclesiastical justice procedures have been a fundamental prerogative of religions for centuries and have been widely upheld by U.S. courts.

The decision below holds that a person may avoid agreements made with a religious institution or its members by walking away. The court decided that the Respondents' agreements to submit all disputes with the Church of Scientology to ecclesiastical dispute resolution, or religious arbitration, no longer applied once the Respondents left the faith. The decision would result in less favored treatment for religious agreements than for secular agreements, and it discriminates against all religions.

The decision imperils the practice of religious arbitration, which is central to the faith of Christians, Muslims, and Jews. And it threatens all religions because it intrudes on religious doctrine, in violation of the Constitution. Review should be granted because the ruling creates a conflict with longstanding authority, disregards this Court's precedent, and creates doubt about whether courts will enforce religious organizations' contracts in the same manner as all other contracts.

ARGUMENT

I. Arbitration Agreements Have Long Been Part of Religious Life, and the Questions Presented About Their Enforceability Have Far-Reaching Effects.

The use of contracts to govern disputes is as old as religion itself. Religions, including Christianity, Islam, and Judaism, have long used arbitration by a religious tribunal to resolve their disputes internally based on religious principles rather than using a secular arbitrator. *See, e.g.*, Ginnine Fried, Comment, *The Collision of Church and State: A Primer to Beth Din Arbitration and the New York Secular Courts*, 31 *Fordham Urb. L.J.* 633, 635 (2004) (explaining Judaism had a system of self-government for thousands of years); R. Seth Shippee, Note & Comment, “*Blessed Are the Peacemakers*”: *Faith-Based Approaches to Dispute Resolution*, 9 *ILSA J. Int’l & Comp. L.* 237, 245–48 (2002) (noting Islam’s tradition of encouraging peaceful conflict resolution applying sharia law). For instance, practicing Jews believe that according to *halakhah*, they cannot bring private lawsuits against Jewish disputants to secular courts. Fried at 635–36. Christianity encourages private conflict resolution rather than the use of secular courts. Shippee at 241–42. The Qur’an promotes arbitration over litigation. Irshad Abdal-Haqq & Qadir Abdal-Haqq, *Community-Based Arbitration as a Vehicle for Implementing Islamic Law in the United States*, 1 *J. Islamic L.* 61, 75 (1996). Additionally, minority faiths may prefer religious tribunals out of fear of discrimination in secular courts. Fried at 639.

Parties to a faith-based arbitration agreement may choose to use a minister or a rabbi to act as a religious arbitrator. The parties can then present their arguments to arbitrators who share their value system. Faith-based arbitration may allow for a more conciliatory process, where the arbitrator determines the case based more on equitable principles and morality rather than primarily focusing on the legal issues. *See Kozlowski v. Seville Syndicate, Inc.*, 314 N.Y.S.2d 439, 445 (1970) (finding a Jewish arbitration panel “may seek to compromise the parties’ claims, and is not bound to decide strictly in accordance with the governing rules of Jewish law, but may more carefully weigh the equities of the situation”). For example, Christians may participate in “conciliation,” which focuses not only on substantive resolution but also on personal reconciliation, based on Biblical values.²

Fundamental religious beliefs often underlie a faith’s reliance on religious arbitration to resolve disputes. By using religious arbitration, the parties can resolve anything from commercial to family law disputes under the tenants of their faith rather than being bound by standard civil dispute resolution. This is especially helpful when religious topics are in dispute, where a religious arbitrator may be better equipped than a secular civil court judge to understand and determine these issues. Religious arbitration can also offer parties many of the same benefits as secular arbitration, including low cost resolution, speed, convenience, and efficiency.

² *See* Wallace, Jordan, Ratliff & Brandt, LLC, *Christian Conciliation*, <https://wallacejordan.com/practice-areas/christian-conciliation/> (last visited August 19, 2022).

Abraham P. Ordover & Andrea Doneff, *Alternatives to Litigation: Mediation, Arbitration, and the Art of Dispute Resolution* 15 (3d ed. 2014). It also allows parties to privately and confidentially settle their disputes, while lessening the burden on courts' caseloads. Arbitration (both faith-based and secular) allows the parties to retain some level of control over their dispute and can help foster continued relationships after a dispute is resolved because matters may be handled in a more hospitable and less adversarial process. Secular courts could cause inconsistent or uncertain results because of a misunderstanding of religious agreements and customs. And if a secular court interfered in religion by substituting its judgment for that of a religious authority, it could harm the preservation of cultural and religious custom, tradition, and identity.

The freedom of religion enshrined under the First Amendment to the U.S. Constitution protects the use of religious arbitration and allows for people of faith to govern their disputes with arbitrators of their faith, without the interference of the secular government.³ But the ruling below threw into doubt whether courts will recognize, and protect, religious arbitration and afford it the same legal protections that non-religious or commercial dispute resolutions receive. Treating religious and non-religious arbitration as equals prevents the government from favoring irreligion over religion and therefore disestablishing religion, a violation of the First Amendment. When parties voluntarily contract to practice their religious norms

³ In the United States, religious tribunals can qualify as arbitration panels under the civil legal system, and their judgments are binding. Shippee at 254.

in a dispute resolution setting, their contract should be legally enforced in the same way as any secular arbitration agreement.

This Court should accept review to make clear that arbitration—be it religious or not—is a matter of contract law, limited by contract principles and rules of arbitration. The decision to arbitrate a disagreement is manifested by signing a contract. Because the arbitration agreement is subject to the same rules as any other contract, courts can invalidate the agreement based on contract principles such as adhesion, duress, or unconscionability. Caryn Litt Wolfe, Note, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction with Secular Courts*, 75 *Fordham L. R.* 427, 443 (2006). But when the contract was validly and voluntarily entered into by the parties with their consent, the parties are bound to the agreement, and the contract should be enforced, regardless of the religious or secular nature of the dispute.

II. Uncertainty Created by Conflicting Decisions and Disregard of This Court's Precedents Reveal a Compelling Need for Guidance on the Enforceability of Religious Arbitration Agreements.

Despite their widespread use across American society, this Court has never addressed the enforceability of religious arbitration agreements. There is a critical need for this Court's guidance on whether religious arbitration agreements are enforceable after a party has left the faith and whether court enforcement of religious arbitration agreements constitutes improper state action. The

judicial split of authority created by the ruling below, together with the disregard of this Court's precedents, creates untenable uncertainty about the enforceability of all agreements entered into by religious organizations.

The ruling below allows a party to abrogate a religious arbitration agreement because she has left the faith. This introduces the risk that a religious arbitration agreement will be repudiated by one party at any time, based on a change of religion.

The California Court of Appeal confused the right to free exercise of religion with the right to revoke an arbitration agreement. It assumed that the right to free exercise of religion, or the right to leave the faith, necessarily encompasses the right to break an agreement for religious arbitration. Entering a religious arbitration agreement is not, as the court below suggested, "bargain[ing] away [a] constitutional right to change religions." (App. 26a-27a, n.20). Nothing in the arbitration agreement at issue limits the right to change religions, or requires participants to be a practicing Scientologist to present a dispute to the arbitrators. (App. 82a-84a). Having left the faith, Respondents can continue to resolve any disputes with the Church through the Scientology justice system. (App. 83a). This is what Respondents committed to do. Enforcing their arbitration agreement is a matter of contract, not forced adherence to a religion.

Based on the mistaken conclusion that the religious arbitration agreement improperly "encroach[ed] on a person's fundamental constitutional right" to change religions (App. 26a-27a, n.20), the court below concluded that enforcing

the arbitration agreement would amount to illegal state action.

The California Court of Appeal ruling creates a split of authority and contradicts decades of caselaw holding that judicially enforcing private arbitration agreements does not constitute state action. *E.g.*, *Davis v. Prudential Sec., Inc.*, 59 F.3d 1186, 1191 (11th Cir. 1995) (no state action in enforcing private arbitration); *Desiderio v. Nat’l Ass’n of Sec. Dealers, Inc.*, 191 F.3d 198, 207 (2d Cir. 1999) (same). As this Court has explained, “[p]rivate use of state-sanctioned private remedies or procedures does not rise to the level of state action.” *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 485 (1988). The court below disregarded that precedent, thereby creating doubt about the viability of faith-based arbitration as a reliable means of resolving disputes.

Other courts have long held that “[p]rivate religious arbitration, which is exceedingly common in our pluralistic religious society” is entitled to the same “presumption in favor of arbitration” as applied to secular arbitration agreements. *Spivey v. Teen Challenge of Fla., Inc.*, 122 So.3d 986, 992 (Fla. Dist. Ct. App. 2013). *See also Easterly v. Heritage Christian Schs., Inc.*, No. 08-cv-1714, 2009 WL 2750099, at *4 (S.D. Ind. Aug. 26, 2009) (enforcing religious arbitration of dispute between teachers and religious school in accord with their agreement). The California Court of Appeal declined to apply the same presumption in favor of arbitration in this case.

The court violated the U.S. Constitution and the Federal Arbitration Act (“FAA”), 9 U.S.C. § 2, by *rejecting* judicial enforcement of religious arbitration while *requiring* judicial enforcement of secular

arbitration. This differential treatment of religious arbitration is impermissible. In addition to the Constitutional constraints prohibiting different treatment of religious and secular arbitration, religious arbitration agreements fall under the FAA and are to be enforced according to their terms. *Garcia v. Church of Scientology Flag Serv. Org., Inc.*, No. 18-13452, 2021 WL 5074465 (11th Cir. Nov. 2, 2021).

Parties to religious arbitration agreements have a right to have courts enforce their contracts on the same basis as secular arbitration agreements. The ruling in question undermines religious dispute-resolution mechanisms, trampling on processes and beliefs that are deeply-rooted in religious doctrine. Moreover, the opinion disregarded precedent and created a split in authority. This Court should grant the petition because the ruling below undermines religious institutions' confidence in the courts and permeates their contracts with uncertainty.

CONCLUSION

The petition for a writ of certiorari should be granted.

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