No. 26-

IN THE

Supreme Court of the United States

JANE DOE I, *et al.*,

Petitioners,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTERDAY SAINTS, A UTAH CORPORATION SOLE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is a neutral child abuse reporting statute unconstitutional on its face if it requires members of the clergy to report child abuse arising from communications that are not in fact confidential?

2. Does the First Amendment compel a neutral child abuse reporting statute to be judicially altered or amended to exempt clergy members from reporting child abuse even if they learned of the abuse in conversations that were not confidential?

3. In other words, if clergy members, like others, are required to report non-privileged knowledge of abuse, does the First Amendment nevertheless exempt clergy from reporting because Church doctrine provides that the communication should be confidential – even if it was not?

4. Does employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying neutral standards in State statutes violate the Establishment Clause of the First Amendment?

5. Does the First Amendment mandate that Church doctrine, rather than a court or jury, determine whether a communication is a "confidential communication" or "confession" while applying a neutral State statute?

6. Does the First Amendment command that determining whether a communication is actually confidential is not a matter of fact; but instead decided by normative Church doctrine?

7. Did the Arizona Supreme Court apply First Amendment principles correctly?

PARTIES TO THE PROCEEDING

Jane Doe I, Jane Doe II, & John Doe, by & through conservator, Fleming & Curti PLC[1], (collectively, "Petitioners"), and The Corporation of the President of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole; The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole; Dr. John Herrod and Sherrie Farnsworth Herrod, individually and as a married couple; and Robert Kim Mauzy and Michelle Morgan Mauzy, individually and as a married couple (collectively, "Respondents"), are the parties to this proceeding. The Respondents are not publicly traded entities and, as such, do not have stock ticker symbols.

1. A law firm in Tucson, Arizona, Conservators for minors. The firm includes attorneys Robert B. Fleming, Jordan Young, Elizabeth Friman, and Amy Matheson. A professional limited liability company.

RELATED PROCEEDINGS

Jane Doe I v. The Corp. of the President of the Church of Jesus Christ of Latter-day Saints, No. S0200CV202000599, 2023 WL 12253415, at *1 (Ariz. Super. Ct. Nov. 03, 2023).

Doe I v. Corp. of President of Church of Jesus Christ of Latter-Day Saints, No. 2 CA-CV 2023-0293, 2025 WL 2158205, at *1 (Ariz. Ct. App. July 29, 2025), *vacated sub nom. Jane Doe I, Jane Doe II, & John Doe, by & through conservator, Fleming & Curti PLC, Plaintiffs/Appellants, v. The Corp. of the President of the Church of Jesus Christ of Latter-day Saints, a Utah Corp. Sole; the Church of Jesus Christ of Latter-day Saints, a Utah Corp. Sole; Dr. John Herrod & Sherrie Farnsworth Herrod, individually & as a jointly married couple; & Robert Kim Mauzy & Michelle Morgan Mauzy, individually & as a jointly married couple, Defendants/Appellees.*, No. CV-25-0213-PR, 2026 WL 2203781 (Ariz. July 30, 2026).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Jane Doe I, Jane Doe II, & John Doe, by & through conservator, Fleming & Curti PLC, respectfully pray that a writ of certiorari issue to review the Opinion by the Arizona Supreme Court, which reversed the decision of the Arizona Court of Appeals, Division Two, thereby granting summary judgment in favor of The Corporation of the President of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole; The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole; Dr. John Herrod and Sherrie Farnsworth Herrod, individually and as a married couple; and Robert Kim Mauzy and Michelle Morgan Mauzy, individually and as a married couple.

OPINION BELOW

The Opinion of the Arizona Supreme Court is not yet reported but is available at 2026 WL 2203781 and 180 Ariz. Cases Digest 37. The Opinion is attached hereto at Appendix A (Pet. App. 1a – 32a).

JURISDICTION

The Opinion of the Arizona Supreme Court was entered on July 30, 2026. The Plaintiff's Motion for Reconsideration was denied on August 21, 2026. Order attached hereto at Appendix D (Pet. App. 70a – 72a). The jurisdiction of this Court is invoked under Title 28 U.S.C. 1257(a). *See Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178-180 (1988).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment of the United States Constitution provides: "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." Appendix I (Pet. App. 95

STATEMENT OF THE CASE

I. BACKGROUND

Paul Adams confessed to Bishop Herrod that he had sexually molested his five-year-old daughter in late 2010 or 2011. The confession was considered privileged and confidential. The next day, however, Paul Adams repeated the confession to Leizza Adams, the mother of the child, in Bishop Herrod's presence, in a manner that was not confidential. Bishop Herrod told her to report the second admission to the police. Leizza Adams testified in a deposition that the conversation was not confidential. At the very least, a dispute of fact existed regarding the confidentiality of the second admission or confession.

The Arizona child abuse reporting statute, similar to numerous statutes across the U.S.A., requires clergy and others to report child abuse but exempts clergy from reporting if they received a genuine "confession" or "confidential communication" in their role as clergy. A.R.S. § 13-3620(A). Other states where the clergy hold the privilege, except Arizona, require a judicial determination

of "confidentiality" to exist.[2] The Arizona statute did as well; but the Arizona Supreme Court declared that the First Amendment "compelled" it to construe (amend) the statute to defer a finding of "confidentiality" based on Church doctrine rather than objective reality. We contend that the First Amendment does not compel any such result.

The LDS Church held several disciplinary proceedings involving 30 or more persons who also learned of the sex abuse, but failed to report. Leizza Adams, admittedly not a clergy member, attended and heard confessions of abuse during the disciplinary proceedings. Once again, the Arizona Supreme Court did not seem interested in factual "confidentiality" but noted that disciplinary proceedings are supposed to be confidential. No matter that theory and practice did not match. The First Amendment compelled delegation to the LDS Church to decide "confidentiality" according to the Arizona Supreme Court.

II. STATEMENT OF FACTS

Paul and Leizza Adams were active, lifelong members of the Church of Jesus Christ of Latter-day Saints ("Mormon Church" or "LDS Church") [ROA 433, ep 3,

2. One state by statute expressly allows Church officials to determine "confidentiality." *Nunez v. Watchtower,* 455 P.3d 829 (Mont. 2020). The Arizona Opinion is the first and only decision to judicially alter a neutral statute to authorize clergy to be exempt from reporting any communication regardless of the provisions of the statute.

6-7].[3] They moved to Sierra Vista in 2006 and attended LDS churches in Sierra Vista [ROA 441]. Paul Adams went to work for the U.S. Customs and Border Patrol as an agent around December 2007 [ROA 436, ep 12]. The Adams family relocated to Bisbee and joined the LDS church in Bisbee in early 2009. John Herrod, M.D. was the bishop of the Bisbee Ward at the time [ROA 441]. The Bisbee Ward was a small church with only about 40 regular attendees. Leizza Adams was a stay-at-home mother to a growing family. [ROA 433, ep 4-6; ROA 434, ep 8-9, through 435]. The LDS church served as "the controlling force" in Leizza's life – nothing else mattered outside the church. [ROA 444, Ex. 9, ep 7-11].

The Adams had six children between 2006 and 2015. [ROA 434, ep 9-10]. Plaintiff Jane Doe I was the oldest (born in 2006) and Plaintiff Jane Doe II was the youngest (born in 2015). [ROA 457, Ex. 55]. Plaintiff John Doe and three other boys were born in between Jane Doe I and Jane Doe II. [ROA 454, ep 8].

Leizza Adams disclosed that Paul Adams had been in counseling with the church for his pornography addiction for many years and the church was very aware of his sexual addictions. Paul was even seen watching pornography on his phone in church. [ROA 433, ep 27-28; ROA 439, ep 7; ROA 445 through ROA 446, p. Adams 0001495; ROA 448, Ex. 12; ROA 439, ep 14-17; ROA 442 through ROA 443 ep 3].

---

3. "ROA" citations refer to the State Appellate Court's electronic record.

In 2010 or 2011 (the year is contested), Paul Adams told Bishop John Herrod, M.D. (who was also the Adams' physician) he had oral sex with his five-year-old daughter, Jane Doe I, and forced her to videotape it. [ROA 448, Ex. 18; ROA 444, ep 16-23; ROA 453, Ex. 45; ROA 449, Ex. 21]. Shortly thereafter, Bp. Herrod invited Paul Adams to repeat this disclosure to his wife, Leizza Adams. [ROA 453,Ex. 45]. Bp. Herrod did not report Paul Adams' abuse nor Leizza Adams neglect or abuse to the authorities. [ROA 191; ROA 449, Ex. 28]. Bp. Robert "Kim" Mauzy replaced Bp. Herrod as bishop of the Bisbee Ward in August 2012.

Bp. Mauzy received a phone call from the church headquarters instructing him to conduct a church disciplinary council regarding Paul Adams' misconduct. [ROA 448, Ex. 17, ep 48-50]. Appellants learned late in the litigation that there were actually two church/ward level disciplinary councils, the first where Paul did not admit his abuse and a second council where he did admit. Paul Adams was excommunicated from the LDS church in August 2013. [ROA 449, Ex. 23; Ex. 22 ep 72; Ex. 24)].

Paul Adams appealed the excommunication which resulted in a third disciplinary council at the Stake level and the excommunication was upheld. None of the nineteen people present at the disciplinary councils reported the abuse to the authorities. Paul Adams' abuse of his children continued and escalated. [ROA 449, Ex. 24; ROA 455; ROA 455; ROA 252, ep 69, Section 6.10.1. of Church Handbook 1; ROA 450].

In February 2017, Homeland Security was alerted to a nine-minute video of Paul Adams having intercourse

with Jane Doe I when she was about nine years old. Paul Adams forced Jane Doe I to record her own sexual assault. [ROA 450, ep 4; ROA 438, ep 29-30].

Paul Adams admitted to sexually abusing his children when confronted with the irrefutable evidence and later committed suicide in his jail cell. [ROA 436 through ROA 437; ROA 383, Ex. 13]. Leizza Adams entered into a plea agreement and after a two-day sentencing hearing, she was sentenced to two and one-half years in prison. [ROA 438, Ex. 4]. Evidence that the LDS church had known about Paul Adams' sexual abuse of his children and Leizza Adams' neglect of her children since 2010 came to light during Leizza Adams' sentencing hearing. [*Id.* Ex. 4, ep 19-22].

Bp. Herrod had been counseling Paul Adams for several months to a year before Paul admitted that he sexually molested his young daughter. [ROA 449, Ex. 21, ep 37]. Bp. Herrod did not have Paul Adams "re-confess" to him during this meeting, but made Paul tell his wife what he had done. To quote Leizza Adams: "[H]e [Herrod] told the fat head [Paul Adams] to tell me what he had told him…the bishop." [ROA 433, ep 9]. Bp. Herrod, knowing if abuse happened once it was likely to happen again, told Leizza Adams she needed to report Paul to the authorities, "for the safety of the kids". [ROA 448, Ex. 18, ep 121-122; ROA 449, Ex. 21, ep 35]. Leizza Adams did not consider this meeting with her husband and Bp. Herrod to be confidential. [ROA 433, ep 10].

Special Agent Edwards testified that Bp. Herrod told him that Paul disclosed during a counseling session that he had videotaped his young daughter orally stimulate

him and he had done so several times. [ROA 438, Ex. 4, ep 19-20]. Bp. Herrod affirmed at deposition that he never lied to law enforcement. [ROA 449, Ex. 21, ep 56-57].

Bp. Herrod did not know if he should report the abuse to the authorities, so he called the LDS Abuse Helpline. [ROA 448, Ex. 18, ep 118-121]. As Leizza's bishop and her physician [ROA 433, Ex. 1, ep 21], Bp. Herrod knew Leizza Adams was incapable of protecting her children:

> "…counseling with her" and "being a doctor… she was – fits the syndrome of battered woman syndrome…if Paul told her to do something she was afraid not to do it…but [she was] powerless, emotionally, psychologically, to do anything about it…she's still psychologically, physically, and emotionally not capable of protecting her kids."

[ROA 448, Ex. 18, ep 122, 135; Herrod interview with law enforcement; ROA 433, ep 18-19.]

Bp. Herrod was instructed by Merrill Nelson, Esq., on behalf of the Church, not to report the abuse to the authorities. [ROA 449, Ex. 28]. However, after Bp. Herrod's knowledge of the abuse became public at Leizza Adams' sentencing hearing in June 2018, Special Agent Edwards (DHS) interviewed Bp. Herrod, who adamantly stated that the church's instructions not to report the abuse had nothing to do with LDS church doctrine but had everything to do with Arizona law. Bp. Herrod believed he could be sued if he reported the abuse to civil authorities:

> Edwards: … So it's your understanding…your legal counsel explained…sexual abuse of his children at his own hands…
>
> Herrod: …if it comes from him, then I can't [report].
>
> Edwards: -- in the Mormon Church. And-and as far as clergy –
>
> Herrod: **No**. [inaudible]
>
> Edwards: -- **clergy-penitent privilege**. So –
>
> Herrod: **No. No. No. No**. **That – that- that-that's Arizona state law….Yeah, cause the church doesn't – it says – you do whatever the state tells you to do…if it's illegal for you to tell – if he could sue you for telling, then you can't do it….So yeah, it has nothing to do with Church rules. It's – those are the arizona rules**.
>
> Edwards: Those – okay. Those are the Arizona laws you were advised of, right?
>
> Herrod: Yes.

ROA 448, Ex. 18, ep 119-121: June 12, 2018 recorded statement to Law Enforcement.

Bp. Herrod admitted he "violated" his "religious duty of confidentiality" by acknowledging that he had disclosed some of the substance of what Paul Adams' confessed in

response to Agent Edwards' questions. [ROA 340, Ex. 1, paragraph 22, Herrod Declaration].

Bp. Herrod ended his term as bishop in August 2012 and Robert "Kim" Mauzy replaced him as bishop of the Bisbee Ward. [ROA 441]. Sometime during the first half of 2013, Bp. Mauzy received a telephone call from the church headquarters or church lawyers (he was not sure which) instructing him to hold a disciplinary council because of the things "Bp. Herrod had reported". [ROA 448, Ex. 17, pp. 6-7, 33, 38].

Appellants were precluded from discovery regarding what was said or done at the disciplinary council by the church's claim of privilege. However, late in the litigation, Paul Adams' brother gave Appellants a letter that Paul Adams wrote to his wife from jail, wherein Paul stated that he had refused to admit his conduct at the first church disciplinary council, but requested a second church disciplinary council at which he admitted it:

> "[T]he church court was held perhaps a year or two after my confession of sins that lead to it. At that time, though still working to overcome my pornography addiction…I was also attending church regularly and fulfilling callings and assignments faithfully…The excommunication was a mistake. After I refused to speak in the church court, excommunication was pronounced…We decided I would ask the court to reconvene and hear my confession, in hopes this display of humility and contrition might save me from excommunication. Here was a mistake on our part…The Stake President

> elected to uphold the church court decision from the second hearing in which I confessed."

[ROA 449, Ex. 22, handwritten letter by Paul Adams].

ARGUMENTS

I. IT IS THE ROLE OF THE JUDICIARY, NOT CHURCHES, TO INTERPRET SECULAR STATE STANDARDS – BUT NOT ACCORDING TO THE ARIZONA SUPREME COURT

Petitioners brought suit against Respondents under A.R.S. § 13-3620(A) (Appendix J (Pet. App. 96a)), a statute that creates a mandatory duty for certain persons to report child abuse. Under § 13-3620(A), "[a]ny person who reasonably believes that a minor is or has been the victim of" child abuse must "immediately report or cause reports to be made of this information to a peace officer, [or] to the department of child safety." § 13-3620(A)'s definition of "[a]ny person" includes any "member of the clergy, priest or Christian Science practitioner." § 13-3620(A)(2).

The statute contains what the Arizona Supreme Court determined in this case to be a "'Clergy Exemption'" – a privilege held by "the clergy member" as opposed to "the person making the confession" or communication. *Doe I*, 2026 WL 2203781, at *1, 4 (Appendix A, 1a – 32a). The "Exemption" provides that:

> A member of the clergy… who has received a confidential communication or a confession in that person's role as a member of the clergy… may withhold reporting of the communication

> or confession if the member of the clergy… determines that it is reasonable and necessary within the concepts of the religion...

A.R.S. § 13-3620(A).

The Arizona Supreme Court held that the "Clergy Exemption within the Reporting Statute requires five elements to exempt a religious official from the duty to report abuse of a minor." Those five elements are:

> that [a religious official] must be (1) a member of the clergy, who (2) receives a confidential communication or confession, (3) in that person's role as a member of the clergy, (4) in the course of discipline enjoined by the church to which the member of clergy belongs, and (5) determines that it is reasonable and necessary within the concepts of the religion to withhold reporting.

Id. at *5 (citing § 13-3620(A)).

The Arizona Supreme Court acknowledged that courts have "recognized confidentiality as a component of 'confession' by implication through the waiver doctrine." *Doe I*, 2026 WL 2203781, at *7 (Appendix A, 1a – 32a). (citing *State v. Archibeque*, 223 Ariz. 231, 236 ¶¶ 16–18 (App. 2009)). Thus, it is undisputed that confidentiality is required for a communication to constitute either a "confidential communication or a confession" and trigger the "Clergy Exemption" in § 13-3620(A).

Petitioners' argument before the Arizona Supreme Court was twofold: (1) that it is the role of the judiciary, not

the Church, to determine whether Paul's communication was confidential – the second element of the "Clergy Exemption"; and (2) that Paul Adams' second communication to Bishop Herrod, in the presence of Leizza Adams, the mother of the children and independently a mandatory reporter, was not objectively confidential. As such, Bishop Herrod was a mandatory reporter under § 13-3620(A).

II. THE ARIZONA SUPREME COURT REJECTED PETITIONERS' ARGUMENTS AND IMPERMISSIBLY DELEGATED POWER FROM THE JUDICIARY TO THE CHURCH TO INTERPRET AND APPLY STATE STANDARDS IN VIOLATION OF THE FIRST AMENDMENT

The *Doe* decision delegates power from the judiciary to the Church to interpret and apply state standards, justified on the basis of the vague "application of federal constitutional principles." *Doe I*, 2026 WL 2203781, at *1. It grossly misapplied precedent from this Court.

The Arizona Supreme Court ascribed objective, secular definitions to the terms "confidential communication" and "confession" in § 13-3620(A). *Doe I*, 2026 WL 2203781, at *7. The Court did not hold that § 13-3620 incorporates religious canon or doctrine to define "confidential communication" or "confession." In fact, the Court openly recognized that "[t]he Reporting Statute does not define the terms 'confession' or 'confidential communication.'" *Id.* at *7. As such, the Court applied "common meanings" to "confidential communication" or "confession." *Id.* Still, the Court held that it is solely the role of the Church to determine whether a communication is confidential under § 13-3620(A). This result was "compelled" by "the

application of federal constitutional principles." *Id.* at *8. The Court explained that the "First Amendment… requires courts to exercise substantial deference to a religious institution's own doctrinal conception of 'confession' or 'confidential communication'" even when those statutory terms are in fact secular, do not incorporate canonical meaning, and are defined in a secular way by a state's highest court. *Id.* at *1.

In defining "confidential communication" and "confession" in A.R.S. § 13-3620(A), the Court looked to "dictionaries" and "common meaning" and adopted an objective, secular definition of each term. *Id.* at *7. The Court defined "confession" as "'a confidential acknowledgment or admission of a crime, sin, or fault to a member of the clergy, priest, or Christian Science practitioner for the purpose of absolution.'" *Id.* (citing *Confession*, Webster's New Dictionary and Thesaurus (1990); *Confess*, Webster's New Dictionary (1990); *Confess*, New Websterian Dictionary (1912)). The Court first found that "'confidential communication' in the Reporting Statute means 'speech or correspondence that is treated as private or made in confidence, generally under circumstances that indicate the communication is intended only for the person or persons addressed.'" *Id.* (citing *Confidential*, Webster's Dictionary (1990); *Communication*, Webster's Dictionary (1990); *Confidential Communication*, Black's Law Dictionary (6th ed. 1990)). In the case of Paul Adams, the Bishop told Leizza Adams to report the abuse. She later testified that the meeting was not confidential.

The Court highlighted that the "standard and legal dictionary definitions of 'confidential communication' align" and that

> [t]his definition is consistent with our court of appeals' conception of confidential communications in the privilege waiver context. *See, e.g.*, *Archibeque*, 223 Ariz. at 236 ¶¶ 15–16 (determining the 'relevant inquiry' into confidentiality, in the context of privilege waiver, "to be whether the communicant reasonably understood the communication to be confidential" and that a communication remains confidential if the communicant 'believed the communication would remain private and such belief is reasonable').

Doe I, 2026 WL 2203781, at *7-8. The Court emphasized that these objective definitions of "confidential communication" and "confession" in A.R.S. § 13-3620(A) "**pass Establishment Clause muster because they broadly apply to a variety of religious denominations**." *Id.* at *8 (citing *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025) (emphasis added)). *See also Rodriguez-Ramirez v. State*, No. CR-25-0157-PR, 2026 WL 2329934, at *4 (Ariz. Aug. 12, 2026) ("*Doe* defined 'confession' consistent with the First Amendment's Free Exercise and Establishment Clause jurisprudence, as 'a confidential acknowledgment or admission of a crime, sin, or fault to a member of the clergy, priest, or Christian Science practitioner for the purpose of absolution.'").

However, the Arizona Supreme Court refused to apply the objective definitions of "confidential communication" and "confession" to the facts of this case. Instead, the Court empowered the Church to define and apply the relevant state standards using its religious doctrine. The

Court stated that "[o]ur approach also allows for a religious institution's interpretation of these concepts pursuant to its doctrine." *Id.* at *8. The "First Amendment's constraint on courts against resolving matters involving the interpretation of church discipline, doctrine, and internal procedures extends to what qualifies as a 'confession' or 'confidential communication'" in a neutral State statute. *Id.*

Stated plainly, the Court abandoned the definitions of "confidential communication" and "confession" it established and substituted them for the religious doctrine of the LDS Church – the "laws of God." *Id.* at *9.

> The Church Defendants have outlined Church doctrine concerning confession… '[b]ishops often meet with husbands and wives together to counsel about marriage and family problems,' and 'such meetings are just as confidential as meeting with someone alone.'
>
> The Church's factual assertions regarding its own doctrine establish that a 'confession' is the admission of sin to a bishop. Under Church doctrine, 'abuse cannot be tolerated in any form' as it 'violates the laws of God.' The Church classified Paul's admissions of abuse to Bishop Herrod, both individually and in the presence of Leizza, as confessions. We must afford deference to the Church's understanding of what constitutes an admission of fault or sin.
>
> **Given the Church's classification of Paul's abuse as violating the laws of God, and the Church's assertion that Paul's admissions**

> **to Bishop Herrod – alone and in Leizza's presence – were confessions, we conclude that Paul's admissions to Bishop Herrod constituted "confessions" for purposes of the Reporting Statute.** Any further inquiry into whether Paul's admissions qualify as confessions is explicitly doctrinal. Under the First Amendment, such inquiry is beyond the purview of the factfinder and, thus, leaves no genuine issue of material fact regarding whether Paul's admissions to Bishop Herrod qualify as "confessions…"
>
> **The Church deemed any communication Paul made during the Council proceeding confidential under Church doctrine. Thus, we conclude that Paul's alleged admissions to the Council were, at a minimum, 'confidential communications' for purposes of the Reporting Statute.**

Id. (emphasis added). The Court's delegation to the Church to interpret and apply the terms "confidential communication" and "confession" in A.R.S. § 13-3620 goes beyond what even Respondents' counsel recognized as appropriate at oral argument: "there is some role for the judiciary to determine whether there was a confession or confidential communication in the first place." *See Doe I*, 2026 WL 2203781 (oral argument at 16:52–17:02 (Mar. 24, 2026)), https://vimeo.com/1154840789.

The Court justified giving the Church "broad interpretive deference" to determine the state standards in § 13-3620 by explaining that the "Clergy Privilege" in

§ 13-3620 is held by "the clergy member" as opposed to "the person making the confession" or communication. *Doe I*, 2026 WL 2203781, at *4. Because the privilege is held by the clergy, the privilege "insulates a *clergy member* from disclosing information deemed doctrinally confidential." *Id*. The "Clergy Privilege precludes the state from compelling a clergy member to testify in circumstances which would violate his religious oath and duties… **the First Amendment compels such deference**." *Id.* (emphasis added). According to the Court, to avoid "conflict with the Establishment Clause", the First Amendment mandates that "a particular church or religious organization's doctrine must necessarily inform the types of admissions or acknowledgments that qualify as "confessions" ... [t]he same principle applies to "confidential communications," particularly whether the religion's doctrine considers a communication private or confidential." *Id.* at *7.

The Court summarized its holding in *Doe* less than two weeks later in *Rodriguez-Ramirez v. State*: "[In *Doe*] we held that determining whether a person's communication to a clergy member constitutes a confidential communication or confession is 'explicitly doctrinal,' and that the First Amendment places that determination beyond the purview of the factfinder." No. CR-25-0157-PR, 2026 WL 2329934, at *4 (Ariz. Aug. 12, 2026) (citing *Doe I*, 2026 WL 2203781, at *9 ¶ 44). Apparently, because the clergy hold the privilege in § 13-3620, determining whether a communication was in fact confidential requires the Court to "assess whether a communication satisfies [a] particular faith's theological requirements." *Id.* at *4.

The position taken by the Court in *Doe* is strikingly different, from a constitutional perspective, to a case in which the penitent holds the privilege. In *Rodriguez-Ramirez*, the Court considered whether a communication was a "confession" under Arizona's clergy-penitent privilege statute – A.R.S. § 13-4062 – under which the penitent holds the privilege. The Court "adopted *Doe*'s construction of the" term "confession," meaning the Court adopted the exact same definition of "confession" under both § 13-4062 and § 13-3620. *Id.* In *Rodriguez-Ramirez*, though, the Court applied *Doe*'s objective definition of "confession," it did not look once to religious doctrine:

> Having adopted *Doe*'s construction of the term, we turn to the definition itself. *Doe* defined "confession" consistent with the First Amendment's Free Exercise and Establishment Clause jurisprudence, as "a confidential acknowledgment or admission of a crime, sin, or fault to a member of the clergy, priest, or Christian Science practitioner for the purpose of absolution." 2026 WL 2203781 at *1 ¶ 3… **[a] factfinder applying our definition does not assess whether a communication satisfies any particular faith's theological requirements; it asks only whether the communication sought spiritual absolution, consolation, or guidance. That question is factual – it asks what the communication was for, not whether it complied with the tenets of any religion**…

Id. at *4, 8 (emphasis added). The difference in the Court's analysis in *Doe* and *Rodriguez-Ramirez* highlights the First Amendment holding in *Doe*: where a privilege is

held by the clergy, the First Amendment commands that a determination of confidentiality is "explicitly doctrinal"; in contrast, where a privilege is held by the penitent, the determination of confidentiality is purely "factual" and does not implicate any "kind of doctrinal analysis." *Id.* at *4.

The Court also explained that applying the objective, secular definitions of "confession" and "confidential communication" that the Court adopted in this case would risk "government coercion" that "force[s] citizens to engage in 'a formal religious exercise.'" *Id.* at *8 (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537 (2022)). Again, the Court recognized just paragraphs earlier that its objective definitions of "confession" and "confidential communication" "**pass Establishment Clause muster because they broadly apply to a variety of religious denominations**." *Id.* (emphasis added).

III. THE DECISION BELOW CONFLICTS WITH THE APPLICATION OF FIRST AMENDMENT PRINCIPLES TO NEUTRAL CHILD ABUSE REPORTING STATUTES BY OTHER STATES

The First Amendment does not allow, let alone compel, "a particular church or religious organization's doctrine" to "necessarily inform" the meaning of a secular state statute.[4] *Doe I*, 2026 WL 2203781, at *7. A court itself may

4. "By turning to religious doctrine to identify religiously necessary or confidential communications, courts must delve into questions of doctrine and faith—the very intertwining prohibited under the Establishment Clause." Christine P. Bartholomew, *Exorcising the Clergy Privilege*, 103 Va. L. Rev. 1015, 1057 n. 200 (2017).

not interpret and apply "church doctrine." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 445 (1969). The Arizona Supreme Court's approach in this case, delegating the duty of interpreting and applying the State statute standard of "confidentiality" to the Church, similarly violates the First Amendment. In *Presbyterian Church*, this Court made clear that the "**First Amendment prohibits a State from employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying state standards**." 393 U.S. at 451 (emphasis added). A church may not interpret and apply secular state standards because "the core rationale underlying the Establishment Clause is preventing 'a fusion of governmental and religious functions.'" *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 126-27 (1982) (quoting *School District of Abington Township v. Schempp,* 374 U.S. 203, 222 (1963)).

"Simply having a religious association on one side of the 'v' does not automatically mean" that the Church's interpretation of a law controls. *Belya v. Kapral*, 45 F.4th 621, 630 (2d Cir. 2022). Courts may employ "neutral principles of law" to decide matters to which the Church is a party so long as the dispute does not require resolving issues of "doctrinal theology."[5] *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 714 (1976). *See also Jones v. Wolf*, 443 U.S. 595, 602–04 (1979) (concluding that courts have jurisdiction to

5. The Church's own counsel recognized this, conceding at oral argument that "there is some role for the judiciary to determine whether there was a confession or confidential communication in the first place." 16:52 to 17:02.

hear disputes over church property that may be settled based on secular law and without considering religious beliefs or policies); *Maryland & Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 370 n. 4 (1970) (Brennan, J., concurring) (States may "resolve[] disputes over religious property by applying general principles of property law").

The neutral principles approach may be applied outside of property disputes. *See Belya*, 45 F.4th at 630 (alteration in original) (quoting *Jones*, 443 U.S. at 602–03) (deciding a defamation claim and recognizing that "secular components of a dispute involving religious parties are not insulated from judicial review; a court may use the 'neutral principles of law' approach. So long as the court relies 'exclusively on objective, well-established [legal] concepts,' it may permissibly resolve a dispute even when parties are religious bodies").

Delegating power to the Church to interpret secular state law violates the Establishment Clause. When a court delegates legal interpretive authority to the Church, it

> "bestows a preference on the relevant church decisionmakers by allowing their decisions to displace the autonomous judgment of the courts. Each time a court, without considering the merits of a case, substitutes a church's judgment for its own, it effects an establishment of that church's decision as the law of the case and commits the enforcement power of the state or federal government to uphold that decision. Such a result violates the basic precepts of the establishment clause."

Michael William Galligan, Note, *Judicial Resolution of Intrachurch Disputes*, 83 Colum.L.Rev. 2007, 2020 (1983). *See also Larkin*, 459 U.S. at 125-26 (holding state statute violates the Establishment Clause because "the churches' power under the statute [was] standardless, [and] call[ed] for no reasons, findings, or reasoned conclusions" and because "the mere appearance of a joint exercise of legislative authority by Church and State provides a significant symbolic benefit to religion in the minds of some by reason of the power conferred"); *Elmora Hebrew Ctr. v. Fishman*, 593 A.2d 725, 732 (N.J. 1991) ("It is not proper for a trial court to refer civil issues to a religious tribunal in the first instance. The United States Supreme Court has forbidden that course.").

The Establishment Clause prohibits the Church from interpreting and applying A.R.S. § 13-3620(A). The objective, secular terms that the Arizona Supreme Court adopted for "confidential communication" and "confession" do not remotely mandate a decision about what the "accused church really believes" about its doctrine. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 206 (2012) (Alito, J., concurring). The Arizona Supreme Court wildly misapplied the First Amendment to emasculate a neutral State statute.

IV. THE DECISION BELOW CREATES A DIVISION IN AUTHORITY AS TO WHETHER THE FIRST AMENDMENT REQUIRES CHURCH DOCTRINE TO DETERMINE WHETHER A COMMUNICATION IS CONFIDENTIAL AND THUS PRIVILEGED WHEN THE PRIVILEGE IS HELD BY THE CLERGY.

The *Doe* decision creates an intolerable division amongst states regarding whether the First Amendment requires church doctrine to determine whether a communication is confidential and thus privileged when the relevant privilege is held by the clergy. In New Jersey, Alabama, Missouri, California, Colorado, Virginia, Illinois, and Maryland – where the clergy-penitent privilege is held solely or jointly by the clergy – courts still determine confidentiality by analyzing the objective reasonableness that the communication would remain private or confidential. These jurisdictions do not recognize the First Amendment as an impediment to applying neutral principles of law pertaining to confidentiality. Yet, the Arizona Supreme Court held that the First Amendment compelled substantial changes to a neutral State statute.

In New Jersey, "both the cleric and penitent hold the privilege and… neither alone may waive it." *State v. J.G.*, 990 A.2d 1122, 1129 (N.J. 2010) (state court of last resort). The New Jersey statute contains the same core language as the Arizona statute. Indeed, it is a bit broader. In 1960, the clergy privilege was expanded. A "clergyman, minister or other [authorized] person…of any religion shall not be allowed or compelled to disclose a confession or other confidential communication made to

him in his professional character, as a spiritual advisor in the course of the discipline or practice of the religious body…". Nevertheless, the New Jersey Courts did not abdicate responsibility from applying their own statute. They did not delegate application of the statute to a religious organization.

Instead, New Jersey correctly held that courts should analyze whether a communication is confidential – thus whether the privilege applies in the first place – by inquiring: "[w]ould an objectively reasonable penitent, under the totality of the circumstances, believe that a communication was secret, that is, made in confidence to a cleric in that cleric's professional character or role as spiritual advisor?" *Id.* at 1131. The Court expressly rejected imposition of religious canon in making this determination: "The dissent proffered a different test… civil law will protect those communications between a cleric and a penitent made in confidence under circumstances where religious dogma bars disclosure… [but the statute does] not establish religious law as the foundation for evidence rules used in civil and criminal courtrooms." *Id.* at 1132. The Arizona Opinion is in direct conflict with the New Jersey decision. It is a dramatic conflict which should be resolved by this Court. The breadth of the Free Exercise Clause versus the Establishment Clause versus judicial independence is at stake.

In Illinois, the privilege belongs both to the penitent and the clergyman. *People v. Burnidge*, 664 N.E.2d 656, 659 (Ill. App. 1996), aff'd, 687 N.E.2d 813 (Ill. 1997) (state court of last resort). The pastor had to report; but could not be compelled to testify – the same as Arizona (A.R.S. §3620(A) and (L)). 687 N.E.2d at 813, 818 affirming

644 N.E.2d 656 (App. 1996). To be confidential and entitled to the clergy penitent privilege, communications must "originate in a confidence that they will not be disclosed." *Snyder v. Poplett*, 424 N.E.2d 396, 399 (Ill. App. 1981). It "is obvious, the trial court would not leave the determination of privilege to the Diocese and allow it to withhold whatever it deemed was protected." *People v. Campobello*, 810 N.E.2d 307, 314 (Ill. App. 2004). The First Amendment is not "relevan[t]" to that determination. *Id*. at 628.

In *Campobello*, the Roman Catholic Diocese of Rockford refused to disclose personnel files relating to Campobello based, in part, on First Amendment grounds. The Illinois appellate court summarized restrictions imposed by the Free Exercise Clause, squarely relying on precedent from this Court that was horribly misapplied by the Arizona Supreme Court:

> Accordingly, a court oversteps its bounds:
>
> > "where a subject-matter of dispute, strictly and purely ecclesiastical in its character – a matter over which the civil courts exercise no jurisdiction – a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them – becomes the subject of its action." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733, 20 L.Ed. 666, 678 (1871).

Campobello, 810 N.E.2d at 315. Then, the Illinois Court reviewed numerous decisions from this Court that

were also relied upon by the Arizona Supreme Court and directly and persuasively concluded that they are inapplicable.

> The religious freedom guaranteed by the first amendment encompasses "the power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120, 136 (1952).
>
> The Diocese analogizes the case at hand to cases applying the church autonomy doctrine to enforce government separation from involvement in matters of church administration. See, e.g., *Serbian Eastern Orthodox Diocese v. Milivojevic*h, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) (declining to address defrocked bishop's claim that his removal from office was unlawful under the church's constitution and penal code); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) (refusing to adjudicate local church's claim that the central church had violated its constitution and departed from accepted doctrine and practice, thereby relinquishing its authority over property of local church); *Kedroff*, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (striking down statute purporting to transfer control of the Russian Orthodox Church from the central governing

> hierarchy located in the Soviet Union to a church organization limited to the diocese of North America); Watson, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (refusing to adjudicate property dispute between factions within a local church where each claimed superior rights because it was doctrinally the "true" church); *McClure v. Salvation Arm*y, 460 F.2d 553 (5th Cir. 1972) (refusing to apply federal nondiscrimination law to the employment relationship between a religious organization and the minister it employed).
>
> We fail to see the relevance of these cases.

Campobello, 810 N.E.2d at 315-16. The conflict with the *Doe* decision in Arizona is quite stark. The straightforward analysis in *Campobello* reveals the muddled analysis by the Arizona Supreme Court.

Numerous other states, admittedly through intermediate appellate courts, have also held that the judiciary determines whether, in fact, a communication was "confidential." None of them have found First Amendment compulsion to abdicate responsibility for interpreting and applying elements of their state statutes. Only the Arizona Supreme Court has found so much compulsion behind the First Amendment that only religious organizations can self-determine when to report child abuse and when to hide it. The list of courts countering the Arizona theory of First Amendment compulsion applied against neutral reporting statutes is impressive.

In California, both the clergy and the penitent can claim the privilege independently. Cal. Evid. Code §§ 1033-1034. For a communication to be confidential, "it must be intended to be in confidence." *Roman Cath. Archbishop of Los Angeles v. Superior Ct.*, 131 Cal.App.4th 417, 442 (2005), *as modified on denial of reh'g* (Aug. 16, 2005). "[E]ven if third parties are not physically present at the time of the communication, the privilege may still be inapplicable if the penitent does not intend for the contents of the communication to be kept in confidence." *Doe 2 v. Superior Ct.*, 34 Cal. Rptr. 3d 458, 467 (Cal. App. 2005) (emphasis added).

Indeed, California has expressly held that a mandatory reporting statute that is far more demanding and less deferential than the Arizona statute (before it was judicially amended in our case), does not violate the Free Exercise Clause.

> While it is well settled that "civil courts may not involve themselves in reviewing the termination of clergy for theological or disciplinary reasons" (*Higgins v. Maher* (1989) 210 Cal.App.3d 1168, 1173, 258 Cal.Rptr. 757), it is acknowledged that churches and their congregations and hierarchy "are as amenable as other societal entities to rules governing property rights, torts and criminal conduct" (*id.* at p. 1170, 258 Cal.Rptr. 757, see also *Watson v. Jones* (1872) 80 U.S. (13 Wall) 679, 732-733, 20 L.Ed. 666).

* * *

> We agree with the *Hodges* court that the statute as applied does not violate the free exercise clause of the First Amendment nor does it constitute an excessive government entanglement with religion. The Act clearly applies to clergy members, is limited in scope and furthers the compelling state interest of protecting children from abuse. This interest is significant and outweighs the burden on respondent's free exercise rights…. To permit respondent to escape scrutiny for its actions would be contrary to the legislative intent in amending section 11166 to include clergy members as mandatory reporters.

Conley v. Roman Cath. Arch. of San. Fran., 85 Cal.App.4th 1126, 1130-1133 (App. 2001).

The superior analysis from the New Jersey and Illinois courts of last resort were actually matched by the Arizona Court of Appeals before it was reversed by the Arizona Supreme Court.

> According to the Church Defendants, the only relevant question as to whether the exception in § 13-3620 applies is not whether Paul's confessions were privileged but whether "Bishop Mauzy and Bishop Herrod believed they had a religious duty of confidentiality."
>
> * * *
>
> Paul then confessed directly to Leizza in Herrod's presence. Indeed, the Church

> Defendants acknowledge in the answering brief that Herrod had invited Leizza "so [she] would know what Paul had done and so she could protect her children." A reasonable fact finder could conclude that in such circumstances, Herrod did not receive Paul's confession to Leizza; he merely observed it.
>
> * * *
>
> A reasonable fact finder could also conclude Paul's confession to Leizza amounted to a waiver of the clergy-penitent privilege.

Doe v. LDS Church, 2025 W.L. 2158205 (App. 2025), rev'd by Az. S.Ct.

In Alabama, the clergy-penitent privilege can be claimed independently by the clergy. Ala. R. Evid. 505(c). Still, courts analyze confidentiality using an objective test. *See Lucy v. State*, 443 So. 2d 1335, 1341 (Ala. Crim. App. 1983) ("[T]he communicant must have intended his communication to be confidential…. the communication must have been made in confidence and with the express or implied understanding that it should not be revealed to anyone"). In Missouri, the clergy-penitent privilege solely belongs to the clergy and cannot be waived by the penitent. *Eckmann v. Bd. of Educ. of Hawthorn Sch. Dist. No. 17*, 106 F.R.D. 70, 73 (E.D. Mo. 1985). Still, Missouri courts do not look to religious doctrine to determine whether a communication is entitled to the clergy-penitent privilege or defer to the Church's judgment about such matters. Missouri courts look at whether third parties present were "necessary" and the "communicator's expectation

of privacy or confidentiality." *State v. Studdard*, 688 S.W.3d 788, 798 (Mo. Ct. App. 2024). *See also State v. Gerhart*, 129 S.W.3d 893, 899–900 (Mo. Ct. App. 2004) (Court made no reference to church doctrine, instead finding that the communication was not "a confidential statement made to a member of the clergy in her capacity as a spiritual advisor, confessor, counselor or comforter" because "[t]he foregoing evidence is insufficient to support [that] finding"). Once again, an independent judiciary is apparent.

In Colorado, the clergy-penitent privilege belongs to both the communicant and the clergy and must be waived by both clergy and communicant. Colo. Rev. Stat. Ann. § 13-90-107. In *People v. Trammell*, the Colorado Court of Appeals analyzed whether a communication was confidential, one element required to establish the clergy-penitent privilege. 345 P.3d 945, 948 (Colo. App. 2014). The court concluded that for the clergy-penitent privilege to apply, "the circumstances must indicate the intention of secrecy… and the communication must be private or secret." *Id.* at 949 (emphasis added). *See also People v. Police*, 651 P.2d 430, 430 (Colo. App. 1982) (Court analyzed whether a communication was entitled to clergy-penitent privilege and noted that "[n]othing in the entire conversation indicated that defendant expected any confidentiality").

In Virginia, the clergy-penitent privilege is held "only to the minister, priest or rabbi, not to the penitent or lay communicant." *Seidman v. Fishburne-Hudgins Educ. Found., Inc.*, 724 F.2d 413, 415 (4th Cir. 1984). The courts do not analyze the issue using religious doctrine or the church's interpretation of religious doctrine. *Blough*

v. Food Lion, Inc., 142 F.R.D. 622, 625 (E.D. Va. 1992), vacated on other grounds, 4 F.3d 984 (4th Cir. 1993).

In our case, Bishop Herrod expressly told Leizza Adams to report the admission of child molestation to the police. Neither he nor Leizza Adams considered the communication to be confidential. Apparently, no one did. Yet, somehow the First Amendment compelled the legal fiction of "confidentiality" based on the Court's application of religious doctrine. The tortured application of the First Amendment to "compel" such an extreme result is novel, misplaced, and at odds with every other State court considering similar issues unless statutorily mandated. The conflict dramatically displays the substantial abdication of judicial responsibility and independence by the Arizona *Doe* Opinion and the unlawful delegation to a religious organization to interpret and apply neutral state standards. The result will lead to a wicked windfall of deceit and broad application of religious doctrine to hide child sex abuse. That is exactly what occurred here. Paul Adams continued to molest Jane Doe and then molest his second daughter starting at six months of age. The horrendous abuse continued for seven years.

V. FIRST AMENDMENT JURISPRUDENCE FROM THIS COURT WAS GROSSLY MISAPPLIED AND THE OPINION BY THE ARIZONA SUPREME COURT CONFLICTS WITH SUBSTANTIAL PRECEDENT FROM THIS COURT

The First Amendment cases from the U.S. Supreme Court relied upon by the Arizona Supreme Court to "compel" the dramatic reconstruction of a neutral child abuse reporting statute are surprisingly inapplicable

factually and in principle. They have nothing to do with the neutral application of a child abuse reporting statute.

One of the two cases most often cited, *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115-16 (1952) dealt with an internal Church dispute over the right to use and occupy physical Church property:

> This controversy concerning the right to use St. Nicholas Cathedral is strictly a matter of ecclesiastical government…

344 U.S. 94, 115. The "state interference with the free exercise of religion" employed in *Kedroff* literally has no doctrinal relevance to a neutral child abuse reporting statute. Its application is illogical.

The second case most relied upon, *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 748 (2020) applied the "ministerial exception" to a religious teacher's employment discrimination suit – wholly irrelevant in principle. Similarly, in *Serbian E. Orthodox Diocese for U.S. of Am. & Can v. Milivojevich*, 426 U.S. 696, 713 (1976), the Illinois Supreme Court was not allowed to delve into "various church constitutional provisions" to determine if a bishop's defrockment was justified – wholly irrelevant in fact or principle. *See also Hosanna-Tabor*, 565 U.S. at 186 ("ministerial exception" applied to religious teacher's claim of employment discrimination). Similarly, in *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-45 (1987), this Court reversed the denial of unemployment benefits for an employee at a jewelry store who was discharged because she refused to work on the

sabbath, "conduct mandated by religious belief." It is an interesting case but rests in an intellectual field far apart from the neutral effort to stop child sex abuse.

The Arizona Supreme Court applied the ecclesiastical abstention doctrine to a neutral child abuse reporting statute even though no "religious controversy" existed. *Doe I*, 2026 WL 2203781, at *11, 12. The narrow exception for "fraud or collusion" to the ecclesiastical abstention doctrine only applies to disputes involving internal governance, discipline, and religious determinations of hierarchical churches, particularly disputes affecting church property or leadership positions. The *Doe* decision grossly misapplied the principles applied by this Court in *Serbian Eastern Orthodox v. Milivojevich*, 426 U.S. 696 (1976). A dispute over application of a secular statute does not fall within ecclesiastical or church autonomy doctrine. See, *General Council on Finance, etc. of U.S. Methodist Church v. Sup. Ct. of Calif.*, 439 U.S. 1355 (1978).

In *Catholic Charities Bureau, Inc. v. Wis. Lab & Indus. Rev. Comm'n*, 605 U.S. 238, 247 (2025), this Court reviewed the religious-employer exemption for paying unemployment taxes and held that denominational preferences are not allowed. Yet, A.R.S. § 13-3620(A) is completely neutral. The Arizona Supreme Court did not cite nor discuss *Employment Div., Dept. of Human Resources v. Smith*, 494 U.S. 872 (1990) holding that generally applicable, religion-neutral laws do not violate the Free Exercise Clause of the First Amendment. During oral argument, one of the Arizona Justices stated that *Smith* was on "its last legs." As a result, although most applicable, the principles behind *Smith* were not discussed at all. The Arizona Supreme Court effectively overruled *Smith* on its own, albeit silently.

CONCLUSION

The First Amendment Free Exercise Clause was misused as a tool to change a neutral child abuse reporting statute into one that is "compelled" to exempt clergy from reporting any abuse, confidential or not. The Arizona Opinion conflicts with authoritative First Amendment principles decided by the U.S. Supreme Court, as well as, decisions from other states. It has extended the Free Exercise Clause to the breaking point. The application of the First Amendment by the Arizona Supreme Court has destroyed judicial independence and simultaneously violated the Establishment Clause of the First Amendment. The Arizona *Doe* Opinion effectively grants immunity to and creates an incentive for religious organizations to conceal child sex abuse. It needlessly puts the integrity and safety of children in harm's way despite decades of widely known child sexual abuse hidden by religious organizations. The Free Exercise Clause should not be used as both a sword and shield to encourage and exempt clergy from reporting any and all child sexual abuse under the cloak of Church doctrine.

The Arizona Statute as written provided a generous exemption to clergy from reporting if a genuine confession or "confidential" communication was received. The First Amendment did not "compel" the neutral statute to be judicially amended to hide all child sex abuse whether genuinely confidential or not. The net result not only seriously undermines the safety of innocent children; but it eviscerates the fundamental principles of the First Amendment as well. The Arizona statute was intended to protect our children. It was neutrally written and created lawful public policy to make the safety of our children a priority. The *Doe* opinion provides churches with a genuine

incentive and free pass to hide horrific child sexual abuse. It is absolutely wrong legally and as a matter of public policy. This Court should review this important First Amendment Opinion.

RESPECTFULLY SUBMITTED this 13th day of November, 2026.

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APPENDIX A — OPINION OF THE SUPREME COURT OF THE STATE OF ARIZONA, FILED JULY 30, 2026

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

No. CV-25-0213-PR

JANE DOE I, JANE DOE II, AND JOHN DOE, BY AND THROUGH CONSERVATOR, FLEMING AND CURTI PLC,

Plaintiffs/Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; DR. JOHN HERROD AND SHERRIE FARNSWORTH HERROD, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE; AND ROBERT KIM MAUZY AND MICHELLE MORGAN MAUZY, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE,

Defendants/Appellees.

Filed July 30, 2026

OPINION

Appendix A

Appeal from the Superior Court in Cochise County
The Honorable Timothy B. Dickerson, Judge
No. S0200CV202000599
AFFIRMED

Memorandum Decision of the
Court of Appeals, Division Two
No. 2-CA-CV 23-0293
Filed July 29, 2025
VACATED

VICE CHIEF JUSTICE LOPEZ authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER and JUSTICES BOLICK, BEENE, MONTGOMERY, KING, and CRUZ joined.

VICE CHIEF JUSTICE LOPEZ, Opinion of the Court:

¶1 We consider several issues concerning a clergy member's duty under Arizona statutory law to report abuse of a minor when a member of a religious congregation admits such abuse to the clergy member. Resolution of these issues turns solely on the interpretation of Arizona statutes and the application of federal constitutional principles, rather than public policy or the factual merits of the minor victims' claims.

¶2 We must decide if a factfinder—a court or jury—may inquire into whether a clergy member violated religious doctrine by failing to report abuse of a minor. Subsection (A) of A.R.S. § 13-3620 (the "Reporting Statute") requires "[a]ny person who reasonably believes that a minor"

is the victim of abuse to "immediately report or cause reports to be made." The Reporting Statute, however, allows a clergy member who receives "a confession or confidential communication" to refrain from reporting the "confession" or "confidential communication" if the clergy member "determines that it is reasonable and necessary within the concepts" of the clergy member's religion. § 13-3620(A) (the "Clergy Exemption"). We hold that the First Amendment generally prohibits factfinders from inquiring into a clergy member's application of his particular religious doctrine—absent fraud or collusion for secular purposes—in determining whether reporting should be withheld if "reasonable and necessary."

¶3 We next determine the meaning of the terms "confession" and "confidential communication" in the Reporting Statute. We hold that "confession" means "a confidential acknowledgment or admission of a crime, sin, or fault to a member of the clergy, priest, or Christian Science practitioner for the purpose of absolution." A "confidential communication" refers to "speech or correspondence that is treated as private or made in confidence, generally under circumstances that indicate the communication is intended only for the person or persons addressed." The First Amendment, however, requires courts to exercise substantial deference to a religious institution's own doctrinal conception of "confession" or "confidential communication."

¶4 Finally, we resolve whether a factfinder may determine who qualifies as a "member of the clergy." We hold that the First Amendment protects the right of

a religious institution to define who is a "member of the clergy" and, absent fraud or collusion for secular purposes, prohibits factfinders from inquiring into the religious institution's designation of clergy.

BACKGROUND

¶5 During their marriage and between 2005 and 2015, Paul and Leizza Adams had six children, three of whom are the Plaintiffs-Appellants in this case: Jane Doe I, Jane Doe II, and John Doe (collectively, the "Does"). Around 2011, Paul met privately with Bishop John Herrod ("Bishop Herrod") and revealed that he had sexually abused one of the Does. At the time, Bishop Herrod was bishop of the Bisbee Ward (the "Bisbee Ward") of The Church of Jesus Christ of Latter-day Saints (the "Church"). Following Paul's revelation, Bishop Herrod scheduled an additional meeting with Paul and Leizza, during which Paul again revealed his abuse. In 2012, Bishop Robert "Kim" Mauzy ("Bishop Mauzy") replaced Bishop Herrod as bishop of the Bisbee Ward of the Church.

¶6 During the leadership transition from Bishop Herrod to Bishop Mauzy (collectively, the "Bishops"), Bishop Herrod informed Bishop Mauzy of Paul's sexual abuse disclosures. Based on this information, Bishop Mauzy convened a formal disciplinary council (the "Council") proceeding, during which Paul again revealed his abuse to several members of the Church serving on the Council, including Bishop Mauzy. Following Paul's disclosures to the Council, Bishop Mauzy excommunicated Paul from the Church.

¶7 The Bishops claim that their knowledge of Paul's abuse is limited to admissions he made in his meetings with Bishop Herrod and the Council. The Bishops considered Paul's admissions to be confidential communications or confessions received in their role as bishops of the Church. According to Church doctrine, as alleged by the Church and reflected in the Church's General Handbook (the "Handbook"), bishops have a solemn duty to maintain confidentiality of all information members offer in such confessions and interviews. This duty of confidentiality extends to all who participate in the Council. On familial issues, Church doctrine also dictates that bishops counsel husbands and wives together and that such meetings are considered confidential.

¶8 In 2017, after the Department of Homeland Security discovered a video of Paul's abuse online, Paul and Leizza were indicted on charges relating to Paul's abuse of the Does. Leizza pleaded guilty and was sentenced to two and a half years in prison. Paul confessed his abuse to law enforcement but committed suicide in jail prior to trial. After learning of Paul's disclosures to the Bishops and Council members, the Does sued The Corporation of the President of The Church of Jesus Christ of Latter-day Saints, the Church, the Bishops and their spouses (collectively, the "Church Defendants"), and other parties.[1]

1. The Does also named Lenzner Medical Services, LLC ("Lenzner"), and Shaunice Warr ("Warr") as defendants in their First Amended Complaint. The trial court granted Warr's Motion for Summary Judgment and dismissed her from the underlying complaint. That ruling is the subject of a separate petition pending before this Court, and none of the claims relating to Lenzner or Warr are before us here.

The Does alleged several claims against the Church Defendants arising from Paul's abuse including negligence, breach of fiduciary duty, and civil conspiracy. The Does' claims, in part, arose from the Church Defendants' alleged failure to comply with the Reporting Statute.

¶9 The Church Defendants moved for summary judgment, arguing, in part, that they did not owe a duty to the Does under the Reporting Statute. The trial court granted the Church Defendants' summary judgment motion predicated on the following rulings: (1) Paul's communications to Bishop Herrod, his disclosure to Leizza in Bishop Herrod's presence, and his communications to the Council were confidential communications or confessions that Bishops Herrod and Mauzy received in their role as clergy members; and (2) the Bishops "determined that not reporting the communications was 'reasonable and necessary within the concepts of the [Church's] religion.'" The court noted that "[i]t is not for a [c]ourt or a jury to tell a clergyman that he is wrong about the concepts of his religion" and ultimately concluded that the "Church Defendants were not required under the Mandatory Reporting Statute to report the abuse . . . because their knowledge of the abuse came from confidential communications which fall within the [Reporting Statute's] clergy-penitent exception." The court also ruled that the "Church Defendants did not breach a duty owed" to the Does.

¶10 The court of appeals, in a memorandum decision, reversed the trial court's ruling, finding genuine issues of material fact "as to the Church Defendants' duty to report under" the Reporting Statute. *Doe v. The Corp. of*

the President of the Church of Jesus Christ of Latter-Day Saints, No. 2 CA-CV 2023-0293, 2025 WL 2158205, at *7 ¶ 35 (Ariz. App. July 29, 2025) (mem. decision). Notably, the court centered much of its analysis on the statutory clergy-penitent privilege in A.R.S. § 12-2233 (the "Clergy-Penitent Privilege"). *Id.* at *4–5 ¶¶ 20–26. The court held that a reasonable factfinder could conclude that Bishop Herrod merely "observed" Paul's confession to Leizza and, thus, waived the Clergy-Penitent Privilege. *Id.* at *5 ¶¶ 25–26. The court also surmised that a jury could "reasonably infer" that Paul's confession to the Council "waived the [C]lergy-[P]enitent [P]rivilege" and concluded there was a "genuine issue of material fact as to whether Paul's statements before the council invoked the Church Defendants' [Reporting Statute] duty to report." *Id.* at *6 ¶ 30. Finally, based on the court's interpretation of the Handbook, which required disclosure when necessary to prevent "serious injury," *id.* at *6 ¶¶ 33–34, the court held that a genuine issue of material fact existed as to "whether it was 'reasonable and necessary' for [the] Church Defendants to withhold reporting" based on the "question of whether the Church Defendants violated Church doctrine by not reporting Paul to the authorities," *id.* ¶ 34.

¶11 The Church Defendants petitioned this Court for review. We granted review to resolve recurring issues of statewide importance: the interpretation and application of the Reporting Statute, and whether the First Amendment allows a factfinder to inquire into a clergy member's doctrinal duty to report under the statute. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

Appendix A

DISCUSSION

¶12 Absent genuine issues of material fact, and when one party is entitled to judgment as a matter of law, summary judgment is appropriate. Ariz. R. Civ. P. 56(a). "[W]e review a grant of summary judgment de novo, viewing the evidence in the light most favorable to the party against whom summary judgment was entered." *Dabush v. Seacret Direct LLC*, 250 Ariz. 264, 267 ¶ 10, 478 P.3d 695, 698 (2021). We also review questions of statutory interpretation de novo. *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 13, 545 P.3d 892, 897 (2024).

I.

¶13 We begin with the statute at the center of the parties' dispute over the Church Defendants' duty to report Paul's abuse of the Does. Under Arizona's Reporting Statute, "[a]ny person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect . . . shall immediately report or cause reports to be made of this information . . . ." § 13-3620(A). However:

> A member of the clergy . . . who has received a confidential communication or a confession in that person's role as a member of the clergy . . . in the course of the discipline enjoined by the church to which the member of clergy . . . belongs may withhold reporting of the communication or confession if the member of the clergy . . . determines that it is reasonable and necessary within the concepts of the religion.

Id. The Clergy Exemption only applies to "the communication or confession and not to personal observations the member of the clergy . . . may otherwise make of the minor." *Id.*

II.

¶14 As an initial matter, we address the court of appeals' misapprehension of the relevance of the statutory Clergy-Penitent Privilege to the Bishops' reporting duties under the Reporting Statute. The Does also base the thrust of their briefing on the centrality of the Clergy-Penitent Privilege to this case.

¶15 Subsection (N) in the Reporting Statute provides that:

> In any civil or criminal litigation in which . . . child abuse . . . is an issue, a member of the clergy . . . shall not, *without his consent*, be examined as a witness concerning any confession made to him in his role as a member of the clergy . . . in the course of the discipline enjoined by the church to which he belongs.

§ 13-3620(N)[2] (emphasis added) (the "Clergy Privilege"). The Clergy Privilege, however, is a testimonial privilege and "does not discharge a member of the clergy . . . from the duty to report pursuant to [the Reporting Statute's]

2. Previously § 13-3620(L). *See* 2026 Ariz. Sess. Laws ch. 143, § 1 (2d Reg. Sess.).

subsection A." *Id.* Here, the court of appeals opined that the Clergy Privilege does not create "an independent evidentiary privilege for the clergy apart from the communicant's [C]lergy-[P]enitent [P]rivilege" in § 12-2233. *Doe*, 2025 WL 2158205, at *4 ¶ 19 (citing *Church of Jesus Christ of Latter-Day Saints v. Superior Court*, 159 Ariz. 24, 30–31, 764 P.2d 759, 765-66 (App. 1988)). We disagree.

¶16 The text of the Clergy-Penitent Privilege statute and the Reporting Statute identifies the privilege holder, its scope, and applicable exceptions. The civil statutory Clergy-Penitent Privilege provides that, in civil actions, "a clergyman . . . shall not, *without the consent of the person making a confession*, be examined as to any confession made to him in his character as clergyman . . . in the course of discipline enjoined by the church to which he belongs." § 12-2233 (emphasis added); *see also* A.R.S. § 13-4062(3) (the equivalent criminal clergy-penitent privilege). Thus, the civil clergy-penitent statute designates the person making the confession as the privilege holder. *See* § 12-2233. In contrast, the Clergy Privilege identifies the clergy member as the privilege holder. *See* § 13-3620(N).

¶17 In addition to the Reporting Statute's testimonial Clergy Privilege, the Clergy Exemption provides broader protection from disclosing confidential religious communications than the Clergy-Penitent Privilege. *See* § 13-3620(A), (N); § 12-2233. The protections of the Clergy Exemption extend to a "confidential communication" or "confession," while the Clergy-Penitent Privilege applies only to a "confession."

¶18 As for the privileges' exceptions, § 13-3620(M)(1)–(3)[3] precludes the Clergy-Penitent Privilege's application to any "[c]ivil or criminal litigation . . . in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue"; judicial proceeding "resulting from a report, information, or records submitted" pursuant to the Reporting Statute; or "[i]nvestigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or the department of child safety." Yet, in the same statutory section—subsection (M)—the Legislature expressly preserved the Clergy Privilege set out in § 13-3620(N). § 13-3620(M) ("Except for the attorney client privilege or the privilege under subsection N of this section, no privilege applies . . . .").

¶19 The Legislature has the authority to carve out express exceptions to statutory privileges. *See State v. Zeitner*, 246 Ariz. 161, 166 ¶ 20, 436 P.3d 484, 489 (2019) (discussing the physician-patient privilege and observing that, "[i]n many instances, the [L]egislature has created express exceptions to the privilege within the language of the applicable statutes"). Section 13-3620(M) typifies such an express exception to the statutory Clergy-Penitent Privilege. Although the Clergy Privilege absolves a clergy member of the duty to testify, it does not eliminate the Reporting Statute's duty to report. *See* § 13-3620(N) ("This subsection does not discharge a member of the clergy, a Christian Science practitioner or a priest from the duty to report pursuant to subsection A of this section."). Of

3. Previously § 13-3620(K)(1)–(3). *See* 2026 Ariz. Sess. Laws ch. 143, § 1 (2d Reg. Sess.).

course, a clergy member's duty to report a minor's abuse is not categorical; instead, it is subject to the Clergy Exemption's conditions—the meaning and application of which we must resolve in this case. But what is clear is that the Clergy-Penitent Privilege is inapplicable under the Reporting Statute and, thus, irrelevant to the Church Defendants' duty to report.

¶20 We note that the court of appeals' misapplication of the Clergy-Penitent Privilege is not novel—the court adopted from *Church of Jesus Christ of Latter-Day Saints* the notion that the Reporting Statute did "not create a statutory clergyman's privilege independent of the penitent's privilege under A.R.S. § 12–2233." *Doe*, 2025 WL 2158205, at *4 ¶ 19 (citing *Church of Jesus Christ of Latter-Day Saints*, 159 Ariz. at 30–31, 764 P.2d at 765-66). *Church of Jesus Christ of Latter-Day Saints* reasoned that the Clergy Privilege's purpose was "to require the clergy to report child abuse cases . . . but not to invade unnecessarily the priest/penitent privilege in A.R.S. § 12-2233." 159 Ariz. at 31, 764 P.2d at 766. Although we agree the Reporting Statute's Clergy Privilege is intended to curtail undue intrusion into clergy-penitent communications, *Church of Jesus Christ of Latter-Day Saints* misconstrued its purpose. The Clergy Privilege insulates a *clergy member* from disclosing information deemed doctrinally confidential; it does not protect the penitent's privacy rights. The Clergy Privilege precludes the state from compelling a clergy member to testify in circumstances which would violate his religious oath and duties. This aligns with the Reporting Statute's deference to the clergy member embodied in the Clergy

Exemption from reporting abuse of a minor *if* it is required by religious doctrine. As discussed below, the First Amendment compels such deference. Thus, we disavow *Church of Jesus Christ of Latter-Day Saints* to the extent it conflates the purpose and effect of the Clergy-Penitent Privilege and Clergy Privilege and Clergy Exemption.

III.

¶21 We now turn to the parties' fundamental dispute: may a factfinder—a court or jury—inquire into whether a clergy member followed religious doctrine by refraining from reporting the abuse of a minor.

A.

¶22 The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. Const. amend. I (respectively, the "Establishment Clause" and "Free Exercise Clause") (collectively, the "Religion Clauses"). The First Amendment's protections apply to the states through the Fourteenth Amendment. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 115, 73 S.Ct. 143, 97 L.Ed. 120 (1952).

¶23 The Founders adopted the First Amendment, in part, to prevent the repetition of certain practices under 16th-century British statutes which gave "the Crown the power to fill high 'religious offices' and to control the exercise of religion in other ways . . . ." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732,

748, 140 S.Ct. 2049, 207 L.Ed.2d 870 (2020). Thus, the Religion Clauses evince "a spirit of freedom for religious organizations, an independence from secular control or manipulation . . . ." *Kedroff*, 344 U.S. at 116, 73 S.Ct. 143 (discussing *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 (1872)). Put simply, the Religion Clauses give religious institutions the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Id.*

¶24 The United States Supreme Court applied *Kedroff*'s guiding principles to fashion the "ecclesiastical abstention" doctrine that courts apply in cases involving the Religion Clauses. *See Serbian E. Orthodox Diocese for U. S. of Am. & Can. v. Milivojevich*, 426 U.S. 696, 713, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) (discussing "the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law"); *see also Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049 ("Among other things, the Religion Clauses protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion." (quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 186, 132 S.Ct. 694, 181 L.Ed.2d 650 (2012))). Our court of appeals has recognized that the "ecclesiastical abstention" doctrine precludes courts from inquiring into "matters concerning 'theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals

required for them.'" *Christakis v. Deitsch*, 250 Ariz. 246, 249 ¶ 5, 478 P.3d 241, 244 (App. 2020) (quoting *Ad Hoc Comm. of Parishioners of Our Lady of the Sun Cath. Church v. Reiss*, 223 Ariz. 505, 510 ¶ 12, 224 P.3d 1002, 1007 (App. 2010)).

B.

¶25 The Clergy Exemption within the Reporting Statute requires five elements to exempt a religious official from the duty to report abuse of a minor: that person must be (1) a member of the clergy, who (2) receives a confidential communication or confession, (3) in that person's role as a member of the clergy, (4) in the course of discipline enjoined by the church to which the member of clergy belongs, and (5) determines that it is reasonable and necessary within the concepts of the religion to withhold reporting. § 13-3620(A).

¶26 We address the permissible inquiry a factfinder may make into each Clergy Exemption element and apply these principles to this case.

1.

¶27 We begin with the Clergy Exemption's first element—clergy membership. *Id.*

a.

¶28 The right of a religious institution to select its clergy members is practically plenary. Unless an improper

method of choice is proven—such as acts undertaken in bad faith like fraud or collusion for secular purposes—the freedom to select clergy and to decide other matters that are "purely ecclesiastical" is under "federal constitutional protection as a part of the free exercise of religion against state interference." *Kedroff*, 344 U.S. at 116 & n.23, 73 S.Ct. 143; *Serbian E. Orthodox*, 426 U.S. at 713, 96 S.Ct. 2372; *see also Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049 (finding that "the selection of the individuals who play certain key roles" in a religious institution is a protected component of religious autonomy under the Religion Clauses). This freedom emanates from the notion that "[i]n a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition." *Our Lady of Guadalupe Sch.*, 591 U.S. at 757, 140 S.Ct. 2049. Consistent with federal jurisprudence, in *Rashedi v. Gen. Bd. of Church of Nazarene*, our court of appeals held that "[w]hether an individual is qualified to be a clergy member of a particular faith is a matter to be determined by the procedures and dictates of that particular faith." 203 Ariz. 320, 323, 54 P.3d 349, 352 (App. 2002). To be clear, however, if church members commit fraud or collusion to further a secular purpose, such as avoiding legal responsibilities, they may be held liable. *See Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct.").

b.

¶29 The Does do not contend that the Bishops were not members of the clergy, nor do they allege that the Church's internal procedures embody an improper method of choice for identifying clergy membership. *See Kedroff*, 344 U.S. at 116, 73 S.Ct. 143. This is unsurprising, as it is not the province of a court or jury to dictate a religious institution's clergy membership requirements. *See Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049.

¶30 Instead, the Does' primary contention concerning clergy membership rests on the premise that it is "not a given that everyone present at the disciplinary council meetings were clergy." From this presumption, the Does contend that "[i]f just one person at the disciplinary council meetings was not determined to be clergy under the [ ] Church's 'ecclesiastical rule, customs and laws,' then the [C]lergy-[P]enitent [P]rivilege was likely waived." Thus, the Does argue that Paul and Bishop Mauzy waived the Clergy-Penitent Privilege because Paul admitted his abuse before non-clergy Church members during Council proceedings. But this argument does not advance the Does' position because waiver of the Clergy-Penitent Privilege does not resolve whether the Reporting Statute required clergy members to report Paul's abuse. *See supra* ¶¶ 14–20. Under the Reporting Statute, so long as Paul's admissions before the Council qualify as a "confession" *or* "confidential communication" pursuant to Church doctrine, the fact that non-clergy members also may have heard the admissions would not undermine Bishop Mauzy's status as a clergy member or his ability

to receive Paul's admissions as a confession or confidential communication in that role.

2.

¶31 We next consider the Reporting Statute's second element—the existence of a "confession" or "confidential communication." § 13-3620(A).

a.

¶32 The United States Supreme Court "has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144–45, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987). We are mindful of the First Amendment's prohibition against "employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying state standards[,]" but in order to avoid conflict with the Establishment Clause, a particular church or religious organization's doctrine must necessarily inform the types of admissions or acknowledgments that qualify as "confessions." *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). The same principle applies to "confidential communications," particularly whether the religion's doctrine considers a communication private or confidential.

¶33 The Reporting Statute does not define the terms "confession" or "confidential communication," which the Legislature added to the statute in 1990. *See* 1990 Ariz. Sess. Laws ch. 384, § 12 (2d Reg. Sess.). "Absent statutory definitions, courts apply common meanings . . . and may look to dictionaries." *State v. Pena*, 235 Ariz. 277, 279 ¶ 6, 331 P.3d 412, 414 (2014) (internal citations omitted).

¶34 In 1990, "confession" meant an "[a]knowledgment of a crime or fault" and an "acknowledgment of sin to a priest; a sect; a denomination." *Confession*, Webster's New Dictionary and Thesaurus (1990). Similarly, "confess" meant "to acknowledge fully, to own or admit, [and] to make known, as sins to a priest." *Confess*, Webster's New Dictionary (1990). Historically, "confession" in the religious context embodied the notion of disclosure for the purpose of absolution. *See Confess*, New Websterian Dictionary (1912) (defining "confess" as "disclose the state of one's conscience to a priest or receive absolution"). Our courts have also effectively recognized confidentiality as a component of "confession" by implication through the waiver doctrine. *See, e.g.*, *State v. Archibeque*, 223 Ariz. 231, 236 ¶¶ 16–18, 221 P.3d 1045, 1050 (App. 2009) ("[W]e conclude that the clergy-penitent privilege under § 13-4062(3) was not waived by the presence of Archibeque's wife if Archibeque believed the communication would remain private and such belief is reasonable.").

¶35 Guided by established First Amendment principles and the Reporting Statute's text, "confession" means "a confidential acknowledgment or admission of a crime, sin, or fault to a member of the clergy, priest, or Christian

Science practitioner for the purpose of absolution." *See Confession*, Webster's New Dictionary and Thesaurus (1990); *Confess*, Webster's New Dictionary (1990); *Confess*, New Websterian Dictionary (1912); *Archibeque*, 223 Ariz. at 236 ¶¶ 16–18, 221 P.3d at 1050; § 13-3620(A).

¶36 We next define "confidential communication" under the Reporting Statute. "Confidential," in common parlance in 1990, meant "treated with confidence, private, secret," *Confidential*, Webster's Dictionary (1990), and "communication" indicated "the act of making known" and "intercourse by speech, correspondence, messages, etc.," *Communication*, Webster's Dictionary (1990). As a legal term of art, "confidential communication" was defined at the time as "[p]rivileged communications such as those between spouses, physician-patient, attorney-client, confessor-penitent, etc." and "a statement made under circumstances showing that [the] speaker intended [the] statement only for [the] ears of [the] person addressed." *Confidential Communication*, Black's Law Dictionary (6th ed. 1990). The standard and legal dictionary definitions of "confidential communication" align. Thus, "confidential communication" in the Reporting Statute means "speech or correspondence that is treated as private or made in confidence, generally under circumstances that indicate the communication is intended only for the person or persons addressed." *See Confidential*, Webster's Dictionary (1990); *Communication*, Webster's Dictionary (1990); *Confidential Communication*, Black's Law Dictionary (6th ed. 1990).

¶37 This definition is consistent with our court of appeals' conception of confidential communications in the privilege waiver context. *See, e.g.*, *Archibeque*, 223 Ariz. at 236 ¶¶ 15–16, 221 P.3d at 1050 (determining the "relevant inquiry" into confidentiality, in the context of privilege waiver, "to be whether the communicant reasonably understood the communication to be confidential" and that a communication remains confidential if the communicant "believed the communication would remain private and such belief is reasonable"); *see also Waters v. O'Connor*, 209 Ariz. 380, 385 ¶ 23, 103 P.3d 292, 297 (App. 2004) (analyzing "confidential communications" and limiting the term "only [to] those communications anchored in the ecclesiastical rules, customs and laws of the applicable religious group").

¶38 Our definitions of "confession" and "confidential communication" pass Establishment Clause muster because they broadly apply to a variety of religious denominations. *See Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 247, 145 S.Ct. 1583, 221 L.Ed.2d 881 (2025) ("[T]he government may not 'officially prefe[r]' one religious denomination over another." (second alteration in original) (quoting *Larson v. Valente*, 456 U.S. 228, 244, 102 S.Ct. 1673, 72 L.Ed.2d 33 (1982))). Our approach also allows for a religious institution's interpretation of these concepts pursuant to its doctrine. *See Waters*, 209 Ariz. at 382 ¶ 10 n.2, 103 P.3d at 294 n.2 (noting that "a narrow construction of the confession requirement so that only penitential communications would be protected would raise First Amendment concerns").

¶39 The Reporting Statute reflects this same deference by focusing on the subjective view of the clergy member, rather than the communicant, and by requiring that "confessions" or "confidential communications" be made to a clergy member *in the course of discipline* enjoined by the church to which the member of the clergy belongs. § 13-3620(A) (emphasis added); *see also Waters*, 209 Ariz. at 385 ¶ 23, 103 P.3d at 297 (finding the course of discipline requirement in the statutory Clergy-Penitent Privilege necessitates "communications [to be] anchored in the ecclesiastical rules, customs and laws of the applicable religious group"). The First Amendment's constraint on courts against resolving matters involving the interpretation of church discipline, doctrine, and internal procedures extends to what qualifies as a "confession" or "confidential communication" under established customs and rules. *See Christakis*, 250 Ariz. at 249 ¶ 5, 478 P.3d at 244. This broad interpretive deference also avoids the potential for government coercion that could arise from a narrower construction of the Legislature's language. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 537, 142 S.Ct. 2407, 213 L.Ed.2d 755 (2022) (quoting *Zorach v. Clauson*, 343 U.S. 306, 314, 72 S.Ct. 679, 96 L.Ed. 954 (1952), for the proposition that the government may not "force citizens to engage in 'a formal religious exercise'").

¶40 Finally, under this construction, the Reporting Statute's underlying secular purpose—promoting the welfare of children—remains intact, despite the accommodation afforded to religious practices. *See Hobbie*, 480 U.S. at 144–45, 107 S.Ct. 1046 ("[T]he government may (and sometimes must) accommodate religious practices

and . . . it may do so without violating the Establishment Clause.").

b.

¶41 The Reporting Statute implicitly requires the party asserting the Clergy Exemption to produce the relevant doctrinal facts and standards to invoke it. *See* § 13-3620(A) (premising the reporting exemption on the clergy member's view that withholding of reporting is "reasonable and necessary" "in that person's role" and in the "course of discipline enjoined by the church to which *the member of the clergy*" belongs (emphasis added)). As with the Clergy-Penitent Privilege, a person asserting the Reporting Statute's Clergy Exemption necessarily must establish its applicability. *See, e.g.*, *Waters*, 209 Ariz. at 385 ¶ 24, 103 P.3d at 297 (rejecting Waters' assertion of the Clergy-Penitent Privilege because she failed to establish that a church member to whom she confessed was a "clergyman").

¶42 The Church Defendants have outlined Church doctrine concerning confession. In support of their summary judgment motion, they explained that the Church has adopted the "fundamental Christian doctrines of repentance and confession." Under these doctrines, Church members should "confess to [the bishop] if they have committed serious sins." Bishops, in turn, have a responsibility to counsel individual members, aid them in their efforts to repent, and act as the members' confessor. Bishops "have a solemn duty to keep confidential all information that members give [ ] them in confessions and

interviews." This duty of confidentiality "applies to all who take part in Church disciplinary councils." Bishops may only share confidential information with other "authorized ecclesiastical leaders." Also, "[b]ishops often meet with husbands and wives together to counsel about marriage and family problems," and "such meetings are just as confidential as meeting with someone alone."

¶43 The Church's factual assertions regarding its own doctrine establish that a "confession" is the admission of sin to a bishop. Under Church doctrine, "abuse cannot be tolerated in any form" as it "violates the laws of God." The Church classified Paul's admissions of abuse to Bishop Herrod, both individually and in the presence of Leizza, as confessions. We must afford deference to the Church's understanding of what constitutes an admission of fault or sin. *See Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049 (explaining that courts do not have the constitutional authority to interpret religious doctrine).

¶44 Given the Church's classification of Paul's abuse as violating the laws of God, and the Church's assertion that Paul's admissions to Bishop Herrod—alone and in Leizza's presence—were confessions, we conclude that Paul's admissions to Bishop Herrod constituted "confessions" for purposes of the Reporting Statute. Any further inquiry into whether Paul's admissions qualify as confessions is explicitly doctrinal. Under the First Amendment, such inquiry is beyond the purview of the factfinder and, thus, leaves no genuine issue of material fact regarding whether Paul's admissions to Bishop Herrod qualify as "confessions." *See id.*

¶45 The Church Defendants have also outlined Church doctrine concerning confidential communications, which mandates a strict duty of confidentiality for anyone who participates in Council proceedings and requires bishops to maintain the confidentiality of information shared among other authorized ecclesiastical leaders. As with confessions and other religious doctrinal matters, we must defer to the Church's doctrine concerning "confidential communications." *See id.*

¶46 The Church deemed any communication Paul made during the Council proceeding confidential under Church doctrine. Thus, we conclude that Paul's alleged admissions to the Council were, at a minimum, "confidential communications" for purposes of the Reporting Statute. We also deem Paul's admissions to Bishop Herrod, alone and in Leizza's presence, "confidential communications." To the extent Bishop Herrod discussed Paul's admissions with Bishop Mauzy, or Bishop Mauzy with Council members, those communications, too, were confidential under the Church's doctrine, which allows such confidential discussions among authorized ecclesiastical leaders.

¶47 The Does' argument that Paul's admissions before non-clergy Council members waived the Clergy-Penitent Privilege does not foreclose our holding that those admissions are confidential communications pursuant to Church doctrine and, thus, justify the Church Defendants' failure to report Paul's abuse under the Reporting Statute.

¶48 Similarly, because we deem the Clergy-Penitent Privilege irrelevant to the Church Defendants' duty

to report Paul's abuse, *see supra* ¶¶ 14–20, we need not address the Does' remaining arguments expressly predicated on waiver of the Clergy-Penitent Privilege, including that the Church Defendants failed to make a prima facie showing of the Clergy-Penitent Privilege under *State ex rel. Adel v. Adleman*, 252 Ariz. 356, 503 P.3d 120 (2022); that Bishop Herrod did not consider Paul's confession before Leizza confidential because he urged Paul and Leizza to report Paul's abuse to law enforcement (which ignores Bishop Herrod's request, due to confidentiality, for Paul's permission to report the abuse); and that Bishops Herrod and Mauzy had a duty to report Leizza's "obvious child neglect." These arguments fail because we conclude that the communications at issue between Bishop Herrod, Bishop Mauzy, Paul, Leizza, and the Council were "confidential communications" under Church doctrine and the Reporting Statute.

¶49 We briefly address the court of appeals' assertion that Bishop Herrod "did not receive Paul's confession to Leizza; he merely observed it." *Doe*, 2025 WL 2158205, at *5 ¶ 25. Although the court noted that the Reporting Statute "does not exempt a clergy member's personal observations," *id.*, it omitted the rest of the relevant statutory language—"personal observations the member of the clergy . . . may otherwise make *of the minor*[,]" § 13-3620(A) (emphasis added). The Does do not allege that they were present for Paul's admission to Leizza in Bishop Herrod's presence. Thus, the Reporting Statute's "personal observation" exemption is irrelevant to this admission.

3.

¶50 We now consider the Reporting Statute's third and fourth elements—whether Church clergy received Paul's confessions or confidential communications in their role as clergy (third element) while in the course of discipline enjoined by the Church (fourth element). § 13-3620(A).

a.

¶51 Courts may not inquire into ecclesiastical matters such as the "conformity of the members of the church to the standard of morals required for them." *Christakis*, 250 Ariz. at 249 ¶ 5, 478 P.3d at 244 (quoting *Reiss*, 223 Ariz. at 510 ¶ 12, 224 P.3d at 1007); *see also Our Lady of Guadalupe Sch.*, 591 U.S. at 757, 140 S.Ct. 2049 ("In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of the role played by every person who performs a particular role in every religious tradition."); *Kedroff*, 344 U.S. at 116 & n.23, 73 S.Ct. 143 (observing that, absent fraud or collusion for secular purposes, the freedom to decide matters that are "purely ecclesiastical" is under "federal constitutional protection as a part of the free exercise of religion against state interference"). Thus, the religious institution's doctrine determines whether a clergy member received a "confession" or "confidential communication" in their role as clergy. *See* § 13-3620(A). We accord the same deference to whether the communication or confession was received "in the course of discipline enjoined by the church to which the member of the clergy . . . belongs." *Id.*; *see also*

Waters, 209 Ariz. at 385 ¶ 23, 103 P.3d at 297 (finding the course of discipline requirement in the statutory Clergy-Penitent Privilege necessitates "communications [to be] anchored in the ecclesiastical rules, customs and laws of the applicable religious group").

¶52 Although courts may not inquire into whether clergy members adhered to the religion's doctrine and principles, this prohibition does not foreclose inquiry into whether an issue in controversy actually implicates the religion's doctrine. *See Alulddin v. Alfartousi*, 255 Ariz. 436, 440 ¶ 11, 532 P.3d 1172, 1176 (App. 2023) ("Courts of law may adjudicate disputes arising in religious contexts 'by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy[.]'" (quoting *Rashedi*, 203 Ariz. at 324 ¶¶ 15–16, 54 P.3d at 353)); *see also Watson*, 80 U.S. at 733 (finding that when a church, on behalf "of one of its members[,] entertain[s] jurisdiction as between him and another member as to their individual right to property, real or personal, the right in no sense depending on ecclesiastical questions, its decision would be utterly disregarded by any civil court where it might be set up").

b.

¶53 The Church has adopted the "fundamental Christian doctrines of repentance and confession." The Church's doctrine establishes that bishops must counsel individual members, assist their efforts to repent, and act as a member's confessor. The Bishops received Paul's admissions during counseling sessions and disciplinary

proceedings that are explicitly provided for under the Church's doctrine. The Bishops also claimed that they received Paul's admissions in their role as clergy members.

¶54 We may not substitute our interpretation of Church doctrine for the Church's reading of its own doctrine. *See Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049. We conclude that the Bishops received Paul's confessions or confidential communications in the course of discipline enjoined by the Church to include admissions before the Council.

4.

¶55 Finally, we consider the Reporting Statute's fifth element—whether the Bishops determined it was "reasonable and necessary within the concepts" of their religion to withhold reporting of Paul's abuse. § 13-3620(A). Although the "concepts" of a clergy member's religion may be broader than the religion's "doctrine," this inquiry effectively requires a factfinder to evaluate whether the clergy member's determination conformed with his own religious doctrine.

a.

¶56 The United States Supreme Court previously concluded that court inquiry "into whether the Church had followed its own procedures" is an unconstitutional attempt to resolve "quintessentially religious controversies." *Hosanna-Tabor*, 565 U.S. at 187, 132 S.Ct. 694. Consequently, absent evidence of fraud or collusion for

secular purposes, courts are generally foreclosed from making such a determination, including in the context of resolving a "battle of the experts" opining on religious doctrine. *See Christakis*, 250 Ariz. at 249 ¶ 5, 478 P.3d at 244; *Kedroff*, 344 U.S. at 116 & n.23, 73 S.Ct. 143.

b.

¶57 The court of appeals invoked the Church's Handbook, § 32.4.4, which required Church disclosure when necessary to prevent "serious injury," to conclude that a genuine issue of material fact existed as to "whether it was 'reasonable and necessary' for [the] Church Defendants to withhold reporting" based on the "question of whether the Church Defendants violated Church doctrine by not reporting Paul to the authorities." *Doe*, 2025 WL 2158205, at *6 ¶¶ 33–34. There is no dispute that this provision was added to the Handbook *after* the relevant events in this case. Furthermore, the court's inquiry constitutes an impermissible intrusion into the Church's doctrine. *See Hosanna-Tabor*, 565 U.S. at 187, 132 S.Ct. 694; *Christakis*, 250 Ariz. at 249 ¶ 5, 478 P.3d at 244.

¶58 The Bishops declared that Paul's confessions "had to remain confidential within the concepts of their religion," a position consistent with the Handbook. On this record, we are constrained to credit the Bishops' determination that withholding reporting of Paul's confessions or confidential communications was "reasonable and necessary" within the concepts of Church doctrine.

IV.

¶59 The Reporting Statute and bedrock First Amendment principles compel our decision in favor of the Church Defendants in the Does' civil action against the Church Defendants for withholding reporting of Paul's abuse.

¶60 Our decision "does not mean that religious institutions enjoy a general immunity from secular laws . . . ." *Our Lady of Guadalupe Sch.*, 591 U.S. at 746, 140 S.Ct. 2049. "Courts of law may adjudicate disputes arising in religious contexts 'by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy[.]'" *Alulddin*, 255 Ariz. at 440 ¶ 11, 532 P.3d at 1176 (quoting *Rashedi*, 203 Ariz. at 324 ¶¶ 15–16, 54 P.3d at 353). However, as the United States Supreme Court has recognized, there is room only for "marginal civil court review under the narrow rubrics of 'fraud' or 'collusion' when church tribunals act in bad faith for secular purposes . . . ." *Serbian E. Orthodox*, 426 U.S. at 713, 96 S.Ct. 2372; *Cantwell*, 310 U.S. at 306, 60 S.Ct. 900. Thus, if a court finds a religious institution submitted evidence procured through "fraud" or "collusion" for secular purposes, it will lose the Religion Clauses' protection. *See Serbian E. Orthodox*, 426 U.S. at 713, 96 S.Ct. 2372; *Cantwell*, 310 U.S. at 306, 60 S.Ct. 900. Such inquiries are permissible because they ask *how* or *why* a religious institution's evidence was procured, rather than *what* the evidence means under the religious doctrine. Consequently, if a matter involving a religious institution can be resolved by applying neutral principles

of law, the "ecclesiastical abstention" doctrine would not apply.

¶61 In this case, however, there is no evidence that the Church Defendants' factual allegations were procured by "fraud" or "collusion" for the secular purpose of avoiding legal responsibilities, and any inquiry into whether the Bishops adhered to Church doctrine is the antithesis of the permissible narrow review—the application of "neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy[.]'" *See Alulddin*, 255 Ariz. at 440 ¶ 11, 532 P.3d at 1176 (quoting *Rashedi*, 203 Ariz. at 324 ¶¶ 15–16, 54 P.3d at 353). On this record, and consistent with the Reporting Statute's Clergy Exemption, the First Amendment forecloses any such inquiry.

CONCLUSION

¶62 Accordingly, we vacate the court of appeals' memorandum decision and affirm the trial court's ruling granting the Church Defendants' motion for summary judgment.

APPENDIX B — MEMORANDUM DECISION OF THE ARIZONA COURT OF APPEALS, DIVISION TWO, FILED JULY 29, 2025

IN THE ARIZONA COURT OF APPEALS
DIVISION TWO

No. 2 CA-CV 2023-0293

JANE DOE I, JANE DOE II, AND JOHN DOE, BY AND THROUGH CONSERVATOR, FLEMING AND CURTI PLC,

Plaintiffs/Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; DR. JOHN HERROD AND SHERRIE FARNSWORTH HERROD, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE; AND ROBERT KIM MAUZY AND MICHELLE MORGAN MAUZY, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE,

Defendants/Appellees.

Filed July 29, 2025

MEMORANDUM DECISION

Appendix B

Appeal from the Superior Court in Cochise County
No. S0200CV202000599
The Honorable Timothy B. Dickerson, Judge

REVERSED AND REMANDED

STARING, Chief Judge:

¶1 Jane Doe I, Jane Doe II, and John Doe ("Does") appeal from the trial court's grant of summary judgment in favor of The Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, The Church of Jesus Christ of Latter-Day Saints ("Church"), Dr. John Herrod, Robert Kim Mauzy, and their spouses (collectively, "Church Defendants"). For the following reasons, we reverse and remand for further proceedings consistent with this decision.

Factual and Procedural Background

¶2 We view all facts and reasonable inferences in the light most favorable to the Does, the parties opposing summary judgment. *See Doe v. Roman Cath. Church of Diocese of Phx.*, 255 Ariz. 483, ¶ 2 (App. 2023). Paul and Leizza Adams had six children together between 2005 and 2015, three of whom are the Does. They joined the Bisbee Ward of the Church in 2009. Dr. Herrod, a practicing physician, was bishop of the Bisbee Ward from 2004 to 2012.

¶3 In November 2011, Paul confessed to Herrod that he had sexually abused his minor daughter, Jane Doe I.

Herrod subsequently asked Leizza to join them and Paul repeated his confession to her. Herrod believed he could not report Paul's abuse and strongly encouraged that either Paul turn himself in or that Leizza report Paul to the authorities.

¶4 Mauzy succeeded Herrod as bishop for the Bisbee Ward at the end of Herrod's term and served from 2012 to 2018. During Mauzy's transition to the position, Herrod told him about Paul's confession. Mauzy eventually initiated a disciplinary proceeding that resulted in Paul's excommunication from the Church in 2013 for having sexually abused Jane Doe I. Paul initiated an appeal of his excommunication, voluntarily discussing his actions at the hearing. The Church upheld the excommunication. However, none of the Church Defendants reported the abuse of Jane Doe I to law enforcement or the Arizona Department of Child Safety.

¶5 Paul continued to sexually abuse the Does until he was arrested in February 2017, after law enforcement officers found a video he had posted online that depicted him sexually abusing Jane Doe I. He was charged with multiple counts of child sex abuse and exploitation. A search of the Adams's home found photos and videos depicting years of Paul sexually abusing the Does. Paul confessed to law enforcement and, in December 2017, committed suicide in jail. Leizza was arrested, pleaded guilty, and was convicted for knowing about the abuse and failing to protect the Does.

¶6 In their October 2021 first amended complaint against the Church Defendants, the Does claimed negligence, intentional and negligent infliction of emotional distress, breach of fiduciary duty, conspiracy, and ratification, and requested punitive damages.[1] They alleged the Church Defendants had a duty to report Paul's abuse pursuant to Arizona's mandatory reporting statute, A.R.S. § 13-3620(A), and had failed to do so, causing them to suffer years of additional abuse and harm.

¶7 In August 2022, the Church Defendants sought special action review of the trial court's order directing the disclosure of evidence related to Paul's 2013 church disciplinary council proceeding based on the court's conclusion that the clergy-penitent privilege did not apply to a witness and had been waived by Paul's actions. We granted review and relief, vacating the disclosure order in December 2022. *Corp. of President of Church of Jesus Christ of Latter-day Saints v. Cardinal* (*Jane Doe*), No. 2 CA-SA 2022-0047 (Ariz. App. Dec. 15, 2022) (mem. decision).

¶8 The Church Defendants moved for summary judgment in October 2022, claiming they owed no duty to the Does outside of the mandatory reporting statute and it was "undisputed that both Bishops had no other

1. The Does asserted these claims against Herrod and his medical practice as well, in addition to claims for "medical malpractice/medical negligence" and "medical negligence/negligent hiring/retention/supervision." Those claims are not at issue in this appeal, nor are their claims against another defendant, Shaunice Warr.

information about the abuse" aside from Paul's confidential confession. In their opposition to the motion, the Does claimed the Church Defendants were overbroadly applying the clergy-penitent privilege to evidence "beyond the privilege's scope."

¶9 The trial court granted the Church Defendants' motion for summary judgment in November 2023. The Does appealed the subsequent final judgment. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Jane Doe **Special-Action Memorandum**

¶10 As a preliminary matter, we address the Does' argument that our unpublished memorandum decision in *Jane Doe* should be abandoned.[2] In *Jane Doe*, the Church Defendants argued the trial court had erred in finding that: (1) Paul had waived his clergy-penitent privilege by broadcasting his criminal conduct on the internet and confessing to police; and (2) Richard Fife, a ward clerk participating in Paul's 2013 church disciplinary hearing, was not covered by the clergy-penitent privilege. *See* No. 2 CA-SA 2022-0047, ¶¶ 8, 13. On review, we concluded that Paul's criminal conduct and confession to law enforcement did not waive the clergy-penitent privilege and that there was insufficient evidence in the record before us to conclude that Fife did not qualify as clergy. *Id.* ¶¶ 12, 14.

2. Specifically, they contend our decision was "faulty, unjust, and an intolerable suppression of the truth in child sex abuse cases" and conflicts with published caselaw on the clergy-penitent privilege.

We did not definitively conclude that Fife was a member of the clergy; instead, we noted the Does had failed to provide sufficient evidence on the question. *See id.* ¶ 14.

¶11 Ordinarily, unpublished memorandum decisions are not precedential in any court except to establish claim or issue preclusion or as the "law of the case." Ariz. R. Sup. Ct. 111(c)(1). The "law of the case" doctrine is a judicial policy of refusing to reopen previously decided questions from the same case by the same court. *Sholes v. Fernando*, 228 Ariz. 455, ¶ 8 (App. 2011). However, as the Does correctly note, this doctrine is procedural rather than substantive, and it does not prevent a court from changing a ruling that was decided earlier, especially if there has been a "substantial change" in the evidence. *See id.*

¶12 The Does exaggerate the scope and significance of the memorandum decision. *Jane Doe* does not resolve the primary questions in the appeal before us. While the Does maintain that Paul waived the clergy-penitent privilege, the majority of their argument on appeal involves his conduct during the church disciplinary council meetings and counseling sessions as opposed to his criminal conduct and confessions to police—the conduct at issue in the special action.[3] Further, there are additional arguments in this appeal that were never made or considered in *Jane Doe*. Thus, we leave *Jane Doe* undisturbed and decline to treat it as "law of the case" for any issue other than

3. As this issue was already decided in *Jane Doe*, we decline to revisit the Does' argument that Paul's criminal conduct and confessions to police waived the clergy-penitent privilege. *See Sholes*, 228 Ariz. 455, ¶ 8; *Jane Doe*, No. 2 CA-SA 2022-0047, ¶ 12.

whether Paul's criminal conduct and confession to law enforcement waived the clergy-penitent privilege. *See* Ariz. R. Sup. Ct. 111(c)(1).

Preclusion of Jane Doe I and John Doe Declarations

¶13 In May 2023, the Does filed a supplement to their statement of facts opposing summary judgment, which included additional facts from signed declarations made by Jane Doe I and John Doe in April 2023. The Church Defendants objected to the supplement, asserting the filing was untimely and the declarations failed to raise a genuine issue of material fact because they were "conclusory and speculative."

¶14 In its summary judgment ruling, the trial court concluded the declarations of Jane Doe I and John Doe had not been timely disclosed. The court reasoned the disclosure of the declarations "18 months after the Amended Complaint was filed and well after the disclosure deadline" was an "egregious violation of Rule 26.1," Ariz. R. Civ. P., and it precluded the declarations from evidence.

¶15 In their briefing on appeal, the Does did not raise the issue of whether the trial court erred when it precluded the declarations. After oral argument in this court, however, we ordered the parties to file simultaneous supplemental briefs on the question, as well as on whether the Does had waived the issue on appeal. In their supplemental briefing, the Does conceded that they had waived the issue of whether the trial court wrongly precluded the

declarations. As such, we do not consider the declarations in the disposition of this appeal.

Summary Judgment

¶16 The Does argue the trial court erred in granting the Church Defendants' motion for summary judgment, maintaining that summary judgment was inappropriate because there were instances where the clergy-penitent privilege was waived. They also claim significant evidence exists—independent of any potentially privileged communications—that supports the conclusion that the Church Defendants had a duty to report Paul's abuse of the Does under § 13-3620(A). Further, the Does assert that under the mandatory reporting statute, the evidence need only give rise to a "reasonable belief" of abuse, not an actual observation of the abuse.

¶17 In their motion for summary judgment, the Church Defendants argued there was no evidence that Bishops Herrod and Mauzy had knowledge of, and thus any duty to report, Paul's abuse of the Does outside of confidential communications that were covered by the clergy-penitent exception in § 13-3620(A). The trial court agreed and granted their motion for summary judgment. We review a summary judgment ruling de novo, and, as noted, we view the facts in the light most favorable to the parties against whom summary judgment was entered, drawing all justifiable inferences in their favor. *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, ¶¶ 2, 9 (App. 2009).

¶18 Summary judgment is appropriate if the moving parties have shown "there is no genuine dispute as to any material fact" and they are entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a). In considering whether to grant summary judgment, a court must review the entire record, including all "pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." *Giovanelli v. First Fed. Sav. & Loan Ass'n of Phx.*, 120 Ariz. 577, 581 (App. 1978). "Likewise, the Court of Appeals, in ruling on the propriety of the summary judgment, must review the whole record to determine whether a material issue of fact exists." *Id.* "A 'genuine' issue of fact is one that a reasonable court could decide 'in favor of the party adverse to summary judgment on the available evidentiary record.'" *Mesquite Power, LLC v. Ariz. Dep't of Revenue*, 252 Ariz. 74, ¶ 12 (App. 2021) (quoting *Martin v. Schroeder*, 209 Ariz. 531, ¶ 12 (App. 2005)). Summary judgment is inappropriate where the court must evaluate the credibility of witnesses, weigh the quality of the evidence, or choose among competing inferences. *Orme Sch. v. Reeves*, 166 Ariz. 301, 311 (1990). Our supreme court has warned that summary judgment "should not be used as a substitute for jury trials simply because the trial judge may believe" the moving party will win or should win at trial. *Id.* at 310; *see also MacKinney v. City of Tucson*, 231 Ariz. 584, ¶ 6 (App. 2013) (summary judgment disfavored but possible in negligence actions).[4]

4. "[A]lthough courts have no discretion to grant summary judgment if the standard is not met, they can deny summary judgment even where there is apparently no genuine dispute over any material fact." *Orme Sch.*, 166 Ariz. at 309 n.11.

¶19 Arizona's mandatory child abuse reporting statute, A.R.S. § 13-3620(A), requires that certain persons "who reasonably believe[ ] that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense, or neglect that appears to have been inflicted on the minor . . . shall immediately report or cause reports to be made of this information" to law enforcement or the appropriate agency. Clergy members are identified as mandatory reporters under the statute. § 13-3620(A)(2). However, "[a] member of the clergy . . . may withhold reporting of [a] communication or confession if the member of the clergy . . . determines that it is reasonable and necessary within the concepts of the religion" to do so. *Id.* "This exemption applies only to the communication or confession and not to [a clergy member's] personal observations." *Id.* And although § 13-3620(L) provides that a member of the clergy "shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy," subsection (L) does not supplant a clergy member's duty to report. Nor does it create an independent evidentiary privilege for the clergy apart from the communicant's clergy-penitent privilege, A.R.S. § 12-2233. *See Church of Jesus Christ of Latter-Day Saints v. Superior Court*, 159 Ariz. 24, 30-31 (App. 1988) (mandatory reporting statute does not create separate privilege for clergy). Thus, § 13-3620(A) imposes a legal duty upon clergy, including Herrod and Mauzy, to report a reasonable belief that abuse has occurred unless the source of that belief fits within the statute's exceptions for clergy. *See Perez v. Circle K Convenience Stores, Inc.*, ___ Ariz. ___, ¶ 20, 564 P.3d 623, 630 (2025) ("sometimes certain antecedent facts must be considered

in determining whether a duty exists," including "whether a statute applies to a circumstance to give rise to a duty").

¶20 Arizona's clergy-penitent privilege applicable to civil actions is § 12-2233, which provides a clergyman "shall not, without the consent of the person making a confession, be examined as to any confession made to him in his character as clergyman . . . in the course of discipline enjoined by the church to which he belongs." The communicant, not the clergyman, holds the privilege. *Cf. Waters v. O'Connor*, 209 Ariz. 380, ¶ 12 (App. 2004) (privilege "belongs to the communicant"); *Secure Ventures, LLC v. Gerlach*, 249 Ariz. 97, ¶ 5 (App. 2020) ("We do not resort to secondary statutory interpretation principles when the plain language is unambiguous.").

¶21 We strictly construe privilege statutes because they impede the truth-finding process. *Carondelet Health Network v. Miller*, 221 Ariz. 614, ¶ 7 (App. 2009). "Whether and to what extent a privilege exists is a question of law." *Id.* ¶ 8. However, whether a privilege has been waived "is a mixed question of law and fact that we review de novo." *Accomazzo v. Kemp*, 234 Ariz. 169, ¶ 8 (App. 2014).

I. Paul Repeating Confession to Leizza

¶22 The Does contend the trial court erred in concluding the clergy-penitent privilege precluded a substantial portion of the evidence. They allege Paul impliedly and expressly waived the privilege, making that evidence admissible. Most notably, they claim that Paul repeating his confession in Leizza's presence amounted to a waiver,

which required the Church Defendants to report the abuse to the appropriate authorities pursuant to § 13-3620(A). They further assert that after Paul repeated to his wife what he had done to Jane Doe I, Herrod explicitly told Leizza—a mandatory reporter under § 13-3620(A)(3)—to report her husband to police. As such, the Does argue, Paul had "[n]o reasonable belief of confidentiality."

¶23 The Church Defendants contend that under Church doctrine, counseling married couples together in "spiritual matters" is confidential. They also assert that Paul intended the communications be confidential because Herrod had asked Paul for permission to disclose the confession to police directly and Paul refused. Further, they claim this court's decision in *State v. Archibeque*, 223 Ariz. 231 (App. 2009), "establishes that the presence of a spouse during a confession does not remove confidentiality for purposes of the privilege." According to the Church Defendants, the only relevant question as to whether the exception in § 13-3620 applies is not whether Paul's confessions were privileged, but whether "Bishop Mauzy and Bishop Herrod believed they had a religious duty of confidentiality."

¶24 Under *Archibeque*, the involvement of a spouse during a confession does not automatically waive clergy-penitent privilege. *See* 223 Ariz. 231, ¶ 16. There, Archibeque and his wife contacted their LDS bishop to report that he had inappropriately touched his stepdaughter. *Id.* ¶ 2. At the bishop's office, Archibeque confessed to the bishop while in the presence of his wife. *Id.* The bishop testified that providing spiritual guidance for the family was within his

religious duties and confidentiality was a concern for both him and the Archibeques. *Id.* ¶ 17. He also testified he had assured the couple their communications would remain confidential. *Id.* This court reasoned that because there was "no allegation in [the] record" that Archibeque later disclosed the conversation with others, the couple had received assurances of confidentiality, and the confession to the bishop was "made in furtherance of the confession and repentance process," the presence of his wife did not constitute implied waiver. *Id.* ¶ 19; *cf. State v. Sucharew*, 205 Ariz. 16, ¶ 11 (App. 2003) ("general rule" that presence of third party waives attorney-client privilege inapplicable when parties intend to keep communication confidential).

¶25 Unlike the wife in *Archibeque*, Leizza did not meet the bishop with her husband for confession but met with Paul and Herrod after Paul had already confessed to Herrod. Paul then confessed directly to Leizza in Herrod's presence. Indeed, the Church Defendants acknowledge in their answering brief that Herrod had invited Leizza "so [she] would know what Paul had done and so she could protect her children." A reasonable fact finder could conclude that in such circumstances, Herrod did not receive Paul's confession to Leizza; he merely observed it. As noted, § 13-3620(A)(2) does not exempt a clergy member's personal observations.

¶26 A reasonable fact finder could also conclude Paul's confession to Leizza amounted to a waiver of the clergy-penitent privilege. *See Waters*, 209 Ariz. 380, ¶ 16 (privilege "restrictively interpreted"). Conduct by the communicant inconsistent with maintaining confidentiality

may constitute implied waiver. *See Church of Jesus Christ of Latter-Day Saints*, 159 Ariz. at 29. Implied waiver occurs when the communicant "has abandoned privacy and confidentiality through inconsistent conduct" by revealing "not only the fact, but the substance" of a confidential communication. *Id.*

II. Paul's Confession at Council Meetings

¶27 The Does argue Paul's confessions at church disciplinary council meetings did not fall within the clergy-penitent exception to the mandatory reporting statute because the meetings "were assembled to excommunicate [Paul]" and "not [to] provide spiritual guidance." They assert that, pursuant to *Waters*, 209 Ariz. 380, ¶¶ 22-23, the clergy-penitent privilege does not extend to communications that are not "intended for repentance, spiritual advice, and forgiveness" or where a confidential communication is made to an individual who is not clergy. They also contend that the presence and participation of non-clergy Church members during disciplinary council proceedings thus constituted waiver.

¶28 In response, the Church Defendants assert that Herrod and Mauzy "were acting in their capacity as clergy," "in the course of discipline enjoined by the Church," and that "they considered the disclosures confidential" according to the concepts of their religion. They also contend that one of the primary purposes of a disciplinary council is to provide spiritual guidance, even during excommunications. And the Church Defendants claim the "number of people who attended a disciplinary

council is not relevant to the Reporting Statute's exemption." Thus, they argue, the bishops had no duty to report the abuse pursuant to § 13-3620.[5]

¶29 However, communications are not confidential, and thus not privileged, when received by non-clergy church members who are not "enjoined by the practices or rules . . . to receive confidential communications and to provide spiritual counsel." *See Waters*, 209 Ariz. 380, ¶¶ 22-24 (quoting *State v. Martin*, 959 P.2d 152, 157 (Wash. App. 1998)). Further, as noted, conduct by the communicant inconsistent with maintaining confidentiality may constitute implied waiver. *See Church of Jesus Christ of Latter-Day Saints,* 159 Ariz. at 29.

¶30 During Paul's first excommunication proceeding, he was asked to confess or allow his confession to be heard before the council, but he refused to do so. At the later proceeding addressing Paul's appeal of his excommunication, however, Paul chose to confess his abuse of Jane Doe I before the council. A jury could reasonably infer that Paul's actions in the later proceeding voluntarily waived the clergy-penitent privilege for the purpose of disclosing his abuse of Doe to all members in attendance,

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5. The Church Defendants also contend that "this Court has already held that statements made to the disciplinary council are privileged," citing *Doe*, No. 2 CA-SA 2022-0047, ¶ 16. This citation consists only of our order vacating the trial court's order and is not a conclusion that the statements were privileged. *See id*. As noted, we addressed two narrow questions in *Doe*; Paul's statements to the disciplinary council and whether they were privileged was not one of those issues. *See id.* ¶¶ 12, 15.

clergy and non-clergy alike. *See id.* Given this record, and considering all inferences in the light most favorable to the Does, there exists a genuine issue of material fact as to whether Paul's statements before the council invoked the Church Defendants' duty to report under § 13-3620(A). *See id.*; *Modular Mining Sys., Inc.*, 221 Ariz. 515, ¶ 2.

III. Church Doctrine

¶31 In their opposition to summary judgment, the Does argued the Church Defendants' failure to report Paul's confession was not "reasonable and necessary" according to Church doctrine because the Church's General Handbook nullifies the confidentiality of confessions in instances where "serious injury," such as child sex abuse, occurs. They argued that a portion of the handbook and the testimony of Vince Creviston—Herrod's First Counselor—contradicted the Church Defendants' assertions that Paul's confession "must have been kept secret" according to Church doctrine.[6] The trial court did

6. Although the Does do not expressly re-raise this issue of Church doctrine on appeal, the doctrine of waiver is discretionary. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) (purpose of waiver doctrine is to avoid deciding on appeal issues trial court never had opportunity to consider). Here, because the Does submitted the argument to the trial court in their opposition to summary judgment, because the trial court erred in impliedly rejecting it, and because they assert generally on appeal that the court erred in granting summary judgment, we exercise our discretion to address the issue. *See United Bank of Ariz. v. Allyn*, 167 Ariz. 191, 195 (App. 1990) (appellate courts must review a grant or denial of summary judgment "on the basis of the record made in the trial court," applying the same standards used by that

not indicate in its grant of summary judgment that it had considered the Does' argument or whether the evidence constituted a genuine issue of material fact. We believe it does.

¶32 At oral argument in this court, when asked whether the *entire* handbook was considered doctrine, the Church Defendants answered unequivocally that it "can be referred to as doctrine." Indeed, below and on appeal, the Church Defendants cite to numerous portions of the handbook for support that Herrod and Mauzy acted in accordance with Church doctrine in determining it was "reasonable and necessary within the concepts of the[ir] religion" to withhold reporting.

¶33 Section 32.4.4 of the handbook states:

> In only one situation should a bishop or stake president disclose confidential information without first seeking guidance. That is when disclosure is necessary to prevent life-threatening harm or *serious injury* and there is not time to seek guidance. In such cases, the duty to protect others is more important than the duty of confidentiality. Leaders should contact civil authorities immediately. (Emphasis added.)

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court); *see also Giovanelli*, 120 Ariz. at 581 (court must review entire record in review of summary judgment).

¶34 At his deposition, Creviston testified that child sex abuse would constitute a "serious injury" under Church doctrine. This testimony, along with Section 32.4.4, raises the question of whether the Church Defendants violated Church doctrine by not reporting Paul to the authorities. In other words, there is a genuine issue whether it was "reasonable and necessary" for Church Defendants to withhold reporting Jane Doe I's abuse. *See* § 13-3620(A); *Doe*, 255 Ariz. 483, ¶ 2; *see also Waters*, 209 Ariz. 380, ¶ 23 ("only those communications anchored in the ecclesiastical rules, customs and laws of the applicable religious group" are protected).

Disposition

¶35 For the foregoing reasons, we conclude that genuine issues of material fact exist as to the Church Defendants' duty to report under § 13-3620(A). We therefore reverse the trial court's grant of summary judgment in favor of the Church Defendants and remand for further proceedings consistent with this decision.

APPENDIX C — RULING OF THE SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF COCHISE, FILED NOVEMBER 3, 2023

SUPERIOR COURT, STATE OF ARIZONA,
IN AND FOR THE COUNTY OF COCHISE

JANE DOE I, *et al.*,

Plaintiffs,

and

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE, *et al.*,

Defendants.

Case No. CV202000599

UNDER ADVISEMENT RULING CHURCH DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

HONORABLE TIMOTHY B. DICKERSON
DIVISION FOUR

By: Lizette Castaneda-Arroyo
Judicial Administrative Assistant

This case is before the Court for a decision on the Church Defendants' Motion for Summary Judgment and

their Motion for Partial Summary Judgment on Plaintiffs' Conspiracy Claim.

The Court has reviewed the Motion, Notice of Supplemental Authority in Support of the Motion, Plaintiff's Response, and Defendant's Reply, along with the Statements of Fact and exhibits. For the reasons stated below, the Court grants the Motions for Summary Judgment.

I. Procedural History

On October 26, 2021, Plaintiffs filed their First Amended Complaint (Complaint) against the Church of Jesus Christ of Latter-Day Saints (Church) and various individuals related to the Church including Defendants John and Sherrie Herrod (except as to Counts 5 and 6) and Kim and Michelle Morgan Mauzy. These defendants are collectively referred to as the "Church Defendants." The claims against the Church Defendants are Count One, Negligence; Counts Two and Three, Intentional Infliction of Emotional Distress; Count Three, Negligent Infliction of Emotional Distress; Count Four, Breach of Fiduciary Duty; Count Seven, Ratification; Count Eight, Civil Conspiracy; and Count Nine, Punitive Damages.

The Church Defendants filed their Motion for Summary Judgment on October 21, 2022, requesting dismissal of all claims except Count Eight for Civil Conspiracy and a Motion for Partial Summary Judgment on Count Eight. Plaintiffs filed their Responses to both motions on January 25, 2023, and a Replies were filed on February 14, 2023.

Oral argument was held on July 18, 2023, at which the Court stated that it would take the motions under advisement when it ruled on Plaintiffs' First Amended Motion for Ruling on Constitutionality of Certain Statutes and Notice of Claim of Unconstitutionality Under ARS §12-1841. A ruling was entered on the constitutionality motion on September 8, 2023, and the Church Defendants' Motions for Summary Judgment were taken under advisement on that date.

II. Facts

This lawsuit arises from sexual abuse inflicted on the Plaintiffs over a period of seven years, when they were between the ages of six weeks and twelve years, by their father, Paul Adams. Plaintiffs' mother, Leizza Adams, was aware of the abuse and was charged and convicted for failing to protect the children. Paul Adams died by suicide.

The Church's clergy are called "bishops." An individual church unit is called a "ward," and each ward has a bishop. Bishops hear confessions from members of their ward. Church doctrine requires bishops to keep confessions confidential.

Plaintiffs' family were members of the Bisbee Ward. John Herrod (Herrod) was the bishop of the Bisbee Ward from 2009 through 2012.

Paul Adams confessed to Herrod that he had sexually abused Jane Doe I. Herrod had Ms. Adams attend a second session with Mr. Adams and Herrod had Mr.

Adams tell Ms. Adams about the abuse. Herrod provided counseling to Mr. and Ms. Adams and either said that Mr. Adams should tum himself in to the authorities or he may have said Ms. Adams should tum him in. Herrod left his post in 2012 and he disclosed the abuse of Jane Doe 1 to the new bishop, Kim Mauzy (Mauzy). Mr. Adams was excommunicated from the Church in 2013 after a disciplinary council proceeding.

Herrod and Mauzy were interviewed by Homeland Security Investigations (HSI). Herrod said that sometime around 2010-2012, Mr. Adams told him that he was molesting his daughter. He contacted legal counsel for the Church and was advised that he could only encourage Mr. Adams to tum himself in and that it was illegal for him to report the abuse. Mauzy told HSI that, 1) Herrod briefed him what had been "going on" with the Adams family; 2) "Salt Lake," the main office of the Church, told him to hold a disciplinary council to decide what to do with Mr. Adams; 3) the result of the disciplinary council was to excommunicate Mr. Adams; 4) he could not remember exactly what Mr. Adams said to the council; 5) Ms. Adams was present at the council; and 6) he did not remember if there were notes or other record of the disciplinary council.

No one affiliated with the Church reported Mr. Adams' misconduct to law enforcement. Mr. Adams continued to abuse Plaintiffs after his confession to Herrod and after he was excommunicated. Ms. Adams and the children remained active in the Church after Mr. Adams was excommunicated. Mr. Adams continued to reside with Ms.

Adams and their two daughters after the confession and the excommunication.

III. Discussion of Contested Issues

A. Positions of the Parties

The Church Defendants contend that 1) the only basis for holding them liable for the harm inflicted on Plaintiffs is A.R.S. § 13-3620 (Mandatory Reporting Statute); 2) they were not required by that statute to report to authorities the statements made by Plaintiffs' father to Church officials due to the clergy-penitent privilege contained in the statute; and 3) they did not otherwise owe a duty to protect Plaintiffs and therefore all claims against them must fail.

Plaintiffs allege that Church Defendants did owe a duty under the Mandatory Reporting Statute to report their knowledge or suspicion of the abuse because Mr. Adams sexual deviance and child abuse was notorious within the community; they failed to report Leizza Adams' neglect of the children; they abused the clergy-penitent privilege in various ways and therefore cannot use it to shield their failure to report; and Church Defendants had knowledge child abuse separate from the statements made by Mr. Adams.

B. Standard of Review

A court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any

material fact and the moving party is entitled to judgment as a matter of law. Rule 56(a), Arizona Rules of Civil Procedure. In determining whether there are any factual disputes to resolve, the court is to view matters of record in the light most favorable to the party opposing summary judgment. *Normandin v. Encanto Adventures, LLC,* 246 Ariz. 458, 460 (2019). Summary judgment should be granted if no reasonable jury would find facts, directly or by inference, that would justify judgment in favor of the party opposing summary judgment. *Orme School v. Reeves,* 166 Ariz. 301, 310 (1990). Even when the facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary judgment. *Northern Contracting Co. v. Allis-Chambers Corp.,* 117 Ariz. 374,376 (1977).

C. Discussion

1. Duty In General

Under Arizona law, l)"duty is not presumed; in every negligence case, the plaintiff bears the burden of proving the existence of a duty;" 2) "foreseeability is not a factor in determining duty;" 3) "duty is based on either special relationships recognized by the common law or relationships created by public policy;" and 4) "in the context of duty, the primary sources for identifying public policy are state and federal statutes. In the absence of such legislative guidance, duty may be based on the common law-specifically, case law or Restatement sections consistent with Arizona law." *Quiroz v. ALCOA Inc.,* 243 Ariz. 560, 563, ¶ 2 (2018) (internal citations omitted).

The existence of a duty "is a legal matter to be determined before the case-specific facts are considered." *Quiroz,* 243 Ariz. at 563 ¶ 7.

2. Duty Based on Special Relationship

Duties of care may arise from special relationships based on contract, family relations, or conduct undertaken by the defendant. *Gipson v. Kasey,* 214 Ariz. 141, 145 ¶ 18 (2007). Relationships held to create a duty include landowner-tenant, tavern-owner-patron, and "special relationships" recognized by § 315 of the Restatement of (Second) of Torts (1965) that create a duty to control the actions of another. *Id.,* at 145 ¶ 19. *Quiroz* provides that the Restatement of (Second) of Torts§§ 314A, 316-19, also recognizes relationships that create a duty. People do not generally have a duty to protect others from harm. *Dinsmoor v. City of Phoenix,* 251 Ariz. 370,373 ¶ 15 (2021). Where the law in Arizona has found duty based on special relationships, it has limited the duty to "risks that arise within the scope of the relationship," and "bounded by geography and time." *Id.* at 374 ¶ 17 (citations omitted).

Plaintiffs argue that Paul Adams' sexual deviance and abuse of his family was "well known within the community, ... both beyond and within the LDS Church." Plaintiffs' Response, page 2. The Court agrees with Church Defendants; Plaintiffs have not shown admissible evidence that the Church or other Church Defendants had knowledge of Paul Adams abuse of Plaintiffs outside of Paul Adams' confession to Herrod and the disciplinary council. (The Court will discuss the declarations of Plaintiffs Jane Doe I and John Doe separately.)

But assuming for the sake of this decision that Plaintiffs have admissible evidence, the Court has not been made aware of any legal authority holding that a church or church community has a special relationship with its members which creates a duty to report suspected child abuse, separate from the Mandatory Reporting Statute.

The Court concludes that if any of the Church Defendants owed a duty to Plaintiffs to report suspected child abuse, that duty must arise from the Mandatory Reporting Statute.

3. Duty Based on A.R.S. § 13-3620A (Mandatory Report Statute)

Paragraph A.2 of the Mandatory Report Statute requires the following persons who reasonably believe a minor is a victim of abuse to report their suspicions to proper authorities: "Any peace officer, child welfare investigator, child safety worker, member of the clergy, priest or Christian Science practitioner."

The Mandatory Report Statute makes the following exception for clergy (clergy-penitent exception):

> "A member of the clergy, a Christian Science practitioner or a priest who has received a confidential communication or a confession in that person's role as a member of the clergy, as a Christian Science practitioner or as a priest in the course of the discipline enjoined by the church to which the member of the

> clergy, the Christian Science practitioner or the priest belongs may withhold reporting of the communication or confession if the member of the clergy, the Christian Science practitioner or the priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, the Christian Science practitioner or the priest may otherwise make of the minor."

Church Defendants agree that the Mandatory Reporting Statute creates a duty owed by clergy as a matter of public policy, but they argue that Herrod and Mauzy, and therefore the Church, are protected by the clergy-penitent exception from liability for not reporting.

Before considering Plaintiffs arguments as to why the clergy-penitent exception does not protect Church Defendants from liability, the Court finds that the original confession made by Paul Adams to Herrod, the communications made by Mr. Adams and Ms. Adams at the counseling sessions, and the communications at the disciplinary council were "a confidential communication or a confession," were received by Herrod and Mauzy in their role as members of the clergy, and Herrod and Mauzy determined that not reporting the communications was "reasonable and necessary within the concepts of the [Church's] religion." There is not a genuine dispute as to these facts. This finding is also consistent with this Court's finding in its order dated August 8, 2022, as noted

in Church Defendants' Reply, page 1. The Court will refer to these communications collectively as the "confidential communications."

The court will now examine the Plaintiffs arguments why the clergy-penitent exception does not shield the Church Defendants.

Herrod And Mauzy Knew of The Abuse Because the Community Knew Of The Abuse

Plaintiffs contend that the community knew that Paul Adams abused his family and therefore they want the opportunity to convince a jury that Herrod and Mauzy knew of the abuse and as clergy were required to report it. Plaintiffs have not shown admissible evidence that Herrod or Mauzy had knowledge of abuse outside of the confidential communications.

The Church Defendants Abused the Clergy-Penitent Exception and Therefore May Not Claim Its Protection From Liability

The Court rejects Plaintiffs' argument that the clergy-penitent exception to the Mandatory Reporting Statute can be abused and thereby not available to protect an otherwise qualifying communication. Authorities cited by Plaintiffs in support of this argument are not persuasive. The Court also finds not persuasive Plaintiffs argument and authority that the "abuse" claim is a jury issue. The Mandatory Reporting Statute provides that the clergyman makes the decision as to whether the concepts

of their religion make it "reasonable and necessary" to not make a report. It is not for a Court or a jury to tell a clergyman that he is wrong about the concepts of his religion.

The Court will briefly address the ways in which Plaintiffs claim the Church Defendants abused the clergy-penitent exception.

Help Line

Plaintiffs argue that the Church's instruction that clergy call the "help line" before contacting the authorities is evidence of abuse of the privilege is without merit. The clergy-penitent exception to the Mandatory Reporting Statute either applies or it does not apply. The Court has found that the exception applies to the confidential communications. It is not relevant that Herrod or Mauzy called the Help Line for advice.

The Court also finds it not relevant that Herrod said the Help Line told him he was not *allowed* to report the child abuse, instead of advising him he was not *required* to report it. Plaintiffs are correct that it would not have been illegal under Arizona law for Herrod to report the abuse, but it would have violated Church doctrine, therefore he was not required to make a report. The precise wording of the legal advice received cannot create an abuse of the exception which nullifies its application.

Appendix C

Failure To Report Immediately Was An Abuse Of The Exception.

The clergy-penitent exception applied when the confidential communications were made and Herrod and Mauzy were not required to make a report. The word "immediately" in the Mandatory Reporting Statute does not in some manner negate the clergy-penitent exception.

A "Game Of Telephone" About Child Abuse Breaks The Privilege

Other Church officers learned of the communications because of Herrod and Mauzy called the Help Line, seeking advice from Church authorities, and from the disciplinary council. Plaintiffs argue that too many persons were informed of the communications for the law to continue to protect the non-reporting of the abuse. The Court rejects this argument.

Plaintiffs offer no evidence that the sharing of the confidential communications between Church officials was not done within the context of concepts of the Church.

Leizza Adams' Neglect Of Plaintiffs

The clergy knew of the abuse by Paul Adams through the confidential communications and knew Leizza Adams still supervised the children and knew a report of the abuse of Jane Doe I had not been made to the authorities; Plaintiffs argue this chain of facts results in the bishops having a reasonable belief that Ms. Adams was neglecting

the children by exposing them to further abuse by their father. This chain of logical reasoning begins with the confidential communications which the Court has held fall within the clergy-penitent exception. When the confidential communications are removed from Plaintiffs' chain of facts, there remains no admissible evidence that the bishops had reason to believe the children were being abused.

Emily Reynolds' Testimony That Paul Adams' Abuse Of Plaintiffs Was Known By The Bishops Of The Bisbee Ward

This argument is the same as the Plaintiffs' argument that the bishops must have known of the child abuse, outside of the confidential communications, because the church community knew about it. The Court reviewed the portions of the Reynolds deposition transcript supplied with the Response and Reply and finds that Ms. Reynolds' testimony does not provide admissible evidence that Herrod or Mauzy were aware of the sexual abuse of Plaintiffs other than by the confidential communications. Ms. Reynolds offers no firsthand testimony but rather provides information concerning rumors told her by individuals at Relief Society meetings, individuals who she is unwilling or unable to name, except for Ms. Linda Drake, who in her depositions denies hearing discussions of the Adams family at Relief Society meetings and testified Ms. Reynolds was not attending Church services during the time relevant to this case.

Appendix C

Declaration Of Jane Doe I And John Doe

On April 30, 2023, Plaintiff Jane Doe I signed a declaration in which she makes the following statements relevant to this motion:

1. The people from the LDS Church, including Bishops Herrod and Mauzy, were very involved in her family's life.

2. Bishop Herrod came to her home.

3. She believes that "many people" in the ward knew about the sexual abuse.

4. She knew by the way he treated her that Bishop Mauzy had learned of the abuse from Bishop Herrod.

5. She and her siblings were called into Bishop Mauzy's office, usually one at a time. He asked her how she was doing. She could not meet his eyes. His expression would change when he asked how things were going at her home. She told him "many times," "I'm scared to go home. I don't want to go home." He sent her home.

6. Anyone visiting their home could not miss the lubricant and porn magazines lying throughout the house in plain view.

On April 24, 2023, Plaintiff John Doe signed a declaration in which he says:

1. People would see his father hitting and kicking him and his siblings.

2. He remembers going into Herrod and Mauzy's office and they would ask him how he was.

3. Everyone there [the Bishops and Church people] knew his dad was different, weird, and dangerous.

Jane Doe I's and John Doe's statements concerning what they believed to be true, and their conclusions based on how they believe people treated them are not admissible evidence and therefore cannot be considered. John Doe's declaration does not provide admissible evidence that Herrod and Mauzy had reason to suspect child abuse other than the confidential communications.

Church Defendants filed an Objection on June 2, 2023, arguing that the Court should not consider Plaintiffs' Supplemental Separate Statement of Facts because they claim it was filed untimely and because the information contained in the declarations was not previously disclosed. Plaintiffs, in their Response to the Objection, do not deny that their Supplemental Separate Statement of Facts was filed late, nor do they assert that the information in the declarations was timely disclosed. The Court notes that the allegation that Jane Doe I told Mauzy many times that she was scared to go home is not stated in factual allegations of the Amended Complaint. The factual allegations do contain all the other ways in which Plaintiffs contend that the Church Defendants were placed on notice of the child abuse. The Court will focus on the disclosure issue.

Appendix C

Rule 26.1(a)(3) requires that a party disclose in writing each witness the party intends to call at trial and "a description – and not merely the subject matter – of the testimony sufficient to fairly inform the other parties of each witnesses' expected testimony." Plaintiffs do not claim that the facts in the declarations were disclosed under Rule 26.1, rather they argue that Church Defendants could have taken the deposition of Jane Doe I and learned of the facts by that method. "A party need only disclose the "substance" of the witness's expected testimony, not the details." *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424,426 ¶ 5 (App.2003). Jane Doe I's statement that she told Mauzy "many times" that she was scared to go home is not a mere detail and it should have been disclosed in Plaintiffs' description of Jane Doe I's expected testimony. Disclosing this information 18 months after the Amended Complaint was filed and well after the disclosure deadline is an egregious violation of Rule 26.1. The argument that the Church Defendants should have taken Jane Doe I's deposition to learn that she told Mauzy she was scared to go home and the Plaintiffs' theory that this triggered a duty for him to report, goes against the purpose of Rule 26.1, to "fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon." *Reyes v Town of Gilbert,* 247 Ariz. 151, 158, ¶25.

The Court finds that the declarations do not contain admissible evidence, appropriate for it to consider in ruling on this Motion.

If the Court did consider the Jane Doe I's declaration, it would find it inadequate to create a genuine dispute of

fact. Plaintiff Jane Doe I's statement that she told Bishop Mauzy that she was scared to return home, if offered at trial, is not hearsay as she would be present and subject to cross examination. The question is, does this statement provide a genuine dispute of a material fact, to wit: Did her statement cause Bishop Mauzy to reasonably believe that Jane Doe I was being abused, separate from his knowledge of past abuse gained from the confidential statements made by Paul Adams? The Court answers this question in the negative. A child saying, "I'm scared to go home," is as a matter of law not sufficient to create a duty for Mauzy to report Jane Doe I's fear to the authorities. Plaintiffs' argument is that Jane Doe I telling Mauzy that she is scared to go home removed the confidential nature of Mauzy's knowledge that Jane Doe I's father had sexual abused her in the past. Plaintiffs are correct that conversations between Jane Doe I and Mauzy are not covered by the clergy-penitent exception, but Plaintiffs' contention is that somehow the statements "I am scared to go home," removes the clergy-penitent exception protection from the confidential information. Plaintiffs offer no legal authority to support this contention. To honor the clergy-penitent exception to Mandatory Reporting Statute, the Court must view the statements "I am scared to go home," in a vacuum, without reference to the knowledge Mauzy obtained from the confidential communications.

4. Conspiracy

The parties in their pleadings seem to agree that if the Court grants in full the Church Defendants' main

Motion for Summary Judgment, the conspiracy claim fails as well. Plaintiffs in their Opposition state that the Motion concerning the conspiracy claim should be stricken, "as these matters are already addressed in Defendants' concurrently filed summary judgment motion." Therefore, the Court will not address in detail the Motion for Partial Summary Judgment on Plaintiffs' Conspiracy Claim.

"To establish liability on the basis of conspiracy, a plaintiff must show by clear and convincing evidence that the defendant and at least one other person agreed to accomplish an unlawful purpose or a lawful purpose by unlawful means, and accomplish the underlying tort, which in turn caused damages." *Dawson v. Withycombe,* 216 Ariz. 84, 103 ¶ (2007).

The Court agrees with the arguments stated in Church Defendants' Motion. Assuming for purposes of this decision that the Herrod and Mauzy could be both agents of the Church and form a conspiracy with the Church, Plaintiffs have not shown sufficient admissible evidence for any reasonable jury to conclude by the standard of clear and convincing evidence that Herrod and Mauzy and the Church or Church officials had the intention, as part of an express or implied agreement, to not report the abuse of Plaintiffs by their father and by not reporting the abuse intended for the abuse to continue.

Appendix C

Dispositive Findings and Orders

Based on the foregoing,

THE COURT **FINDS** that 1) there is not a genuine dispute as to any material fact relevant to the question of duty; 2) Church Defendants were not required under the Mandatory Reporting Statute to report the abuse of Jane Doe I by her father because their knowledge of the abuse came from confidential communications which fall within the clergy-penitent exception in the Mandatory Reporting Statute; and 3) Church Defendants did not breach a duty owed to Plaintiffs that could form the basis for liability for the harm to Plaintiffs.

THE COURT **FURTHER FINDS** that 1) there is not a genuine dispute as to any material fact relevant to the count alleging conspiracy; and 2) there is neither an "unlawful purpose" to support the conspiracy count nor evidence from which a reasonable jury could conclude that there was a conspiracy to hide the abuse suffered by Plaintiffs.

IT IS ORDERED GRANTING Church Defendants' Motion for Summary Judgment and dismissing the First Amended Complaint as to the Church Defendants.

Counsel for Church Defendants is directed to provide a form of judgment in accordance with this decision.

/s/ TIMOTHY DICKERSON November 3, 2023

APPENDIX D — ORDER OF THE SUPREME COURT OF ARIZONA, FILED AUGUST 21, 2026

SUPREME COURT OF ARIZONA

Arizona Supreme Court
No. CV-25-0213-PR

Court of Appeals
Division Two
No. 2 CA-CV 23-0293

Cochise County
Superior Court
No. S0200CV202000599

JANE DOE I, JANE DOE II, AND JOHN DOE, BY AND THROUGH CONSERVATOR, FLEMING AND CURTI PLC,

Plaintiffs/Appellants,

v.

THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; DR. JOHN HERROD AND SHERRIE FARNSWORTH HERROD, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE; AND ROBERT KIM MAUZY AND MICHELLE MORGAN MAUZY, INDIVIDUALLY AND AS A JOINTLY MARRIED COUPLE,

Defendants/Appellees.

Appendix D

Filed August 21, 2026

ORDER

On August 12, 2026, Plaintiffs /Appellants Doe et al. filed a Motion for Reconsideration. Upon consideration of the Court en banc,

IT IS ORDERED denying the Motion for Reconsideration.

DATED this 21st day of August, 2026.

/s/
JOHN R. LOPEZ IV
Vice Chief Justice

TO:
Lynne M Cadigan
John C Manly
John J Trebon
William J Maledon
Scott W Rodgers
Joseph N Roth
Paul D. Clement
Andrew C. Lawrence
Barrett L. Anderson
Stanley G Feldman
Max W. Larnerd
David Paul Brooks
Eric S. Baxter
James C. Phillips

Appendix D

Gene C. Schaerr
ASC Judicial Assistants
Brett William Johnson
Ryan J Regula
Tracy Olson
Charlene Anne Warner
lm

APPENDIX E — PETITION EXCERPT OF THE ARIZONA SUPREME COURT, DATED SEPTEMBER 29, 2025

ARIZONA SUPREME COURT

Arizona Supreme Court
Case No. CV-25-0213-PR

Court of Appeals Division Two
No. 2 CA-CV 2023-0293

Cochise County Superior Court
No. S0200CV202000599

JANE DOE I, JANE DOE II, AND JOHN DOE, BY AND THROUGH CONSERVATOR, FLEMING AND CURTIS PLC,

Respondents-Appellants,

v.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE, *et al.*,

Petitioners-Appellees.

PETITION FOR REVIEW

* * *

and violate the First Amendment, by refusing to defer to the Church's "ecclesiastical rules, customs and laws" to determine who its clergy are, *Waters*, 209 Ariz. at 385 ¶ 21, and instead allowing a secular jury to decide?

REASONS TO GRANT THE PETITION

The Decision below is egregiously wrong thrice over. It not only ignores the Reporting Statute's plain language, but openly invites secular juries to resolve doctrinal disputes that the First Amendment forbids them from resolving. Absent this Court's review, the Decision will produce an unconstitutional trial in this case and undermine First Amendment values statewide.

I. The Decision requires unconstitutional trials about whether the Church and its clergy "violated Church doctrine."

The first problem with the Decision is that it empowers secular juries to decide whether the Church and other religious organizations have "violat[ed]" their own "doctrine." That holding is clearly unconstitutional.

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. Over 150 years ago, the Supreme Court held that "civil courts" have "no jurisdiction" to decide any matter that is "ecclesiastical in its character." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1871). That is because the Religion Clauses protect the right of religious institutions "to

decide … matters of church government as well as those of faith and doctrine" themselves. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). "State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion." *Our Lady of Guadalupe*, 591 U.S. at 746. Accordingly, when courts are asked to "resolve ecclesiastical questions" or to decide cases "on the basis of doctrine," *Skelton v. World Chapel*, 130 Ariz. 543, 545 (1981), they must decline the invitation.

The Supreme Court's decision in *Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969), is illustrative. That case involved a church-property dispute that arose after two local churches withdrew from a general church organization. *See id.* at 441. Under the state law at issue, whether the local churches could retain their property hinged on "a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it." *Id.* The Supreme Court recognized that the "departure-from-doctrine element" of this law "require[d] the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Id.* at 450. "Plainly," the Supreme Court held, "the First Amendment forbids civil courts from playing such a role." *Id.*

Appendix E

The First Amendment violations in this case are equally plain. Bishops Herrod and Mauzy testified that Church doctrine required them to keep Paul's confessions confidential. Under the Reporting Statute and the First Amendment principles that it embodies, that should have resolved the matter. The Reporting Statute requires courts to defer to a "member of the clergy['s]" doctrinal determination of whether it is "reasonable and necessary within the concepts of the religion" to "withhold reporting of the communication or confession." A.R.S. § 13-3620(A).

The Decision here did no such thing. It seized on testimony from a lower-ranking Church official that supposedly "contradicted" the Bishops' interpretation of "Church doctrine." Dec. ¶31. It also emphasized a provision in the Church's General Handbook—a provision that did not even exist at the relevant time[3]—stating that a bishop can "'disclose confidential information … when disclosure is necessary to prevent life-threatening harm or serious injury[.]'" *Id.* ¶33. Those two pieces of evidence, the Court of Appeals concluded, "[r]aise[] the question of whether the Church Defendants *violated Church doctrine* by not reporting Paul to the authorities." *Id.* ¶34 (emphasis added).

This is a straightforward First Amendment violation. If this case proceeds to trial, a secular jury will have to

3. The court ignored that the Church added this provision to the General Handbook in 2020—long after Paul's confession. At all times relevant to this dispute, the Handbook stated: "Bishops, Stake Presidents and their counselors have a solemn duty to keep confidential all information that members give them in confessions and interviews." APP040 ¶7; APP057 §6.5.

"declare which party is correct in matters of religion," which it "[o]f course" "cannot" do. J. Nowak & R. Rotunda, Constitutional Law §21.12, at 1413 (6th ed. 2025 update). Indeed, that is the very question that the Supreme Court deemed off-limits for civil courts in *Presbyterian Church*. Unsurprisingly, then, other courts around the country have refused to adjudicate disputes just like this one. *See, e.g.*, *People v. Bragg*, 824 N.W.2d 170, 185 (Mich. App. 2012); *Nunez v. Watchtower Bible & Tract Soc'y*, 455 P.3d 829, 836 (Mont. 2020).

Although the prospect that the Church and its clergy will face substantial damages for supposedly "violating Church doctrine" is troubling enough, the problems run deeper, as the Decision will have a chilling effect on clergy of *all* denominations. In light of the Decision, any *perceived* conflict over religious doctrine—*e.g.*, ambiguous testimony from a lower-ranking religious official or a court's (mis) interpretation of church canons—is potentially subject to review by secular courts and juries. Religious institutions and their clergy will "understandably be concerned that a judge [or jury] would not understand its religious tenets and sense of mission." *Corp. of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 336 (1987). And "[f]ear of potential liability might affect the way an organization carried out what it understood to be its religious mission." *Id.*; *see* A.R.S. § 13-3620(O) (violation of Reporting Statute is a crime). Moreover, the burden may fall disproportionately on denominations without a strict interpretative hierarchy, which creates an additional First Amendment problem. *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248-50 (2025).

The First Amendment forbids all of this. The Court should grant review and make clear that secular judges and juries cannot decide who is right or wrong about religious doctrine.

II. The Decision errs by treating a confidential religious communication as a "personal observation."

The Court of Appeals' conclusion that a jury should decide whether Paul's confession before Leizza is a "communication or confession" under the Reporting Statute is equally problematic. As noted, the Reporting Statute exempts clergy from its disclosure requirements for any "communication or confession" regarding child abuse that the clergyman deems confidential. A.R.S. § 13-3620(A). But the exemption does not apply to "personal observations the member of the clergy … may otherwise make of the minor." *Id.* The Reporting Statute thus establishes a clear rule that protects confidential communications and confessions involving clergy while requiring clergy to report their observations of child abuse.

In the Decision below, the Court of Appeals held that, when Paul confessed before Leizza in Bishop Herrod's office, "[a] reasonable fact

* * * *

APPENDIX F — RESPONSE TO PETITION EXCERPT OF THE ARIZONA SUPREME COURT, DATED NOVEMBER 25, 2025

ARIZONA SUPREME COURT

JANE DOE I, JANE DOE II, AND JOHN DOE, BY AND THROUGH CONSERVATOR, FLEMING AND CURTIS PLC,

Respondents-Appellants,

vs.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE; *et. al.*,

Petitioners-Appellees.

Arizona Supreme Court
No. CV-25-0213-PR

Court of Appeals Division Two
No. 2 CA-CV 2023-0293

Cochise County Superior Court
NO. S0200CV202000599

RESPONSE TO PETITION FOR REVIEW

* * *

IV. THE ARGUMENT THAT THE FIRST AMENDMENT DISPLACES THE REPORTING STATUTE IS MISPLACED

The Church now apparently argues that "the free exercise of religion" is somehow violated if members of its clergy are required to report child sexual abuse even if a reasonable belief of abuse is gained outside of a valid, confidential confession or communication. The minor Plaintiffs have never asked any Court to interpret Church doctrine, but only asked that all clergy abide by the neutral application of A.R.S. § 13-3620.

> In our opinion, the statute immediately under consideration is within the legislative power of Congress ....This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices ....
>
> To permit this would be to make the professed doctrines of religious belief superior to the law of the land ...

Reynolds v. United States, 98 U.S. 167, (1879). If the Church can keep child sexual abuse secret in violation of Arizona law, then it is not far fetched to think that polygamy is up for grabs next.

Appendix F

V. SECTION II OF THE PETITION FOR REVIEW (PP. 18-20) IS OVERTLY MISLEADING

> As noted, the Reporting Statute exempts clergy from its disclosure requirements for any "communication or confession" regarding child abuse *that the clergyman deems confidential.* A.R.S. § 13-3620(A)(emphasis added).

Pet. at p. 18. The Statute says no such thing. Clergymen have not been delegated the authority to decide "confidentiality" from the penitent' s perspective. The Petition asserts that the statute only requires clergy to report "observations" and apparently not communications that lack confidentiality. Wrong again - - unequivocally wrong. Instead, the statute provides that a member of the clergy "who has received a confidential communication or a confession" ... may withhold reporting if it is also "reasonable and necessary within the concepts of the religion." A.R.S. § 13-3620(A).

Then, the Petition makes a gratuitous assertion in Section II that a First Amendment violation exists, but it cites no authority whatsoever, other than *Archibeque,* which is decidedly contrary to its position. Finally, Section II of the Petition ends with the troubling assertion:

> Contrary to the Court of Appeals' suggestions, secular courts and juries are not at liberty to tell the Church that its understanding of its repentance process is misguided.

Pet. at p. 20. The Decision made no such assertion nor have the minor Plaintiffs. Both simply contended that the second confession was not confidential and that Paul Adams waived any privilege - - both propositions are clearly cognizable legal and factual determinations. Any First Amendment argument in Section II is a mirage.

VI. THE FIRST AMENDMENT JURISPRUDENCE RELIED UPON BY THE PETITION IS ENTIRELY INAPPLICABLE

The Petition repeatedly takes snippets from First Amendment cases and then implants them into strong, declaratory sentences that have little or nothing to do with the actual holding or doctrinal discussion of the cited First Amendment case. The Petition conflates "faith and doctrine" with unlawful practices (Pet. p. 7), citing *Our Lady of Guadalupe School v. Morissey-Berru,* 591 U.S. 732, 737 (2020)(Pet. pp. 7, 14, 21), which upheld the independence of religious organizations to hire and terminate employees against claims of discrimination; the so-called "ministerial exception" to employment laws. *Id.* 747.

Similarly, the Supreme Court in *Presbyterial Church in the US. v. May Elizabeth Blue Memorial Presb. Church,* 393 U.S. 440,450 (1969) (Pet. pp. 14-15) addressed an inter-church property dispute that had nothing to do in fact or principle with a neutral Reporting Statute. In *Skelton v. World Chapel,* 130 Ariz. 543, 545 (1981) (Pet. p. 14), this Comi declared that Arizona courts "will not resolve ecclesiastical questions, nor quiet title on the basis of doctrine." At 545. In accord, *Watson v. Jones,* 80 U.S. 679 (1871) (Pet. p. 14) (civil courts have no jurisdiction over

"theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church...." At 733). In *NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490 (1979) (Pet. p. 8), the Supreme Court again affinned religious independence over labor relations.

Due to the obvious mootness issue, there is no risk that a "judge or jury would not understand [the] religious tenants and sense of mission." *Corp. of LDS v. Amos,* 483 U.S. 327, 336 (1987)." (Pet. p. 17). *Amos* was also an employment case. In *Serbian Eastern Ortho Dioc. v. Milivojevich,* 426 U.S. 696, 710 (1976) (Pet. p. 20), the Supreme Court invalidated a decision of the Illinois courts to determine who in the Serbian Eastern Orthodox Diocese should be in control.

The Petition relies upon *Roman Cath. Diocese of Brooklyn v. Cuomo,* 592 U.S. 14, 19 (2020) *(per curiam),* where New York imposed stricter occupancy requirements on houses of worship as "non-essential" during the COVID-19 pandemic than other businesses, disenfranchising most parishioners. The "irreparable injury" in the *Cuomo* case does not compare to our case - indeed the opposite exists because secreted child abuse is the injury at stake.

The Supreme Court in *Kedroff* struck down a New York statute dictating which religious organization should control particular churches. In that context, secular control of "Church government as well as those of faith and doctrine" was not allowed. *Kedroff v. St. Nicholas Russian Orthodox Church,* 344 U.S. 94, 116 (1952). Even the extreme case of *Jane Doe v. Corp. of LDS Church,* 90

P.3d 1147 (Wash. App. 2004) recognized basic principles rejected by the Petition for Review, including that the "privilege is held by the penitent, and only the penitent can waive it." *Id* at 1152. A "reviewing court should not pass on constitutional issues unless absolutely necessary to the determination of the case." *Id* at n. 24.

CONCLUSION

Section III of the Decision below is moot and the Petition for Review is misplaced.

ADDITIONAL ISSUE IF REVIEW ACCEPTED

The interim special action decision by Div. 2 relating to the penitent privilege should be reviewed and reversed. *L.D.S. v. Cardinal,* No. 2 CA-SA-2022-0047.

RESPECTFULLY SUBMITTED this 25th day of November, 2025

LYNNE CADIGAN LAW, PLLC
-and-
MANLY, STEWART & FINALDI
-and-
JOHN TREBON, P.C.

/s/John Trebon
John Trebon
Lynne M. Cadigan
John C. Manly
Attorneys for Respondents/Appellants

APPENDIX G — SUPPLEMENTAL BRIEF EXCERPT OF THE ARIZONA SUPREME COURT, DATED FEBRUARY 9, 2026

ARIZONA SUPREME COURT

Arizona Supreme Court
Case No. CV-25-0213-PR

Court of Appeals Division Two
No. 2 CA-CV 2023-0293

Cochise County Superior Court
No. S0200CV202000599

JANE DOE I, JANE DOE II, AND JOHN DOE,
BY AND THROUGH CONSERVATOR,
FLEMING AND CURTIS PLC,

Respondents/Appellants,

v.

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE, *et al.*,

Petitioners/Appellees.

Dated February 9, 2026

THE CHURCH PETITIONERS'/APPELLEES' SUPPLEMENTAL BRIEF

* * *

may relieve the priest of the obligation of secrecy. Any priest who directly violates the sacramental seal is subject to automatic excommunication and risks eternal damnation."). If post-hoc waiver necessarily created a reporting duty, without regard to religious doctrine, the interference with religious autonomy and potential for discrimination among faiths would be obvious.

Here, the uncontroverted record shows that Church clergy determined that Church doctrine prohibited disclosure. *See* § I. That means that the duty to report under § 13-3620(A) did not arise, regardless of any later waiver of a testimonial privilege or any differing interpretation of Church doctrine by a secular jury.

C. Plaintiffs' claim that the First Amendment is "inapplicable" only confirms that the Constitution prohibits religious meddling in many contexts.

Finally, Plaintiffs would sweep aside the long line of First Amendment cases prohibiting trials like those envisioned by the Decision in a wide variety of contexts from employment law, property disputes, and church control because they did not involve "a neutral Reporting Statute." Resp. to Pet. at 13-14. Plaintiffs miss the mark.

The First Amendment prohibits civil intrusion into religious matters regardless of context. Whether a property dispute, *Presbyterian Church*, 393 U.S. at 450, or a labor-relations dispute, *NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490 (1979), or something else, the same rule

applies: the "First Amendment forbids civil courts" from deciding cases based on "the interpretation of particular church doctrines and the importance of those doctrines." *Presbyterian Church*, 393 U.S. at 450. That this case differs in subject matter from earlier church-property or employment disputes thus is immaterial. Indeed, the Supreme Court applied First Amendment teachings announced in church-property disputes to cases involving the ministerial exception, *see Our Lady of Guadalupe*, 591 U.S. at 747-48, and there is no reason in law or logic why this Court cannot apply those same principles here to reject the Decision's view that a secular jury may decide "whether the Church Defendants violated Church doctrine." Dec. ¶ 34.

The other remanded issues also present serious First Amendment problems. To decide that Paul's confession in the presence of Leizza lacked "confidential[ity]" because Bishop Herrod merely "observe[d]" or "overheard" the confession, the jury must decide what communications count as confidential confessions under Church doctrine and whether clergy correctly understood the "concepts of the religion." And to find that Paul "waived" confidentiality by confessing during Church ecclesiastical proceedings on the theory that "non-clergy" attended the proceedings, the jury would have to interpret and reject Church doctrine, which treats all participants in such proceedings as clergy subject to a sacred duty of confidentiality. *See* Pet. at 21-22.

A trial on any of these issues would require testimony concerning Church teachings, expert testimony on

doctrine, cross-examination about doctrinal compliance, jury instructions defining religious concepts, and jury interpretation of Church doctrine. The "very process of" an "inquiry" like this "impinge[s] on rights guaranteed by the Religious Clauses." *NLRB*, 440 U.S. at 502.

CONCLUSION

The Court should reverse the Decision and affirm the superior court's grant of summary judgment.

* * * *

APPENDIX H — SUPPLEMENTAL BRIEF EXCERPT OF THE ARIZONA SUPREME COURT, DATED FEBRUARY 9, 2026

ARIZONA SUPREME COURT

Arizona Supreme Court
No. CV-25-0213-PR

Court of Appeals Division Two
No. 2 CA-CV 2023-0293

Cochise County Superior Court
No. S0200CV202000599

JANE DOE I, JANE DOE II, AND JOHN DOE,
BY AND THROUGH CONSERVATOR,
FLEMING AND CURTIS PLC,

Respondents/Appellants,

v.

THE CHURCH OF JESUS CHRIST OF
LATTERDAY SAINTS,
A UTAH CORPORATION SOLE, *et al.*,

Petitioners/Appellees.

February 9, 2026

Appendix H

SUPPLEMENTAL BRIEF OF DOE MINOR CHILDREN, APPELLANTS

* * *

> permit the retention of the privilege. It is not to be both a sword and a shield.

94 Ariz. 146, 158 (1963) (quoting 8 Wigmore On Evidence 855, § 2388 (McNaughton Rev.1961)). Church doctrine may determine who qualifies as clergy for the disciplinary process in advance; but a blanket assertion afterwards that everyone was covered is inadequate.

V. THE REPORTING STATUTE IS NOT UNCONSTITUTIONAL, BUT NEUTRAL

Liberal application of the Arizona reporting statute, A.R.S. § 13-3620(A), is not unconstitutional. It does not violate the First Amendment. Outside of a true, "confidential" confession or communication, the "duty" to report is paramount. Church doctrine cannot determine what is "confidential" however. No such blanket authority to interpret and apply the law of Child Abuse Reporting Statutes is vested in any Church.

Independent scholars verify that the Arizona Reporting Statute is neutral and valid:

Appendix H

A. A Proper Clergy-Penitent Privilege

> As with all other privileges, a proper clergy-penitent privilege statute must involve "an imperative need for confidence and trust" and promotion of public ends and, of course, be tailored so as not to conflict with the Constitution. Following these parameters, the optimal clergy-penitent privilege statute would: (1) define "clergy" as those religious functionaries who are obliged by their religion to maintain the secrecy of confidential communications made to them; (2) be available to all penitents, regardless of whether the penitent is under an obligation to engage in such communication; (3) extend protection only to confidential communication between a penitent and a cleric made under a reasonable expectation of privacy; and (4) grant the possession of the privilege to the penitent.

Colombo, *Forgive Us Our Sins: The Inadequacies of the Clergy-Penitent Privilege*, Vol. 73, N.Y.Univ.L.Rev. 225, 242 (1998). The Arizona Statute (A.R.S. § 13-3620(A)(1)) is "proper." It does not violate the free exercise clause nor the establishment clause of the First Amendment:

> Under *Employment Division, Department of Human Resources v. Smith* [494 U.S. 872 1990)], the Supreme Court explained that the Free Exercise Clause prohibits the government

> from (1) regulating one's "right to believe and profess" one's religious convictions, or (2) specifically targeting and regulating one's right to engage in religious activity... Conversely, "generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice" do not violate the Free Exercise Clause...

* * *

B. The Establishment Clause

An overly broad privilege or accommodation, protecting religious communications generally, would run afoul of the Establishment Clause's mandate that the religions not be elevated to a preferred position over the secular; an overly narrow privilege or accommodation, protecting only those communications made to clergy of certain denominations, would violate the Establishment Clause's mandate that no particular denomination be elevated to a preferred position over other denominations.

* * *

C. Confidentiality

> Confidentiality is the first element justifying a privilege's recognition, and the privilege could not attach to communication made in the presence of third parties. Similarly,

> if the circumstances of the communication indicate a lack of concern with the maintaining confidentiality, the privilege could be deemed waived.

Colombo, *Forgive Us Our Sins: The Inadequacies of the Clergy-Penitent Privilege*, Vol. 73 N.Y. Univ. L. Rev. 225, 235-37, 242, 246 (N.Y.U. L.R. 1998).

Without confidentiality, no privilege exists. The holder of the privilege is the penitent. The Arizona Reporting Statute is a model of neutrality and valid public policy established by the Arizona legislature. Application of the statute raises no valid constitutional arguments.[3]

---

3. The constitutionality of eliminating the penitent-privilege completely for clergy in the face of child abuse was recently tested in Washington State. Although a political solution was ultimately reached; the Federal District Court issued a preliminary injunction based on the premise that clergy were unfairly targeted as a religious entity because other potential reporters, including parents and law professors without an attorney-client relationship, were excused from reporting child abuse. *Etienne v. Ferguson*, 791 F.Supp. 1226, 1245-46 (W.D.Wa. 2025). In *Ferguson*, the Plaintiffs did not "dispute that members of the clergy can be designated mandatory reporters in most contexts in a manner consistent with the First amendment." The Plaintiffs were represented, in part, by the Beckett Fund, amicus counsel in this case.

Appendix H

VI. INTERIM DECISION BY COURT OF APPEALS WAS INCORRECTLY DECIDED; BLOCKING RELEVANT DISCOVERY

The unpublished, interim special action decision by Division Two, Court of Appeals relating to discovery and waiver of privilege was wrongly decided. *LDS Church v. Cardinal, Judge, & Jane Doe*, 2022 WL 17727582 (Div. Two. April 7, 2023). We submit that it is one of the most extreme decisions in the United States

* * * *

APPENDIX I — RELEVANT CONSTITUTIONAL PROVISION

The First Amendment

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.

APPENDIX J — ARIZONA REVISED STATUTES § 13-3620

13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions

A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall immediately report or cause reports to be made of this information to a peace officer, to the department of child safety or to a tribal law enforcement or social services agency for any Indian minor who resides on an Indian reservation, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, a Christian Science practitioner or a priest who has received a confidential communication or a confession in that person's role as a member of the clergy, as a Christian Science practitioner or as a priest in the course of the discipline enjoined by the church to which the member of the clergy, the Christian Science practitioner or the priest belongs may withhold reporting of the communication or confession if the member of the clergy, the Christian Science practitioner or the priest

determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, the Christian Science practitioner or the priest may otherwise make of the minor. For the purposes of this subsection, "person" means:

1. Any physician, physician's assistant, optometrist, dentist, osteopathic physician, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.

2. Any peace officer, child welfare investigator, child safety worker, member of the clergy, priest or Christian Science practitioner.

3. The parent, stepparent or guardian of the minor.

4. School personnel, including substitute teachers, domestic violence victim advocates or sexual assault victim advocates who develop the reasonable belief in the course of their employment.

5. Any other person who has responsibility for the care or treatment of the minor.

6. Any person who is employed as the immediate or next higher level supervisor to or administrator of a person who is listed in paragraph 1, 2, 4 or 5 of this subsection and who develops the reasonable belief

in the course of the supervisor's or administrator's employment, except that if the supervisor or administrator reasonably believes that the report has been made by a person who is required to report pursuant to paragraph 1, 2, 4 or 5 of this subsection, the supervisor or administrator is not required to report pursuant to this paragraph.

7. Any member of a school district governing board or charter school governing body.

B. A report is not required under this section either:

1. For conduct prescribed by sections 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual.

2. If a minor is of elementary school age, the physical injury occurs accidentally in the course of typical playground activity during a school day, occurs on the premises of the school that the minor attends and is reported to the legal parent or guardian of the minor and the school maintains a written record of the incident.

C. If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the course of providing sex offender treatment that is not court ordered or that does not occur while

the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.

D. Reports shall be made immediately either electronically or by telephone. The reports shall contain the following information, if known:

1. The names and addresses of the minor and the minor's parents or the person or persons having custody of the minor.

2. The minor's age and the nature and extent of the minor's abuse, child abuse, physical injury or neglect, including any evidence of previous abuse, child abuse, physical injury or neglect.

3. Any other information that the person believes might be helpful in establishing the cause of the abuse, child abuse, physical injury or neglect.

E. A health care professional who is regulated pursuant to title 32 and who, after a routine newborn physical assessment of a newborn infant's health status or following notification of positive toxicology screens of a newborn infant, reasonably believes that the newborn infant may be affected by the presence of alcohol or a drug listed in section 13-3401 shall immediately report this information,

or cause a report to be made, to the department of child safety. For the purposes of this subsection, "newborn infant" means a newborn infant who is under thirty days of age.

F. A person who has a duty to report pursuant to subsection A of this section and who has direct knowledge that a minor is or has been the victim of abuse or neglect shall immediately report the abuse or neglect to the department of child safety and may not delegate another person to make the report.

G. Subsection F of this section does not apply to a person who is an employee or an agent of a health care institution as defined in section 36-401. If a person who has a duty to report pursuant to subsection A of this section is an employee or an agent of a health care institution, the person may delegate the making of the report to a designated agent if the delegation is reasonably required to allow the delegating person to continue patient care or to comply with applicable standards of care, including obligations under state or federal law. This section is not intended to require more than one report from an employee or an agent of a health care institution for the same facts and circumstances that led to a reasonable belief of abuse or neglect.

H. Any person other than one required to report or cause reports to be made under subsection A of this section who reasonably believes that a minor is or has been a victim of abuse, child abuse, physical injury, a reportable offense or neglect may report the information to a peace officer

or to the department of child safety, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.

I. A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer, child welfare investigator or child safety worker investigating the minor's neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer, child welfare investigator or child safety worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

J. When a report is received:

1. By a peace officer, the officer shall immediately notify the department of child safety.

2. Notwithstanding any other statute, by the department of child safety, the department shall immediately notify a peace officer in the appropriate jurisdiction.

3. By a school resource officer or school safety officer, the officer shall immediately notify a law enforcement agency in the appropriate jurisdiction and shall submit to the local law enforcement agency all

information relating to the report for the purposes of the law enforcement agency investigating the reported conduct.

K. Any person who is required to receive reports pursuant to subsection A of this section may take or cause to be taken photographs of the minor and the vicinity involved. Forensic interviews or medical examinations, or both, of the involved minor may be performed.

L. A person who furnishes a report, information or records required or authorized under this section, or a person who participates in a judicial or administrative proceeding or investigation resulting from a report, information or records required or authorized under this section, is immune from any civil or criminal liability by reason of that action unless the person acted with malice or unless the person has been charged with or is suspected of abusing or neglecting the child or children in question.

M. Except for the attorney client privilege or the privilege under subsection N of this section, no privilege applies to any:

1. Civil or criminal litigation or administrative proceeding in which a minor's neglect, dependency, abuse, child abuse, physical injury or abandonment is an issue.

2. Judicial or administrative proceeding resulting from a report, information or records submitted pursuant to this section.

3. Investigation of a minor's child abuse, physical injury, neglect or abuse conducted by a peace officer or the department of child safety.

N. In any civil or criminal litigation in which a child's neglect, dependency, physical injury, abuse, child abuse or abandonment is an issue, a member of the clergy, a Christian Science practitioner or a priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a member of the clergy, a Christian Science practitioner or a priest in the course of the discipline enjoined by the church to which he belongs. This subsection does not discharge a member of the clergy, a Christian Science practitioner or a priest from the duty to report pursuant to subsection A of this section.

O. If psychiatric records are requested pursuant to subsection I of this section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.

2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

P. If any portion of a psychiatric record is excised pursuant to subsection O of this section, a court, on

application of a peace officer, child welfare investigator or child safety worker, may order that the entire record or any portion of the record that contains information relevant to the reported abuse, child abuse, physical injury or neglect be made available to the peace officer, child welfare investigator or child safety worker investigating the abuse, child abuse, physical injury or neglect.

Q. A student who is identified as a potential victim of a reportable offense may be interviewed only as provided by the local county protocol that is adopted pursuant to section 8-817. This subsection does not prevent a school resource officer or a school safety officer from either:

1. Receiving a voluntary report of a reportable offense from a student who is an alleged victim

2. Asking a student minimal follow-up questions that are necessary and authorized by the county protocol.

R. A report to a school resource officer or a school safety officer does not satisfy the reporting requirement prescribed by this section.

S. A person who violates this section is guilty of a class 1 misdemeanor, except if the failure to report involves a reportable offense, the person is guilty of a class 6 felony.

T. For the purposes of this section:

1. "Abuse" has the same meaning prescribed in section 8-201.

2. "Child abuse" means child abuse pursuant to section 13-3623.

3. "Neglect" has the same meaning prescribed in section 8-201.

4. "Reportable offense" means any of the following:

(a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.

(b) Surreptitious photographing, videotaping, filming or digitally recording or viewing a minor pursuant to section 13-3019.

(c) Child sex trafficking pursuant to section 13-3212.

(d) Incest pursuant to section 13-3608.

(e) Unlawful mutilation pursuant to section 13-1214.

5. "School safety officer" has the same meaning prescribed in section 15-514.

6. "Student" means a student who is enrolled in a kindergarten program or any of grades one through twelve.