No. 08-____

IN THE
SUPREME COURT OF THE UNITED STATES

LAURA SCHUBERT,
Petitioner,
v.
PLEASANT GLADE ASSEMBLY OF GOD, REVEREND LLOYD A. MCCUTCHEN, ROD LINZAY, HOLLY LINZAY, SANDRA SMITH, BECKY BICKEL, AND PAUL PATTERSON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Texas

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Free Exercise Clause of the First Amendment preclude the imposition of civil liability for the religiously-motivated assault and false imprisonment of a non-consenting minor?

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The Opinion of the Texas Supreme Court appears at 1a.[1]

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Texas Supreme Court issued its Opinion and entered Judgment on June 27, 2008. Petitioner's timely petition for rehearing was denied on August 29, 2008. 70a.

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[1] References to the Appendix to this Petition are in the form "1a."

CONSTITUTIONAL PROVISIONS

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." UNITED STATES CONSTITUTION, Amendment I.

"No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." UNITED STATES CONSTITUTION, Amendment XIV.

INTRODUCTION

Without her consent, and against her will, Petitioner Laura Schubert was physically restrained and subjected to a "laying on of hands" by Respondents on two occasions during 1996. As a result of these non-consensual physical invasions, Ms. Schubert, then a minor under Texas law,[2] suffered bruises and other immediate physical injuries, as well as post-traumatic stress disorder.[3]

In 1998, Ms. Schubert filed suit against Respondents in Texas state court, asserting causes of action under state law. After lengthy pretrial proceedings, Ms. Schubert's claims for assault and

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[2] *See* TEX. CIV. PRAC. & REM. CODE ANN. § 129.001 (Vernon 2007) ("The age of majority in this state is 18 years."). At the time of the incidents in question, Ms. Schubert was 17 years old.

[3] Ms. Schubert was subsequently classified as disabled by the Social Security Administration. 7a.

false imprisonment were tried to a jury, which ruled unanimously in her favor.[4] The trial court rendered judgment for Ms. Schubert on the jury's verdict of false imprisonment.

The Court of Appeals of Texas affirmed the trial court's judgment, except that it reduced the damages by eliminating the award for loss of earning capacity on the ground those damages were unforeseeable.

A divided Texas Supreme Court reversed, and dismissed Ms. Schubert's claims in their entirety, based solely on the Majority's interpretation of the Free Exercise Clause of the First Amendment to the United States Constitution.[5]

Because the Texas Supreme Court's ruling dramatically and dangerously departs from this Court's First Amendment jurisprudence, Ms. Schubert respectfully requests that this Petition be granted.

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[4] Other claims asserted by Ms. Schubert and her parents were dismissed at various points during the case, before submission to the jury.

[5] Because the Texas Supreme Court dismissed based only on its interpretation of the First Amendment, it did not reach any of the other issues presented by the parties. Petitioner is not seeking review in this Court of those issues not yet decided by the Texas Supreme Court, which were fully briefed and argued before that Court, and could be addressed in the event the decision below is reversed, and the case remanded.

STATEMENT OF THE CASE

A. Trial Court Proceedings

After a three week trial, featuring the testimony of more than thirty witnesses through live appearances or depositions transcripts, twelve jurors unanimously concluded that six individual defendants had falsely imprisoned and assaulted Ms. Schubert.[6] The jury awarded Ms. Schubert $150,000 for "[p]hysical pain and mental anguish sustained in the past," $10,000 for "loss of earning capacity sustained in the past," $12,000 for past medical care, and $16,000 for medical care that she was reasonably likely to sustain in the future. The jury also awarded $112,000 for "[l]oss of earning capacity that, in reasonable probability" she would sustain in the future.[7]

The trial court rendered judgment on the jury's verdict of false imprisonment, awarding the damages found by the jury, and added Pleasant Glade as a judgment debtor with joint and several liability for

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[6] The jury also concluded three other individuals had not assaulted or falsely imprisoned Ms. Schubert. The Court's Charge to the Jury, Jury Questions, and the jury's responses appear at 58a-69a.

[7] As instructed, the jury allocated responsibility for the damages among the defendants it found had assaulted and falsely imprisoned Ms. Schubert, with Pleasant Glade's senior pastor and youth minister responsible for 50% and 25% respectively. 64a.

the damages apportioned to its senior pastor and youth minister. 9a.

B. Texas Court of Appeals's Decision

Respondents appealed to the Texas Court of Appeals, where they argued:

> [A] clear and convincing proof of malice requirement similar to that which the United States Supreme Court has applied to libel actions under the Free Speech Clause should be applied to [Ms. Schubert's] claims and that the judgment against them should be reversed because the evidence conclusively establishes that they did not act with malice.[8]

They also argued, in the alternative, that:

> [T]he case should be remanded for a new trial because the trial court erred in refusing to submit jury instructions on the issue of malice and the clear and convincing evidentiary standard.[9]

In evaluating these arguments the Texas Court of Appeals considered the relevance of pretrial proceedings during which Respondents had sought a Writ of Mandamus ordering the trial court to dismiss

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[8] 174 S.W.3d 388, 405-06 (Tex. App. 2005).

[9] *Id.* at 406.

those of Ms. Schubert's claims which were "religious" in nature.[10]

During that proceeding Respondents had asked that the Court of Appeals "allow [Ms. Schubert's] claims for assault and battery and false imprisonment 'to go forward' because . . . these claims constitute 'a "secular controversy" and do not come within the protection of the First Amendment.'"[11]

As requested by the Respondents, the Texas Court of Appeals granted the relief sought, dismissing all "religious" claims, and allowing Ms. Schubert's assault, battery and false imprisonment claims to proceed to trial "with all of the [Defendants'] acquiescence."[12] Therefore, on appeal from the jury verdict and judgment, the Court of Appeals determined that "[h]aving obtained, in the prior mandamus proceeding, the dismissal of all but [Ms. Schubert's] assault and false imprisonment claims, which they swore under oath should 'go forward' because they were purely secular and

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[10] *Id.*

[11] *Id.*

[12] *Id.* The decision of the Texas Court of Appeals regarding the Writ of Mandamus was published as *In re Pleasant Glade Assembly of God*, 991 S.W.2d 85 (Tex. App. 1998). In that decision, conditionally granting the writ, the Court of Appeals noted that Defendants did "not argue that the false imprisonment, assault and battery claims should be protected from objectionable discovery or dismissed based on the [First Amendment] defense." *Id.* at 88.

entitled to no First Amendment protections," Respondents could not then "'play fast and loose' with the judicial system by taking the opposite position" on appeal of the jury's verdict.[13] The Court of Appeals therefore held that Respondents were estopped from advancing their argument that the jury should have applied a "clear and convincing proof of malice requirement" at trial.[14]

C. Texas Supreme Court's Decision

As they had in the Texas Court of Appeals, Respondents argued before the Texas Supreme Court that the jury should have been instructed that it could impose liability only upon a finding of malice or foreseeability.[15] They further argued that the

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[13] 174 S.W.3d at 407.

[14] *Id.* at 405-07. The Texas Court of Appeals addressed a number of other issues not relevant to this Petition. Among those, the Court of Appeals reversed the award of damages for loss of earning capacity on the ground such damages were unforeseeable. *Id.* at 398-99.

[15] In its Petition for Review before the Texas Supreme Court, Pleasant Glade argued that court "should limit this intrusion of tort liability into First Amendment freedom by requiring malice and forseeability." Pleasant Glade Petition for Review at ix. It formulated the issue for review as: "Whether the Court of Appeals erred in finding that the First Amendment right to freedom of exercise of religion did not place any constraints on civil liability (i.e. requirement of malice or forseeability) . . . ." 73a. In its merits brief before the Texas Supreme Court, Pleasant Glade argued: "Tort liability certainly does not disappear. But it must be limited. Specifically, tort liability must be *narrowly tailored* (actually, only slightly tailored), so

Texas Court of Appeals had erred in concluding that Respondents were estopped from raising this argument by virtue of the positions they had taken during the earlier mandamus proceeding before the Texas Court of Appeals.[16]

1. The Majority Decision

The Texas Supreme Court first considered the Texas Court of Appeals's conclusion that Respondents were estopped from raising First Amendment issues on appeal, and determined they were not.[17]

The Texas Supreme Court then turned to the central subject of its Opinion: whether the First Amendment requires overturning the jury's verdict and the trial court's judgment in favor of Ms. Schubert.[18]

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that damages must be *foreseeable*, or that the defendants acted with *malice*." Brief at 7 (emphasis in original).

[16] On appeal the Respondents did not challenge the sufficiency of the evidence to support the jury's conclusion, based on the instructions it received, that they had falsely imprisoned and assaulted Ms. Schubert.

[17] Chief Justice Jefferson and Justice Green contended that the Majority erred in its analysis of the issue, but they also concluded that Respondents were not estopped. 30a-31a, 47a n.12. Justice Johnson's opinion does not address the issue.

[18] The First Amendment applies to Texas and other states through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

Over the vigorous dissents of three of their colleagues, six members of the Texas Supreme Court concluded that the First Amendment required dismissal of Ms. Schubert's claims. [19]

The Majority initially acknowledged that Ms. Schubert "suffered carpet burns, a scrape on her back, and bruises on her wrists and shoulders," and that she was "diagnosed as suffering from post-traumatic stress disorder, which the doctors associated with her physical restraint at the church in June 1996." 7a.[20] The Majority, however,

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[19] The Texas Constitution contains a provision regarding freedom of religion. *See* TEX. CONST. art. I, § 6 ("All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion . . . ."). This provision of the Texas Constitution was cited once at the outset of the Opinion, but was not otherwise mentioned or discussed. *See* 2a. In this case, the Texas Supreme Court relied solely on its interpretation of the United States Constitution. In other cases, the Texas Supreme Court has not definitively determined the relationship of Article I, Section 6 of the Texas Constitution to the First Amendment's religion clauses. *See, e.g.*, *HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 649-50 (Tex. 2007) ("We have treated the state and federal Free Exercise guarantees as coextensive absent parties' argument to the contrary, and we do so again here.") (footnote omitted).

[20] All three dissenting Justices specifically observed that Ms. Schubert suffered *both* physical and emotional injuries. *See* 33a (Chief Justice Jefferson, joined by Justice Green and

expressed concern that some of Ms. Schubert's injuries were "emotional or psychological," and that there was some evidence those injuries were due in part to what was *said* to her during the two incidents, as opposed to the physical restraints themselves. 15a-17a.[21] The Majority therefore focused its analysis on these aspects of the case.[22]

Justice Johnson: Ms. Schubert "testified that she suffered *physical* as well as emotional injuries from the assaults.") (emphasis added); 55a (Justice Johnson: "Laura claimed damages for physical injuries and pain as well as mental anguish.").

[21] The expert testimony of Dr. Arthur Swen Helge cited by the Majority to support its assertion that trauma from the physical invasion could not be separated from trauma from other aspects of the incidents was elicited *outside the presence of the jury*, during argument on a motion to exclude. Following lawyer questioning of Dr. Helge and arguments by counsel without the jury, the trial judge permitted Dr. Helge to testify, but admonished him to "stay away from the religious aspects" (March 7, 2002, Tr. at 88) – which he did. The only testimony he gave before the jury about his view of the cause of Ms. Schubert's post-traumatic stress disorder was: "It's my opinion that she saw the events that occurred around that time as being a threat to her personally, physically, emotionally. She was unable to cope with that. And over a rapid period of time, she began to develop the major symptoms of post-traumatic stress disorder, which persisted chronically after that. It [a]ffected her life and her personal life, social life, family life, and career." (March 7, 2002, Tr. at 161). Of course, the fact that one witness stated it would be "hard" for him to distinguish between sources of Ms. Schubert's injuries does not mean that other witnesses could not do so. *See* 47a (Chief Justice Jefferson, noting another expert said "she *could*

First, while recognizing that Ms. Schubert's "secular injury claims" – that is, her claims based on the physical restraint by the Defendants – "might theoretically be tried without mentioning religion," the Majority worried that "the imposition of tort liability for engaging in religious *activity* to which the church members adhere would have an unconstitutional 'chilling effect' by compelling the church to abandon core principles of its religious *beliefs*." 20a (emphasis added).[23]

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separate the two") (emphasis in original). If the Texas Supreme Court believed it was an error to permit Dr. Helge to testify, the First Amendment did not require converting that error into an order for dismissal of Ms. Schubert's claims in their entirety.

[22] The Majority accordingly downplayed the non-consensual physical invasion itself, as well as the immediate tangible injuries that resulted. *See, e.g.*, 15a-16a ("Although she suffered scrapes and bruises during these events, her proof at trial related solely to her subsequent emotional or psychological injuries."); *id.* ("Laura did not assert that the church-related events had caused her any physical impairment or disfigurement.").

[23] The Majority offered no support for its contention that the imposition of tort liability for injuries arising from non-consensual physical invasions motivated by religion would chill "religious *beliefs*." Moreover, this Court has repeatedly emphasized that the "[t]he free exercise of religion means, first and foremost, the right to believe and profess whatever doctrine one desires." *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990); *see also Reynolds v. United States*, 98 U.S. 145, 166 (1878) ("Laws are made for the government of actions, and while they cannot interfere with

The Majority then proceeded to examine the role of "laying hands" in Respondents' religious views. Because the court determined that "laying hands" "infuses" their belief system,[24] and that "Laura's claims also involve church beliefs on demonic possession and how discussions about demons at the church affected Laura emotionally and psychologically," they concluded that "assessing emotional damages against Pleasant Glade for engaging in these religious practices would unconstitutionally burden the church's right to free exercise and embroil this Court in an assessment of the propriety of those religious beliefs." 23a. Thus, the Majority determined that the First Amendment required dismissal of Ms. Schubert's claims, explaining:

> The Free Exercise Clause prohibits courts from deciding issues of religious doctrine. Here, the psychological effect of church belief in demons and the appropriateness of its belief in 'laying hands' are at issue. Because providing a remedy for the very real, but

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mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice?").

[24] As Chief Justice Jefferson recognized, the Majority made this determination based on information not presented to the jury. *See* 38a-39a.

> religiously motivated emotional distress in this case would require us to take sides in what is essentially a religious controversy, we cannot resolve that dispute. Accordingly, we reverse the court of appeals' judgment and dismiss the case.[25]

2. The Three Dissenting Opinions

Chief Justice Jefferson and two other Justices dissented, strongly disputing the Majority's view, and specifically its interpretation of the First Amendment and this Court's precedents.

Writing for himself as well as Justice Green and Justice Johnson, Chief Justice Jefferson explained:

> Here, assuming all facts favorable to the [jury's] verdict, members of Pleasant Glade restrained Schubert on two separate occasions against her will. During the first encounter, seven members pinned her to the floor for *two hours* while she cried, screamed, kicked flailed, and demanded to be released. This violent act caused Schubert multiple bruises, carpet burns, scrapes and injuries to her wrists, shoulders and back.[26]

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[25] 26a-27a.

[26] 31a (emphasis in original).

As it was tried to the jury, the case:

> is not about beliefs or 'intangible harms' – it is about violent action – specifically, twice pinning a screaming, crying teenage girl to the floor for extended periods of time. That was how it was presented to the jury, which *heard almost nothing about religion during the trial* due to the trial court's diligent attempt to circumvent First Amendment problems and to honor the court of appeals' mandamus ruling that neither side introduce religion as a reason for Laura's restraint . . . . [T]he jury was able to award damages without considering – or even being informed of – [Defendants'] beliefs.[27]

Regarding the Majority's view of the First Amendment, Chief Justice Jefferson wrote:

> This sweeping immunity is inconsistent with United States Supreme Court precedent and extends far beyond the protections our Constitution affords religious conduct. The First Amendment guards religious liberty; it does not sanction intentional abuse in religion's name . . . . It is not surprising that the [Majority] cites no

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[27] 38a-39a (emphasis in original).

> case holding that the First Amendment bars claims for emotional damages arising from assault, battery, false imprisonment, or similar torts.[28]

Concerned about the effects of the Majority's decision, he warned: "This overly broad holding not only conflicts with well-settled legal and constitutional principles, it will also prove to be dangerous in practice." 48a-49a.

As for the Majority's claim that the case must be dismissed because it "presents an ecclesiastical dispute over religious conduct" (2a), Chief Justice Jefferson remarked that "at its core the case is about secular, intentional tort claims . . . . [W]e simply need not evaluate the validity of [Defendants'] religious beliefs, or even inquire into the assailants' motives, to hold [Defendants] liable for its intentionally tortious conduct." 32a-33a, 41a.

Moreover, citing this Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), Chief Justice Jefferson explained that "any religious motivation [Defendants] may have had is irrelevant to our consideration. The tort of false imprisonment is a religiously neutral law of general applicability, and the First Amendment provides no protection against it." 40a.

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[28] 28a, 36a.

In addition to joining Chief Justice Jefferson's entire dissenting opinion, Justice Green authored a short additional opinion of his own. In it, he focused on the Majority's failure to follow this Court's decision in *Smith*, 494 U.S. 872, observing:

> [T]oday's decision ignores the rule that "courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim," *Smith*, 494 U.S. at 887, replacing it with a far more dangerous practice: a judicial attempt to "balance against the importance of general laws the significance of religious practice," *id.* at 889 n.5. "The First Amendment's protection of religious liberty does not require this." *Id.* at 889. The trial court heeded these admonishments, but the [Majority] today does not.[29]

Justice Green also took issue with the Majority's defense of its decision to dismiss on the grounds that "religious practices that might offend the rights or sensibilities of a non-believer outside the church are entitled to greater latitude when applied to an adherent within the church." 24a.[30] In response, he

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[29] 50a-51a.

[30] The Majority similarly observed that "the 'laying of hands' and the presence of demons are part of the church's belief system and accepted as such by its adherents. These practices are not normally dangerous or unusual and apparently arise in

explained: "If Schubert had consented to the church's actions, the consent . . . would have completely defeated her claims. The jury, however, found that Schubert had not consented, and [Defendants] do[ ] not challenge that conclusion." 50a n.1 (citations omitted).[31] He further observed, the Majority "treats church membership as an across the board buffer to tort liability . . . . We are in no position to decide that the ordeal to which Schubert was subjected was so 'expected' and 'accepted by those in the church' as to overcome Schubert's vehement denial of consent at the time of the incidents. Further, the scant evidence does not support the [Majority's] conclusion." 44a.

While joining most of Chief Justice Jefferson's opinion, Justice Johnson also wrote separately to emphasize the "direct evidence of physical injury and

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the church with some regularity. They are thus to be expected and are accepted by those in the church. That a particular member may find the practice emotionally disturbing and non-consensual when applied to her does not transform the dispute into a secular matter." 26a.

[31] Chief Justice Jefferson also pointed out that "lack of consent is an element of false imprisonment on which we have an affirmative jury finding in this case . . . and [Defendants] did not challenge that finding at the court of appeals and do[ ] not raise it here." 44a. The jury was instructed: "'Falsely imprison' means to willfully detain another without legal justification, against her consent, whether such detention be effect by violence, by threat, or by any other means that restrains a person from moving from one place to another." 62a.

pain from the restraints" on Ms. Schubert, which "were within the knowledge of the jurors." 55a. Taking issue with the Majority's invocation of the First Amendment as the basis for wholesale dismissal of the case, he concluded "there is legally sufficient evidence to support damages for physical injury and pain even if all evidence of Laura's subsequent and ongoing intangible psychological injuries were to be disregarded. Thus, the judgment for damages from physical pain and mental anguish should be upheld." 55a-56a.[32]

D. Further Proceedings Before the Texas Supreme Court

Ms. Schubert filed a motion for rehearing on July 11, 2008. The Texas Supreme Court denied that motion on August 29, 2008. 70a.

Following the denial of her rehearing motion, counsel for Ms. Schubert advised the Texas Supreme Court of her intention to file a petition for a writ of certiorari with this Court, and therefore moved to stay issuance of the mandate.[33] The Texas Supreme

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[32] Chief Justice Jefferson noted, without any disagreement by the Majority, that Defendants "did not request that the damages be segregated, and so waived any complaint that her physical injuries were not compensable." 33a. The jury also awarded damages for "lost earning capacity sustained in the past," and for past "medical care," (65a-66a) – clearly concluding that Ms. Schubert suffered *tangible* harm.

[33] Ms. Schubert's motion to stay issuance of the mandate advised the Texas Supreme Court that she intended "to

Court denied Ms. Schubert's motion to stay issuance of the mandate on September 12, 2008.

REASONS FOR GRANTING THE PETITION

The Court should grant this Petition because the Texas Supreme Court's decision and interpretation of the First Amendment conflicts with relevant decisions of this Court, as well as with decisions of other state courts of last resort and federal courts of appeals. *See* SUP. CT. R. 10(b), (c).

I. THE TEXAS SUPREME COURT'S DECISION MISINTERPRETS THE FIRST AMENDMENT AND FAILS TO FOLLOW AND PROPERLY APPLY THIS COURT'S PRECEDENTS

The Texas Supreme Court's decision in this case is fundamentally at odds with this Court's precedents and the First Amendment itself.

This Court has reviewed numerous state court interpretations of the Free Exercise Clause – often reversing decisions predicated on misinterpretations of the First Amendment. *See, e.g.*, *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872 (1990) (reversing judgment of Oregon

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petition the Supreme Court of the United States for a writ of certiorari on the grounds that this case presents an important question regarding interpretation of the United States Constitution, and that the decision of this Court is inconsistent with decisions issued by the Supreme Court of the United States and other courts."

Supreme Court); *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378 (1990) (affirming decision of Court of Appeal of California); *Thomas v. Review Bd. of the Indiana Employment Sec. Div.*, 450 U.S. 707 (1981) (reversing decision of Indiana Supreme Court); *McDaniel v. Paty*, 435 U.S. 618 (1978) (reversing decision of Tennessee Supreme Court); *Jones v. Wolf*, 443 U.S. 595 (1979) (vacating judgment entered by Supreme Court of Georgia); *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976) (reversing judgment of Illinois Supreme Court); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (affirming decision of Wisconsin Supreme Court); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969) (reversing judgment of Supreme Court of Georgia); *Sherbert v. Verner*, 374 U.S. 398 (1963) (reversing judgment of South Carolina Supreme Court); *Cantwell v. Connecticut*, 310 U.S. 296 (1940) (reversing judgment of Supreme Court of Errors of Connecticut); *Reynolds v. United States*, 98 U.S. 145 (1878) (affirming Supreme Court of the Territory of Utah).

The Court should grant this Petition because the Texas Supreme Court's decision and interpretation of the First Amendment conflicts with relevant decisions of this Court. *See* SUP. CT. R. 10(c).[34]

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[34] Because the Texas Supreme Court dismissed solely on the basis of its interpretation of the Free Exercise Clause, this Petition focuses on that issue. However, the Texas Supreme

A. The Texas Supreme Court Majority Ignored, and Its Opinion is Inconsistent with, this Court's Decision in *Employment Division v. Smith*

Like many jurisdictions, Texas has long prohibited false imprisonment, through both civil and criminal laws. *See, e.g.*, *Arms v. Campbell*, 603 S.W.2d 249 (Tex. App. 1980); *Big Town Nursing Home, Inc. v. Newman*, 461 S.W.2d 195 (Tex. App. 1970); *Hooper v. Deisher*, 113 S.W.2d 966, 967 (Tex. App. 1938) (false imprisonment "is the willful detention of another against his consent and where it is not expressly authorized by law"); *Landrum v. Wells*, 26 S.W. 1001 (Tex. App. 1894); TEX. PENAL CODE art. 513 (1879); *see also* 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 127 (1768) (discussing "the injury of false imprisonment, for which the law has not only decreed a punishment, as a heinous crime, but has also given a private reparation to the party . . . by

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Court's dismissal of Ms. Schubert's claims to accommodate religiously-motivated conduct not immunized by the Free Exercise Clause is itself a violation of the Establishment Clause, applied through the Fourteenth Amendment. While there is "some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause," the Texas Supreme Court's attempt at accommodation falls outside any permissible boundaries. *Cutter v. Wilkinson*, 544 U.S. 709, 719-24 (2005); *see also Palmore v. Sidoti*, 466 U.S. 429, 433 n.1 (1984) ("The actions of state courts and judicial officers in their official capacity have long been held to be state action governed by the Fourteenth Amendment.").

subjecting the wrongdoer to a civil action . . . ."); *see generally* MARTIN L. NEWELL, A TREATISE ON THE LAW OF MALICIOUS PROSECUTION, FALSE IMPRISONMENT AND THE ABUSE OF LEGAL PROCESS (1892).

Texas also joins other jurisdictions in prohibiting assault through its civil and criminal laws. *See* TEX. PENAL CODE ANN. § 22.01 (Vernon 2007) (defining offense of assault); *Hall v. Sonic Drive-In of Angleton, Inc.*, 177 S.W.3d 636, 649-50 (Tex. App. 2005) ("The elements of assault are the same in both the criminal and civil context."); *Gulf, C. & S.F. Ry. Co. v. Perry*, 30 S.W. 709, 709 (Tex. App. 1895) (sustaining civil verdict); *Galveston, H. & S.A. Ry. Co. v. McMonigal*, 25 S.W. 341, 342 (Tex. App. 1893) ("[A] cause of action existed for the assault, and the damages proper to be considered were those sustained by him physically and mentally and of pecuniary nature, which were the proximate results of the act."); TEX. PENAL CODE art. 484 (1879) ("Any attempt to commit a battery, or any threatening gesture showing in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.").

A properly instructed jury determined that Ms. Schubert was assaulted and falsely imprisoned by Respondents.[35] The Texas Supreme Court

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[35] The jury was instructed: "A person commits an assault if he (1) intentionally, knowingly, or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly

overturned that verdict and the trial court's judgment, and dismissed Ms. Schubert's claims altogether, having concluded that the Free Exercise Clause immunized Respondents from liability under neutral and generally applicable laws prohibiting assault and false imprisonment.

Remarkably, the Texas Supreme Court did so without even acknowledging this Court's decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) – let alone trying to reconcile its holding with this Court's precedent.

Smith is just one of a long line of cases which make clear that an individual's religious beliefs do not "excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Id.* at 878-79.

The Texas Supreme Court's decision does not take issue with the fact that Texas law governing assault and false imprisonment is both neutral and generally applicable – applying to anyone, whether their motivation is entirely secular or religious, and

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causes physical contact with another when he or she knows or should reasonably believe that the other will regard the contact as offensive or provocative." 63a. It was instructed: "'Falsely imprison' means to willfully detain another without legal justification, against her consent, whether such detention be effected by violence, by threat, or by any other means that restrains a person from moving from one place to another." 62a.

if religious, without regard to the particular rationale. *Cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993) (discussing "neutrality" and "general applicability" under *Smith* standard). Nor does the Majority's opinion dispute that the jury found the elements of these offenses had been established, or that the conduct at issue was actionable under Texas law absent immunity ostensibly conferred on Respondents by the First Amendment.

The Majority nevertheless ignored *Smith* and this Court's other decisions addressing claims to First Amendment-based exemptions from neutral and generally applicable laws.

In fact, the only time a reference to *Smith* even appears in the Majority's opinion is in a citation to Justice Green's dissenting opinion, in which he specifically discussed inconsistency between the Majority's decision and *Smith*.[36]

Petitioner is unaware of any other judicial decision concluding that the First Amendment

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[36] Specifically, Justice Green observed: "today's decision ignores the rule that 'courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim,' *Smith*, 494 U.S. at 887, replacing it with a far more dangerous practice: a judicial attempt to 'balance against the importance of general laws the significance of religious practice,' *id.* at 889 n.5. 'The First Amendment's protection of religious liberty does not require this.' *Id.* at 889. The trial court heeded these admonishments, but the [Majority] today does not." 50a-51a.

requires immunity from claims based upon an otherwise actionable non-consensual physical invasion of another person.[37]

B. The Texas Supreme Court Majority's Rationale for Dismissing Ms. Schubert's Claims Conflicts with Other Decisions of this Court Interpreting the Free Exercise Clause

In addition to ignoring *Smith*, the Majority's opinion scarcely addresses this Court's other First Amendment precedents, citing only four decisions of this Court in support of its dismissal of Ms. Schubert's claims. None of these decisions supports the Texas Supreme Court's view of the First Amendment – and several are flatly inconsistent with its view.[38]

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[37] *Smith* and its progeny also make clear "that the Constitution does not require judges to engage in a case-by-case assessment of the religious burdens imposed by facially constitutional laws." *Alberto R. Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 424 (2006). Yet this is precisely what the Texas Supreme Court has done here, based on its erroneous reading of the Free Exercise Clause.

[38] It is noteworthy that Respondents' briefs submitted to the Texas Supreme Court did not cite *any* of the First Amendment decisions of this Court relied on in the Majority's Opinion. *See* 75a-78a, 83a-87a, 92a-94a (Tables of Authorities from Respondents' briefs before the Texas Supreme Court). This is not entirely surprising, since the Texas Supreme Court adopted a view of the First Amendment that was not advanced by Respondents.

The Majority first cites *Cantwell v. Connecticut*, 310 U.S. 296 (1940), for the proposition that an "intangible, psychological injury, without more, cannot ordinarily serve as a basis for a tort claim against a church or its members for its religious practices." 17a. *Cantwell*, however, had nothing to do with tort claims – for intangible harms or otherwise. Instead, it addressed the arrest and conviction of three Jehovah's Witnesses for distributing religious literature. Applying the Free Exercise Clause to the states, this Court reversed the convictions. In explaining why those specific convictions should not stand, the Court noted "we find in the instant case no assault or threatening bodily harm." *Id.* at 310. The Court also warned of "coercive activities" by those "in the delusion of racial or religious conceit," noting "[t]hese and other transgressions . . . the States appropriately may punish." *Id.* The Texas Supreme Court misreads *Cantwell* as support for its interpretation of the First Amendment.[39]

The Majority then cites *United States v. Ballard*, 322 U.S. 78 (1944), claiming it as support for its assertion that "because the religious practice of 'laying hands' and church beliefs about demons are so closely intertwined with Laura's tort claim, assessing emotional damages against Pleasant Glade for engaging in these religious practices would unconstitutionally burden the church's right to free

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[39] *See also* 31a, 36a-37a (Chief Justice Jefferson, in dissent, criticizing the Majority's reliance on *Cantwell*).

exercise and embroil this Court in an assessment of the propriety of those religious beliefs." 23a.

Ballard addressed the propriety of charging a jury with finding the truth or falsity of a criminal defendant's religious beliefs. 322 U.S. at 86-88. Like *Cantwell*, it had nothing to do with tort claims of any sort. And *Ballard* similarly lends no support to the Majority's view that the First Amendment forbids the imposition of liability for the assault and false imprisonment of Ms. Schubert.

The Majority next invokes *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976), citing it as support for the proposition that the Free Exercise Clause "prohibits courts from deciding issues of religious doctrine." 23a. The Majority also cites and quotes from *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 716 (1981), contending:

> 'Courts are not arbiters of religious [sic] interpretation,' and the First Amendment does not cease to apply when parishioners disagree over church doctrine or practices because 'it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker [in

> *Thomas*] more correctly perceived the commands of their common faith.'[40]

Apparently relying on its reading of *Milivojevich* and *Thomas*, the Majority concluded:

> Because determining the circumstances of Laura's emotional injuries would, by its very nature, draw the Court into forbidden religious terrain, we conclude that Laura has failed to state a cognizable, secular claim in this case.
>
> * * *
>
> The Free Exercise Clause prohibits courts from deciding issues of religious doctrine. Here, the psychological effect of church belief in demons and the appropriateness of its belief in "laying hands" are at issue. Because providing a remedy for the very real, but religiously motivated emotional distress in this case would require us to take sides in what is essentially a religious controversy, we cannot resolve that dispute. Accordingly, we reverse the court of appeals' judgment and dismiss the case.[41]

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[40] 26a.

[41] 26a-27a (citation omitted).

The Majority misconstrues *Milivojevich* and *Thomas* in concluding they support dismissal of Ms. Schubert's claims.

In *Milivojevich* this Court reviewed a decision of the Illinois Supreme Court which held that church proceedings related to a church's suspension and removal of Bishop were "procedurally and substantively defective under the internal regulations" of the church. 426 U.S. at 697. Observing that First Amendment concerns may be presented by having civil courts "probe deeply enough into the allocation of power within a hierarchical church so as to *decide religious law* governing church polity," the Court concluded that "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity . . . in their application to the religious issues of doctrine or polity before them." *Id.* at 709 (internal citations omitted) (emphasis added).

The Texas Supreme Court has misread *Milivojevich* in concluding that the trial of Ms. Schubert's claims required the court or the jury to "decid[e] issues of religious doctrine," or "take sides in what is essentially a religious controversy." 26a. The facts in *Milivojevich* presented a rare instance in which a secular court is forbidden from adjudicating a claim because of requirements imposed by the First Amendment. There, this Court

held the First Amendment permits "hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters," and "requires that civil courts accept their decisions as binding upon them." 426 U.S. at 724-25.

Ms. Schubert's claims bear no resemblance to the claims of the plaintiff in *Milivojevich*, and do not involve any questions about "internal discipline and government." Only by wrenching *Milivojevich* from its facts, and by ignoring the substance of this Court's opinion, could the Texas Supreme Court conclude that the First Amendment required dismissal of Ms. Schubert's claims.[42]

The Texas Supreme Court similarly misconstrues *Thomas* as supporting its conclusion that the First Amendment required dismissal of Ms. Schubert's claims.

Thomas involved the denial of unemployment compensation to a Jehovah's Witness who claimed his religious beliefs prevented him from

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[42] Although "[t]here are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes . . . this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes." *Gen. Council on Fin. and Admin. of the United Methodist Church v. Superior Court of California*, 439 U.S. 1355, 1372 (1978) (Rehnquist, Circuit Justice).

participating in the production of war materials. Reviewing a decision of the Indiana Supreme Court, this Court criticized the State court's reliance on the views of a different Jehovah's Witness who did not believe religious principles prevented him from doing the work Thomas refused on religious grounds, observing that "[i]ntrafaith differences . . . are not uncommon among followers of a particular creed," and that "[c]ourts are not arbiters of scriptural interpretation." 450 U.S. at 715-16. Yet the fact that courts are not arbiters of scriptural interpretation did not prevent this Court from readily determining that Thomas's reasons for quitting his job were, in fact, religious in nature, without running afoul of the Free Exercise Clause.

The Texas Supreme Court Majority quoted from *Thomas*, but failed the heed the teaching of that decision, and the rest of this Court's Free Exercise jurisprudence, which make clear that courts are not stripped of jurisdiction to adjudicate claims merely because religious practices of some or all of the parties form part of the factual backdrop of the case. *See also Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property . . . . [T]here are neutral principles of law, developed for use in all property disputes . . . [and] the [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious

doctrine."); *Jones v. Wolf*, 443 U.S. 595, 602-04 (1979) ("[T]he First Amendment prohibits civil courts from resolving church property disputes *on the basis* of religious doctrine and practice ... [but] a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute.") (emphasis added).[43]

The trial of Ms. Schubert's claims in no way required the court or jury to resolve a religious or doctrinal controversy, or to pass judgment on the veracity or efficacy of the religious views of any of the parties. The Majority nevertheless concluded that the religious setting for the underlying facts required dismissal under its reading of the First Amendment. This holding directly conflicts with this Court's precedents. *See, e.g.*, *Jones*, 443 U.S. at 605 ("We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no

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[43] The Majority's First Amendment analysis also failed to accord any significance to the fact that, at the time of the conduct in question, Ms. Schubert was a minor under Texas law. *See supra* note 2. In so doing, it further deviated from this Court's precedents. *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (considering "the interests of society to protect the welfare of children" in analyzing free exercise claim); *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972) ("[T]he power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince* if it appears the parental decisions will jeopardize the health and safety of the child, or have a potential for significant social burdens.").

issue of doctrinal controversy is involved."). Only by dramatically departing from this Court's guidance about what constitutes a non-justiciable "religious dispute" could the Texas Supreme Court conclude that it was required by the First Amendment to dismiss Ms. Schubert's claims in their entirety. [44]

II. THE TEXAS SUPREME COURT'S DECISION CONFLICTS WITH DECISIONS RENDERED BY OTHER STATE COURTS OF LAST RESORT AND BY FEDERAL COURTS OF APPEALS

The Petition should also be granted because the Texas Supreme Court's decision and interpretation of the First Amendment conflicts with decisions of other state courts of last resort and federal courts of appeals. *See* SUP. CT. R. 10(b).

First, although the Majority discusses and seems to rely on *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875 (9th Cir.

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[44] Tellingly, the Majority never identified the supposed "religious dispute" which, in its view, required dismissal based on the Free Exercise Clause. The closest the Majority came to identifying any such dispute was to assert "the psychological effect of church belief in demons and the appropriateness of its belief in 'laying hands' are *at issue*." 26a (emphasis added). Yet, as the dissenting Justices make clear, the trial of Ms. Schubert's claims did not require the court or jury to resolve any genuine religious dispute (*see* 38a-43a), and the Majority's dismissal based on vague assertions to the contrary departs sharply from this Court's case law about non-justiciable religious controversies.

1987), its treatment of that decision instead casts doubt on its interpretation of the First Amendment.

Paul concerned tort claims brought by a disassociated member of Jehovah's Witnesses against the church for requiring its members to "shun" the plaintiff. Although the Ninth Circuit affirmed the dismissal of plaintiff's claims, its analysis lends no support to the Texas Supreme Court's decision in this case.

As an initial matter, the Ninth Circuit properly rejected an expansive reading of *Milivojevich* like the one adopted by the Texas Supreme Court in this case, observing that the "limited abstention doctrine" set out in *Milivojevich* "does not apply." 819 F.2d at 878 n.1.[45]

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[45] Numerous other cases properly adopt a narrower reading of *Milivojevich* than the one employed by the Texas Supreme Court here. *See, e.g.*, *Church of God in Christ, Inc. v. Graham*, 54 F.3d 522, 527 (8th Cir. 1995) ("[B]ecause the rule of deference is premised on the presence of a hierarchical authority, a necessary predicate of the Church's argument fails. Thus, *Milivojevich* is inapposite to this case."); *Pilgrim Rest Missionary Baptist Church v. Wallace*, 835 So.2d 67, 71-74 (Miss. 2003) (analyzing *Milivojevich* and concluding First Amendment did not preclude court from ordering vote of church members to decide whether to terminate pastor); *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 773 (Okla. 1989) ("While this dispute involved a religiously-founded disciplinary matter, it was not the sort of private ecclesiastical controversy which the Court has deemed immune from judicial scrutiny [citing *Milivojevich*] . . . . Because the controversy in the instant case is concerned with the allegedly tortious nature of religiously-motivated acts and not with their orthodoxy *vis-à-*

Moreover, in concluding that shunning is not actionable under the tort law of Washington State, the Ninth Circuit specifically considered that "[n]o physical assault or battery occurred," and found the practice did not "constitute a sufficient threat to the peace, safety or morality of the community as to warrant state intervention" in light of First Amendment principles. *Id.* at 883. That analysis stands in stark contrast with the analysis of the Texas Supreme Court Majority, which was confronted with tort claims for precisely the kind of physical invasion the *Paul* emphasizes was not before it. Thus, while the *Paul* court appropriately determined that "[o]ffense to someone's sensibilities resulting from religious conduct is simply not actionable in tort," *id.* at 883, the Texas Supreme Court Majority's treatment of *Paul* highlights the novelty of its reading of the First Amendment rather than supports it.[46]

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vis established church doctrine, the justification for judicial abstention is non-existent and the theory does not apply.").

[46] Unlike the Texas Supreme Court Majority, the Oklahoma Supreme Court appropriately recognized the limits of *Paul*, observing that "[f]or purposes of First Amendment protection, religiously motivated disciplinary measures that merely *exclude* a person from communion are vastly different from those which are designed to *control* and *involve*." *Guinn*, 775 P.2d at 781 (rejecting argument that Free Exercise Clause shielded church and church elders from torts claims for invasion of privacy and intentional infliction of emotional distress brought by former member of congregation) (emphasis in original).

The Texas Supreme Court's decision also conflicts with other courts' views about when the First Amendment strips courts of jurisdiction to resolve cases where the factual background involves a dispute over issues related to religion.[47]

For instance, in *Darab v. United States*, the District of Columbia Court of Appeals rejected defendants' arguments that their convictions for unlawful entry violated the Free Exercise Clause notwithstanding that the convictions arose from a dispute between rival groups for control of a mosque. 623 A.2d 127 (D.C. 1993) (Rogers, C.J.).

Seeking to overturn their convictions by a jury, the *Darab* defendants argued that application of the District of Columbia's unlawful entry statute "was an impermissible government intrusion upon resolution of a religious controversy." *Id.* at 132. Unlike the Texas Supreme Court Majority, the District of Columbia Court of Appeals evaluated defendants' contention by applying *Smith*, and concluded:

> [T]he District's unlawful entry statute is a neutral and generally applicable law. It is not directly aimed at religious practice. As invoked here, the unlawful entry statute was used to quell a disturbance, not a religious service. Thus, it was used to regulate

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[47] Of course, here, there was no genuine religious dispute at issue. *See supra* note 44.

> conduct, not beliefs, a goal vindicated by the Supreme Court in both *Smith II* and *Reynolds*. The Free Exercise Clause cannot be used as a means to escape civic duties.

Id. at 133. And, like the jury that evaluated Ms. Schubert's claims, the *Darab* "jury was not required to resolve any religious issues of contention in order to determine whether [defendants] had violated the unlawful entry statute." *Id.*

The Texas Supreme Court's expansive view of circumstances under which the First Amendment divests a court of jurisdiction also is inconsistent with the decisions of other courts. *See, e.g.*, *McKelvey v. Pierce*, 800 A.2d 840, 857 (N.J. 2002) (reversing dismissal of claim on First Amendment grounds, concluding "[t]he First Amendment is not violated so long as resolution of a claim does not require the court to choose between competing interpretations of religious tenets or to interfere with a church's autonomy rights."); *Burrows v. Brady*, 605 A.2d 1312, 1315 (R.I. 1992) (concluding, in dispute about visitation rights, "when evaluating what is in the best interests of a child, a trial justice has the authority to consider the religious beliefs or disbeliefs of the child's parents, as the issue relates to the best interests of the child, without running afoul of the Constitution."); *see also Meshel v. Ohev Sholom Talmud Torah*, 869 A.2d 343, 346 (D.C. 2005) (rejecting argument that consideration of motion to compel arbitration regarding governing structure of religious organization would impermissibly entangle the court in ecclesiastical

matters, concluding that "well-established neutral principles of contract law can be used," and the court therefore had "jurisdiction consistent with the First Amendment"); *cf. Whittaker v. Sandford*, 85 A. 399 (Me. 1912) (affirming verdict against leader of religious sect for false imprisonment).

The Texas Supreme Court's decision likewise conflicts with decisions rejecting free exercise challenges to laws governing religiously-motivated conduct that threatens the safety, welfare or bodily integrity of others. *See, e.g.*, *United States v. Amer*, 110 F.3d 873, 879 (2d Cir. 1997) (rejecting claim that conviction under International Parental Kidnapping Crime Act "infringes on the free exercise of religion by proscribing removals of children from the United States even when those acts are dictated, or at least motivated, by 'religious law' . . . because the Act punishes parental kidnappings solely for the harm they cause"); *State v. Pack*, 527 S.W.2d 99, 107, 113 (Tenn. 1975) (noting the "belief-action dichotomy has been the subject of numerous decisions of the Supreme Court of the United States," and holding that "the handling of snakes as a part of religious ritual is a common law nuisance" and ordering injunction against handling dangerous and poisonous snakes, even as part of a religious ceremony of consenting adults); *see also Heard v. Johnson*, 810 A.2d 871, 885 (D.C. 2002) ("Torts such as battery, false imprisonment or conversion probably would fall within the exception to church immunity . . . because they pose a 'substantial threat to public safety, peace or order.'") (quoting *Sherbert*, 374 U.S. at 403); *Planned Parenthood of Mid-Iowa v.*

Maki, 478 N.W.2d 637, 640 (Iowa 1991) (applying *Smith* in rejecting claim that a permanent injunction preventing religiously-motivated abortion opponent from obstructing access to or egress from Planned Parenthood location infringed on right to freedom of religion).

The Texas Supreme Court Majority exacerbates its deviation from these cases by speciously invoking the concept of "consent" to justify the dismissal of Ms. Schubert's claims. Specifically, the Majority maintained that "religious practices that might offend the rights or sensibilities of a non-believer outside the church are entitled to greater latitude when applied to an adherent within the church." 24a-25a.

Of course, in making this point the Majority elides the fact that the jury conclusively determined Ms. Schubert did not consent to the physical invasion at issue.[48] The Texas Supreme Court's determination that the Free Exercise Clause requires immunity for a tortfeasor even when a victim resists or refuses consent to participate in a religiously-motivated act by the tortfeasor conflicts with the view of the Oklahoma Supreme Court, which appropriately explained: "Just as freedom to worship is protected by the First Amendment, so also is the liberty *to recede* from one's religious

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[48] Instructed in accordance with Texas law, the jury found that Ms. Schubert was detained "against her consent." 62a. *See also supra* note 31.

allegiance." *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 776 (Okla. 1989) (emphasis in original). "No real freedom to choose religion would exist in this land if under shield of the First Amendment religious institutions could impose their will on the unwilling and claim immunity from secular judicature for their tortious acts." *Id.* at 779; *cf. Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("The right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind.'"); *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (describing "the right to be let alone" as "the most comprehensive of rights and the right most valued by civilized men.") (Brandeis, J., dissenting).

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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November 3, 2008