IN THE MONTGOMERY COUNTY CIRCUIT COURT, MARYLAND
CIVIL DIVISION

JANE DOE, et al.

Plaintiffs,

v.

SOVEREIGN GRACE MINISTRIES, et al.

Defendants.

Case No. 369721V
Hon. Sharon V. Burrell

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS BASED ON THE FIRST AMENDMENT

With one exception, Plaintiffs were physically and sexually abused when they were children.[1] They brought a lawsuit on behalf of themselves and the many others who were similarly victimized in order to stop Defendants from continuing their active and ongoing support for sexual and physical abuse of children. Defendants created, fostered and maintained an environment that encouraged predation of children by their employees and members. They allowed and allow pedophilia and physical beatings to flourish at the church school, in church bathrooms, and home groups. They protected predators from accountability, and forced innocent children to remain in place, subject to ongoing sexual and physical abuse. Defendants' acts and omissions have ruined so many lives; they must be stopped.

Yet now, Defendants continue as they have in the past, trying to evade accountability and hide the truth. They seek to hide behind the First Amendment, arguing that letting a jury hear about their misconduct would violate the First Amendment. Defendants try to shoehorn

[1] One Plaintiff – Robin Roe -- is the sibling of the abuse victim. The abuse victim remains too fragile to bring suit.

Plaintiffs' claims into a box labeled "clergy malpractice." But Plaintiffs do not seek redress for poor spiritual counseling or the like.

As is clear from the First Amended Complaint (hereinafter "FAC") Plaintiffs allege an active and ongoing conspiracy in which Defendants facilitate the sexual and physical abuse of children in their care by (1) failing to stop and instead facilitating known ongoing predation, (2) affirmatively permitting known sexual predators to access young children in physical settings under Defendants' control (e.g. churches, schools, home groups), (3) obstructing justice by giving predators advance warning of arrest and investigation, and (4) conspiring together to hide past and current misconduct.

Thus, Defendants' various arguments about protection for religion and clergy lack any merit whatsoever for one very fundamental reason: Defendants have not – and cannot – cite to or rely upon any religious beliefs that they claim gives them the freedom to sexually and physically abuse children. That misconduct is what is at issue here; that misconduct is not protected by any religious tenet identified by Defendants in their moving papers. Indeed, in public statements, Defendants have expressly disavowed that they are claiming that they have the right under their religious beliefs to abuse children with physical beatings or with sexual molestations. *See* Exhibits A and B (Defendants' statements to the media about their religious beliefs compelling protection, not abuse, of children)

INTRODUCTORY COMMENT ON ORGANIZATION OF PLAINTIFFS' OPPOSITIONS

Defendants filed seven motions seeking dismissal, and memorandum in support.[2] Each defendant incorporated by reference the arguments made by the other Defendants, and also

[2] Defendant Lawrence Tomczak's Motion to Dismiss and Memorandum of Law (Docket No. 47) ("Tomczak Motion"); Defendants Covenant Life Church, Inc., Charles Mahaney, Gary Ricucci, John Loftness and Grant Layman's Motion to Dismiss and Memorandum of Law (Docket No. 48) ("CLC Motion"); Defendant Covenant Life School, Inc.'s Motion to Dismiss and Memorandum of Law (Docket No. 49) ("CLC School Motion");

repeated many of the same arguments. For clarity and convenience, Plaintiffs are opposing all the motions by filing three (rather than seven) Oppositions. Specifically, this Opposition responds to all of Defendants' First Amendment arguments, and will hereinafter be referred to as "Plaintiffs' First Amendment Opposition."[3]

STATEMENT OF FACTS

A. Defendants' Statements to the Media

Defendant SGM has made certain statements to the media about the religious beliefs surrounding abuse of children. In October, 2012, Defendant SGM issued a statement, claiming: "[c]hild abuse in any context is reprehensible and criminal. Sovereign Grace Ministries takes seriously the Biblical commands to pursue the protection and well being of all people, especially the most vulnerable in its midst, little children." *See* Exhibit A.

In November, 2012, Defendant SGM issued another statement, claiming "[w]e take seriously the biblical commands to pursue the protection and well-being of all people – especially children, who are precious gifts given by the Lord and the most vulnerable among us. These biblical commands include fully respecting civil authority to help restrain evil and promote righteousness as Romans 13 instructs us. SGM also encourages the establishment of robust child protection policies and procedures based on best practices." *See* Exhibit B.

Defendant Sovereign Grace Ministries, Inc.'s Motion to Dismiss and Memorandum of Law (Docket No. 50) ("SGM Motion"); Defendants David Hinders, Louis Gallo, and Frank Ecelbarger's Motion to Dismiss and Memorandum of Law (Docket No. 51) ("Va. Defendants' Motion"); Defendants Vince Hinders and Mark Mullery's Motion to Dismiss and Memorandum of Law (to be docketed) (incorporates "Va. Defendants' Motion" and included therein); Defendants Sovereign Grace Church of Fairfax's Motion to Dismiss and Memorandum of Law (to be docketed) ("Fairfax Motion" and collectively referred to as "Va. Defendants' Motion").

[3] Plaintiffs simultaneously are also filing two other Oppositions: (1) one that responds to the jurisdictional and Virginia law arguments made by the Virginia Defendants' (D. Hinders, V. Hinders, Gallo, Mullery, Sovereign Grace Church of Fairfax), which will be referred to as "Plaintiffs' Jurisdiction Opposition"; and (2) a second that responds to the various pleading deficiencies alleged by Defendants, which will be referred to as "Plaintiffs' Pleading Opposition."

B. Complaint Allegations Cited by Defendants

Defendant SGM states "the alleged cover-up was somehow a product of the churches doctrines and teachings" and identifies only FAC ¶ 26 as evidence that the Plaintiffs are attacking a religious tenet. *See* SGM Memorandum at 11. Defendants Covenant Life Church, Inc., Charles Mahaney, Gary Ricucci, John Loftness and Grant Layman do not provide any citations to the FAC, but characterize the lawsuit as "[e]ssentially, their claim is that, acting under the 'guise of a religious organization,' these Defendants' failure to act harmed the Plaintiffs. Plainly, the Complaint must be dismissed because it is barred by the First Amendment." *See* Defendant CLC Memorandum at 12.

Defendant Covenant Life School Inc. argues that because the failures alleged are failures by pastors, the complaint must be alleging a claim for clergy malpractice. The School also cites to FAC ¶116, which states that Defendants have a duty to exercise reasonable care to protect children "from predators and report abuse to law enforcement when it was found to have occurred under the auspices of the Church or by Church officials." *See* Defendant Covenant Life School Inc. Memorandum at 12.

Defendant Tomczak alleges that the FAC "necessarily concern matters of church doctrine and organization over which this Court has no jurisdiction." Defendant Tomczak cites to FAC ¶¶ 25, 26, 29, 33, 34 and 91 as the evidence for this argument. *See* Defendant Tomczak Memorandum at 7- 9.

ARGUMENT

Plaintiffs are suing Defendants because Defendants facilitate the sexual and physical abuse of children in their care. Each victims suffered from Defendants' acts and omissions,

which included (1) failing to stop and instead facilitating known ongoing predation, (2) affirmatively permitting known sexual predators to access young children in physical settings under Defendants' control (e.g. churches, schools, home groups), (3) obstructing justice by giving predators advance warning of arrest and investigation, and (4) conspiring together to hide past and current misconduct. *See* FAC ¶¶1, 24-114

Plaintiffs' tort lawsuit does not violate, or indeed even implicate, the Free Exercise Clause or of Establishment Clause of the First Amendment. The First Amendment provides, in relevant part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The prohibitions contained in the First Amendment apply to the states by operation of the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940).

A. Free Exercise

This Court need only apply neutral tort principles applicable to all, including religious organizations. Such application does not violate the Free Exercise Clause. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993) ("[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice."); *Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 878-82, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (stating that, unless the state attempts to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs, the Free Exercise Clause does not bar neutral, generally applicable laws).

The First Amendment prevents the courts from becoming entangled in religious doctrine; it does not bestow a "get out of jail free" card on wrongdoers who happen to be cloaked in religious garb or who claim to operate with religious authority. Indeed, although not cited by

Defendants, courts across the nation have rejected efforts comparable to Defendants to use the First Amendment to prevent adjudication of abuse claims. Most have found that the tort lawsuits may be adjudicated in a straightforward manner, using the same general standards of care commonly applied in tort lawsuits. *See Turner v. Roman Catholic Diocese of Burlington, Vermont,* 987 A.2d 960 (Vt. 2009); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.,* 196 F.3d 409, 431-32 (2d Cir.1999); *Doe v. Norwich Roman Catholic Diocesan Corp.*, 268 F.Supp.2d 139, 144-46 (D.Conn.2003); *Moses v. Diocese of Colorado*, 863 P.2d 310, 320-21 (Colo.1993); *Malicki v. Doe*, 814 So.2d 347, 360-63 (Fla.2002) (collecting cases); *Fortin v. Roman Catholic Bishop of Portland,* 2005 ME 57, 49-54, 871 A.2d 1208; *Roman Catholic Diocese of Jackson v. Morrison*, 905 So. 2d 1213 (Miss. 2005) (en banc) (collecting cases in Appendix A); *Doe v. Hartz,* 970 F.Supp. 1375, 1431–32 (N.D.Iowa 1997), *rev'd in part on other grounds,* 134 F.3d 1339 (8th Cir.1998) (allowing negligent supervision claims); *Sanders v. Casa View Baptist Church,* 898 F.Supp. 1169, 1175 (N.D.Tex.1995), aff'd, 134 F.3d 331 (5th Cir.1998); *Rashedi v. General Board of Church of the Nazarene*, 203 Ariz. 320, 54 P.3d 349 (Az. App. 2003); *Roman Catholic Bishop of San Diego v. Superior Court of San Diego County,* 42 Cal.App.4th 1556, 50 Cal.Rptr.2d 399 (1996); *Bear Valley Church of Christ v. DeBose,* 928 P.2d 1315 (Colo.1996); *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 45 Conn.Supp. 397, 716 A.2d 967 (1998); *Malicki v. Doe,* 814 So.2d 347 (Fla.2002); *Bivin v. Wright,* 275 Ill.App.3d 899, 656 N.E.2d 1121 (1995); *Konkle v. Henson,* 672 N.E.2d 450 (Ind.Ct.App.1996); *Odenthal v. Minnesota Conference of Seventh–Day Adventists,* 649 N.W.2d 426 (Minn.2002); *F.G. v. MacDonell,* 150 N.J. 550, 696 A.2d 697 (1997); *Kenneth R. v. Roman Catholic Diocese,* 229 A.D.2d 159, 654 N.Y.S.2d 791 (1997); *Smith v. Privette,* 128 N.C.App. 490, 495 S.E.2d 395 (1998); *Mirick v. McClellan,* 1994 WL 156303 (Ohio Ct.App.1994); *Erickson v. Christenson,* 99 Or.App. 104, 781 P.2d 383 (1989); *Martinez v. Primera Asemblea de Dios, Inc.*, No. 05–96–

01458, 1998 WL 242412 (Tex.Ct.App. May 15, 1998); *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wash.2d 699, 985 P.2d 262 (1999); *Doe v. Liberatore*, 478 F.Supp.2d 742, 770-771 (M.D. Pa. 2007) (discussing depth of case law rejected First Amendment defense and distinguishing Franco v. Church of Latter Day Saints, relied on by Defendants).

There is no contrary law in Maryland. The only two cases cited by Defendants are clearly inapposite. In one, *Latty v. St. Joseph's Society of the Sacred Heart, Inc.*, 198 Md.App. 254, 17 A.3d 155 (Md.App. 2011), plaintiffs sought damages arising from a Catholic priest's violation of his vow of celibacy. The other also involved sexual acts between consenting adults, with a church member suing the church after her affair with her pastor ended. *Borchers v. Hrychuk*, 126 Md.App. 10, 727 A.2d 388 (Md.App. 1999). Neither of these cases has any impact on the analysis of Plaintiffs' lawsuit, which arises from Defendants causing harm to children by permitting and covering up extensive sexual and physical abuse.

In any event, even Defendants themselves fail to assert that their religion permits such misconduct. Defendants failed to identify a specific religious doctrine or practice that will be burdened if Plaintiffs' lawsuit goes forward. To the contrary, Defendants have made public statements to opposite effect, claiming their religious beliefs are inconsistent with abuse of children. *See* Exhibits A and B, quoted above in Statement of Facts.

Yet as matter of black-letter law, to be protected under the Free Exercise Clause, the conduct that the state seeks to regulate must be "rooted in religious belief." *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Even then, the freedom to act in accordance with religious beliefs is not absolute. Id. at 303-04 ("Conduct remains subject to regulation for the protection of society."). In short, Defendants' First Amendment argument lacks any weight whatsoever under the Free Exercise Clause.

B. The Establishment Clause

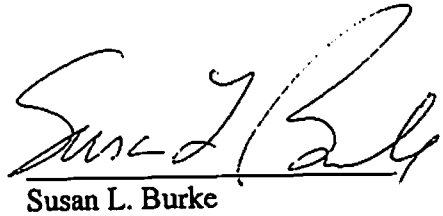
Nor do Defendants' arguments gain any traction under the Establishment Clause. That clause of the First Amendment prohibits government action that tends to endorse, favor, or in some manner promote religion. In *Lemon v. Kurtzman*, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971), the Supreme Court announced a three-prong Establishment Clause test: (1) governmental action must have a secular purpose; (2) its primary effect must not enhance or inhibit religion; and (3) the action must not foster an excessive government entanglement with religion. In evaluating whether a law that is religiously neutral on its face violates the Establishment Clause, we must inquire if the law has either the purpose or principal effect of advancing or inhibiting religion. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 648-49, 122 S.Ct. 2460, 153 L.Ed.2d 604 (2002). Whether there is excessive government entanglement with religion is a factor to consider in evaluating whether the principal effect of the governmental action is to advance or inhibit religion. *Agostini v. Felton*, 521 U.S. 203, 232, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997); *see also Zelman*, 536 U.S. at 648-49, 122 S.Ct. 2460; id. at 668, 122 S.Ct. 2460 (O'Connor, J., concurring); *Mitchell v. Helms*, 530 U.S. 793, 807, 120 S.Ct. 2530, 147 L.Ed.2d 660 (2000) (plurality opinion).

Not all "entanglements" are constitutionally proscribed. *Chittenden v. Waterbury Ctr. Cmty. Church, Inc.*, 168 Vt. 478, 487, 726 A.2d 20, 26 (1998). Excessive entanglement between church and state may occur when governmental regulation necessitates an examination of religious doctrine or results in a close surveillance of religious institutions. *Hernandez v. Comm'r*, 490 U.S. 680, 696-97, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1989); see also *Lemon*, 403 U.S. at 615, 91 S.Ct. 2105 (instructing that an excessive entanglement inquiry should "examine the character and purposes of the institutions that are benefitted, the nature of the aid that the

State provides, and the resulting relationship between the government and the religious authority").

Here, the Court can – and should – bar introduction of any evidence regarding any religious doctrines that underpin the Defendants' faith. Those doctrines are not being advanced or interfered with by a trial that focuses on whether Defendants breached their duties to Plaintiffs. The content of the religious doctrines have absolutely no bearing on this lawsuit, because common law, not ecclesiastical principles or law, establishes the scope of Defendants' duties. Plaintiffs' claims do not involve in any way the internal, ecclesiastical matters of religious institutions. *See Serbian E. Orthodox Diocese*, 426 U.S. at 708-09, 96 S.Ct. 2372; *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449-50, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). The duty owed by defendant to protect minors from sexual abuse is not different from the duty owed by other institutions to which the common law applies. As there is no excessive entanglement, there is no violation of the Establishment Clause. See *Martinelli*, 196 F.3d at 431; *Doe*, 268 F.Supp.2d at 145-46; *Smith v. O'Connell*, 986 F.Supp. 73, 80-82 (D.R.I.1997); *Malicki*, 814 So.2d at 363-64; Konkle v. Henson, 672 N.E.2d 450, 454-56 (Ind.Ct.App.1996); *Roman Catholic Diocese of Jackson*, 905 So. 2d at 1229-30.

Stated differently, whether the Defendants operating the schools, churches and home groups are Christian, Jewish, Buddhist or Muslim makes absolutely no difference: they have the same duties owing to children given over to their care. Defendants' First Amendment arguments lack any merit whatsoever.



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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2013, I served the foregoing Plaintiffs' Notice of Discovery on the following counsel of record via email and regular mail delivery.

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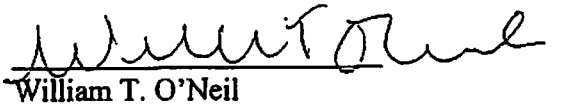
By: 

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