Case Comment: *Garcia V. Church of Scientology Flag Service Organization*

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This piece analyses the decision rendered by Judge James D. Whittemore of the United States District Court for the Middle District of Florida in the case of Garcia v Church of Scientology Flag Service Organization. *It goes beyond the face of the decision, which upholds an arbitration award, to argue that the decision has significant implications for freedom of religion in the United States. More specifically, it argues that the decision narrows the grounds upon which a religious arbitration award can be vacated by a court. The decision allows religious legal systems to, in some circumstances, exist with no oversight from the court system. It exemplifies and supports the thesis that the protections afforded to religious freedom in the United States create room for religious legal systems that are inconsistent with the mainstream legal system to exist. Finally, this piece considers, in light of the obvious issues raised by Judge Whittemore's decision, whether it might be time to rethink judicial review of religious arbitration awards.*

Keywords: United States, arbitration, arbitration award, freedom of religion, legal system, judicial review, Scientology, religion

1 INTRODUCTION

On 17 July 2018, a United States District Judge rendered a five-page decision in which he upheld an arbitration award. At first sight, there is nothing ground-breaking about the decision. It was rendered by a first instance court in Florida and effectively upheld an arbitration award. Arbitration awards are, today, as common as milk and sunrises. And they get upheld at various levels of our court systems every day.

In this short piece, I will argue that this overlooked decision tells us a great deal about freedom of religion in the United States of America. It creates a precedent which strengthens the protections afforded to religions and those who practice them. It creates further room for members to respect the rules of their faith, i.e. to abide by the rules of religious legal systems which exist within the United States yet are foreign to and often inconsistent with the mainstream legal system. In this piece, I also consider whether it might be time to rethink the rules regarding judicial review of religious arbitration awards, in light of the obvious issues raised by Judge Whittemore's decision.

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Lord, Phil. 'Case Comment: *Garcia V. Church of Scientology Flag Service Organization*'. *Arbitration: The Int'l J. of Arb., Med. & Dispute Mgmt* 86, no. 2 (2020): 211–222.

2 THE DECISION

On 17 July 2018, Judge James D. Whittemore of the United States District Court for the Middle District of Florida rendered his decision in the case of *Garcia v. Church of Scientology Flag Service Organization*.[1]

The case was brought by Luis Garcia, a well-known figure within the community of former Scientologists.[2] Garcia is a entrepreneur, who was a Scientologist for decades.[3] Through his journey as a Scientologist, Garcia ascended to the highest level of spiritual training provided by the Church of Scientology.[4] He also donated over one million dollars to the Church and its various religious and community initiatives.[5]

On 6 November 2010, Garcia left the Church and wrote a letter to David Miscavige, the leader of the religion, regarding decisions by church management which he found to be in direct violation of Scientology policies and procedures.[6] Scientologists believe that L. Ron Hubbard, the religion's founder, is the only source of Scientology policy, and that failing to respect his policies and procedures is a serious transgression.[7]

Garcia later filed a claim against the Church. Pursuant to a contract he signed as a Scientologist, the claim needed to be brought before and decided by a panel of Scientologists.

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1 As the decision has not been published in a reporter, the paragraphs are not numbered; *Garcia v. Church of Scientology Flag Service Organization*, 2018 US Dist LEXIS 119099 (MD Fla).

2 Garcia's lawsuit was extensively covered on Tony Ortega's blog, perhaps the most prominent blog regarding Scientology, with over fifteen articles covering various developments in the lawsuit, *see* e.g. Tony Ortega, *The Garcias Won't Go Down Without a Fight: Filing Appeal of Scientology's 'Arbitration' Farce*, The Underground Bunker (17 Aug. 2018), tonyortega.org/2018/08/17/the-garcias-wont-go-down-without-a-fight-filing-appeal-of-scientologys-arbitration-farce/ and Tony Ortega, *Garcia Case Update: Has Judge Whittemore Managed to Fill a Scientology Arbitrating Panel?*, The Underground Bunker (12 Aug. 2017), tonyortega.org/2017/08/12/garcia-case-update-has-judge-whittemore-managed-to-fill-a-scientology-arbitrating-panel/. Garcia was also featured on the television show *Leah Remini: Scientology and the Aftermath*, which reached a wide audience and ran on A&E channel from 2016 to 2019, *see Leah Remini: Scientology and the Aftermath: About*, A&E, www.aetv.com/shows/leah-remini-scientology-and-the-aftermath/about and *Leah Remini: Scientology and the Aftermath: The Business of Religion*, A&E (24 Oct. 2017), www.aetv.com/shows/leah-remini-scientology-and-the-aftermath/season-2/episode-9. Garcia's wife is also a plaintiff in this case.

3 *See* e.g. Thomas C Tobin, *Scientology Couple Who Gave $1.3 Million: Church Mission 'Has Been Corrupted'*, The Tampa Bay Times (13 Nov. 2011), www.tampabay.com/news/scientology/scientology-couple-who-gave-13-million-church-mission-has-been-corrupted/1201187/.

4 Garcia ascended to OT VIII, which is the highest level of spiritual counselling provided by the Church, *see* Tobin, *supra* n. 3 and Phil Lord, *Scientology's Legal System*, 21(1) Marburg J Religion 1, 11–12 (2019).

5 *See* Tobin, *supra* n. 3 and *Garcia v. Church of Scientology Flag Service Organization, supra* n. 1.

6 *See* Mike Rinder, *A Letter from Garcia*, Something Can Be Done About It: Mike Rinder's Blog (6 Nov. 2010), www.mikerindersblog.org/a-letter-from-garcia/ (which reproduces the letter in full).

7 *See* Lord, *supra* n. 4, at 20–21.

Garcia essentially argued that the Church defrauded him and asked for various refunds. As a member, Garcia paid in advance for various services. Although payments to the church are labelled donations and deductible under the taxation laws, the Church charges fixed amounts for services.[8] Members make additional donations to the International Association of Scientologists, which provides funding for such things as legal fees borne by the Church, and to community initiatives supported by the Church.[9] However, the services which form part of Scientology's path to spiritual fulfillment, the Bridge to Total Freedom, are paid for by members at fixed, predetermined prices.[10] Members are also encouraged to pay for services ahead of time, with the money prepaid held 'on account' at various Scientology organizations. Members keep control of that money and can redirect it to pay for other services.[11]

L. Ron Hubbard clearly laid out that former members can be refunded the cost of services they paid for ahead of time.[12] In recent times, however, this policy has effectively been ignored. Indeed, most members who leave the Church are considered apostates and labelled 'suppressive persons'.[13] Once one is labelled a

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[8] This specific issue used to be a longstanding problem for the Church. In the 1980s, several lawsuits were brought in the United States regarding the deductibility of donations to Scientology and its affiliated organizations. The issue was that Scientology, unlike most religions, charges fixed prices for specific services, instead of just soliciting voluntary, variable donations from its members. Relevant guidance from the Internal Revenue Service (the United States revenue agency) held that these quid pro quo payments were purchases and sales of services, not deductible charitable donations. Several appeals of court decisions on the matter eventually reached the Supreme Court of the United States through the case of *Hernandez v. Commissioner*, 490 US 680 (1989). The Court held in favour of the Internal Revenue Service and dismissed the challenge to the disallowance of these fixed donations. However, the Internal Revenue Service eventually reached a settlement with the Church, through which it granted tax exemption to Scientology and its affiliated organizations, rendering the issue moot. The settlement agreement was initially confidential, but had to be disclosed and was widely covered by news organizations, *see* e.g. Elizabeth MacDonald, *Scientologists and IRS Settled for $12.5 Million*, Wall St. J. (30 Dec. 1997) and Douglas Frantz, *$12.5 Million Deal with I.R.S. Lifted Cloud Over Scientologists*, The N.Y. Times (31 Dec. 1997), www.nytimes.com/1997/12/31/us/12.5-million-deal-with-irs-lifted-cloud-over-scientologists.html. The agreement is archived here: *Closing Agreement on Final Determination Covering Specific Matters*, www.cs.cmu.edu/~dst/Cowen/essays/agreemnt.html#In%20General.

[9] *See* Lord, *supra* n. 4, at 4. Donations to the International Association of Scientologists are not directed to a specific church or project and effectively generate a fund which the Church can use as it pleases. In the past, it has served to pay for legal expenses borne by the Church. *See also Frequently Asked Questions: Church Funding: What Is the International Association of Scientologists?*, Scientology, www.scientology.org/faq/scientology-in-society/what-is-the-international-association-of-scientologists.html and Tony Ortega, *How Scientology's 1970s Infiltration Scandal Led to the Creation of Its IAS Slush Fund*, The Underground Bunker (9 July 2015), tonyortega.org/2015/07/09/how-scientologys-snow-white-program-led-to-the-creation-of-its-ias-slush-fund/.

[10] *See Hernandez v. Commissioner, supra* n. 8.

[11] *See* e.g. *Scientology: Refunds and Repayments of Monies on Account,* The Scientology Money Project (25 Oct. 2015), scientologymoneyproject.com/2015/10/25/scientology-refunds-and-repayments-of-monies-on-account/ and Mangotology, *Inside the Scientology Celebrity Centre: An Ex-Parishioner Reveals All* (26 Jan. 2015), www.youtube.com/watch?v=LfKqOUMrCw8.

[12] *See* e.g. L Ron Hubbard, *Refund Policy*, Hubbard Communications Office Policy Letter (23 Oct. 1963).

[13] *See* Lord, *supra* n. 4, at 19–20.

suppressive person, they are, among other things, not allowed to enter Scientology churches. As the refund request form is completed with the relevant office inside a church, most former members cannot request the refund they are entitled to under Scientology policy.[14]

Garcia's claim is for the refund of moneys held on account at various Scientology organizations and of donations that he alleges were solicited from him for purposes that were never fulfilled – more specifically regarding Scientology's International Association of Scientologists fund, which covers general expenses, and specific funds through which money was raised for Scientology's mecca, which includes its flagship 'flag' building and a 'superpower' building which provides a specific Scientology 'rundown'.[15]

Pursuant to a contract signed by all members when they join the religion, the claim needed to be arbitrated by a panel of Scientologists applying Scientology policy. The panel claims to have followed Scientology policy and its procedural safeguards when arbitrating the claim. It also claims to have given Garcia a fair hearing even though he was declared a suppressive person.

Unsurprisingly, the panel mostly denied Garcia's claim. Garcia was awarded USD 18,495.36 (as repayment of money held on account for accommodations at religious retreats). He was claiming almost one million dollars. Garcia then moved to have the award vacated by a United States federal court. He alleges that he was not afforded several fundamental procedural protections and that the panel was partial.

Judge Whittemore reviews the jurisprudence on this point. He notes that evident partiality and a violation of procedural safeguards are two of the several, narrow grounds which can justify vacation of a Federal Arbitration Act (FAA)[16] award. However, he also notes that the grounds upon which a religious arbitration award can be vacated are even narrower. Evident partiality is, in a secular context, only an acceptable ground where an actual conflict exists or where information, which would lead a reasonable person to conclude that a potential conflict exists, is withheld.[17] Neither the case being reviewed here nor the prior jurisprudence set out a different test for religious arbitration awards. The secular arbitration tests are applicable, but with greater judicial restraint and the caveat that the court cannot interpret the underlying religious dogma. For this latter part of the reasoning, Judge Whittemore relies on *Lang v. Levi*, which states:

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[14] *See* e.g. *Scientology: Refunds and Repayments of Monies on Account*, *supra* n. 11 (which reproduces a letter from Scientology to a former member essentially stating what I mention in the main text).

[15] *See* e.g. Lord, *supra* n. 4, at 23 and *Churches: The New Flag Building: Scientology Spiritual Headquarters*, Scientology, www.scientology.org/churches/flag-land-base/scientology-the-new-flag-building.html.

[16] In the United States, the Federal Arbitration Act (9 USC § 1 (1925)) provides the framework for enforcement of arbitration awards.

[17] *See Johnson v. Directory Assistants Inc*, 797 F (3d) 1294 at 1300 (11th Cir 2015).

> As noted earlier, the standard for vacating an arbitrator's decision is a narrow standard to begin with. The addition of the religious context further narrows the standard to make our intervention nearly impossible. As has been clear since secular courts were first faced with intrachurch property disputes, courts have jurisdiction over these cases, but are prohibited from interpreting the underlying religious dogma. This is known as the religious question doctrine.[18]

Judge Whittemore's reasoning on this point is not a mere application of the test set out in the jurisprudence. He, indeed, concludes that neither indicator of evident partiality needs to be applied: partiality was an inherent aspect of Scientology's arbitration procedures, most notably because the agreements explicitly provide for the selection of interested arbitrators. As such, Garcia cannot avail himself of either prong of evident partiality as defined by the jurisprudence.

Judge Whittemore also dismisses the claims that proper procedural safeguards were not provided. He concludes that Scientology procedure was duly followed and that he would, regardless, be prevented from reviewing the application of procedural safeguards under the religious question doctrine.

3 ANALYSIS

It would be easy to overlook this decision. It is a decision from a first instance court which effectively upholds an arbitration award. While the decision has generated some interest within the community of Scientology reporters, it has not generated as much interest from the broader legal community.[19] In this section, I will argue that Judge Whittemore's decision is significant, as it greatly limits judicial review of religious arbitration awards, thereby strengthening the protection afforded to freedom of religion in the United States. In doing so, it creates enough room for religious legal systems that are inconsistent with the mainstream legal system to co-exist alongside the mainstream legal system.[20]

I, first, address how the decision narrows the scope of judicial review of religious arbitration awards. I, then, consider the implications for religious legal systems, as well as the extent to which the decision exemplifies the thesis that constitutional protections of religious freedom allow religious legal systems to exist independently from the mainstream legal system. I, finally, address whether it might be time to rethink judicial review of religious arbitration awards. I do so

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18 198 Md App 154 at 169, 16 A (3d) 980 at 989 (2011) [references omitted].

19 Tony Ortega, *Judge to Garcias: Scientology Can Lie and Cheat and There's Nothing I Can Do About It*, The Underground Bunker (19 July 2018), tonyortega.org/2018/07/19/judge-to-garcias-scientology-can-lie-and-cheat-and-theres-nothing-i-can-do-about-it/.

20 On my use of the phrase 'mainstream legal system', *see* generally Lord, *supra* n. 4, at 8. In this piece, I use the phrase to refer to the secular legal system of the United States.

in light of the obvious issues the decision raises with the very limited scope of such judicial review.

3.1 Narrowing the scope of judicial review of religious arbitration awards

First, Judge Whittemore does more than apply the test set out in the jurisprudence. He could have come to the same conclusion through the test set out in prior cases. He could, indeed, have applied the stringent test of evident partiality and concluded that its elements are not met. The precedent most useful to Judge Whittemore's reasoning, *Lang v. Levi*, defines this ground as 'evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party'.[21] Judge Whittemore could have concluded that the panel of Scientologists that ruled on Garcia's claim was not truly partial, as the parties were aware that the members of the panel would be Scientologists in good standing.

Instead, Judge Whittemore simply states that, to the extent that the arbitrators were partial as a result of their affiliation with the Church, Garcia had agreed to the inherent partiality of the agreements he signed with the Church, which provided for the selection of a panel of Scientologists in good standing. Even though the reasoning on this point is quite succinct, Judge Whittemore appears not to apply the test from the jurisprudence and rather state that the test cannot be used by litigants whose arbitration agreement provides for the selection of a panel of interested arbitrators. To the extent that courts interpret Judge Whittemore's reasoning as I did, this distinction is significant. It further restricts judicial review of these arbitration procedures. While, in the past, judges would have had to apply the test set out in the jurisprudence (and could have concluded that a conflict exists pursuant to the test), Judge Whittemore creates a precedent where (1) if an arbitration agreement provides for the selection of interested arbitrators, (2) an arbitration award rendered pursuant to the agreement cannot be reviewed based on a conflict arising from the selection of interested arbitrators. These potential conflicts are completely removed from the scope of judicial review.

To support his reasoning, Judge Whittemore applies the precedent of *Winfrey v. Simmons Foods Inc.* This precedent requires that the plaintiff demonstrate prejudice to justify vacation of an award rendered pursuant to an agreement which provides for the nomination of an interested arbitration panel.[22] Judge Whittemore concludes that such prejudice has not been demonstrated here, as the only relevant

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[21] *Supra* n. 18, at 163.

[22] 495 F (3d) 549 at 551 (8th Cir 2007).

alleged prejudice is the partiality of arbitrators pursuant to the arbitration agreement signed by Garcia.

There is another way in which this decision narrows the scope of judicial review. It is far more implicit, yet arises quite clearly from the decision. Garcia's claim includes an allegation of fraud. Throughout his reasoning, Judge Whittemore never draws a distinction between the allegation of fraud and the other allegations. There should arguably be a distinction – one of particular relevance to the scope of judicial review.

It can be persuasively argued that the central issue of whether Garcia is entitled to a refund is one of a religious nature. The contract that Garcia signed with the Church covers his relationship with the Church. If Garcia made an advance payment for spiritual services and the Church holds the money on account, his right to repayment of the money held on account is covered by Church policy and subject to arbitration under the agreement if a dispute arises.[23] Similarly, if Garcia is dissatisfied with spiritual services received from the Church, his right to a refund for these services is covered by Church policy and subject to arbitration under the agreement if a dispute arises.[24] These issues directly concern the interpretation and application of religious doctrine. Courts are prevented, under the United States Constitution, from reviewing an arbitration award on these issues.[25]

The allegation of fraud, however, seems intrinsically different. Garcia is essentially alleging that the Church obtained donations from him under false pretences. One significant amount Garcia claims is USD 340,000, which was donated to fund the superpower building at Scientology's Flag Land Base.[26] This claim is different from the refund request, as it is not intrinsically religious in nature. While the Church can argue – correctly, as I have mentioned above – that its policy covers refunds and repayment of money held on account, it can hardly be argued that Scientology policy covers fraud or that it provides a different definition of fraud than the relevant statutes. The claim does not arise under the contract in the same way that the refund claim does. Garcia is alleging that some further donations, in addition to those obtained legitimately by the Church, were procured through fraudulent misrepresentations. Even if we accept that this issue had to be submitted to the arbitration panel, its outcome should be reviewable by the court under a much less stringent standard, as it does not call for interpretation or application of religious doctrine.[27]

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23 *See* Hubbard, *supra* n. 12.

24 *Ibid*.

25 *See* e.g. *Watson v. Jones*, 80 US (13 Wall) 679 at 727, 20 L Ed 666 (1872), which Judge Whittemore cites in his reasoning.

26 On these buildings, *see* n. 15 and accompanying text, above.

27 The prohibition on review from *Watson v. Jones, supra* n. 25, at 727 and subsequent cases would, then, be inapplicable. The other tests from the jurisprudence, mentioned in the first section, would apply.

By assuming that the allegation of fraud falls within the purview of constitutional protections of religious freedom, Judge Whittemore can be understood to further narrow the scope of judicial review of religious arbitration awards. His decision can serve as a precedent to argue that most or all issues arising even indirectly under a contract which provides for mandatory religious arbitration will not be reviewable by courts, as they will be presumed to interpret or apply religious doctrine.

3.2 Implications for religious legal systems

Narrowing the scope of judicial review of religious arbitration proceedings strengthens the protection afforded to freedom of religion in the United States. Members of religions are afforded the opportunity to act in a way that is consistent with their religious beliefs and enter into arbitration agreements with their church. Religions are afforded the opportunity to create religious doctrine and enforce it, with limited oversight from the court system. This religious doctrine can include rules and enforcement mechanisms that significantly differ from those that exist within the mainstream legal system.

My prior research has argued that Scientology scripture sets out an independent and freestanding legal system, which is sometimes inconsistent with the mainstream legal system.[28] This legal system is only relevant to the extent that it is allowed to exist within a country, even where it is inconsistent with the country's legal system. Judge Whittemore's decision exemplifies how constitutional protections afforded to religious freedom allow religious legal systems to exist in this way. Religious legal systems are given legitimacy and are allowed to guide the behaviour of the members of the religions within which they exist. Members can submit to these legal systems, even where their rules are inconsistent with those of the mainstream legal system. The decision demonstrates the application of two of the three pillars, which I have previously argued constitute a legal system: rules and enforcement mechanisms (the third being correctional facilities).[29] Scientology's rules, in this case, are different from those of the mainstream legal system, and they are applied through an enforcement mechanism that differs from that of the mainstream legal system. Most notably, Scientology's arbitration procedure as applied in this case does not provide the same procedural safeguards as the mainstream legal system, and its rules of evidence are different. Constitutional protections of religious

[28] *See* generally Lord, *supra* n. 4.
[29] *Ibid*.

freedom allow Scientology to edict and enforce its own rules, with little and sometimes no oversight from the court system.

3.3 Time to rethink judicial review of religious arbitration awards?

Having considered how the decision narrows the scope of judicial review of religious arbitration awards and taken a step back to consider the implications for religious legal systems, it is appropriate to now take a further step back and consider some of the broader issues the decision raises regarding judicial review of religious arbitration awards.

First, the decision exemplifies the potentially absurd result which is a corollary of severely limiting judicial review of religious arbitration awards. As mentioned above, courts are prevented from reviewing the application and interpretation of religious doctrine.[30] This effectively gives religious groups license to misapply their own religious doctrine, with no external accountability. The arbitration procedure in the case at bar is a prime example of the potential for abuse. First, Garcia's claim for a refund was disallowed in part by the arbitration panel, even though Scientology policy clearly sets out Garcia's right to obtain the refund he was requesting.[31] Similarly, though Garcia would have had a strong claim of fraud under secular law and though Scientology policy does not cover fraud, the panel rejected Garcia's arguments on this point, and Judge Whittemore declined to review the panel's decision. Even though there is clear evidence that the panel ignored or at least misapplied Scientology policy, there was nothing the court could do to review the resulting award. The somewhat absurd result is that Scientology could misapply or ignore its own policy, with no oversight from the court system. Similarly, Scientology could engage in (alleged) misconduct such as fraud, and Garcia's only protection was an internal arbitration procedure, again with no oversight from the court system.

Though one could argue that religions will have their own internal review mechanisms, such an argument would be, especially regarding the case at bar, unpersuasive. The decision makes no mention of available review mechanisms of the arbitration procedure. Scientology's only review mechanism is generally a committee almost identical to the first committee whose decision is being reviewed.[32] Considering that Judge Whittemore agrees that the arbitration

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30 *See* e.g. *Watson v. Jones, supra* n. 25, at 727.
31 *See* Hubbard, *supra* n. 12.
32 *See* e.g. Lord, *supra* n. 4, at 21–22.

procedure at least could have been biased, this internal review mechanism would afford Garcia little protection.

Furthermore, it is worth mentioning that these constitutional protections of religious freedom will often prevent plaintiffs from proving prejudice under the *Winfrey v. Simmons Foods Inc.* test.[33] The test requires a demonstration of prejudice to justify vacation of an award rendered pursuant to an agreement which provides for the nomination of an interested arbitration panel. While prejudice would clearly result from the misapplication of religious doctrine, courts are prevented from evaluating whether the policy was misapplied or not.

While an analysis of how the rules regarding judicial review of religious arbitration awards could or should be changed is beyond the scope of this piece, the above analysis helps make a strong case that such change would be appropriate. While the current framework ensures the primacy of freedom of religion and the respect of members' right to submit to the rules of their religion, it may have been taken too far and now afford insufficient procedural and other safeguards to members of religions. We cannot expect religious legal systems to provide the same safeguards as the mainstream legal system, and at least some oversight from the court system is likely necessary to creating a framework which is not intrinsically ripe for abuse and often stacked against members.

4. CONCLUSION

This piece has analysed the decision rendered by Judge James D. Whittemore of the United States District Court for the Middle District of Florida in the case of *Garcia v. Church of Scientology Flag Service Organization*. It has moved beyond the face of the decision, which upholds a religious arbitration award, and considered how the decision develops the existing jurisprudence and narrows the scope of judicial review of these arbitration awards. It has, then, considered the implications for religious legal systems and, more specifically, the extent to which the decision helps develop a framework where religious legal systems which are inconsistent with the mainstream legal system can exist within the United States, with little or no oversight from the court system. Finally, this piece has considered some of the issues raised by the decision, which point to the potential need to rethink judicial review of religious arbitration awards. Overall, the decision points to the risks of taking freedom of religion and limited review of arbitration awards, especially in a religious context, too far.

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[33] *Supra* n. 22, at 551.

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