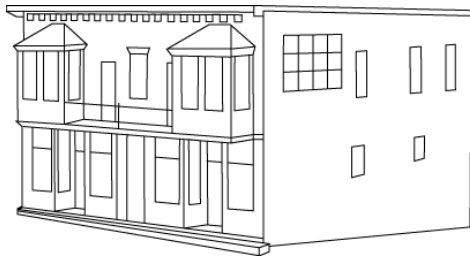


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Monday, February 07, 2022


Hon. Laurence D. Rubin, Presiding Justice
Hon. Lamar W. Baker, Associate Justice
Hon. Carl H. Moor, Associate Justice
Hon. Dorothy C. Kim, Associate Justice
SECOND DISTRICT COURT OF APPEAL, DIVISION FIVE
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: *Chrissie Carnell Bixler, et al. v. Superior Court for the State of California, County of Los Angeles, No. B310559*
(Opinion filed Jan. 19, 2022)

Dear Presiding Justice Rubin and Associate Justices Baker, Moor, and Kim:

Pursuant to California Rules of Court, rule 8.1120 (a), I hereby respectfully request this Court publish its recent opinion in in this case. ^{1/}

^{1/} Requestor, Ford Greene, is a trial and appellate attorney who has long and successfully litigated against the Scientology Organization and other cult organizations that seek to cloak nefarious and harmful conduct under the protections conferred by First Amendment religious liberty and thus avoid accountability under the law. See, e.g., *Raul Lopez v. Church of Scientology*, Second District, Division 3, Case Number B150754, (2001) LASC BC200852; *Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872, LASC C332027 before the U.S. Supreme Court 111 S.Ct. 1298 (1991) and then successfully on judgment enforcement action in the trial court resulting in Scientology interpleading over \$2.6 million in the trial court to prevent evidentiary hearing on alter ego liability. Greene also successfully litigated *Molko v. Holy Spirit Association* (1988) 46 Cal.3d 1092 which imposed liability for coercive practices perpetrated under the guise of religion and which in substantial part provided the basis for the first Second District opinion in *Wollersheim v. Church of Scientology* (1989) 212 Cal.App.3d 872 [vacated by grant of cert.]. Greene also successfully employed at trial the criminal defense of necessity to obtain acquittal of deprogrammers charged with felony kidnapping and false imprisonment *People v. Brandyberry* (1988) Denver District Court, 88CA1741, ruling disapproved on appeal Colorado Court of Appeals, Div. IV 812 P.2d 674.




This Court's opinion reversed the trial court's decision that the plaintiffs/petitioners are bound by one-sided sectarian arbitration agreements that petitioners signed while they affiliated with Scientology. Scientology sought to extend the scope of such agreements to cover misconduct petitioners alleged it committed against them **after** they had chosen to disassociate from it.

As set forth below, this opinion involves key legal issues of continuing public interest and applies an existing rule of law to a set of facts different from those stated in other published opinions. The opinion also explains and clarifies an existing rule of law as well as makes a significant contribution to legal literature by construing important Constitutional rights. Indeed, it establishes a new rule of law. Accordingly, the opinion warrants publication. (Cal. Rules of Court, Rule 8.1105).

Grounds for Publication

California Rule of Court 8.1105 sets forth the standards used to evaluate when an opinion of a Court of Appeal or of a superior court appellate division should be certified for publication in the Official Reports. The standards are:

- (1) Establishes a new rule of law;
- (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;
- (3) Modifies, explains, or criticizes with reasons given, an existing rule of law;
- (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;
- (5) Addresses or creates an apparent conflict in the law;
- (6) Involves a legal issue of continuing public interest;
- (7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law;



(8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or

(9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.


As outlined below, this Court’s opinion in this matter serves at least five Rule 8.1105 purposes.

The opinion applies existing law to a new set of facts and clarifies, if not establishes outright, that the First Amendment prohibits tying a secular person to sectarian arbitration processes for life. (Cal. Rules of Court 8.1105(c)(1),(2) and (4)).

Bixler, et al. v. Church of Scientology International, et al, Los Angeles County Super. Ct. No. 19STCV29458 involves former members of the Church of Scientology who, during the times of their membership, signed certain “Religious Services Agreements.” Each Religious Service Agreement contained arbitration clauses the effect of the enforcement of which required “irrevocably” and “forever” all disputes with Scientology be resolved according to the Scientology’s own “Ethics, Justice, and Binding Religious Arbitration system.” (*Bixler*, p. 2). The trial court upheld the utterly broad scope of such provisions to include alleged misconduct Scientology perpetrated against petitioners after they had disassociated from it.

This Court, in reversing the trial court’s decision, correctly held that the plaintiffs “have a constitutional right to disassociate from a religious community” and “[h]aving exercised this right to disassociate, they are no longer members subject to the Church’s religion and rules, which otherwise would bind them to Scientology dispute resolution for life.” (*Bixler*, p. 35). This Court rightfully recognized to compel petitioners’ continued sectarian affiliation would violate petitioners’ bedrock individual First Amendment right to disassociate from religion.

This Court pegs the basis for its decision on “the constitutional implications of a member’s decision to leave a faith.” (*Bixler*, at p. 24.) It relies on the recognition that “[a]n individual possesses an ‘inalienable First Amendment right to the free exercise of religion, which includes the right to change her religious beliefs . . .’ (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 118.)” (*Bixler*, at p. 24.) *Weiss*, in turn, relies heavily on *Zummo v. Zummo* (Pa. Super 1990) 574 A.2d 1130, 1146). *Zummo* confirms the legitimacy of the “constitutional freedom to question, to doubt, and to change one’s convictions, [which is] protected by the Free Exercise and Establishment Clauses, [and] is important for very pragmatic reasons.” (*Ibid.*) Likewise, *Guinn v. Church of Christ of Collinsville* (Okla. 1989) 775 P.2d 776, 777 states “Implicit in the right to choose freely one’s own form of




worship is the right of unhindered and unimpeded withdrawal from the chosen form of worship.” (*Bixler* at p. 25.)

While not specifically cited, each of these cases - *Weiss*, *Zummo* and *Guinn* - follow, as they must, the wise constitutional guidance the Supreme Court set forth in *Wallace v. Jaffree* (1985) 472 U.S. 38, 53-54. In *Wallace*, the high court noted constitutional jurisprudence has “unambiguously concluded that the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all [fn. omitted.]. This conclusion derives support not only from the interest in respecting the individual’s freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful, [fn. omitted.] and from recognition of the fact that the political interest in forestalling intolerance extends beyond intolerance among Christian sects—or even intolerance among “religions”—to encompass intolerance of the disbeliever and the uncertain.”

Moreover, in the trial court and on appeal, Scientology contended that plaintiffs/petitioners agreed to be bound by Scientology dispute resolution procedures forever as a condition of receiving religious services in the first place. As stated by this Court, such an outcome would constitute an “eternal submission to a religious forum – a sub silencio waiver of petitioners’ constitutional right to extricate themselves from the faith.” While the trial court erroneously held that this result comports with the First Amendment, this Court correctly found that the “Constitution forbids a price that high.” Indeed, such result would eradicate plaintiffs/petitioner’s First Amendment right to reject sectarian affiliation and unconstitutionally bind them to Scientology “justice” for life. (*Bixler*, p. 37).

A published appellate opinion clarifying that the Constitution forbids enforcement of such a broad and extensive sectarian agreement against former members of a religion would protect other similarly situated individuals from being forced to suffer the same violations of conscience were enforcement to be compelled. Such violations of conscience are protected by the inalienable First Amendment right to freedom of thought and freedom of choice in matters of religion. “Freedom of thought, which includes freedom of religious belief, is basic in a society of free men.” (*U.S. v. Ballard* (1944) 322 U.S. 78, 86.)

No other Court of Appeal opinion has so clearly articulated the basis for declining to bind and coerce an independent person to any sectarian edict or requirement when she has decided she no longer desires to associate with such sectarian organization as, in the absence of judicial protection, would enforce it.



The opinion usefully articulates the Constitutional balance between sectarian autonomy on one hand and secular autonomy on the other in the context of explaining the application of an existing rule of law (C.R.C. 8.1105(c)(3)).

In the trial court, Scientology moved to compel the submission of plaintiffs to “religious arbitration.” (*Bixler* at p. 28.) In support of its position Scientology invoked “the legal doctrine of religious abstention.” (*Bixler* at p. 29.) This Court declined Scientology’s contention that evaluating the constitutionality of compelling religious arbitration in this case would involve a “review the procedures of Scientology arbitration” and thus violate the principle of religious abstention. (*Bixler* at p. 29.)

Instead, this Court focused properly on the central issue of consent. This Court clarified that “[r]eligious abstention has its roots in consent – specifically, an individual’s voluntary membership in, or employment by, a church... Here, petitioners withdrew their consent when they left the faith. The notion of consent no longer exists as the necessary predicate for religious abstention.” (*Id.*, p. 33). The Court further explained that refusing to enforce the religious arbitration agreement does not reflect hostility to religion, because the case involved two free exercise rights: Scientology’s First Amendment right to resolve disputes with its members without court intervention and plaintiff/petitioner’s First Amendment right to reject and leave it. (*Id.*, p. 35).

As noted in the preceding section, this Court specifically and clearly identified the nature of petitioners’ First Amendment right when it articulated “petitioners have a constitutional right to disassociate from a religious community. Having exercised this right to disassociate, they are no longer members subject to the Church’s religion and rules, which otherwise would bind them to Scientology dispute resolution for life.” (*Ibid.*)


The opinion involves a legal issue of continuing public interest (C.R.C. 8.1105(c)(6)).

A published opinion employing sufficient intellectual rigor so as to comprehensively and correctly analyze the enforceability of a sectarian agreement that a sectarian organization sought to impose against a secular individual who has disassociated from it will provide essential guidance to trial courts hearing similar motions to compel religious arbitration. A published opinion will promote certainty and consistency in the law. Absent publication, the issue will have to be litigated repeatedly. Such repetition would squander precious judicial resources. Abandoning this Court’s Opinion to depublishation would generate legal uncertainty. Perhaps most importantly, publication will insure that trial and appellate courts will continue to contribute to the development of this sensitive and very important area of the law. Depublishation, on the other hand, and will deprive the judiciary at large from confronting and addressing the legitimate and valuable contribution – the proper balancing of Constitutional rights - the *Bixler* case provides.

SECOND DISTRICT COURT OF APPEAL, DIVISION FIVE

Monday, February 07, 2022

Page 5 of 8.



Protecting the First Amendment rights of individuals to decline sectarian affiliation “forever” as against sectarian communities that would otherwise insist on binding such individuals to sectarian rules in perpetuity when such individuals have, in fact, rejected them, is a matter of profound and continuing public interest.

As one may readily surmise, there has been ongoing national and international interest in this question. ^{2/}

^{2/} The following list is representative, not exhaustive.

The Underground Bunker: Here’s Scientology’s petition for rehearing in Masterson lawsuit, arguing that court blew it.

By Tony Ortega

February 4, 2022

<https://tonyortega.org/2022/02/04/heres-scientologys-petition-for-rehearing-in-masterson-lawsuit-arguing-that-court-blew-it/>

Reason Magazine:

Scientology Arbitration and the First Amendment: Some Questions About *Bixler v. Superior Court*

Eugene Volokh

January 25, 2022

<https://reason.com/volokh/2022/01/25/scientology-arbitration-and-the-first-amendment-some-questions-about-bixler-v-superior-court/>

New York Post: Danny Masterson rape accusers free from Scientology arbitration rules

By Marjorie Hernandez

January 20, 2022

<https://nypost.com/2022/01/20/danny-masterson-rape-accusers-free-from-scientology-arbitration/>

Los Angeles Times: LA Times Today: Can ex-scientologists sue the church?

January 11, 2022

<https://www.latimes.com/california/suing-scientology-danny-masterson-chrissie-bixler-latt-123>

Daily Beast: Appeals Court Revives Harassment Suit Against Scientology and Danny Masterson

By Blake Montgomery

Jan. 20, 2022

<https://www.thedailybeast.com/appeals-court-revives-harassment-suit-against-church-of-scientology-and-danny-masterson>

SECOND DISTRICT COURT OF APPEAL, DIVISION FIVE

Monday, February 07, 2022

Page 6 of 8.

The Underground Bunker

Scientology will be central in tomorrow's Danny Masterson rape case hearing

By Tony Ortega

February 7, 2022

<https://tonyortega.org/2022/02/07/scientology-will-be-central-in-tomorrows-danny-masterson-rape-case-hearing/>

Rolling Stone: Everything We Know About the Civil Suit Against Danny Masterson and the Church of Scientology Ahead of a Nov. 2 hearing, we review the facts of the complicated case and what's at stake for Masterson's accusers

By Nancy Dillon

<https://www.rollingstone.com/culture/culture-news/what-we-know-danny-masterson-scientology-rape-civil-suit-1249704/>

New York Daily News: Former model describes 2 alleged rapes by Danny Masterson, says Church of Scientology protected him

By Nancy Dillon

May 19, 2021

<https://www.nydailynews.com/snyde/ny-former-model-testifies-about-alleged-rapes-by-danny-masterson-20210519-wwfp2vbwq5h4xe7rorkxcbrpnq-story.html>

Los Angeles Times: Can former Scientologists take the church to court? Or are religious tribunals the only recourse?

By Maura Dolan Staff Writer

Nov. 28, 2021

<https://www.latimes.com/california/story/2021-11-28/former-scientologists-lawsuit-court-trial-or-religious-tribunal>

Rolling Stone: Danny Masterson Rape Accusers Fight Scientology Arbitration at Hearing: The women's lawyer said forcing her clients into the church's "wholly one-sided" dispute-resolution process could violate their First Amendment rights to religious freedom

By Nancy Dillon Nov. 2, 2021

<https://www.rollingstone.com/culture/culture-news/danny-masterson-rape-accusers-fight-scientology-arbitration-hearing-1252008/>

Daily Mail: Four women who sued Church of Scientology for harassment after accusing 'That '70s Show' actor Danny Masterson of raping them at his Hollywood Hills home 20 years ago seek court trial instead of religious arbitration

- The former Church of Scientology members claim Masterson and the church harassed them for coming forward
- They say they were stalked and photographed and one says her pets were killed
- Four women, and the husband of one, filed the civil harassment lawsuit in 2019

SECOND DISTRICT COURT OF APPEAL, DIVISION FIVE

Monday, February 07, 2022

Page 7 of 8.

Conclusion

This Court’s opinion in *Bixler* should be published in the Official Reports because it serves five of the purposes outlined in California Rule of Court 8.1105(c): it establishes a new rule of law, applies the law to new facts, explains an existing rule of law, advances a new clarification of a provision of the United States Constitution, makes a significant contribution to legal literature and involves a legal issue of continuing public interest. (Cal. Rules of Court 8.1105(c)(1), (2), (3), (4), (6) and (7)). Courts, attorneys, and any citizen seeking to exercise and protect their First Amendment rights would benefit from this Court’s guidance on the above issues.

Based on the foregoing discussion and authorities, I respectfully request that this Court order the opinion certified for publication.

Sincerely Yours:
HUB LAW OFFICES



By _____
Ford Greene, Esq.

:acg

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- The case is different from the Masterson's ongoing criminal rape trial
 - The court previously told the women to take their harassment claims to religious arbitration, based on an agreement they signed when they joined the church

By Adam Manno 3 November 2021

<https://www.dailymail.co.uk/news/article-10160847/Four-women-accusing-actor-Danny-Masterson-rape-ask-trial-instead-religious-arbitration.html>

Variety: Danny Masterson Ordered to Stand Trial on Rape Charges

By Gene Maddaus

May 21, 2021

<https://variety.com/2021/tv/news/danny-masterson-trial-preliminary-hearing-1234978835/>

New York Daily News: ‘That ’70s Show’ star Danny Masterson surrenders passport, reaffirms ‘not guilty’ plea in Los Angeles rape case

By Nancy Dillon Jun 07, 2021

<https://www.nydailynews.com/snyde/ny-danny-masterson-surrenders-passport-reaffirms-not-guilty-plea-in-la-rape-case-20210608-7zzb4ovdyzg3digot5zmqixuf4-story.html>

SECOND DISTRICT COURT OF APPEAL, DIVISION FIVE

Monday, February 07, 2022

Page 8 of 8.