RELIGIOUS ARBITRATION IN PRIMARY AND SECONDARY PRIVATE SCHOOLS: A COST-BENEFIT ANALYSIS MODEL

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I. INTRODUCTION

Parents, guardians, and persons in parental relation with a child ("parents") who enroll their children in religious private schools ("private schools") may be choosing more than just religious education for their children. They may be, knowingly or unknowingly, choosing arbitration as the venue for any statutory claim arising between the student and the school. Student enrollment applications for private schools may contain clauses calling for faith-based arbitration of all claims that may arise. [2]

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[2] *See*, *e.g.*, *Mediation and Binding Arbitration Agreement and Waiver of Jury Trial*, Helena Christian School, https://www.helenachristian.org/copy-of-handbook-agreement (last visited Mar. 2, 2018) ("The parties to this Contract are Christians and believe that the Bible commands them to make every effort to live at peace and to resolve disputes with each other in private or within the Christian community in conformity with the biblical injunctions of 1 Corinthians 6:1-18 and Matthew 18:15-20. Therefore, the parties agree that any claims or dispute arising out of, or related to, this contract or any aspect of the relationships arising out of the Contract, including disputes over re-enrollment, including claims under federal, state, and local statutory or common law, the law of contract, and law of tort, shall be settled by biblically based alternative dispute resolution."). This clause mirrors the language of The Institute for Christian Conciliation's recommended clause for Christian schools. See *Conciliation Clauses,* INST. OF CHRISTIAN CONCILIATION, http://peacemaker.net/conciliation-clauses-2/ (last visited Mar. 2, 2018) ("The parties to this agreement are Christians and believe that the Bible commands them to make every effort to live at peace and to resolve disputes with each other in private or within the Christian community in conformity with the biblical injunctions of 1 Corinthians 6:1-8, Matthew 5:23-24, and Mathew 18:15-20. Therefore, the parties agree that any claim or dispute arising out of or related to this agreement or to any aspect of the employment relationship, including claims under federal, state, or local statutory or common law, the law of contract, and law of tort, shall be settled by biblically based mediation[, and if no agreement is reached, by biblically based arbitration.]").

Religious arbitration is a subset of traditional arbitration but encompasses some distinct characteristics.[3] For the purposes of this article, religious arbitration refers to an alternative dispute resolution method where religious holy texts, religious-affiliated arbitrator(s), and other similar religious emblems play a role in the dispute resolution proceeding.[4] The role of religious emblems and the extent to which they may play a major or minor role in arbitration depends on the religion (i.e. Judaism, Christianity, or Islam).[5] These three religions developed their own dispute resolution systems where non-secular principles guide the arbitral outcome for the parties involved.[6]

Although primary and secondary school children do not sign the enrollment contracts that include arbitral clauses, they may become parties in an arbitration proceeding against their private schools.[7] For example, in *D. C. v. Harvard-Westlake*, 98 Cal. Rptr. 3d 300 (Cal. Ct. App. 2009), a high school student brought civil rights and hate-crime statutory claims against his private school after students at the school bullied him and threatened his life over his alleged sexual orientation.[8] Pursuant to the school enrollment contract, the court sent the case to secular arbitration and, ultimately, the school prevailed in the arbitration proceeding.[9]

Because religious private schools allow for religious arbitration of statutory claims, cases such as *D. C. v. Harvard-Westlake* raise the question whether students should be compelled to seek redress under anti-discrimination or hate-crime statutes (hereafter collectively "civil rights statutes") through religious arbitration instead of court proceedings. Statutory claims are arbitrable even when the statute may include a prohibition against the waiver of the statutory rights.[10] Students enrolled in private schools differ from other plaintiffs waiving their rights to court

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[3] *See* Caryn Litt Wolfe, *Faith-Based Arbitration: Friend or Foe? An Evaluation of Religious Arbitration Systems and Their Interaction With Secular Courts*, 75 FORDHAM L. REV. 427 (2006).

[4] *Id.* at 436-42.

[5] *Id.*

[6] *Id.*

[7] *See, e.g.*, D. C. v. Harvard-Westlake Sch., 98 Cal. Rptr. 3d 300 (Cal. Ct. App. 2009).

[8] *Id.*

[9] *Id.*

[10] *See* Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985) ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.").

proceedings, because these students are not the final decision makers when enrolling in private schools. Primary and secondary school students are often underage and remain under the tutelage of their parents or guardians, and subject to their control.[11] Generally, the parents or guardians make the final decision to enroll the child in private school and ultimately sign the enrollment contract. The student plays a minor role in this decision, if any at all. The question remains whether binding the student and parents to these enrollment contracts is good policy.

This article presents a cost-benefit analysis of the use of religious arbitration to settle civil rights statutory claims between students and private schools. The first section discusses religious arbitration clauses included in private schools' enrollment contracts and the background of religious arbitration along with its generally perceived benefits. The analysis focuses particularly on the fostering of freedom of religion in religious arbitration. The next segment introduces a background on statutory claims in general and the procedural and substantive benefits guaranteed in court proceedings when plaintiffs seek redress under civil rights statutes. The article emphasizes the importance of preserving these procedural and substantive protections. The subsequent section conceptualizes the costs and benefits in terms of factors. The next segment draws on the previous sections to present a cost-benefit analysis of the use of religious arbitration in private school settings when resolving statutory claims. Finally, the article will discuss why religious arbitration in the private school context should remain in place so long as private schools provide parents the ability to choose.

II. THRESHOLD ISSUES

Two issues are pertinent to the entire article and will be addressed here. First, the article presents three objective cost-benefit analyses of religious arbitration as a venue for student civil rights statutory claims against private schools without attempting to make value judgments. The article does not examine choice-making theories, economic or otherwise, or discuss any negligence theory as it pertains to the parents' duty to read the enrollment contract in its entirety. While these issues are important, the focus of the article is a cost-benefit analysis. Second, for the purposes of

[11] Meyer v. Neb., 262 U.S. 390, 400 (1923).

this article, cost is defined as the tangible, monetary, or intangible value lost when a student plaintiff, and vicariously his or her parents, pursue a civil rights statutory claim in one venue instead of the other. Similarly, the benefits of litigation in one venue over the other are defined as quantifiable, tangible, and abstract terms throughout this article.

III. BACKGROUND

This section introduces arbitral clauses in private school enrollment contracts and discusses the nature of religious arbitration and the litigation of statutory claims in general. It provides background and the status of religious arbitration and statutory claims in the United States as of the writing of this article. Then, the segment elucidates the purpose and benefit of religious arbitration and statutory claims. The article will discuss: Christian, Jewish, and Islamic arbitral tribunals by way of example. The section will conclude with the conceptualization of costs and benefits as algebraic factors.

A. Religious Arbitration Clauses in Private School's Enrollment Contracts

This section presents examples of religious arbitration clauses found in some private school enrollment contracts. The examples presented here have some limitations. Schools across the nation use these clauses, but not all private schools across the nation make their enrollment contracts available to the public on the web. Therefore, this section presents only religious arbitration clauses that are publicly available, specifically from Christian private schools. It is possible that other religious schools also include religious arbitration clauses but have not published these enrollment contracts. It is important to note, while the clauses presented include similar language, they may or may not be representative of other clauses included in private schools' contracts across the country.

Across the nation, Christian private schools stipulating religious arbitration as the preferred method for dispute resolution use comparable language, typically referencing the prominent Institute for Christian Conciliation ("ICC"). Some schools simply

state, "all differences are to be resolved using biblical principles."[12] Others explicitly state, "for the purposes of resolving disputes, matters of disagreement, and adjudication of financial issues, the principles established in *1 Corinthians* 6:1-8 and Matthew 18:15-17 shall be followed."[13] Other clauses explicitly reference that the arbitration clause includes "any contract, tort or statutory claims."[14] Finally, some clauses condition the students' admittance on the agreement to arbitrate "any claim or dispute arising from or related to this agreement/enrollment in school."[15] Such clauses would forbid students from bringing civil rights statutory claims in court against the school.

In enforcing religious arbitration provisions, the courts balance national policy that favors arbitration and the nation's interest in freedom of religion protected against intrusion from the government. The United States has a strong pro-arbitration paradigm that stems from the Federal Arbitration Act ("FAA")[16] and case law interpretation that elevates arbitration provisions to the

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[12] *Parent Commitment Contract*, CHRISTIAN ACADEMY OF PRESCOTT PRESCHOOL, http://capprescott.com/wp-content/uploads/Preschool-Application2.pdf (last updated Mar. 25, 2015).

[13] *New Family Registration*, MCMINNVILLE CHRISTIAN ACADEMY 2, http://www.mcminnvillechristianacademy.org/wp-content/uploads/2017-18-New-Family-Registration.pdf (las updated 2017).

[14] *Valley Christian Schools Enrollment Contract Provisions*, VALLEY CHRISTIAN SCHOOLShttps://www.vcs.net/uploaded/general/2017/contract_provisions.pdf (last updated Jan. 5, 2017); *see also Parent Handbook*, FIRST CHRISTIAN SCHOOL 1, 43, http://www.firstchristianschool.org (follow "Calendar and Forms" hyperlink; then follow "Parent Handbook" hyperlink) (last updated Jan. 9, 2017) ((FCS believes the Bible instructs us to make every effort to live at peace, and to resolve disputes with each other in private, or within the Christian community, in conformance with biblical principles. . . . any dispute arising out of the child's attendance . . . shall be settled by biblically based mediation or arbitration. . . . parties agree these methods shall be the sole remedy for any dispute or controversy between them and, to the full extent permitted by applicable law, expressly waive their right to file a lawsuit in any civil court against one another for such disputes, except to enforce an arbitration, or to enforce this dispute resolution agreement."); *Turlock Christian Preschool Application for Admission*, TURLOCK CHRISTIAN SCHOOLS, https://www.turlockchristian.com/uploaded/Preschool/Preschool_App_Packet_2017.2018.pdf (last visited Sept. 15, 2017) (similar language).

[15] *Application for Admission*, FAITH CHRISTIAN SCHOOL 13, http://www.faithchristian.info/uploadedFiles/File/Enrollment_Application_20162017.pdf (last visited Sept. 15, 2017).

[16] 9 U.S.C. §§ 1-307 (2016).

same level as other contracts.[17] The courts maintain the separation of church and state, avoiding doctrinal questions[18] and applying only "neutral principles of [contract] law"[19] when interpreting religious arbitration clauses.

B. Religion and Arbitration in the United States

Freedom of religion is one of the founding pillars in the United States. The First Amendment of the Constitution guarantees the people's right to exercise their religion freely, stating "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[20] The First Congress of the United States in 1789 proposed the Amendment to

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[17] AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011) ("[T]he FAA was designed to promote arbitration. They have repeatedly described the Act as 'embod[ying] [a] national policy favoring arbitration, Buckeye Check Cashing, 546 U.S. at 443, 126 S. Ct. 1204, 163 L. Ed. 2d 1038, and 'a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary.'"); *see also* Keefe v. Allied Home Mortg. Corp., No. 5-15-0360, 2016 Il App (5th) 150360, at *9 (Ill. App. Ct. Nov. 28, 2016.) ("This pro-arbitration policy, however, is not intended to render arbitration agreements more enforceable than other contracts, and it does not operate in disregard of the intent of the contracting parties.").

[18] *See, e.g.*, Garcia v. Church of Scientology Flag Serv. Org., No. 8:13-cv-220-T-27TBM, 2015 U.S. Dist. LEXIS 1788033, at *17 (M.D. Fla. Mar. 13, 2015) ("As compelling as Plaintiff's argument might otherwise be, the First Amendment prohibits consideration of this contention, since it necessarily would require an analysis and interpretation into religious doctrine, discipline, faith, and ecclesiastical rule, custom, or law by the court.").

[19] Avitzur v. Avitzur, 446 N.E.2d 136, 138 (N.Y. 1983). ("In its most recent pronouncement of this issue, however, the Supreme Court, in holding that a State may adopt any approach to resolving religious disputes which does not entail consideration of doctrinal matters, specifically approved the use of the 'neutral principles of law' approach as consistent with constitutional limitations (Jones v. Wolf, supra, at p 602). This approach contemplates the application of objective, well-established principles of secular law to the dispute (*id.*, at p 603), thus permitting judicial involvement to the extent that it can be accomplished in purely secular terms."); *see also* Meshel v. Ohev sholom Talmud Torah, 869 A.2d 343, 358 (D.C. 2005) ("Appellants' action to compel arbitration is instead premised exclusively upon what appellants contend is the enforceable contractual agreement to arbitrate. . . . Appellants' action is to enforce a contractual obligation; its success with not advance the . . . religion."); Keefe, No. 5-15-0360, 2016 Il App (5th) 150360, at *10 ("Arbitration is consensual, and arbitration agreements as creatures of contract are construed under ordinary principles of contract law. [citations omitted]").

[20] U.S. CONST. amend. I.

the states in an effort to avoid state-established churches from acquiring the same gravitas and overreach as the state-established churches in Britain.[21] State-established churches in early post-colonial North America continued until 1833 when Massachusetts finally repealed church taxes.[22] The pivot strengthened the separation of church and state and served as a strong endorsement of the citizen's right to practice their chosen religion.

Americans reverence for incorporating religious doctrines and traditions into their daily lives, including solving disputes amongst each other, is deeply rooted in American history. As early as 1635, Puritans in the Massachusetts Bay Colony intermingled religious, civil, and public matters.[23] Churches and their doctrines played a large role in the settlers' lives.[24] The churches could hear civil matters, religious matters, and even criminal cases.[25] With the Church Courts offering arbitration, Massachusetts also encouraged colony members to seek arbitration before litigating a dispute.[26] The approach was largely based on the Bible, which urged the settlers to avoid settling disputes outside their religious groups.[27] The Church Courts retained jurisdiction over members of the same congregation but offered dispute resolution alternatives all year.[28] These church courts also provided attractive incentives to settlers: Settlers did not incur expenses for hiring a lawyer to represent them, the process was informal and speedier than traditional courts, and the costs of arbitration were substantially less than litigation costs.[29]

Although the separation of church and state and the growth of diversity of religions led to the creation of a strong, secular judicial system, the infusion of faith and religion in dispute resolution was threaded throughout the post-Revolutionary era.[30]

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[21] Nicholas Walter, *Religious Arbitration in the United States and Canada*, 52 SANTA CLARA L. REV. 501, 509 (2012).

[22] *Id.*

[23] *Id.* at 510.

[24] *Id.*

[25] Walter, *supra* note 21, at 510.

[26] *Id.* at 511.

[27] *1 Corinthians* 6:5-6 ("[D]o you not know that the Lord's people will judge the world? And if you are to judge the world, are you not competent to judge trivial cases? . . . Is it possible that there is nobody among you wise enough to judge a dispute between believers? But instead, one brother takes another to court-and this in front of unbelievers!").

[28] Walter, *supra* note 21, at 511.

[29] *Id.*

[30] *Id.* at 512.

New York's Oneida community and other utopian Christian communities sought to contain within the church system resolution of disputes amongst members, in some cases avoiding litigation in the public courts for nearly twenty years.[31] The Mormons also advocated for arbitration over secular courts, claiming the courts did not truly represent the best interests of the community and exhibiting a strong averse attitude to lawyers.[32] Jewish communities took a similar approach. In the early 1900s, the New York Jewish community relied on the *Kehillah* to oversee arbitration disputes.[33] In 1929 the Jewish community created the Jewish Arbitration Court and in 1930, the Jewish Conciliation Court of America.[34]

Today, religious arbitration continues to provide a systematic regime that allows people to exercise their right to infuse faith into dispute resolution. The Peacemaker Ministries, under the ICC, offers Christian arbitration services in the United States.[35] The ICC was founded in the 1970s in Los Angeles, California by a group of Christian attorneys studying *1 Corinthians* 6.[36] In this Bible verse, Paul exhorts believers, asking "If any of you has a dispute with another, do you dare take it before the ungodly for judgment instead of before the Lord's people?," and urging them not to resolve disputes in front of the "unbelievers" "whose way of life is scorned in the church."[37] The ICC offers people "not only an alternative to litigation, but also an alternative to a secular approach that omits the spiritual dimension."[38] The purpose of the ICC is to "glorify God by helping people to resolve disputes in a conciliatory rather than an adversarial manner."[39] The ICC offers mediation, mediation/arbitration, and arbitration.[40] The ICC handles a great breadth of disputes, including "marriage and family conflicts to complex legal matters, such as employment disputes,

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[31] *Id.*

[32] *Id.* at 512-13.

[33] Walter, *supra* note 21, at 514.

[34] *Id.*

[35] *Alt. Dispute Resolution*, INST. OF CHRISTIAN CONCILIATION, http://peacemaker.net/icc/ (last visited Sept. 15, 2017).

[36] *1 Corinthians* 6.

[37] *1 Corinthians* 6:1-6.

[38] *Alt. Dispute Resolution*, INST. OF CHRISTIAN CONCILIATION, *supra* note 34.

[39] *Id. See also* Guidelines for Christian Concilation, INST. OF CHRISTIAN CONCILIATION, http://peacemaker.net/project/guidelines-for-christian-conciliation/ (last visited Sept. 15, 2017).

[40] *Alt. Dispute Resolution*, INST. OF CHRISTIAN CONCILIATION, *supra* note 35.

breach of contract, estate disputes, partnership dissolution, wrongful termination, oil and gas disputes, international disputes, and organizational conflicts."[41] Finally, although the ICC can *consider* state, federal, or local laws, the Bible reigns supreme, guiding every aspect of the arbitral procedure.[42]

The Jewish community has relied on religious courts (*beth din*) for a millennia and in 1960, the Rabbinical Council created the Beth Din of American.[43] It offers arbitration services where *halacha*, or Jewish law, governs the procedures.[44] The panel takes into consideration secular law and choice-of-law contract provisions between the parties but will only apply these "to the fullest extent permitted by Jewish law."[45] The Beth Din has become a well-respected, prominent institution within the Jewish community across the community's ideological perspective, in part, because of the guaranteed confidentiality of the proceedings.[46]

Islamic Arbitration traces similar roots as Christian arbitration, but has a more controversial public perception. The use of arbitration to resolve disputes between community members has roots in the Qur'an, which states "And if you fear dissention between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]."[47] Arbitration was popular with the tribes people of the Arabian Peninsula in the pre-Islamic period, because arbitration was less expensive than other alternatives.[48] After the birth of Islam in the Peninsula, the popularity of arbitration as an alternative dispute resolution remained strong, with the Prophet Muhammad

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[41] *Id.*

[42] Guidelines for Christian Conciliation, INST. OF CHRISTIAN CONCILIATION, http://peacemaker.net/project/guidelines-for-christian-conciliation/ (last visited Sept. 15, 2017).

[43] *About Us*, BETH DIN OF AMERICA, https://bethdin.org/about/ (last visited Sept. 15, 2017).

[44] *Rules and Procedures*, BETH DIN OF AMERICA, http://s589827416.onlinehome.us/wp-content/uploads/2015/07/Rules.pdf (last visited Sept. 15, 2017).

[45] *Arbitration at the Beth Din of America, Governing Law*, BETH DIN OF AMERICA, http://s589827416.onlinehome.us/wp-content/uploads/2015/07/ArbBrochure.pdf (last visited Sept. 15, 2017).

[46] *About Us*, BETH DIN OF AMERICA, *supra* note 43.

[47] *Qur'an* 4:35.

[48] Mona Rafeeq, *Rethinking Islamic Law Arbitration Tribunals: Are They Compatible With Traditional American Notions of Justice?*, 28 WIS. INT'L L.J. 108, 113 (2010).

often serving as a neutral arbitrator among Muslims and between Muslims and non-Muslims and as a mediator for the Jewish community, applying Jewish law during proceedings.[49] Islamic arbitration exists in the United States but these tribunals and the use of Islamic law to resolve disputes draw more controversy than the religious tribunals described above, because some consider Islamic law to be too radical and incompatible with secular law in the United States.[50] Such anti-Islamic sentiment has led some tribunals, like the Islamic Tribunal, to release statements that clarify the purpose and stance of Islamic tribunals,[51] specifying the use of Islamic law but only to the extent this law is in accordance with local, state, and federal law.[52]

The purpose of Islamic tribunals is to unite Muslims across the United States under the same "belief and creed,"[53] resolving conflicts under Islamic jurisprudence to "satisfy the deep, core principles of [their] faith or *iman* and make sure that [their] account or *hisab* on the Day of Judgment will be in a better position, with the ultimate level of s*aa'adah* or happiness, with *fawz* or *falah* or success and well-being in this life and in the next."[54] The Tribunal seeks to find "Islamic solutions" to problems within the Muslim community.[55] Finding Islamic solutions includes respecting the

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[49] *Id.* at 113-14.

[50] Omar Sacirbey, *Sharia Law In The USA 101: A Guide To What It Is And Why States Want to Ban It*, HUFFINGTON POST (July 29, 2013), http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html.

[51] *Home*, ISLAMIC TRIBUNAL, http://www.islamictribunal.org (last visited Sept. 15, 2017) ("Over the past few days, some media speculation has led members of the local community to wonder if the Islamic Center of Irving is facilitating "Sharia Courts" at the Mosque. The management of the Islamic Center of Irving categorically declares that no such court operates on the center's premises. No other mosque in the area operates in the Dallas-Fort Worth Metroplex, independent of the mosques, to address a genuine need within our faith community for intra-community arbitration. Similar religious tribunals have existed for decades in the American Jewish and American Christian faith communities to resolve disputes, most especially within families. These religious tribunals are optional arbitration vehicles that only conduct their work when requested to do so by both parties involved in a dispute, do not attempt to impose any belief system upon any individual and work in compliance with State of Texas and US law under the United States Constitution.").

[52] *About-It*, ISLAMIC TRIBUNAL, http://www.islamictribunal.org/about-it/ (last visited Sept. 15, 2017)

[53] *Our Mission*, ISLAMIC TRIBUNAL, http://www.islamictribunal.org/our-mission/ (last visited Sept. 15, 2017).

[54] *About-It*, ISLAMIC TRIBUNAL, *supra* note 52.

[55] *Our Mission*, ISLAMIC TRIBUNAL, *supra* note 53.

decision of the arbitrator, or as Allah states, "obey[ing] the Messenger, and those charged with authority among you.' (4; 59)"[56] The Islamic Tribunal adheres to the tenet that "there is no secularism or detachment from the tenets of faith and all Islamic injunctions in regards to the legal field."[57] The Tribunal cites arbitration as a better option for the Muslim community because litigation in the United States is expensive and lawyers are ineffective.[58] Perceived issues with the United States' court system lead some Muslims to forgo litigation and instead wait for justice in front of "an audience on the Day of Judgment."[59]

C. Differentiating Religious Arbitration as a Subset

While religious arbitration offers parties many of the features of non-religious arbitration,[60] a spiritual dimension is one characteristic that differentiates religious arbitration from the secular court system and non-religious arbitration.[61] Because the spiritual dimension is the differentiating factor, when a party to a contract opts for religious arbitration as an alternative dispute resolution mechanism, the party is, in essence, choosing to invigorate the procedure with his or her religious beliefs. The party is also signaling the importance of faith-based approaches to dispute resolution in his or her life and, thus, is more likely to give much more weight to this factor than other factors the party may perceive as a benefits.[62] This factor may be so highly valued that some people will incur substantial costs associated with forgoing the court system as a venue.[63]

The parties' freedom of religion to add a spiritual dimension to dispute resolution has intrinsic, intangible value in the United States.[64] Religious arbitration allows people of faith to resolve

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[56] *Id.*

[57] *About-It*, ISLAMIC TRIBUNAL, *supra* note 52.

[58] *Id.*

[59] *Id.*

[60] *See* Rafeeq, *supra* note 48, at 115-16 (describing some of the most generally-accepted benefits of non-religious arbitration).

[61] *See* discussion *supra* Section III.B.

[62] *See supra* Section III.B (detailing the religious' communities commitment and desire to infuse religion into dispute resolution).

[63] *See id.*

[64] *See* U.S. CONST. amend. I; *see also* discussion *supra* Section III.B (explaining the importance of alternatives to secular litigation in communities of faith).

disputes in a traditional doctrinal method that encompasses the traditions of their religion. Religious arbitration is thus not simply an alternative dispute resolution, but a dispute resolution that furthers the culture of entire religious groups.[65]

D. Statutory Claims and Court Proceedings

1. What Are Hate-Crime and Anti-Discrimination ("Civil Rights") Statutes?

In the civil context, hate-crime and anti-discrimination statutes are state or federal statutes that protect persons from bias-motivated behavior, including hateful or discriminatory behavior motivated by the victims' race, religion, ethnicity, sexual orientation, gender, gender identity, or a disability.[66] Hate-crime and anti-discrimination statutes are particularly important to the public and demand attention because bias-motivated behavior impacts the victim and the victim's community, leaving deep emotional and psychological sequelae that leads to feelings of intimidation, isolation, vulnerability, and fear in the community.[67] The courts have recognized the importance of this policy in the public sphere, including schools.[68] As of April 2016, thirty-three (33)

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[65] *See supra* Section III.B; *see also* Michael A. Helfand, *Arbitration's Counter-Narrative: The Religious Arbitration Paradigm*, 124 YALE L.J. 2994, 2999 (2015) ("When parties agree to religious forms of arbitration, they select religious authorities to resolve disputes in accordance with religious law. Parties embrace this form of arbitration not solely because it is a useful mechanism for dispute resolution, but because these arbitrations are meant to enable parties to resolve a dispute in accordance with shared religious principles and values.").

[66] *See generally An Introduction to Hate Crime Laws*, ANTI-DEFAMATION LEAGUE, http://www.adl.org/assets/pdf/combating-hate/Introduction-to-Hate-Crime-Laws.pdf (last visited Sept. 15, 2017); *Hate Crimes*, FEDERAL BUREAU OF INVESTIGATION, https://www.fbi.gov/investigate/civil-rights/hate-crimes (last visited Sept. 15, 2017) ("the FBI has defined a hate crime as a 'criminal offense against a person or a property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.'").

[67] *An Introduction to Hate Crime Laws*, ANTI-DEFAMATION LEAGUE, *supra* note 66.

[68] *See, e.g.*, Webb v. Puget Sound Broad. Co., No. 41228-1-I, 1998 Wash. App. LEXIS 1795, at *9 (Wash. Ct. App. Dec. 28, 1998) ("Washington's 'hate crimes' clearly establishes that crimes motivated by bigotry and bias are against the public policy of the state."); Doe v. Perry Cmty. Sch. Dist., 316 F. Supp. 2d 809,

states had passed legislations that provide civil remedies for victims of civil rights violations.[69]

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839 ("Providing a safe-and non-discriminatory environment for students obviously serves the public interest . . . [and] fostering tolerance and thereby decreasing hate crimes among students is in the public interest.").

[69] Representative language in statutes includes: 42 U.S.C. § 2000e (2016) (best known as Title VII of the Civil Rights Act) (prohibiting employers from discriminating against current and potential employees based on race, color, religion, sex, or national origin); CAL. CIV. CODE §51.7 (listing "the right to file and pursue a civil action" for victims of bias-motivated violence or threat of violence); FLA. STAT. § 775.085 ("A person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action . . . ."); CAL. CIV. CODE §52(c) ("Whenever there is a reasonable cause to believe that any person or group of persons is engaged in conduct is of that nature and is intended to deny the full exercise of those right, . . . any person aggrieved by the conduct may bring a civil action . . . ."); IOWA CODE § 729A.5 ("A victim who has suffered physical, emotional, or financial harm as a result of a violation of this chapter due to the commission of a hate crime is entitled to and may bring [a civil] action . . . ."); N.J. STAT. § 2A:53A-21 ("A person, acting with purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity, who engages in conduct that is offense under the provisions of the [criminal code] commits a civil offense [and] any person who sustains injury . . . shall have a cause of action."); 21 OKL. ST. § 850 ("Any person convicted of violating any provision of [the hate-crime laws based on race, color, religion, ancestry, national origin, or disability] . . . shall be civilly liable for any damages resulting."). The following have adopted civil remedies: Arkansas, ARK. CODE ANN. § 16-123-106 (2016); California, CAL. CIV. CODE. § 52; Colorado, COLO. REV. STAT. § 13-21-106.5 (2016); Connecticut, CONN. GEN. STAT. § 52-571c (2016); District of Columbia, D.C. CODE § 22-3704 (2017); Florida, FLA. STAT. § 775.085; Idaho, IDAHO CODE §18-7903 (2016); Illinois, 720 ILL. COMP. STAT. 5/12-7.1 (2016); Iowa, IOWA CODE § 729A.5 (2016); Louisiana, LA. STAT. ANN. § 9:2799.2 (2016); Maine, ME. STAT. tit. 5 § 4682; Massachusetts, MASS. GEN. LAWS 26,6 § 127B (2016); Michigan, MICH. COMP. LAWS § 750.147b (2016); Minnesota, MINN STAT.. § 611A.79 (2017); Missouri, MO. REV. STAT. § 537.523.1 (2017); Nebraska, NEB. REV. STAT. § 28-113 (2016); Nevada, NEV. REV. STAT. § 41.690 (2016); New Jersey, N.J. STAT. § 2A:53A-21 (2017); New York, N.Y. CIV. RIGHTS LAW § 79-n (2016); North Carolina, N.C. GEN. STAT. § 99D-1 (2016); Ohio, OHIO REV. CODE ANN. § 2307.70; Oklahoma, OKLA. STAT. tit. 21 § 850 (2016); Oregon, OR. REV. STAT. § 30.198 (2016); Pennsylvania, 42 PA. CONS. STAT. § 8309 (2016); Rhode Island, R.I. GEN. LAWS § 9-1-35 (2016); South Dakota, S.D. CODIFIED LAWS § 20-9-32 (2016); Tennessee, TENN. CODE ANN. § 4-21-701 (2016); Texas, TEX. CODE CRIM. ANN. art. 42.037 (2015); Vermont, VT. STAT. ANN. tit. 13, § 1457, 1466 (2016); Virginia, VA. CODE ANN. § 8.01-42.1 (2017); Washington, WASH. REV. CODE ANN. § 9A.36.083 (2016); West Virginia, W.VA. CODE §5-11-20 (2016); Wisconsin, WIS. STAT. § 895.443 (2016).

2. Venue: Court or Arbitral Tribunals?

Historically, the courts were wary of arbitration as a venue to resolve statutory claims. Among the most prominent cases to discuss the issue is *Wilko v. Swan*, 346 U.S. 427, 435 (1953) ("*Wilko*"). In *Wilko* the United States Supreme Court refused to uphold an agreement to arbitrate statutory claims under the 1933 Securities Act.[70] The Supreme Court in subsequent cases reasoned that arbitral tribunals were not ill-equipped to resolve statutory claims[71] but reiterated that arbitration agreements involving certain public policy-derived statutory rights should remain subject to heightened scrutiny.[72] *Wilko* nevertheless accurately highlights the reasoning for the Court's apprehension toward arbitration.[73]

In *Wilko* and other cases the Supreme Court reasoned that the court system afforded the plaintiff safeguards not available in arbitral tribunals. First, the Court was concerned that arbitrators would lack "judicial instruction on the law."[74] Second, related to the first concern, the Court raised the issue of the possibility of lack of review due to scant or incomplete records on the tribunals' proceedings.[75] Third, the Court flagged the Court's inability to review the arbitrators' award on the merits.[76] The Court was also

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[70] Wilko v. Swan, 346 U.S. 427, 438 (2010).

[71] *Mitsubishi Motors Corp.*, 473 U.S. at 628 ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to the their resolution in an arbitral, rather than a judicial forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration."); Shearson/American Express v. McMahon, 482 U.S. 220, 232 (1987) ("arbitral tribunals are readily capable of handling factual and legal complexities of antitrust claims, notwithstanding the absence of judicial instruction and supervision.").

[72] Armendariz v. Found. Health Psychcare Serv., Inc., 6 P.3d 669, 680 (Ca. 2000) ("Of course, certain rights can be waived. But arbitration agreements that encompass unwaivable statutory rights must be subject to particular scrutiny."), *abrogated on other grounds by* AT&T Mobility L.L.C. v. Concepcion, 563 U.S. 333, 340 (2011).

[73] *See generally* Wilko v. Swan, 346 U.S. 427 (2010).

[74] *Id.* at 435.

[75] *Id.* at 436 ("As their award may be made without a complete record of their proceedings, the arbitrators' conception of the legal meaning of such statutory requirements as 'burden of proof,' 'reasonable care' or 'material fact,' . . . cannot be examined.").

[76] *Id.* at 436-37 ("In unrestricted submissions, such as the present margin agreements envisage, the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in federal courts, to judicial review for error

concerned with the arbitrators' lack of expertise in analyzing statutory claims, implying the court system was more apt to vindicate the statutory rights of the parties.[77] The Court has also specified that in "bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts."[78] In short, prior to the current pro-arbitration national policy, the courts were concerned that the tribunals would be unable to interpret and apply statutory law appropriately and would be shield from subsequent judicial review to correct potential substantive errors, failing to vindicate the parties' statutory rights.[79]

Legal scholars have also expressed concern with arbitration as a venue. Scholars critical of arbitration assert that arbitration does not provide the same rigor and rights as does the court system.[80] They point to the arbitrators' lack of constraint by legal rules, which can lead to the de-emphasis of the parties' substantive rights.[81] As Mona Rafeeq succinctly stated, some disadvantages of religious arbitration include "lack of supervision or accountability of arbitrators, a relaxation of evidentiary rules, decreased opportunities for thorough discovery, insufficient or nonexistent explanations for arbitrators' reasoning in decisions, and limited protections for vulnerable parties."[82]

Similarly, state legislatures have also described the perceived shortcomings of arbitration as a venue for statutory claims, including hate-crimes and anti-discrimination statutes.[83] California, in its adoption of A.B. 2617-which requires that the waiver of statutory rights, civil remedies, and procedures vis-à-vis civil rights be knowing, voluntary, not coerced, and not be stipulated as a condition for doing business-listed the following potential

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in interpretation. The United States Arbitration Act contains no provision for judicial determination of legal issues such as is found in the English law.").

[77] 14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009).

[78] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010).

[79] Helfand, *supra* note 65, at 3001.

[80] *See generally* Edward Brunet, *Arbitration and Constitutional Rights*, 71 N.C.L. REV. 81 (1992).

[81] *Id*. at 88 ("Probably the biggest impediment to enforcing constitutional rights is arbitration's tendency to de-emphasize substantive rights. Because arbitrators are not constrained by legal rules, constitutional protections have little or no impact within an arbitration proceeding. An arbitrator may listen to an argument that a constitutional right has been breached, but will not be required to apply any aspect of substantive law, including civil liberties, to remedy that breach.").

[82] *See supra* note 48 at 116.

[83] *See* A.B. 2617, Gen. Assemb. Reg. Sess. (Cal. 2013-2014).

drawbacks in allowing arbitral tribunals to resolve statutory claims.[84] First, courts may enforce arbitral awards even when the awards "are legally and factually erroneous."[85] Second, arbitral awards are binding and are not subject to appellate judicial review, unless the agreement states otherwise.[86] Third, arbitration agreements often *de facto* preclude access to state agencies tasked with enforcing these statutes.[87] Fourth, arbitral tribunals need not adhere to the rules of evidence, provide discovery, or provide detailed opinions explaining their rationale.[88] Fifth, arbitration proceedings occur in private, away from the public scrutiny.[89] Sixth, arbitrators often have substantial or absolute civil immunity "for acts relating to their decisions, even in the case of bias, fraud, corruption or other violation of law."[90] Seventh, arbitral awards limit the award that a court may award to a victim of a hate-crime or discrimination.[91] Eight, arbitration can be concerning because some perceive it as a "revenue-driven system, where critics contend, 'repeat players' have unfair advantages when they are involved in mandatory arbitration against 'one-shot' users, such as individual consumers."[92] Ninth, because arbitral orders are not legally enforceable unless the court confirms them, protective and/or restraining orders often used in hate-crimes enforcement would be delayed if and when the arbitrator issues these orders.[93] Finally, public judges and juries and other court system guarantees for enforcement of civil rights issues are inherently waived in arbitration.[94]

On the other hand, advocates of arbitration tribunals as an effective alternative dispute resolution, emphasize the benefits of arbitration. The benefits, per these advocates, may include lower costs in arbitration, expediency, autonomy, finality,[95] freedom of

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[84] *See* COMM. ON JUDICIARY, REPORT ON A.B. 2617 FEB. 21, 2014, Gen. Assemb. Reg. Sess. (Cal. 2013-2014).

[85] *Id*. at 3.

[86] *Id*.

[87] *Id*.

[88] *See* COMM. ON JUDICIARY, REPORT ON A.B. 2617 FEB. 21, 2014, *supra* note 83.

[89] *Id*.

[90] *Id*.

[91] *Id*.

[92] *See* COMM. ON JUDICIARY, REPORT ON A.B. 2617 FEB. 21, 2014, *supra* note 83.

[93] *See* COMM. ON JUDICIARY, REPORT ON A.B. 2617 FEB. 21, 2014, *supra* note 84, at 7.

[94] *Id*.

[95] *See* Rafeeq, *supra* note 48, at 115-16 ("There are a number of benefits to arbitration as an alternative to litigation. First, arbitration is private. . . . Second,

religion,[96] and any other benefit a particular party assigns to religious arbitration.

E. Conceptualizing Costs and Benefits: Algebraic Factors

This section conceptualizes the costs and benefits described above. Yet, different parties may view some factors as benefits while others may characterize these same factors as costs. Thus, the table below only lists the factors and describes possible characterizations. The list is not exhaustive. Some people have other factors that they will consider to be costs or benefits when weighing religious arbitration as a venue for statutory claims.

Religious Arbitration as a Venue for Civil Rights Statutory Claims	
Factor	**Cost or Benefit**
Lack of judicial instruction	**Benefit:** Arbitrators can individualize the analysis to each case **Cost:** Predictability of outcomes becomes difficult
Incomplete records on proceedings	**Benefit:** speeds up the process **Cost:** leaves the parties unware as to the *why* of the opinion
No review on merits	**Benefit:** parties can trust the finality of the arbitral award **Cost**: plaintiffs of civil rights statutory claims cannot seek subsequent review
Lack of expertise	**Cost:** arbitrator may not be prepared to interpret and apply statutes
No adherence to civil procedure or other court rules	**Benefit:** speeds up the procedure

arbitration gives parties a significant amount of control over the proceedings. . . . Third, because parties can exert control and because proceedings tend to be less formal than in court trials, arbitration often creates a low-stress atmosphere for dispute resolution. . . . Finally, awards arising out of arbitration can be binding or nonbinding on the parties, according to the arbitration agreement."); *see also* Stolt-Nielsen S. A. v. Animal Feeds Intl'l Corp., 559 U.S. 662, 685 (2010) ("the benefits of private dispute resolution [include]: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.").

[96] *See generally* Helfand, *supra* note 65, at 3001.

	Cost: precludes parties from non-burdensome thorough discovery to prove statutory claim
Preclusion of access to state enforcement agencies	**Benefit:** speeds up the dispute resolution process **Cost:** the party cannot rely on additional assistance from State
Privacy	**Benefit**: avoids public interference **Cost**: precludes public scrutiny on statutory claims
Arbitrator immunity	**Benefit:** helps arbitrators perform their duties without fear of litigation reprisal **Cost**: leaves the possibility of arbitrator bias without remedy
Limited awards	**Benefit:** allows the parties to participate in choosing the award **Cost:** the court cannot provide the awards available otherwise
Revenue-driven/repeat players	**Cost:** plaintiffs bringing statutory claims are at a disadvantage
Lack of prompt protective and/or restraining orders	**Cost:** delayed protection against subsequent behavior
Lack of Public Judges and Juries	**Benefit:** a single tribunal speeds up the process **Cost:** lack of public oversight
Lack of rationale	**Cost:** leaves the parties unaware as to the *why* of the opinion
Religious Dimension	**Benefit:** adds a spiritual dimension for parties **Cost**: parties may prefer secular courts resolve statutory claims
Lower Costs	**Benefit:** less out of pocket expenses
Expediency	**Benefit**: prompt resolution of case **Cost**: for parties who seek thorough, longer review of statutory claim, expediency seems rushed
Autonomy	**Benefit**: parties have substantial say-so in proceeding **Cost**: parties may prefer an expert judge and a proceeding without much party input

Finality	**Benefit**: reduces lengthy litigation and its costs **Cost**: parties do not retain the ability to appeal statutory claims

IV. EVALUATION

This section provides a cost-benefit analysis of religious arbitration as a venue for students' statutory claims. After discussing quantification and the possible equations that result, I consider the importance of co-existence of religious arbitration as an alternative venue to courts.

A. Quantification and Resulting Equations

When conducting a cost-benefit analysis, it is first necessary to determine what costs and benefits are involved. A task or choice is worth doing or making when the benefits outweigh the costs. This can be translated to simple algebraic terms. Let x equal the benefits derived from using religious arbitration as a venue as opposed to using the traditional court system, and let y represent the costs associated with this venue assignment.[97] Some variables are financially quantifiable, such as the costs related with arbitration versus the costs related to litigating the matter in court.[98] As described above, other variables are difficult to quantify, like the value a person assigns to freedom of religion.[99] Moreover, different persons will assign different values to these intangible variables.[100] On the other hand, similar to the variables representing benefits, variables representing costs may be incapable of monetary quantification and are subject to varying values depending on the party assigning the value.[101] After considering the costs and benefits, the benefits derived from religious arbitration to resolve statutory claims will, in the aggregate, weigh against the tangible and abstract costs of resolving these disputes through religious arbitration. Thus, we are left with the following three possibilities:

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[97] *See supra* Section III.D.2.
[98] *See id.*
[99] *Id.*
[100] *See supra* Section III.C.
[101] *See id.*

Case One: $x_1 + x_2 + \ldots + x_n = y_1 + y_2 + \ldots + y_n$

Case Two: $x_1 + x_2 + \ldots + x_n > y_1 + y_2 + \ldots + y_n$

Case Three: $x_1 + x_2 + \ldots + x_n < y_1 + y_2 + \ldots + y_n$,

where x_n variables represent the benefits of religious arbitration and y_n variables the costs.

1. Case One

Under Case One, the venue does not matter. In this case, under mathematical principles, the plaintiffs bringing statutory claims weigh the benefits and the costs of using religious arbitration equally. Whether the plaintiffs were aware of the binding arbitration included in the enrollment contract becomes irrelevant because the plaintiffs conclude that the venue is less important than is the ability to resolve the dispute or that the use of religious emblems has no detrimental repercussions to the resolution of his or her statutory claim.

2. Case Two

Under Case Two, religious arbitration is the preferred dispute resolution mechanism. The plaintiffs in this case find that the benefits of religious arbitration outweigh any costs the plaintiffs must pay.[102] While all variables may vary in value, plaintiffs are more likely to value freedom of religion highly in this equation compared to other variables.[103] Religious arbitration is distinct from traditional arbitration because religious arbitration permits the use of preferred religious tenets in the dispute resolution process.[104] The desire to forgo any benefits safeguarded in the court system is likely

[102] *See Definition of Inequality*, MATH IS FUN, http://www.mathsisfun.com/definitions/inequality.html (last visited Feb. 9, 2017) (An inequality says that two values are not equal. a ≠ b says that a is not equal to be).

[103] *See supra* Section III.C.

[104] *See id*.

to be driven by the distinct, faith-based aspect of religious arbitration. [105]

A plaintiff who falls under this case, would feel at a disadvantage or a sense of loss if the plaintiff must resolve statutory claims in the traditional court system.[106] The feeling of loss stems from the prohibition of religious tenets in resolving statutory claims in court proceedings.[107] The court may offer different benefits, but these benefits pale in comparison to the loss of faith-based techniques and methods used in religious arbitration because the latter furthers religious customs and traditions.[108]

3. Case Three

Under Case Three, the court system is the preferred method to resolve statutory claims. This case is more likely to surface when, at the time of signing the private school enrollment contract, the plaintiff was unaware of the binding arbitration clause mandating the religious arbitration of statutory claims. Had the plaintiff been aware of the arbitration clause, the plaintiff would have either chosen not to enter into a contractual agreement or attempted to negotiate the exclusion of statutory claims from religious arbitration. *Case 3* can also surface when the plaintiff was aware of the arbitration clause but may have thought a dispute or the need for religious arbitration would not arise or could have given little thought to the benefits and costs of using religious arbitration. In either case, the plaintiff has at some point evaluated the positive and negative consequences of using religious arbitration to resolve the statutory claims and has concluded that no matter how many benefits religious arbitration can offer, the court system provides important safeguards for plaintiffs litigating civil rights statutory claims.[109] The case is particularly true for plaintiffs who value their religion but believe civil rights statutory claims are of a distinct nature and merit resolution in the courts.[110]

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[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *See supra* Section III.D.2.
[110] *See id.*

B. The Importance of Co-existence

While people will differ in the weight given to the benefits and costs,[111] one tenet is clear: the availability of religious arbitration as an alternative dispute resolution must co-exist with the traditional court system. Students who bring statutory claims against their private schools generally do not sign the enrollment contracts but may share religious beliefs similar to their parents. Thus, the co-existence of both dispute resolution options provides safeguards for these students and their parents and allows the student and parents the option to exercise their right to include a spiritual dimension to dispute resolution. For plaintiffs who fall under the first equation, the availability of religious arbitration as a dispute resolution mechanism for statutory claims is irrelevant. However, the co-existence of religious arbitration is important for plaintiffs who fall under the second equation.[112] Without the ability to resolve disputes through religious arbitration, the plaintiff is at least limited in venues to resolve disputes and at most can experience an infringement on his or her First Amendment right to freedom of religion.[113] The plaintiff has no ability to use his or her faith in a significant manner when resolving statutory claims because the court will refrain from rendering doctrinal decisions.[114] Plaintiffs who fall under the last equation do not experience the loss of any valued variables if the resolution of statutory claims is prohibited from religious arbitration.[115] To the contrary, these plaintiffs receive all the perceived benefits from litigating statutory claims in court.[116]

The co-existence of religious arbitration as a venue for statutory claims is desirable because some plaintiffs benefit and others are not harmed. First, plaintiffs who fall under the first equation and do not express a preference between the traditional court system or religious arbitration will not receive any harm by the co-existence. Second, plaintiffs who fall under the second equation will have the possibility to involve their faith in this aspect of their life. Third, while plaintiffs who fall under the third equation benefit from the preclusion of arbitration of statutory claims, the co-

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[111] *See supra* Sections III.D.2, III.E.
[112] *See supra* Section IV.A.
[113] *See supra* Section III.C.
[114] *See id.*
[115] *See supra* Section IV.A.
[116] *See supra* Section III.D.2.

existence of religious arbitration can provide the same benefits and no harm. Guaranteeing the same protections requires that arbitral proceedings provide the same benefits available in court to plaintiffs pursuing civil rights statutory claims[117] or, at a minimum, passing legislation that requires the waiver of the right to bring these statutory claims be knowing and not coerced.

1. The California Model As an Example of Co-Existence

States should adopt a model that allows for the co-existence described above. California offers a model that allows for co-existence of religious arbitration for civil rights statutory claims alongside the court system. In 2014, California adopted A.B. 2617 Civil rights: waiver of rights. This bill prohibits persons from requiring other persons to waive the protections afforded under civil rights statutes, including the right to file a civil action or complaint, as a condition for concluding a contract.[118] The law now requires that such waivers be "knowing and voluntary, and in writing, and expressly not made as a condition of entering into the contract or as a condition of providing or receiving goods or services."[119]

The Bill sets a scheme that provides statutory safeguards for parents who enroll their children in private schools, because the schools must expressly notify the signee about the religious arbitration clause. This allows an opportunity for the parents to weigh the costs and benefits of religious arbitration as a venue for potential civil rights statutory claims. Consistent with the analysis above, parents who weigh both factors equally will likely not have any concerns with the clause.[120] Parents who value the qualities offered in religious arbitration, particularly the spiritual dimension, will be content with the dispute resolution mechanism stipulated.[121] Parents who weigh the costs and benefits and find the court system a more appropriate venue for statutory claims will have the option to dispute the clause. The bill does not abrogate the current pro-arbitration scheme. Instead, the model offers parents options.

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[117] *See supra* Section III.D.

[118] LEGISLATIVE COUNSEL'S DIGEST, A.B. 2617, Gen. Assemb. Reg. Sess. (Cal. 2013-2014).

[119] *Id*.

[120] *See supra* Section IV.A.

[121] *Id*.

V. CONCLUSION

Religious arbitration of statutory claims is often mandated pursuant to arbitral clauses in private schools' enrollment contracts. This sparks the question of whether religious arbitration is the proper venue for civil rights statutory claims. To determine whether religious arbitration is the proper venue, the article presented a cost-benefit analysis. In conclusion, the United States' strong support for freedom of religion suggests religious arbitration must co-exist alongside the traditional court system as a venue for statutory claims. Religious arbitration as a venue should co-exist, but parties must expressly have the choice to opt out. The choice will provide plaintiffs who value freedom of religion above other variables a venue to involve their faith in the dispute resolution process and plaintiffs who prefer the court system the ability to choose.