IN THE SUPREME COURT OF TEXAS

NO. 05-0916

PLEASANT GLADE ASSEMBLY OF GOD, REVEREND LLOYD A. MCCUTCHEN, ROD LINZAY, HOLLY LINZAY, SANDRA SMITH, BECKY BICKEL, AND PAUL PATTERSON, PETITIONERS,

v.

LAURA SCHUBERT, RESPONDENT

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE SECOND DISTRICT OF TEXAS

Argued April 12, 2007

JUSTICE GREEN filed a dissenting opinion.

Because the fundamental principles of Texas common law do not conflict with the Free Exercise Clause, courts can and should decide cases like this according to neutral principles of tort law. *See Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 876–90 (1990); *Jones v. Wolf*, 443 U.S. 595, 602–06 (1979). If a plaintiff's case can be made without relying on religious doctrine, the defendant must be required to respond in kind.[1] Though not always a simple task for

[1] This case is not about sanctioning voluntary religious practices. If Schubert had consented to the church's actions, the consent—under our familiar, neutral principles of tort law—would have completely defeated her claims. *See* TEX. PENAL CODE § 22.01(a) (assault elements); *Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002) (false imprisonment elements); RESTATEMENT (SECOND) OF TORTS § 892A (1979) (effect of consent); *cf. Tex. Bank & Trust Co. v. Moore*, 595 S.W.2d 502, 508 (Tex. 1980) (consent as a matter of law). The jury, however, found

courts, "the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application." *Jones*, 443 U.S. at 604. In contrast, today's decision ignores the rule that "courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim," *Smith*, 494 U.S. at 887, replacing it with a far more dangerous practice: a judicial attempt to "balance against the importance of general laws the significance of religious practice," *id.* at 889 n.5. "The First Amendment's protection of religious liberty does not require this." *Id.* at 889. The trial court heeded these admonishments, but the Court today does not. For these reasons, and for those expressed by the Chief Justice, I respectfully dissent.

PAUL W. GREEN
JUSTICE

OPINION DELIVERED: June 27, 2008

that Schubert had not consented, and Pleasant Glade does not challenge that conclusion. When faced with an otherwise valid tort claim, Pleasant Glade's religious motivation is not a defense. *See Smith*, 494 U.S. at 876–90.