

judicial immunity. While acknowledging in principle this Court's immunity, the federal court has also acknowledged that if this Court is dismissed from the case, the federal court may have limited ability to implement its desired remedies. That utilitarian purpose is not an appropriate legal basis for refusing to grant this Court's dismissal from the case.

Moreover, in entering its order the federal court disregarded the repeated requests by both Attorneys' General, that the court stay its action briefly to give the Utah Supreme Court time to issue a decision on the pending question whether, under Utah law, the doctrine of laches as applied in *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Lindberg*, 2010 UT 51, 238 P.3d 1054, has preclusive effect for *res judicata* purposes. The federal court has acknowledged the possibility that if the Utah Supreme Court decides that Utah law recognizes the doctrine of laches, as applied in *Lindberg*, to have preclusive effect, the federal court may lose jurisdiction over its case.

The federal court is required to follow Utah law on laches. This Court does not presume to know how the Utah Supreme Court will rule on this issue of Utah law, but that Court has asserted its authority to consider the matter on an expedited basis and will hear argument in a matter of days. The federal court should have deferred entry of its order until the Utah Supreme Court settled the *res judicata* issue. The parties and the federal court would then be able to determine how, if at all, the supreme court's decision affects the federal court's jurisdiction.

Irrespective of how the Utah Supreme Court ultimately rules on the *res judicata* issue, that Court's decision in *Lindberg* (holding that plaintiffs had waited too long to raise their claims and were barred by laches from bringing their untimely constitutional challenge), effectively approved this Court's continuing oversight of the Trust. Although the federal court concluded it was not bound by *Lindberg*, this Court is so bound. This Court's retention of jurisdiction over the Trust is wholly-consistent with, if not required by, the Utah Supreme Court's decision in *Lindberg*. Until all these thorny issues are finally resolved by the appropriate appellate courts (*i.e.*, the Tenth Circuit, the Utah Supreme Court, or the United States Supreme Court), this Court must continue its oversight of the Trust.

Based on the foregoing, it is this Court's difficult but necessary duty to resist any order by the federal court that gives short shrift to the comity and respect that federal courts owe to the courts of another sovereign. Because the federal court's order improperly intrudes upon the absolute immunity that cloaks this Court's—and the Special Fiduciary's—prior actions, the Court hereby instructs its Special Fiduciary not to turn over assets, documents, or anything else pertaining to the Trust until further order of this Court.

This Court hastens to add that it does not challenge the federal court's authority to issue *prospective* injunctive or declaratory relief, even if such relief could potentially direct present or future actions of this Court. However, before it can enter such relief, the federal court must first

accept and acknowledge the validity and constitutionality of *all* of the actions and determinations taken by this Court over the past six years. Only within that framework may the federal court declare how, in its present posture, the terms of the reformed Trust or this Court's administration of it violate the plaintiffs' First Amendment rights.

Although captioned as a preliminary injunction order, the federal court's order also goes well beyond the appropriate scope of such orders, which are intended to preserve the *status quo* pending final determination of plaintiffs' claims after a trial on the merits. Rather than doing so, the federal court's order purports to dismantle all this Court has done, and grant plaintiffs practically all the relief they seek before they have proven their case on the merits.²

Even if none of the above-stated concerns were present, as a practical matter the federal court's order cannot legally be implemented as it stands, even on an interim basis. Recent media reports have noted that there are competing individuals who, in the last few months, have claimed authority to act for the COP (*i.e.*, Warren Steed Jeffs, William Timpson Jessop, Wendell Nielsen). Potentially, there might be other, as-yet unidentified individuals who may surface to claim such authority. Until there is determination made regarding who is authorized to act for the COP, neither this Court nor the federal court can, without violating the Establishment clause of the First Amendment, select the person to whom Trust assets would be turned over for interim oversight.

Finally, as this Court explained in its objection to plaintiffs' proposed order, irrespective of the Utah Attorney General's stipulation thereto, the Utah Attorney General does not speak for, nor has authority over, this Court. Similarly, because the Trust is under the oversight and control

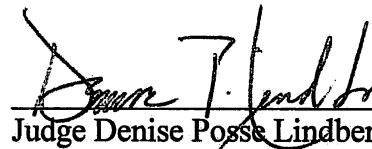
²Because of the very real costs being incurred by the Trust in defending these lawsuits, and the lost opportunity costs if long-planned and contracted asset sales are lost due to delay, it is also of concern to this Court that the federal court refused to condition issuance of its preliminary injunction order upon the posting of a proper bond by plaintiffs. Unlike the federal court, this Court is intimately familiar with the financial condition of Trust. If the federal court's injunction order is ultimately determined to have been improvidently entered, without a security bond it will be the Trust itself (and all its beneficiaries) who will bear the cost of the federal court's error, rather than those whose actions caused those losses. It is no "remedy" to say that the value of Trust lands is sufficient to make the Trust whole if the federal court's order is reversed, because the Trust could only be made whole by selling the very assets the federal court purports to protect. Certainly the federal court believes it has acted correctly in entering its order, or it would not have done so. However, none of us, including that court, is always right in its judgments. Because there are reasonable legal arguments why the federal court may have erred, it should reconsider its rejection of the Arizona Attorney General's request and require that plaintiffs post a ten million dollar bond.

of this Court, the Utah Attorney General's stipulation does not bind this Court nor the Special Fiduciary.

Pursuant to federal court rules, an immediate stay of the federal court's preliminary injunction order will be requested of the U.S. Court of Appeals for the Tenth Circuit, along with an interlocutory appeal of the federal court's decision. Until all avenues available to this Court for review of the federal district court's order are exhausted and a final determination is rendered by appropriate appellate bodies regarding the federal court's decision, this Court directs its Special Fiduciary to retain all assets of the UEP Trust.

To minimize any conflict with the federal court, however, this Court agrees that other than those actions necessary to preserve and protect the assets of the Trust, the Special Fiduciary should initiate no other affirmative action until there is a final appellate decision affirming, modifying, or overturning the federal court's order. The determination of the need to act for the preservation of Trust assets shall be committed, in the first instance, to the Special Fiduciary's business judgment, subject to review by this Court.

SO ORDERED by the Court this 11th day of April, 2011.


Judge Denise Posse Lindberg

