No. 24-154

IN THE
Supreme Court of the United States

CATHOLIC CHARITIES BUREAU, INC., ET AL.,
Petitioners,

v.

WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, ET AL.,

Respondents.

On A Writ of Certiorari to the Supreme Court of Wisconsin

BRIEF OF *AMICUS CURIAE* CITY ON A HILL LEGAL MINISTRY SUPPORTING PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*[1]

City on a Hill Legal Ministry, Inc., ("City on a Hill") is a religious, non-profit organization that has been serving South Florida since 2022. Its mission is deeply rooted in the teachings of Jesus Christ, emphasizing compassion, generosity, and commitment to the foreigner.

City on a Hill offers free legal services and assistance to immigrants in the Miami metropolitan area as an expression of its religious commitment to aid the weak, the poor, and the vulnerable. This ministry is a direct manifestation of its interpretation of Biblical scripture, including passages such as: Ephesians 2:19–20; Matthew 25:35; Deuteronomy 10:19; Exodus 23:9; and Leviticus 19:33–34, which call for the caring of immigrants as central tenets of the Christian faith. *See, e.g.*, Leviticus 19:33–34 (NIV) ("When a foreigner resides among you in your land, do not mistreat them. The foreigner residing among you must be treated as native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God.").

City on a Hill's efforts to assist low-income immigrants are an expression and exercise of its commitment to glorify God and show the love of Jesus Christ. It sincerely believes it has a religious obligation to address the legal and spiritual needs of the poor and needy in its community, especially immigrants, through practical and legal wisdom, the power of God's Word, and the transforming grace of the Gospel. By providing free legal, educational and community support services to immigrants, City on a

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici* and their counsel, made any monetary contribution toward the preparation or submission of this brief.

Hill actively adheres to and demonstrates Christian values of compassion, generosity, and service.

City on a Hill's interest in this case arises from its mission to practice and express its religious beliefs through acts of charity and service. The outcome of this case will have significant implications as to whether governments can deem its religious expression in caring for the needy as possessing an insufficiently "religious purpose" to secure First Amendment protections. By participating as *amicus curiae*, City on a Hill aims to provide the Court with a perspective that underscores the essential nature of safeguarding charitable acts' status as a form of religious expression.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has long recognized that the First Amendment affords religious groups wide deference in matters of belief, theology, and doctrine. Religious adherents—free from government interference—have the right to decide for themselves what their God requires. Determinations of faith belong solely to the faithful.

The Wisconsin Supreme Court's decision below ignores this fundamental principle, improperly entangles the courts in matters of faith, and burdens Petitioner's free exercise of religion. The court held that whether an organization can be properly said to be organized for a "primarily religious purpose"—relevant for the purposes of a tax-exemption benefit—turns *not* on whether that charitable work was religiously *motivated* but instead on whether that activity itself is "primarily religious in nature." Relevant to that analysis, the court reasoned, is whether that activity is also done by secular groups

and whether that activity attempts to "imbue program participants" with matters of faith or "supply any religious materials to program participants or employees." In other words, if it doesn't look religious, it can't be religious. But that is not how religion works in America. The First Amendment does not permit courts to second-guess what constitutes an act of faith.

This Court has long recognized that religious organizations have the autonomy to decide for themselves what their religion commands and how to exercise their faith. The government is not competent to make such determinations and the Court has warned of the consequences of doing so. To that end, the Court has consistently refused to insert itself in determining what is or is not sufficiently 'religious' to deserve First Amendment protections.

Contrary to the decision below, it is the faith motivating the believer's action that that makes the act religious. Secular overlap does not dissolve religious purpose; rather, religious motivation transforms that which is secular into something sacred. Accordingly, this Court and others have repeatedly recognized that religiously-motivated acts fall within the protections of the Free Exercise clause, even though those same types of activities are routinely done in secular contexts. Serving bread and wine is a common secular activity, but it becomes a holy sacrament when done to fulfill the commandments of God. Animals are slaughtered every day for food and clothing, but the activity becomes a sacred sacrifice when done to fulfill religious beliefs. Religious purpose springs from the religious motivation underlying the act, not the act itself.

This Court should reverse the Wisconsin Supreme Court's decision and hold that, in analyzing "religious purpose" provisions, the determinative question must

be whether the activity is motivated by a sincerely held religious belief. To hold otherwise would improperly entangle the government in matters of faith and threaten to undermine the free exercise of religion. The Court's decision in this case will not only have far-reaching impact on how the government applies similar employment tax statutes, but also on how courts apply "religious purpose" provisions in numerous other statutory frameworks throughout the country.

ARGUMENT

I. AN ACT IS RELIGIOUS IF IT IS MOTIVATED BY RELIGIOUS PURPOSES

A. Religious groups enjoy wide deference and autonomy to practice their beliefs free from governmental intrusion.

Determinations of faith belong to the faithful, not the state. Accordingly, the Court's precedent makes clear that the government should not—as the lower court did below—entangle itself in ecclesiastical affairs.

The "most important work" of the Free Exercise Clause is "protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life[.]" *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). In cases stretching back to the 1800s, this Court has repeatedly recognized that the First Amendment "radiates . . . a spirit of freedom for religious organizations" and grants them the "power to

decide for themselves, free from state interference, matters of . . . faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). This means that, to safeguard religious autonomy, no branch of government—legislative, executive, or judicial—may dictate how religious organizations choose to exercise their beliefs or carry out their religious mission. *See id.*; *see also Kreshrik* v. *Saint Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam).

The anchoring principle in the Court's Free Exercise jurisprudence is religious autonomy: "[T]he full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights[.]" *Watson* v. *Jones*, 80 U.S. 679, 728 (1871). The Court has time and again underscored the importance of allowing religious organizations the autonomy to carry out their religious principles without state interference. *See Kedroff*, 344 U.S. at 116; *Serbian E. Orthodox Diocese for the U.S. & Can.* v. *Milivojevich*, 426 U.S. 696, 713 (1976).

In *Kedroff*, for example, the Court was asked to adjudicate a property dispute between two branches of the Russian Orthodox Church, one of which was based in the United States, the other based in Russia. 344 U.S. at 95–97. The dispute concerned which branch of the Church was permitted to use the St. Nicholas Cathedral in New York City as their primary place of worship and as a residence for its archbishop. *Id.* at 96. The New York legislature enacted a statute which purported to transfer the St. Nicholas Cathedral from the Russian Orthodox Church to the Russian Church In America. *Id.* at 107. This, the Court held, violated the First Amendment because it constituted improper

governmental "control over churches." *Id.* at 110. To uphold the statute, the Court held, would allow the legislature to improperly inject itself into a "decision[] of the church custom or law," *id.* at 120, circumventing the First Amendment's "spirit of freedom for religious organizations," *id.* at 116.

The Court reaffirmed this core principle in *Serbian Eastern Orthodox*. There, a state court waded into a dispute between the Serbian Orthodox Church in North America and a former bishop, whom the Church had defrocked. *Id.* at 698, 702–08. The state court questioned and attempted to invalidate the Church's internal regulations. *Id.* at 698. This Court promptly reversed the state court's clear legal error, chastising the state court for undertaking a judicial inquiry "into the procedures that canon or ecclesiastical law supposedly requires [a] church judicatory to follow" as "exactly the inquiry that the First Amendment prohibits." *Id.* at 713. By purporting to resolve the dispute between the Church and the bishop on civil law grounds, the state court had "unconstitutionally undertaken the resolution of quintessentially religious controversies" trampling the Church's religious autonomy in the process. *Id.* at 720.

Earlier in the history of this case, the Wisconsin Court of Appeals explicitly noted that "the result in this case would likely be different if CCB and its sub-entities were actually run by the church, such that the organizations' employees were employees of the church." *Catholic Charities Bureau, Inc.* v. *Wis. Lab. & Indus. Rev. Comm'n*, 987 N.W.2d 778, 780 (Wis. Ct. App. 2023) (citing Wis. Stat. § 108.02(15)(h)1 (2024)). That distinction may be embedded within the Wisconsin statute, but it finds no support in the First Amendment. The First Amendment's guarantee of religious autonomy is not limited to churches. As this

Court's opinions make clear, the First Amendment guarantees "religious groups"—not only houses of worship—the autonomy to "shape [their] own faith and mission." *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *E.E.O.C.*, 565 U.S. 171, 188 (2012). Secular authorities have no role to play in shaping the group's faith or mission, or how they may go about that work. In reaching its holding in *Hosanna-Tabor*, the Court looked to the First Amendment's "special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189. The decision is framed around "religious groups" *writ large,* and rejects out of hand the "remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom." *Id.* Most recently, the Court adopted similar reasoning in *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, affirming "[t]he independence of religious institutions" including "their autonomy with respect to internal management decisions that are essential to the institution's central mission." 591 U.S. 732, 746 (2020).

The Court's holdings lead the an inescapable conclusion: the guarantees of the Free Exercise clause extend not only to Churches, but also to "religious schools, and religious organizations engaged in charitable practices" such as "homeless shelters, hospitals, soup kitchens, and religious legal-aid clinics . . . among many others." *Seattle's Union Gospel Mission* v. *Woods*, 142 S. Ct. 1094, 1096 (2022) (statement of Alito, J., respecting denial of certiorari). To allow the government to interfere in such organizations' internal religious affairs would "would undermine not only the autonomy of many religious organizations but also their continued viability." *Id.*

Time and again the Court has affirmed that, when it comes to matters of faith, the state should keep its

hands off. *See, e.g.*, *Masterpiece Cakeshop* v. *Colo. Civ. Rights Comm'n*, 584 U.S. 617, 6321 (2018) ("[A] member of the clergy who objects to gay marriage on moral and religious grounds could not be compelled to perform the ceremony without denial of his or her right to the free exercise of religion. This refusal would be well understood in our constitutional order as an exercise of religion."); *Church of Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 531 (1993) ("Although the practice of animal sacrifice may seem abhorrent to some, religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." (internal quotation omitted)); *Hernandez* v. *Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989) ("It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds."); *Thomas* v. *Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981) ("The determination of what is a 'religious' belief or practice is more often than not a difficult and delicate task . . . . [R]esolution of that question is not to turn upon a judicial perception of the particular belief or practice in question[.]"(footnote omitted)); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 336 (1987) ("[I]t is a significant burden on a religious organization to require it . . . to predict which of its activities a secular court will consider religious. . . . [A]n organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission."); *United States* v. *Ballard*, 322 U.S. 78, 87 (1944) ("With man's relations to his Maker and the obligations he may think they impose . . . no interference can be permitted[.]" (citing *Prince* v. *Massachusetts*, 321 U.S. 158 (1944))).

In the words of Justice Gorsuch, "[t]he First Amendment does not permit bureaucrats or judges to 'subject' religious beliefs 'to verification.' About this, the Court has spoken plainly and consistently for many years." *Trs. of New Life in Christ Church* v. *City of Fredericksburg, Va.*, 142 S. Ct. 678, 679 (2022) (Gorsuch, J. dissenting from denial of certiorari). "Absent proof of insincerity or fraud, a church's decisions 'on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as *conclusive*." *Id*. (emphasis added) (quoting *Milivojevich*, 426 U.S. at 729). "In this country, we [do] not subscribe to the 'arrogant pretension' that secular officials may serve as 'competent Judge[s] of Religious truth.'" *Id.* (citation omitted). Instead, the faithful themselves, free from state interference, are the sole arbiters of their faith. *Id*.

B. Religiously motivated charitable activities are entitled to First Amendment protection.

The court below erred in wading into ecclesiastical determinations that belong squarely to the faithful, not the government. Central to this error is the court's holding that it should look beyond the religious motivations underlying the organization's charity work—which are unquestioned—and determine instead whether or not the activities themselves are "primarily religious in nature." *Catholic Charities Bureau, Inc.* v. *Wis. Lab. & Indus. Rev.,* 3 N.W.3d 666, 682 (Wis. 2024). Using that standard, the court held that the organization is not run primarily for religious purposes because, among other things, its charitable activities "can be provided by organizations of either religious or secular motivations." *Id* at 683. Such an approach to the free

exercise of religion finds no support and would lead to absurd results.

Drinking wine *can* be a secular act, but it is indisputably an act of faith when imbibed as a part of Holy Communion. *See* Luke 22:19 (NIV). It is the faith motivating the believer's action that that makes the act religious. The opinion below is precisely backwards. Secular overlap does not dissolve religious purpose; rather, religious motivation transforms that which is secular into something religious.

The courts have repeatedly recognized that religiously-motivated acts fall within the protections of the Free Exercise clause, even though those same types activities are routinely done in secular contexts as well. For example, in various circumstances, the courts have recognized that:

- Animal sacrifices are protected as religious acts, despite that killing animals is a common secular activity. *See Lukumi Babalu*, 508 U.S. at 535–36 (ordinance "prohibits the sacrifice of animals, but defines sacrifice . . . [to] exclude[] almost all killings of animals except for religious sacrifice, ... The net result of the gerrymander is that few if any killings of animals are prohibited other than Santeria sacrifice, which is proscribed because it occurs during a ritual or ceremony and its primary purpose is to make an offering to the orishas, not food consumption.").

- Operating a homeless shelter is a protected expression of faith, notwithstanding existence of secular organizations that also provide shelter services. *Jesus Ctr.* v. *Farmington Hills Zoning Bd. of Appeals*,

544 N.W.2d 698, 703 (Mich. Ct. App. 1996) ("The Jesus Center's argument that its shelter program is an expression of its faith is certainly not unique or otherwise difficult to believe. The Bible . . . is replete with passages teaching that the God of the Bible is especially concerned about the poor, that believers must also love the poor, and that this love should result in concrete actions to deal with the needs of the poor.") (RFRA decision).

- Managing a school is a religious act, even though schools are commonly secular. *Cmty. Lutheran Sch.* v. *Iowa Dep't of Job Serv.*, 326 N.W.2d 286, 289–91 (Iowa 1982) (a school operates for a "religious purpose" when the reason the school is operated is faith-based) (decided on state statutory grounds); *see also Christian Sch. Ass'n of Greater Harrisburg* v. *Commonwealth Dep't of Lab. & Indus.*, 423 A.2d 1340, 1345 (Pa. Cmmw. Ct. 1980) ("[A]ttempt[s] to dichotomize the religious and secular aspects of church schools is not a fruitful method for determining their primary purpose.").

- Operating a mental health training center is a religious act, despite fact that mental health counseling is often secular. *Kendall* v. *Dir. of Div. of Emp. Sec.*, 473 N.E.2d 196, 199 (Mass. 1985) (courts must be "quite cautious in attempting to define, for tax . . . purposes, what is or is not a 'religious' activity . . . for obvious policy and constitutional reasons" (quoting *Cmty. Renewal Soc.* v. *Dep't of Lab.*, 439 N.E.2d

975, 978 (Ill. App. Ct. 1982)) (decided on state statutory grounds).

Secular authorities should not second-guess what charitable work a religious organization considers religious activity. *See, e.g.*, *Amos*, 483 U.S. at 336; *Thomas*, 450 U.S. at 714. Rather, they should defer to the religious organization's determination as to the faith-based nature (or not) of their activities. This Court has long looked to the *motivation* behind the act, not the act itself, to determine religious purpose. *See Lukumi Babalu*, 508 U.S. at 532 ("[T]he protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons."). This is because the First Amendment protects *all* acts that are an expression of faith, not simply "objective" or "typical" ones such as religious ceremony or proselytizing. *See Catholic Charities Bureau, Inc.*, 3 N.W.3d at 681 (identifying these as exemplar "hallmarks of religious purpose").

Consequently, when done as an expression of faith, charitable activities like feeding the hungry or operating legal aid clinics are protected religious conduct, even though such activities are frequently engaged in by secular organizations. Proper application of this Court's precedent requires court to analyze the *motivation* animating the charitable activity, not focus on the inherent nature of the activity itself. The inescapable conclusion then, is that when a charitable endeavor is operated by a religious organization and animated by religious motivation, the charitable endeavor itself is also rendered religious. *See, e.g.*, *Dep't of Emp.* v. *Champion Bake-N-Serve, Inc.*, 592 P.2d 1370, 1372 (Idaho 1979) (rejecting idea that "commercial aspects coexistent with the primary religious purpose" undermine the

fundamental religious purpose of an activity); *Schwartz* v. *Unemployment Ins. Comm'n*, 895 A.2d 965, 971 (Me. 2006) ("The fact that the Mission provides health care to islanders and an afterschool program for students does not diminish its continuing religious purpose.").

II. THE ERROR OF THE WISCONSIN SUPREME COURT IS NOT UNIQUE AND HAS BURDENED RELIGIOUS LIBERTIES IN OTHER STATES AND OTHER CONTEXTS.

Unfortunately, the error made by the Wisconsin Supreme Court is not unique, nor is it cabined to the realm of employment tax statutes. Across the country "religious purpose" statutory provisions have been used by courts as an invitation to scrutinize and second-guess religious beliefs. The Court can—and should—prevent this unconstitutional, widespread injustice from continuing.

A. Courts in states with similar employment statutes are quick to disregard the religious purpose behind a religious organization's activities.

Just like the Wisconsin Supreme Court, state courts repeatedly construe "religious purpose" exemptions in unemployment tax statutes as an invitation to probe whether an religious ministry's acts are sufficiently religiously motivated to constitute "religious purpose." A few examples serve to illustrate the folly of this state of affairs.

In *Cathedral Arts Project, Inc.* v. *Department of Economic Opportunity*, an Episcopalian ministry in Florida created an outreach ministry, the Cathedral Arts Project, that provided fine arts education to underprivileged children. 95 So. 3d 970, 972 (Fla. Dist.

Ct. App. 2012). As part of this ministry, art teachers selected art for use in the program because they "associate [it] with the Gospel of Jesus Christ." *Id.* The state Department of Revenue determined that the ministry did not qualify for a religious tax exemption, and therefore owed over $20,000 in unemployment tax. *Id.* The ministry challenged the tax determination, and a state agency concluded that the ministry's "primary purpose" was to "promote and support the arts" and was therefore not "operated primarily for religious purposes." *Id.* The ministry appealed, and the court affirmed, over a vigorous dissent. *Id.* at 972–73. The court reasoned that although the ministry's "motivation may be religious in nature, its primary purpose in operating . . . is to give art instruction to underprivileged children." *Id.* at 973. In other words: preaching the Gospel through fine arts was not religious enough to demonstrate the ministry's religious purpose.

The dissent highlighted the fundamental flaw in the majority's opinion:

> Rather than focus on the "primary purpose" of the organization, the majority takes a non-textual approach in focusing solely upon the service delivered. The statute is neutral as to the type of service an organization provides; it speaks only in terms of the purpose of the organization. *The legal question under the statute's language is "why" the organization provides the service (i.e., its purpose) and not "what" the organization provides (i.e., arts instruction, food bank, etc.).*
>
> . . .
>
> The majority opinion is inconsistent in finding the Church controls Cathedral Arts, but that

> Cathedral Arts does not operate with a primarily religious purpose. Control is the channel marker for purpose. Cathedral Arts, as an outreach ministry, is an arm of the Church with a purpose that is no less religious than that of the Church itself.

Id. at 975–76 (emphasis added).

Another example comes from Illinois. In *Concordia Ass'n* v. *Ward*, an intermediate appellate court found that the "religious purpose" of a corporation established by Lutheran churches for the purpose of operating and maintaining a cemetery for Lutherans and their family members was "secondary" to its "primary purpose" of operating a cemetery. 532 N.E.2d 411, 412–14 (1988). To be buried in the cemetery, the deceased, (or one of their family members) had to be Lutheran. *Id.* at 412–13. Burial services had to be Christian, and most were performed by Lutheran ministers. *Id.* Nevertheless, the court dismissed the organization's "history, . . . ongoing activities, [and] . . . connection with the Lutheran congregations which make up the association" as "secondary" and therefore insufficient to demonstrate a primarily religious purpose. *Id.* at 414. As a result, the Concordia Association was, like Petitioners, required to pay taxes into the state's unemployment insurance program. *Id.*

The Supreme Court of Arkansas similarly held that a Catholic hospital did not qualify for a religious exemption from the state's unemployment tax because (i) religion was too small a percentage of the hospital's budget, (ii) no proselytizing took place, and (iii) except for employees working in the hospital's chapel, hospital employees were not required to be Catholic. *Terwilliger* v. *St. Vincent Infirmary Med. Ctr.*, 804

S.W.2d 696, 699 (Ark. 1991). The church was a "wing" of the Catholic Church, owned and operated by the Sisters of Charity of Nazareth, and viewed itself as a "conduit for the mission of service to the sick." *Id.* at 697. Unconvinced, the court reasoned that "although the *sole motivation* may be religious in nature[,]" the hospital "*operated* primarily for the purpose of providing health care." *Id.* at 699 (emphases added). Thus, the court concluded that the evidence did not establish that "religion pervades the operation of the [hospital]." *Id.* It is unclear what kind of religious organization could meet the court's enigmatic standard, if they could not be met by a hospital owned and operated by the Roman Catholic Church to fulfill its religious mandates.

The foregoing are just a handful of examples of how courts have burdened religious liberty through interpretations of "religious purpose" provisions in the employment tax context. There are far more. *See, e.g.*, *Samaritan Inst.* v. *Prince-Walker*, 883 P.2d 3, 5, 8, 9 (Colo. 1994) (institute which aids and establishes pastoral counseling centers in "provid[ing] services in the context of religious faith" did not qualify for a religious purposes exemption because the institute's activities was "essentially secular"); *Unity Christian Sch. Of Fulton, Ill.* v. *Rowell*, 6 N.E.3d 845, 851 (Ill. App. Ct. 2014) (Christian school was not operated for primarily religious purposes notwithstanding "the school's Bible instruction, inculcation of Christian values and glorification of God were integral parts of the educational mission"); *Simon* v. *Bd. of Rev., Dep't of Lab. & Workforce Dev.*, No. A-1972-15T4, 2017 WL 6398900, at *2 (N.J. Super. Ct. App. Div. Dec. 14, 2017) (denying a Jewish school a religious purposes exemption even though "religious education was a significant part of the curriculum, and petitioner was

unaware of any non-Jewish students at the school"). In these cases, and many others, courts around the country have inappropriately put a thumb on the scale of religious belief. All too often, the result has been that religious organizations' activities—although clearly religiously motivated—are not "religious enough" to be deserving of protection.

B. Courts have also improperly applied "religious purpose" provisions in other contexts.

Outside of the employment tax context, courts have similarly used "religious purpose" to second-guess the religious nature of faith-based activities.

For example, in *Needham Pastoral Counseling Center., Inc.* v. *Board of Appeals of Needham*, a Massachusetts state court made the remarkable determination that a pastoral counseling center's application to remodel part of its building—located inside a church—to make room for a spiritual counseling center should be denied, because it did not qualify for the statutory "religious purpose" exemption. 557 N.E.2d 43, 46 (Mass. App. Ct. 1990). The center's counselors were ordained clerics and trained theologians, who employed "psychological training" and "therapeutic techniques" in their counseling sessions. *Id.* at 46. Despite acknowledging the religious nature of the center's activities, the court determined that "[s]ome theological . . . content does not automatically imbue an activity with religious purpose[.]" *Id.* The court reasoned that the center's activity was not primarily religious because its clerical counselors provided services to non-parishioners and non-believers, and did not proselytize to its clients. *Id.* at 46–47. Brushing aside the First Amendment, the court described its protections as "academic" because the activity "is not in its essential nature a religious

use[.]" *Id.* at 47. That is to say, the court found that the First Amendment could not apply because the activity at issue was primarily secular, a conclusion that required the court to disregard the clear religious motivations of the counseling and instead decide for itself what are and are not religious activities.

A similar issue arose in Tennessee. *Christ Church Pentecostal* v. *Tenn. State Bd. of Equalization*, 428 S.W.3d 800 (Tenn. Ct. App. 2013). The Christ Church Pentecostal constructed a multi-million dollar family life center, which housed worship and classroom areas, offices, and the church's "For His Glory" bookstore. *Id.* at 804. The church operated the bookstore "to reach out to the community and minister to their needs" because that was "a direct purpose of the Church." *Id.* at 808. Nevertheless, the court denied the church's request for a religious purpose tax exemption for the bookstore, concluding that it was "nothing short of a retail establishment housed within the walls" of the church's family life center, *id.* at 813, and "was not reasonably necessary to accomplish [the church's outreach] mission," *id.* at 818–19.

The foregoing examples are not unique. Courts across the country have tied themselves in knots trying to delineate which types of activities have a constitutionally protected "religious purpose." *See, e.g.*, *Bishop of Protestant Episcopal Diocese in N.H.* v. *Town of Durham*, 151 A.3d 945, 948 (N.H. 2016) (denying a church's request for a religious purpose tax exemption for use of its parking lot); *In re Appeal of Church of Yahshua*, 584 S.E.2d 827, 829–30 (N.C. Ct. App. 2003) (denying church's request for religious purpose tax exemption because the land did not yet have any buildings); *Du Page Cnty. Bd. of Rev. v. Dep't of Revenue of Ill.*, 790 N.E.2d 918, 923-24 (Ill. Ct. App. 2003) (denying property tax exemption for home

owned by Lutheran church, where teacher at parish-school was required to live because only the home office was used for religious purposes). The Third Circuit, for example has employed a *nine factor* test to determine whether a corporation's "purpose and character are primarily religious." *LeBoon* v. *Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 226 (3rd Cir. 2007). That is an overcomplicated approach. Instead, this Court should make clear that any activity born out of religious belief or done as an expression of faith is imbued with religious purpose. *See Lukumi Babalu*, 508 U.S. at 542. That test would allow courts to make straightforward determinations about the nature of an organization's activities without improperly entangling themselves in ecclesiastical affairs.

* * * * *

Narrow and inconsistent judicial interpretations of "religious purpose" have inflicted tangible harm on religious organizations, undermining their ability to fulfill their missions and violating their First Amendment rights. Courts repeatedly fail to give ample weight to the intrinsic religious motivations animating religious organizations to action. Instead, they focus on the nature of the actions themselves, routinely concluding that because the religious organization is doing something that a secular organization does too, the religious organization's charitable activities lack "religious purpose." This jeopardizes the autonomy of religious groups and sets a dangerous precedent for future interpretations of religious exemptions.

Acts of charity performed by Christian organizations are imbued with religious purpose, and thus constitutionally protected. Indeed, the Bible calls

Christians—including *amicus*—to perform acts of "secular" benevolence:

> 35 For I was hungry and you gave me something
> to eat, I was thirsty and you gave me something
> to drink, I was a stranger and you invited me
> in, 36 I needed clothes and you clothed me, I was
> sick and you looked after me, I was in prison
> and you came to visit me.
>
> 37 Then the righteous will answer him, "Lord,
> when did we see you hungry and feed you, or
> thirsty and give you something to
> drink? 38 When did we see you a stranger and
> invite you in, or needing clothes and clothe
> you? 39 When did we see you sick or in prison
> and go to visit you?"
>
> 40 The King will reply, "Truly I tell you,
> whatever you did for one of the least of these
> brothers and sisters of mine, you did for me."

Matthew 25:35–40 (NIV).

Religious organizations fulfill these commandments when they operate programs to feed the hungry, welcome the stranger (immigrant), clothe the poor, or otherwise assist widows and orphans, the elderly, disabled, and those in need of disaster relief. Religious groups perform these acts of service in fulfillment of the divine command to "love your neighbor as yourself," not out of transactional proselytization. Matthew 22:39 (NIV); *see also* 1 Thessalonians 3:12 (NIV) ("May the Lord make your love increase and overflow for each other and for everyone else"). Courts should not take it upon themselves to parse, for instance, which act of feeding bread to the hungry is secular (*i.e.*, a Church-operated food pantry), and which is religious (*i.e.*, serving Holy Communion). To

do so impermissibly places courts in the role of deciding how a religious organization should carry out its "faith and mission" and violates basic First Amendment protections. *Hosanna-Tabor*, 565 U.S. at 190.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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