

No. 24-154

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IN THE  
**Supreme Court of the United States**

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CATHOLIC CHARITIES BUREAU, INC., ET AL.,

*Petitioners,*

*v.*

WISCONSIN LABOR & INDUSTRY REVIEW  
COMMISSION, ET AL.,

*Respondents.*

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On Writ of Certiorari to the  
Supreme Court of Wisconsin

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**BRIEF OF *AMICI CURIAE*  
RELIGIOUSLY AFFILIATED UNIVERSITIES  
AND HIGHER-EDUCATION ASSOCIATIONS  
IN SUPPORT OF PETITIONERS**

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Zachary G. Parks  
*Counsel of Record*  
MaKade C. Claypool  
Eli Nachmany  
Brad J. Grisenti  
COVINGTON & BURLING LLP  
850 Tenth Street, NW  
Washington, DC 20001  
(202) 662-6000  
zparks@cov.com

*Counsel for Amici Curiae*

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici* are among the largest and most well-known religiously affiliated universities in the country. *Amici* also include five associations of religiously affiliated colleges and universities, representing over 400 higher-education institutions that bring opportunities to hundreds of thousands of Americans. Although *amici* differ in their theology, governance structures, and campus communities, they all hold deeply religious views about the importance of education. From curriculum to standards of conduct, *amici* seek to infuse faith into all aspects of campus life, and they depend on First Amendment protections to safeguard their ability to pursue their religious missions without state interference. Many *amici* also depend on their tax-exempt status as religious organizations to better direct resources towards fulfilling those missions. As such, *amici* are uniquely positioned to explain how the Wisconsin Supreme Court's reasoning, if left to stand, could threaten fundamental religious liberties for not only Petitioners, but also faith-based higher education more broadly.

The following associations are *amici* in this brief:

- Council for Christian Colleges and Universities
- Association of Adventist Colleges and Universities
- Association for Biblical Higher Education

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person, aside from *amici*'s counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

- Association of Presbyterian Colleges and Universities
- Conference for Mercy Higher Education

The following religiously affiliated universities are also *amici*:

- Brigham Young University
- Baylor University
- George Fox University
- Liberty University
- Loma Linda University
- University of Notre Dame du Lac

## SUMMARY OF ARGUMENT

This case is about who decides whether an organization’s faith-based practices are “religious”—the organization itself or the courts? Since the Founding and across decades of precedent, the answer has been (and still is) straightforward: religious organizations have an inalienable right to determine their own beliefs and practices, and those beliefs and practices are entitled to constitutional protection. The role of courts has been equally clear and especially narrow: avoid judicial entanglement and faith-based discrimination by assessing only whether an organization’s religious beliefs or practices are sincere, not whether they are “religious” enough. The divided Wisconsin Supreme Court would upend that delicate balance, arrogating to courts the right to decide which religiously motivated activities count as “religious.” That approach is wrong, and the decision below should be reversed.

*Amici* write to underscore two points. *First*, by allowing courts to decide what counts as “religious,” the decision below denigrates individuals’ and organizations’ inalienable right to religious *self*-determination, entangles courts in religious questions, and discriminates against religious activities that do not fit a narrow mold. Instead, the Wisconsin Supreme Court should have credited the undisputed record evidence demonstrating that Petitioners’ activities were sincerely motivated by their religious beliefs. And it should have stopped the inquiry there.

*Second*, although the decision below immediately affects only Petitioners' efforts to care for the disabled and unemployed, *amici* worry that this same erroneous reasoning could be used to diminish the ability of higher-education institutions to further their sincere religious missions. In particular, the Wisconsin Supreme Court's decision creates immense uncertainty for religious educational institutions, who would be forced to try to predict what activities a court will consider sufficiently "religious"; impermissibly disregards the religious nature of activities simply because secular organizations engage in similar activities; offers fewer protections for educational institutions that welcome all faiths without proselytizing; and threatens to deprive many schools of resources critical to carrying out their religious missions.

For these reasons, and those articulated by Petitioners, *amici* urge the Court to reverse.

## ARGUMENT

### **I. The Decision Below Denies First Amendment Protections for Religiously Motivated Activities, Breaking from History and This Court's Precedents.**

At base, the divided Wisconsin Supreme Court's decision reduces to whether Petitioners' efforts to care for the disabled and unemployed are sufficiently "religious." *See* Pet.App.26a–28a. The Wisconsin Supreme Court thought that it could answer this question without raising constitutional concerns so long as it relied on "a neutral and secular inquiry,"



which included consideration of whether the organization engaged in a list of “typical” liturgical, proselytizing, and intra-faith activities more common in some faiths. *See* Pet.App.26a–27a, 40a. But by deciding *whether* a religiously motivated activity is sufficiently religious (regardless of the criteria it employed), the court impermissibly strayed beyond its constitutional bounds, infringing Petitioners’ right to determine and exercise their own religious beliefs and practices. This “very process of inquiry,” *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979), runs counter to the fundamental right of religious self-determination championed during the Founding, recognized in the Constitution, and repeatedly reaffirmed by this Court. Instead, the decision below should have limited itself to confirming that Petitioners’ convictions were sincere, which the record plainly demonstrated.

**A. The Decision Below Infringed Petitioners’  
Right to Religious Self-Determination.**

Since the Founding, the right to practice one’s own religion has been a touchstone principle of religious liberty. This right was enshrined in many colonial charters and state constitutions, evincing “wide assent in the early republic” to the notion that religious matters were a “private judgment” and that a person has an “unfettered freedom to believe that which is dictated by one’s heart and mind.” Richard W. Garnett et al., *Religion and the American Constitutional Experiment* 60 (5th ed. 2022) (cleaned up); *see also* *Fulton v. City of Philadelphia*, 593 U.S. 522, 576 (2021) (Alito, J., concurring) (“[T]hese state constitutional provisions provide the best evidence of

the scope of the right embodied in the First Amendment.”).

In describing that right, colonial charters and state constitutions emphasized protections for religiously motivated activities driven by “conscience,” without getting mired in questions about whether particular activities were religious enough. For example, William Penn’s 1701 Charter of Privileges declared that no “persons” could be “compelled to frequent or maintain any religious worship, place, or ministry *contrary to ... their mind*” or “*their religious persuasion.*” *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* 3076–77 (Francis Newton Thorpe ed., 1909) (emphases added). New Jersey’s 1776 constitution similarly affirmed that “no person shall ever ... be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of *his own conscience,*” “which he *believes* to be right, or has deliberately or voluntarily engaged himself to perform.” *Id.* at 2597–98 (emphases added). Virginia’s 1776 Bill of Rights likewise explained that “religion, or the duty which we owe to our Creator, and the manner of discharging it, *can be directed only by reason and conviction*”; thus the state protected “the free exercise of religion, according to the dictates of conscience.” *Id.* at 3814 (emphasis added). Massachusetts’s 1780 constitution reserved to individuals that right to “worshi[p] God in the manner and season most agreeable to the dictates of his own *conscience*; or for his religious profession of *sentiments.*” *Id.* at 1889 (emphases added); *see also id.*

at 1647 (Maine 1819 constitution, similar). New Hampshire's 1784 constitution also ensured that "[e]very individual has a natural and unalienable right to worship God according to the dictates of his own conscience ... in a manner and season most agreeable to the dictates of his own conscience." *Id.* at 2454.

The Founding generation shared similar views. In a 1789 letter to a group of Quakers, George Washington "assure[d]" them that "the conscientious scruples of all men should be treated with great delicacy and tenderness." 30 *The Writings of George Washington from the Original Manuscript Sources 1745-1799*, at 416 n.54 (John C. Fitzpatrick ed. 1939). James Madison, "the leading architect of the religion clauses of the First Amendment," *Flast v. Cohen*, 392 U.S. 83, 103 (1968), similarly affirmed that religion is to be "left to [one's own] conviction and conscience" and "cannot follow the dictates of other men." *Memorial and Remonstrance Against Religious Assessments* (1785), in 2 *The Writings of James Madison (1783-1787)*, at 184 (Gaillard Hunt ed. 1901). He went on to explain that "[i]t is the duty of every man to render to the Creator such homage, and such only, as *he believes* to be acceptable to him," and therefore that "Religion is wholly exempt from [civil society's] cognizance." *Id.* at 185 (emphasis added). "Above all," Madison explained, every individual "retain[s] an equal title to the free exercise of Religion according to the dictates of conscience." *Id.* at 186. The Founding generation understood these protections to extend to religious organizations as well. See, e.g., George Washington, Letter to United Baptist Churches of Virginia (May 1789) (assuring

that the constitutional protections for “liberty of conscience” unquestionably prevented the government from “endanger[ing] the religious rights of any ecclesiastical Society”).

Aligned with this historical understanding, this Court has safeguarded the right of both individuals and organizations to determine their own religious beliefs and practices. In doing so, the Court has avoided injecting itself into questions regarding whether beliefs or practices were religious enough to merit First Amendment protection.

For individuals, “the 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, is conceded to all.” *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871) (emphases added); *see also Zorach v. Clauson*, 343 U.S. 306, 313 (1952) (“We guarantee the freedom to worship as one chooses [and] make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary.”); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (“The [Free Exercise] Clause ... does its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths[.]”).

Religious organizations enjoy the same right. They can decide to “organize voluntary religious associations to assist in the expression ... of *any* religious doctrine.” *Watson*, 80 U.S. (13 Wall.) at 728–29 (emphasis added). Put another way, this “freedom,” “independence,” and “power” entitles

organizations “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 114, 116 (1952); accord *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020) (affirming the “autonomy” and “independent authority” of religious organizations with respect to religious affairs). The right protects religious activities, even if those activities can be performed by non-religious organizations, such as caring for the poor or providing education. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

Simply put, both the individual and the organization possess the right to decide for themselves what is or is not religious. The Wisconsin Supreme Court was thus wrong to conclude that “self-definition [should not] drive” its evaluation of Petitioners’ activities. Pet.App.23a–24a.

**B. The Wisconsin Supreme Court Exceeded Its Limited Role of Determining Whether Petitioners’ Religious Convictions Were Sincere.**

The Wisconsin Supreme Court thought it was necessary to look beyond the Petitioners’ sincere religious beliefs to prevent “a broad spectrum of organizations” from claiming tax-exempt status “based entirely on a single assertion of a religious motivation.” Pet.App.23a–24a. Yet by giving due deference to an organization’s right to religious self-determination, courts are not rubber-stamping any and all assertions. Although the right to religious self-

determination lies exclusively with the professing individual or organization, a court plays the important, but limited, role of evaluating whether a belief or practice is sincere, *without* assessing whether it is sufficiently religious.

In *Wisconsin v. Yoder*, for example, the Court was asked to decide whether the educational preferences of Amish parents were, in fact, “rooted in religious belief.” 406 U.S. at 215. Echoing George Washington’s sentiments discussed above, the Court acknowledged that “determin[ing] ... what is a ‘religious’ belief or practice entitled to constitutional protection ... present[s] a most delicate question.” *Id.* But rather than decide for itself whether the Amish practices were sufficiently religious, the Court relied on “abundan[t]” record evidence to credit the *Amish parents’* claims that their “life style” was “not merely a matter of personal preference, but one of deep religious conviction.” *Id.* at 216–17.

The Court reaffirmed its limited role in *Thomas v. Review Board*, 450 U.S. 707 (1981). There, Thomas had “claimed his religious beliefs prevented him from participating in the production of war materials.” *Id.* at 709. The Indiana Supreme Court disagreed, concluding that he had “made a merely personal philosophical choice rather than a religious” one. *Id.* at 714. In reversing, this Court reiterated that “[t]he determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task.” *Id.* at 715. But it clarified that “the resolution of that question is *not* to turn upon a judicial perception of the particular belief or practice in question,” as “it is not within the judicial function and judicial

competence to inquire whether the petitioner ... correctly perceived the commands of [his] faith.” *Id.* at 715–16 (emphasis added).<sup>2</sup> Because “Thomas drew a line,” “it [was] not for [the Court] to say that the line he drew was an unreasonable one.” *Id.* at 715; *accord Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014) (Gorsuch, J.). Instead, the Court’s only function was deferential and “narrow,” i.e., to determine whether the record showed that Thomas had an “honest conviction that such work was forbidden by his religion,” and nothing more. *Thomas*, 450 U.S. at 716; *accord Burwell v. Hobby Lobby*, 573 U.S. 682, 725 (2014) (“[I]t is not for [courts] to say that [an organization’s] religious beliefs are mistaken or insubstantial. Instead, our narrow function ... is to determine whether the line drawn reflects an honest conviction[.]” (cleaned up)); *United States v. Seeger*, 380 U.S. 163, 184–85 (1965) (“[T]he ‘truth’ of a belief is not open to question, [but] there remains the significant question [of] whether it is ‘truly held.’” “In such an intensely personal area, of course, the claim of the [individual] that his belief is an essential part of a religious faith must be given great weight.”).<sup>3</sup>

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<sup>2</sup> This reflected James Madison’s sentiments over a century earlier, considering it “an arrogant pretension” to “impl[y] ... that the Civil Magistrate is a competent Judge of Religious truth.” *Memorial and Remonstrance, supra*, at 187–88.

<sup>3</sup> Because courts can evaluate whether religious convictions are sincerely held, the Wisconsin Supreme Court needlessly worried that “an organization’s *mere assertion* of a religious motive [would be] dispositive.” Pet.App.23a (emphasis added). While deferential, evaluating record evidence to determine if beliefs are  
(cont.)

The decision below exceeded these bounds. Instead of simply reviewing whether Petitioners' religious convictions were sincere, the Wisconsin Supreme Court weighed whether Petitioners' activities were "religious" enough to receive tax-exempt status. See Pet.App.28a–29a (accepting Petitioners' "profess[ed] ... religious motivation" as sincere, but questioning whether their activities are "primarily religious"). As the cases above demonstrate, the court's approach was impermissible.

### **C. The Decision Below Creates Significant Practical and Constitutional Concerns.**

The Wisconsin Supreme Court's approach demonstrates why, for both practical and constitutional reasons, a court's role should be narrow when assessing religious activities.

Practically speaking, "judges cannot be expected to have a complete understanding and appreciation of the role played by every person" or the importance of every particular practice "in every religious tradition." *Our Lady*, 591 U.S. at 757. In other words, a court's unfamiliarity with a particular faith makes it difficult

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sincerely held can meaningfully constrain an organization's ability to feign religion. See, e.g., *United States v. Quaintance*, 608 F.3d 717 (10th Cir. 2010) (Gorsuch, J.) (finding "numerous pieces of evidence ... strongly suggest that the Quaintances' marijuana dealings were motivated by commercial or secular motives rather than sincere religious conviction"). And even when a religious practice is sincere, courts can still evaluate whether the practice must give way to a government restriction that is narrowly tailored to serve a compelling interest. See *Kennedy*, 597 U.S. at 532.



(if not impossible) to accurately understand just how religious a particular belief or practice truly is. As then-Judge Gorsuch explained, attempting to make these determinations would “risk ... many mistakes ... given [judges’] lack of any comparative expertise when it comes to religious teachings.” *Yellowbear*, 741 F.3d at 54. Indeed, the Wisconsin Supreme Court’s approach demonstrates that courts engaging in this inquiry can produce incongruent results, treating deeply religious activities as insufficiently religious, while others find those same practices to be clearly religious. Compare Pet.App.28a–33a, with *Schwartz v. Unemployment Ins. Comm’n*, 895 A.2d 965, 968–69, 971 (Me. 2006) (religious ministry’s activities such as providing telemedicine, a food pantry, a clothing shop, and an after-school program were primarily religious despite facially secular nature), and *Dep’t of Emp. v. Champion Bake-N-Serve, Inc.*, 592 P.2d 1370, 1371–72 (Idaho 1979) (bakery owned by Seventh-Day Adventist Church was operated primarily for religious reasons despite its commercial nature).

The Free Exercise and Establishment Clauses also demand that a court’s role remain narrow. By focusing on whether particular activities are religiously familiar, typical, or traditional, courts risk injecting biases (even if unintended) against unfamiliar, atypical, and novel religious practices. Such biases would raise “serious concerns” by engendering “denominational favoritism,” *Carson v. Makin*, 596 U.S. 767, 787 (2022), “for religions found to possess a greater number of ‘central’ and ‘compelled’ tenets,” *Yellowbear*, 741 F.3d at 54; see also Asma T. Uddin, *When Islam Is Not a Religion*:

*Inside America's Fight for Religious Freedom* 132 (2019) (“The practices of religious minorities can seem foreign,” leaving “religious practices that conform to [majority] culture ... protected more often than practices that don’t.”). This too is one juncture where the Wisconsin Supreme Court went the wrong way: Despite attempts to rely on “objective criteria” and “typical [religious] activities,” the court used as its reference point for determining whether activities were “religious,” the liturgical, proselytizing, and intra-faith activities more common in Protestant faiths, skewing its conclusions in the process. *See* Pet.App.26a–27a.

By deciding whether activities are sufficiently religious, courts also become impermissibly enmeshed in religious affairs. As Justice Brennan explained, attempting to “determin[e] whether an activity is religious or secular requires a searching case-by-case analysis[,] ... result[ing] in considerable ongoing government entanglement in religious affairs,” thus violating the Establishment Clause. *Corp. of Presiding Bishop of The Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 343 (1987) (concurring opinion); *see also New York v. Cathedral Academy*, 434 U.S. 125, 133 (1977) (“[L]itigating in court about what does or does not have religious meaning touches the very core of the constitutional guarantee against religious establishment.”); *Sch. Dist. of Abington v. Schempp*, 374 U.S. 203, 216 n.7 (1963) (“Religion is eminently one of these interests, lying outside the true and legitimate province of government.” (cleaned up)). Justice Brennan further warned that leaving courts to decide what is religious creates a risk that “a court may disagree” with a

religious organization's perspective. *Amos*, 483 U.S. at 344. That risk could then warp the organization's "process of self-definition" by "incentiv[izing]" it to adjust its practices despite what it "genuinely believe[s]" accords with its "religious commitment[s]." *Id.* Here too, the decision below erred: It is simply unclear "how the [court] can avoid becoming entangled in doctrinal matters" if it decides whether a particular activity is sufficiently religious. *Catholic Bishop v. NLRB*, 559 F.2d 1112, 1125 (7th Cir. 1977), *aff'd*, 440 U.S. 490 (1979).

To sum up, the decision below must be reversed: It goes beyond assessing the sincerity of Petitioners' convictions, and instead arrogates to courts Petitioners' inalienable right to religious self-determination. The decision thus creates "judicial entanglement in religious issues" and "privileg[es]" some religious practices over others. *Our Lady*, 591 U.S. at 761. What the Wisconsin Supreme Court should have done was look to the record for "the *religious institution's* explanation ... of the religion in question," *id.* (emphasis added), determine whether the evidence demonstrated an "honest conviction," *Thomas*, 450 U.S. at 716, and stop the inquiry there.

## **II. The Decision Below Would Degrade Religious Liberty Protections in the Education Context.**

The Wisconsin Supreme Court's disregard for Petitioners' right to religious self-determination has immediate effects: According to the court, Petitioners' efforts to care for the poor and needy were not religious enough to warrant tax-exempt status. *See*

Pet.App.51a. But the long-term effects of this erroneous decision will likely extend more broadly. The same justifications that the decision below gave for brushing aside the religious nature of Petitioners' activities could easily be used to disregard First Amendment protections for organizations carrying out their sincere religious missions through education. Avoiding these pernicious consequences is yet another reason to reverse.

**A. For Many Faiths, Education Is a Central Component of Religious Exercise.**

Just as caring for the poor and needy is itself “[p]ure religion ... undefiled” for many faiths, James 1:27, providing and receiving education has been fundamental to many religions for centuries. Moses was “learned in all the wisdom of the Egyptians.” Acts 7:22. The Israelites were instructed to “teach ... diligently” their “children.” Deuteronomy 6:7. Daniel was given “knowledge and skill in all learning and wisdom.” Daniel 1:17. Jesus Christ spent much of his life teaching, and he instructed his disciples to do the same. *See, e.g.*, Luke 2:46; Matthew 5:2, 28:20. The Talmud teaches that “[t]he true guardians of a community are the teachers.” Talmud Yerushalmi Hagigah 1:7. The Torah forbids “protest[ing] against” a neighbor’s “desire to become a teacher.” Mishneh Torah 2:7. The Quran encourages believers to be “increase[d] ... in knowledge.” Quran 20:114. Muhammad taught that “[s]eeking knowledge is an obligation upon every Muslim.” Sunan Ibn Majah 224. And Latter-day Saint scripture teaches that “[t]he glory of God is intelligence,” and to “diligently ... teach one another words of

wisdom ... out of the best books” and “seek learning, even by study and also by faith.” Doctrine & Covenants 88:118, 93:36.

Indeed, “[r]eligious education, formal and informal, is core to almost every faith.” Margaret G. Graf & Eric C. Rassbach, *Reflection on Our Lady of Guadalupe School v. Morrissey-Berru and the Place of Religious Education in American Society*, 134 Harv. L. Rev. 86, 86 (2020). Or as this Court explained, “[r]eligious education is vital to many faiths practiced in the United States” and a “responsibilit[y] that lie[s] at the very core of the mission of [many] private religious school[s].” *Our Lady*, 591 U.S. at 753–54.

The United States in particular has a rich history of religiously motivated education. “In the North American Colonies, education was almost without exception under private sponsorship and supervision, frequently under control of the dominant Protestant sects. This condition prevailed after the Revolution and into the first quarter of the nineteenth century.” *Schempp*, 374 U.S. at 238 n.7 (Brennan, J., concurring); *see also* 2 Alexis de Tocqueville, *Democracy in America*, ch. XVIII (Henry Reeve trans. 1805) (“Almost all education is entrusted to the clergy.”). Thus, until the country “established public schools, governments commonly relied on religious schools” to provide education, especially to the poor. Michael Bindas, *The Once and Future Promise of Religious Schools for Poor and Minority Students*, 132 Yale L.J. Forum 529, 532 (2022).

Higher education followed a similar track, with “the first place of learning in the English parts of

America belong[ing] to a Puritan minister and graduate of Cambridge, John Harvard.”<sup>2</sup> James Bryce, *The American Commonwealth* 1324 (1888). For the Catholic Church, the maintenance of universities furthers its “centuries-old tradition ... as one of the primary transmitters and repositories of knowledge in Western civilization.” Graf & Rassbach, *supra*, at 86. Similarly, Yeshiva University “has grown from a small yeshiva offering some secular education to Jews on the Lower East Side of Manhattan in 1886 to a prestigious, multifaceted institution that integrates the knowledge of Western civilization and the rich treasures of Jewish culture.”<sup>4</sup> Today, “something more than one-third of the colleges and universities in the nation” may fairly be described as “consciously religious schools,” and they include “the finest institutions of higher learning in the world.” Stephen L. Carter, *The Constitution and the Religious University*, 47 DePaul L. Rev. 479, 480 (1998).

In advancing their respective faiths through education, religiously affiliated institutions of higher education have also proved to be a boon for society. These schools “have performed enormous services to the nation,” including “the education of generations of students who have become generations of leaders.” Carter, *supra*, at 480. “[I]n communities where public education falters,” religious schools have also provided “financial support for low-income families to obtain a rigorous faith-based education.” Graf & Rassbach, *supra*, at 86. And when immigrants from

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<sup>4</sup> Yeshiva University, *Our History*, <https://perma.cc/G4DE-9MXV>.

Europe and Latin America “arrived unable to speak English and with little formal education,” “[t]hey looked to the Church,” which “sometimes built schools out of necessity when immigrant families were not welcomed in public schools.” *Id.* Similarly, Jewish students have been able to find accommodations for their dietary restrictions by attending religiously affiliated universities that provide important access to Kosher foods.

Many religious schools believe that “religious education’ includes much more than instruction in explicitly religious doctrine or theology.” *Gordon Coll. v. DeWeese-Boyd*, 142 S. Ct. 952, 954 (2022) (Alito, J., statement respecting denial of certiorari). Such education may include formal theological training, but it also extends to creating a faith-based educational atmosphere, a moral student body, religiously convicted faculty and staff, and a curriculum infused with faith. Thus, even seemingly secular activities, such as codes of conduct, hiring practices, teaching, tuition costs, and administration, are “of deep religious conviction” to these schools and their students, and “intimately related to daily living.” *Yoder*, 406 U.S. at 216; *see also Amos*, 483 U.S. at 343 (Brennan, J., concurring) (even when the “religious-secular distinction” is “not self-evident,” an organization “may regard the conduct of certain functions as integral to its mission”).

**B. *Amici* Are Deeply Committed to Providing Education as Part of Their Sincere Religious Missions.**

As with many religiously affiliated institutions across the country, education lies at the heart of *amici*'s sincere religious missions. To illustrate, here are several examples from the signatories of this brief.

***Council for Christian Colleges and Universities (“CCCU”).*** CCCU is a nonpartisan association of more than 170 Christian higher-education institutions in the United States and around the world. CCCU's mission is to advance the cause of Christ-centered higher education and to help its institutions transform lives by faithfully relating scholarship and service to biblical truth.

CCCU's member institutions focus on seamlessly weaving together the development of the mind, spirit, body, and emotions not only to obtain knowledge, but wisdom and faithfulness as well. Its members share a “Christ-centered” mission and are “committed to supporting, protecting, and promoting the value of integrating the Bible ... throughout all curricular and co-curricular aspects of the educational experience.”<sup>5</sup> Members also commit to three related educational goals: (1) pursue academic excellence by integrating biblical truth into the spiritual and academic aspects of the institution; (2) form “students of moral commitment who live out Christian virtues such as love, courage and humility,” giving meaning and direction to “every part of the academy, from the

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<sup>5</sup> CCCU, *About*, <https://perma.cc/Z7AV-2JL5>.



classroom to the fine arts studio, from the internship placement to the residence hall and the athletic field”; and (3) produce graduates “who make a difference for the common good as redemptive voices in the world,” whether they serve as doctors, engineers, soccer coaches, parents, or in any other capacity.<sup>6</sup> These commitments demonstrate that the religious mission shared by CCCU members is inextricably linked to all aspects of education, even the seemingly secular.

One fundamental way CCCU institutions fulfill their missions is through teaching and curriculum. For example, Wheaton College tailors its curriculum to “combin[e] faith and learning to produce a biblical perspective needed to relate Christian experience” to the “needs of contemporary society.”<sup>7</sup> Pepperdine University “integrat[es] Christian principles with traditional academic fields,” helping students “discover how Christian values inform their scholarship.”<sup>8</sup> Similarly, *amicus* George Fox University “see[s] Christian faith in relation to all forms of knowledge and wisdom,” and thus its curriculum seeks to “synthesiz[e] ideas from various academic disciplines with a Christian worldview.”<sup>9</sup> And for Biola University, “the task of teaching biblical studies is not limited to those within that

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<sup>6</sup> *Id.*

<sup>7</sup> Wheaton College, *Institutional Commitments*, <https://perma.cc/K6B4-PGMQ>.

<sup>8</sup> Pepperdine University, *A Christian University*, <https://perma.cc/Y7YK-4XF9>.

<sup>9</sup> George Fox University, *Mission Statement*, <https://perma.cc/X757-VYWR>.

department”; instead, “the integration of Christian thought into all fields of inquiry is the goal of the entire teaching faculty.”<sup>10</sup> As such, the university seeks to have “every course contribute to the development of the Christian worldview.”<sup>11</sup>

Many CCCU members also expect their students to follow Christian teachings, often outlined in codes of conduct. Biola, for example, requires its students to uphold and live by certain moral and community standards consistent with the university’s religious views.<sup>12</sup> Similarly at Wheaton, “all students, faculty, and staff” promise to affirm and abide by the Community Covenant, which outlines discouraged and encouraged activities based on the college’s understanding of what “the Bible teaches about God-honoring conduct.”<sup>13</sup> The College of the Ozarks similarly requires students to commit to refraining from sexual and immoral behavior that is inconsistent with the school’s “traditional, biblical worldview ... that human sexuality is a gift from God.”<sup>14</sup>

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<sup>10</sup> Biola University, *General Information*, <https://perma.cc/6S3Q-F7G2>.

<sup>11</sup> *Id.*

<sup>12</sup> Biola University, *The Biola Community*, <https://perma.cc/J5TH-GS8M>.

<sup>13</sup> Wheaton College, *Institutional Commitments*, <https://perma.cc/K6B4-PGMQ>.

<sup>14</sup> College of the Ozarks, *Lifestyle/Sexuality Policy*, <https://perma.cc/T9AB-88H2>.

Many institutions also set religious standards for their faculty and staff. George Fox, for example, expects its employees to “bring an authentic and lived faith into the classroom [and] in their service to students,” and to “seek to dwell in Christ and have Christ dwell within and among us.”<sup>15</sup> Biola likewise requires a “Christian commitment” from its faculty and staff.<sup>16</sup> Anderson University charges its employees “with teaching and conducting the university’s business through a traditional Christian perspective” and committing “to respect and not undermine the University’s Statement of Faith.”<sup>17</sup> These requirements drive Anderson’s hiring decisions to ensure that employees are “a good fit with its religious purpose.”<sup>18</sup>

Other CCCU members pursue their religious missions by providing high-quality education at affordable costs.<sup>19</sup> For example, the College of the Ozarks seeks to “provide the advantages of Christian education ... especially [for those] who are without sufficient means to procure such training.”<sup>20</sup>

***Brigham Young University (“BYU”).*** BYU is a religious institution of higher education located in

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<sup>15</sup> George Fox University, *Mission Statement*, *supra*.

<sup>16</sup> Biola University, *General Information*, *supra*.

<sup>17</sup> Anderson University, *Commentary on Sexual Identity and Civility* (Aug. 2024), <https://perma.cc/C9JH-TKYK>.

<sup>18</sup> *Id.*

<sup>19</sup> CCCU, *About*, *supra*.

<sup>20</sup> College of the Ozarks, *About C of O*, <https://perma.cc/3ECL-64AC>.

Provo, Utah, with more than 35,000 daytime students. BYU was founded and is guided and supported by The Church of Jesus Christ of Latter-day Saints. BYU's mission "is to assist individuals in their quest for perfection and eternal life," by providing an educational experience that is "spiritually strengthening, intellectually enlarging, and character building, leading to lifelong learning and service."<sup>21</sup> BYU's mission extends beyond academics by creating "a period of intensive learning in a stimulating setting where a commitment to excellence is expected and the full realization of human potential is pursued."<sup>22</sup>

The university's religious mission is central to all it does and influences all who attend. As President Dallin H. Oaks—former president of BYU and a current ecclesiastical leader in The Church of Jesus Christ of Latter-day Saints—noted, "[t]o accomplish its mission, BYU must have all parts of its community united in pursuing it."<sup>23</sup>

For example, BYU approaches teaching and curriculum in a manner that furthers its sincere religious mission. Faculty are expected to "keep [all] subject matter bathed in the light and color of the restored gospel," even when teaching

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<sup>21</sup> BYU, *Mission & Aims of BYU*, <https://perma.cc/AW7G-EKC5>.

<sup>22</sup> *Id.*

<sup>23</sup> Dallin H. Oaks, Address Delivered at BYU Leadership Conference: Challenges to the Mission of Brigham Young University 3 (Apr. 21, 2017), <https://perma.cc/9LQF-UXP2>.

traditionally secular subjects.<sup>24</sup> Brigham Young (the university's namesake) charged faculty more than a century ago that they "ought not to teach even the alphabet or the multiplication tables without the Spirit of God."<sup>25</sup> And when BYU's J. Reuben Clark Law School was founded in 1973, then-BYU President Marion G. Romney stated that the school was established not only to "obtain a knowledge of the laws of man," but also to do so "in the light of the laws of God."<sup>26</sup> Indeed, Latter-day Saints believe that "education is a religious duty," which includes a "duty to learn truth, to love truth, and to live truth."<sup>27</sup> Thus, the purpose of all education at BYU, regardless of the subject, is "to build testimonies of the restored gospel of Jesus Christ."<sup>28</sup>

As with CCCU's members, BYU's Honor Code is another key component of the university's efforts to

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<sup>24</sup> Spencer W. Kimball, Address Delivered to BYU Faculty and Staff: Education for Eternity 11 (Sept. 12, 1967), <https://perma.cc/5PB8-2BUD>.

<sup>25</sup> Reinhard Maeser, *Karl G. Maeser: A Biography by His Son* 79 (1928).

<sup>26</sup> Marion G. Romney, Address Delivered at the Opening Ceremonies for the BYU J. Reuben Clark Law School: Becoming J. Reuben Clark's Law School (Aug. 27, 1973) (cleaned up; quoting Doctrine and Covenants 93:53), in J. Reuben Clark Law Society and J. Reuben Clark Law School, Clark Memorandum 7 (Fall 1993), <https://perma.cc/TL2M-A926>.

<sup>27</sup> John S. Tanner, A Gospel Ground for Education: An Academic Credo (Feb. 16, 2005), in 1 *Envisioning BYU* vxi (John S. Tanner ed. 2022), <https://perma.cc/TF3V-HQU3>.

<sup>28</sup> BYU, *Aims of a BYU Education*, <https://perma.cc/D8EU-WEES>.

create a faith-based environment. Faculty, administrators, staff, and students alike are required to abide by the Honor Code, which includes a commitment “to conduct [one’s] life in accordance with the principles of the gospel of Jesus Christ.”<sup>29</sup> Some aspects of the Honor Code include committing to honesty and integrity; “living a chaste and virtuous life” in accordance with the teachings of The Church of Jesus Christ of Latter-day Saints; regularly participating in worship services; abstaining from alcohol, tobacco, and other substances; and adhering to dress and grooming standards.<sup>30</sup> Students and faculty must also receive an ecclesiastical endorsement from their local church leader, signifying their “efforts to grow spiritually and meet ecclesiastical standards.”<sup>31</sup> Even those who are not members of The Church of Jesus Christ of Latter-day Saints must receive an endorsement from their own denominational leader, the local Latter-day Saint bishop, or BYU’s nondenominational chaplain.<sup>32</sup> These Honor Code requirements are essential to BYU’s religious mission.

Even BYU’s athletic programs further this mission.<sup>33</sup> Elder Clark G. Gilbert, Commissioner of

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<sup>29</sup> BYU, *CES Honor Code*, <https://perma.cc/4C7Z-9WBX>.

<sup>30</sup> *Id.*

<sup>31</sup> BYU, *Ecclesiastical Endorsements and Resources*, <https://perma.cc/T67T-82PU>.

<sup>32</sup> BYU, *Student Standing Policy*, <https://perma.cc/ET7F-5NQ9>.

<sup>33</sup> Mary Richards, *Church Commissioner of Education: Undeclared BYU Football Team Reflects the University’s Mission*, Church News (Oct. 23, 2024).

the Church Educational System of The Church of Jesus Christ of Latter-day Saints to which BYU belongs, has stressed the importance of athletics to BYU's religious mission: "If we don't have the courage to be different, we'll become just another team."<sup>34</sup> Head football coach Kalani Sitaki is also known to frequently tell his team that "faith in Christ is the foundation of our program."<sup>35</sup> Those participating in the athletic program who are of different faiths, such as the Jewish quarterback of BYU's football team, have referred to experiences at the university's faith-filled campus as transformational.<sup>36</sup> The athletic program has also played an important role in spreading knowledge of BYU's religious mission and attracting prospective students.

***University of Notre Dame du Lac.*** Notre Dame was founded in 1842 by Rev. Edward F. Sorin, a priest of the French missionary order the Congregation of Holy Cross.<sup>37</sup> The university is located near South Bend, Indiana, and has over 13,000 students and approximately 1,500 faculty members.<sup>38</sup> "[F]aculty in all departments participate in [the university's] mission to ensure that Notre Dame's Catholic

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Cameron Salerno, *Meet BYU's Jake Retzlaff, the Only Starting QB of Jewish Faith at College Football's FBS Level*, CBS Sports (Sept. 19, 2024).

<sup>37</sup> University of Notre Dame, *About*, <https://perma.cc/G8XW-MZSU>.

<sup>38</sup> *Id.*

character informs all of [its] endeavors.”<sup>39</sup> Indeed, because Notre Dame believes that “God [is] not only present in but working through persons, events and material things,” “the University welcomes all areas of scholarly activity as consonant with its mission, subject to appropriate critical refinement.”<sup>40</sup> Notre Dame seeks to contribute to “Jesus Christ’s educational mission,” and “draws its basic inspiration from Jesus Christ as the source of wisdom and from the conviction that in him all things can be brought to their completion.”<sup>41</sup>

Like CCCU’s members and BYU, Notre Dame provides students with quality education in a faith-infused environment. The university’s curriculum is “[e]nriched by Catholic intellectual and cultural traditions.”<sup>42</sup> Notre Dame is also driven by its Catholic nature to “inclu[de] and welcom[e] ... people from all faith traditions, or no faith tradition” and to “serve the local and global community.”<sup>43</sup> Similarly, the university welcomes faculty of all faiths “who support its mission as a distinctively Catholic research university” and are willing to help students “receive an education imbued with the lived

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<sup>39</sup> *Id.*

<sup>40</sup> University of Notre Dame, *Mission*, <https://perma.cc/4TLF-C7CA>.

<sup>41</sup> *Id.*

<sup>42</sup> University of Notre Dame, *Academics*, <https://perma.cc/YJ27-YX57>.

<sup>43</sup> University of Notre Dame, *Faith & Service: Catholic, and a University*, <https://perma.cc/KYU6-2SLW>.



experience of present-day Catholicism.”<sup>44</sup> Faith is also “an inextricable part” of campus activities, with “[m]ore than 100 Masses ... celebrated each week on campus at more than 50 on-campus chapels” and “more than 80 percent of Notre Dame students participat[ing] in some form of service learning, even while they study abroad.”<sup>45</sup> Notre Dame also “strive[s] to care for the needs of all who study [t]here, physically, emotionally, and spiritually.”<sup>46</sup>

As these examples from CCCU, BYU, and Notre Dame illustrate, *amici* are deeply committed to their sincere religious missions by infusing faith in all aspects of higher education, even those aspects which may appear secular at first glance.

**C. The Decision Below Could Adversely Affect the Sincere Missions of Religiously Affiliated Colleges and Universities Across the Country.**

Notwithstanding *amici*'s sincere religious missions, the Wisconsin Supreme Court's decision, if affirmed, could create adverse consequences for *amici* and similar institutions throughout the United States. In particular, four aspects of the court's decision illustrate the threats that religious

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<sup>44</sup> University of Notre Dame, *Mission Hire Database FAQs*, <https://perma.cc/TQ8X-2C2K>.

<sup>45</sup> University of Notre Dame, *Faith & Service*, *supra*.

<sup>46</sup> University of Notre Dame, *Campus Life: A Home Under the Dome*, <https://perma.cc/CH8S-CCCU>.

educational institutions could face if the court's erroneous approach is affirmed.

*First*, when deciding whether a religious organization is entitled to tax-exempt status, the Wisconsin Supreme Court now allows courts to decide whether an activity is sufficiently religious. See Pet.App.27a–28a. This could create significant uncertainty for religious schools. With their religious activities potentially in question, religious schools may need to evaluate each of their activities and predict which, if any, “a secular court would consider [sufficiently] religious.” See *Amos*, 483 U.S. at 336; see also Pet.App.115a (Bradley, J., dissenting) (warning that religious schools will be forced to prove whether their religiously motivated activities are sufficiently religious). That calculus will be fraught with uncertainties given that religious schools' all-encompassing missions often touch aspects like curriculum, housing, extracurricular activities, on-campus worship services, and on-campus meals. Indeed, the decision below could be relied upon to uphold legislation or other government actions that effectively require religious schools to focus a majority of their curriculum on theological instruction, even though these institutions often consider *all* instruction to be infused with religious meaning.

In navigating these religious Rorschach tests, a school may need to resort to guesswork, trying to predict what a court would consider sufficiently religious. Would a menu carefully crafted under Rabbinical supervision be “religious,” or one of many university dining options? Would sex-segregated dormitories advancing faith-based mandates be

sufficiently religious, or viewed as a discriminatory housing policy? Would faith-based codes of conduct be dismissed as mere preferences to maintain a particular campus culture?<sup>47</sup> Would an institution's charitable mission to provide educational opportunities to the less fortunate be viewed as no more than a scholarship program for low-income students? Or could mission-based employment decisions be rejected as faculty censorship? The list goes on.

Indeed, the Wisconsin Supreme Court's decision to confine "typical" religious activities to those resembling liturgical, proselytizing, or intra-faith practices only increases the likelihood that many sincere religious practices in the education context would not make the cut. *See* Pet.App.27a–28a. Moreover, the fact that tax-exempt status is neither "perpetual [n]or immutable," *Walz v. Tax Comm'n*, 397 U.S. 664, 673 (1970), further leaves schools in the difficult position of wondering whether they can fulfill their religious mission if their religiously motivated activities might be deemed secular or at least insufficiently religious to qualify for a tax exemption. Soon enough, these layers of uncertainty will shift a school's focus from its religious mission to "avoiding [government] entanglement," eliminating or minimizing practices feared to be too "secular," and overcompensating for risks that could lead to the loss of tax-exempt status. *Rayburn v. Gen. Conf. of*

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<sup>47</sup> For example, in Judaism, the line between "religious beliefs" and "cultural traditions" may be difficult for a court to draw. *See* Renate Mojica, *Navigating the Complexities of Jewish Identity in a Diverse World*, Times of Israel (Apr. 19, 2023).

*Seventh-Day Adventists*, 722 F.2d 1164, 1171 (4th Cir. 1985).

*Second*, the decision below strips religiously motivated activities of their clear religious character merely because secular organizations engage in them too. *See* Pet.App.30a. This reasoning puts religious schools in a particularly fraught position as secular analogues often abound in the higher-education context. On-campus priests might offer the same career guidance as counselors; a faith-based honor code might have the same integrity standards as the state-sponsored university next door; a literature class designed to uplift the soul might share a reading list with a local community college course. In each instance, religious schools would be forced “to defend the religious nature of textbooks, class instruction, examinations,” and more. Pet.App.115a (Bradley, J., dissenting). Under the Wisconsin Supreme Court’s approach, secular analogues would render certain activities insufficiently religious even if those activities are otherwise integral to a school’s sincere religious mission.

With the prospect of losing tax-exempt status, religious schools could experience undue pressure to dramatically reassess their curriculum and course offerings. In describing educational activities that are sufficiently “religious,” the Wisconsin Supreme Court pointed only to “education in the doctrine and discipline of the church” and the “training of ministers,” Pet.App.27a, 40a, suggesting that other classroom instruction would not qualify as “religious.” Would that mean that a religious school could lose its tax-exempt status if only 49 percent of its courses,

rather than 51 percent, were “primarily” religious in nature? Such a perverse result runs counter to centuries of traditional American religious education and the beliefs of many faiths that even secular instruction is infused with religious meaning. *See supra* Part II.A.

The reality is that a religiously motivated education does not lose its faith-based nature just because others offer education on the same subjects too.

*Third*, the Wisconsin Supreme Court’s approach offers less protection for religious practices that serve persons outside the faith or that do not involve proselytizing. Indeed, the court thought that one of the “strong[est] indicat[ors]” that caring for the disabled and unemployed was *not* sufficiently religious was Petitioners’ willingness to hire employees and serve individuals of all faiths, without attempting to share their religious message. Pet.App.29a. In the religious school context, the court’s focus on *who* is being served would burden schools with students and employees who are not members of the dominant faith. Would BYU be insufficiently religious because it admits students who are not members of The Church of Jesus Christ of Latter-day Saints and does not require them to attend church services or meet with missionaries?<sup>48</sup> Similarly, would Anderson University lose its religious status simply because employees are

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<sup>48</sup> These concerns would be especially problematic for educational institutions rooted in faiths that do not emphasize proselytizing, such as Judaism and Hinduism.

required to respect the school’s Statement of Faith *without* personally ascribing to those views?<sup>49</sup> Religious liberty protections are not so limited.

*Fourth*, the practical realities of losing tax-exempt status would also prove particularly harmful for many religious schools that rely on that status to operate. In this case, requiring Petitioners to pay unemployment taxes could jeopardize their ability to fund and operate their own unemployment program. *See* Pet.App.149a. Similarly, many religious schools operate on tight budgets and would be unable to continue carrying out their religious missions if they lost their tax-exempt status.<sup>50</sup> In fact, most U.S. Catholic colleges and universities have “very little in the way of endowment,”<sup>51</sup> but they are able to offer education at only 50 to 70 percent of average tuition costs elsewhere.<sup>52</sup> Thus, the operation of these schools—and their ongoing ability to offer affordable education as part of their sincere religious missions—would be significantly hampered if, under the Wisconsin Supreme Court’s erroneous approach, they were deemed to be insufficiently religious.

The negative consequences of upholding the erroneous decision below would be significant and far-

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<sup>49</sup> Anderson University, *Anderson University Statement of Faith* (Feb. 17, 2023), <https://perma.cc/5M7S-C6H6>.

<sup>50</sup> *See* Bobby Ross, Jr., *Closing Doors: Small Religious Schools Struggle for Survival*, Religion News Serv. (Nov. 20, 2017).

<sup>51</sup> *Id.*

<sup>52</sup> *See* Patrick Wolf & Neal McCluskey, *COVID-19 Leaving Most Private Schools in Financial Despair*, Cato Institute (July 16, 2020), <https://perma.cc/P8WR-4AEN>.

reaching for religiously affiliated colleges and universities across the nation. Indeed, if something as integral to religion as caring for the poor and needy is not “primarily” or “typically” religious, then *amici* and similarly situated religious institutions will find it increasingly difficult to fulfill their mission of providing religiously informed education in a faith-filled environment.

### CONCLUSION

For the foregoing reasons, and those expressed by Petitioners, this Court should reverse the judgment below.

Respectfully submitted,

Zachary G. Parks  
*Counsel of Record*  
MaKade C. Claypool  
Eli Nachmany  
Brad J. Grisenti  
COVINGTON & BURLING LLP  
850 Tenth St., NW  
Washington, DC 20001  
(202) 662-6000  
zparks@cov.com

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*Counsel for Amici Curiae*