No. 23-3265

IN THE

United States Court of Appeals for the Third Circuit

Alexander Smith,
Plaintiff-Appellant,

vs.

City of Atlantic City, et al.,
Defendants-Appellees.

On Appeal From the United States District Court for the
District of New Jersey
Case No. 19-cv-6865
(Honorable Christine P. O'Hearn)

Brief of *Amici Curiae* Christian Legal Society And National Association of Evangelicals In Support Of Appellant

STEVEN T. MCFARLAND
CHRISTIAN LEGAL SOCIETY
8001 Braddock Road, Ste. 302
Springfield, VA 22151
Telephone: 703-894-1041
smcfarland@clsnet.org

MICHAEL H. MCGINLEY
JUSTIN W. AIMONETTI
DECHERT LLP
1900 K Street NW
Washington, D.C. 20006
Telephone: (202) 261-3378
Facsimile: (202) 261-3333
michael.mcginley@dechert.com
justin.aimonetti@dechert.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT OF *AMICI CURIAE*

Pursuant to Federal Rule of Appellate Procedure 26.1(a), undersigned counsel certifies that *amici curiae* Christian Legal Society and National Association of Evangelicals are not a publicly held corporation and do not have a parent corporation and that no publicly held corporation owns ten percent or more of their stock.

Dated: April 10, 2024

/s/ Michael H. McGinley
Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*

Christian Legal Society (CLS) is an association of Christian attorneys, law students, and law professors, with student chapters located on the campuses of around 160 public and private law schools. CLS believes that pluralism, essential to a free society, prospers only when the courts protect the First Amendment rights of all Americans. Accordingly, CLS works to protect the free exercise of religion for Americans of every faith.

National Association of Evangelicals (NAE) is the largest evangelical network in the United States. It serves as the convener and collective voice for 40 member denominations, charities, schools, missions, and health ministries, with a constituency of tens of millions. Religious liberty is recognized by government but given by God and is vital to limited government. Accordingly, NAE works to protect the free exercise of religion for Americans of every faith.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court relied on four binding cases when it granted summary judgment to Atlantic City and sunk Alexander Smith's Free Exercise claims. *See Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999); *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002); *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872 (1990); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Smith v. City of Atlantic City*, 2023

WL 8253025, at *3–6 (D.N.J. Nov. 28, 2023). The district court's application of these cases suffered from two fundamental flaws.

First, the district court overlooked an entire body of relevant caselaw that the Supreme Court has developed over the past four years in a series of landmark cases. These precedents establish that, if a law or regulation substantially burdens religious practice but offers exemptions to secular activities that are comparable to the prohibited religious activities, then the government's refusal to provide the religious claimant with an exemption triggers strict scrutiny. A proper application of this legal framework entitles Mr. Smith to an exemption from the Atlantic City Fire Department's grooming policy.

Second, the district court concluded that Third Circuit precedent mandates that application of intermediate scrutiny rather than strict scrutiny to determine whether the First Amendment entitles a claimant to a religious exemption in the context of public employment. Not so. On the contrary, Third Circuit and Supreme Court precedents hold that strict scrutiny remains the proper level of review in the public-employment context. To the extent that Third Circuit caselaw is not already clear on this point, this Court should explain that strict scrutiny controls.

Ultimately, the district court erred when it declined to grant Mr. Smith an exemption compelled by the First Amendment.

ARGUMENT

The decision below contradicts recent Supreme Court precedents and misapplies prior Third Circuit precedents. In a series of recent cases addressing burdens placed on religious practice arising from disparate contexts including the coronavirus pandemic and a municipality's foster care policy, the Supreme Court has established a presumptive right to religious exemptions where laws or regulations provide comparable secular exemptions. The decision below did not apply this presumptive right to Mr. Smith's Free Exercise claims—but instead ignored the Supreme Court's precedents entirely. Moreover, the district court misapplied the cases that it did cite. Instead of applying strict scrutiny, as binding precedent requires, the district court applied an incorrect lower level of scrutiny when it reviewed Atlantic City's denial of Mr. Smith's claim for a religious exemption. This Court should therefore reverse the summary judgment ruling for Atlantic City and either reverse or vacate and remand the district court's denial of Mr. Smith's request for a preliminary injunction.

I. Strict Scrutiny Applies When The Government Treats Any Secular Activity More Favorably Than Comparable Religious Activity.

In its decision granting summary judgment to Atlantic City, the district court relied on then-Judge Alito's opinion in *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999), as well as the decision in *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002). But the district court failed to

apply a recent body of Supreme Court caselaw that largely mirrors the constitutional logic of this Court's holdings in *Fraternal Order of Police* and *Tenafly*. In a series of recent cases, the Supreme Court has established that a government policy that burdens religious exercise but includes exemptions for comparable secular activities violates the Free Exercise Clause unless the government can satisfy strict scrutiny. Under this formulation, the Atlantic City Fire Department's grooming policy violates Mr. Smith's constitutional rights because the policy offers exemptions for comparable secular activities while offering no corresponding religious exemption.

A. In *Fraternal Order Of Police*, This Court Recognized That A Government Policy That Exempts Secular Activity Must Offer Like Exemptions For Comparable Religious Activity.

The Free Exercise Clause of the First Amendment bars the government from "prohibiting the free exercise" of religion. U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). For decades, courts subjected a neutral and generally applicable law or regulation to strict scrutiny when the law or regulation substantially burdened an individual's free exercise rights. *See Sherbert v. Verner*, 374 U.S. 398, 403 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972); Justin W. Aimonetti & Christian Talley, *Religious Exemptions as Rational Social Policy*, 55 U. Rich. L. Rev. Online 25, 32–35 (2021) (tracing the history).

The Court took a sharp turn in 1990 with its decision in *Employment Division v. Smith*, 494 U.S. 872 (1990). There, the Court held that "the right of free exercise

does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'" *Id.* at 879 (citation omitted). Following *Smith*, litigants faced a tougher task getting district courts to apply strict scrutiny to a government regulation that substantially burdened religious conduct. Only a "law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993).

The decision in *Smith* sparked a raft of critical legal scholarship. *See, e.g.*, Michael W. McConnell, *Free Exercise Revisionism and the* Smith *Decision*, 57 U. Chi. L. Rev. 1109 (1990); Douglas Laycock, *The Remnants of Free Exercise*, 1990 Sup. Ct. Rev. 1 (1990). One commentator identified a crease that *Smith* had left open to future religious claimants. Specifically, *Smith*'s holding did not foreclose the argument that, where "the state grants exemptions from its law for secular reasons, then it must grant comparable exemptions for religious reasons." Laycock, *supra*, at 50.

Within a decade, this Court recognized the route left open in *Smith*. In *Fraternal Order of Police*, two Muslim police officers who worked for the Newark Police Department sued to enjoin the Department from disciplining them for refusing to shave their beards. 170 F.3d at 360–61. The Department had a grooming policy that required male officers to shave their beards, which the officers argued

violated their sincerely held religious beliefs. *Id.* The Department refused to provide the officers with a religious exemption despite the grooming policy recognizing a medical exemption that allowed for beard growth. *Id.* The district court held the policy unconstitutional. *Id.* And in an opinion by then-Judge Alito, this Court affirmed. *Id.*

Judge Alito's analysis turned on the crease left open in *Smith*, reasoning that "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of religious hardship without compelling reason." *Id.* at 364 (citing *Smith*, 494 U.S. at 884). Judge Alito also declared that a policy that includes a categorical secular exemption triggers a right to a religious exemption as well. *Id.* at 365. As applied to the facts in that case, Judge Alito determined that that "the Department's decision to provide medical exemptions while refusing religious exemptions is sufficiently suggestive of discriminatory intent so as to trigger heightened scrutiny." *Id.* Simply put, even a single secular exemption to a government policy, such as the Newark Police Department's medical exemption to its grooming policy, triggers a presumptive right to a religious exemption for comparable conduct.

B. In Recent Years, The Supreme Court Has Enshrined The Essential Holding Of *Fraternal Order Of Police*.

In the years following *Fraternal Order of Police*, courts around the country held that a government policy that exempts certain secular conduct must provide

exemptions for comparable religious conduct as well, unless the government can show a compelling interest otherwise. *See, e.g.*, *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214, 1234–35 (11th Cir. 2004); *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012). But the Supreme Court did not address the issue again until a series of cases beginning in 2020. These cases bore similar fact patterns: The government treated religious organizations less favorably than comparable secular groups in relation to policies arising from the COVID-19 pandemic. But the Court's reasoning was not limited to that set of factual circumstances. Instead, the Court has applied the same doctrinal framework in all instances where government offers secular exemptions that it denies to religious adherents. *See Fulton v. City of Philadelphia*, 593 U.S. 522 (2021).

The principles set forth in *Fraternal Order of Police* first emerged in a case before the Court in July 2020. *See Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (mem.). Nevada officials introduced lockdown rules that privileged certain secular institutions over houses of worship. In a dissent, Justice Kavanaugh wrote that, "under the Court's religion precedents, when a law on its face favors or exempts some secular organizations as opposed to religious organizations, a court entertaining a constitutional challenge by the religious organizations must determine whether the State has sufficiently justified the basis for the distinction." *Id.* at 2612–13 (Kavanaugh, J., dissenting).

Justice Kavanaugh's dissent evolved into a concurrence half a year later in *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14 (2020). As in *Calvary Chapel*, the Court considered an injunction sought against a state regulation that burdened religious organizations. *See id.* at 15–16. The regulation at issue capped attendance at religious services to no more than 25 people. *Id.* at 16. By contrast, no admission cap applied to businesses that the state designated as "essential," including acupuncture facilities, campgrounds, and garages. *Id.* at 17. The Court granted the requested injunction, asserting without further elaboration that this disparate treatment rendered the rule not neutral and generally applicable. *Id.* at 18. Justice Kavanaugh's concurrence offered deeper intellectual heft, reasoning that "once a State creates a favored class of businesses, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class." *Id.* at 29 (Kavanaugh, J., concurring).

The essential holding of *Fraternal Order of Police* fully took root when the Supreme Court issued its opinion in *Tandon v. Newsom*, 593 U.S. 61 (2021). There, California had passed a regulation prohibiting in-home gatherings of over three households while allowing comparable secular activities such as hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at any single time. *Id.* at 63. The Court granted an injunction, holding that "government

regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* at 62.

Then, beyond the context of COVID restrictions, the Supreme Court's decision in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), confirmed that the Court had adopted the principles of *Fraternal Order of Police*'s essential holding in all settings. *Fulton* concerned the City of Philadelphia's policy not to contract with Catholic Social Services unless that organization agreed to certify same-sex couples as prospective foster families. *Id.* at 526–28. Philadelphia's policy also provided that the city could exempt agencies from this requirement at the city's discretion. *Id.* at 535, 537. The city had never utilized this exception. *Id.* at 535. To decide the case, the Court re-affirmed the essential holding from *Tandon* (which mirrored the essential holding from *Fraternal Order of Police*) that strict scrutiny applies to a law "if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 534. The Court then held that the city's discretionary option to exempt any agency from having to certify same-sex couples qualified as a secular exception required the city to satisfy strict scrutiny to justify its denial of similar exemption to religious organizations. *Id.* at 542. *Fulton* thus established that a policy that includes just the *option* to treat secular activity more favorably than comparable religious activity triggers strict scrutiny.

C. *Tandon* Establishes That Risk Counts As The Relevant Comparator Between Secular and Religious Exemptions.

One central question under this legal framework is: What counts as "comparable" secular activity? *Tandon* answers that "[c]omparability is concerned with the *risks* various activities pose," and "not the reasons" for the requested exemptions. *Tandon*, 593 U.S. at 62 (emphasis added). "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.*

Judges around the country have elaborated on how to properly unpack the risk posed and whether the situation warrants a religious exemption. The First Circuit did just that in *Lowe v. Mills*, 68 F.4th 706 (1st Cir.), *cert. denied*, 144 S. Ct. 345 (2023). There, a group of healthcare workers had lost their jobs after they declined to comply with Maine's COVID-19 vaccine mandate on the basis of their sincerely held religious beliefs. *Id*. at 709. The district court dismissed the workers' lawsuit for failure to state a claim. *Id.* at 711. The First Circuit reversed, reasoning that Maine's policy contained a medical exemption that plausibly "undermine[d]" the State's interest in "protecting the lives and health of Maine people" "in a similar way to a hypothetical religious exemption." *Id.* at 715. Thus, said the First Circuit, "it is plausible . . . that the [m]andate is subject to strict scrutiny." *Id.* at 717.

The Second Circuit conducted a similar analysis in *M.A. v. Rockland County Department of Health*, 53 F.4th 29 (2d Cir. 2022). Amidst a measles outbreak,

Rockland County issued an emergency declaration barring unvaccinated children from places of public assembly. *Id.* at 33–34. The declaration, however, exempted children with medical exemptions. *Id.* at 34. Plaintiffs brought a Free Exercise claim, which the district court rejected at the summary judgment stage. *Id.* at 35. The Second Circuit reversed and remanded. *Id.* at 36. Citing the *Tandon* test for comparability, the Second Circuit concluded that the government's asserted interest was unclear and could not distinguish the medical exemption from the requested religious exemption. *Id.* at 39. It noted that, if the interest was to "stop the transmission of measles," then a factfinder might question the medical exemption when those exempt children "are every bit as likely to carry undetected measles [as] a child with a religious exemption and are much more vulnerable to the spread of the disease and serious health effects if they contract it." *Id.* (alteration in original) (citation omitted).

In *Doe v. San Diego Unified School District*, 22 F.4th 1099 (9th Cir. 2022), the Ninth Circuit considered whether a claim for a religious exemption to a COVID-19 vaccine requirement in a public school system was "comparable" to a series of secular exemptions that the district had established for medical reasons. *Id.* at 1105–06. The district claimed that the medical exemption served the purpose of protecting the health of the student body from COVID-19. *Id.* Judge Bumatay, dissenting from the denial of rehearing en banc, expounded on the proper framework, explaining that

each of the secular exemptions qualified as "comparable" to the requested religious exemption, as the "the risks posed by unvaccinated students with secular exemptions [against the asserted government interest] are the same as those posed by unvaccinated religious students." *Id.* at 1106; *accord Resurrection Sch. v. Hertel*, 35 F.4th 524, 536–37 (6th Cir. 2022) (Bush, J., dissenting from denial of rehearing en banc), *cert. denied*, 143 S. Ct. 372 (2022).

D. The District Court Misapplied This Court's Precedents And Failed To Apply *Tandon* And Its Related Body of Law.

In the decision below, the district court erred twice over. First, it misapplied the few cases that it did rely on when it granted summary judgment to Atlantic City on Mr. Smith's Free Exercise claims. But worse, the district court completely failed to apply recent landmark Supreme Court caselaw, which holds that even a *single* secular exemption to a government policy triggers a right to an exemption for comparable religious conduct unless the government overcomes strict scrutiny. Both errors independently require reversal.

First, the district court erred in its application of the few cases that it cited. The court refused to apply strict scrutiny to the Atlantic City Fire Department's denial of Mr. Smith's request for a religious exemption because, in its view, "[u]nder Third Circuit precedent, the Court could only subject the grooming policy to strict scrutiny if it found the policy lacked facial neutrality." *Atlantic City*, 2023 WL 8253025, at *4. On that basis, the court concluded that Atlantic City's policy

qualified as facially neutral, meaning that Atlantic City's policy did not trigger strict scrutiny. *Id.*

The district court's conclusion conflicts with this Court's precedent. Strict scrutiny is not reserved just for cases where a policy lacks neutrality on its face. The cases that the district court relied on hold that strict scrutiny applies when a law, either facially *or* in its application, is neither neutral *nor* generally applicable. *See Lukumi*, 508 U.S. at 534 ("The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination."); *Tenafly*, 309 F.3d at 167 ("We must look beyond the text of the ordinance and examine whether the Borough enforces it on a religion-neutral basis . . . ."). And a law is neither neutral nor generally applicable when the law provides exceptions for comparable secular activities while denying exceptions to religious activities. *See Tenafly*, 309 F.3d at 165–66. Thus, even on its own terms, the district court's analysis should be reversed because it declined to apply strict scrutiny simply because it deemed Atlantic City's policy facially neutral.

Second, and more fundamentally, the district court failed to apply recent landmark Supreme Court decisions that would have been outcome determinative. The line of cases culminating in the Court's decisions in *Tandon* and *Fulton* establish that even one secular exemption to a government policy that is comparable to a requested religious exemption warrants the religious exemption unless the government satisfies strict scrutiny. Because Mr. Smith has alleged the existence of

at least one secular exemption to the Atlantic City Fire Department's grooming policy (*i.e.*, the call-back policy and/or the policy of discretionary enforcement for individual firefighters), and because that exemption is comparable in risk to his requested religious exemption, the law required the court to grant Mr. Smith a religious exemption.

Mr. Smith has alleged that Atlantic City Fire Department's grooming policy includes two secular exemptions. *First*, the Department's policy includes their "call-back" policy wherein members called into work "on an emergency call-back" need not shave before arriving at the station or the scene of a fire. *See* ECF No. 115-2 at ¶ 27; ECF No. 122-1 at ¶ 27. *Second*, Atlantic City Fire Department maintains an unwritten policy of selective enforcement of the grooming policy. *See, e.g.*, ECF No. 122-4 at 185:6–15. Though the Department's second policy goes unwritten, Third Circuit precedent establishes that a selective enforcement policy that permits certain secular conduct but prohibits comparable religious conduct counts as a denial of a religious exception. *See Tenafly*, 309 F.3d at 167–68.

Supreme Court precedent demonstrates that these two secular exceptions count as "comparable" to Mr. Smith's requested religious exception because the secular exemptions present an identical risk to the asserted government interest at stake. *See Tandon*, 593 U.S. at 62. The Department claims that its grooming policy ensures that firefighters' air masks achieve a formfitting seal. *See Atlantic City*,

2023 WL 8253025 at *1. The level of risk that both secular exemptions pose match the level of risk that Mr. Smith's claimed religious exemption poses. As a result, Mr. Smith's requested religious exemption counts as comparable to the existing secular exemptions, and the district court should have granted Mr. Smith a religious exemption unless it satisfied strict scrutiny.

II. The District Court Erred When It Suggested That Intermediate Scrutiny Rather Than Strict Scrutiny Guided The Legal Analysis.

In addition to its misapplication of this Court's precedents and its failure to apply Supreme Court caselaw, the district court applied a patently incorrect standard of review. *Fraternal Order of Police* mandates that strict scrutiny applies when a policy includes a secular exemption and the government has denied a corresponding claim for a religious exemption. Although the district court failed to conclude that the Atlantic City Fire Department's grooming policy involved a secular exemption, the district court nonetheless noted that, even if it had reached that conclusion, intermediate rather than strict scrutiny would have applied to the Department's denial of Mr. Smith's request for a religious exemption. *See Atlantic City*, 2023 WL 8253025 at *4. The court reasoned that *Fraternal Order of Police* required the application of just intermediate scrutiny for religious exemption claims in the public employment context. That is incorrect. *Fraternal Order of Police* merely held that the policy at issue there could not survive *any* level of heightened scrutiny. But to the extent that Third Circuit caselaw requires any clarification, this Court should

unambiguously reaffirm that a government's denial of a religious exemption when comparable secular exemptions exist triggers strict scrutiny even if the claim arises in the public employment context.

A. *Fraternal Order Of Police* Holds That Strict Scrutiny Applies When A Government Policy Includes Secular Exemptions But Does Not Include Comparable Religious Exemptions.

A proper reading of *Fraternal Order of Police* demonstrates that strict scrutiny applies in all situations—involving public as well as private employees—when a government's policy includes exemptions for comparable secular activity. While *Fraternal Order of Police* used the phrase "heightened scrutiny" throughout its analysis, it did *not* hold that intermediate scrutiny applied. *See, e.g., Fraternal Order of Police*, 170 F.3d at 365 ("[W]e conclude that the Department's decision to provide medical exemptions while refusing religious exemptions is sufficient[] . . . to trigger heightened scrutiny. . . ."); *id.* at 366 ("[W]hen the government makes a value judgment in favor of secular motivations, but not religious motivations, the government's actions must survive heightened scrutiny."). Instead, it concluded that the government's policy could not "survive *any* degree of heightened scrutiny [, including intermediate scrutiny,] and thus cannot be sustained." *Id.* at 367 (emphasis added). Thus, far from announcing an intermediate scrutiny standard, the Court merely held that the policy at issue failed under *any* form of heightened scrutiny. *Id.*

at 366 n.7 (noting that the policy at issue could not survive even an intermediate level of scrutiny).

Later Third Circuit caselaw reinforced the conclusion that *Fraternal Order of Police*'s framework mandates strict scrutiny in all cases. In another case dealing with a claim for a religious exemption when a comparable secular exemption existed, the Third Circuit characterized *Fraternal Order of Police* as "appl[ying] strict scrutiny and h[olding] that the no-beards policy could not satisfy that standard." *Blackhawk v. Pennsylvania*, 381 F.3d 202, 208 (3d Cir. 2004). And other Third Circuit cases reviewing the phrase "heightened scrutiny" in other contexts have remarked that the phrase encompasses strict scrutiny. *See Hassan v. City of New York*, 804 F.3d 277, 299 (3d Cir. 2015), *as amended* (Feb. 2, 2016).

B. To The Extent That *Fraternal Order Of Police* Leaves Unclear The Applicable Level Of Review, This Court Should Unambiguously Clarify That Strict Scrutiny Governs.

Insofar as it remains unclear whether *Fraternal Order of Police* warrants the application of intermediate scrutiny rather than strict scrutiny, this Court should unambiguously hold that, in light of recent Supreme Court caselaw, strict scrutiny governs regardless of whether the claim for a religious exemption arises in the public employment context. *Tandon* makes this crystal clear, as it states in no uncertain terms that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat

any comparable secular activity more favorably than religious exercise." *Tandon*, 593 U.S. at 62. This language leaves no room for exception. Strict scrutiny governs in all circumstances.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's grant of summary judgment to Atlantic City on Mr. Smith's Free Exercise claims and either reverse or vacate and remand the district court's denial of Mr. Smith's request for a preliminary injunction.

Respectfully Submitted,

/s/ Michael H. McGinley
MICHAEL H. MCGINLEY (Pa. 325545)
JUSTIN W. AIMONETTI
DECHERT LLP
1900 K Street NW
Washington, D.C. 20006
Telephone: (202) 261-3378
Facsimile: (202) 261-3333
michael.mcginley@dechert.com
justin.aimonetti@dechert.com

STEVEN T. MCFARLAND
CHRISTIAN LEGAL SOCIETY
8001 Braddock Road, Ste. 302
Springfield, VA 22151
Telephone: 703-894-1041
smcfarland@clsnet.org

CERTIFICATIONS OF COUNSEL

I, Michael H. McGinley, hereby certify that:

1) Bar Membership. Pursuant to 3d Cir. L.A.R. 28.3(d), I am a member in good standing of the bar of this Court.

2) Word Count. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) & 32(a)(7)(B) because, excluding those parts of the document exempted by Fed. R. App. P. 32(f), this document contains 4,162 words.

3) Typeface. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman 14-point font.

4) Service. This brief was served electronically filed with the Third Circuit CM/ECF system on April 10, 2024, which automatically served all parties entitled to service.

5) Electronic Filing Requirements. This brief complies with 3d Cir. L.A.R. 31.1(c) because 1) Microsoft Defender virus protection program was run on this electronic file and no virus was detected, and 2) the text of the electronic brief is identical to the text in the paper copies filed with the Court.

Dated: April 10, 2024

/s/ Michael H. McGinley
Counsel for Amici Curiae