No. 24-756

In the Supreme Court of the United States

NATIONAL FEDERATION OF THE BLIND OF TEXAS, INCORPORATED, ET AL.,

Petitioners,

v.

CITY OF ARLINGTON, TEXAS

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF IMPACT CHURCH OF CHRIST, ET AL., AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The *amici* are four churches, and a religious college preparatory school located in Texas.

Impact Church of Christ is a Texas Nonprofit Corporation, with campuses in Houston and Lindale, Texas. Impact was formed to bring the love of Jesus Christ to the poor, the rich, the sad, the happy, the educated, the uneducated, every color and every race.

Three other churches of similar belief and interests join Impact Church of Christ:

- **Saturn Road Church of Christ**, Garland, Texas.
- **Singing Oaks Church of Christ**, Denton, Texas.
- **Kerrville Church of Christ**, with locations in Kerrville and Medina, Texas.

The Highlands School, a Pre-K–12 college preparatory school in Irving, Texas, also joins the four churches as an *amicus*. Partnering with parents, it

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[1] Pursuant to Rule 37.6, counsel for *amici curia*e certifies that no counsel for a party authored the brief in whole or in part. No person other than the *amici curiae* or their counsel made a monetary contribution to fund the preparation or submission of this brief. Pursuant to Rule 37.2, all parties of record in the case below received notice of intention to file this brief more than ten days in advance.

cultivates Catholic leaders through intellectual, spiritual, and character formation, emphasizing charity.

These *amici* collaborate with charities to accept donations via drop-off boxes and have a personal stake in ensuring these boxes receive proper First Amendment scrutiny. If adopted by other Texas cities, the ordinance would hinder their religious ministry.

Committed to charity, these *amici* urge the Court to recognize this case's significance for religious charities and the proper interpretation of the Free Speech and Free Exercise Clauses.

SUMMARY OF ARGUMENT

1. The Fifth Circuit Erred in deciding Arlington's regulation of "Donation Boxes" was content neutral.

2. Careful protection of the Free Speech Clause is essential to protection of the Free Exercise rights of churches and other religious groups.

3. The Court should grant a writ of *certiorari* to resolve the circuit split and uphold First Amendment protections for religious groups.

ARGUMENT

I. THE FIFTH CIRCUIT ERRED IN DECIDING ARLINGTON'S REGULATION OF "DONATION BOXES" WAS CONTENT NEUTRAL.

This case involves the crucial question of when cities may restrict private speech.

Arlington, Texas, enacted an ordinance that bans donation boxes from properties (including church properties) in twenty-five commercial and residential zones.[2] The law defines a "donation box" as a type of "drop-off box" used to collect donated personal property.

The ordinance is unconstitutional, under this Court's holding in *Reed* v. *Town of Gilbert*, 576 U.S. 155, 163 (2015), which says:

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.

The Fifth Circuit admitted the ordinance regulated "fully protected speech" but failed to apply the rule of *Reed*. Instead, it relied on selective dicta from

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[2] Pet. at 8 – 9. (The ordinance is an "outright ban" from "Commercial zones…and from all residential zones, where at least some churches are located. … Arlington cannot identify a single church in the twenty-five prohibited zones that would be allowed to place a donation box on its property…")

City of Austin, Texas v. *Reagan Nat'l Advert. of Austin, LLC*, 596 U.S. 61, 72 (2022), which states that "restrictions on solicitation are not content-based." The Fifth Circuit then concluded that Arlington's regulation of donation boxes was merely a regulation of "solicitation" and therefore content neutral.

But the Fifth Circuit did not properly apply *Reagan's* definition of solicitation: "speech requesting of seeking to obtain something" or "[a]n attempt or effort to gain business." The Fifth Circuit assumed that "donation boxes" covered the waterfront on solicitation. But a request for donations is not synonymous with "a request to gain something," or "an effort to gain business."

To put it simply, the Fifth Circuit erred, because a regulation of "donation boxes" is not a regulation of "solicitation boxes." A request for a "donation" by box is a topic of solicitation, not a method of solicitation. This is obvious because there are other drop-off boxes that solicit business other than donations. And Arlington does not subject those boxes to the same rules.

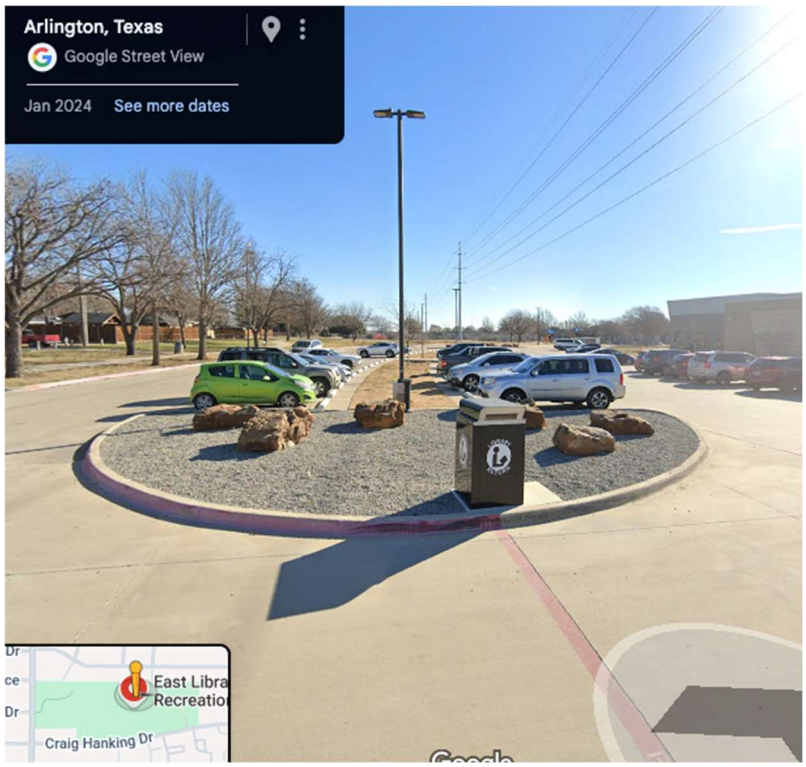
The City's ordinance depends on a viewpoint distinction. It begins with the idea of "drop-off box[es]," and then creates a narrower definition of donation boxes. The City leaves a wide swathe of boxes unregulated, even though such boxes surely affront the City's claimed interests in aesthetics. Arlington singles out "donations" for special contempt.

A "drop-off box" is a method of delivery. Consider the wide variety of boxes not apparently reached by a "donation box":

- Mailboxes.
- Federal Express Boxes
- UPS Boxes
- Library Boxes
- Bank Deposit Boxes
- Redbox kiosks
- Amazon "Lockers"
- Utility / Tax Payment Drop Boxes
- Ballot Drop-off Boxes

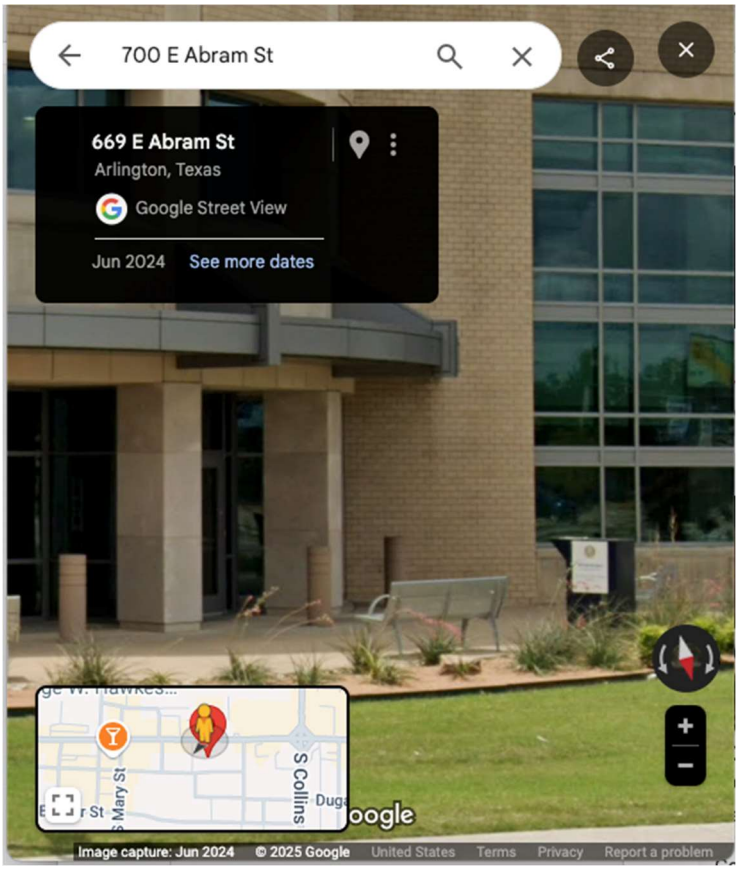
The City of Arlington contains dozens, if not scores, of commercial or civic drop-off boxes like these.

For example, Google Maps appears to show the City of Arlington's Library uses drop-boxes, even at suburban branches.[3]



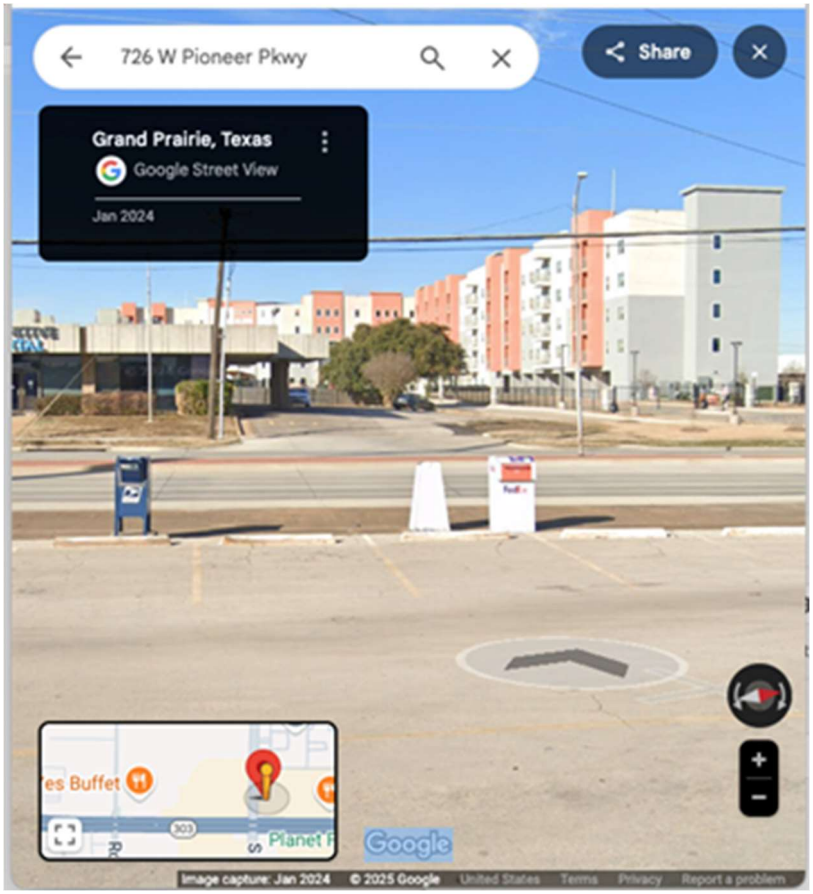
[3] https://maps.app.goo.gl/W2ca9C1ua5N2GD8E8

Tarrant County's building in Arlington[4] has a drop box in front of the building:



[4] https://maps.app.goo.gl/ksxeDdLxdar1B88H6

A short distance away, on Pioneer Parkway[5], there is a Federal Express drop-off box near a mailbox:



But these fall outside the ordinance on "donation" boxes. If Arlington's ordinance targeted aesthetics, donative intent would not matter. Instead, the law discriminates among solicitations, contradicting *Reagan*.

[5] https://maps.app.goo.gl/rAGpNkTrF19Gqqwy9

Each of these other boxes are engaged in a certain kind of solicitation, but not for donations.

- FedEx's drop box is soliciting for its delivery business, including the delivery of books and household goods. The box can receive anything a "donation box" might receive, whether textiles, clothing, shoes, books, toys, dishes, household items, or other personal property.

- An Amazon Locker is soliciting for the return of a vast array of items, in furtherance of Amazon's business. Amazon's business, too, includes textiles, clothing, shoes, books, toys, dishes, household items, and other personal property

- The Arlington Library's book box is soliciting for the delivery of returned books, in furtherance of the Library's charitable operations.

- Likewise, utility payments, or bank deposits are soliciting in commerce.

Each of these escapes the "Donation Box" ordinance solely because the goods put into the box are not being donated.

But, of course, putting goods in these boxes *might* further a donative intent. A donation or a contribution can be sent by UPS or Federal Express or DHL. Every year, on the second Saturday in May, the USPS asks the public to leave canned goods next to

mailboxes, as part of the National Association of Letter Carrier's "Stamp Out Hunger" Drive.[6] Yet Arlington only subjects drop-off boxes that solicit donations to special rules. The City of Arlington has no constitutionally permissible interest in regulating the donation drop-box differently from the mailbox, the FedEx Box, or the Library box.

How does FedEx airbill make a donated book more beautiful in Arlington? It does not. And so, it is clear Arlington did not seek to regulate the content-neutral category of drop-boxes but only drop-boxes with a specific point of view.

Arlington's distinction is, in practice, like the City of Cincinnati's ban on newsracks that distribute "commercial handbills," but not "newspapers," which this Court said was a content-based rule. *See City of Cincinnati* v. *Discovery Network, Inc.*, 507 U.S. 410, 429 (1993). Under Arlington's ordinance, FedEx can solicit delivery services using drop-off boxes, even if the donations are to be delivered to a church. But Arlington says a church in twenty-five zones cannot have its own box to solicit delivery of the same goods. *Why?* Why can any Arlington church in the restricted zones put a FedEx drop-off box on church property, but not its own drop-off box? There is no good, content neutral reason for such distinctions.

Arlington's rule is not a rule about all kinds of "solicitation" by a particular means, as imagined in

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[6] See https://about.usps.com/what/corporate-social-responsibility/activities/nalc-food-drive.htm (accessed February 4, 2025).

Reagan. Arlington's rule is about certain topics of solicitation and firmly prohibited by *Reed*.

Arlington's distinction between drop-off boxes should not be a close case under this Court's precedents. Like *Reed's* special ordinance on "temporary directional signs," the distinction between "donation boxes" and other drop-off boxes "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test." *Reed*, 576 U.S. at 184 (2015) (Kagan, J., concurring). The distinction "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace," *R.A.V.* v. *St. Paul*, 505 U.S. 377, 387 (1992), namely solicitations seeking direct delivery of goods.

Your *amici*, then, are concerned that the Fifth Circuit's reading of *Regan* creates an exception that would devour *Reed*. The Fifth Circuit has let an "innocuous justification" transform a "facially content-based law into one that is content neutral," contrary to this Court's explicit instruction. *Reed* at 166. *Reed* will become a footnote if government is allowed to treat *some* reasons for solicitation differently than *other* reasons for solicitation.

This Court should correct the error and confirm that *Reagan* does not allow government to pick-and-choose between motivations for protected speech.

II. CAREFUL PROTECTION OF THE FREE SPEECH CLAUSE IS ESSENTIAL TO PROTECTING FREE EXERCISE FOR CHURCHES AND OTHER RELIGIOUS GROUPS.

The free exercise of religion is the elephant in the room of the District Court and Fifth Circuit opinions.

While nods are made to churches and religious motivations for collecting donations, the is no legal analysis at all distinct to the Free Exercise clause. One of the Petitioners, Arms of Hope, is a religious charity. The solicitation of donations in *boxes* has been a historical practice in Abrahamic religious faiths for *millennia* before the Founding. *See* Pet. at 31-33 for several examples. The concept of donation boxes is so widely ingrained in our culture that English has developed a variety of terms for them, including "alms boxes," "offertories," and the "mite box," after the New Testament parable of the "widow's mite." Luke 21:1-4. Your *amici,* then, as churches and religious organization, emphasize to the Court the importance of a strong Free Speech clause to the protection of Free Exercise of religious Americans.

The Free Speech clause is supposed to protect religious speech as kind of viewpoint – and in doing so, subject all viewpoint discrimination to strict scrutiny and narrow tailoring.

Yet in this case, the religious viewpoint was easily elided, even though the "donative" message is obviously, strongly correlated with religious speech in

American history. Your *amici* observe that a pure Free Exercise challenge would now face an uphill battle, because the Fifth Circuit has already held here that the ordinance was "narrowly tailored" for Free Speech purposes, at least under intermediate scrutiny. And so, this would be an example of the difficult case imagined by Justice Alito's concurrence in *Fulton* v. *Philadelphia*, 593 U.S. 522, 578 (2021). If this law is "thought to be sufficient to address a particular type of conduct when engaged in for a secular purpose," why would a court later conclude the law is not "sufficient to address the same type of conduct when carried out for a religious reason?"

This brief will not attempt to unravel the Court's knotty Free Exercise jurisprudence around "hybrid rights." In the appropriate case, the Court may wish to further define when a Free Speech case might so obviously involve Free Exercise questions, that it should be considered under *Sherbert* v. *Verner*, 374 U.S. 398 (1963).

But your *amici* stress that failure to protect Free Speech and narrow tailoring here will result in harms to religious groups. The low bar here is likely to result in a low bar in a Free Exercise challenge, as described above. But even more, Religious Americans would often rather argue for broad rules that protect speech for all Americans, not arguing a carve out for religious speech. Under current law, the Free Exercise rights of religious Americans depend heavily on a vigorous and robust enforcement of the Free Speech Clause. If the Fifth Circuit's decision here is left un-

disturbed, it will set a troubling precedent that weakens Free Speech protections in ways that inevitably erode Free Exercise rights as well.

Free Speech and Free Exercise claims are often intertwined, and protection of religious exercise frequently depends on the correct application of content neutrality. In *Widmar v. Vincent*, this Court held that religious students in a public university could not be banned from religious worship in student forums, because "state regulation of speech should be content-neutral." *Widmar* v. *Vincent*, 454 U.S. 263, 277 (1981). In *Lamb's Chapel* v. *Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993), the right to display a religious film was protected because a school district's exclusion of religious standpoints was not viewpoint neutral. In *Good News Club* v. *Milford Cent. Sch.*, 533 U.S. 98, 120 (2001), a student club was protected against "discrimination "because of its religious viewpoint in violation of the Free Speech Clause of the First Amendment."

These cases illustrate a consistent principle: where Free Speech protections are diluted, religious expression—and by extension, Free Exercise—becomes vulnerable.

The case before the Court is no exception. If the Fifth Circuit's analysis is allowed to stand, it will create a dangerous precedent where religiously motivated speech, particularly in the context of charitable solicitation, can be restricted without proper constitutional scrutiny.

For this reason, your *amici* urge the Court to recognize the special harm the results below present to religious speech and action. The robust application of the Free Speech Clause is not only necessary to guard against improper governmental intrusion. It is indispensable to a public square where religious viewpoints may be expressed.

III. THE COURT SHOULD GRANT A WRIT OF CERTIORARI TO RESOLVE THE CIRCUIT SPLIT AND UPHOLD FIRST AMENDMENT PROTECTIONS FOR RELIGIOUS GROUPS.

As addressed by Petitioners, now two circuits have erred by applying intermediate scrutiny to "donation boxes." Pet. at 19. The Fifth Circuit below, and the 9th Circuit in *Recycle for Change* v. *City of Oakland*, 856 F.3d 666 (9th Cir. 2017).

As explained above, the Fifth Circuit's reading of *Reagan* threatens to swallow up the protections of *Reed*. And this error is filtering out to other circuits; a district court that had issued a Temporary Restraining Order against Oakland's donation box regulation denied a motion for preliminary injunction after the Fifth Circuit's ruling here. *U'SAgain, LLC* v. *City of L.A.*, No. CV 24-6210-CBM-BFMx, 2024 U.S.Dist. LEXIS 161797, at *9-12 (C.D. Cal. Sep. 9, 2024).

The Court should address the deepening error before it spreads further. *Reagan* does not allow cities to regulate solicitation with less scrutiny than directional signs. The Fifth Circuit's ruling enables unconstitutional viewpoint discrimination, offending the Constitution's guarantee of free speech and free exercise.

Your *amici* ask the Court to grant the petition for a writ of certiorari and affirm *Reed's* protection of this category of speech that is often religiously motivated.

CONCLUSION

Petitioners' position is the only one to secure religious groups' free speech and free exercise rights. If the ruling stands, it will erode these protections by weakening scrutiny of content-based regulations.

Your *amici* respectfully encourage the Court to grant the petition for writ of certiorari to the Fifth Circuit.

Respectfully submitted,

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