No. 24-154

IN THE

Supreme Court of the United States

CATHOLIC CHARITIES BUREAU, INC., *et al.*,

Petitioners,

v.

WISCONSIN LABOR & INDUSTRY REVIEW COMMISSION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICUS*

The International Municipal Lawyers Association ("IMLA") is a non-profit organization of more than 2,500 members dedicated to advancing the interests and education of local government lawyers.[1] Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties, and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoints of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

IMLA's interest in this case stems from its broad implications for governments that exempt religious or religiously affiliated organizations from various government taxes and programs. As Respondents observe, "[i]nteraction between church and state is inevitable." Brief for Respondents at 14 (quoting *Agostini v. Felton*, 521 U.S. 203, 233 (1997)). Interactions between state and local governments and religious organizations arise in a variety of contexts, including taxation (property, sales, income, etc.), fees, zoning, and local discrimination ordinances. A decision by this Court, not properly cabined, could have wide-ranging effects on these other situations in which governments necessarily interact with religious organizations.

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1. Pursuant to Supreme Court Rule 37.6, IMLA affirms that no counsel for any party authored this brief in whole or in part and that no party, counsel for a party, or person or entity other than IMLA or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

If the Court accepts Petitioners' arguments, it would be difficult—if not impossible—to deny an exemption to any organization claiming a religious exemption from a government program or tax. At the arguments' most extreme, governments and reviewing courts would not be able to undertake *any* examination of an organization's activities to determine if an exemption applies. Such an outcome could be devastating to local governments, given the "sheer magnitude of corporate religion." Marshall & Blomgren, *Regulating Religious Organizations Under The Establishment Clause*, 47 Ohio St. L.J. 293, 317 (1986). For example, authors writing over twenty years ago described the holdings of the Church of Jesus Christ of Latter-Day Saints as "including a hotel, a publishing company, a department store, several agri-businesses, real estate and investment operations, and radio and television stations from coast to coast." *Id.*[2] Requiring governments to grant exemptions to any and all such religiously affiliated corporations, given their numbers, could undermine the viability of many local governments and their current operations. And, as *amicus* Professor Christopher Lund aptly observed, it "would create powerful incentives for legislatures, agencies and courts either to invalidate, narrow, or not create certain kinds of religious exemptions at all, because they will be unable to put sensible boundaries on them." Brief of Professor Christopher C. Lund as *Amicus Curiae* in Support of Neither Party at 2 (filed Jan. 31, 2025). IMLA urges this

2. The Church of Jesus Christ of Latter-Day Saints maintains a wide holding of affiliated for-profit companies to this day. *See* Deseret Management Corporation, "Our Companies," https://www.deseretmanagement.com/#our-companies (listing multiple media companies, an insurance company, and a hospitality organization, among others) (last visited March 4, 2025).

Court not to stretch the Religion Clauses to the point where local government's operations would be significantly undermined.

INTRODUCTION AND SUMMARY OF ARGUMENT

A ruling in Petitioners' favor could put state and local governments in an impossible position. Petitioners' approach, if embraced by this Court, would effectively require state and local governments to allow a tax exemption to *every* organization that claims it is religiously motivated—regardless of the activities it performs—or be found in violation of the First Amendment. And it would not end there. Such framing disregards the reality of the operation of state and local governments, which interact with religious organizations, like other businesses and individuals operating within their jurisdiction, frequently and for a variety of reasons. In the face of snowballing loss of revenue if forced to allow religious exemptions for all manner of organizations, Petitioner's approach may result in state and local governments choosing to eliminate religious exemptions in a variety of contexts. In other words, adoption of Petitioners' interpretation of the First Amendment would have ramifications well beyond whether such organizations are exempt from a state's unemployment compensation system.

It also disregards the reality of modern religious practice. The setting before the Court involves operations of enterprises that are adjacent to churches or other houses of worship and the religious observances that take place therein. That members of the religious group involved in those enterprises are carrying out their religious beliefs

when working for those enterprises is hardly remarkable. Many for-profit companies aspire to operate in accordance with Biblical principles.[3] Some finance companies are organized to meet the needs of Islamic customers who need to finance purchases in a setting that does not involve the payment of interest (also known as "Riba").[4] Many restaurants and retailers prepare their food in accordance with longstanding religious principles, sometimes with industry certifications.[5] The sincerity of such business leaders' religious beliefs is beyond question—but that alone cannot be enough to grant those who own businesses of those kinds a constitutional right to avoid having their eligibility for a tax exemption scrutinized.

To avoid these pitfalls, IMLA urges the Court to consider how governments and reviewing courts have applied laws to religious organizations in ways that do not impinge on the freedoms guaranteed by the First Amendment Religion Clauses while simultaneously not undermining state and local government revenue and operations. These examples can be found in this Court's own precedent applying laws like the Fair Labor

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3. One organization of such businesses refers to such companies as "BaaM," an abbreviation for "Business as a Ministry." *See* "The C12 Framework for Building Great Business for a Greater Purpose," https://www.joinc12.com/about/ (last visited March 4, 2025).

4. The Ijara Community Development Corporation, for example, caters to potential home buyers who are looking for ways to purchase a home while abiding by Islamic beliefs. *See* "Explore Interest/Riba-Free Housing Alternatives," https://ijaracdc.com (last visited March 4, 2025).

5. *See* "The Kosher Alliance," https://www.kosheralliance.org/ (last visited March 4, 2025).

Standards Act (FLSA) or the Religious Land Use and Institutionalized Persons Act (RLUIPA), but also in the opinions of other federal courts, or state courts applying state and local laws. These cases demonstrate that governments can respect religious autonomy and sincerity of religious belief without ceding their authority to define the scope of the law to religious organizations in order to keep themselves separate from issues of religious faith or doctrine.

ARGUMENT

A. Governments often assess religious organizations to apply the law, and such assessment does not violate the Religion Clauses.

It is an unremarkable proposition that, as Petitioners note, government entities cannot "second-guess *religious* judgments made by *religious* institutions." Brief for Petitioners at 22 (emphasis added). For that reason, this Court refused to mediate a dispute over occupancy of a church that depended on the validity of an appointment of an Archbishop, for example. *See Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952). But Petitioners propose that "even matters which government might consider *secular* can be infused with religious meaning—especially in the context of a religious entity's mission." Pets.' Br. at 35 (emphasis in original). By suggesting that a religious organization can assert "religious purposes" and thereby grant themselves automatic, *carte blanche* exemptions from laws, Petitioners propose to insert constitutional concerns into a wide range of situations in which the government must interact with religious organizations.

"Were the [petitioners'] view the correct reading of [this Court's] decisions, all manner of religious accommodations would fall." *Cutter v. Wilkinson*, 544 U.S. 709, 724 (2005) (rejecting an Establishment Clause challenge to the Religious Land Use and Institutionalized Persons Act (RLUIPA)).

First, on the subject of whether an inquiry into an entity's purpose would constitute forbidden entanglement or intrusive scrutiny, consider this Court's precedent in *Tony & Susan Alamo Foundation v. Secretary of Labor*. *See* 471 U.S. 290 (1985). There, this Court determined that the FLSA applied to "associates" of the Tony & Susan Alamo Foundation, a non-profit religious foundation. This decision required the Court to, among other things, determine that the Foundation was an "enterprise" under the FLSA, meaning that it performed activities for "a common business purpose." *Id.* at 295-96. While a Labor Department regulation stated that activities of a religious organization "may be performed for a business purpose," the Foundation claimed it was different from "'ordinary' commercial businesses" because its activities were "infused with a religious purpose." *Id.* at 297-98. This Court rejected the relevancy of the Foundation's invocation of religious purpose. Instead, it accepted the determination of the courts below, which "clearly took account of the religious aspects of the Foundation's endeavors, and were correct in scrutinizing the activities at issue by reference to objectively ascertainable facts concerning their nature and scope." *Id.* at 299.[6] The

6. In making this determination, the Court noted a "broad congressional consensus that ordinary commercial businesses should not be exempted from the Act simply because they happened to be

decision demonstrates that a religious organization can be examined without violating the First Amendment. Invocation of religious purpose thus does not transform all factual questions into ones requiring assessment of religious doctrine.[7]

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owned by religious or other nonprofit organizations." *Tony & Susan Alamo Found.*, 471 U.S. at 298. The same issue is presented here—one of the Petitioners, Catholic Charities' affiliate Barron County Developmental Services ("BCDS"), was not always affiliated with Catholic Charities, or any other religious organization. And as the Supreme Court of Wisconsin observed, "the services provided before and after BCDS's partnership with [Catholic Charities] commenced were exactly the same." *Catholic Charities Bureau, Inc. v. Labor & Industry Review Comm'n*, 411 Wis.2d 1, 36 (Wis. 2024).

7. Petitioners rely on *National Labor Relations Board v. Catholic Bishop*, 440 U.S. 490 (1979), in which this Court determined that the National Labor Relations Act did not cover teachers in church-operated schools to avoid the constitutional concerns such jurisdiction would confer, as such interactions would "necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." *Id.* at 502. But in *Tony & Susan Alamo Foundation*, which was decided six years later, this Court explicitly distinguished *NLRB v. Catholic Bishop*, 471 U.S. at 305 n.31, in concluding that the government could constitutionally determine whether a religious non-profit operated for a "common business purpose" and, if it did, apply the FLSA's requirements to such an organization.

The Court went on to contrast entangling surveillance with "secular government activity" like "fire inspections and building and zoning regulations." *Id.* at 305. While a regulation may be "burdensome in terms of paperwork," that does not automatically make it "intrusive into religious affairs." *Id.* at 306. Here, as Respondents note, the burden is even lower—"[i]t requires a one-time examination, not continuing surveillance, of Petitioner's activities." Resps.' Br. at 15.

Take RLUIPA as another example. In *Cutter*, this Court upheld the constitutionality of RLUIPA against a challenge that it violates the standards of the Establishment Clause. *See* 544 U.S. at 713. Petitioners point to RLUIPA's "sincerity" requirement as an alternative to government assessment of religious activities. *See* Pets.' Br. at 41. However, RLUIPA is more effective in protecting religious liberties because courts (and, by implication, compliant governments) have generally not followed Petitioners' proposed approach. Indeed, in order to accomplish RLUIPA's objective of providing an additional layer of protection to religious rights in two particular settings, Congress had no choice but to draw a statutory distinction between religious exercise (which the statute protects) and other forms of activity (which the statute does not). *See* 42 U.S.C. § 2000cc-5(7) (defining "religious exercise"). In applying that definition, federal courts have used the existence of a sincerely-held belief as the starting place—but not always the ending place—for determining whether something constitutes a religious exercise.[8]

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8. Even before RLUIPA's passage, courts considered as part of a Free Exercise Clause analysis what constituted a religious belief. *See, e.g., Africa v. Commonwealth of Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981) ("[W]e acknowledge that a determination whether [appellant's] beliefs are religious and entitled to constitutional protection presents a most delicate question; at the same time, we recognize that the very concept of ordered liberty precludes allowing [appellant], or any other person, a blanket privilege to make his own standards on matters of conduct in which society as a whole has important interests." (internal citations omitted)); *Callahan v. Woods*, 658 F.2d 679, 685 (9th Cir. 1981) (observing that "defining religious belief is often quite difficult" but nonetheless undertaking the inquiry).

For example, in the zoning context where a special permit was required for the expansion of a school, and the applicant was religiously affiliated,[9] the Second Circuit distinguished between which kind of potential construction on the site would be protected by RLUIPA as "religious exercise." *See Westchester Day Sch. v. Vill. of Mamaroneck*, 504 F.3d 338, 347 (2d Cir. 2007). RLUIPA would not protect a "gymnasium to be used exclusively for sporting activities," a headmaster's residence, or "more office space" simply because the school was religiously affiliated, but if expansion space were used at least in part for religious education and practice, then RLUIPA would apply. *Id.* at 347-48. The Second Circuit required "careful factual findings [about how] each room the school planned to build would be used," and whether that use would be "at least in part for religious education and practice," before considering RLUIPA implicated. *Id.* at 348. The school's blanket invocation of religious education as motivation for its project was not sufficient.

In *Moore-King v. County of Chesterfield, Va.*, 708 F.3d 560 (4th Cir. 2013), *abrogated on other grounds by Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018), a self-described "spiritual counselor" sought exemptions from the county's zoning ordinance, business license tax, and permitting requirements for her fortune teller business, claiming the requirements violated her

9. The issue in *Westchester Day*—which involves neither alleged discrimination against all religious entities, nor any requirement that an entity renounce its religious character in order to participate in a generally-available public benefit program—is closer to that presented in this case, as opposed to *Trinity Lutheran Church v. Comer,* 582 U.S.449, 466-67 (2017), cited by Petitioners. *See* Pets.' Br. at 22-23.

free exercise rights under the First Amendment and RLUIPA. *See* 708 F.3d at 564-65. The City Code defined "fortune teller" in a way that referred to whether it was an "occupation of occult sciences." *Id.* at 562. While the plaintiff conceded her activities fit within the code's definition of fortune teller, she claimed that the code's requirements interfered with her religious exercise, and that under the Free Exercise Clause and RLUIPA her "set of beliefs deserves constitutional protection as a religion." *Id.* at 570-71. The Fourth Circuit held that it needed to determine whether her beliefs were "religious in nature," meaning whether they "occupy a place in her life 'parallel to that filled by the orthodox belief in God.'" *Id.* at 571 (quoting *United States v. Seeger*, 380 U.S. 163, 166 (1965)). Under that element of the "religious exercise" test, beliefs need not be "comprehensible to others," *id.* (internal citation omitted), but "must nonetheless amount to a religious faith as opposed to a way of life." *Id.* (citing *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)). Because the plaintiff's "beliefs more closely resemble personal and philosophical choices consistent with a way of life, not deep religious convictions shared by an organized group deserving of constitutional solicitude," *id.*, she needed to pay the appliable license tax, obtain the required permit, and comply with the county's zoning ordinance.

And even once a court has determined that a litigant is indeed exercising a religious belief, further analysis of that religious belief can still be required. This can become necessary, for example, as part of the "substantial burden" analysis under statutory protections for religious rights. For example, in declining to grant rehearing of a Religious Freedom Restoration Act (RFRA) claim by two plaintiffs who wanted to sell t-shirts on the National Mall because

of their religious beliefs, an intervening legislative development broadening the interpretation of "religious exercise" did not require the D.C. Circuit to revisit its dismissal. *See Henderson v. Kennedy,* 265 F.3d 1072, 1074 (D.C. Cir. 2001). Judge Raymond Randolph emphasized that panel's earlier examination of "the importance of selling t-shirts on the Mall to the plaintiffs" was not about whether it was a religious exercise; the agency's inquiry was deemed proper "when assessing whether a substantial burden exists." *Id.* Moreover, the court deemed itself the arbiter of the relative importance to petitioners' religious exercise of selling t-shirts on the National Mall, *i.e.,* it did *not* accept without analysis the say-so of the plaintiff claiming substantial burden. *Id.*

Petitioner's most extreme arguments would undermine many of the government regulations at issue in the above-described cases and would also prevent courts from analyzing these legal issues. The cases described above (and others like them), while not necessarily explicitly addressing the Establishment Clause issues put before the Court here, demonstrate that it is not beyond the ken of courts to examine religious organizations for purposes of applying the law.[10] They have been doing so for years.

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10. In identifying the dangers of precluding governments and reviewing courts from considering whether activities can be religious, IMLA is not passing judgment on whether the court below did, in fact, do so. IMLA's focus in this brief is to demonstrate that courts often assess organizations that seek legal benefits or protections as religious bodies, and can do so without passing judgment on the truth or falsity of what their members or leaders believe, or their motivations.

B. The Court's ruling here could have implications far beyond state unemployment compensation systems.

This case considers Wisconsin's unemployment compensation system, but many states invoke the concept of "religious purposes" in various laws and regulations. *See, e.g.,* Kan. Stat. Ann. § 79-3606(aaa) (exempting from tax "all sales of tangible personal property and services purchased by a religious organization . . . used exclusively for *religious purposes*" (emphasis added)); Neb. Rev. Stat. § 77-2704.12(1)(a) (similar); 72 Pa. Stat. Ann. § 7204(10) (similar); 35 Ill. Comp. Stat. 200/15-40(b) (exempting from certain taxes "[p]roperty used exclusively for . . . *religious purposes*" (emphasis added)); *see also In re Appeal of Church of Yahshua*, 584 S.E.2d 827, 829-30 (N.C. App. 2003) (observing the statute "defines 'religious purpose' as 'one that pertains to practicing, teaching, and setting forth a religion'" and "notes that '[a]lthough worship is the most common religious purpose, the term encompasses other activities that demonstrate and further the beliefs and objectives of a given church or religious body'"). The exemptions created by state laws like these and others have ramifications throughout a given state as, for example, "[w]hile property taxes tend to be imposed at the local level, their basic framework is typically set by state law." *See* Tax Foundation, "Property Taxes by State and County, 2023," https://taxfoundation.org/data/all/state/property-taxes-by-state-county-2023/ (last visited March 4, 2025.).

Local governments rely on property and in some cases sales and use taxes—like those cited above—for their continued ability to provide services. *See* Tax Foundation, "Unpacking the State and Local Tax Toolkit,"

https://taxfoundation.org/data/all/state/state-local-tax-collections/ (last visited March 4, 2025) ("Property taxes are the primary source of tax collections at the local level, responsible for 72.2 percent of local tax revenue in fiscal year 2020[.]"); *see also id.* (noting that sales taxes "constitute a major local government revenue stream in some states"). As a result, an overly broad reading of the Religion Clauses, in a way that would expand the ability of virtually any entity claiming to be religiously affiliated to gain exemption, risks undermining the public fisc and the ability of local governments to provide critical public services. Local governments typically must balance their budgets under state law and any significant drop in revenue will coincide with a drop in services, including in areas of law enforcement, fire protection, waste management, and disaster response, among many others. *See*, *e.g.,* Maine Municipal Association, "Guide to Property Tax," https://www.memun.org/Training/Citizen-Education/Guide-to-Property-Tax (last visited March 4, 2025) ("Maine communities provide a vast array of services, including police and fire protection, winter and summer road maintenance, code enforcement, planning and land use regulation, economic and community development, issuance of licenses, recreation, parking, solid waste collection and disposal, water and sewer services, emergency medical services, health and human services, and sometimes more depending on where you live. Property taxes on average fund about 60% of the cost of local governments.")

As the Connecticut Conference of Municipalities puts it, local governments are often placed in a tight spot—on the one hand, "[t]he revenue options available to . . . towns and cities are limited by state statute," with the majority

coming from property tax; on the other, state legislatures maintain control over the structure of property tax *exemptions*. *See* Connecticut Council of Municipalities, "The Property Tax," https://www.ccm-ct.org/Advocacy/Reports-Data/The-Property-Tax (last visited March 4, 2025). Already, in Connecticut, some counties' property base is more than 50 percent exempt. *See id.* Take Lock Haven, Pennsylvania as another example. In 2019, "the city's largest property taxpayer, a for-profit hospital was purchased by a non-profit system that filed for tax exempt status," while at the time "taxes from the property accounted for 3 percent of the city's budget." Pennsylvania Economic League, "It's Not 1965 Anymore: State Tax Laws Fail To Meet Municipal Revenue Needs" at 13 (Oct. 2022), accessible at https://www.pml.org/advocacy/pel-report-local-taxation-study/ (last visited March 4, 2025). Given the existence of these sorts of issues under the current system, and the problems municipalities already face given limited options to raise revenue for critical local services, a further, aggressive expansion of religious exemptions could be disastrous.

Petitioners here argue that in undertaking a one-time analysis of their purposes as required by Wis. Stat. § 108.02—including by considering the activities they actually perform—Wisconsin impermissibly inserted itself into issues of church governance, as well as Catholic faith and doctrine. *See, e.g.,* Pets.' Br. at 17-18. Implied by this argument is that a religious organization's purpose and activities are wholly subjective and cannot be assessed using objective factors. *See id.* at 35 ("[E]ven matters which government might consider *secular* can be infused with religious meaning[.]"). It is not difficult to imagine the absurd results such a rule could allow—one could envision,

in the extreme, a church owning a local convenience store and claiming exempt status, because selling soft drinks and snacks is part of their religious exercise.

This type of issue has already been addressed by at least one state court. As one Illinois court aptly stated when analyzing applicability of the above-cited Illinois property tax law, 35 Ill. Comp. Stat. 200/15-40(b):

> It is [appellant']s position that civil authorities must accept not only a religious organization's characterization of its beliefs but also the entity's characterization of its use of the subject property. Under this theory, no property taxes could ever be imposed on any property a religious organization declared was used exclusively for religious purposes, regardless of the true facts. This is contrary to established law. Courts are permitted to determine whether property is in fact used exclusively for religious purposes.

Franciscan Communities, Inc. v. Hamer, 975 N.E.2d 733, 740 (Ill. App. 2012); *see also Provena Covenant Med. Ctr. v. Dep't of Rev. of State*, 894 N.E.2d 452, 479 (Ill. App. 2008) ("If 'religious purpose' meant whatever one did in the name of religion, it would be an unlimited and amorphous concept. Exemption would be the rule, and taxation the exception. In a sense, everything a deeply devout person does has a religious purpose." (internal quotation marks omitted)). In *Franciscan Communities*, the Illinois Appellate Court determined that a retirement community owned by Franciscan nuns did not qualify for Illinois's religious-use property tax exemption, despite the

appellant's assertion that caring for the elderly is in fact their "religious purpose." 975 N.E.2d at 739.

Cochise County v. Broken Arrow Baptist Church, 161 Ariz. 406 (Ariz. App. 1989), which considered a local zoning regulation, is an illustrative example of how far-reaching a ruling that devolves definitional power to religious organizations could go. In that case an Arizona appellate court upheld the trial court's determination that a church had violated local zoning regulations when it refused to apply for a special use permit for its Bible printing plant. *Id.* at 407-08. The property at issue was zoned for rural use, one permitted instance of which was "public assembly for religious worship." *Id.* at 408. However, a special use permit was required for "[m]anufacturing of durable and non-durable goods." *Id.* The church claimed that "the printing, collating, binding and dissemination of the Bible by the Church and its members is part of the religious worship of the Church and its members." *Id.*

While the Arizona court noted there was no dispute about the church's sincerity or its motivation for producing Bibles, it nonetheless concluded that "[w]hatever [the church's] motives in manufacturing and distributing the Bibles, they do not change the definition of 'assembly for public worship' contained in Cochise County Zoning Regulations to include 'manufacturing.'" *Id.* at 409. But an expansive reading of the rule suggested by Petitioners in this case would require just that, thereby turning ordinary questions of statutory or regulatory interpretation into religious (and therefore Constitutional) ones. Presumably, once the church claimed that manufacturing of Bibles was "religious worship," Petitioners would say that applying the zoning regulation to require a special use permit would

"second-guess *religious* judgments made by *religious* institutions." Pets.' Br. at 22 (emphasis added). This cannot be the rule. The Court should be mindful of the effects of any ruling that dictates what is or is not appropriate for a decisionmaker to consider when applying the law.

CONCLUSION

Amicus Curiae International Municipal Lawyers Association respectfully requests that, irrespective of the Court's determination of the merits of the specific facts and circumstances of this case, the Court cabin its explanation for its ruling so as to avoid depriving government bodies of the well-established authority to perform limited and respectful inquiries into whether those seeking exemption from generally applicable regulation on religious grounds are entitled to that exemption.

Respectfully submitted,

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