SUPREME COURT OF NEW JERSEY
Docket No. A-33-19 (083487)

Christian Mission John 316,	:	On Appeal From The Superior Court, Appellate Division
	:	Docket No. A-3547-17T2
Plaintiff/Petitioner/ Appellant,	:	Sat below:
v.	:	Hon. Richard S. Hoffman, J.A.D. Hon. Karen L. Suter, J.A.D.
Passaic City,	:	Hon. Richard J. Geiger, J.A.D.
Defendant/Respondent	:	

BRIEF OF *AMICI CURIAE* RELIGIOUS DENOMINATIONS AND ORGANIZATIONS (THE GENERAL COUNCIL OF THE ASSEMBLIES OF GOD, THE UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA, THE JEWISH COALITION FOR RELIGIOUS LIBERTY, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, AND THE SISTERS OF SAINT FRANCIS OF PERPETUAL ADORATION IMMACULATE HEART OF MARY PROVINCE) IN SUPPORT OF PETITIONER AND REVERSAL

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INTEREST OF *AMICI CURIAE*

Amici curiae are religious denominations and organizations representing four different faith traditions. While *amici* differ in their core beliefs, they share a concern for preserving legal protections for Americans of different religious convictions. Here, *amici* seek to assist the Court's consideration of this matter with experience from their particular traditions, and apprise the Court of the ways in which its decision could affect, and inadvertently harm, longstanding core religious practices.

The General Council of the Assemblies of God, together with Assemblies of God congregations around the world, is the world's largest Pentecostal denomination. It has approximately 67 million members and adherents worldwide. Religious freedom is critically important to the Assemblies of God. It cherishes the constitutionally guaranteed freedom of religion, and it seeks to foster a society in which religious adherents of all faiths may follow the dictates of their conscience.

The Union of Orthodox Jewish Congregations of America ("Orthodox Union") represents nearly 1,000 synagogues in the United States and is the nation's largest Orthodox Jewish umbrella organization. The Orthodox Union, through its OU Advocacy Center, has participated in many cases that raise issues of critical importance to the Orthodox Jewish community, particularly matters relating to the constitutional guarantees of religious liberty

that have been the indispensable foundation upon which its community and institutions have been able to grow and flourish.

The Jewish Coalition for Religious Liberty is an association of American Jews concerned with the current state of religious liberty jurisprudence. The Coalition aims to protect the ability of all Americans to freely practice their faith and foster cooperation between Jews and other faith communities. Representing members of the legal profession, and as adherents of a minority religion, the Coalition has a unique interest in ensuring the flourishing of diverse religious viewpoints and practices. To that end, the Coalition has submitted *amicus* briefs in numerous courts, written op-eds, and established an extensive volunteer network to spur public statements and action on religious liberty issues by Jewish communal leadership.

The Church of Jesus Christ of Latter-day Saints is a Christian denomination with more than 16 million members worldwide. Religious liberty is an essential Church doctrine: "We claim the privilege of worshipping Almighty God according to the dictates of our own conscience, and allow all men the same privilege, let them worship how, where, or what they may." Art. of Faith 11. And it believes that governments and courts should protect "all citizens in the free exercise of their religious belief." Doctrine and Covenants 134:4. As explained further within this brief, the Church has religious practices relating to temples that reflect its

doctrine and that are essential to accomplishing its religious mission.

The Sisters of St. Francis of Perpetual Adoration (Immaculate Heart of Mary Province) is an American province of a global Roman Catholic papal congregation of religious sisters living in community who profess vows of poverty, chastity, and obedience in order to give themselves totally for the Kingdom of God. The Sisters strive to combine the contemplative life with the active through perpetual adoration of the Blessed Sacrament and the works of mercy in education, healthcare, and other ecclesial ministries. The Sisters have a keen commitment to protecting and preserving both the contemplative and active worship done by religious sisters and like Church communities.

PRELIMINARY STATEMENT

The Appellate Division held that Christian Mission John 3:16 did not qualify for a tax exemption in part because the church building was not "open to the general public" or "available for public use." *Christian Mission John 316 v. Passaic City*, No. A-3547-17T2, 2019 WL 4127383, at *4-5 (N.J. Super. Ct. App. Div. Aug. 30, 2019) (per curiam), *certification granted*, 222 A.3d 337 (N.J. 2019). But any rule requiring complete openness of religious buildings to the general public would conflict with the deeply held beliefs of many religious communities, which require certain areas — such as cloisters, temples, or ritual baths — to be

restricted due to their sacred character or religious purpose. Interpreting New Jersey's tax exemption to require full public access would coerce these communities to limit the full expression of their faith. While *amici curiae* come from varied faith traditions, they share a commitment to preserving the freedom of all faith traditions. *Amici* therefore ask this Court to reject the Appellate Division's interpretation of N.J.S.A. § 54:4-3.6.

In addition to conflicting with the deeply held beliefs of many faith traditions, the Appellate Division's interpretation also lacks grounding in the statutory text. The text of the tax exemption statute unambiguously does not include any public access requirement, instead requiring only "actual use" in the work of religious organizations. *See* N.J.S.A. § 54:4-3.6. Constitutional avoidance also counsels against reading the statute to condition benefits in a manner that would infringe religious organizations' free exercise and free association rights under the First Amendment, including their right to autonomy over their internal affairs and their right to reserve sacred areas apart from the general public.

This Court should reverse the decision below and clarify that the tax exemption statute requires no more than what its text states: "actual[] use[] . . . for religious purposes." *Id.* Most importantly, this Court should reject the view that actual use requires general access to all religious property at any time such

property is in use. Such a clear statement would ensure that the narrow tax dispute before the Court would not be an occasion to undermine religious freedom in New Jersey.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Amici rely on the procedural history and facts as stated by the parties.

ARGUMENT

I. Many religious communities must limit public access to certain areas due to their faith.

Many faith traditions — even those that open their primary worship services to all members of the public — place limits on certain services or areas. Such limitations are often a direct expression of important tenets of faith, such as devotion to God, ritual purity, or the sacredness of the relationship between the sexes. These faith-driven decisions are precisely the "internal church decision[s] that affect[] the faith and mission of the church" that our Constitution and national heritage protect. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012).

The rich tradition of cloistered or enclosed orders in Roman Catholicism offers a familiar example. The Dominican nuns in Summit, New Jersey, for instance, are holy women who have dedicated their lives to offer their prayers and penance for the Church. *See What Is a Dominican Nun?*, Dominican Nuns of Summit, N.J.,

https://www.summitdominicans.org/what-is-a-dominican-nun (last visited Feb. 21, 2020). Similarly, in Morristown, New Jersey, the St. Mary's Abbey houses Benedictine monks who pray, work, and live as a community together. *See* Richard Cronin, *Abbot's Welcome*, St. Mary's Abbey, https://saintmarysabbey.org/abbots-welcome (last visited Feb. 21, 2020). While these two communities' practices (like the practices of other denominations and religions) cannot allow visitors at all times, it is beyond dispute that their service and example encourage and sustain the broader Catholic community in its faith, in addition to providing the cloistered community with a unique spiritual home.

Similarly, although The Church of Jesus Christ of Latter-day Saints ("Church of Jesus Christ") is known for its proselytizing, sponsoring tens of thousands of missionaries across the globe, the Church's strong sense of the sacred requires it to limit access to its own temples. The Church's temples – those few buildings reserved for the faith's most important "sacred ordinances," as distinct from its weekly services – are open only to those willing to meet "the high standards set by the Lord for entrance." Church of Jesus Christ of Latter-day Saints, *Preparing to Enter the Holy Temple* 1-3 (2002), https://media.ldscdn.org/pdf/lds-manuals/preparing-to-enter-the-holy-temple/2011-01-00-preparing-to-enter-the-holy-temple-eng.pdf. While the Church "urge[s] every soul to qualify," this limitation is understood as a command from

God, and it plays an important role in the life of all Church members as they seek to develop the "maturity and dignity" necessary to be recommended for entrance. *Id.* at 2. Although not open to the general public like a public accommodation, each week Church temples accommodate the worship of tens of thousands of faithful Church members from many localities and all walks of life.

Many religions that do not limit entire buildings to chosen sets of co-religionists nevertheless limit the use of portions of their structures by religious status, gender, or other characteristics. Many Orthodox Jews require a *mechitzah*, or physical barrier, to separate men and women during synagogue services, a tradition drawn in part from sacred scripture. *The Mechitzah: Partition*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/365936/jewish/The-Mechitzah-Partition.htm (last visited Feb. 21, 2020). Some synagogues also include other restricted areas such as a *mikvah*, a ritual bath, which must be sex-segregated and restricted to practicing Jews. *See, e.g.*, Rivkah Slonim, *The Mikvah*, The Jewish Woman, https://www.chabad.org/theJewishWoman/article_cdo/aid/1541/jewish/The-Mikvah.htm (last visited Feb. 23, 2020). Practices like these are drawn directly from these faith communities' understanding of what God demands of them and are central to their flourishing.

Promoting and encouraging the flourishing of religious communities — including by protecting areas designated for certain communities — is fully in line with the purposes of New Jersey's property tax exemption law. This Court has recognized that New Jersey property tax exemption law is driven by a desire to facilitate the "contribution of the exempt facility to the public good." *Roman Catholic Diocese of Newark v. Borough of Ho-Ho-Kus*, 42 N.J. 556, 566 (1964) (discussing religious and charitable exemptions among others). To that end, New Jersey courts have long emphasized that "religious use is 'clearly in furtherance of the public morals and general welfare'" and "inherently beneficial." *Kali Bari Temple v. Bd. of Adjustment of Readington*, 271 N.J. Super. 241, 248 (App. Div. 1994).

The New Jersey view is consistent with federal law and historical tradition. The United States Supreme Court has long held that "[w]hen the state encourages religious instruction or cooperates with religious authorities [to accommodate] sectarian needs, it follows the best of our traditions." *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952). That is not only because Americans "are a religious people whose institutions presuppose a Supreme Being," *id.* at 313, but also because "those who adopted our Constitution . . . believed that the public virtues inculcated by religion are a public good." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 400-01 (1993) (Scalia, J.,

concurring in the judgment). Our first President declared religion an "indispensable support[]," essential for both "national morality" and "popular government." *See Washington's Farewell Address 1796*, Avalon Project, Yale Law Sch., https://avalon.law.yale.edu/18th_century/washing.asp (last visited Feb. 21, 2020); *see also* Ordinance for the Government of the Territory of the United States North-West of the River Ohio ("Northwest Ordinance of 1787"), art. III, *reprinted at* 1 Stat. 50, 52 (1789) (characterizing religion as "necessary to good government and the happiness of mankind").

This longstanding intuition finds reinforcement in modern social science literature demonstrating how regular religious participation yields a host of salutary outcomes. Religion is powerfully correlated with many public goods: "[s]urveys of religious individuals further document [that] . . . [r]eligious people are more likely to do volunteer work; more likely to contribute their money to charity; more likely to be involved in their communities. They are also happier." Andrew Koppelman, *Defending American Religious Neutrality* 123 (2013). Researchers at the Harvard T.H. Chan School of Public Health recently found that "[c]ompared with women who never attended religious services, women who attended services more than once per week had a 33% lower mortality risk." Li Shanshan et al., *Religious Service Attendance and Mortality Among Women*, 176 JAMA Internal Med. 777, 782 (2016)

(finding significance "robust" when controlling for various demographic variables). While religion's public benefits cannot – and should not – be distilled into empirical outcomes alone, these findings show how religion concretely contributes to the public good.

Importantly, these public benefits flow from the contributions of the religious community to its members as well as to the broader community, and do not depend upon all services being fully open to or broadly utilized by the general public. Accordingly, courts have declined invitations to condition public benefits to religious bodies on the size of the communities they serve. *See Kali Bari Temple*, 271 N.J. Super. at 249 (rejecting zoning preference for churches "with substantial followings" over "small religious group[s]"). After all, religious groups of any form and size act "as beneficial and stabilizing influences in community life." *Walz v. Tax Comm'n of N.Y.*, 397 U.S. 664, 672-73 (1970) (describing rationale of state tax exemptions). And, in practice, religious groups gather together and worship in all manner of forms and sizes.

A blanket rule extending a tax exemption to religious services or properties only to the degree that they are unrestrictedly open to the general public would unnecessarily impinge on important practices vital to New Jersey's diverse religions, which have long

been recognized as serving the public good and thus advancing the policies behind the tax exemption statute.

II. N.J.S.A. § 54:4-3.6 contains no public access requirement.

A. By its own terms, N.J.S.A. § 54:4-3.6 requires only "actual use" and nothing more.

In addition to threatening a broad range of religious communities, a requirement that buildings must be open to the general public to qualify for the tax exemption also has no basis in the statutory text. N.J.S.A. § 54:4-3.6 provides for tax exemptions of, among other things,

> all buildings actually used in the work of associations and corporations organized exclusively for religious purposes, including religious worship, or charitable purposes, provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt.

N.J.S.A. § 54:4-3.6. As this Court has recognized, a statute's plain language should control its application. *See N.J. Carpenters Apprentice Training & Educ. Fund v. Borough of Kenilworth*, 147 N.J. 171, 178 (1996) ("A statute should be interpreted in accordance with its plain meaning if it is 'clear and unambiguous on its face and admits of only one interpretation.'" (quoting *State v. Butler*, 89 N.J. 220, 226 (1982))). Here, the language is "clear and unambiguous." *Soc'y of Holy Child Jesus v. City of Summit*, 418

N.J. Super. 365, 374 (App. Div. 2011). A property must be "actually used" for a religious purpose — nothing more.

In parallel contexts, this Court has confined N.J.S.A. § 54:4-3.6's requirements to its text: "(1) [the owner of the property] must be organized exclusively for the [exempt purpose]; (2) its property must be actually . . . used for the tax-exempt purpose; and (3) its operation and use of its property must not be conducted for profit." *Hunterdon Med. Ctr. v. Twp. of Readington*, 195 N.J. 549, 561 (2008) (alterations in original) (citation omitted) (addressing parallel language for hospitals); *see Christian Mission*, 2019 WL 4127383, at *3 (acknowledging this test).

Actual use – the criterion at issue in the present case – encompasses all uses "reasonably necessary" to effectuate a tax-exempt purpose. *Roman Catholic Archdiocese of Newark v. City of E. Orange*, 18 N.J. Tax 649, 653–54 (Super. Ct. App. Div. 2000) (concluding that storage useful to church operations satisfied test). And this Court has clarified that "necessary" does not mean "absolutely indispensable." *Boys' Club of Clifton, Inc. v. Twp. of Jefferson*, 72 N.J. 389, 401-02 (1977) (giving the example of "parking accommodations for a church's parishioners" as serving the church's purposes); *see Girls Friendly Soc'y v. Cape May City*, 26 N.J. Tax 549, 566 (T.C. 2012) (citing *Boys' Club* and noting that "uses that are complementary to or consistent with charitable or religious purposes" may qualify as reasonably necessary).

Until now, New Jersey courts have consistently declined to graft additional conditions onto these requirements. *See, e.g.*, *Soc'y of Holy Child Jesus*, 418 N.J. Super. at 386 ("[T]he Statute does not require the property be a lawful use under the municipality's zoning ordinance in order to qualify for tax exemption."); *Borough of Hamburg v. Trs. of Presbytery of Newton*, 28 N.J. Tax 311, 323 (T.C. 2015) (building only "sometimes" used as secondary storage location meets the actual-use requirement). Likewise, this Court should recognize that religious property – no less than one's home or office – may be actually used without being generally open to the public. "A court 'ought not "rewrite a plainly-written enactment of the Legislature"'" or "presume the Legislature intended something other than the meaning of the plain language." *Presbyterian Home at Pennington, Inc. v. Borough of Pennington*, 409 N.J. Super. 166, 185 (App. Div. 2009) (citation omitted).

B. Other provisions of N.J.S.A. § 54:4-3.6, and parallel tax exemption statutes, support a reading of actual use that is inclusive of non-public uses.

When New Jersey lawmakers wish to include requirements more demanding than actual use, they know how to make that intention explicit in the statute. Tax exemption statutes with public policy requirements beyond actual use state those requirements explicitly. *See, e.g.*, N.J.S.A. § 54:4-3.64 (conditioning a conservation/recreation tax exemption on a requirement that the

land be "owned and maintained or operated for the benefit of the public"); *id.* § 54:32B-8.13 (requiring "direct[] and primar[y]" "use or consumption" for certain sales tax exemptions); *id.* § 52:27D-489r (requiring a Certificate of Occupancy to qualify as "[e]ligible property" for tax exemptions under the Garden State Growth Zone program). These variances have meaning: to read in requirements the Legislature omitted would be to nullify the Legislature's distinctions. *Cf. In re Attorney Gen.'s "Directive on Exit Polling: Media & Non-Partisan Pub. Interest Grps.,"* 200 N.J. 283, 297-98 (2009) ("We must presume that every word in a statute has meaning and is not mere surplusage, and therefore we must give those words effect and not render them a nullity.").

N.J.S.A. § 54:4-3.6 itself shows how the State enacts different statutory standards. Religious organizations need only prove "actual[] use," while certain other categories of exemptions require demonstration of "actual[] and exclusive[] use[]" or ownership. N.J.S.A. § 54:4-3.6. For example, the actual-and-exclusive requirement applies to buildings used for public libraries. *See id.* Religious groups, by contrast, need not show "exclusive" use. That is not an accident, but a conscious choice by the legislature. *Compare* Act of July 1, 1993, ch. 166, sec. 1, 1993 N.J. Laws 1017, 1018 (prior version applying to "all buildings actually *and exclusively* used in the work of associations and corporations organized exclusively for religious or charitable

purposes" (emphasis added)), *with* Act of Jan. 29, 2001, ch. 18, sec. 1, 2001 N.J. Laws 106, 107 (current version removing "and exclusively" from the provision); *see Christian Mission*, 2019 WL 4127383, at *3 n.3 (noting that some tax exemptions were previously subject to the "actual[] and exclusive[] use[]" standard).

This choice followed shortly after the decision in *Grace & Peace Fellowship Church, Inc. v. Cranford Township*, which denied a tax exemption to a church under construction on the ground that its contemporaneous services were a "secondary or incidental" use. 4 N.J. Tax 391, 401–02 (T.C. 1982). While the Appellate Division in the present case correctly noted the change in the law, it erred in not recognizing the impact of that change in citing *Grace* as authority. *See Christian Mission*, 2019 WL 4127383, at *4-5.

New Jersey law's treatment of other tax-exempt properties further confirms why N.J.S.A. § 54:4-3.6 does not implicitly import a public-access requirement. First, N.J.S.A. § 54:4-3.6 explicitly contemplates "actual use" of properties that logically cannot be fully open to the public. *See* N.J.S.A. § 54:4-3.6 (granting exemptions for "buildings . . . actually occupied as a parsonage" and for "all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes," including "nursing homes; residential health care facilities; [and] assisted living residences"). Both secular and religious groups operate such properties. *See, e.g.*, *Admissions*, Little

Sisters of the Poor, http://www.littlesistersofthepoor.org/a-place-for-you/admissions/ (last visited Feb. 21, 2020) (describing admission to homes for "low-income elderly persons" served by a congregation of Roman Catholic women religious).

Second, New Jersey courts have consistently recognized that organizations subject to 'actual use' requirements remain eligible for tax exemptions even if they undertake non-public uses, such as by restricting their membership or services. *See, e.g.*, *Pingry Corp. v. Hillside Twp.*, 46 N.J. 457, 466-67 (1996) (recognizing tax exemption under actual-use requirement by a private school with selective admission — including for its faculty housing); *cf. Wildlife Preserves, Inc. v. Borough of Lincoln Park*, 151 N.J. Super. 533, 545 (App. Div. 1977) (finding that a property met the standard for "public conservation uses" under N.J.S.A. § 54:4-3.63 despite being "not open to the public").

There is no reason to think that the meaning of the phrase "actually used" varies by category of exempt institution. As this Court has emphasized, terms "should be given the same meaning when used more than once in a statute unless the contrary is clearly manifested." *City of Clifton v. Zweir*, 36 N.J. 309, 327 (1962); *see Job Haines Home for the Aged v. Twp. of Bloomfield*, 19 N.J. Tax 408, 417-20 (T.C. 2001) (cross-applying "actual use" analysis to a different category of exempt organizations), *aff'd per curiam*, 20 N.J. Tax 137 (Super. Ct. App. Div. 2002).

In short, property can meet the actual-use standard without being accessible to the public at large. As New Jersey courts have long recognized, non-profit institutions like schools, hospice centers, low-rent housing units, and conservation centers can all serve the public good and yet not necessarily be open to the broader public. That same principle should guide decisions regarding non-profit religious organizations as well.

III. Constitutional avoidance counsels against a "public access" requirement that could pose unconstitutional conditions.

The vital principle of constitutional avoidance also counsels against construing the statute as requiring buildings to be open to the public to qualify for the exemption. "[W]hen 'a statute may be open to a construction which would render it unconstitutional or permit its unconstitutional application, it is the duty of this Court to so construe the statute as to render it constitutional if it is reasonably susceptible to such interpretation.'" *Whirlpool Props., Inc. v. Dir., Div. of Taxation*, 208 N.J. 141, 172 (2011) (citation omitted). "Similarly, when a statute's constitutionality is drawn into question or placed in serious doubt, this Court should ascertain whether a construction of the statute is possible that avoids the constitutional problem." *Id.*

Courts adhere to the principles of constitutional avoidance "out of respect for [the legislature], which [courts] assume legislates in the light of constitutional limitations." *Rust v.*

Sullivan, 500 U.S. 173, 191 (1991); *see Whirlpool*, 208 N.J. at 172 (holding that "[w]e must presume 'that the [L]egislature acted with existing constitutional law in mind and intended the [statute] to function in a constitutional manner'" (second and third alterations in original; citation omitted)).

Following these canons, the Court should avoid interpreting N.J.S.A. § 54:4-3.6 to condition benefits to religious organizations based on general access to the public. A condition on a public benefit "can result in an unconstitutional burden on First Amendment rights" even where an organization subject to the condition "has no entitlement to that benefit." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013); *see Speiser v. Randall*, 357 U.S. 513 (1958) (unconstitutional conditions doctrine applies to tax exemptions). In the case of religion, "the Free Exercise Clause protects against 'indirect coercion or penalties on the free exercise of religion,'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017) (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988)), including coercion in the form of "a condition upon even a gratuitous benefit," *id.* (citation omitted).

Here, conditioning a tax benefit for religious organizations on whether their services are sufficiently open to the general public would run afoul of two interrelated First Amendment protections. First, it would impinge on the Free Exercise rights

of the religious organizations, particularly the special protection granted to the autonomy of religious communities over their internal affairs. Second, it would infringe the freedom of expressive association available to all expressive organizations.

Free Exercise. Should this Court construe the tax exemption provision for religious associations to require all tax-exempt religious buildings in New Jersey to open their doors to all members of the public, it would impose a condition upon receipt of a public benefit that would penalize and inhibit the free exercise rights of certain religious communities.

As detailed above, numerous religious associations limit public access to some buildings *because* of their religious faith: to promote a deeper, more intense spiritual union with God that requires separation from the wider community, or to honor and preserve the sacred nature of certain ceremonies or rituals.

The State of New Jersey could not directly command these communities to open their convents, temples, and synagogues to the general public. The United States Supreme Court has taken care to distinguish "neutral law[s] of general applicability" that relate to "regulation of only outward physical acts" from efforts to "interfere[] with an internal church decision that affects the faith and mission of the church." *Hosanna-Tabor*, 565 U.S. at 190. The Supreme Court has held that such interference is flatly forbidden. For example, a secular court cannot "reject[] the

interpretations" of internal church procedural rules offered by a church's "highest tribunals." *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 718 (1976). It likewise cannot enforce anti-discrimination law in the context of "religious groups . . . choosing who will preach their beliefs, teach their faith, and carry out their mission." *Hosanna-Tabor*, 565 U.S. at 196; *see id.* at 185-87 (discussing other examples of the non-interference principle).

By the same token, many courts have found that government may not interfere with the right of religious bodies to exclude members who disobey church teachings from the community – and the use of their property. *See, e.g.*, *Westbrook v. Penley*, 231 S.W.3d 389, 404–05 (Tex. 2007) (court could not interfere with scripturally based "three-step disciplinary process"); *O'Connor v. Diocese of Honolulu*, 885 P.2d 361, 368 (Haw. 1994) (court may not analyze "schism" or interfere with an excommunication); *Paul v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 819 F.2d 875, 878–79 (9th Cir. 1987) (refusing to interfere with practice of shunning disciplined members); *Dwenger v. Geary*, 14 N.E. 903, 905 (Ind. 1888) (upholding bishop's right to refuse Catholic burial on grounds of decedent's "failure to observe [church] doctrines").

New Jersey cannot "us[e] conditions 'to produce a result which it could not command directly,'" and a public access requirement would therefore be an unconstitutional interference with church

autonomy. *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 138 S. Ct. 1365, 1377 n.4 (2018) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)).

Further, a public-access condition could also be considered "[a] law burdening religious practice that is not neutral or not of general application," subjecting it to "the most rigorous of scrutiny." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). The clause of the statute under interpretation here pertains only to "associations and corporations organized exclusively for religious purposes." N.J.S.A. § 54:4-3.6. For that reason, any conditions imported into that clause would "purposely and exclusively regulate[] particular religious conduct and nothing else." *Cent. Rabbinical Cong. of U.S. & Can. v. N.Y. City Dep't of Health & Mental Hygiene*, 763 F.3d 183, 195 (2d Cir. 2014). Definitionally, such regulations are not neutral. *Id.* at 194–95.

Furthermore, because parallel clauses of the statute are regularly understood not to condition tax exemptions on general public access, *see supra* Part II.B, interpreting the religious exemption to impose such a condition would "exempt some secularly motivated conduct but not comparable religiously motivated conduct," also "contraven[ing] the neutrality requirement." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165–66 (3d Cir. 2002). In practice, it would amount to "disqualifying

[otherwise eligible recipients] from a public benefit solely because of their religious character," and therefore "trigger[] the most exacting scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2021.

If strict scrutiny applies, it is most unlikely that the lower courts' interpretation of state law would satisfy that demanding test. The clearest compelling interest the tax exemption statute seeks – accommodating the free exercise of religion for the public good – is well-understood in New Jersey and federal law to be accomplished best by allowing religious practice to flourish in a variety of forms. *See supra* Part I.

Expressive Association. The First Amendment also guarantees the freedom of association for all organizations, including religious organizations. *See, e.g.*, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984) ("[F]reedom of association receives protection as a fundamental element of personal liberty.").

As the Supreme Court recently explained, the "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Janus v. Am. Fed'n of State, Cty., & Mun. Emps. Council 31*, 138 S. Ct. 2448, 2463 (2018) (quoting *Roberts*, 468 U.S. at 623). The State lacks the constitutional authority to require private membership organizations to include "an applicant whose manifest views [a]re at odds with" the organization's views. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 580–81 (1995). Nor may it "compel [an] organization to accept members where such

acceptance would derogate from the organization's expressive message." *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 659 n.4, 661 (2000). Courts have recognized that "[i]t would be difficult for [an organization] to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept members who engage in that conduct." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 863 (7th Cir. 2006); *id.* at 861–62 (noting that strict scrutiny applies).

Amici represent religious groups whose faith practices at times require limiting general use of a place of worship. These practices are important factors in adherents' worship, prayer, meditation, or other interaction with the divine – meaning they are frequently, if not always, expressive. Applying the reasoning of *Walker*, religious organizations place great spiritual value – and therefore great expressive value – on keeping certain spaces sacred by admitting only those members who are living by certain religious standards and beliefs, or by having certain areas divided by sex. To coerce those organizations to surrender such standards would derogate the expressive message of that community and distort the purpose of these activities.

Moreover, the Constitution manifests a "special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189 (2012); *see id.* at 200 (Alito, J., concurring, and Kagan, J., joining) (expressive association freedoms apply "with special

force with respect to religious groups, whose very existence is dedicated to the collective expression and propagation of shared religious ideals"). Therefore, the strict scrutiny applicable in the expressive-association context will often be heightened – as in *Hosanna-Tabor* – to an absolute rule when "[t]he right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine" is at issue. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728-29 (1872) (calling such a right "unquestioned"). But even considering only the baseline protection for freedom of association, it seems unlikely that a general access standard would be constitutionally acceptable.

These are, at a minimum, "grave and doubtful constitutional questions." *United States ex rel. Attorney Gen. v. Del. & Hudson Co.*, 213 U.S. 366, 408 (1909). Yet they are readily avoided by interpreting the exemption statute according to its plain terms. This Court should reverse the decision below and decline to graft an unnecessary public access requirement onto the religious exemption statute that threatens the good work of so many faith traditions.

CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted,

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**Pro hac vice* pending.