No. 11-998

In The Supreme Court of the United States

MOUNT SOLEDAD MEMORIAL ASSOCIATION,

Petitioner,

v.

STEVE TRUNK, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

AMICUS CURIAE BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE, ADVOCATES FOR FAITH AND FREEDOM, AND 34 MEMBERS OF THE UNITED STATES CONGRESS* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI*

The parties received timely notice of the intent to file this *amicus curiae* brief and have consented to its filing.[1]

Amicus, the American Center for Law and Justice ("ACLJ"), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued in numerous cases involving the First Amendment before the Supreme Court of the United States and other federal and state courts. *See, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460 (2009); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987).

The resolution of this case is a matter of substantial concern to the ACLJ because it will significantly affect numerous memorials honoring veterans across the nation. In addition, the ACLJ's institutional interests are directly harmed by the Ninth Circuit panel's unprecedented conclusion that the ACLJ's involvement in defending the Mount Soledad Veterans Memorial is evidence that the federal government's maintenance of the Memorial is unconstitutional.

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[1] No counsel for a party authored this brief in whole or in part. No person or entity aside from *amici curiae*, their members, and their counsel made a monetary contribution to the preparation or submission of this brief.

Amicus, Advocates for Faith and Freedom ("Advocates"), is a California-based law firm dedicated to protecting religious liberty and family values. Advocates seeks to ensure that the rich religious tradition that was so integral to the formation of Anglo-American law is not unduly excluded from the public arena in the United States, and especially in California. Advocates is involved in many First Amendment cases, and the resolution of this case is of great importance to Advocates due to the impact it will have upon future cases in California and across the country.

Amici, United States Representatives Brian Bilbray, Randy Forbes, Duncan Hunter, Robert Aderholt, Todd Akin, Roscoe Bartlett, Dan Burton, Mike Conaway, Chip Cravaack, Jeff Duncan, Jeff Fortenberry, Virginia Foxx, Trent Franks, Vicky Hartzler, Darrell Issa, Bill Johnson, Walter Jones, Jim Jordan, Mike Kelly, John Kline, James Lankford, Cathy McMorris Rodgers, Gary Miller, Jeff Miller, Alan Nunnelee, Mike Pence, Ted Poe, Mike Pompeo, Tom Price, Dennis Ross, Ed Royce, Steve Scalise, Lamar Smith, and Lynn Westmoreland, are currently serving members of the 112th Congress. These *amici* strongly support the federal government's acquisition of the Memorial through Public Law 109-272[2] so that

[2] An Act to Preserve the Mt. Soledad Veterans Memorial in San Diego, California, by Providing for the Immediate Acquisition of the Memorial by the United States, Pub. L. No. 109-272,

(Continued on following page)

it may be enjoyed by all Americans as a national memorial to honor veterans.

In furtherance of their interests, many of the *amici* have previously filed several *amicus curiae* briefs with this Court and other federal and state courts in litigation involving the Memorial. *City of San Diego v. Paulson*, Sup. Ct. No. 05-A-1234 (Kennedy, Circuit Justice, June 30, 2006); *Jewish War Veterans of the United States of America, Inc. v. City of San Diego*, Nos. 08-56415 & 08-56436 (9th Cir. Mar. 12, 2009 and Mar. 24, 2011); *Paulson v. City of San Diego*, No. 06-55769 (9th Cir. June 12, 2006, July 26, 2006, and Nov. 17, 2006); *Paulson v. City of San Diego*, No. 92-55087 (9th Cir. Mar. 13, 1992); *Trunk v. City of San Diego*, No. 06-cv-1597-LAB (S.D. Cal. Dec. 27, 2007); *Paulson v. Abdelnour*, No. S149386 (Cal. Feb. 1, 2007); *Paulson v. Abdelnour*, No. D047702 (Cal. Ct. App. July 24, 2006).

BACKGROUND

Shortly after the Korean War ended, members of an American Legion Post founded the Mount Soledad Memorial Association to honor the sacrifice of the countless Americans who died during that conflict and the two World Wars. With the permission of the

120 Stat. 770 (2006) (making the Memorial federal property through eminent domain).

City of San Diego, they constructed a memorial cross to honor the fallen.[3] In the few years prior to the Memorial's creation, over 36,000 American servicemen died or remained missing along with over 220,000 of their allies.[4] The Korean War came less than a decade after the conclusion of the largest war in history, World War II, which claimed millions of lives, including approximately 400,000 Americans.[5]

As Congress noted, "[t]he Mt. Soledad Veterans Memorial was dedicated on April 18, 1954, as 'a lasting memorial to the dead of the First and Second World Wars and the Korean conflict' and now serves as a memorial to American veterans of all wars, including the War on Terrorism." 120 Stat. 770, Pub. L. No. 109-272, § 1. Since its inception, the Memorial has honored the untold thousands of individuals who made the ultimate sacrifice in defense of our nation's security and values and those of our allies. The memorial cross was a logical choice given the widespread use of crosses in other war memorials that

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[3] "Except for a brief two-year period, there has been a cross on the site since 1913." *Trunk v. City of San Diego*, 660 F.3d 1091, 1102 (9th Cir. 2011) (Bea, J., dissenting from the denial of rehearing en banc).

[4] *Korean War: Battle Casualties*, Encyclopedia Britannica Online, http://www.britannica.com/eb/art-67418?articleTypeId=1 (last visited Feb. 9, 2012).

[5] *World War II*, Encyclopedia Britannica Online, http://www.britannica.com/eb/article-9110199/World-War-II (last visited Feb. 9, 2012); *National WWII Memorial*, http://www.wwiimemorial.com/ (last visited Feb. 9, 2012).

had been recently constructed around the world.[6] In addition, "at the time the federal government bought the Mt. Soledad Memorial site, the Cross was surrounded with over 2,100 plaques commemorating veterans of various faiths or of no faith, and 23 bollards commemorating some particularly valiant units who had taken casualties and various secular community groups." *Trunk*, 660 F.3d at 1092 (Bea, J., dissenting from the denial of rehearing en banc).

SUMMARY OF ARGUMENT

In light of the secular purpose and effect of the federal government's acquisition and maintenance of the Memorial, the Ninth Circuit panel erred in holding the statute that gave the federal government ownership of the Memorial unconstitutional. The panel correctly recognized that the law's key purpose – preserving a historic war memorial to honor veterans – is secular. *Trunk v. City of San Diego*, 629 F.3d 1099, 1104 (9th Cir. 2011). However, the panel placed little importance upon the plurality opinions in *Van Orden v. Perry*, 545 U.S. 677 (2005), and *Salazar v. Buono*, 130 S. Ct. 1803 (2010). As the *Salazar* plurality noted, "a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor

[6] *See, e.g.*, *The Battle of Normandy, The Monuments in Alphabetical Order*, http://www.normandie44lamemoire.com/versionanglaise/monumentsus/lesmonumentsus2.html (last visited Feb. 9, 2012).

and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people." 130 S. Ct. at 1820. In stark contrast, the Ninth Circuit concluded that "the record before us does not establish that Latin crosses have a well-established secular meaning as universal symbols of memorialization and remembrance." *Trunk*, 629 F.3d at 1116, n.18.

In addition, the panel erroneously concluded, contrary to this Court's cases, that the alleged religious or anti-religious motives of private individuals who donate memorials to the government or support legislation are relevant in determining a law's primary purpose and effect in Establishment Clause cases. The federal government's operation of the Memorial is constitutionally sound and the panel's decision should be reversed.

ARGUMENT

I. The Ninth Circuit Panel Improperly Disregarded the Plurality Opinions in *Salazar v. Buono* and *Van Orden v. Perry*.

The Ninth Circuit panel gave little weight to the plurality opinion in *Buono* despite its obvious relevance to this case. In *Buono*, the Court considered whether a federal law that authorized the transfer of federal land which included a memorial cross to a private party violated the Establishment Clause. Justice Kennedy wrote a plurality opinion, joined by

Chief Justice Roberts and Justice Alito, rejecting the claim that a Latin cross is an exclusively religious symbol in all settings.[7] The plurality observed that

> a Latin cross is not merely a reaffirmation of Christian beliefs. It is a symbol often used to honor and respect those whose heroic acts, noble contributions, and patient striving help secure an honored place in history for this Nation and its people. Here, one Latin cross in the desert evokes far more than religion. It evokes thousands of small crosses in foreign fields marking the graves of Americans who fell in battles, battles whose tragedies are compounded if the fallen are forgotten.

130 S. Ct. at 1820 (Kennedy, J., plurality).

The plurality distinguished the case from one in which a Latin cross is displayed for the purpose of promoting a Christian message:

> Private citizens put the cross on Sunrise Rock to commemorate American servicemen who had died in World War I. Although certainly a Christian symbol, the cross was not emplaced on Sunrise Rock to promote a Christian message. . . . Placement of the cross on Government-owned land was not an attempt to set the *imprimatur* of the state on a particular creed. Rather, those who erected

[7] Justices Scalia and Thomas concluded that the plaintiff lacked standing to obtain the injunction he was seeking. *Id.* at 1824 (Scalia, J., concurring).

> the cross intended simply to honor our Nation's fallen soldiers.

Id. at 1816-17. The plurality found it significant that

> [t]he cross had stood on Sunrise Rock for nearly seven decades before the statute was enacted. By then, the cross and the cause it commemorated had become entwined in the public consciousness. . . . Congress ultimately designated the cross as a national memorial, ranking it among those monuments honoring the noble sacrifices that constitute our national heritage. . . . It is reasonable to interpret the congressional designation as giving recognition to the historical meaning that the cross had attained.

Id. at 1817.

In addition, Justice Alito noted in his concurring opinion that

> the original reason for the placement of the cross was to commemorate American war dead and, particularly for those with searing memories of The Great War, the symbol that was selected, a plain unadorned white cross, no doubt evoked the unforgettable image of the white crosses, row on row, that marked the final resting places of so many American soldiers who fell in that conflict.

Id. at 1823 (Alito, J., concurring).

Despite its obvious relevance to this case, the Ninth Circuit panel downplayed the *Buono* plurality opinion in a footnote, stating that

> the record before us does not establish that Latin crosses have a well-established secular meaning as universal symbols of memorialization and remembrance. On the record in this appeal, the "thousands of small crosses" in foreign battlefields serve as individual memorials to the lives of the Christian soldiers whose graves they mark, not as generic symbols of death and sacrifice.

Trunk, 629 F.3d at 1116, n.18. The panel based its analysis upon expert testimony suggesting that most veterans' memorials do not include crosses, downplaying evidence that at least 114 Civil War monuments include some kind of cross and concluding that any religious overtones of those monuments were overshadowed by secular elements. *Id.* at 1112-15. The panel also stated that the size of the Mount Soledad cross in comparison to the Memorial's numerous other items was significant. *Id.* at 1116, n.18.

By contrast, the dissent from the denial of rehearing en banc illustrates the conflict between the panel decision and this Court's cases. The dissent correctly noted that, "[i]f the Cross were ineluctably only a religious symbol, there would have been no need for the Court's remand in *Buono* to the district court for it to consider whether the transfer of the land on which the Cross sat to a private party from the federal government was significant for the

purposes of determining whether an Establishment Clause violation had occurred." *Trunk*, 660 F.3d at 1095 (Bea, J., dissenting from the denial of rehearing en banc). The dissent also observed, "[i]f the Mojave Desert cross standing by itself, with only a single plaque, can be understood as a memorial to fallen soldiers, then surely the Mt. Soledad Cross, surrounded by more than 2100 memorial plaques, bollards commemorating groups of veterans, and a gigantic American flag, can be viewed as a memorial as well." *Id.* In addition, the dissent noted:

> In concluding that the Cross lacks a broadly understood meaning as a symbol of memorialization, the panel discounted certain important record facts: 114 Civil War monuments include a cross; the fallen in World Wars I and II are memorialized by thousands of crosses in foreign cemeteries; Arlington Cemetery is home to three war memorial crosses, and Gettysburg is home to two more; and military awards often use the image of a cross to recognize service, such as the Army's Distinguished Service Cross, the Navy Cross, the Air Force Cross, the Distinguished Flying Cross, and the most famous cross meant to symbolize sacrifice – the French "Croix de Guerre."

Id. at 1100.

The dissent also noted that the panel's decision conflicts with the analysis applied in *Van Orden*: "*Van Orden* tells us that the proper test to determine

whether the government has violated the Establishment Clause by erecting or maintaining a religious symbol on public grounds depends on: (1) the government's use of the religious symbol; (2) the context in which that symbol appears; and (3) the history of the symbol while under government control, including how long it has stood unchallenged." *Id.* at 1092 (citing *Van Orden*, 545 U.S. at 681). The dissent explained:

> For the same reason that the Ten Commandments stand today in that park in Austin, Texas, the Cross should continue to stand on Mt. Soledad: a religious symbol is not always used to promote religion. Whether it promotes religion depends on the context in which the symbol is displayed, how it is used, and its history. Here, that display, use, and history are secular and require affirmance of summary judgment for the federal government.

Id. at 1092-93.

The dissent also noted the secular significance of the Memorial's location:

> San Diego is heavily influenced by and dependant on the Armed Forces. Situated between Camp Pendleton and Naval Base San Diego, Mt. Soledad is a memorial to the sacrifice made by many soldiers who have protected this country over the years, regardless of their religion. And it is a promise to those current soldiers, a promise that we appreciate

> the sacrifice they are willing to make for our freedom and that, if they pay the ultimate price, we will remember them. The Cross has stood at the entrance to this memorial for almost 100 years. It has taken on the symbolism of marking the entrance to a war memorial. We should leave it be.

Id. at 1102.

In sum, this Court should grant review in this case because the panel's decision squarely conflicts with this Court's decisions.

II. The Ninth Circuit Panel Erroneously Concluded that the Alleged Religious (or Anti-Religious) Motives of Private Individuals Who Donate Monuments and Memorials to Government Actors, or Support Legislation or Litigation, Are Relevant to a Determination of Primary Purpose and Effect.

The panel opinion's reliance upon the alleged religious motivations of *amicus* ACLJ and other private organizations that have supported the federal government's acquisition and maintenance of the Memorial conflicts with this Court's decisions. It would be odd indeed if the Establishment Clause effectively prevented religious citizens from participating in the government decision-making process while, at the same time, Article VI of the Constitution ensures that "no religious test shall ever be required as a qualification to any office or public trust under

the United States." *See* U.S. CONST. ART. VI, cl. 3. This, however, is exactly the import of Respondents' argument – accepted by the Ninth Circuit – that "the reasonable observer would know that court decisions enjoining the government display of the Cross have been resisted at every turn by religiously motivated individuals and groups. This resistance is probative of religious effect." Brief for Appellants at 34, *Trunk v. City of San Diego*, 629 F.3d 1099 (9th Cir. 2011) (Nos. 08-56415 & 08-56436).

Respondents have repeatedly cited *amicus* ACLJ's involvement in defending the Memorial as alleged evidence of a primarily religious effect. *Id.* at 36, 44, n.23. The Ninth Circuit panel accepted Respondents' argument, stating that "Christian advocacy groups like [*amicus* ACLJ] . . . launched national petition campaigns for the Cross. . . . The starkly religious message of the Cross's supporters would not escape the notice of the reasonable observer." *Trunk*, 629 F.3d at 1120. The panel's acceptance of Respondents' argument is unsupported by this Court's Establishment Clause jurisprudence and, if applied consistently, would exclude many organizations from participation in the legislative and judicial processes while jeopardizing a host of civil rights, public accommodation, and other statutes. The Ninth Circuit's reasoning is based upon the faulty premise that a faith-based group's support for a legislative or legal position is based primarily upon *religious doctrine* – and the equally faulty premise that public officials adopt private religious sentiments as their own and

act upon them in their official capacities – but this case centers upon *a purely legal question*: whether the Establishment Clause requires the removal of a memorial cross from a comprehensive veterans memorial located on public property. Simply put, Respondents' interpretation of the Establishment Clause has "been resisted at every turn" because it is wrong. *See* Brief for Appellants at 34.

A. Statements made by individuals in the 1950s, or by private groups that supported the federal government's acquisition of the Memorial, are irrelevant to the primary effect of the federal government's maintenance of the Memorial today.

A few religiously-themed quotes from individuals who were involved in the process of dedicating the Memorial in 1954, or who supported the federal government's acquisition of the Memorial more recently, are not evidence of a religious purpose or effect conveyed by the federal government's maintenance of the Memorial in 2012. While the Ninth Circuit panel implied that such statements drown out the Memorial'a intended secular message of remembrance and solemn appreciation, thereby rendering the government's acquisition and maintenance of the Memorial unconstitutional, the dissent correctly noted this Court's rejection of the argument that a monument displayed by the government necessarily conveys the

intended meaning(s) of donors or other private individuals.

With respect to privately donated monuments displayed on public land, this Court observed in *Pleasant Grove* that "a government entity does not necessarily endorse the specific meaning that any particular donor sees in the monument." 555 U.S. at 476-77. The Court noted that "[b]y accepting a privately donated monument and placing it on city property, a city engages in expressive conduct, but the intended and perceived significance of that conduct may not coincide with the thinking of the monument's donor or creator." *Id.* at 476.

Similarly, the federal government's maintenance of the Memorial in its present form – including its numerous memorial walls, bollards, plaques, inscriptions, and photographs – does not perpetuate any religious message proclaimed by an individual in 1954. *Trunk*, 660 F.3d at 1097-98 (Bea, J., dissenting from the denial of rehearing en banc). As the dissent correctly noted, "[w]hat happened while the land was privately held hardly seems relevant to the issue whether the government acted to establish religion." *Id.* at 1097. In particular, under the federal government's ownership, the Memorial has been the site of memorial services, not general religious services. *Id.* at 1097-99. "[F]rom the moment the federal government took title to the Mt. Soledad Memorial site in 2006, it has neither held nor permitted to be held any sort of a religious exercise there. The site has been

used solely for the purpose of memorializing fallen soldiers, consistent with the Cross's 'undeniable historical meaning,' evoking the memory of fallen soldiers." *Id.* at 1092 (citing *Van Orden*, 545 U.S. at 690). The secular text of the statute and the federal government's secular maintenance of the Memorial are what controls, not extraneous quotes from private individuals.

B. The Ninth Circuit panel's decision conflicts with settled Establishment Clause principles.

The District Court correctly noted that there is no authority supporting Respondents' position that "a reasonable observer would take into account the views of various citizens or advocacy groups with no power to control the land or what was done with it." *Trunk v. City of San Diego*, 2007 U.S. Dist. LEXIS 75787, at *5, *7 (S.D. Cal. Oct. 10, 2007). The court stated, "that much of the support for the statute was religiously motivated. . . . is unremarkable; lobbying and public advocacy by religious and charitable organizations is altogether common, and in any event cannot be regarded as 'causing' Congress to take the memorial." *Trunk v. City of San Diego*, 568 F. Supp. 2d 1199, 1208 (S.D. Cal. 2008) (citations omitted).[8]

[8] In addition, the California Court of Appeals stated in previous litigation involving the Memorial, "we are troubled by the proposition that a government entity or any individual

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Conversely, as noted previously, the Ninth Circuit panel concluded that "[t]he starkly religious message of the Cross's supporters would not escape the notice of the reasonable observer," noting that "Christian advocacy groups like [*amicus* ACLJ] . . . launched national petition campaigns for the Cross." *Trunk*, 629 F.3d at 1120. "The panel also considered such irrelevant material as the anti-Semitic practice of realtors in La Jolla to bar Jewish buyers from settling there during the early part of the century, when the Cross was in private hands – a practice that has nothing to do with Mt. Soledad or this Cross." *Trunk*, 660 F.3d at 1098, n.7 (Bea, J., dissenting from the denial of rehearing en banc). The dissent correctly noted that "[t]he actions of private parties are particularly irrelevant because only a governmental entity can violate the Establishment Clause, not the actions of private citizens." *Id.* at 1096, n.6. The dissent also pointed out that "[t]he legislative history also contains a letter from the leaders of this country's four largest veterans service organizations, which explains that the potential destruction of the Memorial is considered an affront to veterans." *Id.* at 1100 (citing 152 Cong. Rec. H5423-24 (daily ed. July 19, 2006)).

Respondents' theory, adopted by the Ninth Circuit panel, is based upon a misapplication of *Epperson v.*

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appearing as an attorney before a court, on any issue, may first be screened for their sectarian or nonsectarian background or motives before being allowed to appear as an advocate." *Paulson v. Abdelnour*, 51 Cal. Rptr. 3d 575, 600 (Ct. App. 2006).

Arkansas, 393 U.S. 97 (1968). A review of legislative history (where appropriate) is necessarily different when a *voter initiative* is involved – as was the case in *Epperson*, *id.* at 109, n.17 – than when a legislature directly enacts a statute, as is the case here. The *Epperson* Court's citation to faith-based advertising campaigns supporting the voter initiative came *after* its conclusion that "[n]o suggestion has been made that Arkansas' law may be justified by considerations of state policy *other than the religious views of some of its citizens*." *Id.* at 107 (emphasis added). Here, the government has relied upon the statute's secular text and the Memorial's secular context, not the religious views of individuals, to demonstrate a secular purpose and effect. Furthermore, Respondents' theory would eviscerate this Court's acknowledgement in *Employment Division v. Smith*, 494 U.S. 872, 890 (1990), that legislatures have broad discretion to accommodate religious practices through statutory exemptions because such provisions are often promoted by religiously affiliated groups for religious reasons.

In addition, in rejecting a federal and state Establishment Clause challenge to a San Diego ballot proposition that authorized the donation of the Memorial to the federal government (which was later mooted by Public Law 109-272), the California Court of Appeals noted the folly of trying to convert the subjective motivations of a handful of private groups or individuals who support a law into an official governmental purpose or effect:

> We do not believe that the position of any one advocate in, or interpreter of, vigorous public debate may be declared to reflect the ultimate position of all voters. . . .
>
> [T]here are multiple reasons that may motivate voters' choices individually and collectively. Neither we nor the parties to this action could ever discern the religious inclination or motives of the 72,859 persons who signed the referendary petition to rescind R-300207. Nor can we discern the motives of 197,125 individuals, 76 percent of those voting, who ultimately passed Proposition A. We cannot tell whether in casting a vote in favor of Proposition A an individual voter did so for a religious reason, a secular desire the cross remain as part of a veterans memorial or simply a neutral desire to transfer to another venue the issue of the cross's presence at the site. . . . The same flaws would occur were we to attempt to ascribe to voters the intent of any individual or group that supported or opposed the proposition or the placement of the proposition on the ballot. . . .
>
> There are multiple reasons advanced in favor of, or opposition to, the Proposition, including that of keeping a secular veterans memorial.

Paulson, 51 Cal. Rptr. 3d at 595-97. Similarly, Respondents' reliance upon the subjective motivations of certain private individuals and groups that supported the federal government's acquisition of the Memorial

enactment is misplaced; a determination of legislative purpose and effect must start, and will often end, with an analysis of *the law's text*.

C. The Ninth Circuit panel's decision would have wide-ranging implications for numerous federal, state, and local laws.

Under Respondents' unprecedented theory, an Act of Congress could be invalidated simply because religious leaders spoke out in favor of its passage. Throughout American history, however, prominent religious leaders like the Reverend Dr. Martin Luther King, Jr. have galvanized like-minded Americans to support or oppose government policies, often in overtly religious terms. For example, in Dr. King's famous *Letter from Birmingham Jail*, he said:

> I am in Birmingham because injustice is here. Just as the prophets of the eighth century B.C. left their villages and carried their "thus saith the Lord" far beyond the boundaries of their home towns, and just as the Apostle Paul left his village of Tarsus and carried the gospel of Jesus Christ to the far corners of the Greco-Roman world, so am I compelled to carry the gospel of freedom beyond my own home town. Like Paul, I must

> constantly respond to the Macedonian call for aid.[9]

Under Respondents' theory, the plethora of laws that Dr. King and other religious leaders have actively supported in overtly religious terms would become constitutionally suspect. Neither the Establishment Clause nor this Court's precedent supports that result. Just as the Establishment Clause does not disqualify priests, rabbis, and other members of the clergy from holding public office, *McDaniel v. Paty*, 435 U.S. 618 (1978) (plurality opinion), laws do not become tainted as unconstitutional because they were actively supported by religious citizens. Congress's secular goals are not transformed into religious goals simply because religiously affiliated groups were among those who advocated for a statute's enactment. "Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the Establishment Clause." *Van Orden*, 545 U.S. at 690 (plurality opinion).

[9] Rev. Dr. Martin Luther King, Jr., *Letter from Birmingham Jail* (Apr. 16, 1963), *available at* http://www.mlkonline.net/jail.html.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant certiorari to review this case and reverse the panel's erroneous decision.

Respectfully submitted,

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