No. 25-10890

In the United States Court of Appeals for the Fifth Circuit

CENTER FOR INQUIRY, INC., AND ERIC MCCUTCHAN,
Plaintiffs-Appellants,

v.

MARY LOUISE NICHOLSON IN HER CAPACITY AS CLERK OF TARRANT COUNTY, TEXAS, AND PHIL SORRELLS IN HIS CAPACITY AS DISTRICT ATTORNEY OF TARRANT COUNTY, TEXAS,
Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Texas, Wichita Falls Division
No. 4:24-cv-1039, Hon. Reed C. O'Connor

BRIEF *AMICUS CURIAE* OF THE BECKET FUND FOR RELIGIOUS LIBERTY IN SUPPORT OF NEITHER PARTY

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CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities as described in 5th Cir. R. 28.2.1 and 5th Cir. R. 29.2 have an interest in the amicus brief.

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CORPORATE DISCLOSURE STATEMENT

Amicus Curiae the Becket Fund for Religious Liberty is a non-profit 501(c)(3) organization and has no corporate parent and is not owned in whole or in part by any publicly held corporation.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitutional Provisions

Other Authorities

INTEREST OF THE *AMICUS CURIAE* [1]

The Becket Fund for Religious Liberty is a non-profit, nonpartisan law firm dedicated to protecting the free expression of all religious traditions. In lawsuits across the country, Becket has represented Anglicans, Buddhists, Catholics, Hindus, Jews, Muslims, Santeros, Sikhs, and Zoroastrians, among others. Becket has filed amicus briefs explaining that non-religious or anti-religious groups cannot invoke protections for religious exercise. *See, e.g.*, *New Doe Child #1 v. United States*, No. 16-4440 (8th Cir. Apr. 18, 2017) (in challenge to "In God We Trust" on currency, arguing that avowed atheists could not bring Free Exercise Clause or RFRA claims because their philosophical beliefs did not constitute an "exercise of religion"); *New Doe Child #1 v. Congress of the U.S.*, No. 16-4345 (6th Cir. Feb. 16, 2017) (same).

Becket does not here take any position on whether Appellants Center for Inquiry ("CFI") and Eric McCutchan have pre-enforcement standing to sue or on the merits of their constitutional claims. Rather, Becket is concerned only about Texas's claim that an avowedly nonreligious or even anti-religious group like CFI is nevertheless a "religious organization" under the Texas Family Code. Such a definition of religion not only runs counter to the historical definition of religion embodied in Texas law and

[1] Both parties have consented to the filing of this amicus brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part, and no person other than *Amicus*, its members, or its counsel made a monetary contribution to fund the brief's preparation or submission.

the First Amendment, but would also render many religious protections nonsensical: If every organization with deeply held philosophical beliefs is religious, then legal protections for religion would become meaningless. Whatever the ultimate outcome of this appeal, Becket therefore urges the Court to uphold the district court's conclusion that CFI is not a "religious organization" for purposes of the Texas Family Code.

INTRODUCTION AND SUMMARY OF ARGUMENT

The First Amendment protects against "establishment[s] of religion" and preserves the "free exercise thereof." U.S. Const. amend. I. But while prioritizing these dual protections for religious liberty as first among the Bill of Rights, the Constitution's text does not expressly define religion's parameters. This has on occasion led jurists and scholars to ask an "important question": "what is a religion?" *McRaney v. N. Am. Mission Bd.*, — F.4th —, 2025 WL 2602899, at *16 n.8 (5th Cir. 2025 Sep. 9, 2025); Transcript of Oral Argument at 40:4-7, *Catholic Charities Bureau v. Wis. Labor & Indus. Rev. Comm'n*, 605 U.S. 238 (2025) (No. 24-154) (inquiring how to articulate a test for religion); Michael W. McConnell et al., *What Is "Religion"?*, in *Religion and the Constitution* 665 (4th ed. 2016) [hereinafter McConnell, *What Is "Religion"?*] ("There are probably 50 law review articles on the problem of defining religion for every case where the definition is a litigated issue.").

Here, that question has arisen under Section 2.202 of the Texas Family Code, which authorizes marriage solemnizations by the state or by a "minister or priest," "rabbi," or any other authorized "officer of a religious organization." Tex. Fam. Code § 2.202(a). Appellant Center for Inquiry ("CFI") sued on the ground that its officers, including Appellant Eric McCutchan, are excluded from performing marriages because CFI is not a "religious organization" within the meaning of the Code. CFI contends this violates, *inter alia*, two provisions of the federal Constitution: (1) the

First Amendment's Establishment Clause, which prohibits any "law respecting an establishment of religion," U.S. Const. amend. I; and (2) Article VI's No Religious Test Clause, which prohibits any "religious Test … required as a Qualification to any Office or public Trust under the United States," U.S. Const. art. VI, cl. 3. Seeking an early dismissal, Texas responded that CFI's officers *can* solemnize weddings because—in Texas's view—CFI *is* "religious" in that it has taken a "stance" on religion, namely, by rejecting it. N.D. Tex. Dkt. 20 at 10. Thus, the question has been squarely presented: What is religion?

In the mine run of cases, courts have no problem resolving such disputes: Whether a particular practice is religious or not is typically manifest. *See, e.g.*, *Fulton v. City of Philadelphia*, 593 U.S. 522, 566 n.29 (2021) (Alito, J., concurring in the judgment) ("Whatever the outer boundaries of the term 'religion' as used in the First Amendment, there can be no doubt that CSS's contested policy [of offering foster-care services consistent with its Catholic faith] represents an exercise of 'religion.'"); *McRaney*, 2025 WL 2602899, at 16 n.8 ("[A]ll agree, obviously, that Baptist churches and missionary groups are religious organizations."); *cf. Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 270 (1993) ("A tax on wearing yarmulkes is a tax on Jews."). This is one such case. Because CFI expressly disclaims being "religious," the Court need go no further. It is, admittedly, a nonreligious, philosophical institution with a secular mission.

But in a small minority of edge cases, a claimant's religiosity may "present a most delicate question" that requires a more in-depth treatment. *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972). And to the extent there is any doubt here, the Court's analysis must be informed by the historical meaning of religion as understood by the Texas Legislature in enacting Section 2.202 and by the Nation's Founders in enacting the Establishment and No Religious Test Clauses. For both, the core of religion is the same, requiring a transcendent authority or truth—with corresponding "duties" arising from the same. Texas's argument that CFI is "religious" because it has "*reject[ed]* … God and the supernatural" thus turns the definition of religion on its head, obliterating any line between beliefs inspired by a source outside the material realm and those inspired by human reasoning and philosophy. N.D. Tex. Dkt. 20 at 10.

Yet the Founders deemed that distinction essential to our Nation's political philosophy and governance. The entire point of the First Amendment's Religion Clauses was to "enshrine" two separate spheres of governance within the Constitution. *McRaney*, 2025 WL 2602899, at *3. This distinction is even more critical to the Texas Constitution's freedom-of-worship clause, which contains religious protections "*at least* as robust—and potentially far more rigorous" than the First Amendment's. *S. Methodist Univ. v. S. Cent. Jurisdictional Conf. of the United Methodist Church*, 716 S.W.3d 475, 510 (Tex. 2025) (Young, J., concurring). And there is nothing in the Texas Family Code to suggest that the Legislature

would have departed from that meaning in enacting Section 2.202. Thus, accepting Texas's newfound view that religion includes nonreligion—and thus any political or moral philosophy—would lead to absurd results. Indeed, it would dilute any proper protections afforded religion under federal and state law and undermine a central feature of American constitutional governance.

Thus, as a matter of both common sense and historical necessity, the task of defining "religious organization" here is a simple one. CFI freely admits, and its mission and activities confirm, that it is not religious. And history confirms that CFI's rejection of any transcendent authority or truth makes it nonreligious under the First Amendment and Texas law. The Court should thus affirm the district court's conclusion that interpreting "religion" and "religious" to cover CFI "ignores history and tradition," "distorts [those terms'] plain meaning," and "risks setting a dangerous precedent" that would adversely affect longstanding protections for religious accommodations in a wide variety of settings. ROA.284.

ARGUMENT

I. CFI is deliberately a nonreligious organization.

Under any conceivable definition of "religious organization," CFI is not one. By its own account, CFI is "a purely secular organization" "dedicated to fostering a secular society grounded in reason, science, freedom of inquiry, and humanist values." Opening Br.5. Its mission is to "advocate for secular humanism," which it defines as "a nonreligious worldview

rooted in science, philosophical naturalism (rather than supernaturalism), and humanist ethics." *The History of CFI*, Ctr. For Inquiry, https://perma.cc/2BTE-M7V5; *Our Mission*, Ctr. for Inquiry, https://perma.cc/C6WZ-BMMQ. And in doing so, it "encourages individuals to develop ethical values without reliance on supernatural beliefs." Opening Br.5. Far from exercising religion, one of CFI's "bedrock tenet[s]" is the "eschew[ing] [of] religion." N.D. Tex. Dkt. 22 at 2.

CFI's secular nature is borne out by its history of advocating for a philosophical, secular, and expressly irreligious humanist worldview. CFI is the brainchild of humanist philosopher Paul Kurtz, who founded two nonreligious organizations: the "Committee for Skeptical Inquiry" and the "Council for Secular Humanism." *The History of CFI*, Ctr. for Inquiry, https://perma.cc/W7ND-7T3J. The first was dedicated to "promot[ing] scientific inquiry and critical thinking," and the second to "advocat[ing] for secular humanism: a naturalistic lifestance of positive, rational ethics" over and against "the rising Christian Right," which it accused of seeking "to dismantle the wall of separation between church and state while demonizing the already marginalized nonreligious." *Id.* CFI was established in 1991 when the two merged to form "a house of enlightenment" with the goal of promoting "reason and science." *Id.*

More than three decades later, CFI's mission has cemented. In addition to "foster[ing] a secular society based on reason, science, freedom of inquiry, and humanist values," CFI seeks to create an American "society

free of the dogmatic influence of religion and pseudoscience." *Our Mission*, Ctr. for Inquiry, https://perma.cc/C6WZ-BMMQ; *see also Our Issues*, Ctr. for Inquiry, https://perma.cc/W8AJ-CHA6 (asserting CFI is "the only organization working to advance reason, science, secularism, and humanist values in public policy" and to counter "the influence of religion, dogma, pseudoscience, and superstition"). As CFI's President recently stated, CFI "strive[s] for a world liberated from" religion, which it deems "oppressive and stultifying." *CFI Progress Report 2023*, Ctr. for Inquiry, https://perma.cc/2Y6X-E446. It does so in part through lobbying against "religious privilege" in the public square, and in part through publications criticizing both religious groups and religion writ large.[2]

As a self-proclaimed secular, nonreligious organization, CFI expressly disavows any belief in a transcendent authority or truth. And many of its statements and activities are not only nonreligious, but overtly anti-religious. So while there are some "hard calls to make" when it comes to interpreting and enforcing religious protections, "this is not one." *Catholic Charities*, 605 U.S. at 254. CFI is not a "religious organization" under any conceivable definition of the term.

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[2] *See, e.g.*, *id.*; *CFI Progress Report 2024*, Ctr. for Inquiry, https://perma.cc/56KD-6YNN; Jeff Dellinger, *"Totally Out of Line" – Hallmark Catholicism, Invisible Rulers, and the mRNA 180*, Ctr. for Inquiry: Blogs/Magazines (Aug. 13, 2025), https://perma.cc/MXK2-3Q22; Ronald A. Lindsay, *The Madness of Following 'Prophets'*, Free Inquiry: Unprayerful Reflections (Sep. 11, 2025), https://perma.cc/3JEY-JRDY.

II. CFI's identity as a nonreligious organization aligns with the historical meaning of religion under federal and state law.

It is "inescapable that the courts … must sometimes say what counts as 'religion' in our legal system and what does not." McConnell, *What Is "Religion"?*, at 665. And while CFI's nonreligious identity should be obvious, because Texas disputes it, the definitional question is presented here. Under both federal and state law, CFI does not qualify.

A. The historical meaning of religion presupposes belief in a transcendent authority or truth.

At the time of the founding, "Religion" was understood by James Madison to be "the duty which we owe to our Creator and the Manner of discharging it." James Madison, *Memorial and Remonstrance Against Religious Assessments*, in 2 The Writings of James Madison 184 (G. Hunt. Ed., 1901) [hereinafter *Memorial*] (quoting Thomas Jefferson, *Virginia Declaration of Rights* (June 12, 1776)). This understanding of religion—which requires an invocation of "transcendent" authority and truth, Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1497 (1990) [hereinafter McConnell, *Historical Understanding of Free Exercise*]—was consistent with the ordinary public meaning of the word at the time of the founding. And it was the understanding ultimately embraced by the Founders in adopting the Bill of Rights and applied by the United States Supreme Court ever since. Texas likewise has not departed from this

understanding, which is essential to ensure that religious liberty retains its meaning and force within the Nation's increasingly diverse and pluralistic society.

1. The Founders intended to safeguard individuals' rights to discharge duties to their Creator.

In 1791, the Nation ratified its first federal protection of the religious freedoms central to the Founders' vision of ordered liberty. The First Amendment stated that "Congress shall make no law respecting an establishment of religion" and, in the same breath, shall not "prohibit[] the free exercise thereof." U.S. Const. amend. I.[3] But while the First Amendment clearly protects and prioritizes religion, it does not expressly define it. The Court thus must "reference [the] historical practices and understandings" of religion to elucidate its meaning. *Kennedy*, 597 U.S. at 535 (quoting *Town of Greece v. Galloway*, 572 U.S. 507, 576 (2014)). The Religion Clauses' "original meaning and history" indicate that the Constitution's protection for religion covers both beliefs and exercises rooted in and aimed toward transcendence. *Id.* at 536.

When interpreting constitutional provisions, courts often seek the original public meaning of the Constitution's text. *See id.*; *District of*

[3] This Court has noted that "[w]hile most courts and scholars refer to the Establishment Clause and the Free Exercise Clauses as the First Amendment's 'Religion Clauses' (plural), they are in fact a singular clause." *McRaney*, 2025 WL 2602899 at *3 n.1. Certainly, they were enacted as a "unitary provision" and together accomplish "complementary," "not warring," purposes of shielding religion from government interference. *Id.* (quoting *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 510 (2022)).

Columbia v. Heller, 554 U.S. 570, 605 (2008) (determining the Second Amendment's meaning based on "how [it] was interpreted from immediately after its ratification through the end of the 19th century"). This historical inquiry includes reference to contemporary dictionaries. *See, e.g.*, *NLRB v. Noel Canning*, 573 U.S. 513, 527 (2014) (looking to "Founding-era dictionaries" to define the term "'recess'" in the Recess Appointments Clause); *McDonald v. City of Chicago*, 561 U.S. 742, 813-14 (2010) (Thomas, J., concurring) (looking to Blackstone's Commentaries and Webster's Dictionary to determine the meaning of "privileges" and "immunities"). In defining "religion," several founding-era dictionary definitions referred to both belief in and an obligation toward a "God," a "Supreme Being," or the "divine." *See, e.g.*, Samuel Johnson, *A Dictionary of the English Language* (1785) (defining "religion" as "[v]irtue, as founded upon reverence of God, and expectation of future rewards and punishments" or "[a] system of divine faith and worship as opposite to others"); Thomas Sheridan, *A Complete Dictionary of the English Language* (1789) (same); Noah Webster, *A Compendious Dictionary of the English Language* (1806) (defining "religion" as "a system of faith and worship, obedience to divine commands, from love to a Supreme Being and moral excellence").

This focus on "transcendent" authority reflected the "prevailing understandings" of "the difference between religious faith and other forms of human judgment." McConnell, *Historical Understanding of Free*

Exercise, at 1496-97. The "ancient" roots of religion—and religious freedom, more specifically—reinforce the founding generation's contemporary conception. *McRaney*, 2025 WL 2602899, at *3. Understanding "church and state a[s] 'two rightful authorities,' each supreme in its own sphere," dates back to Jesus instructing his followers to "render 'unto Caesar the things which are Caesar's; and unto God the things that are God's.'" *Catholic Charities*, 605 U.S. at 257-58 (Thomas, J., concurring) (quoting Matthew 22:21). And the "distin[ction] between temporal matters subject to civil courts' jurisdiction and spiritual matters subject to ecclesiastical jurisdiction" carried throughout pre-founding English law. *Id.* at 258; *accord McRaney*, 2025 WL 2602899, at *3-4. As separation between the sacred and the secular became "more aspirational than effective" under the Crown's control, *McRaney*, 2025 WL 2602899, at *4, the colonists fled from England's "chronic religious strife and intolerance," McConnell, *Historical Understanding of Free Exercise*, at 1421. Upon reaching the other side of the Atlantic, the colonists developed "a variety of approaches to church-state relations." *Id.* While some started colonies to shield newly established religious communities from outside influence, others became havens for diverse religious dissenters. *Id.* at 1422-25.

Early American debates about religion and religious freedom arose against this backdrop. *See* McConnell, *Historical Understanding of Free Exercise*, at 1425-80. And two Founders' efforts to protect religious liberty

in their home state of Virginia made a national impact. The first, Thomas Jefferson, recognized the free exercise of religion as a foundational right "pertain[ing] to [Virginians] and their posterity, as the basis and foundation of government." Thomas Jefferson, *Virginia Declaration of Rights* (June 12, 1776). By Jefferson's account in the Virginia Declaration of Rights, religious exercise was based not upon a mere set of philosophical or moral stances, but upon transcendent obligations—"the duty which we owe to our Creator, and the manner of discharging it." *Id.* ¶16.

Just years before becoming the "leading architect of the religion clauses of the First Amendment," the second, James Madison, built upon this definition in Virginia. *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. EEOC*, 565 U.S. 171, 184 (2012) (quoting *Flast v. Cohen*, 392 U.S. 83, 103 (1968)). In his *Memorial and Remonstrance Against Religious Assessments*, Madison elaborated that the exercise of "Religion[,] or the duty which we owe to our Creator and the Manner of discharging it," is "in its nature an unalienable right." *Memorial* at 184. Madison's use of "terms other than 'God' to refer to the object of religious homage, including 'Creator,' 'Governor of the Universe,' and 'Universal Sovereign' … suggests an attempt at a definition more compendious than the familiar Judeo-Christian God, but it retains the distinction between transcendent authority and personal judgment." McConnell, *Historical Understanding of Free Exercise*, at 1493 n.430. Accordingly, the historical definition can

also be "extended without distortion to transcendent extrapersonal authorities not envisioned in traditionally theistic terms." *Id.* at 1493.

Madison's framing reflects his own theological education, but his articulation is a version of the same "two rightful authorities" concept carried forth throughout Western law. *Catholic Charities*, 605 U.S. at 257 (Thomas, J., concurring) (quoting McConnell, *Historical Understanding of Free Exercise*, at 1496). That is, the fulfillment of religious duties are outside the cognizance of any civil government's native power—with any power over them belonging to the direction of a "Universal Sovereign" or "Governor of the Universe." McConnell, *Historical Understanding of Free Exercise*, at 1493. This is why religious liberty claims under the First Amendment are "conceived not as a clash between the judgment of the individual and of the state, but as a conflict between earthly and spiritual sovereigns," to whom the individual has respective obligations. *Id.* at 1496. These were, as Jefferson explained in the Declaration of Independence, the day's "harmonizing sentiments"—and continued to be throughout U.S. history. *See* Declaration of Independence (July 4, 1776), codified at U.S.C. XLIII (2000); *cf. Zorach v. Clauson*, 343 U.S. 306, 313 (1952) ("We are a religious people whose institutions presuppose a Supreme Being."). Indeed, even in a Nation of unparalleled civic freedoms, "[n]o other freedom is a duty to a higher authority." Michael W. McConnell, *The Problem of Singling Out Religion*, 50 DePaul L. Rev. 1, 30 (2000).

2. Supreme Court precedent reinforces this historical definition.

Supreme Court precedent reiterates the distinction between religion and philosophy. For example, in *Yoder*, the Court granted the Amish a religious exemption from compulsory school-attendance laws under the Free Exercise Clause, holding that the Amish objection to formal schooling was "one of deep religious conviction" grounded in a divine obligation "to direct the religious upbringing of their children." 406 U.S. at 233. Crucially, the Court distinguished the Amish's constitutionally protected beliefs from those of Henry David Thoreau. *Id.* at 216. Though Thoreau withdrew from society and rejected mainstream values out of deeply held beliefs, his actions stemmed from a personal philosophy—a desire to live simply and according to his own standards. *Id.* His beliefs, unlike those of the Amish, were "merely a matter of personal preference." *Id. Yoder* thus confirmed that "philosophical and personal" beliefs "do[] not rise to the demands of the Religion Clauses." *Id.*

According to Texas, cases decided prior to *Yoder* undermine this distinction. *See* N.D. Tex. Dkt. 20 at 7-10; Hr'g Tr. 68:23-70:16. But a closer reading reveals otherwise. Before the district court, Texas relied most heavily on *Torcaso v. Watkins*, 367 U.S. 488 (1961), in which the Court invalidated a Maryland requirement that public officeholders profess belief in God because "neither a State nor the Federal government can constitutionally force a person 'to profess a belief or disbelief in any religion.'"

Id. at 495. That's true; but it's irrelevant to the scope of religion. Finding no help in *Torcaso*'s legal analysis, Texas resorted to a footnote where the Court suggested that certain belief systems such as "Ethical Culture" and "Secular Humanism" may qualify as religious. *Id.* at n.11.

Yet, as Texas acknowledged, this statement, made in reference to the Constitution's Oaths Clause, is "not precedent" governing the proper interpretation of the Religion Clauses. Hr'g Tr. 70:2-4. Instead, it is dicta that should not be read to contradict the Supreme Court's governing First Amendment precedent. *See, e.g.*, David C. Williams & Susan H. Williams, *Volitionalism and Religious Liberty*, 76 Cornell L. Rev. 769, 901 n.504 (1991) (citing *Torcaso* for the observation that the Court's "comments on religiosity have been dicta at best"); *Alvarado v. City of San Jose*, 94 F.3d 1223, 1228 & n.2 (9th Cir. 1996) (citing cases supporting the limited scope of the *Torcaso* footnote).

Even if *Torcaso*'s footnoted speculation were relevant to the Court's holding, it "does not stand for the proposition that humanism, no matter in what form and no matter how practiced, amounts to religion." *Kalka v. Hawk*, 215 F.3d 90, 99 (D.C. Cir. 2000). In including secular humanism in the list of religious beliefs, the Supreme Court relied on *Fellowship of Humanity v. County of Alameda*, 315 P.2d 394 (Cal. Dist. Ct. App. 1957), where a California court held that a humanist group's use of property "solely and exclusively for religious worship" qualified it for a religious tax exemption. *Id.* at 397.

But whether the "Fellowship of Humanity" was deemed religious under state law based on its self-reported "worship" has little bearing on whether any given group of secular humanists is covered by the First Amendment. *See Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1537 (9th Cir. 1985) (Canby, J., concurring) ("The apparent breadth of the reference to 'Secular Humanism,' however, is entirely dependent upon viewing the term out of context."). The Supreme Court has never said otherwise. *See Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994) (recognizing that the Supreme Court has never "held that evolutionism or secular humanism are 'religions' for Establishment Clause purposes" but rather "held unequivocally that while the belief in a divine creator of the universe is a religious belief, the scientific theory that higher forms of life evolved from lower forms is not").

United States v. Seeger, 380 U.S. 163 (1965), and *Welsh v. United States*, 398 U.S. 333 (1970), did not change the constitutional meaning of religion either. Both cases interpreted the scope of statutory conscientious-objector exemptions under the Selective Service Act. *Seeger*, 380 U.S. at 164; *cf. Kalka*, 215 F.3d at 98 ("Whether *Seeger* meant to define 'religion' as used in the First Amendment is doubtful."). That statute exempted from conscription those who, "by reason of their religious training and belief," were conscientiously opposed to war, and expressly defined "religious training and belief" as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any

human relation." *Seeger*, 380 U.S. at 164-65. Although the conscientious objectors rejected belief in a "Supreme Being" in the traditional theistic sense, they explained that their opposition to war was still rooted in sincere convictions that functioned like religious belief. In *Seeger*, the Court ultimately agreed. Because the exemption expressly encompassed all beliefs based upon a "power or being, or upon a faith, to which all else is … ultimately dependent," any objector with belief that was "sincere and meaningful" and "occupie[d] … a place parallel to that filled by God" could qualify. *Id.* at 176.

When returning to the issue in *Welsh*, the Supreme Court revised its interpretation of the Selective Service Act—holding that the broad sweep of the statute "exempts from military service" all objectors "spurred by deeply held moral, ethical, *or* religious beliefs." 398 U.S. at 344 (emphasis added). Thus, even when employing its most expansive definition of religion, the Court still recognized the distinction between "religious beliefs" on one hand and "deeply held moral [or] ethical" beliefs on the other. *See also* Universal Military Training and Service Act, 50 App. U.S.C. § 456(j) (1948) (distinguishing a historical understanding of religion—one involving an obligation to a "Supreme Being"—from beliefs that are "essentially political, sociological, or philosophical views or a merely personal moral code").

3. The Texas Family Code likewise accepts the traditional understanding of religion.

The Texas Family Code does not expressly define "religious organization." But because the Legislature was aware of both religion's ordinary meaning and its coverage in Texas's Constitution, the term's meaning is presumptively informed by each. *See Acker v. Tex. Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990) ("A statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it."). When determining "a statutory term's common, ordinary meaning," Texas courts "typically look first to their dictionary definitions." *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 35 (Tex. 2017); *see, e.g.*, *Barr v. City of Sinton*, 295 S.W.3d 287, 301 (Tex. 2009) (consulting Webster's Third to identify the ordinary meaning of "substantially burden" in the Texas Religious Freedom Restoration Act). Then they "consider the term's usage in other statutes, court decisions, and similar authorities." *Tex. State Bd. of Examiners of Marriage & Fam. Therapists*, 511 S.W.3d at 35.

Dictionaries published around the time of the statute's amendment in 1957 define religion to derive from a divine authority or truth and to include obligations that result from that authority. For example, Webster's Second defined religion as, *inter alia*, "[a]n apprehension, awareness, or conviction of the existence of a supreme being, or more widely, of supernatural powers or influences controlling one's own, humanity's, or

nature's destiny … accompanied by or arousing reverence, love, gratitude, the will to obey and serve, and the like." *Religion*, Webster's New International Dictionary (2d ed. 1937). Another relevant dictionary defined religion as the "recognition of and belief in a superhuman power or powers to whom obedience, reverence, and worship are due." *Religion*, Thorndike-Barnhart Comprehensive Desk Dictionary (1957). And the contemporary edition of Black's Law Dictionary defined religion as both "a particular system of faith and worship recognized and practiced by a particular church, sect, or denomination" and "Man's relation to Divinity, to reverence, worship, obedience, and submission to mandates and precepts of supernatural or superior beings." *Religion*, Black's Law Dictionary (4th ed. 1951).

The Texas Constitution reinforces the traditional definition of religion, elaborating that "[a]ll men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences," prohibiting the intrusion of "human authority" on "rights of conscience in matters of religion," and "protect[ing] equally every religious denomination in the peaceable enjoyment of its own mode of public worship." Tex. Const. art. 1 § 6; *cf. S. Methodist Univ.*, 716 S.W.3d at 510 (Young, J., concurring) (noting that "[t]he freedom-of-worship clause in § 6 markedly expands on its federal analogue" and that the framers and ratifiers of Texas's Constitution may have "anticipated substantially … more protective substantive outcomes"). Given that the Texas Constitution itself

recognizes a transcendental element of the free exercise of religion and possibly affords even stronger protections for religion than the First Amendment, it is unlikely that the Legislature would have departed from its own Constitution's respect for religion as to consider secular and anti-religious organizations to be "religious organizations" under the Texas Family Code.

B. Expanding religion to include secular and anti-religious groups would strip religious protections of their meaning.

Texas would read "religious"—and by extension "religion"—much more broadly. It would include not just those who profess and exercise faith in transcendent authority and truth, but anyone with a "firmly held belief system." Hr'g Tr. 65:21-24; *see* N.D. Tex. Dkt. 20 at 7-11; Hr'g Tr. 65:7-78:3. That cannot be right. Reading "'religion' … to include purely moral, ethical, or philosophical beliefs" would "empty[] the term of any distinct meaning." *Wright v. Honeywell International, Inc.*, 148 F.4th 779, 782 n.3 (5th Cir. 2025). In effect, if "religion" included everything, the Religion Clauses would protect nothing.

America has long been heralded as a "Nation of unparalleled pluralism and religious tolerance." *Salazar v. Buono*, 559 U.S. 700, 723 (2010) (Alito, J., concurring in part and concurring in judgment); *see Cannata v. Catholic Diocese of Austin*, 700 F.3d 169, 176 (5th Cir. 2012) (interpreting the Religion Clauses in light of the "the pluralism of religious thought for which America is known and celebrated"). And today, "virtually every

religion in the world is represented in the population of the United States." *Hosanna-Tabor*, 565 U.S. at 198 (Alito, J. concurring). The Nation has responded to this "growing diversity" by "welcoming" religious adherents of "many creeds"—both theistic and nontheistic alike—to share its place of priority. *Town of Greece*, 572 U.S. at 579 (collecting examples of legislative prayers by Buddhist, Jewish, Hindu, and Muslim leaders). But while the Religion Clauses' protection has worked to accommodate many additional religions beyond those present in the United States at its founding, the definition of "religion" has not changed.

To start, it should be obvious that the Free Exercise Clause does not cover *anti*-religious groups or religious parody groups. These "so-called religions" do not exercise religion, but oppose it. *See, e.g.*, *Theriault v. Carlson*, 495 F.2d 390, 395 (5th Cir. 1974) (concluding that "so-called religions which tend to mock established institutions" are "shams and absurdities" warranting "denials of First Amendment protection"); *Bellamy v. Mason's Stores, Inc.*, 368 F. Supp. 1025, 1026 (E.D. Va. 1973) (holding the Ku Klux Klan is not a "religion" under Title VII because its "proclaimed racist and anti-semitic ideology" has "a narrow, temporal and political character inconsistent with the meaning of 'religion' as used in § 2000e"), *aff'd*, 508 F.2d 504 (4th Cir. 1974); *cf. Childs v. Duckworth*, 509 F. Supp. 1254, 1260 (N.D. Ind. 1981) (finding it "doubtful" that Satanism was religion, but dismissing claims on other grounds), *aff'd*, 705 F.2d 915

(7th Cir. 1983). Cloaking such anti-religious groups with free-exercise protections would denigrate, not protect, religious freedom.

Purely secular groups are less offensive to religion—but because their beliefs do "not rest on a religious basis," they don't "rise to the demands of the Religion Clauses" either. *Yoder*, 406 U.S. at 216. Indeed, if the "religious" included the "secular," then "religious groups" would include the Sierra Club, Rotary International, Lions Club, and maybe even the Dallas Cowboys. ROA.282; Hr'g Tr. 74-76. And without any distinct meaning or limiting principle, the category would conceivably include *any* individual who claimed a moral right to engage in certain behavior. *See, e.g.*, *Moore-King v. County of Chesterfield*, 708 F.3d 560, 571 (4th Cir. 2013) (rejecting free-exercise claim to a county's regulation of fortune tellers because plaintiff's alleged religious belief in her "inner flow" was a "personal philosophical belief[]"); *see also United States v. Quaintance*, 608 F.3d 717, 720-21 (10th Cir. 2010) (Gorsuch, J.) (rejecting free-exercise claim brought by individuals who asserted a belief in marijuana as a deity on sincerity grounds, without reaching lower court ruling that associated beliefs were also nonreligious). The concept of religion should not be so "empt[ied]" to include organizations that are clearly nonreligious. *Wright*, 148 F.4th at 782 n.3; *see also Thomas v. Rev. Bd.*, 450 U.S. 707, 715 (1981) (confirming that an asserted belief might be "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause").

* * *

From the founding to today, the term "religion" has consistently been understood as a set of obligations to a higher transcendent authority. While individuals may sincerely hold secular moral or philosophical beliefs, those beliefs do not generally trigger statutory or constitutional protection unless they are rooted in a system of religious duty. *Yoder*, 406 U.S. at 216. This distinction—first articulated at the founding, expressly reaffirmed in *Yoder*, and accepted by Texas—anchors laws addressing "religion" in their historical context and ensures that religion is not made a proxy for personal or political ideology. *See, e.g.*, *Frazee v. Illinois Dept. of Emp. Sec.*, 489 U.S. 829, 833 (1989).

CONCLUSION

In reaching its decision in this appeal, the Court should hold that CFI is not a "religious organization" for purposes of the Texas Family Code and the First Amendment.

Dated: October 6, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 6, 2025, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with 5th Cir. R. 25.2.13; and (2) the electronic submission is an exact copy of the paper document in compliance with 5th Cir. R. 25.2.1.

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CERTIFICATE OF COMPLIANCE

This brief complies with: (1) the type-volume limitation of 5th Cir. R. 29.3 and Fed. R. App. P. 29(a)(5) because it contains 5,470 words, excluding the parts exempted by Fed. R. App. P. 32(f); and (2) the typeface and typestyle requirements of 5th Cir. R. 29.2 and Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word (the program used for the word count).

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