No. 13-193

IN THE
Supreme Court of the United States

SUSAN B. ANTHONY LIST AND COALITION OPPOSED TO ADDITIONAL SPENDING AND TAXES,
Petitioners,

v.

STEVEN DRIEHAUS, KIMBERLY ALLISON, DEGEE WILHELM, HELEN BALCOLM, TERRANCE CONROY, LYNN GRIMSHAW, JAYME SMOOT, WILLIAM VASIL, PHILIP RICHTER, OHIO ELECTIONS COMMISSION, AND JON HUSTED,
Respondents.

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

BRIEF *AMICUS CURIAE* OF CHRISTIAN LEGAL SOCIETY, NATIONAL ASSOCIATION OF EVANGELICALS, NATIONAL HISPANIC CHRISTIAN LEADERSHIP CONFERENCE, QUEENS FEDERATION OF CHURCHES, AND INSTITUTIONAL RELIGIOUS FREEDOM ALLIANCE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici come before this Court as frequent practitioners of religious speech, assembly, and petition. They ask this Court to ensure that they will continue to have full access to this Court, and the lower courts, to challenge state actions that would chill the full exercise of these "first freedoms," rights which are at the core of this Republic's health, history, and continued dynamism.

The **Christian Legal Society** ("CLS") believes that pluralism, which is essential to a free society, prospers only when the First Amendment rights of all Americans are protected, regardless of the current popularity of their beliefs, expression, and assembly. CLS is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 public and private law schools. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of traditional Christian beliefs.

The **National Association of Evangelicals** ("NAE") is the largest network of evangelical churches, denominations, colleges, and independent ministries in the United States. It serves 41 member denominations, as well as numerous evangelical associations, missions, nonprofits, colleges, seminaries and independent churches. NAE serves as the collective voice of evangelical churches, as well as other church-related and independent religious ministries. NAE is

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[1] In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici* and their counsel, make a monetary contribution to the preparation or submission of this brief. The parties consented to this filing. Their letters of consent are on file with the Clerk.

grateful for the American legal tradition of freedom of speech and religious liberty, and believes that this constitutional and jurisprudential history should be honored, nurtured, taught, and maintained.

The **National Hispanic Christian Leadership Conference**, the Hispanic national association of evangelicals, is America's largest Hispanic Christian organization, serving millions of constituents via our 40,118 member churches and member organizations. The NHCLC exists to unify, serve, and represent the Hispanic born-again faith community by reconciling the vertical and horizontal elements of the Christian message via the seven directives of life, family, Great Commission, stewardship, education, justice, and youth.

The **Queens Federation of Churches** was organized in 1931 and is an ecumenical association of Christian churches located in the Borough of Queens, City of New York. It is governed by a board of directors composed of an equal number of clergy and lay members elected by the delegates of member congregations at an annual assembly meeting. Over 390 local churches representing every major Christian denomination and many independent congregations participate in the Federation's ministry. The Federation and its member congregations are vitally concerned for the protection of the principle and practice of freedom of speech and religious liberty as manifest in the present action.

The **Institutional Religious Freedom Alliance**, founded in 2008, works to protect the religious freedom of faith-based service organizations through a multi-faith network of organizations to educate the public, train organizations and their lawyers, create policy alternatives that better protect religious

freedom, and advocate to the federal administration and Congress on behalf of the rights of such faith-based services.

SUMMARY OF ARGUMENT

Under the British Fraud Act of 2006, a London court recently summoned the President of the Mormon Church to appear to defend allegations that certain of its church teachings are "untrue or misleading," including that "Native Americans are descended from a family of ancient Israelites" and that "Adam and Eve lived around 6,000 years ago."[2] That, hopefully, elicits a reaction of, "That would not be possible in this country!" But it is, in effect, what has happened with the political speech attempted by Petitioners in this case.

Religious speech, assembly, and petition are at the very core of First Amendment freedoms. They are just as central to our Republic's values as political speech, if not more so. And religious claims and beliefs, similarly to political ones, are often not susceptible to experimental, historical, or scientific verify-cation. Our Constitution has firmly embedded in it the principle that the State cannot be the arbiter of religious truth claims.[3]

For these core freedoms to be protected, it is essential that the courts be open to those who are being affected by State laws that restrict the exercise of their religious liberties—and not just after the State has taken adverse action against them. When

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[2] http://religionclause.blogspot.com/2014/02/british-court-issues-summons-to-mormon.html (links "1" and "2") (last visited Feb. 25, 2014); *see* U.K. Fraud Act, 2006 (c 35), § 1.

[3] *See, e.g., United States v. Ballard*, 322 U.S. 78, 86-88 (1944).

religious expression and assembly are colorably chilled, the courts must be open to adjudicate whether the State is acting consistently with the Constitution. Otherwise, the exercise of those freedoms will be inhibited, often in ways that would never see the light of day, to the detriment of our founding principles of a free exchange of information and tolerance of varying religious views.

We believe these principles to be well established and self-evident. If they were not, many important decisions by this Court upholding religious freedoms likely would never have reached this Court, to the great injury of our common public life. The Sixth Circuit's decision restricting access to the courts in the context of political speech we believe to be wrong and aberrational. Because the Sixth Circuit's rationale could easily be expanded to religious speech and expression, we request the Court to correct this encroachment now, and emphatically.

ARGUMENT

I. Religious Speech and Assembly Are Core Freedoms That the Federal Courts Must Protect from Being Chilled

The "first freedoms" of speech, religion, assembly, petition, and press enshrined in the First Amendment were part of a noble experiment in government that was forged in reaction to restrictions on those same freedoms in England and other homelands. The story of religious persecution that spawned the Religion Clauses is well rehearsed and need not be repeated here. "Indeed," as Chief Justice Burger explained, "it was 'historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.'" *Church of Lukumi Babalu*

Aye, Inc. v. City of Hialeah, 508 U.S. 520, 532 (1993) (quoting *Bowen v. Roy*, 476 U.S. 693, 703 (1986) (Burger, C.J., concurring) and citing additional authorities).

The freedom of speech covers much more than religious speech, but, "in Anglo–American history, at least, government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (Scalia, J.) (plurality op.). Similarly, the freedom of assembly has its roots in religious speech. Its proponents in the first Congress specifically noted the celebrated case of the British authorities prosecuting William Penn for "unlawful assembly" when he preached to a group of Quakers on a London street.[4]

Largely in reaction to their recent experience, our forebearers established a different polity:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the

[4] See 1 *Annals of Cong.* 759 (1790) (remarks of Rep. Page). The intimate correlation between religious worship and the right of assembly is seen in recent scholarship that observes that "the right of the people peaceably to assemble" was included as a discrete right in the First Amendment, in part, because of the familiarity of the First Congress with William Penn's trial in England in 1670 for violating "the 1664 Conventicle Act that forbade 'any Nonconformists attending a religious meeting, or assembling themselves together to the number of more than five persons . . . for any religious purpose not according to the rules of the Church of England.'" John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 24-25 (2012); *see generally* Irving Brant, *The Bill of Rights: Its Origin and Meaning* 55 (1965).

> reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943).[5]

"Freedom of speech and thought," as well as the other fundamental freedoms, "flow[] not from the beneficence of the state but from the inalienable rights of the person." *United States v. Alvarez*, 132 S. Ct. 2537, 2550 (2012). Thus, "[i]t has been explicitly and repeatedly affirmed by this Court, without a dissenting voice, that freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons . . . ." *Hague v. CIO*, 307 U.S. 496, 519 (1939) (Stone, J., concurring) (citing numerous cases).

As Petitioners have amply demonstrated, this Court has protected these "first freedoms" by making sure that the courts are available *as soon as those freedoms are reasonably considered to be threatened*. Religious exercise, speech, and assembly are at the core of the First Amendment protections and receive the highest level of protection, similar to political speech. Indeed, "political" speech is often motivated by religious

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[5] The "first freedom" of right to petition also has direct ties to religious freedoms, as evidenced by Madison's own "Memorial and Remonstrance" that he delivered to the Virginia General Assembly shortly before the convening of the Constitutional Convention. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 37-38, 63-72 (1947) (reprinting the document).

beliefs. This is shown, for example, in *Barnette*, in which Jehovah's Witness students refused to salute the flag due to their religious beliefs. 319 U.S. at 629.

Of course, the best evidence of the inviolability of religious speech and belief is the Establishment Clause itself, which prevents even the courts from parsing the veracity of sincere religious beliefs. As Justice Douglas stated in *Fowler v. Rhode Island*, "it is no business of courts to say that what is a religious practice or activity for one group is not religion under the protection of the First Amendment. Nor is it in the competence of courts under our constitutional scheme to approve, disapprove, classify, regulate, or in any manner control sermons delivered at religious meetings." 345 U.S. 67, 69-70 (1953). *See also Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694 (2012).

This Court's two latest decisions in this area, *Snyder v. Phelps*, 131 S. Ct. 1207 (2011), and *Alvarez*, underscore the inter-relatedness of religious speech and assembly with political speech and reinforce that religious speech and assembly are entitled to the highest protection of the courts. In *Snyder*, the Court held that *political* speech motivated by an unpopular, minority *religious* belief, delivered in a grossly insensitive manner, was still subject to First Amendment protection. The Court held that the speech dealt with a matter of public concern and that such speech "is 'at the heart of the First Amendment's protection.'" 131 S. Ct. at 1215 (quoting *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.,* 472 U.S. 749, 758-759 (1985) (opinion of Powell, J., quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978)). Such speech "occupies . . . the highest rung of

the hierarchy of First Amendment values." *Id.* (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

That religious speech, assembly, and petition also occupy this highest rung cannot be questioned. They, too, deal with matters "of political, social, or other concern to the community." *Id.* at 1215 (quoting *Connick*, 461 U.S. at 146). As such, their regulation would "pose the risk of 'a reaction of self-censorship' on matters of public import." *Id.* at 1216 (quoting *Dun & Bradstreet*, 472 U.S. at 760).

The Court in *Snyder* also emphasized that, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Indeed, 'the point of all speech protection . . . is to shield just those choices of content that in someone's eyes are misguided, or even hurtful.'" *Id.* (quoting *Texas v. Johnson*, 491 U.S. at 414, and *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 574 (1995)).

In *Alvarez*, the issue was whether an individual who knowingly lied about having been awarded the Medal of Honor could be prosecuted for his false statements. 132 S. Ct. at 2542. Justice Kennedy, writing for a plurality, underscored that regulation of even false speech was reserved for only narrow categories. *Id.* at 2543-47. The concurring and dissenting justices all agreed with this basic proposition, although the dissenters believed the speech in question to be appropriately regulated. The key point for present purposes is that *all* justices recognized that freedoms central to the First Amendment, such as *religious* speech and assembly, required the *highest* level of protection to ensure they are not chilled.

Writing for the Court, Justice Kennedy observed that "some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id.* at 2544 (citing *N.Y. Times Co. v. Sullivan,* 376 U.S. 254, 271 (1964) ("Th[e] erroneous statement is inevitable in free debate."). He continued,

> Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

Id. at 2547-48. Justice Kennedy concluded, "The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth. The theory of our Constitution is 'that the best test of truth is the power of the thought to get itself accepted in the competition of the market.'" *Id*. at 2550 (citing *Whitney v. Cal.,* 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) and quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

Justice Alito in dissent, while disputing that the speech in question was of central constitutional significance, recognized that the principles espoused by the majority would apply to *religious* speech.

Observing that the Court has "repeatedly endorsed the principle that false statements of fact do not merit First Amendment protection for their own sake," Justice Alito agreed that the Court has "recognized that it is sometimes necessary to 'exten[d] a measure of strategic protection' to these statements in order to ensure sufficient 'breathing space' for protected speech." *Id.* at 2563 (Alito, J., dissenting (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). Justice Alito continued,

> All of these proof requirements inevitably have the effect of bringing some false factual statements within the protection of the First Amendment, but this is justified in order to prevent the chilling of other, valuable speech. . . . [T]here are broad areas in which any attempt by the state to penalize purportedly false speech would present a grave and unacceptable danger of suppressing truthful speech. Laws restricting false statements about philosophy, religion, history, the social sciences, the arts, and other matters of public concern would present such a threat. The point is not that there is no such thing as truth or falsity in these areas or that the truth is always impossible to ascertain, but rather that it is perilous to permit the state to be the arbiter of truth.
>
> Even where there is a wide scholarly consensus concerning a particular matter, the truth is served by allowing that consensus to be challenged without fear of reprisal. Today's accepted wisdom sometimes turns out to be mistaken. And in these contexts, "[e]ven a false statement may be deemed to make a valuable contribution to public debate,

> since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.'"

Id. at 2563-64 (Alito, J., dissenting) (quoting *Sullivan*, 376 U.S. at 279 n.19 (quoting J. Mill, *On Liberty* 15 (R. McCallum ed. 1947))).

Justice Breyer in his concurrence agreed that

> 'there are broad areas in which any attempt by the state to penalize purportedly false speech would present a grave and unacceptable danger of suppressing truthful speech.' Laws restricting false statements about philosophy, religion, history, the social sciences, the arts, and the like raise such concerns, and in many contexts have called for strict scrutiny. . . . Moreover, as the Court has often said, the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby 'chilling' a kind of speech that lies at the First Amendment's heart.

Id. at 2553 (Breyer, J., concurring) (citing *Gertz,* 418 U.S. at 340-41) (citation to Justice Alito's opinion omitted).

Our history has proved the Framers correct. Time and again, regulation and restriction have been aimed at unpopular political or religious speech and assembly. Resort to the courts, while not always availing and subject to stumbles even in this Court, has been a necessary protection. One such stumble was in *Whitney*. But the words of Justice Brandeis in his concurrence have long since been vindicated,[6] and

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[6] *Whitney*'s majority opinion was overruled in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). Another frequently cited misstep was

they still ring true today. His words are just as applicable to *religious* speech and assembly as they were to the political speech and assembly at issue in that case:

> Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government. . . . Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.

Id. at 375-76 (Brandeis, J., concurring in the result) (footnotes omitted).

To guard these guarantees of the First Amendment, so classically elucidated by Justice Brandeis, the courts must be open to hear challenges to state regulation of religious speech and assembly at the earliest time such regulation threatens suppression. Otherwise, as the present case demonstrates, protected speech that lies at the heart of the First Amendment will be chilled, contrary to the genius of our Founders.

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in *Minersville School District v. Gobitis*, 310 U.S. 586 (1940), which the Court overruled in *Barnette*, 319 U.S. at 630-42.

II. Decisions of This Court Demonstrate the Importance of Being Able to Challenge State Action That Chills Religious Speech and Assembly

This Court has always assumed that citizens will obey the law, and not only when they are threatened with prosecution: the "very existence" of a statute regulating religious speech or assembly may cause citizens to "refrain from constitutionally protected speech or expression." *Broadrick v. Okla.*, 413 U.S. 601, 612 (1973).

Accordingly, it "has long been recognized that the First Amendment needs breathing space and that . . . the Court has altered its traditional rules of standing" in such cases and permits plaintiffs to challenge a statute "not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Id*. at 611-12.[7]

If the Sixth Circuit's rule challenged in this case had been applied in cases of both recent relevance and historic importance, many such cases would not have reached the federal courts for resolution when they

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[7] *Accord Sec'y of State v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984) ("[W]hen there is a danger of chilling free speech, the concern that constitutional adjudication be avoided whenever possible may be outweighed by society's interest in having the statute challenged."); *Steffel v. Thompson*, 415 U.S. 452, 459-60 (1974) (finding standing for declaratory relief on statute regulating handbilling where plaintiff had been twice warned by police to stop, had been told that he would likely be prosecuted if he attempted it again, and had expressed a desire to resume handbilling during an upcoming election).

did. For recent cases, one need look no further than the religious speech case involving the Massachusetts "buffer zone" before the Court this term, *McCullen v. Coakley*.[8] That case involves prohibition of speech and assembly motivated by religious convictions in certain public areas classically open to such conduct. The plaintiffs did not have to violate the law and suffer prosecution before challenging it. And it is, of course, unknown how many individuals have been discouraged from such speech and assembly by the challenged statute.

This Court has consistently permitted pre-enforcement challenges to State regulation based on allegations that it chilled First Amendment rights. To cite a few examples:

- In *Hill v. Colorado*, 530 U.S. 703 (2000), the Court accepted jurisdiction of a challenge to a new "buffer zone" statute by persons who had previously engaged in abortion education outside health care facilities and who stated that their fear of prosecution under the new statute caused them "to be chilled in the exercise of fundamental constitutional rights." *Id.* at 708-09.[9] Their chilled rights of speech and assembly were motivated by sincerely held religious beliefs concerning the morality of abortion.
- In *Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981), the

[8] No. 12-1168, argued Jan. 15, 2014.

[9] *See also City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755-59 (1988) (newspaper could challenge statute prohibiting unpermitted news racks under the First Amendment without first applying for a permit or being prosecuted under the statute).

Court upheld as a valid time, place, and manner regulation a state statute restricting distribution of religious and other literature and solicitation of donations to an assigned booth at the state fair. The challenge by the religious organization was begun before the fair opened or any actual enforcement of the statute. *Id.* at 644-45.

- In *Board of Airport Commissioners of Los Angeles v. Jews for Jesus, Inc.*, 482 U.S. 569 (1987), the Court struck down as overbroad a resolution that forbade all "First Amendment activities" on airport property. A peace officer brought the resolution to the attention of an individual distributing religious literature and asked him to leave, which he did, and then both he and a religious organization brought suit. *Id.* at 571-72. The Court noted that a facial challenge of the resolution was appropriate to prevent the chilling of First Amendment activities by others. *Id*. at 574 (citing *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985)).
- In *Epperson v. Arkansas*, 393 U.S. 97 (1968), this Court accepted jurisdiction of a public high school teacher's challenge to a 1928 statute prohibiting the teaching of evolution, even though neither she, nor any other teacher, had been threatened with prosecution. *Id*. at 99. In 1965, the state adopted a new textbook that contained a chapter describing evolutionary theory, and Epperson, a high school biology teacher, filed suit for a declaration that the statute was void. *Id*. This Court accepted jurisdiction and overturned the statute on Religion Clause grounds, even though the State

had never attempted to enforce it. *Id.* at 103; *see also id*. at 109-10 (Black, J., concurring).

- In *Lukumi*, the Court found standing for members of a Santeria church who brought a pre-enforcement challenge to a new city ordinance that was directed at their ritual of animal sacrifice. In early 1987, the church leased land and announced its plan to bring the practice of Santeria, including its ritual of animal sacrifice, into the open. In reaction, the city enacted an ordinance forbidding animal sacrifice, and the church filed suit seeking a declaration that the ordinance violated the Free Exercise Clause. This Court accepted jurisdiction, even though the record does not indicate that the church was prosecuted or even *threatened* with prosecution under the ordinance; the mere existence of an ordinance that was directed at the church's religious practices was sufficient. 508 U.S. at 524-28.

- In *Larson v. Valente*, 456 U.S. 228 (1982), the Court found standing for church members' Establishment and Free Exercise Clause challenges to a statute requiring registration prior to soliciting contributions, even though the State had only threatened to enforce but later disclaimed any intent to do so. The Court found that the mere fact that the State no longer sought to regulate the church under the act did not make the controversy "any less concrete." *Id.* at 241. Rather, the fact that the State had at one time attempted to use the act to compel the church to register under the act "[gave] appellees standing to challenge the constitutional validity of the rule." *Id.*

- In *Barnette*, the Court accepted jurisdiction of a religious freedom and freedom of speech action brought on behalf of Jehovah's Witness children who had been expelled and others who had merely been *threatened* with expulsion and prosecution for refusing to salute the flag. 319 U.S. at 630.
- In *Illinois ex rel. McCollum v. Board of Education,* 333 U.S. 203 (1948), the Court accepted jurisdiction over a challenge by a non-participating student to the board of education's rules permitting religious education in public school, even though the rules did not involve the threat of punishment or enforcement against the student. *Id*. at 206.
- In *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150 (2002), church members challenged a permitting requirement for handing out religious literature door-to-door. Without seeking a permit or facing prosecution, the church members challenged the constitutionality of the ordinance, which this Court struck down. *Id.* at 153-69.

These examples can be multiplied, but the point is clear.[10] The Sixth Circuit's rule restricting access to

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[10] There are, of course, similar cases in the courts of appeals. *E.g.*, *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114 (10th Cir. 2002) (permitting pre-enforcement challenge on Establishment Clause grounds by church and other groups of easement retained by city which gave the LDS church the right to restrict speech on the area covered by the easement); *Krantz v. City of Fort Smith*, 160 F.3d 1214, 1216-17 (8th Cir. 1998) (church could bring a pre-enforcement declaratory relief action challenging a city ordinance against handbilling, no one from the church having been arrested or even

the federal courts to challenge State regulation that restricts political speech is wholly out of step with the law guaranteeing access to the courts to challenge such regulation at the earliest possible time it can reasonably be considered potentially chilled. The "first freedoms" of political and religious speech, assembly, and petition populate "the highest rung of the hierarchy of First Amendment values." *Snyder*, 131 S. Ct. at 1215. The Sixth's Circuit's view jeopardizes protection of these freedoms by allowing them to be chilled, both substantively and temporally.

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threatened with arrest); *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1466 (3d Cir. 1994) (finding minister's challenges to statute on free exercise, association, and speech grounds were ripe because the state refused to waive enforcement of the statute against private citizens, despite the state indicating that it had no present intent to prosecute churches under the statute and had not done so in the past).

CONCLUSION

For the reasons stated above, *amici* request the Court to reverse the decision below.

Respectfully submitted,

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