

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
No. SJC-12021

SHRINE OF OUR LADY OF LASALETTE,

Appellant

v.

BOARD OF ASSESSORS OF ATTLEBORO,

Appellee

ON APPEAL FROM A DECISION
OF THE APPELLATE TAX BOARD, F320598

BRIEF OF AMICI CURIAE MASSACHUSETTS COUNCIL OF
CHURCHES, CAIR-MASSACHUSETTS, EMMANUEL GOSPEL CENTER,
EPISCOPAL DIOCESE OF MASSACHUSETTS, EPISCOPAL DIOCESE
OF WESTERN MASSACHUSETTS, ISLAMIC SOCIETY OF BOSTON
CULTURAL CENTER, MASSACHUSETTS CONFERENCE OF THE
UNITED CHURCH OF CHRIST, NEW ENGLAND CONFERENCE OF THE
UNITED METHODIST CHURCH, NEW ENGLAND REGION OF THE
UNITARIAN UNIVERSALIST ASSOCIATION, NEW ENGLAND SYNOD
OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA, OUR
LADY OF FATIMA SHRINE, HOLLISTON, MASSACHUSETTS, and
UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM
IN SUPPORT OF APPELLANT

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici curiae are an interfaith collection of religious groups and associations, which together represent many of the best known and widely practiced religions, and comprises hundreds of individual congregations – including a wide range of Christian denominations and churches, Conservative Jewish synagogues and congregations, the largest Islamic center and mosque in New England, and dozens of Universalist Unitarian parishes throughout the Commonwealth. This case has implications far beyond the Shrine of Our Lady of LaSalette (“the Shrine”), and will affect every religious organization that owns property and relies on the exemption provided in G.L. c. 59, §5, Clause Eleventh. Amici have come together to submit this brief in support of the Shrine, and to express their shared, deep concerns that the decision of the Appellate Tax Board (“ATB”), if upheld, will have sweeping and disastrous consequences for religious organizations across the Commonwealth.

Amici believe that the ATB’s narrow reading of the term “houses of religious worship”, its ruling that draws a sharp line between religious use and charitable use, and its findings that property used to raise funds to sustain the Shrine is not exempt ignore reality and contradict the teachings of many religions, including those practiced by amici. Amici

also believe that the ATB's ruling with respect to the Shrine creates a dangerous opportunity for government entanglement and interference with religion as it invites parsing of what is religious worship and what is not, and puts at risk religious organizations' ability to sustain themselves, to provide places for worship, retreat and instruction, to continue their important, charitable work and freely to exercise their religions.

Massachusetts Council of Churches

The Massachusetts Council of Churches ("MCC") is a network of individuals, congregations and denominations convinced that what binds them together is stronger than what divides them. The MCC proclaims the vitality of the Church in Massachusetts. MCC works with Christians and others across the Commonwealth toward a vibrant, hopeful witness of oneness in Christ in its local churches, on Beacon Hill and with its neighbors of other faiths.

MCC's Member Denominations include: African Methodist Episcopal Zion, New England Conference; African Methodist Episcopal, New England Conference; the American Baptist Churches of Massachusetts; the Diocese of Armenian Church in America (Eastern); Christian Church (Disciples of Christ); the Episcopal Diocese of Massachusetts; the Episcopal Diocese of Western Massachusetts; Evangelical Covenant Churches,

East Coast Conference; Evangelical Lutheran Church in America, New England Synod; Greek Orthodox Metropolis of Boston; Religious Society of Friends, New England Yearly Meeting; Presbyterian Church (USA), Synod of the Northeast; Swedenborgian Church; Salvation Army, Mass. Divisional Headquarters; New England Region of the Unitarian Universalist Association; United Methodist Church, New England Conference; and United Church of Christ, Massachusetts Conference.

MCC and its members share an interest in ensuring religious freedom and the ability of religious organizations to sustain and further themselves, their members, worship and faith in general. MCC is troubled by the ATB's rulings, including its narrow definition of "houses of religious worship," which suggests partiality towards some religions and manners of worship. MCC is also concerned that the ATB's ruling regarding the charitable work at the Shrine, and its uses of property to accommodate worship and to raise funds to sustain itself, demonstrates a fundamental misunderstanding of the centrality and inseparable nature of charitable work and religious worship and, if allowed to stand, would make it impossible for many religious organizations even to survive, to encourage and further worship, and to worship freely. Most fundamentally, MCC believes the very notion that local assessors or other government officials would be

allowed to parse what counts as religious worship and what does not, to determine the applicability of the exemption defies religious freedom.

CAIR-MASSACHUSETTS

CAIR-Massachusetts is the Massachusetts chapter of the Council on American-Islamic Relations, the largest Muslim advocacy and civil liberties organization in the United States. For over twenty years, CAIR has been a leading voice for Muslim civil rights, protection of religious freedoms, and equal treatment under the law. CAIR has led the charge in bringing cases of national import before countless courts throughout the country, has emerged as the leading voice for Muslims in the media and public affairs, and serves as a trusted representative for the American Muslim community. CAIR-Massachusetts is one of thirty-one local chapters of CAIR's national structure, and handles the day-to-day advocacy and service work within the state. CAIR-MA is an independent and federally-recognized 501(c) (3) educational nonprofit organization.

CAIR-Massachusetts was troubled to learn of the ATB's ruling in this case and the potential negative consequences to religious organizations that are likely to flow from it. As representatives of one of the fastest growing religions in the United States, CAIR-MA has a vested interest in ensuring that, as

mosques and mosque attendance multiply and expand within the Commonwealth, they are guaranteed a secure legal position from which they can practice their faith in a meaningful sense. Mosques across the Commonwealth rely on tax exemptions to allow them to use the funds they otherwise would use to pay property taxes towards sustaining the mosque, worship, charitable work and other integral, religious practices. The ATB's ruling, if upheld, has the potential to hamper the practice of worship, in all of its forms, including charitable exercise. This has enormous potential impact for the Muslim community specifically, which views charity as an inseparable element of religious practice. To attempt to distinguish the two, and effectively punish the exercise of charity as worship, is tantamount to a restriction of religious freedom.

Emmanuel Gospel Center

The Emmanuel Gospel Center ("EGC") is a non-profit, Christian ministry operating in the South End of Boston since 1938. Its mission is to strengthen Christian leaders to serve urban communities. The EGC believes the Church is God's chosen instrument to bring his life and presence into communities. Its work is designed to support what God is doing through his Church in urban Greater Boston. EGC takes time to learn how the city, the church, and their related

systems are changing. It connects with the people involved to build strong working relationships, and provides teaching, training, tools and resources for effective ministry. As the EGC invests in Christian leaders, it strengthens the Church's ability to leverage healthy change that helps build urban communities that support and care for everyone

EGC's facility, which it has owned since the early 1970s, includes a main building, an office space, and a house. The main building has an auditorium used for staff worship and prayer as well as for ministry meetings, church worship services, community meetings and even community parties. Much of the EGC's relevant religious work takes place out of its office building. The house is used as a Christian community to support a small number of Christian workers who live together. It would make no sense as it relates to say EGC's auditorium is for religious purposes (since worship services take place there), and the rest of the space is not. All of EGC's work is informed and motivated by its faith mission, and the practice and implementation of its faith and mission occur in all of EGC's space.

Episcopal Diocese of Massachusetts

The Episcopal Diocese of Massachusetts is made up of 180 congregations in cities and towns throughout eastern Massachusetts, Cape Cod and the islands. The

diocese is part of the wider Episcopal Church, which in turn is part of a larger, global community of Anglican Christians. The diocese has a strong interest in ensuring the proper interpretation of Clause Eleventh to protect the ability of its congregations and followers to worship freely, in line with their beliefs, in the space and manner of their choosing.

A definition of space for religious activity which confines itself solely to that space which is set aside for worship in the form of a formal service is not in keeping with an Anglican/Episcopal understanding of religious activity. The Church's Outline of the Faith, as found in the Book of Common Prayer, includes the following description of religious practice:

The Church. . . continues in the *teaching and fellowship* of the apostles and is sent to carry out Christ's mission to all people. The Church pursues its mission as it prays and worships, proclaims the Gospel, and *promotes justice, peace, and love*. The Church carries out its mission through the ministry of all its members.

(pp. 854-55) (emphasis added).

Though Episcopalians have a high theology of sacred space, the church's religious mission and identity is not limited to those parts of its property dedicated to formal prayer and worship, but also includes those facilities devoted to teaching,

fellowship, and outreach activities which promote the well-being of all people. Thus, some of facilities are used to promote education – not only the spiritual education of the church's members but also the education of those in the wider community, because Episcopalians understand education as furthering the God-given gift of mind and intellect. Churches such as Grace Church in Lawrence, St. Stephen's Church in Boston's South End, and St. Andrew's Church in Fall River, use their parish halls and other religious space for community education and tutoring.

Further, some of the churches have outdoor spaces devoted to the furtherance of the spiritual life. Many, such as St. Barnabas, Falmouth, and Church of Our Redeemer, Lexington, have an outdoor labyrinth. Others, such as Trinity, Topsfield, have an outdoor altar and/or devotional sculptures on their grounds. Others, such as St. Mary's, Barnstable, have outdoor gardens specifically designed and promoted as places of spiritual respite. These are religious spaces.

In addition, many of the diocese's churches use their space for soup kitchens and community meals, from San Lucas in Chelsea, to the Cathedral of St. Paul in Boston, to St. Thomas in Taunton. Some churches, such as St. Paul's, Lynnfield, have gardens in which they grow produce which is donated to the soup kitchens of other congregations. In all of these

instances, these portions of the property are as integral to the church's and its followers' religious identities as are its sanctuaries.

A variety of parishes' facilities also are used for fundraising activities in direct support of the church's mission. Some have dedicated space for such activities, such as the Galley West Shop at the Church of the Holy Spirit in Orleans. Others use parish hall or outdoor space for such events. The congregations that make up the diocese rely on the religious exemption clause to enable all these uses of space alike, for the furtherance of their religious identity and service to their communities.

Episcopal Diocese of Western Massachusetts

The Episcopal Diocese of Western Massachusetts is made up of more than 55 vibrant congregations from the Berkshires to Worcester County. The Diocese and its congregations are focused on Jesus' mission of mercy, compassion and hope here and around the world.

Worship in the Episcopal Churches in the Diocese takes many forms, occurs indoors and outside, and includes, as part of the commandment to "love your neighbor as yourself", a broad range of charitable and community activities that occur on church property. This includes many activities from accommodating Alcoholics Anonymous meetings, Scout gatherings, mindfulness and yoga classes, to hosting food pantries

and soup kitchens. There are meetings for senior citizens, veterans, parenting classes, and spaces for meditation and reflection, including several labyrinths open to the public for meditation. The churches in the Diocese rely on the Clause Eleventh exemption to maintain their properties, their congregations, the ability to worship freely and the important community and other services they provide.

Islamic Society of Boston Cultural Center

The Islamic Society of Boston Cultural Center, a project of the Muslim American Society of Boston ("ISBCC"), is one of the most diverse Islamic Centers in the United States, located in the Roxbury neighborhood in Boston. The 70,000 square foot structure is not just a mosque, but a dynamic cultural center designed to serve the entire community.

The ISBCC's mission is "[t]o teach and live Islam in America" and its vision is "[t]o build a community of leaders rooted in the Islamic tradition, committed to American ideals and empowered to serve the common good." The ISBCC houses a school, a café, and its multipurpose space is used for various functions and events, including, but not limited to, religious services and programs, and to host interfaith, nonprofit, cultural, and educational programs.

Worship and charity are inseparable in Islam. Obligatory charity, or zakat, is the Third Pillar of

Islam, and is required of all Muslims. When a Muslim person raises funds he is not gathering money for a stranger, but is acting on behalf of his family. Everyone in the Islamic community is seen to reside in the house of Allah, as one people. To attempt to separate worship from charity is an affront to the very essence of Islamic teaching.

Given an already difficult environment for Muslims in America, the ISBCC is deeply troubled by the fact that the ATB's rulings, if upheld, would essentially empower local assessors to parse through activities at the ISBCC and at other mosques and to determine which are religious and which are not, regardless of Islamic teaching and traditions. Charity is but one example of how the ATB's rulings collide with Islamic teachings. The ISBCC is also troubled by the ATB's lack of understanding of the way in which people of different faiths worship and by its effort to so strictly limit how indoor and outdoor space may be used for worship and related activities. The ATB's rulings have the potential to allow local assessors to strip mosques of funds they need to sustain themselves and their work, education and worship.

Massachusetts Conference of the United Church of Christ

The Massachusetts Conference of the United Church of Christ ("MACUCC") comprises 365 local congregations

and over 900 current and retired clergy in Massachusetts. Rooted in the grace of God, the MACUCC's mission is to nurture local church vitality and the covenant among its member churches, to make God's love and justice real. The MACUCC assists churches with clergy transitions, provides leadership development and opportunities for shared mission, ministry and networking. The MACUCC's local congregations play a vital role in addressing the spiritual and temporal needs of people in their own communities and the Commonwealth as a whole.

The Board of Directors of the MACUCC, speaking on behalf of its member churches and clergy, is deeply concerned by the ATB's rulings. In the theology and traditions of the United Church of Christ, worship takes many forms and can be manifest in many kinds of places. It is troubling to think that a local tax assessor would be empowered to decide what constitutes worship for any religious group. The MACUCC believes this case represents an existential threat to its congregations, which will have great difficulty continuing to worship and minister to their communities if they are assessed property taxes on any property that does not look like a "house of religious worship" to a local tax assessor. The MACUCC also believes that the case presents serious challenges to the First Amendment rights of its members.

New England Conference of The United Methodist

Church

The New England Conference of The United Methodist Church comprises more than 600 congregations in six states, including 200 in the Commonwealth, all committed to a vision of being "Transformed by the Holy Spirit ... as we boldly proclaim Christ to the world." The United Methodist Church seeks to create disciples for Christ through outreach, evangelism, and seeking holiness, also called sanctification, by the power of the Holy Spirit.

The integration of personal piety and social holiness has been a hallmark of Methodist tradition. For United Methodists, faith always includes a social dimension. United Methodists affirm the biblical precept that "faith by itself, it is has not works, is dead" (James 2:17). They grow in faith through participation in the church community, and are also nourished and equipped for mission and service to the world. Service with and for the surrounding community is a natural extension of worship. United Methodist congregations also use their property for regular and ongoing fundraising to sustain their ministry and mission. Many of these fundraising activities are also sources of community building.

New England Conference congregations that exist in the Commonwealth rely on the Clause Eleventh

exemption to sustain themselves, their religious practices and charitable work. The Conference has a strong interest in supporting the proper interpretation of Clause Eleventh to ensure the continued existence and vitality of the presence of The United Methodist Church in the Commonwealth.

New England Region of the Unitarian Universalist Association

The New England Region of the Unitarian Universalist Association ("UUA") is comprised of 232 Unitarian Universalist congregations in Massachusetts, Vermont, Maine, New Hampshire, Connecticut and Rhode Island. The UUA is the central organization for the Unitarian Universalist ("UU") religious movement in the United States. The UUA's 1000 plus member congregations are committed to Seven Principles that include the dignity and worth of each person, the need for justice and compassion, and the right to choose one's own beliefs. The UUA's congregations and faith communities promote these principles with regular worship, learning and personal growth, shared connection and care, social justice action and service, celebration of life's transitions, and more.

The New England Region of the UUA shares intimately in the religious history of New England. That most of its congregations are named "First Parish" rightly signals the centrality of these

congregations in the religious life of so many Massachusetts communities. UUA congregations' presence on the town greens of many of these towns and cities reflects the historical interplay of religious and civic life in this part of the world. This interplay persists to 2016, as UUA congregations – along with those of so many other faith traditions – support, encourage, and nourish community life.

UU congregations are committed to ensuring the fundamental principal of the religious freedom that sustained its own people when they experienced persecution as religious outliers. UUA's own people and congregations know the very real dangers of being declared outside the bounds of other people's definitions of religion, faith, and worship.

The UUA is deeply concerned by the ATB's rulings that impose definitions of "houses of religious worship" that the UUA simply does not recognize as being consistent with its own and that of many of its faith neighbors. One of the UUA's congregations famously declares that "the church has left the building," by which it means that the people practice their faith outside the bounds of the sanctified worship space. In many communities, UUA congregations are lucky to have large yards, religious education buildings, parish halls, parsonages, and office spaces. Actual, liturgical worship takes places in

every one of these spaces. And UUA church spaces are used constantly to support the educational and justice missions of UUA congregations – which the UUA also considers worship in that it commits with the hands and feet what the heart promises in liturgical time.

The UUA respectfully requests that the Court not deprive its people, its congregations, or its communities of this enriched and essential definition of worship on which their collective religious lives depend. To do so would be an affront to religious freedom.

New England Synod of the Evangelical Lutheran Church in America

The New England Synod of the Evangelical Lutheran Church in America ("ELCA") comprises more than 180 congregations throughout New England, of which 65 are located in the Commonwealth, from Cape Cod in the east to Pittsfield in the west. The Synod is a unique local expression of the ELCA – a denomination of 3.8 million members in the United States. The Synod and its congregations are focused on the proclamation of the Gospel of Jesus Christ through word and sacrament.

Ministry in the congregations of the Synod manifests itself in various forms, including public worship held both in a congregation's buildings and outdoors on its property. The Synod conducts Christian education, Summer Vacation Bible Schools, adult

religious education, and a broad range of charitable and community activities on church property.

In addition, Synod congregations, most all of them located on property of 4 acres or less, host community events that include health fairs, yoga classes, Alcoholics Anonymous meetings, Scout gatherings, food pantries and soup kitchens, senior citizen gatherings, Christian preschools and day care centers. The congregations of the New England Synod ELCA rely on the exemption in Clause Eleventh to maintain their properties, their congregations, the ability to worship freely and practice the free exercise of their religious beliefs.

Our Lady of Fatima Shrine, Holliston, MA

Our Lady of Fatima Shrine ("Fatima Shrine"), located in Holliston, Massachusetts, was built by the Xaverian Missionaries in 1950. It has become a well-known place of prayer, meditation and devotion to Our Lady. The center of the shrine includes the apparitions of Our Lady that occurred in Fatima, Portugal in 1917. This shrine holds what is said to be the largest rosary in the world. Xaverian Missionaries, are a religious community of priests and brothers founded in 1895 by Saint Guido M. Conforti. Inspired by the life and dreams of St. Francis Xavier, who left his home country and family to preach the Word of God to distant lands, the Xaverians contribute

towards making the world one single family by proclaiming in word and action the Good News of God's Reign to non-Christians. The Xaverian Missionaries respond to Jesus Christ's invitation to be His witnesses to the ends of the world by a life-long commitment to serving the poorest among the poor.

As men of prayer and action, the Xaverian Missionaries live in community and work with people of all faiths and beliefs. The Xaverian Missionaries live according to the vows of poverty, obedience, chastity and mission. They are involved in social work, in community building, in health care, and in educational programs and interfaith dialogue. They live together in a missionary community consecrated to God by a mission vow and the profession of the evangelical counsels, the vows of poverty, chastity and obedience. The Xaverian's missionary work and religious life constitute their sole and undivided charism.

The Xaverian Missionaries and the Fatima Shrine are concerned about the implications of the ATB's rulings in this case for all religions. Although on a smaller scale, the Fatima Shrine uses its property in many ways similar to the Shrine of Our Lady of LaSalette. In keeping with and in furtherance of the missionary and religious work of the Xaverians, for example, the Fatima Shrine holds a festival of lights that is open to the public from late November through

the end of the year, and operates a gift shop, which sells religious articles, books and other items. The Fatima Shrine also uses its space for various religious services and gatherings open to the public that include a soup and mission event, pilgrimages, Spiritual Retreats and Days of Recollection by youth groups, parish groups and Catholic school groups (teachers and students), inter-religious and interfaith workshops, and book club gatherings, space for prayer walks, meditative walks and other religious, contemplative experiences. The ATB's rulings indicate a complete lack of understanding of the manners in which religious organizations and worshippers practice their faiths and introduces government oversight of and interference with religious worship.

United Synagogue of Conservative Judaism

The United Synagogue of Conservative Judaism ("USCJ") is the communal arm of the Conservative Movement in North America, representing the interests of nearly 600 synagogues and Conservative Jewish religious congregations affiliated with USCJ, including twenty-nine (29) in Massachusetts. Many of these synagogues and congregations own property outside of the house of worship itself, that is used for tax exempt religious, educational and charitable purposes, such as (but not limited to) parsonage,

religious schools, youth programming, and fund-raising for the synagogue, other Conservative Jewish institutions and projects, and the community-at-large. Such property, unless used for an "unrelated business purpose," has historically been exempt from real estate taxation. The properties have been acquired by USCJ affiliated synagogues and congregations and, in many cases, financed with that understanding.

The ATB's rulings in this case suggest a fundamental shift in the manner in which religious organizations are treated for property tax purposes. The USCJ's members and those they permit to have free or low cost use of such property would be adversely affected if the longstanding tax exemption were lost and taxes assessed. USCJ has a direct interest in ensuring proper interpretation and application of Clause Eleventh to allow its affiliate synagogues and congregations to sustain themselves and their properties and to carry on in the same manner as they have historically, in line with their beliefs and traditions.

SUMMARY OF THE ARGUMENT

The ATB's ruling, if it stands, has potentially disastrous implications for religious organizations across the Commonwealth far beyond the Shrine and this case. The ATB's narrow definition of the term "houses of religious worship" in Clause Eleventh, and its

rigid and formalistic approach to evaluating the Shrine's use of its property would deny Clause Eleventh exemption to many religious organizations whose practices and beliefs do not fit into a local assessor's vision of a "traditional" worship in "traditional" structures. This approach would allow government actors to refuse to recognize religious practices they do not understand. (pp. 24-25)

Many, including amici and their members, worship indoors and outdoors on their property in ways that the ATB's rulings wrongly ignore and effectively discredit. Worship is not, as the ATB suggests, confined to specifically-consecrated spaces within four walls. It comes in many forms - from individual meditative reflection, to preparation and consumption of meals. Worship happens inside at a shared dinner table, in church and synagogue halls, and over coffee after service. It occurs outside under the arches of a mosque, on a walk through a labyrinth or over a peaceful nature trail, or in the form of seeding fields to cultivate produce in a garden. (pp. 25-28)

These are all examples, and only a small number of examples, of actual religious worship activities of amici members. Yet, the ATB's ruling effectively denies that these genuine acts of worship count as the type of worship that supports the Clause Eleventh exemption because they occur outdoors or outside of

what the ATB recognizes as “traditional” Sunday church service. This approach demonstrates hostility and a lack of neutrality towards religion, and threatens the very existence of many religious organizations across the Commonwealth that worship in all kinds of ways and in all kinds of spaces. (pp. 28-30)

The ATB’s attempt to draw a bright line between religious worship and charity is also contrary to the religious beliefs, teachings and practices of many religions. Charity is inseparable from and is a sacred tenet of many religions. Christianity, Judaism, Islam, Buddhism, Hinduism, Sikhism, for example, all teach that charity is an integral element and, in some cases, a mandatory component of, worship. Amici members accordingly utilize their property to engage in and support charitable acts in countless forms in aid of the needy and vulnerable. These charitable acts underlie the Clause Eleventh exemption. To deny the exemption for space used for charitable work thus not only denies a fundamental religious mandate but it undermines the very purpose of the exemption and puts at risk the ability of many religious organizations to continue to do their necessary good work. (pp. 30-42)

The ATB’s conclusion that space the Shrine uses for fundraising is non-exempt is similarly flawed. Fundraising is essential for religious organizations to survive, to continue their charitable work and to

sustain free worship in line with their beliefs. Fundraising takes many forms and occurs in many places on religious property. It ranges from passing a donation basket during formal service to operating a café or gift shop to raise funds for the organization. To deny the exemption for space used for fundraising effectively nullifies the exemption as it requires religious organizations to choose between raising funds to sustain themselves and their property and invoking the exemption. (pp. 42-46)

The ATB's narrow definition of "houses of religious worship" and its rigid and uninformed application of Clause Eleventh to the Shrine's use of property creates serious First Amendment problems. The ATB's decision suggest partiality towards religions that local assessors recognize as having "traditional" structures and formal worship services in those structures. It also invites government intrusion into and parsing of religious activity in a manner which this Court has never allowed and which the Constitution forbids. The ATB's decision should be reversed and religious determinations should be left with religious organizations. (pp. 46-50)

ARGUMENT

I. The ATB's Rulings, If Upheld, Would Have Sweeping, Potentially Disastrous Effects For Religious Organizations Across the Commonwealth.

A. The ATB's Definition Of "Houses Of Religious Worship" Would Deny Clause Eleventh Exemption To Religious Organizations Because They Worship In Ways Outside Of A Single, Uninformed Notion Of "Traditional" Religious Worship.

The ATB's conclusion that the exemption in Clause Eleventh may only be invoked for "the types of structures traditionally associated with a religious organization," RA278, and its rigid application of that conclusion to the Shrine's property ignores the broad spectrum of religious organizations, beliefs, teachings, practices and activities that exist in the Commonwealth. Limiting the ability of religious organizations to invoke the tax exemption based on the way in which they use property for worship and related purposes, as the ATB has done, essentially makes local assessors the arbiters of what counts as religious worship and what does not. This denies some practices and some religions, and has drastic implications far beyond the Shrine and this case.¹

¹Amici will not repeat the Shrine's legal argument, but state here only that the assessors acknowledge that they seek a new rule when they advocate for so-called "evolved thinking" on the issue, Brief of Appellee at 13, but then demonstrate an utter lack of such thinking by seeking a rule that would deny the exemption to religious organizations that worship in ways local assessors do not understand.

Many, including amici and their members, worship on property - indoors and (contrary to the ATB's conclusions) outside - and in a manner that the legislature clearly intended to include within the exemption, but which perhaps may not look to a local assessor with limited religious background and experience like the type of "traditional" use of structures the ATB envisioned. Even a few examples from amici and their members demonstrate the breadth of the forms of religious worship and where it occurs and, therefore, the fallacy of the ATB's reasoning:

- Common Ground, UCC is a family-style, farm-to-table dinner church that meets the first and third Thursday of each month at First Churches in Northampton.² In addition to preparing and sharing a meal as a fundamental part of their worship, the church grows some of its own food on church property, and church members worship through service, including the acts of growing food and working in the fields.
- Like the Shrine, the Fatima Shrine holds an outdoor festival of lights from November through January in celebration of Christmas.

²This unique church describes itself as follows: "At Common Ground, we cook and eat dinner together from food we've grown or sourced locally. Our worship centers around the growing, preparing, cooking, and sharing of a sacred meal. Over and around dinner we sing, play, share, pray, hear the Word, and take the time to respond."

- The Unitarian Universalist Society of Greater Springfield owns approximately 11 acres of parkland abutting Springfield's historic Forest Park, and surrounding the church's building, access to which for prayer, meditation and simply the tranquility associated with nature, it views as an important part of spirituality for its members.

- Many amici members have outdoor space that is used for prayer walks, meditative walks, or other contemplative activities. For example, the ISBCC worshippers walk the property surrounding the mosque as a way to connect to nature – which the ISBCC and its followers consider to be "one of the miraculous signs of God". The First Congregational Parish in Kingston has an outdoor nature walk as an extension of South Shore Bay Path Trail to Jones River.

- Many of the churches across Christian and UU denominations have labyrinths and prayer gardens in outdoor spaces, where visitors meditate and pray in small groups or individually.³

- Some of the Episcopal churches have outdoor altars and/or devotional sculptures on their grounds.

- Some UU parishes hold their weekly services and religious classes outside in good weather, other churches and some congregations move services from

³Indeed, walking the labyrinth for some is symbolic of pilgrimage.

larger sanctuaries to smaller spaces in wintertime to save on heating costs.

- The First Parish Church of Groton has a memorial garden to allow for a key Church function of giving people space to grieve safely and comfortably. It also has an outdoor Medicine Wheel garden, which is tied to faith and its role in honoring sources, as well as appreciation for, other faiths' traditions. The Church also has an officially-designated butterfly garden, to help protect endangered species, as part of the Church's fidelity to the Seventh UU principle of interdependent web of all life.

- Several other amici members have outdoor sanctuaries, peace poles, meditation gardens, and memorial spaces that serve as spiritual cemeteries

- The ISBCC and number of the other amici members have gardens used for, among other things, growing produce that is donated to soup kitchens, or used to make meals for congregants or the needy.

- Some amici members hold religious rituals celebrating their own faith or other faiths on their lawns, and religious wedding ceremonies in courtyards, and elsewhere outside any designated sanctuary.

- Amici members use fellowship halls and other indoor spaces for marriage celebrations, memorial services, less formal services, family-centered activities and other social activities (game nights,

pot lucks, coffee hours) to bring congregants together immediately following service and at other times.

Worship is simply not confined to a formal service within four walls. The UUA gives the example of the UU congregation that proclaims, "The church has left the building," to demonstrate that people worship outside of formally sanctified worship space. The Common Ground UCC church, on its website, explains, similarly, "at Common Ground leaving church doesn't have to mean leaving worship. We worship wherever we go because we believe worship is service and service is worship." Many activities comprise religious worship, and both indoor and outdoor space plays a significant role for many. Indeed, while some religions are perhaps commonly viewed as connected with outdoor worship and sanctity of nature, see, e.g., LaPlante v. Massachusetts Dept. of Corrections, 89 F. Supp.2d 235, 249 (D. Mass. 2015) ("Because it is a nature-oriented religion,...Wicca requires that its adherents perform an 'Earth Offering'" outdoors); Blake v. Murphy, Civ. A. No. 05-10508-RGS, 2010 WL 447780, *1 (D. Mass. Feb. 9, 2010) (observing Native Americans perform worship services outside), as illustrated above, nature, and outdoor worship, prayer, meditation and other activities are important to the amici, their members and followers. Any notion that undeveloped, outdoor space owned by a religious

organization and used for religious worship is secular space is simply wrong.⁴

These uses of property are all ingrained, religious practices tied directly to religious beliefs within established religions practiced across the Commonwealth. Nevertheless, like the Shrine's natural sanctuary, its use of outside space for meditative and prayer walks, and its use of spaces for activities comprising, related to and supporting worship, which the ATB dismissed as not sufficiently religious, all of these uses of property are vulnerable under the ATB's narrow-minded construction of Clause Eleventh. The ATB's approach rejects some of the most established forms of worship because they occur outdoors or outside of a traditional Sunday church service. It also threatens to single out and marginalize religious organizations devoted to religions and religious practices that may be less mainstream, less well known, or less popular at any given time by taxing them when other more

⁴For some, worship occurs through or in conjunction with the preparation and sharing of a meal. For example, for a Sikh, it is a privilege and a duty to provide langar (food) in the Gurdwara (Sikh place of worship) for the whole congregation after the weekly service of worship. The langar is part of the act of worship and a very fundamental aspect of Sikh life. See, e.g., Anamika Arora, *Selfless Service Aims to Bring Solidarity and Awareness at the Shri Guru Ravidas Sabha of New York, HINDUISM HERE* (Jun. 27, 2013).

"traditional" religions are exempt. It is difficult to conceive of an approach that exhibits more "hostility toward religion", 397 U.S. at 672-73, or more soundly defeats the "benevolent neutrality" of which the Supreme Court spoke in Walz v. Tax Commissioner of City of N.Y., 397 U.S. 664, 669 (1970).

B. The ATB's Rulings Ignore That Religious Worship And Charity Are Inseparable In Many Religions And, If Upheld, Would Devalue A Core Religious Tenet And Threaten Religious Organizations' Ability To Provide The Charitable Services That Underlie The Exemption.

The ATB's attempt to draw a line between religious worship and charitable work for tax purposes defies the history, scriptures, teachings and fundamental practices of many religions. It strips of meaning a fundamental aspect of worship for many. And it undermines the legislative purpose of providing the exemption in Clause Eleventh specifically out of recognition for, and to support continuation of the charitable and other contributions religious organizations make to the community. The ATB's decision should be reversed.

As this Court has confirmed, the religious property exemption in Clause Eleventh applies equally to lands appropriated to "the sacred uses contemplated," Boston Soc'y of Redemptorist Fathers v. City of Boston, 129 Mass. 178, 181 (1880). A "sacred" tenet of many religions and, therefore, one of the

"sacred uses contemplated" for property by many religious organizations is charity. Among the amici and across other religions, religious worship and charity are inseparable: engaging in charitable work and charity in aid of others, including the most vulnerable among us, the sick, the needy, the elderly, the addicted, abused and abandoned, and others, is an integral element (and, in some cases, a mandatory part) of religious worship.

In Christianity, charity is considered the expression of God's love for people. By giving alms and aid to the needy, Christians spread God's love. The scriptural references are pervasive. Perhaps the most well-known Christian biblical reference, "love thy neighbor as yourself" is, in Christian belief, second only to the love of God:

The first commandment is this: Hear O Israel: the Lord our God is the only Lord. Love the Lord your God with all your heart, with all your soul, with all your mind, and with all your strength. The second is this: Love your neighbor as yourself. There is no other commandment greater than these.

Mark, 12:29-31. For Christians, the role of charity is first built on the injunctions of the Hebrew Bible. In the New Testament, Jesus's parables and actions also speak to the morality of charitable sentiments. In the *Gospel of Luke*, for example, an expert in the law notes the injunction to "love thy neighbor as thyself"

and asks Jesus, "Who is my neighbor?" Jesus responds with the familiar parable of the Good Samaritan. A man on the Jericho road is robbed, stripped, and lies half-dead. After others pass by him, a Samaritan—whose people were historic rivals of the Jews Jesus was talking to—takes pity on the unfortunate, binds his wounds, and transports him to an inn for care. Jesus asks, "Who do you think was a neighbor to the man who fell into the hands of the robbers?" The expert says, "The one who had mercy on him," and Jesus responds, "Go and do likewise."

Amici the MAUCC explains that in United Church of Christ ("UCC") tradition, the four markers are worship, service, fellowship, and proclamation, and the UCC church cannot exist without all four of these marks. The four marks cannot be separated and, instead, flow from one another, interact with each other, and often overlap in actual practice. The biblical basis for this view is found in the Book of Acts. See, e.g., Book of Acts 2:44-45 ("All who believed were together and had all things in common; they would sell their possessions and goods and distribute the proceeds to all, as any had need."); see also Matthew 25:31-46 (where the hungry, thirsty, naked, sick, the stranger, and the prisoner – the most vulnerable ones – are to be tended to with care). It is expressed in the UCC Statement of Faith: "God calls

us into the church to accept the cost and joy of discipleship, to be servants in the service of the whole human family." UCC Statement of Faith, 1977 version. The structures the law refers to as "houses of worship" are to the UCC nothing less than a base of operations for the healing of the world and the increase of the love of God to all creation.

Unitarian Universalism embraces truth from many religions and spiritual traditions, which nurture the spirit and help individuals find meaning in life. UU draws from many sources, including Jewish and Christian teachings which call individuals to respond to God's love by loving their neighbors as themselves. UU congregations and congregants put their faith into action by, for example, following and fulfilling the words from *Matthew 25:31-46* quoted above, and providing food to the needy. As explained by Professor A.J. Todd, Ph.D., "This means you and I, church and laity, Jew, Greek, barbarian, are possessed of the sense of vital social unity, believe and practice that belief that we are part and parcel of one another, that we are all members of the mystic body of Christ.

. . Charity here signifies that sense of mutual responsibility and brotherhood which attests social unity." "The Social Church," *The Unitarian Advance*, vol. 3, pp. 108-09 (1912). The Seven UU Principles include their belief in the inherent worth and dignity

of every person and in justice, equity and compassion in human relations. UU followers live their beliefs through deeds (for example, acts of charity) rather than through a specific creed.

In Islam, charity is considered a form of worship. Zakat (giving money to the poor) is one of the five pillars, or essential practices of Islam required of all Muslims. In the Qur'an, Allah describes those who prevent the supporting of orphans and the feeding of the poor as "those who reject the faith" (107:1-3), while emphasizing that charity should be given in "prosperity or adversity" (3:134), without fear for one's wealth, and having faith that a sincere act of giving can only bring abundant reward to the giver: "those who spend their wealth in Allah's cause are like grains of corn which produce seven ears, each bearing a hundred grains" (2:261). The necessity and inextricable nature of charity to worship in Islam is reflected throughout the Qur'an and the hadith (sayings) of the Prophet Muhammed:

- "And be steadfast in your prayer and pay charity; whatever good you send forth for your future, you shall find it with Allah, for Allah is well aware of what you do." (Qur'an 2:110)
- "Never shall you attain to true piety unless you spend on others of what you cherish for yourselves; and whatever you spend, verily, God has full knowledge thereof" (Qur'an 3:92)

- "The believer's shade on the Day of Resurrection will be his charity." (Hadith of the Prophet).

Performing tzedaka (helping the needy) is one of the most important laws in Judaism. Tzedakah is seen as a religious obligation, which must be performed regardless of financial standing, and is considered to be one of the three main acts that can annul a less than favorable heavenly decree. Indeed, the edict to "love thy neighbor as thyself," comes from the Torah, *Leviticus 19:18*, and is repeated in *Leviticus 19:34*: "love [the stranger] as thyself." Pirkei Avot, a book of the Mishnah, teaches that the universe depends on three things: on Torah (law), on avodah (service to God), and on g'milut chasadim (usually translated as "acts of lovingkindness") (*Avot 1:2*). In fact, this quote has become a popular song in synagogues: Al Shloscha D'varim (On Three Things). The Mishnah also describes g'milut chasadim as one of the few things that one derives benefit from in this world and yet still be rewarded for in the world to come.

Other religions similarly teach that charity is an essential part of worship. For example, Sikhs believe that wealth is only acceptable if it is used for other people. The Gurus' teachings reflect this: "You shall find peace, doing seva (selfless service)." Guru Granth Sahib, p. 25, l. 19 (Guru Nanak Dev). And even more specifically, "Without selfless service, no

one ever receives the fruits of their rewards.” Id. at p. 992, l. 7 (Guru Amar Das). Sewa or service to the community is essential to Sikh life. This theology is reflected in a famous pronouncement in the *Guru Granth Sahib*, the Sikh scripture: “Only they are on the True Path who eat what they earn through earnest work and help support the disenfranchised.” Harpreet Singh, *The Sikh Perspective on Acts of Charity*, Harvard Divinity School, News & Events (Dec. 12, 2013), www.htd.harvard.edu/news/2013/12/13/why-give-religioius-roots-charity (“HDS Article”).

In Buddhism, “almsgiving” and, more generally, “giving” are called dana, and no deed is more universally praised. The giving of gifts in this life results in rebirth in the luxuriant heavens of the gods in the future. Giving is also important in the path to enlightenment. Donald Lopez, *Buddhist Scriptures*, ch. 18 (2004). As a spiritual practice, generosity is the first of six “perfections,” or virtuous qualities, one cultivates for spiritual awakening, and the giving of alms is the beginning of one’s journey to enlightenment. Buddhist lay people have long practiced the giving of alms, food, medicine, and clothing to monks and to monasteries in exchange for teachings and merit. This relationship is seen to be a sacred mutual dependence, and merit is shared on both sides for the benefit of all. *Anguttara*

Nikāya, AN V, 34. Buddhists often quote Buddha statement from an early scripture: "What is the accomplishment in generosity? A noble disciple dwells at home, with a heart free from the stain of stinginess, open-handed, pure-handed, delighting in relinquishment, one devoted to charity, one who delights in sharing and giving. This is called accomplishment in generosity." Chris Berlin, *Charity in Buddhism*, HDS Article, supra.

For Hindus, dana (giving) is an important part of one's dharma (religious duty). The well-known Hindu text the *Bhagavadgita* speaks of giving without expectation of any reward as the only form of giving that has value from a spiritual perspective. (17.20-22). The *Bhagavadgita* urges people to act selflessly for the welfare of others: "Strive constantly to serve the welfare of the world; by devotion to selfless work one attains to the supreme goal in life. Do your work with the welfare of others in mind." (3.19-26). The *Bhagavata Purana* states that we have no right to claim more than what is required for our basic purposes. The *Mahabharata* recommends that one third of our wealth is used for philanthropic purposes.

To fulfill this nearly universal religious mandate, religious organizations across the Commonwealth use their property to carry out and support charitable work and purposes. Worshippers

partake in charity as a core part of exercise of their religion both by participating in the religious organization's own charitable work, and by participating in the charitable work of other non-profit organizations that are allowed to use space on religious organizations' property. Charity transcends specific religion and denomination and takes many forms, including, often, interfaith, coordinated efforts to help those in need.

The amici use their property (sanctuaries, fellowship halls, parishes, open space and other space) to perform charitable acts and to raise money for charitable and community causes themselves, and allow others to use their space to do so at no fee or for a small fee, including, as examples:

- Providing short term shelter to homeless, abused (for example, one UU parish has an upstairs apartment for use by abused women) and to community members who experience power outages, and others.
- Holding and hosting community building events such as weekly dance nights for youth and parents, mommy and me groups, barbecues, parenting classes, senior citizens meet and greets.
- Holding benefits to aid the community, such as clothing sales, book drives, and parish house lobster roll sales.
- Operating or hosting summer camps.

- Hosting, preparing and/or providing free community meals, meals for the elderly, veterans, special needs children and adults, the poor, for Families in Transition, homeless people and families.
- Holding or facilitating health fairs, concerts, book fairs, craft fairs, collector events, talent shows, game nights.
- Preparing meals on site to provide offsite to the needy directly (the ISBCC "sandwich" event) or through another organization (UCC Chelmsford – food prepared for Salvation Army meals)
- Using space for food collection and/or to operate food pantries, food banks and soup kitchens.
- Holding meetings of church members in a sewing group who come together to sew dresses for women and girls in impoverished nations.
- Allowing use of space by nonprofit nursery schools and pre-schools.
- Providing office space and other space at low or no cost to non-profit groups, such as the Boy Scouts and Girl Scouts, Salvation Army Domestic, the Violence Task Force, Animal Rescue League, Rotary Clubs, and to other non-profits, like ICNA Relief, which themselves provide, on site or elsewhere, assistance to the needy
- Housing and organizing volunteer health professionals that provide mental health counseling

for free to those who need it; they also do hospital visits, conduct free health clinics and screenings.

- Allowing Alcoholics Anonymous and other 12-step groups and other support groups, including Carrying On, a support group for people who have lost loved ones, National Alliance on Mental Illness family-to-family groups, Teenage Anxiety and Depression Solutions, Alternatives to Violence.

Like the services provided at the women's shelter on the Shrine's property, this charitable work is part and parcel of worship and religious practice. It also constitutes precisely the type of public service that this Court has found justifies the existence of the exemption. Opinion of the Justices, 324 Mass. 724, 731 (1949) (explaining basis for statutory exemption for property owned by "religious organization and churches" in Clause Eleventh as based on the tendency "in some measure directly or indirectly to relieve public burdens"); see also Walz, 397 U.S. at 687 (Brennan, J., concurring) (describing one of two secular purposes for exempting religious organizations from property taxes the fact that they are "among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation, or be left undone, to the detriment of the

community.”).⁵ Applying the ATB’s decision, however, property used for these services is at risk of taxation precisely because of this use. It defies logic that the exemption exists out of recognition for the charitable and other public services religious organizations provide, but is inapplicable to the property they use to carry out those services.

Denying the Clause Eleventh exemption for property religious organizations use for charitable purposes essentially denies the legitimacy of a sacred, universal religious tenet. It also penalizes those organizations for doing that which their religion requires of them and would decrease or, in some cases, eliminate their ability to continue this important work. As Justice Brennan aptly put it in his concurrence in Walz:

⁵The majority in Walz did not justify the tax exemption for property owned by religious organizations on charitable or public service, 374 U.S. at 672-74, and, in fact, warned that “[t]o give emphasis to so variable an aspect of the work of religious bodies would introduce an element of governmental evaluation and standards as to the worth of particular social welfare programs, thus producing a kind of continuing day-to-day relationship which the policy of neutrality seeks to minimize.” Id. Far from anticipating taxation based on charitable use of religiously-owned property, the Court warned that even considering the “good work” done by religious organizations as a general basis for exemption invites a level of assessment and entanglement that could “escalate to constitutional dimensions.” Id.

Taxation, further, would bear unequally on different churches, having its most disruptive effect on those with the least ability to meet the annual levies assessed against them. And taxation would surely influence the allocation of church resources. By diverting funds otherwise available for religious or public service purposes to the support of the Government, taxation would necessarily affect the extent of church support for the enterprises that they now promote. In many instances, the public service activities would bear the brunt of the reallocation, as churches looked first to maintain their places and programs of worship.

397 U.S. at 692. In other words, refusing to apply the exemption to property religious organizations use for charitable purposes not only denies the organization and worshippers the ability to worship freely, but undermines a key purpose for the exemption. The ATB rulings, if upheld, would have a broad chilling effect on religious, charitable work. And it would hit hardest those that can least afford it.

C. Fundraising Is An Integral And Traditional Means By Which Religious Organizations Sustain Themselves, Their Charitable Work And Their Ability To Accommodate And Encourage Religious Worship, And It Cannot Be The Basis For Denying Clause Eleventh Exemption.

The ATB's conclusion that space the Shrine uses for fundraising is not exempt under Clause Eleventh ignores reality, functionally nullifies the exemption and threatens the existence and ability to worship freely of many religious organizations, including amici, their members and affiliates. The cases

interpreting Clause Eleventh recognize that a religious organization's property necessary to meet the organization's "reasonable requirements," Boston Soc. Of Redemptorist Fathers, 129 Mass. at 180, used for purposes "connected with" religious worship, Proprietors of the South Congregational Meetinghouse in Lowell v. City of Lowell, 42 Mass. (1 Met.) 538, 541 (1840), or for purposes that "normally accompany and supplement the religious work," Assessors of Framingham v. First Parish in Framingham, 329 Mass. 212, 215 (1952), is exempt so long as the "dominant purpose" is religious use. Id. at 216.

Fundraising is and traditionally has been an integral means by which religious organizations sustain themselves and their ability to worship in accordance with their beliefs. Space religious organizations use for fundraising is necessary to the organization's "reasonable requirements". Indeed, it is unclear what could be more intertwined with a religious organization's religious use of its property than the organization's basic ability to exist and financially sustain itself.

Fundraising takes many forms - from passing a donation basket or plate in a defined, perhaps "traditional", sanctuary, to a wide array of activities, indoors and outdoors, aimed at raising funds for the organization or a charitable cause it

supports. Amici's own fundraising efforts range from collecting small charges for outside uses of space, yard sales, bazaars, pageants, and bake sales, to bookstores, gift shops, and cafés much like the gift shop, cafeteria and bistro the Shrine operates that the ATB refused to exempt. More specifically, those activities include, again, as some examples only:

- The ISBCC operates The Common Word Café, which offers on a donation basis a selection of food and drink to ISBCC visitors. On Fridays, after Jum'a (congregational prayer held midday on Fridays) the café offers special hot meal entrees for a suggested donation. In Ramadan, the cafe offers iftar (meal that breaks the Ramadan fast).
- The Fatima Shrine operates a gift shop, and others operate or rent space to gift shops, religious artifact shops and book shops; others have thrift shops and clothing drives.
- The Church of the Holy Spirit in Orleans operates the Galley West Craft Shop, which sells handmade items, including Prayer Brooks, hand-sewn items and hand-wrought aluminum, and many other crafts to raise funds for the church.
- Numerous amici members hold holiday and Christmas fairs, pageants, bazaars and festivals.
- Some hold other fundraisers that incorporate a group meal in exchange for a donation (e.g., a May

Breakfast and a July Fourth Breakfast, and a "midnight café" on New Years' Eve, offering inexpensive food and a place for people to come in and get warm).

- Other meal-related fundraisers include coffeehouses, and organized or theme dinners.
- One UU parish hosts a Fair Trade table during coffee hour after Sunday worship, and a number of Episcopal churches hold Fair Trade coffee sales.
- Other amici hold book sales and fairs, yard sales (inside and outdoors), art fairs, annual craft fairs, concerts, and chocolate festivals.
- Some hold talent shows, auctions, bingo, and one holds a Toll House Cookie Gala.

These and other fundraising activities religious organizations use to raise funds are entirely distinct from secular businesses. They are aimed at raising sustaining funds for the organizations and, importantly, accommodate visitors and worshippers to facilitate and encourage their own worship. Yet, all of these activities and the organizations that engage in them are at risk if the ATB's decision stands.

The ATB gives local tax assessors the ammunition not only to intrude upon and pick through the inner workings of religious organizations, but to impose taxes on any organization that uses its property in part to raise money to remain viable and to do so based on a formula the assessors simply make up on the

"back of the envelope." RA025. Once the Shrine's bistro, gift shop and cafeteria can be taxed, it is only a matter of time before structures the ATB itself deems to be "traditional" religious structures may be taxed, too, because fundraising activities take place in them, or even based on the simple fact that worshippers make donations during services there.

The Clause Eleventh exemption is meaningless if, as the ATB's decision suggests, it requires a religious organization to forego the financial means to survive. An organization that has insufficient funds to retain and maintain its real property and even to carry on has little use for a property tax exemption. The ATB's rulings should be reversed and the Shrine's property should be treated as exempt.

II. The ATB's Decision Creates Unconstitutional Partiality, Interference And Entanglement.

In addition to the disastrous, far-reaching practical effects the ATB's decision would have on religious organizations, it also creates insurmountable Constitutional problems. The ATB's decision suggests partiality towards and, therefore, establishment of certain religions, and invites government intrusion into and assessment of religious practices and, therefore, entanglement and interference with religion. And while the assessors suggest the Court strike down Clause Eleventh, it is

not the statute, but the ATB's interpretation of it, that is unconstitutional.

Freedom of religion is a fundamental right guaranteed by the United States and Massachusetts Constitutions. U.S. Const. amend 1; Mass. Decl. of Rights, arts. 1 and 2; Mass. Const., amend., art. 46. Indeed, this Court has held that the Massachusetts Constitution provides even greater protection for freedom of religion than is afforded by the United States Constitution. See, e.g., Attorney Gen. v. Desilets, 418 Mass. 316, 321 (1994) (rejecting Supreme Court's ruling in Employment Div., Dep't of Human Resources of Or. v. Smith, 494 U.S. 872 (1990), which lowered standard of review for religious challenges to neutral and generally applicable laws, and retaining strict scrutiny for all laws); see also Society of Jesus of New England v. Boston Landmarks Comm'n, 409 Mass. 38, 41 (1990) (Massachusetts Constitution "in emphatic and unmistakable terms ... guarantees to all our people absolute freedom as to religious belief and liberty unrestrained as to religious practices") (quotation omitted)). The ATB runs afoul of both.

Defining "houses of religious worship" to include only those "structures" that a local assessor may understand to be "traditionally" associated with religious organizations opens the door to favoritism and marginalization. This approach creates the very

type of government favoritism and hostility that is forbidden by the Establishment Clause. See, e.g., Walz, 397 U.S. at 669-70.

For a vivid illustration of why the ATB's approach is wrong, one need look no further than the ATB's treatment of the Shrine: despite the Shrine's use of its outdoor space for prayer, meditative walks and other contemplative activities constituting worship, the assessors concluded that the Shrine's outdoor space, except a specifically-consecrated outdoor chapel, is not used for religious worship and is, therefore, non-exempt. RA46, 274, 278. Applying the same reasoning generally would put at risk the ability of religious organizations in the Commonwealth to claim the Clause Eleventh exemption if they worship outside of the four walls of a structure that local assessors understand to be a "church" "chapel" or equivalent. It would exclude some religions - like Wiccans - from the benefit of the exemption altogether because of the way in which they use outdoor space to worship. Creating a rule that favors what local assessors see as "traditional" use of space for worship is the definition of partiality. This is unconstitutional establishment.

The ATB's decision also illustrates just the type of entanglement and interference the Supreme Court warned in Walz is likely to accompany taxation of

property owned by religious organization: "The exemption creates only a minimal and remote involvement between church and state and far less than taxation of churches. It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other." 397 U.S. at 676.

Avoiding constitutional obstacles is precisely why the Supreme Court and this Court have repeatedly stated in various contexts that courts cannot delve into and decide "doctrinal matters, whether the ritual and liturgy of worship or tenets of faith." Jones v. Wolf, 443 U.S. 595, 602 (1979); see also, e.g., Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976) ("[T]he general rule [is] that religious controversies are not the proper subject of civil court inquiry..."); Alberts v. Devine, 395 Mass. 59, 71 (1985). It is not likely a coincidence that Clause Eleventh is broader and imposes fewer burdens on religious organizations than are required of other charitable organizations under Clause Third. Requiring religious organizations to detail their religious practices for government inspection would itself raise an entanglement issue. As the Supreme Court in Walz recognized, once government dips its toe into parsing a religious organization's practices, it risks

crossing a constitutional line. 397 U.S. at 674-76 (exemption creates less entanglement than taxation).

The assessors here bounded over that line. They sifted through the Shrine's website, assessors' reports and their own memories of visits to the Shrine to declare, incorrectly, that some Shrine activities and uses of property did not qualify - in their estimation- as religious worship. And they got it wrong. The notion that local assessors or any government actor is equipped or would presume to deem whether one use of a religious organization's property or another falls within the definition of "religious worship" is antithetical to religious freedom. Those determinations must remain with the religious organization, its leaders, and worshippers, and not with the government. It would be a dangerous precedent to allow government actors to purport even to understand the full breadth of religious worship that exists in this Commonwealth, let alone to attempt to parse and define it.

CONCLUSION

For all of the reasons set forth above, amici respectfully request that the decision of the Appellate Tax Board be reversed.

Respectfully submitted,

AMICI CURIAE MASSACHUSETTS
COUNCIL OF CHURCHES, CAIR-
MASSACHUSETTS, EMMANUEL
GOSPEL CENTER, EPISCOPAL
DIOCESE OF MASSACHUSETTS,
ESPISCOPAL DIOCESE OF WESTERN
MASSACHUSETTS, ISLAMIC
SOCIETY OF BOSTON CULTURAL
CENTER, MASSACHUSETTS
CONFERENCE OF THE UNITED
CHURCH OF CHRIST, NEW ENGLAND
CONFERENCE OF THE UNITED
METHODIST CHURCH, NEW ENGLAND
REGION OF THE UNITARIAN
UNIVERSALIST ASSOCIATION, NEW
ENGLAND SYNOD OF THE
EVANGELICAL LUTHERAN CHURCH
IN AMERICA, OUR LADY OF
FATIMA SHRINE, HOLLISTON,
MASSACHUSETTS, and UNITED
SYNAGOGUE OF CONSERVATIVE
JUDAISM,

By their attorney,



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Rule 16(k) Certification

I, Heidi A. Nadel, herewith certify that to the best of my knowledge the foregoing brief complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R.A. P. 16(f) (reproduction of statutes, rules, regulations); Mass R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).



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