No 06-35883

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CANYON FERRY ROAD BAPTIST CHURCH
OF EAST HELENA, INC., *et. al.*,
Plaintiffs-Appellants,

v.

DENNIS UNSWORTH,
Defendant-Appellee.

ON APPEAL FROM THE DISTRICT OF MONTANA

BRIEF *AMICUS CURIAE* OF THE NATIONAL LEGAL FOUNDATION,

in support of Plaintiffs-Appellants,
Supporting Reversal

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Amicus Curiae, The National Legal Foundation has not issued shares to the public, and it has no parent company, subsidiary, or affiliate that has issued shares to the public. Thus, no publicly held company can own more than 10% of stock.

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INTEREST OF THE *AMICUS CURIAE*

The National Legal Foundation (NLF) is 501(c)(3) public interest law firm. Our donors and supporters have a vital interest in issues pertaining to America's religious heritage. Because this case affects relevant First Amendment rights and the protection of church freedoms, we have an interest in petitioning this Court.

This brief is filed pursuant to consent of Counsel of Record for all parties.

ARGUMENT

I. THE MONTANA POLITICAL COMMITTEE REGULATORY SCHEME IS NOT GENERALLY APPLICABLE BECAUSE IT CONTAINS CATEGORICAL EXEMPTIONS AND CONTAINS THE POTENTIAL FOR INDIVIDUALIZED EXEMPTIONS.

The court below mis-applied *Church of Lukumi Bablu Aye v. City of Hialeah,* 508 U.S. 520 (1993) to support its holding that the Montana scheme in question (various sections of Montana Code Annotated § 13-37 (LEXIS through 2005 Sess. And related regulationsns), was generally applicable and not under-inclusive. *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Higgins*, No. CV 04-24-H-DWM (D. Mont. Sept. 26, 2006). The court below relied upon *Lukumi* to claim that laws are not invalid unless their "exceptions operate to 'impose burdens only on conduct motivated by religious belief,'" *id.*at *26 (quoting *Lukumi*, 508 U.S. at 543). However, the *Lukumi* Court did not strictly limit the occasions on which laws would be found invalid in the way the court below claimed. Only by taking the quotation out of context could the court below

appear to make that statement true. In fact, the *Lukumi* Court went on to opine, "we need not define with precision the standard used to evaluate whether a prohibition is of general application, for these ordinances [targeting religion] fall well below the minimum standard necessary to protect First Amendment rights." *Lukumi*, 508 U.S. at 543.

The Supreme Court, however, has not clarified the general applicability guidelines since *Lukumi*. Thus, this Court should look to the decisions of its sister courts in order to examine the general applicability of the scheme at hand.[1] This Brief will explore the pertinent decisions of the Third and Tenth Circuits which have taken two different approaches to filling in the gaps left by the *Lukumi* opinion. This Brief will show that the Third Circuit's approach should be adopted and that under that approach, the political committee regulatory scheme is unconstitutional. While the facial neutrality of the Montana's scheme is not in question, the general applicability requirement is not satisfied.

We first describe the exemptions in the scheme that need to be examined. First, the scheme defines political committees as "a combination of two or more individuals." Mont. Code Ann. §13-1-101 (LEXIS through 2005 Sess.). Yet, on

[1] *Amicus* concedes that a finding that the scheme is not generally applicable does not end the analysis; this Court must still determine that the scheme does not pass the high bar of the compelling interests test. This Brief and the Appellants' arguments on compelling interests, Brief of Appellant at *52-55, combine to demonstrate that the scheme is not generally applicable, and that the state does not have a compelling interest.

its face, the scheme creates a categorical exemption for groups which cannot be defined as a political committee: the Montana Administrative Rules § 44.10.325(2) (LEXIS through Feb. 9, 2007) states that "[a] candidate and his or her campaign treasurer do not constitute a political committee."

Second, the statutory scheme, as addressed by the court below, contains other exemptions. The code says that the Commissioner "*may* initiate a civil or criminal action" against a party which fails to comply with the requirements during a campaign period, Montana Code Annotated § 13-37-121 (3) (LEXIS through 2005 Sess.) (italics added), leaving room for the Commissioner's discretion to grant individual exemptions in prosecuting a civil action against a violating party.[2] The church discussed the Commissioner's discretion in its vagueness argument. Brief of Appellant at *24. But, the point here is that his discretion also explicitly allows for a system of individualized exemptions by not enforcing compliance uniformly.

A third exemption in Montana's scheme applies to school districts. Under Montana Code Annotated § 13-37-206 (LEXIS through 2005 Sess.), their elections are exempted from political committee regulations. Further, under Montana Administrative Rules 44.10.411 (LEXIS through Feb. 9, 2007), school districts are

[2] The court below correctly noted that the Commissioner's discretion exists at certain times, but not others. *Canyon Ferry,* CV 04-24-H-DWM at *11 n.2. While the Commissioner's discretion would not apply to the church in the case at hand, the point here is significant that the discretion is written into the statute.

exempted from those filing requirements required for incidental political committees. (The exemption occurs because 44.10.411(3)(b) specifically "includes those referenced in 13-37-226(4), MCA, but does not include those referenced in 13-37-206, MCA." Section 13-37-206 specifically deals with school districts.) This broad categorical exemption allows those involved in school district elections to disregard the political committee protocols even if they are supporting or opposing a ballot issue.

A fourth exemption creates a distinction between political committees which form to support a local versus a statewide issue. Mont. Code Ann. § 13-37-226 (4) (LEXIS through 2005 Sess.). Political committee reports, which are otherwise required under that scheme, are not required if the committee is formed "to support or oppose a particular local issue . . . only if the total amount of contributions received . . . exceeds $500." Thus, if a committee forms to support a local referendum, and spends $499 towards its support, then that committee is not required to file reports. On the other hand, if the political committee formed to support a statewide referendum and spent the exact same amount, the committee would be in subjected to the reporting requirement.

Even though not all of the exemptions in the scheme apply to the case at hand, it is clear that exemptions exist. Thus, while the scheme is widely applicable, it does not follow that the scheme is generally applicable.

Several courts, including this Court, have discussed general applicability in the zoning context, *e.g. San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024 (9th Cir. 2004); *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (7th Cir. 2003) (allowing churches in residential areas but requiring special approval for churches in commercial and business areas held to be generally applicable); *First Assembly of God of Naples v. Collier County,* 20 F.3d 419 (11th Cir. 1994) (prohibiting all homeless shelters in specific areas was generally applicable because of the city's health and safety concerns). This Court, however, has not dealt with general applicability outside of zoning cases.[3]

This Brief will now address how other courts have dealt with this same issue post-*Lukumi*. *E.g.*, *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006); *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004); *Blackhawk v. Pennsylvania*, 381 F.3d 202 (3d Cir. 2004); *Tenafly Eruv v. Borough of Tenafly*, 309 F.3d 144 (3d Cir. 2002); and *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359 (3d Cir. 1999); and *Rader v. Johnston*, 924 F. Supp. 1540 (D. Neb. 1996). Two main approaches have been applied. The Third Circuit (and the District of Nebraska) represent one approach.

[3] The laws in both *Davey v. Locke*, 299 F.3d 748 (9th Cir. 2002) and *WJM ex rel. KDM v. Reedsport School District*, 196 F.3d 1046 (9th Cir. 1999) were not neutral, and this Court did not address a general applicability argument. In *American Family Ass'n v. City & County of San Francisco*, 277 F.3d 1114 (9th Cir. 2002) the general applicability argument failed because there was no law at issue.

There, either a categorical exemption or a discretionary exemption will require a practice to be subject to strict scrutiny.[4]

On the other hand, according to the Tenth Circuit interpretation of *Lukumi*, "as long as a law remains exemptionless, it is considered generally applicable and religious groups cannot claim a right to exemption; however, when a law has secular exemptions, a challenge by a religious group becomes possible." *Grace Methodist Church*, 451 F.3d at 650. However, paradoxically, the Tenth Circuit has interpreted that proposition to apply only in the cases where there has been a record of discretionary government decisions. *See, e.g.*, *Axson-Flynn*, 356 F.3d 1198 (showing a pattern of ad hoc discretionary decisions by an acting teacher discriminating against a Mormon student would trigger a strict scrutiny analysis); *Grace Methodist Church*, 451 F.3d 643 (prohibiting any daycare facility was generally applicable because the regulations did not appear to be based on animus towards religion). While the Tenth Circuit admits that *Lukumi* discusses both categorical and individualized exemptions, that court has nonetheless held that only individualized exceptions violate general neutrality. *Grace Methodist Church*, 451 F.3d at 652-54. That analysis is not faithful to *Lukumi* and should not be followed by this Court.

The Third Circuit and the District of Nebraska have ruled on several cases

[4] For reasons discussed below, the *Fraternal Order of Police* Court only applied heightened scrutiny.

analyzing the general applicability of both individualized exception and categorical exemption schemes; those court's analyses should be followed by this Court. As discussed in the Brief for Appellant at 53, *Rader*, 924 F. Supp. at 1540, held that a university policy was not generally applicable because of both its categorical written exemptions and the school's discretionary exemptions. The policy required freshman students to live in on-campus housing. However, the policy itself provided several exemptions. *Id.* at 1546. In addition, the school granted other exemptions at its discretion for reasons not stated in the policy. *Id.* The policy violated the Free Exercise Clause because the school refused to grant an exemption for a student wanting to live at a Christian dormitory off campus even though other students were exempt from the policy. *Id.* at 1553. Because a religious exemption was refused where secular exemptions were granted, the policy was not generally applicable.

Similarly, in *Fraternal Order of Police*, the court identified two secular categorical exemptions contained in a police department policy. The policy allowed facial hair for undercover police and for medical reasons, but did not allow an exemption for religious reasons. 170 F.3d at 363. Since that policy allowed for some exemptions while disallowing others, the court held that categorical exemptions in the policy against facial hair in the police force strongly suggested a discriminatory intent. *Id.* at 365. The categorical exemptions were subject to

heightened scrutiny. *Id.* at 366 n.7.[5] The court noted that *Lukumi's* concern about discriminatory intent "is only further implicated when the government does not merely create a mechanism for individualized exemptions, but instead, actually creates a categorical exemption for individuals with a secular objection but not for individuals with a religious objection." *Id.*

Three years later, the *Tenafly* court relied upon the prior decision of *Fraternal Order of Police* to determine that a facially neutral and generally applicable city ordinance was not generally applicable as-applied. *Tenafly Eruv*, 309 F.3d at 167. That court noted that "*Lukumi* and *Fraternal Order of Police* inferred discriminatory purpose from the objective effects of the selective exemptions at issue without examining the responsible officials' motives." *Id.* at 168. The court first looked to whether the ordinance provided for any secular exemptions, and then the court looked to the objective effect of the enforcement of the ordinance to determine whether it was generally applicable. *Id.* at 167. Under the facts in *Tenafly*, the ordinance did not provide for exemptions and was generally applicable on its face. However, the city was selectively and discriminatorily enforcing that law by allowing secular signs to be hung while refusing the religious requests. *Id.* at 168. The Eruv Association was ultimately

[5] The court stated "we will assume that an intermediate level of scrutiny applies since this case arose in the public employment context and since the Department's actions cannot survive even that level of scrutiny." *Id.*

allowed to hang their lechis (strips of plastic cloth which define the boundaries of the eruv) on utility poles as an exemption to the city ordinance. *Id.* The Third Circuit held that either categorical exemptions or the objective effect of individualized exemptions would trigger strict scrutiny. *Id.* at 167.

The Third Circuit's decision in *Blackhawk* rounds out that court's landmark Free Exercise cases that are applicable to the case at hand. The *Blackhawk* court reasoned that if a state's asserted interest is undercut by the exemptions allowed for in the scheme, then that scheme would not be generally applicable, thus triggering strict scrutiny. *Blackhawk*, 381 F.3d at 211. That court then held that the statute before it was not generally applicable *because* it could just as easily grant a religious exemption without further undercutting the state's interests. *Id.*

In totality, the above cases stand for the proposition that any categorical exemption or any discriminatory objective effect of individualized exceptions triggers strict scrutiny. Further, skepticism of the general applicability of the scheme arises when the state's interests would be undermined by the secular exemptions carved out by the scheme. Montana's scheme for elections carves out not only broad categorical exemptions for political committees, but it also allows the Commissioner discretion in pursuing actions against certain statute violations. Those exemptions in the statutory scheme should trigger a strict scrutiny analysis of the general applicability prong.

Amicus does not believe that Montana's interest in informing voters is a compelling interest. However, even assuming *arguendo* that it is, this Court should be wary of Montana's failure to provide a religious exemption, similar to the court's suspicion of the medical exemption in *Fraternal Order of Police*, 170 F.3d at 365. Additionally, just as *Blackhawk's* existing secular exemptions cut against the state's asserted interest and required a religious exemption, 381 F.3d at 211, so here the existing secular exemptions cut against Montana's asserted interest, and a religious exemption must be granted. Even should this Court find that Montana has a legitimate interest in informing voters, that finding does not preclude a holding that the scheme is not generally applicable.

Additionally, the Commissioner's inconsistency in pursuing actions against other political committee violations is similar to the city's allowance of secular postings on the utility poles *Tenafly*, 309 F.3d at 167. This Court should similarly find that the objective effects of the Commissioner's discretionary decisions can lead to a finding that the scheme is not generally applicable. Since the Commissioner in the present case has discretion under the scheme, discriminatory intent against religion can be inferred from the objective effects of the scheme. The presence of the discretionary exemption under the scheme here is another indicator that it fails to be generally applicable.

Finally, allowing an exemption for a candidate and his treasurer to not

constitute a political committee inevitably undermines Montana's purpose to provide information to voters. Arguably, voters should be informed of the actions of any group that would form for a political purpose. Similarly, following the logic of *Blackhawk* and *Fraternal Order of Police*, a secular exemption for groups forming political committees or an exemption for certain local ballot issue committees is no more or no less likely to affect the community's knowledge of a ballot issue than would exempting the church. Both of those cases allowed limited secular exemptions and were not subject to discretionary decisions, but the court held that those schemes should also allow religious exemptions. *Blackhawk*, 381 F.3d at 211; *Fraternal Order of Police*, 170 F.3d at 365. Further, the Commissioner's discretion to file actions against political committee violators already keeps certain information from the voters, and the state interest in informing voters would not be undermined to a greater degree by granting a religious exemption as opposed to a secular exemption for similar reasons. Similarly, exempting a school district from political committee practices and from the filing requirements for incidental political committees even when supporting statewide ballot issues undercuts the state's interest; the interest would not be undercut any more or less for granting a religious exemption. Thus, following the categorical exemption holdings of the Third Circuit likewise leads to a conclusion that the statute is not generally applicable.

This Court should follow the reasoning and analysis of the Third Circuit and the District of Nebraska because the categorical and objective effect triggers most resemble the case at hand and *Lukumi's* intent. According to *Lukumi*, "[a]ll laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice." 508 U.S. at 542. While *Lukumi* addressed what amounted to a system of individualized exemptions, the Court stressed that categorical exemptions are of great concern. Further, the categorical exemption would apply to this case because the political committee statute does contain such exemptions. As discussed above, the political committee regulatory scheme is not generally applicable because it contains a categorical exemption without providing for a religious exemption.

II. GRANTING THE CHURCH AN EXEMPTION FITS WITHIN A WELL-ESTABLISHED HISTORIC PRACTICE IN THIS COUNTRY.

As the Framers of the Constitution recognized, we must be vigilant to insulate the church from improper encroachments by the state. While the case at hand raises Free Exercise concerns, this Court should also consider the interplay between both Religion Clauses of the First Amendment. Thus, it is very instructive to consider the Supreme Court majority and concurring opinions in *Walz v. Tax Commission*, 397 U.S. 664 (1970). The Court in that case upheld New York City's property tax exemption for churches under the Establishment Clause. The *Walz* majority opinion, 397 U.S. 664, and each of the concurring opinions, *id*.

at 680 (Brennan, J., concurring); *id*. at 694 (Harlan, J., concurring), emphasized the need to look to the original meaning of the Framers of the Bill of Rights and to historical practice as a guide to understanding the intent of the Religion Clauses of the First Amendment. A better understanding of the Framers' intent of the clauses will provide insight as to why this Court should exempt Canyon Ferry Road Baptist Church from the political committee regulations.

Chief Justice Burger wrote for the *Walz* majority that: "It is sufficient to note that for the men who wrote the Religion Clauses of the First Amendment the 'establishment' of a religion connoted sponsorship, financial support, and active involvement of the sovereign in religious activity." 397 U.S. 667. The *Walz* Court went on to explain that:

> The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.
>
> Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so. Adherence to the policy of neutrality that derives from an accommodation of the Establishment and Free Exercise Clauses has prevented the kind of involvement that would tip the balance toward government control of churches or governmental restraint on religious practice.

Id. at 669-70.

But Chief Justice Burger did not merely point out the general principle of seeking the original meaning of the First Amendment with the aid of history. Instead, he actually examined the particular history of property tax exemptions as a guide to the meaning of the Religion Clauses:

> Governments have not always been tolerant of religious activity, and hostility toward religion has taken many shapes and forms—economic, political, and sometimes harshly oppressive. Grants of exemption historically reflect the concern of authors of constitutions and statutes as to the latent dangers inherent in the imposition of property taxes; exemption constitutes a reasonable and balanced attempt to guard against those dangers. The limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause. To equate the two would be to deny a national heritage with roots in the Revolution itself.

Id. at 673 (citing *Sherbert* v. *Verner*, 374 U.S. 398, 423 (1963) (Harlan, J., dissenting). *See also*, *Braunfeld* v. *Brown*, 366 U.S. 599, 608 (1961); Paul G. Kauper, *The Constitutionality of Tax Exemptions for Religious Activities, in The Wall Between Church and State* 95 (D. Oaks ed. 1963)).

The same is true here. The dangers inherent in requiring the church to comply with the political committee regulatory scheme are even more pernicious than subjecting it to property taxes. Given the possibility of fines, the instant scheme is simultaneously "economic, political, and . . . harshly oppressive," *Walz*, 397 U.S. at 673.

The majority opinion continued with the historical analysis by drawing

attention to the numerous occasions in which Congress or the City Council of Washington D.C., acting under congressional authority, had granted income tax exemptions, property tax exemptions, and import duty exemptions for religious articles. *Id.* at 677-78. But Chief Justice Burger, writing for the majority, was not the only one to discuss such tax exemptions. Religion Clause literature is rife with numerous other examples of this sort of accommodation of religion, as well as more direct examples of "benevolent neutrality." These include import duty exemptions, property tax exemptions, income tax exemptions, congressional and penitentiary chaplains, indirect aid to church social agencies, and clergy privileges such as exemption from jury duty. *See, e.g.*, D.B. Robertson, *Should Churches Be Taxed?* 89-103 (1968). It is important to note that it was after discussing *all* of these practices that Chief Justice Burger penned the words: "Nothing in this national attitude toward religious tolerance and two centuries of uninterrupted freedom from taxation has given the remotest sign of leading to an established church or religion and on the contrary it has operated affirmatively to help guarantee the free exercise of all forms of religious belief." *Id*. at 678.

Under the approach of the *Walz* majority, tax exemption is just one of the many ways in which the government accommodates churches and their clergy. An exemption in this case would be another form of "benevolent neutrality toward churches." *Walz*, 397 U.S. at 678. Such an exemption would "guarantee the free

exercise of all forms of religious belief." *Id.* In granting an exemption for churches as political committees, this Court would be following a line of "reasonable and balanced" efforts to guard against government oppressions of the church, *id.* at 673, by restraining the government's involvement in religion.

Turning to Justice Brennan's concurring opinion in *Walz*, one sees the same insistence upon interpreting the First Amendment in a manner faithful to the understanding of the Founding Fathers. Tax exemptions in *Walz* were not representative of that which the Founders were trying to avoid. Quoting his own concurring opinion in *Abington School District v. Schempp*, 374 U.S. 203, 294 (1963), Justice Brennan wrote: "the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers." *Walz*, 397 U.S. at 680 (Brennan, J., concurring) (internal quotation omitted). Justice Brennan explained why the historical record is so important in interpreting the Religion Clauses, in particular the Establishment Clause: "On its face, the Establishment Clause is reasonably susceptible of different interpretations regarding the exemptions. This Court's interpretation of the clause, accordingly, is appropriately influenced by the reading it has received in the practices of the Nation." *Id*. at 681. However, an examination of the historical record is equally important in the context of a Free Exercise claim.

Turning to the New York exemption, Justice Brennan observed that "[t]he more longstanding and widely accepted a practice, the greater its impact upon constitutional interpretation." *Id.* While Justice Brennan's opinion focused almost exclusively on the states' uniform tax exemptions for churches, his analysis is relevant beyond the particular exemption at issue in *Walz*. In fact, many practices of a similar nature have developed as part of a larger continuum. And many of these practices went uncommented upon for decades and centuries simply because, in the words of Justice Brennan, they were not "among the evils that the Framers and Ratifiers . . . sought to avoid." *Id*. at 682. As Justice Brennan pointed out, "religious tax exemptions were not an issue in the debates preceding the petitions calling for the Bill of Rights, in the pertinent congressional debates, or in the debates preceding ratification by the States," *id*., despite being a wide-spread practice. Justice Brennan found it particularly significant that within ten years of ratification of the Bill of Rights, four states passed laws exempting church property from taxation. *Id*. Justice Brennan correctly saw the significance of these post-Bill of Rights enactments. They demonstrate that in the midst of the movement to dis-establish churches at the state level and avoid establishment at the federal level, exempting church property from taxation was seen as compatible with those goals.

In other words, exempting church property from taxation was neither an establishment of religion nor a goal of the anti- or dis-establishment movement.

Rather it was a legitimate accommodation of religion, worthy of re-enactment to make sure that "the baby wasn't thrown out with the bath water." So here, an exemption for churches under the scheme at hand should not be seen as promoting religion because of the value which the Founder's placed on religion. Similar to the purposes for granting tax exemptions to churches, granting the church an exemption from the political committee requirements would likewise serve "the encouragement of public service activities and of a pluralistic society." *Id.* at 692.

Justice Harlan also looked to the original meaning of the First Amendment as elucidated by history in his concurring opinion. While his concern was to note what he considered to be the proper present day standards by which to apply the Religion Clauses, he clearly stated that those standards must be based on the lessons of history. After declaring himself to be in "basic agreement" with the majority, he went on to state that "[w]hat is at stake as a matter of policy is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point." *Walz*, 397 U.S. at 694 (Harlan, J., concurring). That lesson should be equally applied to the instant political committee scheme as it is to the issue of tax exemption. History, as Justice Harlan noted, points to limiting government involvement in religion across the board.

Justice Harlan restated his point this way: "[H]istory cautions that political

fragmentation on sectarian lines must be guarded against." *Id*. at 695. For him, exempting church property from taxation "neither encourages nor discourages participation in religious life." *Id*. at 696. While this statement was made in a portion of the opinion dealing with modern First Amendment cases, it comports with history and common sense. No one has ever argued that Americans are more or less likely to be adherents of particular religions based upon whether states and localities do or do not tax church property. Similarly here, no one has ever argued that Americans are more or less likely to adhere to a particular religion based upon a church's political committee status.

Thus, exempting churches from the political committee scheme fits within a well-established historic practice in this country. Exemptions are simply an example of government "benevolent neutrality" toward religion. The Founding generation enacted several exemptions to religion thereby demonstrating that exemptions were not one of the evils the First Amendment Religion Clauses were intended to remedy. From that day until now, this country has had a rich tradition of enacting exemptions that benefit both religious organizations and religious people. Indeed, such exemptions are "expected and accepted as a matter of course." *Id.* at 698.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the district court.

Respectfully Submitted,
this 20th day of February, 2007

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Fed. R. App. P. 32(a)(7)(C), the attached Brief *Amicus Curiae* has been produced using 14 point Times New Roman font which is proportionately spaced. This brief contains 4,678 words as calculated by Microsoft Word 2003.

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CERTIFICATE OF SERVICE

I hereby certify that I have duly served the attached Brief *Amicus Curiae* of National Legal Foundation in the case of *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, No. 06-35883, on all required parties by depositing two paper copies and one electronic copy in the United States mail, first class postage, prepaid on February 20, 2007 addressed as follows:

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