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No. 24-0573

In the Supreme Court of Texas

WARREN KENNETH PAXTON, JR., IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL AND THE STATE OF TEXAS,
Appellants,

v.

ANNUNCIATION HOUSE, INC.,
Appellee.

On Direct Appeal from the
205th Judicial District Court, El Paso County

BRIEF FOR *AMICUS CURIAE* FIRST LIBERTY INSTITUTE IN SUPPORT OF APPELLEE

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INTEREST OF *AMICUS CURIAE*[*]

First Liberty Institute is the largest legal organization in the nation dedicated exclusively to defending religious liberty for all Americans. It provides pro bono legal representation to individuals and institutions of all faiths—Catholic, Islamic, Jewish, Native American, Protestant, the Falun Gong, and others. First Liberty regularly files *amicus curiae* briefs to offer courts insight about how a given decision will affect religious institutions, their missions, and their rights under state and federal law.

Several of the religious ministries First Liberty represents are based in Texas and entitled to the protections afforded them under the Texas Religious Freedom Restoration Act—as First Liberty has successfully argued to this Court before. *See*, *e.g.*, *Barr v. City of Sinton*, 295 S.W.3d 287, 308 (Tex. 2009). First Liberty respectfully submits this *amicus* brief to help ensure that religious organizations like Annunciation House are afforded the full protection of the State's laws.

[*] No counsel for a party authored this brief in whole or in part, or made a monetary contribution intended to fund its preparation or submission. No person other than *amicus curiae*, its members, or its counsel made any monetary contribution to the preparation or submission of this brief. *See* Tex. R. App. P. 11.

INTRODUCTION

Over a decade ago, this Court cautioned that the Texas Religious Freedom Restoration Act "requires the government to tread carefully and lightly when its actions substantially burden religious exercise." *Barr v. City of Sinton*, 295 S.W.3d 287, 289 (Tex. 2009). Shuttering a religious nonprofit like Annunciation House is hardly treading lightly.

The Act's plain text provides expansive protection for the free exercise of religion by limiting "*any* . . . exercise of governmental authority" that substantially burdens religiously motivated conduct. Tex. Civ. Prac. & Rem. Code §§ 110.002(a), 110.003(a) (emphasis added). The textual command "not" to "substantially burden a person's free exercise of religion" unless doing so advances a compelling government interest in the least restrictive means possible is entirely consistent with the Attorney General's authority under the Texas Constitution. *Id.* § 110.003(a)–(b). After all, section 22 of Article IV—the provision that authorizes the Attorney General to seek judicial forfeiture of corporate charters—curbs that power when "expressly directed by law." Tex. Const. art. IV, § 22.

Once clear that the Act applies, it's easy to see that the proposed *quo warranto* action in this case to "terminate" Annunciation House's religious services in Texas doesn't pass muster. It would impede Annunciation House's ability to keep Christ's command to practice charity—"the high road of the journey of faith, of the perfection of faith." *See* Pope Francis, *Angelus* (Aug. 23, 2020), https://t.ly/K3y6. And the State identifies no compelling interest *specific* to closing Annunciation House down, let alone justifying the death knell of termination as the least restrictive means to advance its interest in enforcing Texas law.

This Court should reaffirm the Legislature's decision to protect religious entities from undue government interference and hold that the Act bars the action here.

ARGUMENT

I. The Texas Religious Freedom Restoration Act applies to this *quo warranto* action.

By its plain text, the Act expansively "applies to *any* ordinance, rule, order, decision, practice, *or other exercise of governmental authority*" and "*each law* of this state" absent express direction otherwise. Tex. Civ. Prac. & Rem. Code § 110.002(a), (c) (emphases added). The State brought this proposed *quo warranto* petition under section 66.001 of the Texas

Civil Practice and Remedies Code to exercise its authority under section 402.023 of the Texas Government Code to seek a judicial forfeiture of Annunciation House's charter. CR2211, 2216. Because the Legislature didn't except these provisions from the Act's wide scope, it applies to this "exercise of governmental authority." Tex. Civ. Prac. & Rem. Code § 110.002(a).

The State doesn't dispute that straightforward conclusion. Instead, it argues that the Attorney General's authority to terminate Annunciation House's charter "springs from the *constitution*." State Br. 36–37 (referring to Article IV, section 22). But the text of the constitutional provision on which the State relies explicitly subjects the Attorney General's authority to legislative limits like those imposed by the Act. So while Article IV, section 22 requires the Attorney General to "seek a judicial forfeiture" of a charter when "sufficient cause exists," it also limits that mandate when "*otherwise expressly directed by law*." (Emphasis added).[2]

[2] Article IV, section 22 reads in full: "The Attorney General shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or

As "the power to make . . . laws" resides in the legislative branch, *Abbott v. Mexican Am. Legis. Caucus, Tex. House of Reps.*, 647 S.W.3d 681, 702 (Tex. 2022) (quoting *Walker v. Baker*, 196 S.W.2d 324, 328 (Tex. 1946)), the phrase "by law" in section 22 *at least* "refers to the power of the Legislature to provide by statute" for limitations on the Attorney General's forfeiture power, *White v. Sturns*, 651 S.W.2d 372, 375 (Tex. App.—Austin 1983, writ ref'd n.r.e.). This Court recently construed another constitutional provision with similar "by law" language as "leav[ing] substantial room for the legislature to" act. *In re Dallas Cnty.*, 697 S.W.3d 142, 156, 160 (Tex. 2024); *see also* State Br. 32 (conceding section 22 "preserves some amount of 'discretion' on the part of the Legislature to direct" the Attorney General's "authority").[3]

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wharfage not authorized by law. *He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law*, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law." (Emphasis added).

[3] *Accord El Paso Elec. Co. v. Tex. Dep't of Ins.*, 937 S.W.2d 432, 438 (Tex. 1996) (explaining that the Legislature can and has exercised "the authority delegated to it under Article IV, Section 22" to "expand[]" and "empower[] the Attorney General") (citing *Brady v. Brooks*, 89 S.W. 1052, 1055 (Tex. 1905)); *San Antonio & A.P. Ry. Co. v. Blair*, 196 S.W. 502, 504 (Tex. 1917) (noting "the Legislature has without challenge conferred other jurisdiction upon [certain] courts" under "section 6 of article 5" of the Texas Constitution, which "provides that 'said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law' "); *Fain v. State*, 986 S.W.2d 666, 672 (Tex. App.—Austin 1998, pet. ref'd) ("The plain meaning of ['except as otherwise provided by law' in article V, section 7] is that the legislature has the

So construing the phrase "by law" the same way here would break no new ground. Indeed, the Attorney General's authority has been subject to legislative limits at least since the 1845 Texas Constitution recognized his office.[4]

The 1845 Texas Constitution placed the Attorney General's authority within the Legislature's wheelhouse by providing that his duties were those "prescribed by law," without elaboration. Tex. Const. of 1845, art. IV, § 12; *see also id.* art. III, § 25, art. IX, § 2, & art. XIII, § 11 (mentioning the Attorney General only to bar him from holding legislative office, subject him to the power of the Senate to try him for

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power to draft laws that create exceptions to the county seat requirement."); *Dal-Briar Corp. v. Tri-Angl Equities, Inc.*, 22 S.W.3d 520, 522 (Tex. App.—El Paso 2000, no pet.) ("The legislature added ['except as otherwise provided by law' to article V, § 7] by constitutional amendment in 1949 in order 'to permit the legislature to confer greater flexibility in cases pending in districts embracing two or more counties.'"); *Sagredo v. Ball*, 689 S.W.3d 407, 411 (Tex. App.—Corpus Christi–Edinburg 2024, no pet.) (constitutional provision that allows for exceptions "as otherwise provided by law" includes legislative enactments).

[4] "The [1836] Constitution of the Republic of Texas did not create an office of attorney general . . . ." *Saldano v. State*, 70 S.W.3d 873, 878–81 (Tex. Crim. App. 2002) (charting the history of the Legislature and the Texas Constitution limiting the Attorney General's powers in criminal cases). Instead, the "first act of the First Congress created four other executive offices, including that of attorney general," and "described" his duties "only in general terms" like to "execute the instructions of the president." *Id.* at 878–79 & n.19 (internal quotation marks omitted).

impeachment, and place him in the line of succession).[5] And the 1869 Constitution similarly charged the Attorney General with representing the State before the Supreme Court and otherwise continued to leave the task of further defining his duties to the Legislature. Tex. Const. of 1869, art. IV, § 23 ("perform such other duties as may be required by law").

So it's unsurprising that in later vesting the Attorney General with the responsibility of seeking the forfeiture of corporate charters "whenever sufficient cause exists," the framers of the 1876 Constitution cabined that authority by permitting it only if not "otherwise expressly directed by law." Tex. Const. art. IV, § 22.[6] The Attorney General's

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[5] *See also* Tex. Const. of 1866, art. IV, § 13 ("An Attorney General shall be elected by the people, who shall reside at the Capital of the State during his continuance in office, whose duties shall be prescribed by law, who shall hold his office for four years, and who, in addition to perquisites, shall receive an annual salary of three thousand dollars, which shall not be increased or diminished during his term of office."); Tex. Const. of 1861, art. IV, § 12 ("The Governor shall nominate, and by and with the advice and consent of two-thirds of the Senate, appoint an Attorney-General, who shall hold his office for two years, and there shall be elected by joint vote of both Houses of the Legislature a District Attorney for each district, who shall hold his office for two years; and the duties, salaries and perquisites of the Attorney General and District Attorneys shall be prescribed by law.").

[6] *See* George D. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 352 (1974) ("The delegates to the 1875 Convention without much debate added lengthy instructions to the attorney general about corporate charters and illegal corporate actions or charges."); Journal of the Constitutional Convention of the State of Texas 295 (1875); Debates in the Texas Constitutional Convention of 1875 at 164 (Seth Shepard McKay ed., 1930) (statement of Richard Sansom) (remarking that "the Legislature would determine whether it was necessary for the Attorney-General to perform the duties"); *accord* Tex. Const. art. XII, § 4

forfeiture power has remained subject to this express "by law" limitation ever since.[7]

The Act is precisely the type of "law" that Article IV, section 22 contemplates. Like its federal counterpart, the Act provides "more protection" against government interference with the free exercise of religion unless the government has a compelling interest and there is no less-restrictive alternative. *Barr*, 295 S.W.3d at 295–96; *cf.* Tex. Civ. Prac. & Rem. Code § 110.0031 ("A government agency or public official may not issue an order that closes or has the effect of closing places of worship.").[8]

(repealed 1969) (requiring the Legislature to "provide a mode of procedure [for] the attorney general . . . to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares, or tolls, for the use of property devoted by the public, unless the same shall have been specially authorized by law").

[7] *Compare* Tex. Const. art. IV, § 22 ("He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law."), *with* Tex. Const. of 1876, art. IV, § 22 ("He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the governor and other executive officers, when requested by them, and perform such other duties as may be required by law.").

[8] When applying the Act, Texas courts consider cases construing its federal counterparts. *See Barr*, 295 S.W.3d at 296 ("Because TRFRA, RFRA, and RLUIPA were all enacted in response to *Smith* and were animated in their common history, language, and purpose by the same spirit of protection of religious freedom, we will consider decisions applying the federal statutes germane in applying the Texas statute.").

So because the Attorney General "can only act within the limits of the Texas Constitution and statutes," *Perry v. Del Rio*, 67 S.W.3d 85, 92 (Tex. 2001), his authority to seek judicial forfeiture of a corporate charter is limited by the Act to those circumstances that comport with it. That isn't the case here.

II. Terminating Annunciation House's charter violates the Act.

Because the Act applies, this *quo warranto* action cannot be maintained if it (A) substantially burdens Annunciation House's free exercise of religion, *and* (B) imposes that burden without a compelling government interest, *or* (C) fails to apply the least restrictive means to achieve that compelling interest. Tex. Civ. Prac. & Rem. Code § 110.003(a)–(b); *see also Barr*, 295 S.W.3d at 289.[9] This action to shut the doors of Annunciation House fails each prong of the test.

[9] Annunciation House properly asserted the Act's protections as a defense to the State's *quo warranto* counterclaim. Tex. Civ. Prac. & Rem. Code §§ 110.004, 110.005(a)(1)–(2). The trial court properly considered this defense in denying the State's petition for lack of "probable grounds." CR2931. *Cf. Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 656 (Tex. 2020) (holding that courts can dismiss claims under Rule 91a based on affirmative defenses).

A. This action substantially burdens Annunciation House's religious exercise.

To afford religious liberty ample protection, the Legislature expansively defined free exercise to include acts "substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code § 110.001(a)(1). The government imposes an impermissible burden on acts substantially motivated by sincere religious belief when it "truly pressures the adherent to significantly modify his religious behavior and significantly violate his religious beliefs." *Barr*, 295 S.W.3d at 301 (internal quotation marks omitted). Prohibiting Annunciation House from operating in Texas imposes just such an impermissible burden on its free exercise of religion.

As a threshold matter, this case implicates Annunciation House's free exercise of religion every bit as much as the halfway house in *Barr* did. Annunciation House's "spiritual calling is to provide shelter to the poor, namely refugees." Annunciation House Br. at 56; *accord* CR517–19. Its "'exercise of religion' *is* its provision of food, clothing, and shelter for those who have nowhere else to turn." Annunciation House Br. at 55.

Indeed, such acts of charitable service are "rooted in Catholic values," CR12, 517, 1306 (citing Pope Francis, *Evangelii Gaudium* (Nov.

24, 2013)), and are just as vital as "the Sacraments and the Word." Pope Benedict XVI, *Deus Caritas Est* ¶ 22 (Dec. 25, 2005), https://t.ly/Bxvi. Because Annunciation House expresses the Catholic faith through its service to immigrants, the Church lists it in "the Official Catholic Directory [of] organizations affiliated with the Catholic Diocese of El Paso." CR515. Indeed, the Catholic Diocese of El Paso donated a shelter for Annunciation House to pursue its mission to serve. Annunciation House Br. at 19.

Only by wading into ecclesiastical matters beyond its purview does the State try to disagree. The State contends (at 38) that terminating Annunciation House's charter wouldn't prevent any exercise of religion because Annunciation House "goes periods of 'nine months, ten months' without offering Catholic Mass," "does not offer confessions, baptisms, or communion," and "makes 'no' efforts to evangelize or convert its guests to any religion." (Emphasis omitted).

Not only are these allegations incomplete—*see* CR1308 ("Mass is generally celebrated weekly in at least one of Annunciation House's hospitality sites.")—they're also beside the point. The Act and longstanding precedent bar this kind of inquiry into matters of faith. The

Act defines free exercise as an act motivated by religious belief without reference to whether that act is "a central part or central requirement of the person's sincere religious belief." Tex. Civ. Prac. & Rem. Code § 110.001(a)(1). Both this Court and the U.S. Supreme Court have long held that it is "impossible" and "[in]appropriate" to question religious motivations and belief. *Barr*, 295 S.W.3d at 300; *accord Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 761 (2020) ("The Religion Clauses protect the right of churches and other religious institutions to decide matters 'of faith and doctrine' without government intrusion.") (quoting *Presbyterian Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 186 (2012)).[10]

Annunciation House averred that its mission flows from its religious belief that "service to the poorest of the poor" (including immigrants) is "the purest expression of Catholic and Christian faith." Annunciation House Br. at 56; *accord* CR517, 1306. So its acts of service are "easily" exercises of its religious beliefs. *Barr*, 295 S.W.3d at 301.[11]

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[10] *Accord In re Lubbock*, 624 S.W.3d 506, 514, 519 (Tex. 2021) ("[C]ourts are prohibited from risking judicial entanglement with ecclesiastical matters," and religious institutions have the "right to shape [their] own faith and mission.").

[11] The State's argument (at 38) that no right to free exercise is implicated because Annunciation House doesn't "evangelize or convert" shows why it is inappropriate for

Because Annunciation House's free-exercise rights are implicated, the question becomes whether this action to shut down Annunciation House altogether *substantially* burdens that exercise. This Court has had "no hesitation in concluding that" an action substantially burdens free exercise where, as "a practical matter," it would end the religious practice. *Id.* at 302. In *Barr*, for example, this Court held that a zoning ordinance that restricted a pastor's ministry by effectively closing a halfway house "substantially burdened" the exercise of religion. *Id.* This action to shut down Annunciation House would have the very same effect.

B. No sufficiently compelling interest supports terminating Annunciation House's charter.

That the "right to free exercise has been burdened, of course, does not mean that [there's] an absolute right to engage in the conduct"—the State may still be able to "regulate such conduct so long as it is in furtherance of a compelling interest." *Barr*, 295 S.W.3d at 305. That interest, however, cannot be "broadly formulated," but instead must be

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the State to wade into matters of faith. In the Catholic faith, acts of charity "cannot be used as a means of engaging in . . . proselytism"—indeed, those "who practise charity in the Church's name will never seek to impose the Church's faith upon others." *See* Brief of Wisconsin Catholic Conference as *Amicus Curiae* in Support of Petitioners at 4–5, *Cath. Charities Bureau, Inc. v. State of Wis. Lab. & Indus. Rev. Comm'n*, No. 24-154 (U.S. Sept. 12, 2024) (quoting *Deus Caritas Est* ¶¶ 31(c), 32).

tied to "the particular claimant" or "practice at issue." *Id.* at 306. The State's asserted interest (at 39–40) in uniformly enforcing its laws is the kind of broad interest untethered to the challenged practice that courts reject.

In *Barr*, for example, this Court rejected a city's attempt to assert general interests in "advancing safety, preventing nuisance, and protecting children" as support for its attempt to prohibit a halfway house from operating within city limits. 295 S.W.3d at 307 (explaining "no evidence" supported the city's claim as to the particular halfway house at issue).[12] The U.S. Supreme Court similarly refused to accept the government's "general interest in uniformity"—even in the criminal-law context—as sufficient to justify a substantial burden on religious exercise, *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 435, 439 (2006) (affirming preliminary injunction preventing application of Controlled Substances Act to a religious sect's use of a sacramental tea).

[12] *Accord Merced v. Kasson*, 577 F.3d 578, 592 (5th Cir. 2009) ("The government cannot rely upon general statements of its interests [like public health and animal treatment], but must tailor them to the specific issue at hand.").

In its brief explication of its compelling interest, the State does nothing to tie its interests to the "particular practice at issue" or explain why an "exemption[] could not be accommodated." *Id.* So the State hasn't demonstrated a compelling interest sufficiently tied to Annunciation House itself.

C. Shutting Annunciation House down isn't the least restrictive means to achieve the State's purported interest.

Even if the State could establish a compelling interest, shutting down Annunciation House is far from the least restrictive means for furthering an interest in uniform law enforcement. *See* Tex. Civ. Prac. & Rem. Code § 110.003(b)(2); *Barr*, 295 S.W.3d at 308.

Shutting down a religious ministry altogether is the most drastic means of enforcement there is—so it can rarely be considered the least restrictive. Indeed, in *Barr*, the Court explained that the city ordinance at issue "effectively prohibit[ed]" halfway houses from operating within city limits at all, and was worded so broadly that it would reach innocuous conduct like renting a room to a person recently jailed for driving without a valid license. 295 S.W.3d at 308. "Such restrictions," this Court held, "are certainly not the least restrictive means of insuring

that religiously operated halfway houses do not jeopardize children's safety and residents' wellbeing." *Id.*

The State asserts (at 40) that a *quo warranto* suit to shut down Annunciation House is the least restrictive means of achieving the State's interests because otherwise there is "no way" to "achieve its compelling interest" in "ensuring that corporations consistently violating Texas law . . . lose their privilege to do business here." But that argument conflates the government's *means* (a *quo warranto* proceeding to revoke a corporation's charter) with the government's *interest* (uniform law enforcement).

Once the State's circular logic is set aside, its interest boils down to the consistent enforcement of its laws. And the State has not "show[n] that" shutting down Annunciation House is "the least restrictive means" of ensuring Annunciation House complies with the law. *Barr*, 295 S.W.3d at 308; *see* Tex. Civ. Prac. & Rem. Code § 110.003(b) (placing burden on government to "demonstrate[] that the application of the burden" is "the least restrictive means").

In fact, the State now concedes (at 38) it could seek an injunction that "would not force Annunciation House's closure—only that it operate

consistently with the alien-harboring and stash-house laws." *See also State v. Sw. Bell Tel. Co.*, 526 S.W.2d 526, 531 (Tex. 1975). There can be no dispute that district and county attorneys could charge and fine Annunciation House or its agents for any violations.[13] So the State has other, narrower means of ensuring Annunciation House's compliance with the law before resorting to the death knell of forfeiting its charter to operate.

* * *

The Act safeguards religious liberty in Texas by protecting organizations like Annunciation House from undue government interference with their religious missions. Nothing in the Texas Constitution limits those protections here—to the contrary, the Constitution expressly contemplates constraints imposed by laws like the Act. In recognizing the Act's reach, this Court cautioned government officials to "tread carefully and lightly" when regulating religious entities. *Barr*, 295 S.W.3d at 289. The State's efforts to shutter

[13] That the Attorney General couldn't bring such criminal actions himself is of no consequence. The State certainly can through district and county attorneys—its constitutionally designated representatives. *Saldano*, 70 S.W.3d at 876.

Annunciation House violate that command. The State's request for relief should be denied.

PRAYER

For these reasons, the Court should affirm the trial court's judgment.

Dated: December 10, 2024

Respectfully submitted,

/s/ *Allyson N. Ho*

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CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), I certify that this brief contains 3,990 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ *Allyson N. Ho*
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