SUPREME COURT OF PENNSYLVANIA

No. 150 EAL 2025

FRED DIMEO AND NANCY DIMEO,

v.

PETER GROSS, D.O., G.S. PETER GROSS, D.O., P.C., PENNSYLVANIA HOSPITAL OF THE UNIVERSITY OF PA HEALTH SYSTEM, UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM, TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Petition of: Peter Gross, D.O., and
G.S. Peter Gross, D.O., P.C.

AMICUS BRIEF OF THE JEWISH COALITION FOR RELIGIOUS LIBERTY, COALITION FOR JEWISH VALUES, AND THE LOUIS D. BRANDEIS LAW SOCIETY IN SUPPORT OF PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal from the April 2, 2015 Order of the Superior Court at No. 280 EDA 2024, affirming the November 27, 2023 Order of the Philadelphia County Court of Common Pleas, Hon. Carmella G. Jacquinto, October Term 2019, No. 3447

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STATEMENT OF INTEREST[1]

The Jewish Coalition for Religious Liberty (JCRL) is an organization of Jewish rabbis, lawyers, and professionals who are committed to defending religious liberty. As members of a minority faith that adheres to practices that many may not understand, JCRL seeks to ensure that courts and other government entities accommodate and respect the sincerely held beliefs and practices of Jewish Americans, and are prohibited from evaluating the validity of those beliefs. JCRL is also interested in protecting all Americans' First Amendment Free Exercise rights.

Coalition for Jewish Values (CJV) is the largest Rabbinic public policy organization in America, representing over 2,500 traditional, Orthodox rabbis. CJV promotes religious liberty, human rights, and classical Jewish ideas in public policy, through education, mobilization, and advocacy, including

[1] No one other than the amici, their members, and their counsel paid for or authored this brief, in whole or in part. Pursuant to the restrictions of Rule 210 of the Code of Judicial Conduct, no Judicial Officer participated in either the decision or vote to file/join nor the content of any amicus brief.

amicus briefs defending freedom for religious institutions and individuals. CJV seeks to ensure that observant Jews are free to practice the tenets of their faith, which include observing holy days such as Yom Kippur according to Jewish law and tradition, without fear of government sanction or persecution.

The Louis D. Brandeis Law Society is a professional organization for Jewish lawyers, judges, and law students in Philadelphia and the surrounding region. Given the recent surge in anti-Semitism, the Society believes there is an urgent need for collective action and awareness. The Society is committed to countering anti-Semitism through education, advocacy, and leveraging legal expertise. This case has particular significance to the Society, named in honor of the late Justice Louis D. Brandeis (1856–1941), the first Jew to ever serve on the U.S. Supreme Court. To preserve the rule of law in a just society, courts must not disregard the religious practices of litigants, lawyers, or judges. This form of discrimination undermines the pursuit of justice.

SUMMARY OF ARGUMENT

No American should have to choose between his constitutional rights: whether to violate his religious beliefs or to attend his own trial before a jury of his peers. Yet that is the unconstitutional choice that the Philadelphia County Court of Common Pleas subjected Defendant-Appellant Dr. Peter Gross ("the Doctor") to when it scheduled his jury trial for Yom Kippur and refused his accommodation request to move the trial one day so that he and an observant Jewish juror could attend without violating their faith. This was an egregious violation of the Doctor's First Amendment rights.

Such discrimination could only happen to a religious minority, because courts do not schedule proceedings on Sundays or holidays observed by those of majoritarian faiths. Yet the court refused to accommodate the Doctor and juror's religious practices while making many other accommodations for secular reasons. This unequal treatment demonstrates the court's disregard of the significance of Yom Kippur, the holiest day of the year for Jews, and it triggers strict scrutiny under the Free Exercise Clause of the First Amendment. The superior court

doubled down on this error when it refused to reach the constitutional issue Dr. Gross raised and instead emphasized the discretion that trial courts have over continuances. Under U.S. Supreme Court precedent in *Fulton v. City of Philadelphia*, that discretion triggers strict scrutiny review when religious exercise is burdened.

Amici urge this Court to grant the petition for allowance of appeal. *Amici* seek to help this Court (1) understand the religious significance of Yom Kippur for observant Jews, and (2) apply Free Exercise precedent to address the constitutional violations that occurred when the trial court refused to accommodate the Doctor, and when the superior court blessed that refusal.

ARGUMENT

I. For observant Jews, including the Doctor, attending court during Yom Kippur would require intolerable violations of Jewish religious law.

The trial court's act of scheduling the Doctor's jury trial for Yom Kippur and its refusal to accommodate his request for a one-day continuance reveal its disregard for the religious significance of Yom Kippur. The superior court seems to share this disregard, characterizing the Super Bowl parade as a "major

civic event" that warranted closure of the court on short notice, Op.15 n.8, yet failing to grapple with the religious significance of Yom Kippur for Jews.

In Jewish law and tradition, Yom Kippur, translated as "Day of Atonement" or "Day of Forgiveness," is the holiest day of the year.[2] The Torah, the Five Books of Moses, describes it as a "holy convocation"[3] and "a day of complete rest."[4] Spiritually, it is the culmination of the "Ten Days of Repentance" that begin on Rosh HaShanah, the Jewish New Year:[5] "For on this day he shall provide atonement for you to cleanse you; from all your sins before HASHEM shall you be cleansed."[6] Many Jews believe that health and sickness, joy and despair, and even life and death are subject to divine judgments that are, in part, decided by one's actions on that day.

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[2] *Yom Kippur*, Torah.org, https://torah.org/yom-kippur/; *Yom Kippur 2024*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/4687/jewish/Yom-Kippur.htm.
[3] Leviticus 23:27 (trans. *The Stone Edition Tanach,* Mesorah Publications 1996).
[4] Leviticus 16:31.
[5] Rabbi Yehudah Prero, *The Ten Days of Repentance: Ideas for Inspiration*, Torah.org, https://torah.org/learning/yomtov-yomkippur-vol1no40/.
[6] Leviticus 16:30.

Most critically, Yom Kippur is marked by religious obligations and strict prohibitions precluding regular activities such as attending court proceedings.[7] All restrictions of Sabbath observance apply as well to Yom Kippur,[8] including prohibitions on car travel, use of electronic devices, participation in any commerce or business, and writing notes.[9] In addition, the day requires a set of five unique afflictions, including prohibiting eating, drinking, and bathing.[10]

Leviticus 23:26-32 emphasizes the gravity of these prohibitions, while underscoring that observances of Yom Kippur are an "eternal decree throughout your generations":

> HASHEM spoke to Moses, saying: But on the tenth day of this month it is the Day of Atonement; there

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[7] *See, e.g.*, Encyclopedia Judaica, *Practice and Procedure*, Jewish Virtual Library (2008), https://www.jewishvirtuallibrary.org/practice-procedure (ancient Jewish courts never held court on the Sabbath or holy days, due to prohibition on writing, and only in "exceptionally urgent cases" on Sabbath eves or holy days, "but a party summoned was not punished for failing to appear on such a day").

[8] Rabbi Yosef Karo, *Siman* 611 law 2, *Shulchan Aruch* (first published in 1565 CE).

[9] OU Staff, *The 39 Categories of Sabbath Work Prohibited by Law*, Orthodox Union, https://www.ou.org/holidays/the_thirty_nine_categories_of_sabbath_work_prohibited_by_law/.

[10] The Mishnah, *Tractate Yoma* Ch. 8 Mishnah 1 (written in third century CE, Mishnah is earliest compendium of Oral Law).

> shall be a holy convocation for you, and you shall afflict yourselves; you shall offer a fire-offering to HASHEM. You shall not do any work on this very day, for it is the Day of Atonement to provide you atonement before HASHEM, your God. For any soul who will not be afflicted on this very day will be cut off from its people. And any soul who will do any work on this very day, **I will destroy that soul from among its people.** You shall not do any work; it is an eternal decree throughout your generations in all your dwelling places. It is a day of complete rest for you and you shall afflict yourselves; on the ninth of the month in the evening—from evening to evening—you shall rest on your rest day.[11]

In keeping with these clear Torah commands, observant Jews have long commemorated Yom Kippur as the most significant day for repentance, prayer, and seeking forgiveness and reconciliation with God and others.[12]

Yet observing Yom Kippur is far more than what devout Jews abstain from—it also merits active devotion and significant time investment, requiring a full day of communal prayer services in the synagogue. Worshippers dress in white to symbolize sinless angelic beings, the burial shroud, and the

[11] Leviticus 23:26-32.
[12] *Id.*

physical and spiritual purity needed to worship God.[13] Observant Jewish men must attend five prayer services in person at their local synagogue, lasting 14–15 hours. The *Maariv* prayer service occurs on the evening before Yom Kippur, where worshippers renounce unintentional vows they may make during the year ahead.[14] *Shacharit* is "the morning prayer, which includes a reading from Leviticus followed by the Yizkor memorial service"; *Musaf* "includes a detailed account of the Yom Kippur Temple service"; *Minchah* includes the reading of the Book of Jonah; and *Neilah* is "the closing of the gates' service at sunset, followed by the *shofar* blast marking the end of the fast."[15] Given these lengthy, mandatory prayer services, the

[13] Shalom Goodman, *19 Yom Kippur Facts Every Jew Should Know*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/3784348/jewish/19-Yom-Kippur-Facts-Every-Jew-Should-Know.htm.
[14] Menachem Posner, *What is Kol Nidre?*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/5345/jewish/Kol-Nidre.htm.
[15] *What is Yom Kippur?*, Chabad.org, https://www.chabad.org/library/article_cdo/aid/177886/jewish/What-Is-Yom-Kippur.htm.

worshipper has only a one- or two-hour break; many spend the entire day at the synagogue.

Following the Torah reading, many Jews recite a prayer for the souls of deceased relatives. This prayer, said to honor or even beneficially impact the souls of the dead, attracts even many Jews who might not otherwise pray for their own benefit, but are willing to do so in hope of benefitting their parents in Heaven. These services also include a confessional prayer viewed as an important part of repentance—which many consider vital to obtaining a favorable divine judgment. These prayers bring many adults to tears in the synagogue, including *amici* on occasion.

For observant Jews like the Doctor, none of these actions or abstentions is a choice. Observant Jews throughout history and around the world are compelled by their beliefs and commandments to worship on Yom Kippur in these very specific ways. To violate its prohibitions would not only be sinful; it

carries the threat of spiritual excision from God and the Jewish Nation: "I will destroy that soul from among its people."[16]

If the Doctor chose to attend his jury trial rather than observe Yom Kippur, he would have violated his faith by: (1) traveling to the courthouse, (2) using electricity, (3) missing four of the five prayer services and 10-12 hours of prayer and worship with his community at his local synagogue, (4) engaging in work and business, (5) engaging in weekday activities, and potentially (6) writing notes. And all this without eating or drinking for 25 hours. With these actions, he would have thumbed his nose at God on the very day he was expected to devote to repentance and reconciliation. This would be unthinkable for any sincerely observant Jew—and it was for the Doctor, which is why he chose to miss his own jury trial rather than commit these egregious violations of his faith.

Thus, when the trial court scheduled the Doctor's jury trial on the holiest day of the Jewish calendar, and then refused his simple request of a one-day continuance, it required the Doctor

[16] Leviticus 23:30.

to engage in behavior that he feared would imperil both his life and his eternal soul in order to exercise his "constitutional right to be present" for his own hearing. *Saul v. Saul*, 1 Pa. D. & C.2d 486, 487 (Pa. Com. Pl. 1955). The only observant Jewish juror on the panel was similarly excluded from participation because the court dismissed her for cause during jury selection due to her religious exercise of observing Yom Kippur. Further, the court's suggestion that trial counsel disclose to the remaining jurors the reason for the Doctor's absence only further prejudiced his trial.

Therefore, this Court should grant the petition for allowance of appeal and remand for a new trial.

II. The court's refusal to accommodate the Doctor's faith violated the Free Exercise Clause.

The trial court's unwillingness to grant a simple scheduling accommodation to the Doctor after it scheduled his trial on Yom Kippur infringed upon his First Amendment rights. The superior court exacerbated this problem by emphasizing the trial court's discretion, which triggers strict scrutiny review under *Fulton v. City of Philadelphia*, 593 U.S. 522, 535 (2021).

The Free Exercise Clause broadly proscribes government interference with sincere religious exercise.[17] U.S. Const. amend. I. If the government interferes with religious practice in a way that is either not generally applicable or nonneutral, it must overcome strict scrutiny—the most difficult test in constitutional law.

Although courts routinely cite the neutral and generally applicable test from *Employment Division v. Smith*, 494 U.S. 872 (1990), the U.S. Supreme Court has clarified *Smith*'s holding in recent years. *See Church of Lukumi Babalu Aye v. City of Hialeah*,

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[17] The Pennsylvania Constitution is even more protective than the First Amendment, describing religious liberty as a positive "natural and indefeasible right;" "no human authority can, in any case whatever, control or interfere with the rights of conscience." Pa. Const. art. I, § 3; *see, e.g.*, *Judicial Inquiry and Review Bd. v. Fink*, 532 A.2d 358, 369 (Pa. 1987) ("Pennsylvania, more than any other sovereignty in history, traces its origins directly to the principle that the fundamental right of conscience is inviolate . . . . A citizen of this Commonwealth is free, of longstanding right, to practice a religion or not, as he sees fit, and whether he practices a religion is strictly and exclusively a private matter, not a matter for inquiry by the state.") (quoting *Commonwealth v. Eubanks*, 512 A.2d 619 (Pa. 1986)); *see also* Gary Gildin, *Coda to William Penn's Overture: Safeguarding Non-Mainstream Religious Liberty Under the Pennsylvania Constitution*, 4 U. PA. J. CONST. L. 81, 85 (2001) ("[T]he Pennsylvania Constitution safeguards individual religious liberty more expansively than the Free Exercise Clause.").

508 U.S. 520 (1993); *Masterpiece Cakeshop v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617 (2018); *Fulton*, 593 U.S. at 533-34; *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022). To the extent that the Doctor's First Amendment rights (as opposed to the more protective guarantees of the Pennsylvania Constitution) are at stake, his case is controlled by the updated test the Court has applied in these intervening decisions.

A. The court's discretion to grant scheduling accommodations triggers strict scrutiny under *Fulton v. City of Philadelphia*.

Under *Fulton*, a government policy or practice "is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." 593 U.S. at 533 (cleaned up). In *Fulton*, the unanimous Supreme Court held that Philadelphia's foster care contracting policy was not generally applicable, because the commissioner had discretion to grant exemptions—though she had never granted one. A "formal mechanism for granting exceptions renders a policy not generally applicable, regardless whether any exceptions have been given, because it 'invite[s]' the government to decide which

reasons for not complying with the policy are worthy of solicitude . . . at the Commissioner's 'sole discretion.'" *Id.* at 537 (quoting *Smith*, 494 U.S. at 884).

In his *Fulton* concurrence, Justice Alito addressed many reasons why the *Smith* framework has been harmful to religious Americans and does not align with the original meaning of the Free Exercise Clause. As an example of an earlier case denying religious exemptions, he cited *Philips's Executors v. Gratz*, 2 Pen. & W. 412 (Pa. 1831), where this Court "rejected the [Jewish] plaintiff's religious objection to trial on Saturday," "proclaim[ing] that a citizen's obligation to the State must always take precedence over any religious obligation." *Fulton*, 593 U.S. at 589 (Alito, J., concurring). That rationale ignores the Pennsylvania Constitution's protections as well as the United States' long history of religious exemptions on matters of conscience with greater impact on a citizen's obligations, such exemptions from oaths or from military conscription. *Id.* at 582–83. Granting the Doctor's petition would provide this Court an opportunity to reexamine *Philips v. Gratz* in light of the U.S. Supreme Court's jurisprudence.

Here, the trial court's refusal to accommodate the Doctor's request for a one-day continuance to observe the holiest day of the Jewish calendar runs afoul of the Free Exercise Clause under *Fulton*. Regardless of whether the court had granted scheduling accommodations for other reasons—and it did—it was "vested with broad discretion" to do so. Op.7. Indeed, the court was very willing to accommodate the schedules of expert witnesses in this very case, but not the Doctor. The court's last-minute closure for the Super Bowl parade demonstrates this discretion in practice. Op.15, n.8.

Few government decisionmakers have more absolute discretion than a judge setting trial dates, and the superior court recognized that. Op.7-9.[18] Yet it erred in citing that discretion to avoid the Doctor's constitutional concern. Both courts claimed a "lack of diligence" by the Doctor, arguing he could have

[18] Such discretion is not an automatic Free Exercise violation. But it requires reviewing courts to apply strict scrutiny, which means the government must demonstrate a compelling interest in denying an exception to that particular plaintiff and demonstrate that it has used the least restrictive means. *See Gonzales v. O Centro*, 546 U.S. 418, 431 (2006) (describing compelling interest standard) and *Holt v. Hobbs*, 574 U.S. 352, 364 (2015) (describing least restrictive means standard).

requested a continuance sooner. Op.11-12. Yet "diligence" is another subjective standard, based on the judge's "sole discretion." *Fulton*, 593 U.S. at 537. The alleged lack of diligence is a factor that can be considered when applying strict scrutiny, but it cannot be used to avoid scrutiny altogether. Here, the closest we come to a generally-applicable scheduling rule is that requests must be made one week before trial. Pa.R.Civ.P. 216(c). The Doctor followed that rule. Yet even that rule allows discretionary exceptions through the imposition of costs. The court's inherent discretion to determine which requests are "diligent" triggers strict scrutiny, because the judge may weigh which reasons are "worthy of solicitude." *Fulton*, 593 U.S. at 537. Thus, the trial court's scheduling policy cannot be generally applicable, and the superior court should have applied strict scrutiny to the court's refusal to accommodate the Doctor's faith.

B. The court's willingness to grant secular scheduling accommodations while denying the Doctor's religious accommodation triggers strict scrutiny under *Tandon v. Newsom.*

In *Fulton*, the Supreme Court explained that "[a] law also lacks general applicability if it prohibits religious conduct while

permitting secular conduct that undermines the government's asserted interests in a similar way." 593 U.S. at 534. In *Tandon v. Newsom*, the Court explained that the application of a government policy or practice cannot "treat *any* comparable secular activity more favorably than religious exercise." 593 U.S. 61, 62 (2021). Thus, in *Tandon*, when the government allowed hair salons, retail stores, movie theaters, and indoor restaurants to remain open during the COVID-19 pandemic, undermining its public safety rationale, its refusal to allow believers to gather for worship triggered strict scrutiny. *Id.* at 63–64 ("The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'") (citing *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

So too here. In fact, the court's stated reason for denying the Doctor's accommodation request was its desire to accommodate Plaintiffs' expert. At the pretrial status conference, the Doctor requested a continuance of one day because of Yom Kippur. Plaintiffs objected to his religious accommodation request for scheduling reasons, claiming one of their experts was only available to testify on Yom Kippur. The court

accommodated the expert's scheduling preference over the Doctor's religious exercise. Yet Plaintiffs' expert later testified that he often takes two days off work to testify at trial. And Defendants' experts had to testify remotely and ahead of schedule to accommodate the court. The court made an impermissible value judgment when it chose to accommodate the expert's schedule but not the Doctor's. This was an even clearer preference of secular activity over religious exercise than in *Tandon*, because, when faced with potentially conflicting requests, the court chose the secular over the religious. It would be as if, under COVID-19 restrictions, only one building were permitted to open its doors, and the court chose the hair salon over the synagogue. The court would have to justify that decision under strict scrutiny.

This unequal treatment is especially problematic because only the Doctor possessed the constitutional right to a jury trial by his peers, and the right under the Pennsylvania Constitution to attend his own trial. *See, e.g.*, *Saul*, 1 Pa. D. & C.2d at 487 (in civil trial, "the parties . . . have a constitutional right to be present"); *Cordes v. Assocs. of Internal Med.*, 87 A.3d 829, 863 n.1

(Pa. Super. Ct. 2014) (Donohue, J., concurring) (recognizing in medical malpractice context "the guarantee provided by both the United States and Pennsylvania constitutions of a trial 'by an impartial jury'").

The court made a similarly troubling value judgment when it chose to close on less than seven days' notice for the Super Bowl parade in both 2018 and 2025. The superior court explained this away as a "false equivalency," Op.15 n.8, but *Tandon* teaches otherwise: "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather." 593 U.S. at 62. Closing the entire court for the Super Bowl parade has a much larger impact on the court's interests in judicial economy, efficiency, and convenience for parties and witnesses than the Doctor's request for a one-day trial continuance. The difficulty of operating the courthouse during the parade would be part of the strict scrutiny analysis, but it could not excuse the court of having to engage in that analysis.

C. The trial court's actions cannot survive strict scrutiny.

Because the trial court's scheduling policy and decision were neither neutral nor generally applicable, strict scrutiny applies, which means the government bears the burden to show that its treatment of the Doctor was "'narrowly tailored' to serve a 'compelling' state interest." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 18 (2020) (citing *Lukumi*, 508 U.S. at 546). Strict scrutiny "is a workable test for striking sensible balances between religious liberty and competing prior governmental interests." *O Centro*, 546 U.S. at 436.

To identify a compelling interest, the government cannot rely on "broadly formulated interests," but must identify with "particularity" the harm that would result from granting an exemption specifically to the Doctor. *O Centro*, 546 U.S. at 431. Even in contexts with more significant interests at stake, such as prison safety, courts must still 'scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants,'" *id.*, and "look to the marginal interest in enforcing" the challenged government action in that particular context. *Holt*,

574 U.S. at 363 (citing *Burwell v. Hobby Lobby Stores, Inc.*, 572 U.S. 682, 726–27 (2014)).

Here, calendar control is not a compelling interest, nor did the trial court have a compelling interest in refusing to postpone the trial one day. While the court may have a general interest in controlling the schedule, it identified no "interests of the highest order," *Lukumi*, 508 U.S. at 546, that would justify denying the Doctor's continuance request, especially since the court accommodated the expert instead. Perhaps in other circumstances, the judge may have had a compelling interest, but here, accommodating one expert's travel plans at the expense of the Doctor's constitutional rights does not strike the balance that strict scrutiny requires. And the plaintiff's expert could have testified remotely, exactly what the defendant's experts already had to do. Thus, scheduling the trial for one day later could not cause any harm besides minor administrative inconvenience—which is negligible given the numerous scheduling accommodations that courts make every day for secular reasons.

Even if the government can prove a compelling interest, it must also show that denying the religious claimant's request is the least restrictive way of pursuing that interest. This standard is "exceptionally demanding, and it requires the government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party." *Holt*, 574 U.S. at 364–65 (cleaned up). In other words, "if a less restrictive means is available for the Government to achieve its goals, the Government must use it." *Holt*, 574 U.S. at 365 (citation omitted). In *Holt*, the Supreme Court held that even though maintaining prison security could be a compelling interest, denying a religious beard accommodation request was not the least restrictive means of furthering that interest. *Id.* at 368–69.

Here, the trial court's blanket denial was not the least restrictive means of pursuing its scheduling goals. Its refusal to accommodate was maximally restrictive to the Doctor—forcing him to choose between his right to attend his own jury trial and his religious obligations. The court could have taken many other measures, such as scheduling the trial to start the day after Yom

Kippur in the first place, granting a one-day continuance, or granting a longer continuance until a time when the plaintiff's expert was available. Even if the court insisted on refusing to accommodate the Doctor, it could have allowed trial counsel to place his objection on the record, instead of shutting down the request entirely.

Thus, the trial court's actions cannot survive strict scrutiny, and the superior court erred when it blessed those actions.

D. The court's hostility toward the Doctor's faith violates the Free Exercise Clause under *Lukumi* and *Masterpiece Cakeshop*.

Hostility from government decisionmakers is an automatic Free Exercise violation. When "'official expressions of hostility' to religion accompany laws or policies burdening religious exercise . . . we have 'set aside such policies without further inquiry.'" *Kennedy*, 597 U.S. at 525 n.1 (2022) (quoting *Masterpiece Cakeshop*, 584 U.S. at 634–35, 639–40) (state commissioner violated Free Exercise Clause when he demonstrated "a clear and impermissible hostility toward [his] sincere religious beliefs"). Such hostility need not be overt; the Free Exercise

Clause "forbids even subtle departures from neutrality." *Lukumi*, 508 U.S. at 534.

Here, the court's hostility was anything but subtle. The court refused to accommodate the Doctor's religious exercise, and then prevented his attorney from objecting to this ruling on the record. When trial commenced on Yom Kippur, with the Doctor and one juror absent because of their religious obligations, the Doctor's counsel attempted to put his objections on the record, but the judge refused, saying there would be "no discussion or argument" because the plaintiffs' expert was not available the next day. The Doctor's counsel was then faced with a Hobson's choice—either disclose his client's faith, opening him up to more anti-religious hostility, or leave jurors to think he was callous about the plaintiff's medical condition and did not care enough to attend trial (where the core issue was negligence). The court should not have placed the Doctor or his counsel in this position. The hostility he experienced is reflected in the high jury verdict of $3.5 million in *non-economic* damages, and the trial court's post-verdict increase to $4.04 million. This hostility,

furthered by the trial court, violated the Free Exercise Clause under *Lukumi*, *Masterpiece Cakeshop*, and *Kennedy*.

CONCLUSION

For these reasons, *amici* respectfully submit that the petition for allowance of appeal should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
WITH WORD COUNT

I certify that this document complies with the word limit of Rule 2135 of the Pennsylvania Rules of Appellate Procedure because, excluding the parts exempted by Pa.R.A.P. 2135(b), it contains 4,497 words.

/s/ *Daniel M. Blouin*
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May 2, 2025

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

/s/ *Daniel M. Blouin*
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May 2, 2025

CERTIFICATE OF SERVICE

I certify that I caused the foregoing document to be served by PACFile and/or first-class mail on these attorneys, which satisfies the requirements of Pa.R.A.P. 121(d):

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May 2, 2025