IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CHABAD OF SURFSIDE, INC., a Florida non-profit corporation; RABBI ZALMAN LIPSKAR; UNITED ORTHODOX SYNAGOGUES OF SURFSIDE, INC., a Florida non-profit corporation; and individual registered voters of the Town of Surfside: RABBI GIDEON MOSKOVITZ, RABBI GAVRIEL KOSKAS, RABBI DAVID ELMALEH, RABBI MOSHE MATZ, IRA STURM AND SHLOMO DANZINGER Plaintiffs, v. TOWN OF SURFSIDE, FLORIDA, a Florida municipal corporation; and THE TOWN OF SURFSIDE CANVASSING BOARD, Defendants.	Case No. 132026CA00637001GE01

AMENDED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
(*Amended as to Contents of Brief*)

The Christian Legal Society ("CLS") Center for Law & Religious Freedom (the "Center"), by counsel, files this Amended Motion and respectfully requests that the Court grant it leave to file an *Amended Amicus Curiae Brief* in support of the Plaintiffs in the above titled case. The Center states the following in support thereof.

1. Interest. On April 1, 2026, the Center became aware of this pending case. CLS has an interest in arguing for the Plaintiffs against the unconstitutional conduct of the Defendants, which CLS avers substantially burdens the religious exercise of the Plaintiffs. A copy of the proposed Amended Amicus Curiae Brief is attached hereto as Exhibit A.

2. **Issues.** CLS is a national organization of Christian attorneys. The Center is CLS's advocacy arm. For decades, the Center has defended religious freedom for all faiths in all three branches of government, both at the federal and state levels.

3. **Assistance by CLS.** The purpose of an *amicus curiae* brief is "to assist the court in resolving cases of general public interest or and in resolving difficult issues that have an impact beyond the parties to the litigation." *Liberty Counsel v. Florida Bd. of Governors*, 12 So. 3d 183, 186 n.9 (Fla. 2009).

4. **Consent of the Parties.** On April 1, 2026, the Center inquired with Plaintiffs' Counsel as to whether they have any objection to the Center submitting a Brief of *Amicus Curiae* to the Court in support of the Petition filed by the Plaintiffs. Plaintiffs have no objection. As of this filing, no counsel has entered an appearance for Defendants.

WHEREFORE, Movant Christian Legal Society respectfully requests leave to file the attached amicus curiae brief in support of Plaintiffs.

Respectfully Submitted,

CHRISTIAN LEGAL SOCIETY, CENTER FOR LAW & RELIGIOUS FREEDOM, *Amicus Curiae Brief*

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CERTIFICATE OF SERVICE

Counsel certifies that on April 3, 2026, this document has been furnished to: Robert David Garson at rg@gs2law.com, Shirley Grinstein at smg@gs2law.com, Joshua Kligler at jkligler@kliglerlaw.com, Mario A. Diaz at mdiaz@townofsurfsidefl.gov, Sandra N. McCready at smccready@townofsurfsidefl.gov, and Alina Garcia at alina.garcia@votemiamidade.gov by filing the document with the Court's electronic filing system.

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AMENDED AMICUS CURIAE BRIEF OF CHRISTIAN LEGAL SOCIETY IN SUPPORT OF PETITION

Identity and Expertise of Amicus Curiae:

1. For a half century, the Christian Legal Society ("CLS") Center for Law & Religious Freedom (the "Center") has defended religious freedom for all faiths in all three branches of government, federal and state. Center attorney Steve McFarland assisted with the argument in this brief. Mr. McFarland co-chaired the lobbying committee of the large coalition that successfully drafted and lobbied for the passage of the Religious Freedom Restoration Act ("RFRA") of 1993. CLS has filed as *amicus curiae* in virtually every religious freedom case before the Supreme Court of the United States since the early 1980s.

2. If it would assist this Court, CLS moves for leave to address the free exercise claim in the Petition, section I B, pp. 16-18. Of course, CLS concurs that relief should be granted under

EXHIBIT A

Florida's RFRA, which triggers the same strict scrutiny as discussed below. So, if the Court agrees with the latter, then the federal constitutional arguments (free exercise and equal protection) need not be reached.

Summary of Legal Argument

1. Strict scrutiny is triggered here by a substantial burden on Plaintiffs' free exercise of religion, namely the scheduling of an election when much of the electorate would be forced to choose between their religious observance and their fundamental right to vote.

2. The U.S. Supreme Court applies the strictest legal scrutiny (the compelling government interest test):

   a. to laws that are not "generally applicable" because they delegate power to the government to subjectively choose who it will accommodate and when, as the Town exercised here to the prejudice of Plaintiffs' fundamental rights; and/or

   b. to laws that, though facially neutral, were spawned by animus, as in this case; and/or

   c. to laws that burden a hybrid of constitutional rights (here, First Amendment Free Exercise Clause and the Fourteenth Amendment right to vote).

3. Defendants cannot satisfy any prong of the strict scrutiny test.

Legal Argument

A. The Scheduling of an Election on Plaintiffs' Holy Day Substantially Burdens Their Free Exercise of Religion.

The definition of a "substantial burden on religion" has been indelible for decades:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his

> beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas v. Review Bd., 450 US 707, 717-18 (1981) (the free exercise of a Jehovah's Witness was burdened when he was denied unemployment compensation after employer forced him to either violate his religious beliefs or quit his job).

Here, the Town, whether by oversight or worse, is forcing thousands of Jews to choose between their religious observance of God's command to honor Passover or their right to vote. That certainly meets the standard for finding a substantial burden on religion: by scheduling an election during a series of holy days, Defendants have put "substantial pressure on an adherent to violate his beliefs." *Id*. at 718. There can be no good faith debate that Defendants' scheduling of an election during Passover, as a matter of law, imposes a "substantial burden" on Plaintiffs' free exercise rights.

B. The Government Action That Burdens Free Exercise Is Improper for Three Reasons

1. It is not generally applicable, as the Town has discretion to reschedule the election.

Similarly to the "burden" question, it is patently indisputable that Defendants have the power and discretion to burden (and potentially disenfranchise) or not burden citizens when Defendants scheduled the election: "The Town Charter's runoff timing provision is not an immovable mandate; it is a scheduling mechanism that has been adjusted in analogous circumstances." Pet.¶ 53, p. 18.

In determining general applicability, the Supreme Court of the U.S. focuses on whether the government has discretion to make exceptions that would either leave or relieve hardship on a

religious claimant. *See*, *e.g.*, *Fulton v. City of Philadelphia*, 593 U.S. 522, 536 (2021) (explaining that "the inclusion of a formal system of entirely discretionary exceptions . . . renders [a law or contractual requirement] not generally applicable[]" under the First Amendment). Defendants have the power and precedent of discretion to set a later date for the Town's elections. Thus, their action, and the law empowering it, is not generally applicable, as a matter of law. *See id*.

2. It is not neutral, as evidenced by the mayor's public letter of March 21, 2026.

It is enough to trigger strict scrutiny that Defendant's action and the law empowering it is not generally applicable. In the alternative, the burdening government action is not neutral either. Even if language is neutral, a state actor's direct involvement in a way that is "inconsistent with the State's obligation of religious neutrality" means that evidenced hostility triggers strict scrutiny. *Masterpiece Cakeshop v. Colorado Civil Rts. Comm'n*, 584 U.S. 617, 625 (2018).

As described in the Petition, unfortunately there is written and publicly disseminated evidence that Defendants' action was not taken with neutrality towards religion. The mayor, with apparent authority to speak for the Town and Defendants, uses divisive tropes to disparage—on the basis of their religion—those voters who he thinks will not support his preferred candidate. *See* Pet., text at note 19; Exhibit 2 (that supporters of one of the Plaintiffs are "frightened and misled" and "vote in lockstep."). Not only does the letter blatantly disparage Jewish voters as a group, it then seeks to muster non-Jews to seize the moment and turn out the vote when observant Jews cannot. The Supreme Court's decision in *Masterpiece Cakeshop* amply guides this Court in what to do in the face of such animus: apply strict scrutiny. *See* Pet. ¶ 30.

3. It involves "the Free Exercise Clause in conjunction with other constitutional protections[]" and thus strict scrutiny applies even if the action were both neutral and generally applicable.

In distinguishing its many prior decisions in which it applied strict scrutiny to free exercise claims, the Supreme Court in *Employment Division v. Smith* carved out an additional genre of claims entitled to strict scrutiny:

> The only decisions in which [the Court has] held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, . . . [citing as examples freedom of speech, freedom of the press, and the right of parents to direct the welfare of their children].

494 U.S. 872, 881 (1990). Here, the Petition invokes not only the constitutional protection of the Free Exercise Clause, but also the constitutional right to vote under the Fourteenth Amendment's Equal Protection Clause. The Equal Protection Clause prevents putting discriminatory barriers in place to voting, which is seen as a fundamental political right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966). The Supreme Court has said there must be "opportunity for equal participation by all voters." *Id.* at 670. These two independently viable constitutional claims, considered together, should be considered to "work in tandem" to create a particularly strong and clear constitutional claim that merits strict scrutiny. *See also Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022) (holding that the Free Exercise and Free Speech Clauses in the First Amendment "provide[] overlapping protection").

So even if Defendants' scheduling action were both neutral and generally applicable (which CLS respectfully argues is neither), *Smith* still bars that action. *See Smith*, 494 U.S. at 881.

C. Where the Government Action Is Subject to Strict Scrutiny, Defendants Have the Burden of Proving That They Have "an Interest of the Highest Order" That Cannot be Furthered by any Means Less Infringing on a Religious Claimant's Free Exercise, Equal Protection and Voting Rights.

Government very rarely has been found to satisfy strict scrutiny, *Chiles v. Salazar*, 607 U.S. __, slip op. at 8 (2026), and this case certainly should not lie among those exceptions. Just last year, the Supreme Court reaffirmed that the government must justify substantially burdening free exercise only with proof of a compelling interest. *Mahmoud v. Taylor*, 606 U.S. 522, 565 (2025). And generalities (like an interest in managing elections) do not suffice. *Fulton*, 593 U.S. at 542 (explaining that "speculation is insufficient to satisfy strict scrutiny."). Rather, Defendants here must prove that they have an interest "of the highest order" in denying an accommodation for the constitutional rights of a quarter of the electorate. *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). The Town may have scheduled the election without animus by mere oversight, but the date chosen effectively disenfranchises Plaintiffs and their community. If not even the state interest in compulsory education for children was sufficiently compelling, *see id*., Defendants certainly have no interest, let alone a compelling one, sufficient to continue with the April 7, 2026, election.

D. Defendants Can Exercise Their Authority to Schedule Elections in a Manner Less Restrictive of Plaintiffs' Constitutional Rights—Indeed, That Would *Eliminate* the Present and Imminent Burden on Them.

Even if Defendants were to prove an interest—like national defense or preventing illicit drug importation—in denying Plaintiffs a week's delay in the election, they cannot carry the other half of strict scrutiny, set forth again just nine months ago by the Supreme Court in *Mahmoud*: "[t]o survive strict scrutiny, a government must demonstrate that its policy advances interests of

the highest order and is narrowly tailored to achieve those interests." 606 U.S. at 565 (citing *Fulton*, 593 U.S. at 541) (internal citation omitted).

Here, Defendants cannot prove that setting an election for a religious holiday is narrowly tailored to achieve its interest in having a runoff election in which all eligible voters can vote. Indeed, far from tailored to achieve that interest, it will have the effect of frustrating it, when up to 25% of the voters cannot vote on April 7.

With due respect for the Court, the outgoing Mayor and the Defendants, this case should not have been necessary. Whether oversight or some other reason resulted in this election being scheduled during Passover, this Court has the power to correct this wrong by granting the Plaintiffs' Petition.

Respectfully Submitted,

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