No. 10-0863

IN THE SUPREME COURT OF TEXAS

AUSTIN GURDWARA SAHIB, INC d/b/a
AUSTIN GURDWARA SAHIB,
Defendant-Appellee,

v.

JOHN A. BOLLIER and LESLIE J. BOLLIER
Plaintiffs-Appellants.

On Petition for Review From the
Third Court of Appeals at Austin

AMICUS CURIAE BRIEF OF UNITED SIKHS IN SUPPORT OF PETITION FOR REVIEW

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TO THE HONORABLE SUPREME COURT OF TEXAS:

UNITED SIKHS respectfully submits this brief in support of the Petition for Review filed by Austin Gurdwara Sahib, INC. d/b/a Austin Gurdwara Sahib ("AGS").

IDENTITY OF AMICUS CURIAE AND SOURCE OF FEE

Pursuant to Rule 11 of the Texas Rules of Appellate Procedure, the following *amicus curiae* brief is presented on behalf of UNITED SIKHS in support of the Petition for Review filed by AGS. UNITED SIKHS is a U.N. affiliated non-partisan, non-profit, international NGO with 11 Chapters globally. UNITED SIKHS has four major thematic areas: (1) International Civil and Human Rights Advocacy (ICHRA); (2) Humanitarian Aid/ Disaster Relief; (3) Education; and (4) Health Care. The source of any fee paid for the preparation of this brief has been borne by UNITED SIKHS. Copies of this brief have been served on all attorneys of record as reflected in the Certificate of Service.

STATEMENT OF INTEREST OF *AMIUCS CURIAE*

UNITED SIKHS works tirelessly to engage, empower, and safeguard the rights of minority communities worldwide. Protecting religious freedoms is a cornerstone of UNITED SIKHS' mandate. Therefore, UNITED SIKHS feels compelled to voice their concern on behalf of the Sikh community because the Appellate Court's overly expansive injunctive remedy will result in the removal of a Gurdwara, a Sikh house of worship, and thereby adversely impact the religious freedoms of non-parties. Balancing of equities should not lead to punitive remedies, especially, when the result reaches beyond the parties in dispute and implicates an important public interest, the right to religious assembly and worship.

Unfortunately, our society is currently mired by racial/ religious animus towards Muslims/ Arabs (whom Sikhs have often been mistaken for). It is imperative that the law step in to blunt the unlawful interference of religious minorities' ability to construct houses of worship. We are deeply concerned that the ability to practice one's faith is seriously impeded by those who wield racial/ religious animus as a weapon to discourage the assembly of religious adherents whose religious identity does not comport with their notions of being "American."

ARGUMENT

I. The Appellate Court's Judgment Granting a Permanent Injunction is Overly Expansive (Disproportionate) and Threatens an Important Public Interest if Enforced: The Impingement of Non-Parties Right to Religious Assembly/ Practice.

In laying out general principles that underpin the granting of an injunction, the U.S. Supreme Court in *Salazar* asserted that courts "should be particularly cautious when contemplating relief [injunction] that implicates public interests." *Salazar v. Buono*, 130 S. Ct. 1803, 1816 (2010). Recognizing the discretionary authority of courts in meting out judgments based on equity, the Court relied on well settled authority which states: "where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling." *Id.* at 1816. In the instant case, an important public interest is at stake, allowing non-parties (Sikh Community of Austin) to the litigation to freely assemble and practice their faith in the company of the *sangat* (congregation).

Moreover, the impact of the Appellate Court's overly expansive injunction, which would require a permanent injunction "ordering removal of the New Temple," never considers the impact on non-parties (or third parties). *Bollier v. Austin Gurdwara Sahib*,

Inc. d/b/a, 2010 WL 2698765, *9 (Tex.App.—Austin July 9, 2010, pet. filed) (mem. op.). Therefore, if this Court finds that an injunction is warranted, the scope of the injunction should be narrowly tailored to bring the New Temple ("Gurdwara") into compliance, which would mitigate the disproportionate remedy offered by the Appellate Court and safeguard the rights of non-parties who rely on the Gurdwara as a place of worship. *Monsanto Co. v. Geertson Seed Farms*, 130 S.Ct. 2743, 2748 (2010) ("an injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course . . . [if] a less drastic remedy [is] sufficient to redress their injury, no recourse to the . . . extraordinary relief of an injunction [is] warranted.").

A. Background

1. An Essential and Fundamental Element of Religious Practice within the Sikh Faith is the Ability to Assemble and Worship in the Company of the Congregation.

Sikhism is the fifth largest religion in the world, and it originated in Punjab, India in the 15th century. Followers of Sikhism are commonly referred to as "Sikhs," which means disciple or student. Sikhs are recognized by their distinctively wrapped turban and uncut hair. Sikhism is an egalitarian faith that recognizes One Supreme God. The major tenants of Sikhism's are: religious, racial, class, and gender equality, sharing one's labor with others, making an honest living, selfless service to humanity, and remembering God ("Waheguru") through prayer and meditation. The Sikh house of worship is called a Gurdwara, which has been referred to as the New Temple in this case.

A Gurdwara, literally translated as gateway to the Guru, is fundamental to a Sikh's

ability to spiritually/ religiously progress, since being in the company of the *sadh sangat* (holy gathering of the congregation) is paramount in seeking to understand the role of faith in a Sikhs daily life. It is in the company of the *sangat* that a Sikh gains spiritual training through the recitation of *nitnem* (daily prayers) and the listening of *kirtan* (religious hymns).[1] This is why the Gurdwara stands at the fulcrum of the Sikh faith and the establishment of a Gurdwara is often the first major community endeavor undertaken when Sikhs begin to lay down roots in a community.

Sikh Gurdwaras are generally open daily, or at a minimum, weekly to the public and the importance of a permanent structure to accommodate the needs of the Sikh community in Austin cannot be understated, specifically, because the next closest Gurdwara is approximately 100 miles away in San Antonio. In a recent Amicus filed in the 7th Circuit and joined by UNITED SIKHS, the *amici* argue that for certain faiths, and it is similarly true for Sikhism, "it is impossible to decouple the physical structure from its religious significance." Brief for John Doe, et. al. as *Amici Curiae* Supporting Appellants, *Doe v. Elmbrook School District*, 2010 WL 2854287 (2010) (slip copy) (No. 102922). Thus, if entry through the door of a Gurdwara "constitutes a religious act which signifies entry into the sacred," then a denial, or even worse its destruction, through an injunction requiring its removal, would interfere with one's ability to assemble and practice one's faith. *Id.*

[1] The Sikh Code of Conduct (*Rehat Maryada*), provides Sikhs with binding edicts in which to discipline their lives. The *Rehat Maryada* has a section devoted specifically to "joining the congregation for understanding of and reflection of Gurbani" (Chapter IV). Shiromani Gurdwara Parbandhak Committee (SGPC), *Rehat Maryada* (Sikh Code of Conduct), C. IV, Art. V (a)), http://www.sgpc.net/rehat_maryada/section_three_chap_four.htm.

If the Appellate Court's judgment is affirmed, many of the congregants will be left without a permanent house of worship and the ability for new congregants to join will be permanently curtailed.

B. Protecting the Religious Rights of Assembly and Free Exercise of Non-Parties who Attend or May Attend AGS is a Vital Public Interest.

In the context of first amendment protections, Justice Gonzales of this Court warned that ignoring the impact of an injunction on non-parties "'screens reality' and is inconsistent with the First Amendment jurisprudence." *Operation Rescue-National v. Planned Parenthood of Houston*, 975 S.W.2d 546, 577 (Tex. 1998) (Gonzalez, J., concurring) (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 924 (1982)). Justice Gonzalez further instructed that "[w]e must "not hesitate[ ] to take into account possible applications of the [injunction] in other factual contexts besides that at bar." *Id.* (citing *NAACP v. Button*, 371 U.S. 415 (1963)). Therefore, we implore this Court to address the severe limitations on the religious freedoms of the Sikh community if the Appellate Court's excessively broad injunctive remedy is allowed to stand.

The concluding statement from the Appellate Court's judgment states that this "holding should not be construed to bar or in any other way affect the continued holding of services on the AGS lot in the existing Mobile Home Temple." *Bollier*, 2010 WL 26987652 at *9. Yet, the impact of demolishing the Gurdwara will undoubtedly affect the continuing holding of services and impede needs of the Sikh community in Austin, Texas.

1. The Impact of an Overly Expansive Injunctive Remedy on Non-Parties and the Detrimental Effect on the Public Interest.

This case provides compelling reasons for reversing the overly broad injunctive

relief ordered by the Appellate Court because a significant public interest would be prejudiced, the ability for a religious group to congregate and worship together as mandated by their faith. *City of Harrisonville, Mo. v. W. S. Dickey Clay Mfg. Co.*, 289 U.S. 334, 338 (1933) ("Where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling.") (citing *Osborne v. Missouri Pacific Railway*, 147 U.S. 248, 258, 259; *New York City v. Pine*, 185 U.S. 93, 97; *Cubbins v. Mississippi River Commission* (D.C.) 204 F. 299, 307).

The issuance of an injunction should be done with the utmost sensitivity to balancing the equities, especially when an injunction has the potential to harm non-parties and the public interest. *Triantaphyllis v. Gamble*, 93 S.W.3d 398, 401-02 (Tex.App.—Houston [14 Dist.] 2002) ("a court determining the appropriateness of a permanent injunction should balance the competing equities, including the public interest") **(**citing *In re Gamble*, 71 S.W.3d at 317 (citing *Storey v. Central Hide & Rendering Co.*, 148 Tex. 509, 226 S.W.2d 615, 618-19 (1950)); *see also Hitt v. Mabry*, 687 S.W.2d 791, 795 (Tex.App.—San Antonio 1985, no writ); *Davies v. Unauthorized Practice Committee of State Bar*, 431 S.W.2d 590, 595 (Tex.Civ.App.—Tyler 1968, writ ref'd n.r.e.)**.** An injunction that fails to take these competing interests into consideration cannot be said to grant equitable relief, instead, it has moved into the realm of punitive measures.

The Sikh congregation in Austin has regularly attended religious services in a mobile home on the AGS' property since 2003. The Sikh congregation ultimately built a more secure and safer structure to continue their religious services. Although the trial

court found no violation of the structure deed restriction with the new Gurdwara, the Appellate Court has endorsed an injunction that seeks to remove the completed Gurdwara. The impact of this injunction on non-parties (the Sikh congregation) will be immediate. The Gurdwara, if it is returned to its pre-development stage, would likely have a preclusive effect on the Sikh community's participation in religious functions (i.e. worship, marriage and death ceremonies etc.). Therefore, not only would AGS be affected, but such an injunction would halt the future participation by the Sikh community of Austin. An injunction that would directly impact non-parties and impedes the religious freedom of the Sikh congregation, implicates an important public interest, the ability for non-parties to religiously assemble and practice their faith.[2]

2. Injunctions, as Equitable Remedies, Should be Narrowly Tailored and Avoid Creating a Disproportionate Remedy.

The Appellate Court has cited authority which found that "Texas courts have declined to balance the equities in favor of a party who incurs building costs after receiving . . . notice of a deed restriction prohibiting construction." *Bollier*, 2010 WL 26987652, *8. Nonetheless, as the Petition for Review has cited, those same Texas Courts favored narrowly tailoring the remedy to bring the violating structure into compliance.

[2] Sister jurisdictions have similarly found that an injunction should not be performed "where the public interest would be prejudiced" and third parties (non-parties) would be affected. *McRae v. Lois Grunow Memorial Clinic*, 14 P.2d 478, 505 (Ariz. 1932) (citing *Conger v. New York*, W. S. & B. R. Co., 23 N. E. 983; *Pauley v. Hadlock*, 188 P. 263; *see also Cubbins v. Mississippi River Comm'n*, 204 F. 299, 307 (D.C. Ark. 1913) ("If it appears that the granting of the injunction . . . would inflict such great damage on . . . the **public** . . . an injunction must be refused.") (citing *New York City v. Pine*, supra; *Kansas v. Colorado*, 206 U.S. 46, 117; *McCarthy v. Bunker Hill*, etc., Co., 164 F. 927; *Shubert v. Woodward*, 167 F. 47, 54; *In re Arkansas Railroad Rates* (C.C.) 168 F. 720, 722; *Kadel v. Dayton Superior Corp.*, 731 N.E. 2d 1244, 1248-49 ("In deciding whether to grant injunction, a court must look at . . . (3) whether **third parties** will be unjustifiably harmed if the injunction is granted, and (4) whether the **public interest** will be served [or harmed] by the injunction.")).

Petition for Review at 11. Additionally, the Supreme Court in *Monsanto* was similarly concerned about limiting the scope of injunctions and held that if a "less drastic remedy [is] sufficient to redress the[ ] injury, no recourse to the . . . extraordinary relief of an injunction [is] warranted." *Monsanto*, 130 S.Ct. at 2748.

Although the Appellate Court indicated that the balancing of equities did not favor AGS, trial courts have nonetheless been resistant to completely removing an offending structure; rather, courts have narrowly tailored steps to bring the structure into compliance. *Winfield v. LaMoyne*, 1995 WL 634161 (Tex. App.–Dallas, 1995, writ dism'd) (mem. op.). In cases where there has been actual notice and assumption of risk on part of the party who the court is seeking to enjoin, "the scope of the injunction was limited to those changes necessary to make the structure comply with the deed restrictions." Petition for Review at 11.

Here, compliance with the deed restriction does not require complete removal of the new Gurdwara. By the Appellate Court's own admission, they found evidence at Trial that four violations of the Structure Restrictions existed. *Bollier*, 2010 WL 26987652 at *2. Thus, even if those four violations were factually correct (and AGS represents that they are not), AGS could bring the Gurdwara into compliance by: (1) erecting interior walls to make permanent bedrooms; (2) removing the signs designating the two restrooms as men's and women's; (3) removing the separate utility sink; and (4) removing the grease trap. Petition for Review at 12 fn. 7. Nevertheless, if AGS is unwilling or unable to bring the Gurdwara into compliance, only then have courts found an injunction that seeks to wholly remove a structure appropriate. *Ireland v. Bible Baptist*

Church, 480 S.W.2d 467, 473 (Tex. Civ. App.–Beaumont 1972, writ ref'd n.r.e.).

Generally, disproportion is weighed by balancing the benefit received with the resulting harm. If the Appellate Court's judgment stands, the benefit to the Plaintiffs is that there will be no permanent Gurdwara in their community, but services can still be held in the Mobile Home Temple as has been done regularly since 2003. Additionally, there is no findings or evidence on whether Plaintiff's property value would increase or decrease from the preservation or destruction of the new Gurdwara. In stark contrast, the harm to AGS would be: 1) destruction of a house of worship; 2) waste of substantial construction fees; and 3) adverse impact on Sikh congregant's ability to worship and assemble, especially since the next closest Gurdwara is about 100 miles away in San Antonio.

II. The Plaintiff's Unclean Hands Driven by Racial/ Religious Animus Combined with the Disproportionate Remedy, Militates for the Denial of Permanent Injunctive Relief.

The Doctrine of Relative Hardship has been clearly laid out by Texas courts for over half a century. In *Cowling*, one of the seminal cases to discuss balancing of relative hardships and disproportion of injunctions, the court relied on the Restatement of Property § 563 and asserted that "[a] disproportion between the harm the injunctive relief causes and the benefit it produces must be of considerable magnitude to justify a refusal to enforce the restrictions." However, the Restatement goes on to mention that disproportion is "seldom . . . the sole basis for refusing the relief" it adds that other

factors[3] become part of the consideration. RESTATEMENT (FIRST) OF PROP.: RELATIVE HARDSHIP §563(c) (1944).

Looking beyond the disproportion between the harm and benefit that would result from affirming the Appellate Court judgment, "other" compelling factors are present here, namely, the doctrine of unclean hands. Finding of Fact ¶ 13. As mentioned by the Appellate Court, a court under the doctrine of unclean hands "may refuse to grant equitable relief to a plaintiff who has been guilty of unlawful or inequitable conduct regarding the issue in dispute." *Bollier*, 2010 WL 26987652 at *6 (citing *Lazy M Ranch v. TXI Operation*, LP, 978 S.W.2d 678, 683 (Tex. App.—Austin 1998, pet. denied). Yet, the rule is "confined to misconduct connected with the matter in litigation." *Id.* (citing 2 Pomeroy' Equity Jurisprudence §399 (5th ed. 1941).

In combination, the disproportion resulting from the proposed remedy and the presence of unclean hands in this case militates against affirming the Appellate Court's judgment. The Trial Court's findings and judgment regarding Plaintiff's unclean hands are persuasive and inextricably "connected" with this case. The Trial Court found that:

> Plaintiffs engaged in inequitable conduct in connection with the Defendant's use of its Property, including the following acts: Plaintiff Leslie Bollier accused Defendant's agents of selfish and devious conduct for the purpose of discouraging support for an amendment of Restrictive Covenants to allow Defendant's religious assembly use; Plaintiff Leslie Bollier summoned the police to detain Defendant's agents by falsely reporting to the police that Defendant's agents were driving around the Subdivision in vehicles without license plates and terrorizing the residents of the Subdivision when such agents were visiting residents for the purpose of discussing an amendment of the Restrictive Covenants; and Plaintiff Leslie Bollier encouraged a nonresidential use of property in the Subdivision.

Findings of Fact ¶ 13. These actions and the important supplementary facts in the record

[3] The Court points to *laches* as one example. We posit that unclean hands would fall under the category of "other factor" to consider as it is one of the affirmative defenses like *laches* that are often claimed in property disputes.

point convincingly to evidence that Plaintiff's acted with unclean hands, and that those actions were motivated by racial/ religious animus.

A. The Facts Support Plaintiff's Unclean Hands was Motivated by Racial/ Religious Animus.

The Appellate Court's judgment overturning the Trial Court's finding of unclean hands is troubling because the Court ignored evidence showing that Plaintiff's were motivated by racial/ religious animus towards AGS, or their agents, and that this directly impacted the ability of AGS to garner the required support to amend the deed restrictions. Trial Court ¶ 13; Petition for Review at 12-13 fn.8. The Trial Court correctly found Plaintiffs' conduct to have a direct connection to the litigation and to have "seriously harmed" AGS. Findings of Fact ¶ 13. *But see Bollier*, 2010 WL 26987652 at *8 ("neither the court's findings nor the trial record reflect that Leslie Bollier's actions 'seriously harmed' AGS").

Thus, the Trial Court held that the "Plaintiff's claims for injunctive relief are barred by the doctrine of unclean hands." Conclusion of Law 3. Further, it is crucial that this Court not ignore the pervasiveness of racial/ religious animus that has led to the intolerable persecution of religious minorities and their places of worship. Though at trial, witnesses and the Plaintiffs denied racial animus, the Plaintiffs and their supporters own words and actions call their denial into serious question. Petition for Review at 12 fn. 8.

First, Plaintiffs went to extreme means to discourage support for amending the Restrictive Covenants by falsely reporting to the police that AGS members were

"terrorizing" their neighbors. Findings of Fact ¶ 13. The Plaintiffs used a description likely to illicit an immediate and strong response by the police and their neighbors: labeling the AGS congregation members as terrorists. The use of such hyperbole goes beyond discouraging support for an amendment to the deed restrictions, but also seeks to stoke suspicion and fear of the AGS members. Interestingly, the Appellate Court highlights that Leslie Bollier told the police she was no longer frightened and that "[t]hese people are nice." *Bollier*, 2010 WL 26987652 at *3.

We do not seek to read too much into one statement, but such a comment must not be couched in such a manner to mitigate the Plaintiff's animus towards AGS as the Appellate Court has attempted to do. Even when the Plaintiff is assuring the police that she does not feel threatened, she still uses a phrase that results in distinctly separating herself from the AGS members: the phrase "these people" serves to differentiate herself from the "other". *Id*.

Second, the Plaintiff and another resident, Misha Spridonov, hand delivered letters to residents of the subdivision to directly derail the efforts by the congregation to amend the restrictions, which would, with a "majority of the lot owners," preserve the house of worship. Petition for Review at *13 fn. 9. Again, the Plaintiff does not rely solely on the law to make her argument against the building of the Gurdwara, instead, the Plaintiffs seek to inflame their neighbors' fear by stating in their letter that the AGS community was engaging in "devious conduct" and that the neighborhood "will no longer remain [ ] quiet," rather, the community will be one in which "anything goes." *Id*. at 12-14.

AGS has been holding religious services since 2003 and no antagonistic

relationship existed between AGS and any of the owners in the subdivision before the Plaintiffs moved into the neighborhood. Unfortunately, after Plaintiff's delivered a malicious letter to neighbors and attempted to malign the Sikh community by calling the police and portraying them as dangerous, Plaintiffs successfully intimidated their neighbors into not signing the amendment, something they had previously committed to signing. *Id*. at 13 (testimony indicating that a direct result of calling the police made the neighbors "hesitant to sign" and some "felt intimidated" by the Plaintiffs). This was vital because the deed restrictions provide for an amendment if the signatures of a majority of the lot owners are procured. *Id*. at 13 fn. 9.

The implicit racial/ religious animus in these statements intimates that AGS is not a house of worship to be respected, but something more sinister. This is revealed by the climate of hostility created by Plaintiffs that resulted in Spiridonov confronting Dr. Bains, AGS President, who yelled and asked him about: 1) his passport, 2) his green card, 3) whether he was a citizen 4) what country he was from 5) when he was going back to his country 6) whether he possessed a job card and 7) what he was doing. *Id*. at 12 fn. 8.

The Plaintiffs were highly successful in poisoning a community that had lived in harmony for years, but now, were unsupportive of each other because the seeds of mistrust towards a religious minority, with a distinctive identity, had been permanently sown. Not only were the actions of the Plaintiffs directly connected with the litigation, they also seriously harmed AGS from obtaining the necessary amendments that would safeguard their house of worship. The Appellate Court implicitly rewarded the type of racial/ religious animus that has plagued the country over the last year. Such animus often

does not manifest through words, but by the actions of individuals who seek to mask their bigotry by using the law as a weapon to perpetuate intolerance. We plead that this Court does not overlook this reality.

B. The Current Climate is Replete with Racial/ Religious Animus Towards Muslims/ Arabs or those Perceived to be of Muslim/ Arab descent (i.e. Sikhs and South Asians), and Therefore, Courts must Forcefully Condemn Such Actions Which are Masked Behind Seemingly Lawful Disputes.

One cannot be willfully blind to an environment of racial/ religious intolerance since 9/11, and most recently, with the attempted building of a Mosque in New York. Though this intolerance/ animus are directed towards those of the Muslim faith or Arab descent, the impact extends to those perceived as being Arab or Muslim (including members of the Sikh faith who wear visible articles of faith including turbans). Recently, the Department of Justice (DOJ) released a Report on the 10th Anniversary of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The Report describes how out "[o]f 18 RLUIPA matters involving possible discrimination against Muslims that the Department has monitored since September 11, 2001, **eight** have been opened since May of 2010." DEPARTMENT OF JUSTICE (DOJ), REPORT ON THE TENTH ANNIVERSARY OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT, 12 (Sept. 22, 2010), http://www.justice.gov/crt/rluipa_report_092210.pdf) (emphasis added).

Furthermore, after a Sikh Gurdwara in California was consistently denied permits, the U.S. government intervened by submitting an Amicus arguing that Sikh congregant's rights were violated under RLUIPA. *Id*. at 5 fn. 16, 10. This is a "sober reminder that, even in the 21st century, challenges to true religious liberty remain." *Id*. at 12.

By ignoring the racial/ religious animus that was the basis of the Trial Court's unclean hands finding, the Appellate Court sanctions Plaintiffs' behavior and provides indirect encouragement to others who seek to derail houses of worship from faiths other than their own. Sikhs across the country have already incurred obstacles in attempting to worship and practice their faith freely. The impact of destroying the Gurdwara will not only be felt by local Sikhs, who would be substantially burdened by having lost their place of worship, but the implications of affirming the Appellate Court's decision will be felt by the Sikh population throughout the country who seek to experience the glow of freedom, but will think twice before constructing houses of worship in their local neighborhoods.

CONCLUSION & PRAYER

This case goes beyond a private property dispute, rather, this case strikes at the heart of the court's scope of authority in issuing **equitable remedies** that impact nonparties and their First Amendment rights. Additionally, this presents an opportunity for courts to take a clear legal stand against racial/ religious animus that underpins and fuels litigation seeking to intimidate religious minorities.

Therefore, we respectfully urge this Court to: grant AGS's Petition for Review and reverse the Appellate Court's judgment. If this Court finds that an injunction is warranted, we request this Court to: limit the scope of the permanent injunction to minimize hardship on non-parties' religious freedoms and remand to the Trial Court for determination on what requirements are necessary to bring AGS back into compliance with the Restrictive Covenants.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing *Amicus Curiae* Brief was served on the following counsel of record, indicated below, by First Class U.S. Mail on Feb. 18, 2011:

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