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Brief Amicus Curiae of the International Council of Thirteen Indigenous Grandmothers, the MICA Group, and a Tribal Elder in Support of Plaintiff-Appellant's Petition for Full En Banc Rehearing

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In the United States Court of Appeals for the Ninth Circuit

APACHE STRONGHOLD,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA, ET AL.,
Defendants-Appellees,
and
RESOLUTION COPPER MINING, LLC,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the District of Arizona
Honorable Steven P. Logan
(2:21-cv-00050-PHX-SPL)

BRIEF *AMICUS CURIAE* OF THE INTERNATIONAL COUNCIL OF THIRTEEN INDIGENOUS GRANDMOTHERS, THE MICA GROUP, AND A TRIBAL ELDER IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR FULL EN BANC REHEARING

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* have no parent corporation and no stock.

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INTERESTS OF AMICI

Amici are a Tribal Elder and other Native American cultural heritage and rights organizations. *Amici* submit this brief to highlight the history of the U.S. government's seizure of Indigenous sacred sites, the en banc majority's erroneous new substantial-burden test, and the problematic double standard that test creates.

The members of the International Council of Thirteen Indigenous Grandmothers come together to protect the lands where Indigenous peoples live and upon which these cultures depend.

The MICA Group (Multicultural Initiative for Community Advancement) is a nonprofit organization that has worked with hundreds of Tribal Nations throughout the country on cultural revitalization and other projects.

Ramon Riley is a respected Apache elder who serves as the White Mountain Apache Tribe's Cultural Resource Director, NAGPRA Representative, and Chair of the Cultural Advisory Board. Letters he sent to the U.S. government regarding Oak Flat are included in the record at 2-ER-225-29. Riley has spent most of his life and career working to maintain Apache cultural knowledge and pass it down to

future generations. He has spent the last two decades working to defend Oak Flat. He opposes the proposed mining project for Oak Flat because he believes it is wrong to "destroy sacred land that made us who we are." 2-ER-226.[1]

[1] *Amici* state that no party's counsel authored the brief in whole or in part; no party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person contributed money that was intended to fund preparing or submitting the brief. All parties have consented to the filing of this amicus brief. *See* Circuit Rule 29-2(a).

SUMMARY OF THE ARGUMENT

Once again, the Apache community has been denied the rights afforded to it by the Religious Freedom Restoration Act's plain text—this time by a panel of the en banc court in a deeply contested and divided decision. The full Ninth Circuit should rehear the case en banc to restore the Religious Freedom Restoration Act's full scope of protection for the Indigenous community, who has uniquely been deprived of its right to worship. The en banc panel here properly disposed of the unduly restrictive definition of "substantial burden" in *Navajo Nation v. United States Forest Service*, 535 F.3d 1058 (9th Cir. 2008) (en banc). And yet the opinion did no justice for Indigenous worshippers or the rule of law. Rather, it fashioned a new, unworkable standard that—even more than *Navajo Nation*—places Indigenous worship in a uniquely disfavored category relative to other faith traditions.

The full en banc Court should correct the muddled and atextual test that the en banc panel adopted. That test claims to be limited to government *dispositions* of land but seems to stretch to cover even government *uses* of it. It incorporates into RFRA's text a prior Supreme Court decision—*Lyng v. Northwest Indian Cemetery Protective*

Association, 485 U.S. 439 (1988)—that RFRA was created to supplant along with *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). The resulting test has no grounding in RFRA's text and provides no workable standards for subsequent decisions.

And the test does so uniquely for Indigenous worship, when courts have recognized that RFRA remedied other pre-*Smith* cases that, like *Lyng*, curtailed the religious rights of non-Indigenous religions. It thus gerrymanders RFRA to leave Indigenous worshippers at a particular disadvantage and perpetuates a history of government callousness and discrimination towards them.

Full review is needed to clarify the meaning of RFRA's text and restore RFRA's protections for all faiths, including Indigenous faiths.

ARGUMENT

Full en banc review is warranted because the controlling decision of the splintered en banc court perpetuates a long history of abuses toward Native peoples by inventing an unclear and atextual substantial-burden test that imposes a harmful double standard.

I. A bare en banc majority manufactured an atextual test that further entrenches a troubling double standard.

One majority of the en banc court correctly overruled this court's decision in *Navajo Nation* to the extent it limited the definition of "substantial burden" under RFRA to only two categories of burdens. But a different majority has now reimposed a modified and even more problematic definition of "substantial burden" in the context of government property. This invention is inconsistent with the statutory text and Supreme Court precedent, and it uniquely harms Indigenous claimants whose sacred worship sites are located on government-controlled tribal lands.

A. The meaning and application of the divided en banc panel's invented definition is uncertain.

Despite recognizing that this Court's prior definition of "substantial burden" was improperly narrow, a splintered en banc decision has now imposed a different gerrymandered test that applies only in cases involving government property. Under this test, the "disposition of government real property does not impose a substantial burden on" a claimant's "religious exercise when it has" (1) "'no tendency to coerce individuals into acting contrary to their religious beliefs'"; (2) "does not

'discriminate' against religious adherents"; (3) "does not 'penalize' them"; and (4) "does not deny them 'an equal share of the rights, benefits, and privileges enjoyed by other citizens.'" Per Curiam Op. 11 (quoting *Lyng*, 485 U.S. at 449); *see also* Collins Op. 34. This definition of "substantial burden" is confused on many accounts.

The origin of this reading of RFRA is unknown. No brief addressed it, let alone asked this Court to adopt it. No other court has defined "substantial burden" in this way. Nothing in RFRA's text suggests it contains a special rule for dispositions of government real property. And, to the extent the decision ties its discriminatory test to the Supreme Court's decision in *Lyng*, that case provides questionable authority: *Lyng* was not a "substantial burden" case. *See* Nelson Op. 136.

Given this uncertainty, it is unsurprising that this novel definition raises more questions than it answers. For one, does the test apply only to cases involving the sale or distribution of government land? The word "disposition" generally involves "transferring something to another's care or possession . . . the relinquishing of property." *See Disposition*, *Black's Law Dictionary* (11th ed. 2019). But nothing in the majority's reasoning speaks to this limited application, and instead seems to suggest that the

test applies to all government action involving its real property. And again, *Lyng* provides questionable authority for such a test, given that it involved government *use* rather than disposition of land. *Lyng*, 485 U.S. at 442. Either way, the new test creates an atextual carveout for government real property from RFRA's protection—an exception that is not provided by the text of the statute and is inconsistent with the purpose of the statute, which "Congress enacted . . . in order to provide very broad protection for religious liberty." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014); *see also id.* at 696 n.5.

The meaning of each of the four specified ways the government might substantially burden religious exercise is no clearer. Those ways are (1) "'coerc[ing] individuals into acting contrary to their religious beliefs'"; (2) "'discriminat[ing]' against religious adherents'"; (3) "'penaliz[ing]' them"; and (4) "deny[ing] them 'an equal share of the rights, benefits, and privileges enjoyed by other citizens.'" Per Curiam Op. 11 (quoting *Lyng*, 485 U.S. at 449). For example, the new test separates "coercion" from "penalty," suggesting that each is an independent way to demonstrate a substantial burden. But *Navajo Nation*, interpreting *Wisconsin v. Yoder* 406 U.S. 205 (1972), had

described one category of "substantial burden" as "coerc[ion] to act contrary to . . . religious beliefs *by* the threat of civil or criminal sanctions." 535 F.3d at 1070 (emphasis added). Do these two specified burdens simply collapse into the *Yoder* formulation? Again, the majority leaves those questions unanswered. *See generally* Murguia Dissent 233 ("[T]he majority opinion creates confusion as to how to define 'substantial burden.'").

The new test also separates dispositions that "penalize" from dispositions that deny "an equal share of the rights, benefits, and privileges enjoyed by other citizens." Per Curiam Op. 11 (quoting *Lyng*, 485 U.S. at 449). But *Lyng* treats them as a single concept: "nor would either governmental action penalize religious activity by denying any person an equal share of the rights, benefits, and privileges enjoyed by other citizens." *Lyng*, 485 U.S. at 449. Are these overlapping, too? If so, three of the four elements—coercion, penalty, and denying equal rights and benefits—seem to collapse into one.

B. The novel definition is inconsistent with the statutory text and Supreme Court precedent.

The en banc panel's definition is not merely unclear. Under any interpretation, it is baldly inconsistent with RFRA's text and Supreme Court precedent.

First, the new definition of "substantial burden" is unsupported by RFRA's text. RFRA generally prohibits the government from "substantially burden[ing] a person's exercise of religion." 42 U.S.C. § 2000bb-1(a). But Congress provided no definition of the term "substantial burden." The statute explains Congress' finding that the Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), had wrongly "eliminated the requirement that the government justify burdens on religious exercise imposed by" neutral laws. *Id.* at § 2000bb(a)(4). And, Congress explained, the purpose of RFRA is "to restore" the test "set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*." *Id.* at § 2000bb(b)(1). *Sherbert* and *Yoder*, in turn, lay out the compelling interest—or strict scrutiny—test that the government must satisfy when it substantially burdens religious exercise.

From this, the fractured majority asserts that RFRA must "subsum[e]," not "abrogat[e]," the Supreme Court's holding in *Lyng*.

Collins Op. 51. This is plainly wrong. *See* Murguia Dissent 224–28. For starters, the statute nowhere mentions *Lyng*—a pre-RFRA case—despite naming other cases explicitly. And it certainly does not state that RFRA "subsum[es] . . . the holding of *Lyng*." Collins Op. 51. To the contrary, RFRA explicitly rejects *Smith*'s approach to neutral laws of general applicability, which is the same approach taken by the Court in *Lyng*. *See, e.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 460 (2017) (describing *Lyng* as a case, like *Smith*, in which the Court "rejected [a] free exercise challenge[]" to a "neutral and generally applicable" law).

The majority contends that RFRA adopts the pre-*Smith* framework, and that this framework must include *Lyng*. Collins Op. 43. But it makes no sense that Congress would have rejected *Smith* only to preserve *Lyng*, a proto-*Smith* case that employed the very test that RFRA rejects. Interpreting the definition of "substantial burden" under RFRA by pointing to *Lyng* is plainly unsupported by the statutory text.

As the Supreme Court has recognized, Congress enacted RFRA "in order to provide greater protection for religious exercise than is available under the First Amendment." *Holt v. Hobbs*, 574 U.S. 352, 357 (2015).

This heightened protection permits the government to substantially burden a claimant's religious exercise only when the government can demonstrate that its action is the least restrictive means of furthering a compelling interest. 42 U.S.C. § 2000bb-1(b). Congress, of course, enacted RFRA in response to *Smith*, which had narrowed the application of this compelling-interest test as set forth in *Sherbert* and *Yoder*. *See Smith*, 494 U.S. at 884; 42 U.S.C. § 2000bb(b) ("purpose" of RFRA is "to restore the compelling interest test as set forth in *Sherbert* . . . and . . . *Yoder*").

In *Smith*, the Supreme Court recognized that several of its prior decisions—including *Lyng*—had declined to apply the *Sherbert* test. *Smith*, 494 U.S. at 883–84 (citing *Lyng*, *Goldman v. Weinberger*, 475 U.S. 503 (1986), and *O'Lone v. Estate of Shabazz*, 482 U.S. 342 (1987)); *see generally* Murguia Dissent 224. In other words, prior to *Smith*'s rejection of *Sherbert*'s compelling-interest test, the Supreme Court had created carve-outs to the *Sherbert* rule that previewed *Smith*'s adoption of a new regime. The Supreme Court's interpretation of RFRA and its sister statute RLUIPA, which reject *Smith*'s approach, has made clear that those statutes do not silently incorporate pre-*Smith* decisions that sit

outside the restored *Sherbert* framework. Instead, RFRA and RLUIPA reject those decisions, too.

The Court's reasoning in *Holt v. Hobbs* demonstrates as much. There, a Muslim prisoner claimed that the corrections department's policy against growing beards substantially burdened his religious exercise in violation of RLUIPA. *Holt v. Hobbs*, 574 U.S. 352, 355–56 (2015). Relying on pre-*Smith* Supreme Court cases, including *O'Lone*, the district court rejected his claim and the Eighth Circuit affirmed. *Id.* at 360. The Supreme Court reversed, concluding that the claimant "easily satisfied [his] obligation" to demonstrate that the challenged policy "substantially burdened" his religious exercise. *Id.* at 361. In concluding otherwise, the lower court had "improperly imported a strand of reasoning from cases involving prisoners' First Amendment rights." *Id.* (citing *O'Lone*, 482 U.S. at 351–52). Those cases, the Supreme Court explained, do not ask the same questions that the RLUIPA inquiry requires. *Id.* at 361–62; *see also* Murguia Dissent 209 ("RFRA and RLUIPA later essentially codified Justice Brennan's [*O'Lone*] dissent."). And this distinction makes sense: the whole point of RLUIPA and RFRA is to provide greater protection for religious exercise than the First

Amendment offers under *Smith*. *See, e.g.*, *Holt*, 574 U.S. at 357–58 (RLUIPA and RFRA set forth the same standard); Per Curiam Op. 10 (RLUIPA and RFRA "are interpreted uniformly").

Other circuits agree that proto-*Smith* cases like *O'Lone*, which fell outside the *Sherbert* framework, do not somehow cabin RFRA and RLUIPA's heightened protection. *See, e.g.*, *Davila v. Gladden*, 777 F.3d 1198, 1212–13 (11th Cir. 2015) ("[T]he intent of [RFRA] [was] to restore the traditional protection afforded to prisoners to observe their religions which was weakened by . . . *O'Lone v. Estate of Shabazz*." (quotation omitted)); *Jolly v. Coughlin*, 76 F.3d 468, 475 (2d Cir. 1996); *Hamilton v. Schriro*, 74 F.3d 1545, 1551–52 (8th Cir. 1996). The same is true of *Goldman v. Weinberger*, which addressed an Orthodox Jew's First Amendment challenge to the Air Force's headwear regulations. 475 U.S. 503, 504–06 (1986); *see, e.g.*, *Singh v. Berger*, 56 F.4th 88, 93 (D.C. Cir. 2022) (describing RFRA as one of several statutes Congress enacted to supersede *Goldman* and "double[] down on [its] commitment to accommodating religion within military life").

The fractured en banc court offers no compelling reason why RFRA should be interpreted to incorporate *Lyng* alone. And, as discussed below,

this piecemeal approach only furthers a long history of discrimination against and disfavor for land-based religions. *See* Murguia Dissent 233 ("Either the meaning of 'substantial burden' is the same under RFRA and RLUIPA, or the definition under RFRA is case-dependent. It cannot be both.").

The bare majority's incorporation of *Lyng* ignores RFRA's statutory text and stated purpose, and the Supreme Court's interpretation of RFRA's broad command. It instead draws a definition of "substantial burden" that seemingly excludes burdens faced uniquely by minority, land-based religions. This gerrymandered approach is therefore not only wrong, but also discriminatory.

Nothing about *Lyng* justifies treating it alone as surviving RFRA's rejection of *Smith*. Like *Smith*, *Lyng* declined to apply the compelling interest test to a law that incidentally affected religious exercise. *See Lyng*, 485 U.S. at 450–51; *see also* Murguia Dissent 226, 229–30. The same is true of *O'Lone* and *Goldman*. *See O'Lone*, 482 U.S. at 349; *Goldman*, 475 U.S. at 506–07. And *Smith* itself rejected the argument that *Lyng* created a broad exception for "the government's conduct of 'its own internal affairs'" or a more specific carveout for the "management of

public lands." *Smith*, 494 U.S. at 885 n.2 (quotation omitted); *see also* Murguia Dissent 225.

C. The splintered court's gerrymandered approach uniquely harms those who practice land-based religions.

The problematic incorporation of *Lyng* into RFRA manufactures a definition of "substantial burden" that makes demonstration of such a burden uniquely difficult for land-based religious adherents. Under the new test, the government is exempted from RFRA's command that the government may not substantially burden religious exercise when it deals with its own real property. Instead, when dealing with its own property, the government need only refrain from burdening religious exercise in circumscribed ways that truncate RFRA's full meaning. For example, if government action that makes impossible religious practice at a government-controlled sacred site is not coercion, it is difficult to identify what would be. This oversight is particularly glaring given that the Supreme Court has recently reinforced the commonsense notion that a complete prohibition on religious exercise imposes a substantial burden. *See Ramirez v. Collier*, 142 S. Ct. 1264, 1278 (2022); Murguia Dissent 213 n.13. Indeed, in other contexts, courts have recognized that government

control of access to worship areas and resources creates a baseline of interference with religious exercise. *See* Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 Harv. L. Rev. 1294, 1301 (2021).

Ignoring this same baseline of government coercion here results in a disparity that provides far less protection for Indigenous religious exercise on sacred sites. *Id.* at 1301. Under the fractured court's invented test, "when the government desecrates, destroys, and removes access to Indigenous sacred sites—making previous religious ceremonies physically impossible at those locations—the coercion evaporates." *Id.* at 1331. That plainly cannot be squared with RFRA's definition of "substantial burden."

II. The invented test further perpetuates a government history of callousness and coercion toward Native Americans.

The discriminatory consequence of this gerrymandered approach is clear here. For many Native peoples, like the San Carlos Apache, they are people *of* a particular place, and their particular homelands and landscapes are inextricably tied to their identity.[2] So, too, are particular

[2] Much of the material in this Section is drawn from Barclay & Steele, *supra*.

places inextricably tied to religious and cultural rites and identity. As Professor Alex Skibine and others have noted: "Native American religions are land based."[3] To deprive tribal people of access to certain sites, or to compromise the integrity of those sites, is effectively to prohibit the free exercise of their religion. There is no adequate substitute and no adequate compensation for the deprivation. The religion is, for all intents and purposes, banned.

While the use of sacred sites is an integral element of worship for many Indigenous peoples, the importance of sacred sites is not unique to them. Practitioners of many and varied religious faiths escape the mundane to commune with the Divine in specific places set aside and sanctified for that purpose—Jews at the Wailing Wall in Jerusalem, Catholics at the Grotto at Lourdes, members of the Church of Jesus Christ of Latter-day Saints at the Sacred Grove in Upstate New York, Muslims at the Kaaba in Mecca, and many others. But what *is* unique to Indigenous peoples in countries such as the United States is the extent of government-created obstacles that inhibit their use of these sacred

[3] Alex Tallchief Skibine, *Towards a Balanced Approach for the Protection of Native American Sacred Sites*, 17 Mich. J. Race & L. 269, 270 (2012).

sites. These obstacles, both historic and contemporary, have resulted in significant interference with Indigenous spiritual practices related to particular sites and often operate as an effective prohibition on religious practices.

Conflicts arise regarding use of sacred sites largely because so many of these sites are located on property now claimed by the federal government. Indigenous peoples are often beholden to the government to continue to engage in centuries-old practices and ceremonies. And the government came to acquire much of this land—including, as Plaintiff alleged, Oak Flat, see 2-ER-240–42, 256–57—by ignoring treaties or confiscating additional land. The Native inhabitants who once lived on the confiscated land, including the Apaches in the area of Oak Flat, were forced out, often violently. As Plaintiffs explain, "as settlers and miners entered the area [of Oak Flat], U.S. soldiers and civilians committed numerous massacres of Apaches, including 35 lethal attacks from 1859-1874." Appellant's Opening Br. 14. Indeed, in order to make way for mining interests, one of those soldiers, General James Carleton, "ordered 'removal to a Reservation or . . . utter extermination' of the Apaches." *Id.* at 15 (quoting John R. Welch, *Earth, Wind, and Fire: Pinal Apaches,*

Miners, and Genocide in Central Arizona, 1859-1874, SAGE Open, Oct.–Dec. 2017, at 1, 8).

For many Indigenous peoples, such divestiture means that their most sacred sites are completely within the government's control. Indeed, the government's dispossession of Native lands is what made legal protection for access to these sites necessary to begin with. *See* Joel West Williams & Emily deLisle, *An "Unfulfilled, Hollow Promise": Lyng, Navajo Nation, and the Substantial Burden on Native American Religious Practice*, 48 Ecology L.Q. 809, 814 (2021). Unfortunately, the government has not often been a faithful steward of these sacred places. At the hands of both public and private actors, graves have been despoiled, altars destroyed, and sacred artifacts catalogued for collection, display, or sale. Nor is this callous destruction simply a troubling relic of the past. Just within the past several years, Indigenous sacred sites have been bulldozed,[4] developed for commercial interests, and even blown up

[4] *See Slockish v. U.S. Fed. Highway Admin.*, No. 08-cv-01169, 2018 WL 2875896, at *1 (D. Or. June 11, 2018); *see also* Plaintiffs' Objections to Magistrate's Findings and Recommendations at 17–18, *Slockish*, No. 08-cv-01169 (D. Or. Apr. 22, 2020); Karina Brown, *Government Says It Can't Fix Tribal Religious Site It Bulldozed*, Courthouse News Serv. (Nov. 16, 2021), https://www.courthousenews.com/government-says-it-cant-fix-tribal-religious-site-it-bulldozed/.

at the hands of the federal government.[5] And while other religions have generally enjoyed strong legal protection for their places of worship, Native Americans routinely fail to receive the same. *See* Barclay & Steele, *supra*, at 1297.

The United States has continually chosen its own profit, or the profits of private contractors, at the expense of the Native peoples—a direct violation of its duties as trustee.[6] As a trustee, the government has a duty to exercise the highest standard of care to federally recognized Indian tribes and their resources. *Id.* The federal government "has charged itself with moral obligations of the highest responsibility and trust" in its relations with the Indian people. *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942). The existence of "a general trust relationship between the United States and the Indian people" is "undisputed." *United States v. Mitchell*, 463 U.S. 206, 225 (1983).

Chi'chil Biłdagoteel is but the latest episode in this shameful saga. The area contains hundreds of Indigenous archaeological sites, Apache burial grounds, ancient petroglyphs, medicinal plants, and numerous

[5] *Native Burial Sites Blown Up for US Border Wall*, BBC News (Feb. 10, 2020), https://perma.cc/DC56-Z4DQ.
[6] See Barclay & Steele, *supra*, 1351–58.

sacred sites. Oak Flat is revered by Native tribes as a place where holy springs flow from the earth and where holy beings reside. 2-ER-227. And it is the site of many worship ceremonies and an important rite of passage for young women. 1-ER-070.

Put plainly, Indigenous religious practice is uniquely situated relative to all other religions in the United States that do not involve the same land-based religious practices on federal land. To acknowledge the history that led to this quandary is not to graft a reparations theory onto RFRA, as Judge VanDyke put it pejoratively. *See* VanDyke Op. 174–80. Reparations would seek to redress past harms that can never be fully restored. *Amici*'s arguments instead highlight the dire stakes of the government's *prospective* actions. Judge VanDyke claims that recognizing this longstanding reality would discriminate against other, newer religions. *Id.* at 163–68, 164 n.12. But he resorts—as he must—to hypothetical religions to make his discrimination point. *Id.* His inability to name a real religion makes clear that there is no other religion in the United States that is as beholden to the federal government for land-based religious practices. *Id.* Indigenous believers

are thus uniquely harmed by the en banc majority opinion's atextual limitations on RFRA that apply *only* in the federal land-use context.

Under the fractured and contentious approach adopted by a bare majority of the en banc panel, the Apaches' long history of religious exercise at Oak Flat will no longer be possible. Full rehearing is needed to protect this sacred exercise.

CONCLUSION

The splintered decision of an en banc panel warrants review by the full Ninth Circuit. A bare majority invented a novel test that lacks grounding in the statutory text and purpose of RFRA and is inconsistent with the Supreme Court's interpretation of the RFRA. Worse still, the majority's approach imposes a problematic double standard that uniquely harms Native American religious exercise. The full Ninth Circuit should review to correct this grave mistake.

Dated: April 25, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this amicus brief complies with Federal Rule of Appellate Procedure 29(a)(5) and Ninth Circuit Rule 29-2(c)(2) as it contains 4,094 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f).

The brief's typesize and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in 14-point Century Schoolbook, a proportionally spaced font.

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Dated: April 25, 2024

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the Court's CM/ECF system. I further certify that service was accomplished on all parties via the Court's CM/ECF system.

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Dated: April 25, 2024