NO. 24-733

IN THE
Supreme Court of the United States

DANIEL SNYDER,

Petitioner,

v.

ARCONIC CORP., A DELAWARE CORPORATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF NC VALUES INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

NC Values Institute ("NCVI"), as *amicus curiae*, respectfully urges this Court to grant the Petition and reverse the Eighth Circuit decision.

NCVI, formerly known as the Institute for Faith and Family, is a North Carolina nonprofit corporation established to preserve and promote faith, family, and freedom, including the right to live and work according to religious convictions. See https://ncvi.org.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is an opportunity for the Court to clarify and affirm the Constitution's application to public life. As Justice Alito warned, "those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes," but may be "labeled as bigots and treated as such by governments, *employers*, and schools." *Obergefell v. Hodges*, 576 U.S. 644, 741 (2015) (Alito, J., dissenting) (emphasis added). Petitioner Snyder has unquestionably been "labeled as [a] bigot[]" and "treated as such" by his employer, Arconic Corporation.

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[1] Counsel of record for all parties received notice at least 10 days prior to the due date of *amicus curiae*'s intention to file this brief. *Amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to its preparation or submission.

The First Amendment has never been confined within the walls of a church, as if it were a wild animal needing to be caged. On the contrary, the Constitution broadly guarantees religious liberty to citizens who participate in public life and conduct business according to their moral, ethical, and religious convictions. Congress echoed those guarantees when it enacted 42 U.S.C. § 2000e-2(a)(1), protecting the religious liberty of employees while on the job. Indeed, "Title VII does not demand mere neutrality with regard to religious practices—that they be treated no worse than other practices," but goes beyond the bare minimum and "gives them favored treatment." *Groff v. DeJoy*, 600 U.S. 447, 461 n. 9 (2023) (quoting *EEOC* v. *Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015)).

The Eighth Circuit decision clashes with these broad protections, allowing private employers to impose crippling penalties on employees who refuse to set aside conscience or hide their religious convictions. Arconic's failure to tolerate even a simple religious comment is an assault on time-honored liberties no person should ever be required to sacrifice as a condition of employment.

Arconic has adopted a Diversity Policy. Like many comparable policies, it is designed to promote diversity, equity, and inclusion. The Policy "prohibits employee conduct that denigrates or shows hostility or aversion towards someone because of a protected characteristic, which includes conduct that creates an intimidating, hostile, or offensive work environment." *Snyder v. Arconic*, 2024 U.S. App. LEXIS 20431, *2 (8th Cir. 2024) (internal quotation marks omitted).

A related "antiharassment policy" prohibits "circulating on social media outlets connected to the workplace written material that denigrates or shows hostility or aversion toward a person or group because of any characteristic protected by law." *Ibid*. (internal quotation marks omitted).

Petitioner Snyder is a former pastor who believes it is sacrilegious to use the rainbow, a biblical symbol of God's covenant with mankind, to promote LGBT values. Snyder reported that Arconic's "working environment . . . include[d] approximately three depictions of the rainbow in connection with LGBTQ+ equality or Pride Month." *Snyder*, at *8. In response to an anonymous company survey, he posted a religiously motivated comment about the rainbow that allegedly violated the Policy. Although intended to be anonymous, the comment was inadvertently posted publicly to a company-wide intranet message board. *Id*. at *2. An internal "Hearing Letter" "expressly state[d] that Snyder 'was disciplined because, while logged into a Company computer, he left a public comment . . . that violated the Company's diversity policy.'" *Id.* at *10.

Some would argue policies like this one are necessary for LGBT persons to achieve equality in the workplace. That rabbit trail diverts attention from the religious liberty issues at the heart of this case. There is a growing clash between secularized culture and the deeply held religious convictions of many Americans, who struggle to run a business or faithfully perform their duties as employees without compromising their faith. This is seen in a growing number of this Court's landmark decisions, including:

Burwell v. Hobby Lobby Stores Inc., 573 U.S. 682 (2014) (contraception mandate); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. 617 (2018) (wedding cake requested by same-sex couple); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (wedding website creation); *Fulton v. City of Philadelphia*, 593 U.S. 622 (2021) (foster care placement); *Groff v. DeJoy*, 600 U.S. 447 (employee's Sabbath observance). These and many other decisions implicate anti-discrimination laws or policies that protect sexual orientation and/or gender identity. But as in this case, those laws or policies are easily employed as a weapon to discriminate against those who hold traditional views about marriage and sexuality.

Instead of prohibiting invidious discrimination, the Diversity Policy creates it. The Policy jettisons key values heralded by LGBT advocates—*diversity, inclusion, equality, tolerance*. Properly understood and applied, those values facilitate life in a free society and protect the rights of all Americans. But by crushing dissenting views, such as those held by Snyder, Arconic promotes *uniformity, exclusion, inequality, intolerance*. The company demands uniformity of thought and belief, cementing intolerance into company policy. The result is an unconscionable *inequality* where people who hold traditional beliefs about marriage and sexuality are silenced or even excluded from employment. All of this is anathema to the First Amendment values that have characterized American society since the nation's founding. Although Arconic is not a state actor constrained by the Constitution, Congress has acted to ensure strong protection for many of the same

constitutional values, including religious liberty, through statutes like Title VII.

ARGUMENT

I. THE POLICY COMPELS *UNIFORMITY* AMONG EMPLOYEES, CONTRARY TO THE LABEL *DIVERSITY*.

"Diversity" is an ongoing mantra for LGBT advocacy. America has always valued diversity, but ironically, Arconic's *Diversity* Policy destroys it. The company essentially demands uniformity of speech, belief, and thought among its employees—silencing one side of a hotly contested issue while it promotes "Pride Month." Snyder forfeited his job by daring to post a comment contrary to the prevailing LGBT orthodoxy preferred by his employer.

Freedom of thought undergirds First Amendment liberties. *See, e.g., Schneiderman v. United States*, 320 U.S. 118, 144 (1943). The Constitution protects "both the right to speak freely *and the right to refrain from speaking at all*"—the right to advance ideological causes and "*the concomitant right to decline to foster such concepts*." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (emphasis added). These complementary rights are components of "individual freedom of mind." *W. Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 643 (1943). Such freedom includes religious thought.

This Court should reaffirm these longstanding precedents in response to the grievous consequences faced by Petitioner and others in comparable

positions. Although Arconic is not a *state* actor, a ruling in its favor would endanger the liberties of all Americans to freely think, speak, and live according to conscience and faith—contrary to this Court's precedents and Title VII's statutory protections.

This case has particularly ominous implications because Snyder's posting was intended as an anonymous response to a survey and was only inadvertently posted in a place where it would be seen by other company employees.

II. THE POLICY CRUSHES THE CONSCIENCE OF THE COMPANY'S EMPLOYEES.

Freedom of thought is closely linked to conscience. Respect for individual conscience is deeply rooted in American history. The nation's legal system has traditionally respected conscience, as illustrated by many statutory and judicially crafted exemptions in other contexts. One case, acknowledging man's "duty to a moral power higher than the State," quotes Harlan Fiske Stone (later Chief Justice) stating that "both morals and sound policy require that the state should not violate the conscience of the individual." *United States v. Seeger*, 380 U.S. 163, 170 (1965) (quoting Stone, *The Conscientious Objector*, 21 Col. Univ. Q. 253, 269 (1919)). Conscience is so significant "that nothing short of the self-preservation of the state should warrant its violation," and even then, "it may well be questioned whether the state which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process." *Ibid.* It is hazardous for any government to systematically crush the conscience of

its citizens—and equally improper for any employer to crush the conscience of its employees, contrary to the statutory protections of Title VII. But that is exactly what this type of policy does, breeding a company whose employees lack *conscience*—employees who must set aside conscience, values, and religion to preserve their livelihood.

Religious employees should never have to choose between respect for an employer's policies and faithfulness to God as a condition of employment. We dare not sacrifice priceless American freedoms through misguided—or even well-intentioned—efforts to broaden LGBT rights. People of faith have not forfeited their right to participate in business according to conscience and convictions.

III. THE POLICY *EXCLUDES* EMPLOYEES WHO HOLD DISSENTING VIEWS.

Congress defined "religion," for purposes of Title VII, as "includ[ing] all aspects of religious observance and practice, as well as belief." 42 U.S.C. §2000e(j). "Thus, religious practice is one of the protected characteristics that . . . *must be accommodated*." *Abercrombie*, 575 U.S. at 774-775 (emphasis added). The Eighth Circuit ruling cuts against congressional intent by allowing employers to punish employees who hold traditional beliefs about sexuality—*excluding* them from employment because of their views.

The ruling also grates against the Constitution, an *inclusive* document that protects the religious liberty and viewpoint of all within its realm. LGBT

advocates trumpet *inclusion* as a key rationale for anti-discrimination policies that protect them. But here, the Policy facilitates the *exclusion* of employees whose religious expression does not align with their employer's viewpoint. It is tantamount to a statement that "no religious believers who refuse to [celebrate same-sex relationships] may be included in this part of our social life." Nora O'Callaghan, *Lessons From Pharaoh and the Hebrew Midwives: Conscientious Objection to State Mandates as a Free Exercise Right*, 39 Creighton L. Rev. 561, 565, 611, 573 (2006). Crippling financial penalties, including loss of employment and income, threaten Petitioner and others who share his religious convictions.

There *is* discrimination in this case—not against LGBT employees or those who support their agenda, but blatant religious discrimination against Petitioner. The Policy threatens to impose onerous penalties on the livelihood of Petitioner and others who share his views. "No person can be punished for entertaining or professing religious beliefs or disbeliefs . . . ." *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15-16 (1947). A citizen may not be excluded from a profession by unconstitutional criteria: "The First Amendment's protection of association prohibits a State from *excluding a person from a profession or punishing him* solely because he is a member of a particular political organization or *because he holds certain beliefs*." *Baird v. State Bar of Arizona*, 401 U.S. 1, 6 (1971) (emphasis added); *see also Keyishian v. Bd. of Regents*, 385 U.S. 589, 607 (1967) (professor). This Court has a "duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people." *Lee v. Weisman*, 505 U.S. 577,

592 (1992). The Framers intentionally protected "the integrity of individual conscience in religious matters." *McCreary County, KY v. ACLU*, 545 U.S. 844, 876 (2005). Congress echoed this protection when it enacted strong protections for employees in the workplace.

The commercial context is irrelevant. People of faith do not forfeit their constitutional rights in the commercial sphere, particularly where comparable rights are reiterated in a statute (Title VII). If religion is shoved to the private fringes of life, constitutional guarantees ring hollow. Michael W. McConnell, *"God is Dead and We have Killed Him!" Freedom of Religion in the Post-Modern Age*, 1993 BYU L. Rev. 163, 176 (1993). Petitioner intends to conduct himself with integrity while on the job, accomplishing his work in a manner consistent with his conscience, moral values, and religious faith. Not everyone shares those values, but cutting conscience out of the commercial sphere is a frightening prospect for business owners, *employees*, and customers. Customers expect businesses to operate with honesty and integrity.

Some have used *United States v. Lee* to argue against religious freedom in the commercial sphere. But this Court merely stated that "*every* person cannot be shielded from *all* the burdens incident to exercising *every* aspect of the right to practice religious beliefs." 455 U.S. 252, 261 (1992) (emphasis added). Religious freedom is not abrogated altogether in the world of commerce. Commercial regulations do not erase religious liberty, particularly where Congress has explicitly affirmed protection for that

liberty and mandated that employers provide reasonable accommodations.

IV. THE POLICY CREATES *INEQUALITY* BY DISCRIMINATING AGAINST EMPLOYEES WHO HOLD DISSENTING VIEWS.

Equality is a key "buzzword" for LGBT advocacy. The phrase "marriage equality" is often used to describe *Obergefell*. Legal advocates have not only achieved their goals but far exceeded them. The LGBT community enjoys broad legal protection, including a wide array of options for employment and public services.

There is an "elephant" in the courtroom. The term "discrimination" urgently needs a clear, consistent definition. It is all too easy to pluck phrases from *Obergefell* to justify a punitive application of policies like the one Arconic adopted. This Court compared the denial of so-called "marriage equality" to discrimination, saying that it "works a grave and continuing harm" that imposes a "disability on gays and lesbians [that] serves to disrespect and subordinate them." *Obergefell*, 576 U.S. at 675. But now, Arconic and other private employers have adopted LGBT-friendly policies that "disrespect and subordinate" those who hold traditional marriage views, rendering them unequal, second-class employees.

This case is not specifically about LGBT rights or discrimination against that community, but this Court should recognize the invidious *inequality* often created post-*Obergefell*. Citizens who graciously serve

and interact with LGBT persons, but who oppose redefining the institution of marriage, are often treated as *unequal*. The Policy here imposes crippling penalties that punish Petitioner's dissenting view of sexuality. This blatant viewpoint discrimination wars against both the First Amendment and Title VII's statutory protections.

Anti-discrimination principles have expanded over the years, increasing the potential encroachment on religious liberty. Commentators have long observed the legal quagmire, noting that "the conflict between the statutory rights of individuals against private acts of discrimination and the near universally-recognized right of free exercise of religion places a complex legal question involving competing societal values squarely before the courts." Jack S. Vaitayanonta, Note: *In State Legislatures We Trust? The "Compelling Interest" Presumption and Religious Free Exercise Challenges to State Civil Rights Laws*, 101 Colum. L. Rev. 886, 887 (2001). *See also* Harlan Loeb and David Rosenberg, *Fundamental Rights in Conflict: The Price of a Maturing Democracy*, 77 N.D. L. Rev. 27, 29 (2001); David E. Bernstein, *Defending the First Amendment From Antidiscrimination*, 82 N.C. L. Rev. 223 (2003) (urging resolution in favor of First Amendment liberties).

Anti-discrimination policies have ancient roots. The Massachusetts law at issue in *Hurley* was derived from the common law principle that innkeepers and others in public service could not refuse service without good reason. *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 571

(1995). But Massachusetts broadened the scope to add more categories and places. *Id*. at 571-572. Similarly, *Dale* noted that the traditional "places" had expanded beyond inns and trains to commercial entities and even membership associations—escalating the potential collision with First Amendment rights. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 656 (2000).

It is hardly "arbitrary" to avoid promoting a cause for reasons of conscience. Discrimination is arbitrary where an entire class of persons is excluded without justification. Where widespread refusals deny an entire group access to basic public goods and services, it is reasonable to enact protective measures. This Court rightly upheld the Civil Rights Act of 1964, which Congress passed to eradicate America's long history of racial discrimination. *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964). But as protection expands to more places and people, so does the potential to employ anti-discrimination principles to suppress traditional viewpoints and impose social change on unwilling participants. Religious liberty is particularly susceptible to infringement. Advocates of social change respecting sexuality "are anything but indifferent toward the teachings of traditional religion—and since they are not indifferent they are not tolerant." McConnell, *"God is Dead and We have Killed Him!"*, 1993 BYU L. Rev. at 187.

Political and judicial power can be used to squeeze religious views out of public debate about controversial social issues. Religious voices have shaped views of sexual morality for centuries. These views about right and wrong are deeply personal convictions that shape the way people of faith live

their daily lives in public and private. Government has no right to legislate a novel view of sexual morality and demand that religious citizens facilitate it. Nor does a private employer have the right to demand that all employees parrot its pro-LGBT viewpoint or risk losing their jobs.

The clash between anti-discrimination rights and religious liberty "places a complex legal question involving competing societal values squarely before the courts." Vaitayanonta, *In State Legislatures We Trust?*, 101 Colum. L. Rev. at 887. When the D.C. Circuit addressed the question "of imposing official orthodoxy on controversial issues of religious, moral, ethical and philosophical importance, upon an entity whose role is to inquire into such matters" it concluded that "[t]he First Amendment not only ensures that questions on difficult social topics will be asked, it also *forbids government from dictating the answers*." *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.,* 536 A.2d 1, 24 (D.C. 1987) (emphasis added). Anti-discrimination rights, whether created by statute or derived from equal protection principles, may conflict with core rights to religious liberty. *Fundamental Rights in Conflict*, 77 N.D. L. Rev. at 27, 29.

The growing conflict between religion and anti-discrimination principles emerges in many contexts. Protection of one group may alienate another. Solutions are difficult to craft, particularly in the wake of expanding privacy rights. But while private sexual conduct is generally protected from government intrusion, that protection does not trump the rights of those who cannot conscientiously

endorse it. Congress has extended comparable protection to employees who work for private employers.

V. THE POLICY CEMENTS *INTOLERANCE* BY CRUSHING DISSENT.

The "personal choices central to individual dignity and autonomy" this Court recognized in *Obergefell*, "including intimate choices defining personal identity and beliefs," apply equally to Arconic's treatment of Petitioner and other employees. *Obergefell*, 576 U.S. at 663. Instead, the Policy "vilif[ies] [employees] who are unwilling to assent to the new orthodoxy." *Id.* at 741 (Alito, J., dissenting). This Court's concern about stigma is conveniently cast aside, "put[ting] the imprimatur of the [employer] itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied." *Id.* at 672. Arconic refuses to tolerate employees who disagree with the company-sanctioned view of sexuality.

Secular ideologies increasingly employ the strong arm of the state to advance their causes, promoting tolerance and respect for some while ruthlessly suppressing others. Religious liberty collapses in this toxic atmosphere. McConnell, *"God is Dead and We have Killed Him!"*, 1993 BYU L. Rev. at 186-188.

As the Sixth Circuit observed, "tolerance is a two-way street." *Ward v. Polite*, 667 F.3d 727, 735 (6th Cir. 2012). So is dignity. Even though this Court has redefined marriage, the LGBT community and its supporters have no corollary right to coerce others to

celebrate the new definition. The Policy demeans Petitioner by compelling him to remain silent or lose his job. That is intolerance, and it is intolerable in a country devoted to liberty.

VI. IRONICALLY, THE EIGHTH CIRCUIT RULING WEAKENS PROTECTION FOR THE RIGHTS OF EVERYONE.

Proponents of LGBT rights have accomplished dramatic social and political transformation in just a few years by exercising their rights to free speech, press, association, and the political process generally. These changes were possible because the Constitution guarantees free expression and facilitates the advocacy of new ideas. Bernstein, *Defending the First Amendment*, 82 N.C. L. Rev. at 232. But advocates cannot demand for themselves what they would deny to others—otherwise, the constitutional foundation will crumble and all Americans will suffer. Overly aggressive assertion of a particular right erodes protection for other liberties. Anti-discrimination laws are often utilized as a sword, allowing LGBT rights to trump the protected liberties of those who—while willing to serve and work alongside them—hold a different view about the nature of marriage.

This Court needs to preserve the constitutional and statutory liberties guaranteed to *all* citizens. Americans who want to expand their own civil rights must grant equal respect to opponents—not crush them with debilitating legal penalties: "The price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish." *United States v. Ballard*, 322 U.S. 78, 95

(1944). Arconic may characterize Petitioner's views as "rubbish," but that does not give the company a right to terminate his employment for failing to promote a message he finds offensive. "*If Americans are going to preserve their civil liberties . . . they will need to develop thicker skin*. One price of living in a free society is toleration of those who intentionally or unintentionally offend others." Bernstein, *Defending the First Amendment*, 82 N.C. L. Rev. at 245 (emphasis added). Demanding freedom from every offense—even a short, inadvertently posted comment—will ultimately destroy both equality and liberty.

This principle cuts across all viewpoints. The increasing popularity of an idea makes it all the more essential to protect dissenting voices. *Dale*, 530 U.S. at 660. Censorship spells death for a free society. "Once used to stifle the thoughts that we hate . . . it can stifle the ideas we love." *Gay Alliance of Students v. Matthews*, 544 F.2d 162, 167-168 (4th Cir. 1976). Justice Black expressed it well in a case about the Communist Party, when he said that ". . . the freedoms . . . guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish." *Communist Party v. SACB,* 367 U.S. 1, 137 (dissenting opinion) (1961).

Non-discrimination principles should never be applied in a discriminatory, unequal manner that squelches genuine diversity, equity, inclusion, and tolerance.

CONCLUSION

This Court should grant the Petition and reverse the Eighth Circuit.

Respectfully,

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