No. 21-476

In the
Supreme Court of the United States

303 CREATIVE LLC, *et al.*,
Petitioners,

v.

AUBREY ELENIS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF *AMICI CURIAE* COLORADO STATE LEGISLATORS IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the Free Speech Clause of the First Amendment.

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, *Amici Curiae*, Colorado State Legislators of the 73rd General Assembly submit this brief.[1]

Rep. Mark Baisley represents the citizens of Colorado living in House District 39, including all of Teller County, as well as portions of Douglas County.

Rep. Rod Bockenfeld represents the citizens of Colorado living in House District 56, including portions of Adams and Arapahoe Counties.

Rep. Marc Catlin represents the citizens of Colorado living in House District 58, including all of Dolores, Montezuma, Montrose, and San Miguel Counties.

Sen. Bob Gardner represents the citizens of Colorado living in Senate District 12, including portions of El Paso County.

Rep. Ron Hanks represents the citizens of Colorado living in House District 60, including all of Chaffee, Custer, and Park Counties, as well as portions of Fremont County.

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[1] Petitioners and Respondents granted blanket consent for the filing of *Amici Curiae* briefs in this matter, as reflected on this Court's docket. *Amici curiae* further state that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Sen. Dennis Hisey represents the citizens of Colorado living in Senate District 2, including all of Clear Creek, Fremont, Park, and Teller Counties, as well as portions of El Paso County.

Sen. Chris Holbert represents the citizens of Colorado living in Senate District 30, including portions of Douglas County.

Rep. Richard Holtorf represents the citizens of Colorado living in House District 64, including all of Baca, Bent, Crowley, Elbert, Kiowa, Las Animas, Lincoln, Prowers, and Washington Counties.

Sen. Larry Liston represents the citizens of Colorado living in Senate District 10, including portions of El Paso County.

Rep. Stephanie Luck represents the citizens of Colorado living in House District 47, including all of Otero County, as well as portions of both Fremont and Pueblo Counties.

Sen. Paul Lundeen represents the citizens of Colorado living in Senate District 9, including portions of El Paso County.

Rep. Hugh McKean represents the citizens of Colorado living in House District 51, including portions of Larimer County.

Rep. Patrick Neville represents the citizens of Colorado living in House District 45, including portions of Douglas County.

Rep. Rod Pelton represents the citizens of Colorado living in House District 65, including all of Cheyenne,

Kit Carson, Logan, Morgan, Phillips, Sedgwick, and Yuma Counties.

Rep. Andres Pico represents the citizens of Colorado living in House District 16, including portions of El Paso County.

Rep. Kim Ransom represents the citizens of Colorado living in House District 44, including portions of Douglas County.

Rep. Janice Rich represents the citizens of Colorado living in House District 55, including portions of Mesa County.

Rep. Shane Sandridge represents the citizens of Colorado living in House District 14, including portions of El Paso County.

Rep. Matt Soper represents the citizens of Colorado living in House District 54, including all of Delta County, and portions of Mesa County.

Rep. Kevin Van Winkle represents the citizens of Colorado living in House District 43, including portions of Douglas County.

Rep. Dave Williams represents the citizens of Colorado living in House District 15, including portions of El Paso County.

Sen. Rob Woodward represents the citizens of Colorado living in Senate District 15, including portions of Boulder and Larimer Counties.

Unlike the State officials who compelled and censured the Petitioner's speech in the case at bar,

amici Colorado Legislators are politically accountable to the people of Colorado. Sworn to uphold the Constitution, they hold a special commitment to constitutional governance under the Rule of Law. This understanding includes a deep respect for the constitutional limits on the exercise of government power, including the Free Speech Clause of the First Amendment. *Amici Curiae* are profoundly concerned by the willingness of State authorities who, by force of law and punishment: 1) censure viewpoints and ideas inconsistent with preferred political preferences; and 2) compel viewpoints and ideas consistent with preferred political preferences.

Moreover, *Amici Curiae* are equally concerned that a majority of the Colorado legislature emboldened officials to compel and censure speech in this case, due to a fundamental misunderstanding of the restraints imposed by the First Amendment on the exercise of State authority.[2] From this incorrect understanding, these lawmakers erroneously validated, and continue to validate, the use of Colorado's anti-discrimination statutes to unconstitutionally interfere with the religious expression of those not sharing their preferred political preferences. Rather than restraining unconstitutional applications of its anti-discrimination law, the State continues to expand the scope of its applicability, without acknowledging the constitutional

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[2] *Amici* legislators have attempted to correct unconstitutional application of the law through legislation and debate but have been unsuccessful. See, e.g., HB17-1013, Colorado Freedom of Conscience Protection Act (2017).

limits on its exercise of government power.[3] Consequently, it is unlikely that legislative oversight to correct the misuse of this immense power can occur before the State violates the rights of additional citizens. *Amici Curiae* file this brief, therefore, to encourage this Honorable Court to guide legislative, executive, and judicial authorities toward a sound constitutional basis for understanding how the First Amendment properly limits the exercise of government power.

SUMMARY OF THE ARGUMENT

The First Amendment to the United States Constitution protects a religious person's freedom of expression, especially artistic expression of thoughts, conscience, and viewpoints inhering in one's personal identity. U.S. Const. amend. I.

Unless this Court affirmatively acts to correct the Tenth Circuit's disturbing diminishment of the Free Speech Clause and its systemic misapplication by Colorado officials and legislators, Colorado's action compelling and censuring speech, as a practical matter, denudes any meaningful constitutional protection for liberty as a limit on the exercise of State power.

A religious person's artistic expression of thoughts, conscience, and viewpoints, inherent in her personal

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[3] Most recently, during the 2022 legislative session, the Colorado legislature passed HB22-1367, expanding the reach of Colorado's anti-discrimination laws to include domestic workers. If enacted, like the case at bar, this law imperils First Amendment liberties of homeowners whose religious expression or exercise of their faith collides with the State's preferred political preferences.

religious identity, is entitled to at least as much constitutional protection as those who find their identity in their sexuality.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS FREEDOM OF EXPRESSION, ESPECIALLY EXPRESSION OF ONE'S PERSONAL CONSCIENCE AND RELIGIOUS IDENTITY

Ratified in 1791, the First Amendment to the United States Constitution provides that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech . . . ." U.S. Const. amend I. This language includes no exemption for laws that compel or censure a person's speech because the government disagrees with the idea or viewpoint expressed.

Bearing witness to the intolerant laws of seventeenth century England that persecuted individuals because of their religious views, the First Amendment balances the need for freedom of speech and religion with the need of a well-ordered central government. *See, e.g.*, Mark A. Knoll, *A History of Christianity in the United States and Canada* 25-65 (1992); F. Makower, *The Constitutional History and Constitution of the Church of England* 68-95 (photo. reprt. 1972) (1895). The First Amendment Speech Clause embodies an ideal that is uniquely American—that true liberty exists only where men and women are free to hold and express conflicting political and religious viewpoints. Under this aegis, the

government must not interfere with its citizens living out and expressing their freedoms but embrace the security and liberty only a pluralistic society affords.

The Free Speech Clause protects expression of a religious person's artistic viewpoints and ideas, subjecting a State to the strictest of scrutiny if it substantially interferes. See, e.g., *Masterpiece Cakeshop, LTD., v. Colorado Civil Rights Commission,* 138 S. Ct. 1719, 1745-46 (2018) (Thomas, J., concurring) (noting, the necessity of applying "the most exacting scrutiny" in a case where Colorado's public accommodation law penalized expression of cake designer) citing *Texas v. Johnson*, 491 U.S. 397, 412 (1989); accord, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010); see also, *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 164 (2015). In *Shurtleff v. Boston*, No. 20-1800 (May 2, 2022) this Court unanimously reaffirmed that government "may not exclude speech based on 'religious viewpoint'; doing so 'constitutes impermissible viewpoint discrimination,'" (quoting *Good News Club v. Milford Central School*, 533 U.S. 98, 112 (2001)). See also, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 828-830 (1995).

The Civil Rights Division of the Colorado Civil Rights Commission enforces the Colorado Anti-Discrimination Act (CADA). While the Division investigates, the Commission adjudicates. Pet. App. 175a-176a. In its most recent endeavor to force acceptance of its political policy preferences, Colorado used this public accommodation law to censure Petitioner's viewpoint, a religious viewpoint consistent with her conscience and inherent in her personal

religious identity; moreover, Colorado compelled her to engage in expression conflicting with it. Pet. App. 23a-24a; 28a; 34a. Remarkably, a panel of the Tenth Circuit found Colorado's substantial interference with Petitioner's First Amendment liberty justified. Unless this Court affirmatively acts to correct the Tenth Circuit's disturbing diminishment of the Free Speech Clause and its systemic misapplication by Colorado officials and legislators, Colorado's action, as a practical matter, denudes any meaningful constitutional protection for liberty as a limit on the exercise of State power.

A. When Government Policy Preferences Unfairly Interfere with Fundamental First Amendment Liberty

Ubiquitous special preferences for sexual orientation and gender identity (hereinafter SOGI), imposed by states in the name of protecting freedom, too often threaten fundamental First Amendment liberties. These government actions necessarily require religious people, here a Christian artist, to relinquish their right to artistic expression inhering in their personal religious identity.

Through the faith perspective of her Christian identity, Petitioner web designer and artist Lorie Smith creates original content for websites. Pet. App. 21a, 179-181a. She desires to bring glory to God and does so via creating unique expressions that impart her thoughts, views, and conscience, including her understanding of God's design for marriage as the union of one man and one woman. Pet. App. 179a-180; 187a-188a. Petitioner hoped to expand her business to

include wedding websites promoting her understanding of God's design for marriage, encouraging commitments "to lifelong unity and devotion…." Pet. App. 187a-188a

The State said no, even though it concedes Petitioner is "willing to work with all people regardless of … race, creed, sexual orientation, and gender." Pet. App. 53a; 184a. Why? Because Petitioner, as a matter of who she is, is unable to engage in artistic expression promoting a message conflicting with her religious conscience and identity. Pet. App. 184a.[4]

Petitioner hoped to express an online message explaining why, as a Christian person and artist, she could only engage in speech consistent with her religious identity / Christian faith. Pet. 188a-189a. Here the State said no, relying on CADA to restrict Petitioner from engaging in expression consistent with her conscience and inherent in her personal religious identity, while compelling her to engage in expression conflicting with it. Pet. App. 23a-24a; 28a; 34a.

The government-imposed speech conditions in the case at bar substantially interfere with Petitioner's freedom of speech. Because Colorado's law restricts and compels expression based on content, the Tenth Circuit correctly held that the government must satisfy strict scrutiny. Pet. App. 23a-24a. The Tenth Circuit's majority opinion grievously erred, however, when it held that CADA survived strict scrutiny. Pet. App. 28a (finding that Colorado held a compelling interest in safeguarding access to Lorie's "unique services"

[4] If an individual seeks such content, she respectfully refers them to another website designer. Pet.185a.

notwithstanding that "LGBT consumers may be able to obtain wedding website design services from other businesses.").

B. The Tenth Circuit's Ruling Conflicts with this Court's Prior Precedents Protecting Expression

Application of a public-accommodation law can unconstitutionally burden protected speech when the law targets speech, alters the expressive content of the message, or interferes with an individual's choice to not propound a viewpoint conflicting with their beliefs; if a public accommodation law "ha[s] the effect of declaring … speech itself to be the public accommodation," the First Amendment applies with full force. *Hurley v. Irish American, Gay, Lesbian and Bisexual Group of Boston, Inc.,* 515 U.S. 557, 572-73 (1995); *accord, Boy Scouts of America v. Dale*, 530 U.S. 640, 654, 657-659 (2000); *Masterpiece Cakeshop,* 138 S. Ct. at 1741 (Thomas, J., concurring).

The Tenth Circuit's ruling cannot be reconciled with this Court's holding in *Hurley,* 515 U.S. at 568-81. In *Hurley*, this Court held that the First Amendment gave the organizers of a private St. Patrick's Day parade the right to not communicate a message about homosexual conduct to which they objected. *Id.* The First Amendment protected the parade organizers' right "not to propound a particular point of view," *id.* at 575, and this Court protected the "principle of speaker's autonomy" *id.* at 580. In doing so, this Court unanimously ruled that a State's public accommodations law must not be applied to compel a speaker to communicate an unwanted message or

express a contrary viewpoint. This Court condemned the notion that public accommodation laws should force free individuals to express and convey messages to which they disagree because "*this use of the State's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.*" *Id.* at 573 (emphasis added).

The *Hurley* Court noted that, "this general rule, that the speaker has the right to tailor the speech, applies not only to expression of value or endorsement, but equally to statements of fact the speaker would rather avoid," *id.* at 573, and the benefit of this rule is not limited to the press or just some people but is "enjoyed by business corporations generally." *Id.* at 574.

This Court, in later applying *Hurley*, noted that "the parade organizers did not wish to exclude the GLIB members because of their sexual orientations, but because they wanted to march behind a GLIB banner." *Dale*, 530 U.S. at 653–54. In *Hurley*, the parade organizers did not seek to discriminate, but wished to communicate their St. Patrick's Day message as they saw fit, without being compelled to adopt and promote other messages in their parade.

Like the parade organizers whose First Amendment rights this Court protected in *Hurley*, Petitioner does not, and has never, wished to discriminate against anyone based on their sexual orientation or who they are. Given that Petitioner willingly serves anyone without regard to their sexual orientation lifestyle, it is not her customers' sexual orientation that creates

problems in this case. Rather, it is solely the State's action compelling and censuring Petitioner's expression.

Petitioner believes that all people are created equal, but she reserves the liberty to abstain from affirming that all conduct is equal—especially when such a message violates the Christian faith central to her identity. The First and Fourteenth Amendments afford the liberty to not be forced or compelled by the State to do so. As this Court previously declared, "While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government." *Hurley*, 515 U.S. at 579. Government interpretation that punishes a dissenting opinion by promoting another is unconstitutional; "[t]olerance is a two-way street. Otherwise, the rule mandates orthodoxy, not anti-discrimination." *Ward v. Polite*, 667 F.3d 727, 735 (6th Cir. 2012).

Government SOGI preferences, enforced via censured and compelled speech regulation, too often unconstitutionally collide with the expression protected by the First Amendment. State enforcement of speech directives advancing such preferences frequently weaponize State action to eliminate the Free Speech Clause as an important constitutional constraint on the exercise of State authority. Indeed, religious people in our nation face a far more onerous predicament than the drafters and ratifiers of the Constitution and Bill of Rights could ever have imagined.

The beacon of liberty fails to shine when freedom dies on the pulpit of the civil authority's demands to supplant its will and opinion of morality for that of its citizens. The promise of liberty amounts to nothing more than empty subterfuge when the State punishes its citizens for expressing their thoughts and views inhering in their personal identity. Persecution of religious identity via censorship and compelled speech, imposed by the State upon Petitioner, must not stand in the United States. The First Amendment, promulgated to protect free expression and religious tolerance, requires reversal of the Tenth Circuit's oppressive and overreaching judgment.

The Tenth Circuit agreed that Respondents, through the power of the State, can both censure and compel a devout Christian artist's expression of her artistic message to comport with the government's political policy preferences.[5] If this holding is correct, the American experiment is effectively over. For devout citizens, such a rule fatally erodes freedom of speech, thought, and conscience inherent to one's dignity, autonomy, and identity. If government can compel citizens in their speech to dishonor God or else lose their livelihoods, we are far down the road to tyranny, a tyranny not so dissimilar from that which caused so many to flee so far to our shores all those years ago.

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[5] And the same could happen to any devout Jew, Muslim, or other person who disagrees with Respondents on this issue.

C. Colorado Failed to Understand how Liberty Interests Recognized by this Court in *Obergefell,* Reinforce Freedom of Speech, and other Rights Expressly Protected by the First Amendment

In *Obergefell v. Hodges*, this Court found in the Constitution a right of personal identity for all citizens. 135 S. Ct. 2584 (2015).[6] The Justices in the majority held that: "The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity." *Id.* at 2593; *see also Masterpiece Cakeshop,* 138 S. Ct. at 1727. *Obergefell* affirmed, therefore, not just freedom to define one's belief system, but freedom to express one's conscience associated with it.

Because *Obergefell* defined a fundamental liberty right as including "most of the rights enumerated in the Bill of Rights," and "liberties [that] extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs," this understanding of personal identity must broadly comprehend factual contexts well beyond the same-sex marriage facts of that case. 135 S. Ct. at 2589. Understanding then that the Court meant for the rules established in *Obergefell* to protect all individuals equally without preference,

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[6] While *amici* question the cogency of the substantive due process jurisprudence that birthed the court-created liberty articulated in *Obergefell,* they expect government to follow the now-established constitutional Rule of Law, including when it protects the personal identity and viewpoints of religious people.

the right of personal identity applies not just to those who find their identity in their sexuality and sexual preferences—but also to citizens who define their personal identity through their religious conscience communicated in their artistic thoughts and expression.

Recently this Court in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) held that "denying a generally available benefit solely on account of *religious identity* imposes a penalty on [First Amendment liberty]." *Id*. at 2019 (emphasis added). The concept of "religious identity" was recognized twice in the majority opinion of this Court and in the concurrences of Justice Gorsuch, Justice Thomas, and Justice Breyer. *Id*. at 2019, 2024, n. 3, 2025, 2026. And *Obergefell* specifically recognized that adherence to divine precepts and religious principles (*i.e.*, religious identity) is "central" to the "lives and faiths" of religious individuals. *Obergefell*, 135 S. Ct. at 2607.

Many Christian people, like Petitioner, find their identity in Jesus Christ and the ageless, sacred tenets of His Word in the Holy Bible. For followers of Jesus, adhering to His commands is the most personal choice central to their individual dignity and autonomy. A Christian person's artistic expression of thoughts, conscience, and viewpoints inhering in such personal religious identity, is entitled to at least as much constitutional protection as those who find their identity in their sexuality.

There can be no doubt that *Obergefell's* personal identity jurisprudence informs against government authorities who use public policy to discriminate

against religious people by compelling and censuring expression. Indeed, government must not use its power in ways hostile to religion or religious viewpoints under this new "autonomy" paradigm. *Masterpiece Cakeshop,* 138 S. Ct. at 1731. Certainly, government ought to protect and not impede the free expression of conscience. *Cf. Trinity Lutheran,* 137 S. Ct. at 2022 (holding the government violates the Free Exercise Clause if it conditions a generally available public benefit on an entity giving up its religious character); *cf. Burwell v. Hobby Lobby Stores, Inc.,* 134 S. Ct. 2751, 2775 (2014) (holding the RFRA applies to federal regulation of activities of closely held for profit companies); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 196 (2012) (barring an employment discrimination suit brought against a religious school). State actions must uphold constitutionally protected freedoms, not grant special protections for some, while coercing others to engage in expression adverse to their personal identity and conscience.

Contrary to *Obergefell's* holding, the Tenth Circuit eviscerates the constitutional right to free speech and identity, enabling States to claim a compelling interest in subjectively deeming infringement on artistic expression and conscience lawful. This Court should reverse the appellate court's diminishment of the liberty protected by the Free Speech Clause, especially considering *Obergefell's* recognition of constitutional protection afforded to personal identity in this area.

Indeed, under this Court's holdings, expressing "religious and philosophical objections" to SOGI issues

are constitutionally protected. *Masterpiece Cakeshop,* 138 S. Ct. at 1727, (holding that "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered" (citing *Obergefell* 135 S.Ct. at 2607)).

For religious people in the current cultural environment, though, that right regularly manifests as a mirage. In practice, State and local government authorities often elevate SOGI identities above all others, especially religious identities, and in so doing, forget the long and tragic history that the First Amendment aimed to correct. Special preferences embodied in government SOGI classifications, like those in the case at bar, exalt certain ideas and viewpoints over others and signal official disapproval of certain expressions, especially those grounded in a religious identity that authorities deem offensive. By this exercise of power, the State does not end prejudice, it instead endorses a form of it. "Just as no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, it is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive." *Masterpiece Cakeshop* 138 S. Ct. at 1731 (internal quotations and citations omitted).

A State's obligation to respect the Constitution's free expression guarantees requires it to act in a manner that tolerates, without passing judgment upon, or presupposing the illegitimacy of, religious ideas and

viewpoints. *Cf. Masterpiece Cakeshop,* 138 S. Ct. at 1731 (citing *Church of Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 534, 547 (1993) (internal quotes omitted)).

While the appellate court's strict scrutiny analysis wrongly deemed a compelling government interest justified the State's despotic action, it intentionally ignored how Colorado's imposition of SOGI preferences unavoidably introduces hostility and inequity toward the viewpoints and identity of many religious people. Indeed, special SOGI preferences, like those present here, require religious people to surrender their right to freely express their viewpoints, conscience, and personal identity.

For "freedom of speech" to have meaning, it must include the right to express one's ideas, viewpoints, and identity without fear of government punishment or coercion, irrespective of the popularity of that speech.[7] Unique and diverse individuals will disagree in a free society on important issues. Some may even find the divergent ideas, viewpoints, or identities of their fellow citizens deeply offensive. For society to remain free, though, it is imperative that they not also be compelled by the State to express them.

The government imposed compelled speech and censorship advancing SOGI preferences in the case at bar substantially interferes with Petitioner's freedom

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[7] Although beyond the scope of this brief, it is worth noting that likewise, for the "free exercise" of religion to have meaning, it must include the right to hold and manifest beliefs without fear of government punishment or coercion.

of speech. Colorado ought not require artists or other people of conscience to disavow who they are to engage in artistic or other forms of expression. Imposing such conditions inevitably chills, deters, and discourages the exercise of First Amendment rights. Here Colorado officials expressly require Petitioner to renounce her religious character and identity to artistically express herself in an otherwise accessible marketplace.

These officials do so despite the fact that artistic expression of viewpoints and conscience inhering in one's personal identity is not invidious discrimination. *Amici* legislators condemn invidious discrimination and hold no animus toward anyone. Rather they seek respectful consideration of all ideas and viewpoints and reject the notion that honest disagreement based on religious conscience equates with bigotry. Colorado authorities, however, have advanced a different view. Both in practice and in principle, they improperly seek to elevate SOGI preferences above other identities.

Amici legislators ask the Court to reinstate a proper constitutional understanding of the First Amendment such that all identities are honored equally with rules not subject to State preferences or politics. Each of the *amici* legislators represent different districts within Colorado, which include diverse populations of varied and often conflicting identities. The duty of the *amici* legislators includes an obligation to protect all of those they serve, not to favor some of them. They understand it is their responsibility not to interfere with the sincere expressions of their constituents' identities so as to foster the healthy exchanges innate

in a free society, to create a space for a fair debate without State imposed prejudice.

As *Masterpiece Cakeshop* recognized, when First Amendment freedoms are at stake "these disputes must be resolved with tolerance [...]" 138 S. Ct. at 1732. In fulfillment of this aim, *amici* legislators ask the Court to recognize the conflicting identities of their varying constituencies and treat them all fairly using the same standard, free from any unconstitutional interference via the State's political preferences. Offense to an expression, by the State or by anyone, is not the line where freedom should end. It is often the necessary intersection where opposing views freely meet.

Obergefell's personal identity jurisprudence informs and reinforces the First Amendment's free speech protections.[8] Government action not only must avoid censuring and compelling a citizen's speech to facilitate policies contrary to their conscience protected by the First Amendment, it must especially do so when the expression inheres in their personal identity. In this light, the Tenth Circuit erred by finding that a compelling interest justified the State's substantial interference with liberty protected by the Free Speech Clause. Such an error must not stand.

For artists, who view the world through their personal religious identity, God and His Word are real, and therefore really matter. It is part of who they are. *Amici* legislators, who have a duty to protect their

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[8] As well as protections for religious liberty.

constituents, are concerned about the increased censorship imposed by Colorado authorities upon viewpoints that contradict current political preferences. Under our Constitution, artists should not have to choose between fidelity to their religious identity or participation in the marketplace. Yet, here, Colorado prohibits expression inherent to Petitioner's religious identity, while compelling speech wholly incompatible with it. By making faith-informed artistic expression illegal via suppressed and compelled speech, Colorado deprives people of faith of their dignity.

Prohibiting an idea or viewpoint, informed by ageless sacred tenets, because it is not presently politically preferred, prevents thousands of years of wisdom from informing the public ethic. The perilous global challenges we face today ought to begin with preserving freedom of expression, thought, conscience, and religion. The idea that God created humans in His image, and that all human life has dignity – that we are endowed by our Creator with certain rights – ended slavery, advanced the rights of women, and provided the foundation for the civil rights movement that laws like CADA now misuse. Preserving unalienable First Amendment freedoms promotes good governance, peace, stability, prosperity, and charity. Os Guinness, *The Global Public Square* (2013). Moreover, this fundamental liberty provides the foundation for understanding the inherent value of every human being, thereby promoting the inviolable dignity and worth of all human life.

Conversely, when government suppresses expression of religious identity and the free expression

of religious ideas, it often results in tragic consequences. From the Inquisition to the current Russian regime, authoritarian restrictions on this fundamental liberty have led to tyranny and the abuse of basic human rights. We are, therefore, in the midst of a high-stakes battle over the character of the American nation. The extent to which unbridled State power governing speech prevails over the plain meaning of the Free Speech Clause will determine: 1) whether unalienable liberty for free speech will continue to be relevant as an objective limit on government action; and 2) whether the State replaces the Framers' intent with its own personal social policy views.

Amici legislators are keenly aware of the stakes. Despite the holding in *Masterpiece Cakeshop*, Colorado officials continue to demonstrate, distinguish, and rationalize a misunderstanding of First Amendment principles as they expand the scope of CADA without restraining the unconstitutional application of it. The case at bar is yet another example of this confusion, but it presents an important opportunity to finally and more fully correct the course for Colorado, as well as all States, between discrimination and liberty. First Amendment principles must protect all identities and viewpoints, not just State preferred ones.

CONCLUSION

For the reasons provided in this brief, *Amici Curiae* urge this Court to restore the right of all persons to exercise fundamental freedoms under the First Amendment and reverse the decision of the Tenth Circuit.

Respectfully submitted,

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