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 *AMICUS CURIAE* CHRISTIAN FAMILY COALITION (CFC) FLORIDA, INC. IN SUPPORT OF PETITIONERS

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AMICUS BRIEF OF CHRISTIAN FAMILY COALITION, FLORIDA, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION

The Christian Family Coalition Florida, Inc. ("CFC" or "Amicus"), hereby submits its Brief Amicus Curiae in support of the Petitioners' Request for Reversal of the Judgment of the United States Court of Appeals for the Tenth Circuit. This Court should reverse the judgment of the Tenth Circuit and should order issuance of the injunction the Petitioners seek, to protect their First Amendment rights of expression and non-expression – fundamental protections of the First Amendment.[1]

INTEREST OF THE AMICUS

Amicus is a non-profit Florida corporation representing over 100,000 Floridians and is dedicated to family values, religious freedom, fellowship, social justice, respect for human life, brotherhood and peace among people and nations, and world peace. Amicus actively seeks to protect these values and principles in political forums and in litigation including amicus filings in prior cases in this Court. These values are central to Amicus's purpose and are at the core of its

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[1] All parties have filed blanket consents to the filing of all Amicus Briefs. No counsel or other representative or agent of any party in this case authored any part of this brief or exercised any form of control or approval over this Amicus Brief or any portion of it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

efforts to ensure the protection of religious freedom and related rights of free expression in all walks of life, and not merely in formal Houses of Worship. These are exactly the protections at stake in this case. Petitioners seek to exercise their religious freedoms in the context of their constitutionally protected rights of expression in their livelihood. Amicus has an interest in this case because the rights of expression which Petitioners seek to protect – with their integrally related protections of Petitioners' firmly held religious beliefs – are central to Amicus's purpose in ensuring the protection of religious freedom which is inseparable from the rights of expression at issue in this case.

SUMMARY OF ARGUMENT

This Court should reverse the judgment of the Tenth Circuit for three reasons.

First, the Tenth Circuit disregarded the consistent holdings of this Court barring governmental compulsion of speech. In a long line of cases spanning the past 80 years, this Court consistently has held that governmental rules which compel speech by an involuntary speaker run afoul of the First Amendment. The First Amendment protects the rights of speakers to control and limit the content of their message and prohibits government from requiring speakers to include additional messages which the speakers oppose. This unbroken line of precedent is a fundamental bulwark of First Amendment protection and should not be abandoned by this Court.

Second, the rights of expression in this case are inseparable from Petitioners' rights of religious

freedom. Petitioners seek to exercise their religious freedoms – and to convey their constitutionally protected religious messages – in the websites they design. This is a fundamental part of Petitioners' religious observance. It reflects the message of the Supreme Being which Petitioners honor. To compel Petitioners to convey a different message, at odds with their religious beliefs, is in essence a compulsion imposed on Petitioners to honor something other than their own vision of a Supreme Being – and requires them to espouse support for religious tenets which contradict their own. This is the modern-day computerized equivalent of the centuries-old practice of forced religious conversions and of dragging people physically and forcibly into a different Church.

The compelled speech imposed on Petitioners also has an Orwellian dimension. It compels Petitioners to espouse as a religious truth what they sincerely hold to be a religious falsehood.

Third, there are no judicially manageable standards to measure the adequacy of the compelled speech which the Tenth Circuit requires. Unlike governmental ***restrictions*** on speech which Courts often can remedy by simply enjoining the governmental intrusion, governmental ***compulsion*** of speech defies judicial measurement or supervision. How can a Court – or any governmental agency – measure the compliance or noncompliance of speech and artistic efforts intrinsic to a web design? It is literally impossible. Is a Court or governmental bureaucrat supposed to second-guess the designer's artistic choices? – or determine whether the web designer improperly "sabotaged" a website being

forced upon her? – or determine how the designer should "fix" it? These are impossible tasks for a Court or governmental bureaucrat to perform. There are no meaningful standards. The First Amendment violation is extreme.

ARGUMENT

There are three reasons why the Tenth Circuit's holding impairs Petitioners' First Amendment freedom of expression and why it is essential to the First Amendment that this Court reverse the judgment below.

1. The Requirement that Petitioners Engage in Speech Contrary to Their Own Viewpoints Violates the First Amendment and the Consistent Precedent in this Court Barring Such Governmental Compulsion

The Tenth Circuit disregarded the consistent holdings of this Court barring governmental compulsion of speech. In a long line of cases spanning the past 80 years, this Court consistently has held that governmental rules which compel speech by an involuntary speaker run afoul of the First Amendment. The First Amendment protects the rights of speakers to control and limit the content of their message and prohibits government from requiring speakers to include additional messages which the speakers oppose. This unbroken line of precedent is a fundamental bulwark of First Amendment protection and should not be abandoned by this Court. *See National Institute of Family and Life Advocates v. Becerra,* 138 S.Ct. 2361, 2372 (2018) (First Amendment

right of anti-abortion clinics to refuse to disseminate information about abortion services); *Boy Scouts of America v. Dale,* 530 U.S. 640, 648 (2000) (First Amendment right of private organization to refuse to expand its scope of membership, because "[t]he forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association"); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557, 573 (1995) (First Amendment right of parade organizers to refuse to include particular viewpoints in their parade, because "one important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say"); *Miami Herald Publishing Company v. Tornillo,* 418 U.S. 241 (1973) (First Amendment right of newspaper to refuse to publish others' viewpoints); *Wooley v. Maynard,* 430 U.S. 705, 715 (1977) (First Amendment right of automobile owner to refuse to express others' viewpoint on his car's license plate, because "[t]he First Amendment protects the right of individuals … to refuse to foster … an idea they find morally objectionable"); *Pacific Gas and Electric Company v. Public Utilities Commission of California,* 475 U.S. 1, 9 (1986) (First Amendment right of electric/gas utility to refuse to include others' messages in its billing envelopes, because "[c]ompelled access … forces speakers to alter their speech to conform with an agenda they do not set"); *West Virginia State Board of Education v. Barnette,* 319 U.S. 624, 642 (1943) (First Amendment right of student to refuse to salute the American flag in contravention of student's religious beliefs because "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion,

or other matters of opinion or force citizens to confess by word or act their faith therein").

So compelling and immutable is this line of precedent against compelled speech that it inures to the benefit of the government itself, protecting the government's own prerogative to refuse to express a particular viewpoint in the government's own speech. *Shurtleff v. City of Boston,* 142 S.Ct. 1583, 1589 (2022) ("The First Amendment's Free Speech Clause does not prevent the government from declining to express a view … [or from] choos[ing] what to say and what not to say").

The overwhelming force and consistency of this long-standing line of precedent against compelled speech leave little room for doubt that the Tenth Circuit misapplied the First Amendment. No amount of intellectual tinkering or conceptual nitpicking can justify the formulation of any alleged "compelling State interest" to compel Petitioners to violate their personal conscience by forcing them to use their personal talents to create expressive content for causes they find "morally objectionable." *Wooley, supra,* 430 U.S. at 715. This is especially so, given the virtually limitless multitude of other web designers available for hire.

In addition, the mode of expression by Petitioners in the present case is far more clearly protected by the First Amendment than the expression which this Court has extended in the cases cited above. Several of the cases cited above involved combinations of speech and some form of either conduct or physical presence, whereas the present case is one of pure speech alone, and thus more closely tied to core First Amendment

values. For example, in *Boy Scouts, supra,* this Court protected physical membership in an organization as a mode of constitutionally protected expression, and in *Hurley, supra,* this Court extended First Amendment protection to a combination of speech and physical presence in a parade. Here, by contrast, Petitioners' mode of expression is one of pure speech and thus central to core First Amendment values.

For these reasons, this Court should reverse the judgment of the Tenth Circuit and should hold that Petitioners are protected by the First Amendment in their refusal to engage in expression they find "morally objectionable." *Wooley, supra,* 430 U.S. at 715.

2. The Requirement that Petitioners Engage in Speech Contrary to Their Deeply Held Religious Convictions Deprives Petitioners of Their Rights of Expression Which Include Rights to Choose the Religious Viewpoints They Espouse and Effectively Imposes Upon Them The Involuntary Expression of Alien Religious Viewpoints

The rights of expression in this case are inseparable from Petitioners' rights of religious freedom. The two constitutional freedoms are inextricably intertwined. *Shurtleff, supra,* 142 S.Ct. at 1593 (2022) ("discrimination based on religious viewpoint … violated the Free Speech Clause"); *West Virginia State Board of Education, supra,* 319 U.S. at 642 ("no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion").

Petitioners seek to exercise their religious freedoms – and to convey their constitutionally protected religious messages – through the content of the websites they design. This is a fundamental part of Petitioners' religious observance. It reflects the message of the Supreme Being which Petitioners honor. To compel Petitioners to convey a different message, at odds with their own religious beliefs, is in essence a compulsion imposed on Petitioners to dishonor their own vision of a Supreme Being and to honor something else.

This compulsion is not new to history. In the Inquisition and religious wars of past centuries, combatants forcibly imposed their religious beliefs on their victims and literally dragged them into a different Church, on pain of death for noncompliance. In the modern era of the internet and computers, the spiritual imposition which the Tenth Circuit has ordained lies in involuntary computerized expression, rather than involuntary physical attendance at a different Church.

This compelled, involuntary speech is Orwellian. It imposes on Petitioners' belief system – to compel Petitioners to espouse as true what they sincerely hold to be false – in Petitioners' view, a religious falsehood, a religious non-truth.

This extreme transgression of First Amendment freedoms has no place in our constitutional system.

Whether in religion, politics, or artistic pursuits, government may not be the arbiter of truth or impose its vision of religious or political orthodoxy. To permit any governmental entity in this country to arrogate to

itself this draconian power is fundamentally contrary to our constitutional scheme and a clear violation of the First Amendment's protections of speech and religion. As this Court has held, "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia State Board of Education, supra,* 319 U.S. at 642.

To safeguard the First Amendment freedoms of speech and religion, this Court should reverse the decision of the Tenth Circuit.

3. The Requirement that Petitioners Engage in Speech Contrary to Their Own Viewpoints Violates the First Amendment Because There Are No Judicially Manageable Standards by Which Courts or Other Governmental Agencies Can Measure the Alleged Compliance or Noncompliance of the Speech Which the Government Seeks to Compel

It is axiomatic that governmental restrictions or limitations on speech, to the extent they are permitted, as well as governmental involvement in the speech of private entities, must comport with strict standards which are clear and judicially manageable. Vague, lax, or non-existent standards delegate excessive authority to bureaucrats and judges which, in turn, trigger impermissible suppression and censorship of speech. *Forsyth County v. Nationalist Movement,* 505 U.S. 123, 131 (1992) (First Amendment requires "narrow, objective and definite standards to guide the licensing authority"); *City of Lakewood v. Plain Dealer*

Publishing Co., 486 U.S. 750, 759 (1988) (First Amendment requires strict "standards by which to measure the licensor's action"); *NAACP v. Button,* 371 U.S. 415, 432 (1963) ("standards of permissible statutory vagueness are strict in the area of free expression").

This is exactly what is lacking here. There are no judicially manageable standards to measure the adequacy of the compelled speech which the Tenth Circuit requires. Unlike governmental ***restrictions*** on speech which Courts often can remedy by enjoining the governmental intrusion, governmental ***compulsion*** of speech defies judicial measurement or supervision. How can a Court – or any governmental agency – measure the compliance or noncompliance of speech and artistic efforts intrinsic to a web design? It is literally impossible. Is a Court or other governmental functionary supposed to second-guess the designer's choice of color, shading, timing, artistic symmetry, or other artistic or design qualities in a web page? Is a Court or other governmental agency really able to determine whether the designer purposefully sabotaged a web page she was forced to design if there are allegations of "poor quality" or "underhanded" artistic efforts? – and then determine with specificity how the designer should fix it?

These are impossible tasks for a Court or governmental agency to perform. The lack of meaningful precise standards for these tasks – which require second-guessing artistic efforts – makes the violation of the First Amendment inescapable if the

tasks are even attempted. *Forsyth County, supra; City of Lakewood, supra; NAACP v. Button, supra.*

The unbridled discretion which the Tenth Circuit's holding allows to governmental bureaucrats in their supervision of speech and artistic endeavors will ensure more censorship of speech and is a serious violation of the First Amendment.

CONCLUSION

To ensure the protection of these vital First Amendment interests, this Court should reverse the judgment of the Tenth Circuit and should order the issuance of the injunction which the Petitioners seek.

Respectfully submitted,

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