No. 24-427

IN THE

Supreme Court of the United States

RONALD HITTLE,

Petitioner,

v.

CITY OF STOCKTON, CALIFORNIA; ROBERT DEIS; LAURIE MONTES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR SAMARITAN'S PURSE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

Amicus Samaritan's Purse is a nondenominational evangelical Christian organization that provides spiritual and physical aid to hurting people around the world. Since 1970, Samaritan's Purse has helped meet the needs of people victimized by war, poverty, natural disasters, disease, and famine as a practical demonstration of God's love for the world through his Son, Jesus Christ. Samaritan's Purse seeks to follow the command of Jesus to "go and do likewise" in response to the story of the Samaritan who helped a hurting stranger. Samaritan's Purse serves the world through acts of service and by sharing the life-giving message of the Gospel of the Lord Jesus Christ. In its Statement of Faith, Samaritan's Purse affirms that "the ministry of evangelism (sharing and proclaiming the message of salvation only possible by grace through faith in Jesus Christ) and discipleship (helping followers of Christ grow up into maturity in Christ) is a responsibility of all followers of Jesus Christ." [1]

That responsibility is lived out by the more than 1,600 staff members and hundreds of thousands of volunteers who partner with Samaritan's Purse to provide crisis relief in over 100 countries, sharing the hope and love of Jesus Christ with the vulnerable in their darkest hour of need. Those volunteers often have other full-time employment in numerous sectors, both private and public, balancing their God-given mission and earthly vocations.

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

Samaritan's Purse is thus interested in the proper development of this Court's Title VII jurisprudence, which, when appropriately applied, can help safeguard the freedom of employees to live out their faith, in the workplace and through related voluntarily associations, without fear of unlawful discrimination.

SUMMARY OF ARGUMENT

This case presents a particularly useful vehicle for clarifying or setting aside the burden-shifting framework this Court articulated in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973). The framework sets out a three-step process for determining whether Title VII claims clear summary judgment and reach the finder of fact. At step one, plaintiffs must offer a *prima facie* case of discrimination. *Id.* at 802. Once offered, employers assert neutral (nondiscriminatory) justifications for the challenged employment action. *Id.* Finally, plaintiffs must prove that the employers' neutral justifications are pretext for discrimination. *Id.* at 804. Only then may plaintiffs reach a jury.

The framework, particularly steps two and three, is wholly divorced from statutory text, distracts from Title VII's essential causation inquiry, and requires more of plaintiffs than Rule 56 demands. The atextual inquiry has confused the lower courts, which have embraced different approaches to reconciling *McDonnell Douglas* with this Court's recent pronouncements in *Bostock* v. *Clayton County*, 590 U.S. 644 (2020). This Court held that liability attaches whenever an employee's protected characteristic is just one but-for cause (or motivating factor) of a challenged discharge. *Id.* at 656. But *McDonnell Douglas* continues to confuse the courts below—*i.e.*, here, the Ninth Circuit ignored *Bostock*'s reasoning and gave undue weight to an employer's

purportedly neutral justifications for discriminatory actions. Indeed, as this record demonstrates, purportedly neutral justifications can be a shield for anti-religious animus. Because this case is a clean vehicle squarely presenting the tension between Title VII's causation standard and *McDonnell Douglas*, the Court should grant the petition to clarify the governing framework in light of this Court's most recent authority.

ARGUMENT

I. THE COURT SHOULD GRANT THE PETITION TO RECONCILE *BOSTOCK* AND *MCDONNELL DOUGLAS*

It is time to revise or set aside the burden-shifting framework articulated in *McDonnell Douglas*. From pronouncement, the framework has befuddled the lower courts. Intermediate efforts to refine its application have spawned intractably complex categorization exercises. And, as the reasoning of *Bostock* clarifies, the framework elevates considerations that, at best, distract from and, at worst, undermine Title VII's plain text.

A. *McDonnell Douglas*'s Atextual Framework Has Confused And Divided Courts Below

The courts of appeals have long reflected that the "mechanics of the burden shifting in *McDonnell Douglas* … have caused no little difficulty among courts." *Loeb* v. *Textron, Inc.*, 600 F.2d 1003, 1011 (1st Cir. 1979) (collecting authorities); *see also Wells* v. *Colorado Dep't of Transp.*, 325 F.3d 1205, 1221 (10th Cir. 2003) (Hartz, J., "writ[ing] separately to express [his] displeasure" with the *McDonnell Douglas* framework, which "only creates confusion" and "should be abandoned"). The difficulty follows from the proliferation of judge-made factors (and subfactors) invited by a three-step framework unmoored from its governing statute. *Tynes* v. *Florida*

Dep't of Juv. Just., 88 F.4th 939, 958 (11th Cir. 2023) (Newsom, J. concurring), *cert. denied*, No. 23-1235 (U.S. 2024). Such factors "divid[e] the presentation of the evidence" into multiple stages, obscuring "the ultimate fact of discrimination." Tymkovich, *The Problem with Pretext*, 85 Denv. U.L. Rev. 503, 519-528 (2008) (noting examples). This Court has repeatedly clarified that the scope of liability under Title VII must be determined by "what the actual text of Title VII means." *Groff* v. *DeJoy*, 600 U.S. 447, 471-472 (2023) (interpreting 42 U.S.C. § 2000e-2(a)(1)). But the *McDonnell Douglas* burden-shifting framework finds no purchase in the text of Title VII. That alone warrants granting the petition, revisiting *McDonnell Douglas*, and abandoning—or at least clarifying—its atextual framework.

B. *McDonnell Douglas* Foments Confusion And Distracts From Title VII's Essential Causation Inquiry

The courts of appeals have responded to the tension between *McDonnell Douglas* and the text of Title VII with confusion and burdensome categorization exercises. These efforts look beyond the mark, as Title VII's standard for liability is straightforward:

> It shall be an unlawful employment practice for an employer … to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]

42 U.S.C. § 2000e-2(a)(1). Likewise, Federal Rule of Civil Procedure 56 sets a clear standard for awarding summary judgment:

> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). Neither authority mentions a three-step burden-shifting framework, nor is there any hint of a requirement for a plaintiff to disprove an employer's purportedly neutral justification for an adverse employment action. The Court created the framework out of whole cloth, and lower courts struggle to apply it without eviscerating the law's plain text.

Following this Court's intermediate clarifications, for example, most circuits apply the *McDonnell Douglas* test at the summary-judgment stage in cases involving only indirect or circumstantial evidence. *See, e.g.*, *Walton* v. *Powell*, 821 F.3d 1204, 1210-1211 (10th Cir. 2016) (Gorsuch, J.); *Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111, 121 (1985) (the "*McDonnell Douglas* test is inapplicable where the plaintiff presents direct evidence of discrimination"). To apply *McDonnell Douglas* then, courts must start by "polic[ing] the often fine line between" direct and indirect evidence. *Walton*, 821 F.3d at 1211.

Meanwhile, the Seventh Circuit jettisoned the malleable distinction between direct and indirect evidence altogether—as well as a version of the "convincing mosaic" standard—focusing instead on "the sole question that matters" under the statute: whether a statutorily proscribed factor caused an adverse employment action. *Ortiz Enters., Inc.* v. *Werner*, 834 F.3d 760, 764-766 (7th Cir. 2016) (Easterbrook, J.) ("With the rat's nest of surplus 'tests' removed from the law of the circuit, we can turn back to [Plaintiff's] claim and his supporting

evidence. Stripped of the layers of tests, our analysis is straightforward.").

Other circuits simply cut (or circumvent) portions of the test. The D.C. Circuit, for example, ignores the first step (plaintiffs' burden to present a *prima facie* case), as an "unnecessary sideshow" often involving onerous, atextual showings that "wast[e] litigant and judicial resources." *Brady* v. *Office of Sergeant at Arms*, 520 F.3d 490, 494 (D.C. Cir. 2008) (Kavanaugh, J.).

C. Division Has Intensified In The Wake Of *Bostock*

The confusion and diverging approaches have become even more pronounced since this Court's decision in *Bostock*. The Second Circuit, for example, now holds that a plaintiff's step-three burden to show "pretext" need not identify any pretext at all. *Bart* v. *Golub Corp.*, 96 F.4th 566, 577 (2d Cir.), *cert. denied*, No. 23-1346 (U.S. 2024). Instead, plaintiffs may "satisfy that third-stage burden" by showing that the challenged discharge "was also attributable to an impermissible consideration." *Id.* The panel in *Bart* reasoned that, under *Bostock*, a plaintiff establishes that an employer's discharge was caused by discrimination simply by showing that the discrimination is a but-for cause of the discharge. *Id.* at 570. Instead of establishing pretext, "a Title VII plaintiff need only prove that the employer's stated non-discriminatory reason was *not the exclusive* reason for the adverse employment action." *Id.* at 574.

The Second Circuit's approach splits sharply with the Ninth's, which applies *McDonnell Douglas* without meaningfully considering how the burden-shifting framework interacts with *Bostock*. As the Second Circuit recognized, *Bostock* necessarily alters *McDonnell Douglas*, especially at summary judgment. *Bart*, 96

F.4th at 570-577. Consider the logic of *Bostock*. It held that, under the text of Title VII, liability attaches whenever a protected characteristic is at least one but-for cause (or motivating factor) of an adverse employment action, regardless of discriminatory animus. 590 U.S. at 656-657. That is true regardless of the quantity or quality of an employer's other justifications for a discharge. *Id.* This Court reasoned that because Title VII adopts "the traditional but-for causation standard" and "events have multiple but-for causes," "a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision." *Id.* at 656. "So long as the plaintiff's [protected characteristic] was one but-for cause of" or at least one "motivating factor" of the "decision, that is enough to trigger the law." *Id.* Although *Bostock* does not discuss the summary judgment standard of Rule 56 directly, one implication is self-evident: plaintiffs who adduce evidence sufficient to establish a genuine factual dispute about whether their protected characteristic was at least one but-for cause (or motivating factor) of a challenged employment action should clear the summary-judgment hurdle.

The Ninth Circuit ignored the *Bostock* but-for-causation inquiry, instead elevating a defendant's neutral reasons for discharge under *McDonnell Douglas*. Indeed, the opinion focuses exclusively on the City's (purportedly) non-discriminatory reasons for removing Chief Hittle and Hittle's *McDonnell Douglas* burden to show that the City's justifications were pretext for "discriminatory animus." Pet. App. 24a. That approach cannot be squared with text of Title VII. As this Court has explained, plaintiffs need not show that an employer acted with animus against persons with, or on the basis of, a statutorily protected characteristic. *Bostock*, 590 U.S. at 661. Nor must plaintiffs demonstrate that an

employer's proffered justifications were pretext for religious discrimination. "If an employer would not have discharged an employee but for that individual's [protected trait], the statute's causation standard is met, and liability may attach." *Id.* An employer's "additional intentions" (or justifications) distract from the essential causation inquiry, as the protected characteristic "need not be the sole or primary cause of the of the employer's adverse action"—only one but-for cause or motivating factor. *Id.* at 661, 664. Other "intentions" are also irrelevant because they cannot "insulate … employers from liability." *Id.* at 661. After all, "[i]ntentionally burning down a neighbor's house is arson, even if the perpetrator's ultimate intention (or motivation) is only to improve the view." *Id.*

Recall that the Ninth Circuit's opinion acknowledges Hittle's attendance at a Christian leadership summit was an "aspect" of the City's decision to fire him.[2] Yet at no point did the panel directly consider that fact relevant to determining whether Hittle's religion—which the statute expansively defines, 42 U.S.C. § 2000e(j)—was at least one reason the City discharged him. Why? Because the Ninth Circuit, in attempting to

[2] Notably, the first opinion described Hittle's attendance as the "gravamen" of the City's discharge determination, Pet. App. 101a; the amended opinion calls summit attendance an "aspect" of the decision, Pet App 32a. Under *Bostock*, it does not matter. Whether "aspect" or "gravamen," the Ninth Circuit should have asked whether religion was at least one reason the City discharged him. The amended opinion also substitutes the phrase "discriminatory animus" for "hostility to religion" when describing what Hittle must establish to prove that his employer's supposedly neutral grounds for discharge were pretextual under *McDonnell Douglas*. But under Title VII, as interpreted by *Bostock*, a discharge motivated by an employee's religion is unlawful even when the employer's justifications are benign and free of animus.

apply *McDonnell Douglas*, became distracted by the City's purportedly neutral justifications for the discharge. In short, by stressing the employer's justifications (step two) and the employee's obligation to rebut those explanations as pretext (step three), the Ninth Circuit was derailed by the confusion of *McDonnell Douglas* from its duty, per statutory text, to determine simply whether Hittle was discharged because of religion. *See* 42 U.S.C. § 2000e-2(a)(1).

* * *

Given the pervasive confusion over how to apply *McDonnell Douglas* and its tendency to distract courts from the only causation inquiry that matters under Title VII, the Court should grant the petition and revise or set aside the three-step burden-shifting framework. It should also direct lower courts to discontinue asking more, at the summary-judgment stage, than whether plaintiffs provided sufficient evidence to (when viewed in the light most favorable to plaintiffs) permit a reasonable factfinder to conclude religion was at least one but-for cause or motivating factor behind the challenged discharge. That approach, while not only true to the text, preserves judicial economy, even if more Title VII cases were to move beyond summary judgment. It focuses lower courts on the central point: whether the plaintiff introduced evidence sufficient to show that an employer discriminates on the basis of a protected trait. And this streamlines judicial analysis, *Tynes*, 88 F.4th at 949, avoids (unlike *McDonnell Douglas*) "unnecessary sideshow[s]" that squander "judicial resources," *Brady*, 520 F.3d at 494, and eliminates the need for this Court to police endlessly evolving versions of the burden-shifting framework.

So long as religious discrimination is a but-for cause or motivating factor for the discharge, an employer's non-discriminatory justifications for the firing are irrelevant.

II. THIS CASE PRESENTS A CLEAN VEHICLE FOR CLARIFYING CAUSATION UNDER TITLE VII

When evaluating vehicles to refine causation under Title VII, this Court would want a case in which the conflict between various causes was "'passed upon,'" *Citizens United* v. *Federal Election Comm'n*, 558 U.S. 310, 330 (2010), and "outcome determinative," *Gamache* v. *California*, 562 U.S. 1083, 1085 (2010) (mem.). This case meets both criteria.

A. The Ninth Circuit's Analysis Of The Possible Justifications For The Adverse Employment Action Provides The Court With An Opportunity To Crystallize The Causation Standard

The Ninth Circuit considered and passed on multiple facially possible but-for causes of Hittle's discharge. This is not a case in which the plaintiff's protected trait was the *only* alleged cause, which would obviate any need to resolve tension between a protected but-for cause under *Bostock* and some other cause the employer may proffer at step two. It is precisely because the parties meaningfully developed multiple causes, and the Ninth Circuit passed on those causes, that certiorari is appropriate for this case. The underlying facts will permit the Court to clarify the causation standard for lower courts, demonstrating that after *Bostock* the neutral justifications employers must offer (step two) and plaintiffs must rebut (step three) under *McDonnell Douglas* are irrelevant. Here, the City not only conceded *in writing* that religion was a but-for cause of Chief Hittle's termination, but the record reflects meaningful disputes over

other possible but-for causes. It is thus a strong vehicle for reconsidering *McDonnell Douglas* in light of *Bostock*'s causation analysis.

B. The City's Asserted Justifications For Hittle's Termination, Supposedly Neutral, Reflect Anti-Religious Animus, Rendering The Ninth Circuit's Application Of *McDonnell Douglas* Without Consideration Of *Bostock* All The More Inappropriate

Certiorari is all the more appropriate here because the Ninth Circuit wrongly elevated the City's purportedly neutral justifications under *McDonnell Douglas*—when they were actually anti-religious—in a manner that was wrongly dismissive of *Bostock*'s guidance and outcome-determinative. The record (when viewed in the light most favorable to Chief Hittle) does not show that non-discriminatory justifications were the *only* but-for causes of Chief Hittle's termination. Quite the opposite. Many of the City's alternative explanations reflect value judgments that inherently devalue faith and strengthen the case that anti-Christian animus was a but-for cause (and motivating factor) of the discharge. Had the Ninth Circuit focused on Title VII's essential causation inquiry under *Bostock*, instead of permitting employer-framed justifications to take center stage under *McDonnell Douglas*, it would have found that the City's justifications raise (rather than preclude) triable issues of fact about whether Chief Hittle's religion was a but-for cause of the discharge.

Consider two of the City's purportedly neutral justifications for terminating Chief Hittle.

First, the City suggested that it fired Chief Hittle for attending an event that was "'inconsistent with … policies that require'" leadership "'training provide "a

specific benefit" to the City.'" Pet. App. 63a-64a (VanDyke, J., dissenting). To begin, the City failed to provide objective and discernible criteria for what constitutes a permissible or impermissible training. Although Deputy City Manager Montes claims to have suggested supposedly possible trainings, none was actually feasible (*i.e.*, affordable) given the City's budget constraints. Additionally, there was no written policy prohibiting attendance at events with a religious valence. Yet in Montes's words, the summit provided no value to City because of its "'stated purpose'" "'to "transform Christan leaders … for the sake of the local church."'" *Id.* As Judge VanDyke highlighted in his dissent from the Ninth Circuit's denial of rehearing en banc, "such logic is per se discriminatory." *Id.* It was the City's conceded view that the religious aspect of a leadership training event means that it must lack any secular benefit. That view risks "fostering a pervasive bias or hostility to religion," all while hiding that bias behind neutral-sounding policies. *Rosenberger* v. *Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 845-846 (1995).

One could imagine an employer that encourages or provides incentives for employees to engage in community service in their free time but that later decides not to recognize an employee's service volunteering with organizations like Samaritan's Purse on the derogatory basis that work done for Christ provides no secular benefit. Such bias would devalue the beneficial humanitarian work organizations like Samaritan's Purse carry out all over the world simply because it is done in the name of Jesus. That is precisely the type of anti-religious conduct Title VII and this Court's precedents forbid. Yet, Montes and City Manager Deis made little effort to hide similar animus, repeatedly parroting derogatory and insulting terms coined by others ("church clique" and

"Christian Coalition") and describing Chief Hittle's associations with other firefighters of faith as something he "should refrain from." Pet. App. 8a, 15a. Montes gave the pejorative terms credence and used them to interrogate Hittle about these activities. By singling out religious training for disfavored treatment, the City provided additional evidence that anti-religious discrimination caused Hittle's discharge.

Yet, remarkably, the Ninth Circuit brushed aside the derogatory language of Hittle's supervisors as based on "other persons' perceptions" that his workplace religious activities were inappropriate. Pet. App. 25a. That reasoning directly contravenes *Groff* by allowing "a coworker's dislike of religious practice and expression in the workplace" to negate Title VII liability. 600 U.S. at 472 (quotation marks omitted). This Court articulated the principle of *Groff* in the context of a religious accommodation case, *id.*; it should hold with even greater force in the context of a case with evidence of direct discrimination, such as *Hittle*.

Second, Montes's subjective questioning of Hittle's judgment was itself rooted in animus. Montes questioned Hittle about his off-duty activities and directed him to refrain from "those types of activities" without providing any justification for her guidance or connecting Chief Hittle's protected religious practice to conduct that violated workplace policies. Pet. App. 8a. At best, this line of questioning was motivated by an outdated fear that a public employee's religious activity could be construed as state endorsement of religion. The Court has clarified that this view is unwarranted in *Kennedy* v. *Bremerton School District*, 597 U.S. 507, 544 (2022). But at worst, Montes's statements constituted unlawful discrimination against religion that no court would tolerate if, in a similar case, an employer had directed a

public employee to stop associating with other employees on the basis of another protected trait like sex, race, or ethnic group. Religion is no less worthy of protection than other traits safeguarded by Title VII. Yet the Ninth Circuit not only endorsed Montes's conduct as reasonable but relied on it in concluding that Montes did not "ma[k]e any remarks demonstrating [her] own discriminatory animus toward religion—*i.e.*, an intent to treat Hittle worse because he is a Christian." Pet. App. 30a.

To be clear, under *Bostock*, plaintiffs need not show that employers acted with hostility or animus toward a protected trait. But, as this case demonstrates, the specter of anti-religious animus in the City's so-called neutral justifications makes it all the more reasonable for a factfinder to conclude that religion was a but-for cause of the plaintiff's discharge. Indeed, because the record spotlights outcome determinative ways employers use step-two justifications to distract lower courts from anti-religious animus, this case is an especially useful vehicle for setting aside or clarifying the *McDonnell Douglas* burden-shifting framework.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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