

No. 25-233

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**In the Supreme Court of the United States**

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CATHERINE MILLER, ET AL.,

*Petitioners,*

v.

CIVIL RIGHTS DEPARTMENT,

*Respondent.*

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**On Petition for a Writ of Certiorari to the Court of  
Appeal of California, Fifth Appellate District**

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**BRIEF OF AMICI CURIAE ADVANCING AMERICAN  
FREEDOM; AMERICAN ASSOCIATION OF SENIOR CITIZENS;  
AMERICAN ENCORE; AMERICAN VALUES; CENTER FOR  
URBAN RENEWAL AND EDUCATION (CURE); CHRISTIAN  
LAW ASSOCIATION; ET AL.  
IN SUPPORT OF PETITIONERS  
(*Additional Amici Curiae on inside cover*)**

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J. Marc Wheat

*Counsel of Record*

Timothy Harper (Admitted in DC)  
Advancing American Freedom, Inc.  
801 Pennsylvania Avenue, N.W.

Suite 930

Washington, D.C. 20004

(202) 780-4848

September 29,  
2025

MWheat@advancingamericanfreedom.com

*Counsel for Amici Curiae*

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**COALITION FOR JEWISH VALUES; EAGLE FORUM; FAITH  
AND FREEDOM COALITION; FAMILY COUNCIL OF  
ARKANSAS; FAMILY INSTITUTE OF CONNECTICUT ACTION;  
FRONTIERS OF FREEDOM; FRONTLINE POLICY COUNCIL;  
JAY D. HOMNICK, SENIOR FELLOW, PROJECT SENTINEL;  
TIM JONES, FORMER SPEAKER, MISSOURI HOUSE,  
CHAIRMAN, MISSOURI CENTER-RIGHT COALITION;  
LUTHERAN CENTER FOR RELIGIOUS LIBERTY; MARYLAND  
FAMILY INSTITUTE; NATIONAL APOSTOLIC CHRISTIAN  
LEADERSHIP CONFERENCE; NATIONAL CENTER FOR  
PUBLIC POLICY RESEARCH; NATIONAL RELIGIOUS  
BROADCASTERS; NEW JERSEY FAMILY POLICY CENTER;  
NEW YORK CONSERVATIVE PARTY; NORTH CAROLINA  
VALUES COALITION; RIO GRANDE FOUNDATION; 60 PLUS  
ASSOCIATION; SOUTHEASTERN LEGAL FOUNDATION; PAUL  
STAM, FORMER SPEAKER PRO TEM, NORTH CAROLINA  
HOUSE; THE CONCORD FUND; THE FAMILY FOUNDATION  
OF VIRGINIA; TRADITION, FAMILY, PROPERTY, INC.; AND  
WISCONSIN FAMILY ACTION, INC.**

### QUESTION PRESENTED

1. Whether the Free Speech Clause's protection against compelled participation in a ceremony only applies where third parties would view that participation as expressing endorsement of the ceremony.
2. Whether proving a lack of general applicability under the Free Exercise Clause requires showing unfettered discretion or categorical exemptions for identical secular conduct.
3. Whether *Employment Division v. Smith* should be overruled.

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**STATEMENT OF INTEREST OF AMICI CURIAE**

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.<sup>1</sup> AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”<sup>2</sup> and believes American prosperity depends on ordered liberty and self-government.<sup>3</sup> AAF filed this brief on behalf of its 25,189 members in the Ninth Circuit including 11,536 members in the state of California.

Amici American Association of Senior Citizens; American Encore; American Values; Center for Urban Renewal and Education (CURE); Christian Law Association; Coalition for Jewish Values; Eagle Forum; Faith and Freedom Coalition; Family Council of Arkansas; Family Institute of Connecticut Action; Frontiers of Freedom; Frontline Policy Council; Jay D. Homnick, Senior Fellow, Project Sentinel; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Lutheran Center for Religious

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<sup>1</sup> All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

<sup>3</sup> Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at <https://advancingamericanfreedom.com/aaff-independence-index/>.

Liberty; Maryland Family Institute; National Apostolic Christian Leadership Conference; National Center for Public Policy Research; National Religious Broadcasters; New Jersey Family Policy Center; New York Conservative Party; North Carolina Values Coalition; Rio Grande Foundation; 60 Plus Association; Southeastern Legal Foundation; Paul Stam, former Speaker Pro Tem, North Carolina House; The Concord Fund; The Family Foundation of Virginia; Tradition, Family, Property, Inc.; and Wisconsin Family Action, Inc. believe that the fundamental right to operate one's business according to one's religious values is at stake in this case.

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

This case concerns the fundamental freedom of Americans to organize their lives, including their businesses, according to their religious values. The Court has recently reaffirmed that parents and children do not lose their religious rights when they enter school. *Mahmoud v. Taylor*, No. 24-297, slip op. at 16-17 (2025) (quoting *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506-07 (1969)) (“And the right to free exercise, like other First Amendment rights, is not ‘shed . . . at the schoolhouse gate.’”). Neither do they lose those rights when they choose to operate a business.

Here, the California Civil Rights Department (“the Department”) seeks to punish Catherine Miller for running her business, Tastries Bakery, in accord with her Christian beliefs about marriage. This case arose after Ms. Miller declined to bake a cake for a same-sex couple’s wedding celebration. Cert. Pet. at

13-14. The Department brought suit against Ms. Miller in state court in October of 2018, nearly seven years ago, “seeking fines and an order prohibiting [Ms. Miller’s] conduct.” Cert. Pet. at 17. The trial court ruled for Ms. Miller. *Id.* However, the state appellate court reversed, finding that “no one would have understood” the cake to convey a message of support for same-sex marriage. Cert. Pet. at 19.

For Americans who wish to operate their expressive businesses in accord with their religious values, cases like the one here and others operate as an implicit threat. States that seek to enforce their nondiscrimination laws as California does here demonstrate to potential business owners that they and their views are not welcome and that if they have the courage to open their business anyway, they face years of difficult litigation. This should not be the case. The Court should grant the petition for certiorari and rule for Petitioners.

## ARGUMENT

### **I. Religious Americans, Suffering at the Hands of Aggressive State Governments and Activists, Need a Clear Statement of Their Rights From this Court.**

The First Amendment to the Constitution protects the “free exercise” of religion from federal government interference. U.S. Const. amend I. That prohibition extends to state governments under the Fourteenth Amendment. *See, Masterpiece Cakeshop, LTD, v. Colorado Civil Rights Comm’n*, No. 16-111, slip op. at 2 (2018) (recognizing “the right of all persons to exercise fundamental freedoms under the

First Amendment, as applied to the states through the Fourteenth Amendment.”). As this Court has held, “when the government chooses to provide public benefits, it may not ‘condition the availability of [those] benefits upon a recipient’s willingness to surrender his religiously impelled status.” *Mahmoud*, No. 24-297, slip op. at 32 (alteration in original) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017)).

Yet religious Americans in many states have faced retaliation for exercising their fundamental rights to their own property and labor in accord with their religious convictions.

Most famously, Jack Phillips, a Christian baker from Colorado has spent years defending his right to operate his business in accord with his values. This Court ruled in Mr. Phillips’ favor in 2018, finding that the state’s “treatment of his case ha[d] some elements of a clear and impermissible hostility toward the sincere religious beliefs that motivated his objection” to creating a wedding cake for a same-sex couple. *Masterpiece Cakeshop, LTD*, No. 16-111, slip op. at 12. The Court effectively ruled that Colorado had violated Mr. Phillips’ Free Exercise Rights by disparaging his religious views.

As Justice Thomas explained, Colorado had also violated Mr. Phillips’ right to Free Speech. “Forcing Phillips to make custom wedding cakes for same-sex marriages requires him to, at the very least, acknowledge that same-sex weddings are ‘weddings’ and suggest that they should be celebrated—the precise message he believes his faith forbids.” *Id.* slip op. at 8 (Thomas, J., concurring in part and concurring in the judgment). Doing so violated Mr. Phillips’ right

to Free Speech. *Id.* (quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573-74 (1995)).

Further, the Court stopped short of finding that Mr. Phillips had a Free Exercise right to choose which weddings he was willing to create a cake for, ruling on the narrower grounds that Colorado had violated his Free Exercise right in the way it had handled his case. *Id.* at 18 (majority op.).

The Court's relatively narrow reasoning left Mr. Phillips exposed to further harassment. On the day in 2017 this Court granted certiorari in Mr. Phillips' case, Mr. Phillips became the subject of another lawsuit after he refused to bake a cake celebrating a man's transgender transition.<sup>4</sup> The Colorado Civil Rights Commission ultimately dismissed its case as part of a settlement agreement<sup>5</sup> but the private lawsuit continued another seven years until it was dismissed by the Colorado Supreme Court on procedural grounds.<sup>6</sup>

This Court again considered the issue in *303 Creative, LLC, v. Elenis*, No. 21-476 (June 30, 2023). In that case, Lorie Smith challenged Colorado's public

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<sup>4</sup> Kelsey Dallas, *5 years after a Supreme Court win, Christian baker Jack Phillips' fight is far from over*, Deseret News (Oct. 25, 2023 9:00 PM)

<https://www.deseret.com/faith/2023/10/25/23930090/christian-baker-jack-phillips-masterpiece-cakeshop-where-is-he-now/>.

<sup>5</sup> *Id.*

<sup>6</sup> Jennifer McRae, *Colorado Supreme Court dismisses lawsuit against baker who refused to make gender transition cake*, CBS News (Oct. 8, 2024 3:49 PM)

<https://www.cbsnews.com/colorado/news/colorado-supreme-court-dismisses-lawsuit-against-baker-refused-make-gender-transition-cake/>.

accommodations law which she believed would prevent her from creating wedding websites in accord with her religious values. The Court ruled for Ms. Smith, finding that the expression involved in creating a custom wedding website was protected speech and that states do not have a compelling interest in compelling such expression. *Id.*, slip op at 12.

Further, as this Court noted in *303 Creative*, Ms. Smith was not discriminating against customers based on their sexual orientation. She would “gladly create custom graphics and websites for gay, lesbian, or bisexual clients or for organizations run by gay, lesbian, or bisexual persons so long as the custom graphics and websites’ do not violate her beliefs.” *303 Creative*, No. 21-476, slip op. at 17. None of the cases described here, including Ms. Miller’s case, involve discrimination based on identity any more than a black baker’s refusal, or any baker’s refusal, for that matter, to bake a cake celebrating white supremacy would amount to discrimination based on race.

Here, California seeks to punish Ms. Miller for refusing to create a cake that would be used to celebrate a same-sex couple’s wedding despite this Court’s rulings in *Masterpiece Cakeshop* and *303 Creative*.

These cases likely represent only a fraction of the harm caused by such policies as religious Americans choose not to engage in certain forms of business rather than risk years of litigation. Such chilling of legitimate business pursuits itself constitutes a violation of the rights of religious Americans who are forced to self-censor.

The Court promised in its decision in *Obergefell v. Hodges*, 576 U.S.3 644, 679 (2015), 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.” Yet, for many Americans, that promise has come up short, as some Justices warned at the time it might. *See, e.g., id.* at 734 (Thomas, J., dissenting) (explaining that “[i]t appears all but inevitable that” religious and civil views on marriage “will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.”).

Today, after years of increased support, some Americans appear to be rethinking their beliefs on this issue, perhaps because they see the threat it has posed to those with traditional views.

American business owners have a right to express their religion in their place of business just as much as they do in their homes and places of worship. Yet some states have made it difficult to exercise that right. The Court’s decision in *303 Creative* was correct, but this case demonstrates that further clarification is needed. The Court should grant the petition for certiorari in this case and rule for petitioners.

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari and rule for Petitioners.

Respectfully submitted,

J. Marc Wheat

*Counsel of Record*

Timothy Harper (Admitted in DC)

Advancing American Freedom, Inc.

801 Pennsylvania Avenue, N.W. Suite 930

Washington, D.C. 20004

(202) 780-4848

[mwheat@advancingamericanfreedom.com](mailto:mwheat@advancingamericanfreedom.com)

*Counsel for Amici Curiae*