No. 21-2524
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

LYNN STARKEY, Plaintiff-Appellant, v. ROMAN CATHOLIC ARCHDIOCESE OF INDIANAPOLIS, INC. and RONCALLI HIGH SCHOOL, INC., Defendants-Appellees.	)	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division Case No. 1:19-cv-03153 Judge Richard L. Young

BRIEF OF *AMICI CURIAE* ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL, THE COLSON CENTER FOR CHRISTIAN WORLDVIEW, SUMMIT MINISTRIES, AND THE COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES IN SUPPORT OF APPELLEES

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici are evangelical Christian ministries that educate children, young people, and adults based on a Christian worldview, helping students, listeners, and learners of every age integrate biblical truth and the values and virtues of Christian faith into every area of their lives.

The Association of Christian Schools International ("ACSI") is the world's largest Protestant school association. Founded in 1978, ACSI advances excellence in Christian education by strengthening Christian schools and equipping Christian educators worldwide to prepare students academically and inspire them to live as devoted followers of Jesus Christ. ACSI offers resources for Christian educators and provides vital support functions for Christian schools. Headquartered in Colorado Springs, Colorado, ACSI supports over 5,000 member schools throughout the United States and around the world, has member schools in every state across America, supports eighteen global member offices around the world, and collectively serves over 1.2 million students. Its members include early education programs and schools, K-12 schools, international schools, higher education schools, and

[1] No party's counsel authored this brief in whole or in part. No party or its counsel contributed money that was intended to fund preparing or submitting this brief. No person—other than *amici,* their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief. *See* FRAP 29(a)(4)(E).

individuals. ACSI's services to members include teacher and administrator certification, school accreditation, legal and legislative updates, curriculum, and textbook publishing. Through additional training programs, materials, and expertise provided to other educational groups worldwide, ACSI's overall influence and positive impact reach over 26,000 schools operating in over 100 countries and together serving 5.5 million people.

The Colson Center for Christian Worldview ("The Colson Center") is a nonprofit ministry founded by the late Charles W. ("Chuck") Colson, one of the most prominent evangelical Christian figures of the late twentieth century. Likewise headquartered in Colorado Springs, The Colson Center exists to build and resource a national and global movement of Christians committed to cultural restoration and to living and defending a Christian worldview. Through its daily and weekly BreakPoint commentaries and other media, The Colson Center provides Christians with clarity, confidence, and courage in this unique cultural moment. Its Colson Fellows Program equips believers with a robust Christian worldview so they can thoughtfully engage with the culture, inspire reflection in others, and work effectively toward reshaping the world in light of God's kingdom. The Colson Center's annual conference, Wilberforce Weekend, brings together Christian teachers, intellectuals, and believers from all walks of life, and is named after William

Wilberforce, the British politician and evangelical Christian whose tireless efforts led to the abolition of the transatlantic slave trade.

Summit Ministries is a nonprofit ministry that exists to equip and support rising generations to embrace God's truth and champion a biblical worldview. It hosts two-week summer conferences for over 1,500 high school and college students ever year, bringing together prominent Christian speakers and intellectuals to help students navigate fundamental questions about life, Christian faith, and the common good. Its "Summit Semester" is a semester-long Christian gap-year program that has trained hundreds of students over the past ten years to worship God by seeking truth, building relationships, and living intentionally. The publishing division of Summit Ministries offers curriculum and other educational resources to over 60,000 students each year in Christian schools, homeschools, and churches. The organization's podcasts and online content reached an audience of 104 million in 2021.

The Council for Christian Colleges & Universities ("CCCU") is a higher-education association of more than 185 Christian institutions around the world. Formed in 1976, the CCCU strives to be the leading national voice of Christian higher education. Its mission is to advance the cause of Christ-centered higher education and help its member institutions transform lives by faithfully relating

scholarship and service to biblical truth. With campuses across the globe, including more than 150 in the U.S. and Canada and more than 30 from an additional 19 countries, CCCU institutions are accredited, comprehensive colleges and universities whose missions are Christ-centered and rooted in the historic Christian faith. Together, CCCU members employ more than 90,000 faculty and staff and enroll approximately 520,000 students annually, with over 3.6 million alumni. The CCCU is committed to graduating students who make a difference for the common good as redemptive voices in the world.

Consistent with the First Amendment's guarantee of religious freedom, all *amici* advocate for the right of religious institutions to operate free of government intrusion into matters of religious doctrine and self-governance. *Amici* argue that courts should respect a religious institution's freedom to select employees who uphold their religious standards of conduct.

ARGUMENT

I. Faith-based personnel policies are widespread among ministry organizations throughout the country.

As a Catholic school, Roncalli holds its employees to religious standards, requiring them to support Catholic teaching, role-model the faith, and communicate it to students. Faith-based personnel policies like Roncalli's are not unusual. In fact, they're commonplace. Across the country, "religious organizations routinely

require their employees to affirm a personal conviction of the faith, to comply with the faith's teachings, and to adhere to religious-based standards of personal behavior." Matthew K. Richards et al., *Religious-Based Employment Practices of Churches: An International Comparison in the Wake of Hosanna-Tabor*, 26 TEMP. INT'L & COMP. L.J. 263, 269 (2012); *see, e.g.*, *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2056 (2020) (school required teachers to "model and promote Catholic faith and morals" (cleaned up)); *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 330 n.4 (1987) (upholding nonprofit gymnasium's right to require its janitor to "observe the Church's standards in such matters as regular church attendance, tithing, and abstinence").

Amici are evangelical Christian ministries that, like Roncalli, maintain faith-based personnel policies and expect employees to abide by them. ACSI requires board members, officers, and employees to affirm its Statement of Faith and adhere to biblical standards of conduct at work and in their personal lives. The Statement of Faith is a morally orthodox articulation of historic Christian teachings regarding God, the necessity of salvation through Jesus Christ, the role of the church, and the nature of biblical authority, among other things. It affirms the sanctity of human life and the institution of traditional marriage. In addition, ACSI's employee handbook sets forth faith-based expectations of employees, requiring them to reflect the values

and vision of ACSI in all walks of life, not just during work hours. To be eligible for membership in or accreditation by ACSI, a school must affirm that it is in agreement with ACSI's Statement of Faith and its "Essential Elements of a Christian School," which require all school personnel to be committed followers of Christ who model Him in their teaching and leading. ACSI has more than 2,000 member schools nationwide, and more than 100 in this Circuit alone, that have made this commitment.

The Colson Center requires board members, officers, and employees to affirm its Statement of Faith and adhere to biblical standards of conduct at work and in their personal lives. Its Statement of Faith is likewise a morally orthodox articulation of historic Christian teachings, including its affirmations of the sanctity of life and traditional marriage. All employees—leaders and staff—are required annually to certify their agreement with and commitment to the Statement of Faith. In addition, The Colson Center's employee handbook sets forth faith-based expectations of employees, requiring them to reflect the values and vision of The Colson Center in the workplace and in their personal lives.

Summit Ministries has adopted a Statement of Faith consisting of the Apostles Creed and a separate Statement of Convictions that affirms its beliefs about God, the inherent dignity of human beings, the reality of sin and need for salvation

through Christ, traditional marriage, and man's duty to steward creation, care for the planet, and serve others. All Summit Ministries board members, officers, and staff must affirm their agreement with the Statement of Faith and the Statement of Convictions. The employee handbook affirms that faithfulness to God and family and integrity in marriage, work, and finances are part of the moral framework and behavior expected of all Summit Ministries employees.

Each CCCU member has a board-approved, public mission statement that is Christ-centered and demonstrates the institution's commitment in three areas: Biblical Truth (integrating the Holy Scriptures throughout the institution, including teaching and researching in all academic disciplines); Christian Formation (fostering Christian virtues grounded in the Scriptures and nurtured through curricular and co-curricular programs); and Gospel Witness (advancing God's redemptive purposes in the world by graduating students who live and share the Gospel in word and deed). Every voting member of the CCCU must have an institutional policy and practice of hiring as full-time faculty members and administrators only persons who profess faith in Jesus Christ. In addition, the CCCU requires its own employees to affirm their commitment to the Christian faith as expressed in the Nicene Creed and to model Christ-like conduct by exhibiting the fruits of the Spirit (love, joy, peace, etc.) and avoiding sinful behaviors such as hatred, selfish ambition, and sexual immorality.

Like many religious organizations, *amici* apply their faith-based standards to all employees, no matter their particular role in the organization and regardless of whether the courts would consider them "ministers" under the ministerial exception. Just as importantly, these standards aren't limited to workplace conduct; they also encompass an employee's personal conduct and lifestyle. The standards are thus both broad and deep: they apply equally to everyone engaged in *amici*'s work, and they demand of employees a faithful Christian witness in all aspects of their lives. *See* Richards et al., *supra*, at 269–70 (observing that these are common features of religious employment standards). Summit Ministries' employee handbook puts it well, characterizing all of the organization's work as Gospel-shaped ministry and affirming that "[a]ll engaged in this work are responsible for modeling Christ in their lives and in their work."

II. Shared faith commitments are crucial to successful ministry.

Religious entities like ACSI, The Colson Center, Summit Ministries, and the CCCU are not just employers of labor, nor are they simply enterprises providing a service. They and their member institutions are ministries with unique religious callings—communities of believers working together to accomplish a religious mission. For them, faith and mission are inseparable: what they believe shapes everything they do. But faith and mission are not self-sustaining. They depend on

and are given expression through actual people—the leaders and staff who embody the organization's faith and live out its mission every day. This is particularly true of educational ministries, which seek to teach biblical values, model Christian virtue, and inculcate a Christian worldview. For these organizations, *mission* and *message* go hand in hand. "Religious education is vital," *Our Lady*, 140 S. Ct. at 2064, because it is how religious communities preserve their unique identity and message through changing times. It's also why Christianity holds teachers—and by extension educational ministries—to a higher moral standard. *See James* 3:1 ("Not many of you should become teachers, my fellow believers, because you know that we who teach will be judged more strictly." (ESV)).

Religious organizations define and carry out their missions principally "through [their] appointments," that is, through their selection of personnel. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). Although some organizations choose not to make religiously-based hiring decisions, many, like *amici*, insist that all employees profess and practice the same faith. Shared faith is crucial to ministry because "religious beliefs are intertwined with the energy and commitment that make [religious] entities vigorous." Thomas C. Berg, *Partly Acculturated Religious Activity: A Case for Accommodating Religious Nonprofits*, 91 NOTRE DAME L. REV. 1341, 1354 (2016). A religious mission doesn't

exist in a vacuum. It is bound up with and animated by distinct religious commitments, and it is embodied in the employees who are faithful to these commitments and who carry the mission forward.

But shared faith commitments don't just advance the mission outwardly. They also shape the community inwardly. As Justice Brennan observed in his concurrence in *Amos*, "[d]etermining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is . . . a means by which a religious community defines itself." 483 U.S. at 342 (Brennan, J. concurring) (emphasis added). For any organization, as the saying goes, "personnel is policy." *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 979 (7th Cir. 2021) (*en banc*). But for religious organizations, the stakes are higher. Those who join hands in ministry define and give shape to what an organization believes and does. For them, personnel is *identity*.

Social science affirms these insights in two ways. First, organizations that actually demand something of their employees—requiring them to commit to standards of belief and conduct—are more likely to succeed. Shared commitment fosters a strong sense of community identity and inspires the energy and religious devotion on which mission success depends. *See* Berg, *supra*, at 1356–57.

Second, "iron sharpens iron" (*Proverbs* 27:17). People learn through what sociologists call modeling, that is, by observing and imitating the conduct of those around them. "[M]uch of human behavior is a product of social influences" because "the actions and statements of other people provide information about what is true and what is right." CASS SUNSTEIN, CONFORMITY: THE POWER OF SOCIAL INFLUENCES 7, xxv (2019) (emphasis deleted). This is particularly important in religious settings. "Throughout history, religious traditions have emphasized the value of keeping good company and attending to the example of good or holy persons, arguing that people tend to become more like those with whom they associate." Helen Alvaré, *Church Autonomy After* Our Lady of Guadalupe School*: Too Broad? Or Broad As It Needs to Be?*, 25 TEX. REV. L. & POLITICS 319, 363 (2021) (quotation omitted).

In short, faith is formed and fostered through association. This is why *amici*, like thousands of religious employers across the country, insist that leaders and staff commit to and abide by religious standards of belief and conduct. As fellow believers, leaders are able to mentor staff. And all employees, regardless of position, can encourage one another in their journeys of faith and in pursuit of the mission. This deepens employee relationships, tightens the bond between leaders and staff, and strengthens the sense of organizational identity rooted in common faith and practice.

III. The First Amendment and Title VII protect the right of religious organizations to build communities of the faithful.

"It is of the essence of" religious organizations that they get to decide who may "unite themselves" therein "to assist in the expression and dissemination" of the faith. *Watson v. Jones*, 80 U.S. 679, 729 (1871). Faith-based personnel standards lie at the core of religious identity and are a crucial means by which organizations "define and carry out their religious missions." *Amos*, 483 U.S. at 339; *id.* at 342 (Brennan, J. concurring).

The right to maintain faith-based standards is not limited to employees whose duties can be categorized as "religious." This is a core teaching of *Amos*. Most religious organizations don't segregate employees based on "religious" or "secular" responsibilities; for many, such a distinction is alien to ministry work. It would essentially cleave faith from mission, separating what an organization believes from what it does and sifting employees accordingly. Policing such a distinction would also require an intrusive inquiry into religious beliefs and practices and the extent to which any given ministry activity is or isn't "religious." But as *Amos* explained, "it is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious." 483 U.S. at 336. And the Supreme Court has warned against imposing legal standards that require organizations to explain in "good faith" how their personnel policies

"relat[e] to the . . . religious mission." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979). For "[i]t is not only the conclusions that may be reached . . . , but also *the very process of inquiry*" that "impinge[s] on rights guaranteed by the Religion Clauses." *Id.* (emphasis added).

Section 702—Title VII's religious exemption—was crafted precisely for this purpose: to avoid burdening religious organizations in ways the First Amendment prohibits. Congress's directive that Title VII "shall not apply" to faith-based personnel decisions, 42 U.S.C. § 2000e-1(a), advances important constitutional principles. It prevents the government from becoming entangled in "intrusive inquir[ies] into religious belief" (in accordance with the Establishment Clause), and it protects religious groups from "significant governmental interference" with their religious missions (in accordance with the Free Exercise Clause). *Amos*, 483 U.S. at 339; *cf. Catholic Bishop*, 440 U.S. at 506–07 (narrowly interpreting labor law to avoid similar entanglement problem). This is the clear teaching of *Amos*, where the Supreme Court faulted the district court for its conclusion that the job of a ministry employee—a janitor—was unrelated to "any conceivable religious belief or ritual." 483 U.S. at 332 (quotation omitted). This, the Court said, was "the kind of intrusive inquiry into religious belief" that § 702 "avoids." *Id.* at 339. The point of § 702 is "to enable religious organizations to create and maintain communities composed

solely of individuals faithful to their doctrinal practices, whether or not every individual plays a direct role in the organization's 'religious activities.'" *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991).

Title VII's religious exemption and the First Amendment's Religion Clauses have the same scope. They ensure that religious organizations are free to set faith-based personnel standards based on their "*own* faith and mission" and decide such matters "*for themselves*, free from state interference." *Hosanna-Tabor*, 565 U.S. at 188, 186 (emphases added).

IV. Judicial inquiries that fail to respect religious employment standards will foster personnel divisions, cripple the mission, and devastate ministry.

Starkey would have the Court conduct the sort of intrusive inquiry the First Amendment forbids, and which § 702 makes unnecessary. Starkey asks this Court to overlook her express commitment to Roncalli's religious standards, to find that her job was more "secular" than "religious," and to allow her discrimination claim to proceed. But a ruling for Starkey here would be legal error, with adverse consequences far beyond this case. It would make faith-based employment standards a source of Title VII liability, casting a pall over policies maintained by thousands of religious organizations across the country—policies essential to their missions.

Holding employees to faith-based standards of belief and conduct is "of the essence" of religious organizations, *Watson*, 80 U.S. at 729, a key element of their

"internal organization," *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976). But if the good-faith application of these standards can be a basis for Title VII liability, it will have a profound chilling effect on religious exercise in this Circuit and elsewhere. Faced with the prospect of discrimination claims premised on their personnel standards, religious employers will be forced into an expensive and existential gamble: either maintain their faith-based policies and risk sizeable judgments for damages and attorney's fees, or water down their policies and forsake a crucial element of their religious identity and mission. In the Seventh Circuit alone, there are more than 100 ACSI member schools that affirm ACSI's Statement of Faith and require school personnel to adhere to religious standards, and more than 18 CCCU institutions with similar employment requirements. All of these organizations would face a new threat of discrimination claims.

Indeed, the lower court's decision here indicated that, unless the employee is a minister, any religious-conduct standard prohibiting same-sex conduct is *per se* unlawful, suggesting that employees released for entering a same-sex marriage need not even identify a similarly-situated "comparator" to succeed on a Title VII claim. Dkt. 93 at 20. Yet religious-conduct standards often include provisions addressing same-sex conduct. *Amici* here maintain such standards in line with historical understandings of biblical teaching, and the Supreme Court has said *amici*'s views

are "decent and honorable" and entitled to "protection." *Obergefell v. Hodges*, 576 U.S. 644, 672, 679–80 (2015). Yet the district court's reasoning would force them to choose between asking their employees to adhere to these standards and being penalized as discriminators under Title VII. The First Amendment forbids, and § 702 avoids, putting religious employers to this choice. But it is the choice they will face if Starkey's claims are allowed to proceed. And from this, other adverse effects will follow.

First, to avoid liability, many religious employers will have to refashion their personnel policies to align not with internal considerations of faith and mission, but with external secular-legal norms. Yet the First Amendment envisions a separation of church from state—a "private sphere" where religious organizations are neither the mouthpieces for nor the subjects of state-imposed orthodoxy, but are free to believe, internally organize, and "govern themselves in accordance with their own beliefs." *Hosanna-Tabor*, 565 U.S. at 199 (Alito & Kagan, JJ., concurring). This necessarily includes the freedom to make "personnel decision[s] based on religious doctrine," even as to non-ministerial employees. *Bryce v. Episcopal Church in Diocese of Colo.*, 289 F.3d 648, 660 & n.2 (10th Cir. 2002). Thus, when a religious institution sets a religious standard that employees must meet, courts cannot second-guess that judgment without profound incursions upon protected religious autonomy. *See*

Hosanna-Tabor, 565 U.S. at 707 (First Amendment precludes "government interference with an internal church decision that affects . . . faith and mission").

Second, punishing religious ministries for asking all employees (ministerial or not) to abide by its religious teachings would impose artificial personnel distinctions and foster internal divisions within religious organizations. Ministries will have to forsake a common set of religious commitments binding all employees and segregate personnel into "religious employees" held to high standards of belief and moral conduct, and "secular employees" of whom less or nothing is expected. This will be devastating to ministry. It will force organizations to predict which activities a court will consider religious, which *Amos* said is a "significant burden." 483 U.S. at 336. It will eviscerate the shared faith commitments crucial to missional success. Worst of all, it will thrust a sharp-edged double standard into the heart of ministry, fueling employee resentment, destroying their faith-centered unity, and crippling the religious mission.

Punishing religious ministries for having unified religious standards will manifest in other ways, too. For example, ministry leaders such as executives and managers are more likely to be ministerial employees under the *Hosanna-Tabor* exception, and thus could be held to religious standards of conduct. Yet other staff could not be held to the same standard, even though they will often have duties, like

administration, finance, human resources, and information technology, that are just as crucial to the religious mission. Judicial policing of religious standards of conduct would thus divide leaders and staff, disrupting internal processes that are the lifeblood of ministry. Modeling and mentoring by ministry leaders will become meaningless if staff don't share the same religious convictions. And how does an organization raise up leaders from within if it can't hold all of its employees to mission-critical religious standards?

"Religion permeates the ministerial workplace in ways it does not in other workplaces." *Demkovich*, 3 F.4th at 979. Courts cannot tinker with an essential feature of this workplace—the common faith commitments that bind employees and the ministry together—without weakening the internal cohesion and missional energy that ensures that ministries can thrive.

Conclusion

Because the First Amendment precludes and § 702 avoids the intrusive inquiry that Starkey urges, *amici* ask this Court to affirm the district court's summary judgment ruling in favor of Roncalli. To do so, the Court need not hold that religious organizations "enjoy a general immunity from secular laws." *Our Lady*, 140 S. Ct. at 2060. The Court need only recognize that when a religious organization sincerely

determines that an employee has transgressed a faith-based employment standard, that determination cannot be a basis for Title VII liability.

Respectfully submitted,

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This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because it contains 4,004 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the requirements of Fed. R. App. P. 32(a) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Equity font.

/s/*Ian Speir*
Ian Speir

Certificate of Service

I certify that on January 18, 2022, the foregoing brief was served on counsel for all parties by means of the Court's ECF system.

/s/*Ian Speir*
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