

No. 22-1440
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LONNIE BILLARD,)	
)	Appeal from the United States
Plaintiff-Appellee,)	District Court for the Western
)	District of North Carolina,
v.)	Charlotte Division
)	
CHARLOTTE CATHOLIC HIGH)	Case No. 3:17-cv-00011
SCHOOL; MECKLENBURG AREA)	Judge Max O. Cogburn, Jr.
CATHOLIC SCHOOLS; ROMAN)	
CATHOLIC DIOCESE OF CHARLOTTE,)	
)	
Defendants-Appellants.		

BRIEF OF CHRISTIAN EDUCATIONAL MINISTRIES AS *AMICI*
***CURIAE* IN SUPPORT OF APPELLANTS**

Ian Speir
Nussbaum Speir Gleason PLLC
2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80921
(719) 428-4937
ian@nussbaumspeir.com

Attorneys for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1440Caption: Billard v. Charlotte Catholic High School et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

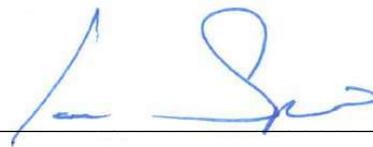
[1 of 3] Association of Christian Schools International; The Colson Center for Christian Worldview;
 (name of party/amicus)

Summit Ministries, Inc.; The Council for Christian Colleges & Universities

who is _____ amici curiae _____, makes the following disclosure:
 (appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
 If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
 If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? YES NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature:  _____Date: 9/28/2022Counsel for: Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1440Caption: Billard v. Charlotte Catholic High School et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

[2 of 3] American Association of Christian Schools; North Carolina Christian School Association; South
(name of party/amicus)

Carolina Association of Christian Schools; Old Dominion Association of Church Schools in Virginia

who is _____ amici curiae _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? YES NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature:  _____

Date: 9/28/2022

Counsel for: Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1440Caption: Billard v. Charlotte Catholic High School et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

[3 of 3] West Virginia Christian Education Association; Maryland Association of Christian Schools
 (name of party/amicus)

who is _____ amici curiae _____, makes the following disclosure:
 (appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
 If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
 If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? YES NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature:  _____Date: 9/28/2022Counsel for: Amici Curiae

TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Identity and Interest of *Amici Curiae* 1

Argument.....5

 I. Faith-based personnel policies are widespread among ministry organizations throughout the country.....5

 II. Shared faith commitments are crucial to successful ministry. 9

 III. The First Amendment and Title VII protect the right of religious organizations to build communities of the faithful. 13

 IV. Judicial inquiries that fail to respect religious employment standards will foster personnel divisions, cripple the mission, and devastate ministry..... 15

Conclusion..... 19

Certificate of Compliance 21

Certificate of Service..... 21

TABLE OF AUTHORITIES

Cases

<i>Billard v. Charlotte Catholic High School</i> 2021 WL 4037431 (W.D.N.C. 2021).	15
<i>Bryce v. Episcopal Church in Diocese of Colo.</i> , 289 F.3d 648 (10th Cir. 2002)	17
<i>Corp. of Presiding Bishop v. Amos</i> , 483 U.S. 327 (1987)	passim
<i>Demkovich v. St. Andrew the Apostle Parish</i> , 3 F.4th 968 (7th Cir. 2021)	11, 19
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC</i> , 565 U.S. 171 (2012)	10, 15, 17, 18
<i>Little v. Wuerl</i> , 929 F.2d 944 (3d Cir. 1991)	15
<i>NLRB v. Catholic Bishop of Chicago</i> , 440 U.S. 490 (1979)	14
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015)	17
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 140 S. Ct. 2049 (2020)	5, 9, 19
<i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976)	16
<i>Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.</i> , 41 F.4th 931 (7th Cir. 2022)	10, 15
<i>Watson v. Jones</i> , 80 U.S. 679 (1871)	13, 16

Statutes

42 U.S.C. § 2000e-1(a)	14
FRAP 29(a)(4)(E)	1

Other Authorities

CASS SUNSTEIN, <i>CONFORMITY: THE POWER OF SOCIAL INFLUENCES</i> 7 (2019)	11
Helen Alvaré, <i>Church Autonomy After Our Lady of Guadalupe School: Too Broad? Or Broad As It Needs to Be?</i> , 25 TEX. REV. L. & POLITICS 319 (2021).....	12
<i>James</i> 3:1.....	10
Peter Greer & Chris Horst, <i>MISSION DRIFT: THE UNSPOKEN CRISIS FACING LEADERS, CHARITIES, AND CHURCHES</i> 36–37 (2014).....	12
<i>Proverbs</i> 27:17	11
<i>Religious-Based Employment Practices of Churches: An International Comparison in the Wake of Hosanna-Tabor</i> , 26 TEMP. INT’L & COMP. L.J. 263 (2012)	5
Thomas C. Berg, <i>Partly Acculturated Religious Activity: A Case for Accommodating Religious Nonprofits</i> , 91 NOTRE DAME L. REV. 1341 (2016)	10, 12

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. ACSI supports over 5,000 member schools throughout the United States and around the world, has member schools in every state, 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 individuals. Through its textbook publishing, school

¹ The parties have provided blanket consent to the filing of all amicus briefs. 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).

accreditation, teacher certification, and other services, ACSI's impact reaches more than 26,000 schools in more than 100 countries that together serve 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. 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 every 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 more than 60,000 students each year in Christian schools, homeschools, and churches. Its 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.

The **American Association of Christian Schools (AACCS)**, founded in 1972, is the nation's oldest evangelical Christian school association serving private K-12 Christian schools and colleges and the administrators, teachers, and students at these schools. AACCS schools are committed to excellence in Christian education, supporting Christian schools and their staff in the training of students for faithful service to God and neighbor. The AACCS is organized as a national network of thirty-eight state and regional affiliate organizations including the **North Carolina Christian School Association**, the **South Carolina Association of Christian Schools**, the **Old Dominion Association of Church Schools in Virginia**, the **West Virginia Christian Education Association**, and the **Maryland Association of Christian Schools**, all *amici* here. Nationally, the AACCS represents more than 125,000 students in more than 700 schools.

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, Charlotte Catholic High School (“Charlotte Catholic”) 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 these 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 Charlotte Catholic, maintain faith-based personnel policies and expect employees to abide by them. ACSI requires its own 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 faith and teaching that, among other things, affirms the sanctity of human life and the institution of traditional marriage as between one man and one woman. ACSI's employee handbook establishes faith-based expectations for 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 240 within this Circuit, 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 faith and 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. The Colson Center’s employee handbook establishes faith-based standards for 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 historic Apostles Creed and a separate Statement of Convictions that affirms its beliefs about God, human dignity, salvation, traditional marriage, care of Creation, and service to 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.

The CCCU has more than 150 member institutions in the United States and Canada. The Fourth Circuit is home to ten of them. Each higher-education institution that joins the CCCU must have a board-approved, public mission statement that is Christ-centered and demonstrates commitment to biblical truth,

Christian formation, and Gospel witness. 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 (e.g., love, goodness, and self-control) and avoiding sinful behaviors such as hatred, selfish ambition, and sexual immorality.

The 700-plus member schools that make up the AACS integrate Christian faith and values into their curriculum, athletics, activities, codes of conduct, discipline procedures, and personnel policies. AACS board members and staff, state affiliate leaders, and school personnel are required to affirm a belief in the Gospel of Jesus Christ and be in agreement with the AACS's doctrinal statements, foundational beliefs, and conduct policies. All personnel are evaluated for their understanding of and commitment to these beliefs and the school's religious mission. Most AACS schools are under the authority of a local church and function as the educational arm of broader church ministry. AACS member schools—more than 200 of which are in this Circuit—teach the Bible at all grade levels, host regular chapel programs for spiritual instruction, provide community service opportunities reflecting their commitment to Christian values and service, and encourage the

development of Christian character and integration of biblical truth as part of every academic discipline and school policy.

Like many religious organizations, *amici* expect their employees to exhibit Christian belief and conduct in every aspect of their lives. Summit Ministries' employee handbook puts it well, affirming that all of the organization's work is Gospel-shaped ministry and that all engaged in it "are responsible for modeling Christ in their lives and in their work."

II. Shared faith commitments are crucial to successful ministry.

Amici, like most religious organizations, 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. “A religious school is entitled to limit its staff to people who will be role models by living the life prescribed by the faith.” *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring). 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 faithfully 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*. It’s not just what they do—it’s who they are.

Social science affirms these insights in two ways. First, “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” because “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).

Second, 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; Peter Greer & Chris Horst, *MISSION DRIFT: THE UNSPOKEN CRISIS FACING LEADERS, CHARITIES, AND CHURCHES* 36–37 (2014).

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 First Amendment 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 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 thinking that the job of a ministry’s 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). As Judge Easterbrook recently put it, “when [an employment] decision is founded on religious beliefs, then all of Title VII drops out.” *Starkey*, 41 F.4th at 946 (Easterbrook, J., concurring). Title VII’s religious exemption and the First Amendment’s Religion Clauses thus advance the same goals. 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.

The lower court in this case conducted the sort of intrusive inquiry the First Amendment forbids, and which § 702 makes unnecessary. The court overlooked Billard’s express commitment to Charlotte Catholic’s religious standards, characterized his job as “purely secular,” and awarded summary judgment on his discrimination claim. *See* 2021 WL 4037431, at *13–14, *25 (W.D.N.C. 2021). This was legal error, and affirming it will have adverse consequences far beyond this case. It will 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.

In the Fourth Circuit alone, there are 245 ACSI schools, 208 AACCS schools, and ten CCCU institutions that require personnel to adhere to religious standards similar to the ones at issue in this case. 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. Faced with the prospect of discrimination claims premised on their personnel standards, religious employers in this Circuit and elsewhere 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.

The lower court’s decision here suggests that, unless the employee is a minister, any religious-conduct standard prohibiting same-sex conduct is *per se* unlawful. Yet religious-conduct standards often include provisions addressing same-sex conduct, and *amici* maintain such standards in line with historical understandings of biblical teaching. 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). But 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 *Billard* prevails. 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. The First Amendment, by contrast, envisions a separation of church from state—a “private sphere” where religious organizations are not subject to 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); *Amos*, 483 U.S. at 340. 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. Ministries will have to forsake a common set of religious commitments binding all employees and segregate their personnel into (i) “religious employees” held to high standards of belief and moral conduct and (ii) “secular employees” of whom less or nothing is expected. This sort of religious caste system will devastate 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 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 in which the lower court engaged, *amici* ask this Court to reverse the lower court's judgment. 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,

/s/ Ian Speir

Ian Speir

Nussbaum Speir Gleason PLLC

2 N. Cascade Ave., Suite 1430

Colorado Springs, CO 80903

(719) 428-3093

ian@nussbaumspeir.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because it contains 4,176 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 September 28, 2022, the foregoing brief was served on counsel for all parties by means of the Court's ECF system.

/s/Ian Speir

Ian Speir