No. 24-427

IN THE

Supreme Court of the United States

RONALD HITTLE,

Petitioner,

v.

CITY OF STOCKTON, CALIFORNIA, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF AMICUS CURIAE INDEPENDENCE LAW CENTER IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Independence Law Center (ILC) is a Pennsylvania-based public-interest civil rights law firm and nonprofit section 501(c)(3) organization committed to securing individuals' rights to freely practice their religion and to safeguarding the First Amendment freedoms that stem from this foundational liberty. ILC's advocacy spans legal arenas, public discourse, and policy developments across legislative and educational domains. *Amicus* has unique experience with these issues as it has represented clients facing discrimination in the workplace. *Amicus* was a member of the legal team representing Gerald Groff in *Groff v. DeJoy*, 600 U.S. 447 (2023). The experience of *amicus* is that religious employees are too often targeted for their faith, while employers raise various pretexts. It is vital that courts apply and adhere to legal standards that prevent such discrimination.

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[1] All parties were timely notified of the filing of this brief, as required by this Court's Rule 37.2. Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amicus*, its members, or counsel made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

Does Title VII protect an employee from an adverse employment action when the employee's religion is one of several factors motivating the employer to take the action? In the case of former City of Stockton Fire Chief Ronald Hittle, the Ninth Circuit's answer was no. Chief Hittle's supervisor advised him to attend leadership training, and Chief Hittle did so, attending a popular leadership conference called "the Summit" that had featured speakers such as Bill Clinton, Colin Powell, Jack Welch, and Carly Fiorina. Unfortunately for Chief Hittle, the Summit was religiously affiliated. The City fired Chief Hittle, relying in part on his attendance at this conference that the City concluded conferred no benefit to the City, and his use of a consulting service owned by a person with whom Chief Hittle was building a church school. Likewise, an outside investigator hired by the City (whose report the City apparently relied on) explicitly found that it was a serious act of misconduct to use City time and a City vehicle to attend the Summit because of its religious affiliation.

A reasonable juror could find that Chief Hittle's termination was due, at least in part, to his religion. Indeed, the City cited religion throughout its written termination justifications. The Ninth Circuit's disregard for this evidence is troubling for employees of all religions because it permits discrimination in the workplace so long as an employer can point to at least one nonreligious reason for an adverse employment action. That is contrary to Title VII's protections. This Court should grant certiorari and reverse the Ninth Circuit.

ARGUMENT

In Title VII, Congress made clear that an employee's protected characteristics may not form *any* part of an employer's rationale for an adverse employment action. Title VII establishes critical protections against workplace discrimination, ensuring that employees are evaluated based on their performance and qualifications rather than characteristics such as "race, color, religion, sex, or national origin." 42 U.S.C. § 2000e–2(m). Section 2000e–2(m) makes an adverse employment action unlawful if one of these characteristics was "*a* motivating factor," "even though other factors also motivated" the employer's action. *Id.* (emphasis added). Congress thereby prevented employers from citing even truthful nondiscriminatory motives to evade responsibility for discrimination.

Chief Hittle presented abundant evidence that the City was motivated, at least in part, to terminate him because of his religion. In ruling that Chief Hittle's evidence was insufficient, the Ninth Circuit departed from its regular practice of allowing cases to proceed to trial by jury when there is evidence of even one discriminatory comment made about other protected classes. This Court should grant certiorari to ensure that Title VII's religious protections are just as strong as its protections for race, color, sex, and national origin.

I. The summary-judgment record is replete with evidence that Chief Hittle's religion motivated his termination.

From the evidence Chief Hittle marshalled at summary judgment, discussed thoroughly in the opinions below, a reasonable juror could conclude that Chief Hittle's "religion . . . was a motivating factor" for his termination. 42 U.S.C. § 2000e–2(m). The City first scrutinized Chief Hittle about his religion after it received an anonymous letter (seemingly written by a high-ranking fire department manager) that alleged Chief Hittle was too religious. *Hittle v. City of Stockton*, 101 F.4th 1000, 1005 (9th Cir. 2024).

- The letter maligned Chief Hittle as a "religious fanatic who should not be allowed to continue as the Fire Chief of Stockton." *Id.* at 1005.
- The same high-ranking official spread the claim to Deputy City Manager Laurie Montes that the chief "favored members of that coalition—who all shared his Christian faith." *Id.*

Shortly after that allegation, Montes took Chief Hittle to task for associating with Christians and engaging in Christian activities, including activities that occurred while Chief Hittle was off duty. *Id.*

- During a meeting, Montes told Chief Hittle that she "heard [he] was part of a group of folks, a Christian Coalition, and that [he] shouldn't be involved in that." *Id.*
- When Chief Hittle told Montes that she could not tell him that he could not practice his faith off duty, Montes began questioning him about his "off duty Christian activities." *Id.*

- Montes told Chief Hittle that he should not "be a part of anything like that as the fire chief, and [he] should refrain from doing any of those types of activities" with other firefighters. *Id.*

Later that year, the City either directed or suggested that Chief Hittle obtain leadership training.[2] *Id.* at 1006. Chief Hittle's subsequent attendance at the Summit prompted another anonymous complaint about Chief Hittle's religious conduct. *Id.* at 1007.

- The City received another letter alleging that Chief Hittle's use of a "city vehicle" and attendance at "a religious function on City time" was "a gross misuse of City finances." *Id.* at 1024 (VanDyke, J., dissenting).

The City thus reprimanded Chief Hittle for attending the Summit and for continuing to associate with Christians at work. *Id.* at 1007.

- Montes "again brought up the subject of there being a Christian Coalition" and "told [Chief Hittle] this wasn't good, and that [he] should not be doing this." *Id.* During this conversation,

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[2] Whether the City directed or suggested that Chief Hittle should obtain leadership training is a disputed fact. *Hittle*, 101 F.4th at 1023–24 (VanDyke, J., dissenting). Additionally, whether the Summit was the type of leadership conference that the City directed or suggested is also disputed. *Id.* Yet the Ninth Circuit inexplicably stated that it was "undisputed that the Summit . . . did not constitute the type of upper management public sector leadership training that Montes directed [him] to seek out, as it did not provide any focus on the management of public agencies." *Id.* at 1014.

she apparently used the term "Christian Coalition" pejoratively.[3] *Id.*

- Montes "raised her voice" at Chief Hittle when he told her that "she could not tell [him that he] can't practice [his] religious faith." *Id.* Chief Hittle described the exchange as "very heated" and as "the angriest argument the two of [them] ever had." *Id.* at 1024 (VanDyke, J., dissenting).

Following Chief Hittle's attendance at the religiously affiliated leadership training, the City notified Chief Hittle that it intended to investigate him, and the City openly stated that the chief's religious conduct was a reason for the investigation. *Id.* at 1008.

- During the investigation, the City manager said "[i]t is not acceptable" to "use public funds to attend religious events; even if under the guise of leadership development," and Montes claimed that the Summit did not "provide 'a specific benefit' to the City." *Id.* at 1024 (VanDyke, J., dissenting).
- During the investigation, the City manager and Montes decried Chief Hittle's relationships with other Christian firefighters in the department as a "Christian clique." *Id.* at 1025 (VanDyke, J., dissenting).

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[3] Whether these phrases were intended to be repeated pejoratively appears to be a disputed issue of material fact. *See Hittle*, 101 F.4th at 1028 (VanDyke, J., dissenting) (stating one "cannot assume" these terms were not used by Chief Hittle's supervisors pejoratively).

- The City hired an outside investigator who conducted interviews and wrote a report that focused, in part, on Chief Hittle's religion. *Id.* at 1008–09. Even the Ninth Circuit observed that when the outside investigator interviewed Montes, Montes "negatively referred to Christians." *Id.* at 1008.

The City's investigation repeatedly pried into the chief's religious life.

- The outside investigator's report characterized the "use of City time and a City vehicle to attend a religious event" as Chief Hittle's "most serious act[] of misconduct" even though the event was merely a leadership conference. *Id.* at 1009.
- The report used the term "religious event" more than fifteen times to refer to a single training conference and dedicated five pages to documenting the Summit's religious nature. *Id.* In total, the report discussed allegations pertaining to Chief Hittle's religion across forty-seven pages. *Id.* at 1025 (VanDyke, J., dissenting).
- The report's conclusions expressly invoked religion at least ten times. *Id.* The report echoed concerns that the Summit did not "benefit" the City and was "a religious based event." *Id.*

After the investigation, the City sent Chief Hittle "a notice of its intent to remove him from City service" based on "the reasons stated" in the outside investigator's report, which was attached to the notice. *Id.* at 1010. The investigation ultimately concluded that Chief Hittle's attendance at the Summit justified his termination because the leadership conference was religiously affiliated. *Id.*

- The notice found Chief Hittle's use of "City time and resources to attend a religious leadership event" to be a reason justifying his removal. *Id.*
- The notice found Chief Hittle's approval of "the attendance on City time of [other firefighters] at the same religious event" to be a reason justifying his removal. *Id.*
- The notice found Chief Hittle's engagement of the consulting services of a company owned by a man with whom the chief was building a Christian school, and the chief's failure to properly investigate allegations that the man had solicited donations for the school from fire department employees, to be reasons justifying his removal. *Id.*

At summary judgment, all inferences drawn from the underlying facts "must be viewed in the light most favorable to the party opposing the motion." *United States v. Diebold, Inc.*, 369 U.S. 654, 665 (1962) (per curiam); *see also* FED. R. CIV. P. 56. From all of this evidence, a reasonable juror could readily infer that Chief Hittle's religion was a motivating factor in his termination, even assuming the City was also motivated by other, nondiscriminatory reasons.

II. In a case involving a protected characteristic other than religion, similar evidence would be more than enough to survive summary judgment.

Had this case involved a different protected trait, it would have easily survived summary judgment in the Ninth Circuit. That court emphasized, in a case involving a mix of nondiscriminatory motives and a sex-based motive, that even "a single discriminatory comment by a plaintiff's supervisor or decisionmaker"

can be enough "to preclude summary judgment for the employer." *Dominguez-Curry v. Nev. Transp. Dep't*, 424 F.3d 1027, 1039 (9th Cir. 2005). Other Ninth Circuit cases have also allowed plaintiffs to proceed past summary judgment where there is only a "single discriminatory comment." *Id.* For example, in *Chuang v. University of California Davis, Board of Trustees*, the court determined that a comment that "'two Chinks' in the pharmacology department were 'more than enough,'" was "an egregious and bigoted insult," and was "strong evidence of discriminatory animus on the basis of national origin." 225 F.3d 1115, 1128 (9th Cir. 2000). Similarly, in *Cordova v. State Farm Insurance Companies*, the court held that a reference to an employee as a "dumb Mexican" might "be proof of discrimination against [the plaintiff]" even when not directed at the plaintiff. 124 F.3d 1145, 1149 (9th Cir. 1997). And in *Lalau v. City and County of Honolulu*, the court held that a statement that an employee was a "typical Samoan" who made the office unsafe was enough to survive summary judgment on a national-origin discrimination claim. 938 F. Supp. 2d 1000, 1012 (D. Haw. 2013).

But in this case involving *religion*, the Ninth Circuit applied different rules. Despite Title VII's declaration that a discriminatory motive is unlawful whether or not nondiscriminatory motives also exist, 42 U.S.C. § 2000e–2(m), the court compelled a religious employee to negate every possible nondiscriminatory rationale offered by his employer to overcome summary judgment. And despite Rule 56's well-established mandate that courts draw all reasonable inferences from the facts in the non-movant's favor at summary judgment, the court credited the employer's allegedly nondiscriminatory termination reasons and

discounted in a sentence the employee's abundant evidence that religion was a motive. Under this standard, religious employees will rarely, if ever, survive summary judgment. *Hittle,* 101 F.4th at 1018 (Callahan, J., dissenting). Yet it is for the jury—not the court—to weigh the evidence. By raising the ordinary summary-judgment bar and distorting the statutory motivating-factor framework with respect to religion, the Ninth Circuit imposed an almost insurmountable burden on religious employees. But there should not be one standard of proof for religious discrimination and another for discrimination based on other protected characteristics.

III. If the Ninth Circuit's reasoning here were applied equally to all Title VII mixed-motive cases, the results would readily be recognized as unacceptable.

For Chief Hittle and his Christian faith, the Ninth Circuit disregarded Section 2000e–2(m)'s plain text—that the chief need only demonstrate religion "was *a* motivating factor" for the City's adverse employment action, "even though other factors also motivated the practice"—and heightened the summary-judgment standard. Applying the Ninth Circuit's reasoning to other circumstances shows just how easily an employer could escape Title VII liability by articulating a single nondiscriminatory motive for an adverse employment action.

- Take Aisha, a hospital employee who wears a hijab in accordance with her Muslim faith. No other employee displays a religious garment or symbol. Citing patient comfort, Aisha's supervisor implements a policy discouraging "overt religious symbols" to maintain "a

welcoming environment." Aisha is later terminated after she seeks a religious accommodation to keep her hijab. Under the Ninth Circuit's logic, the supervisor's neutral justification would prevail, even if an underlying motive is religious bias.

- Picture Rachel, a qualified executive who is passed over for a promotion in favor of a less qualified male candidate. If her supervisor claims that Rachel's "assertive" demeanor is unsuitable for leadership, while also expressing a preference for male leaders, Rachel would have no recourse from an adverse employment action. Under the Ninth Circuit's interpretation, she would need to prove that her sex was the sole reason for the employer's decision, thereby greenlighting the discrimination.
- Consider Carlos, an employee from Mexico and native Spanish speaker who is reassigned to a less prominent role despite his strong performance. His boss claims clients "prefer working with someone without an accent" because "it is easier to understand an American who learned English as his first language." Under the Ninth Circuit's ruling, Carlos would be tasked with disproving this rationale, creating an almost insurmountable challenge to prove that his national origin played a role in the reassignment.
- Imagine James, a seasoned black sales representative who consistently exceeds performance targets. His supervisor, uncomfortable with his interactions with certain key, non-

> black clients, reassigns him to a less prominent role, citing the need for "more relatable" representatives. Under the Ninth Circuit's approach, James must demonstrate race was the sole factor in his reassignment, allowing the employer to use ambiguous terms like "relatability" to mask racial bias.

These hypotheticals show how the Ninth Circuit's decision undermines Section 2000e–2(m)'s mixed-motive standard and allows vague, ostensibly neutral reasons to enable discrimination and overshadow evidence of bias. Title VII is designed to prevent precisely this form of subterfuge, acknowledging that bias rarely functions as a singular motivation.

CONCLUSION

The Ninth Circuit's ruling provides a template for employers to cloak religious discrimination under the guise of neutral concerns. The City fired Chief Hittle because City officials openly disdained his religious conduct. The City raised the chief's religion repeatedly throughout its investigations and in its termination decision. Yet the Ninth Circuit disregarded this evidence, allowing the City to avoid a jury determination about whether unlawful religious discrimination occurred. If left unchecked, the court's decision will undermine Title VII's fundamental objective: to safeguard employees from both overt and covert discrimination, including religious discrimination.

This Court should grant the petition for certiorari.

Respectfully submitted,

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