TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
NATIONAL MOOT COURT COMPETITION
LAW & RELIGION
SPRING 2023

No. 23-012

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IN THE SUPREME COURT OF THE UNITED STATES

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THE CITY OF LOCKWOOD

Petitioner,

v.

UNITED FAITH UNIVERSITY, and its
PRESIDENT, DR. ELLIS SHEPARD,

Respondents.

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**RECORD ON APPEAL**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TOUROVIA

UNITED FAITH UNIVERSITY, and its PRESIDENT, DR. ELLIS SHEPARD in her official capacity,

Plaintiffs,

v.

THE CITY OF LOCKWOOD,

Defendant.

**No. 22- 2303**

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Decided December 5, 2022

Plaintiffs, United Faith University ("UFU") and its President, Dr. Ellis Shepard ("Shepard") (collectively "Plaintiffs") allege that Defendant, the City of Lockwood ("Defendant") violated Plaintiffs' constitutional rights under 42 U.S.C. § 1983 and bring a civil action for deprivation of rights by a state. Defendant has fined UFU $410,000.00 under Lockwood City's Anti-Discrimination Statute §604 ("LCADS §604") because Plaintiffs denied a group of LGBTQ students resources afforded to other student groups then published on UFU's official website the statement: "[W]e want to establish a welcoming and secure environment where every student can receive a quality United Faith education. We cannot, however, endorse a situation that goes against our religious principles. At United Faith University, we hold the view that same sex relationships

are immoral; that any sexual activity performed by a married couple that is not related to reproduction is immoral; and, that God predetermined our gender at conception." On August 1, 2022, Plaintiffs filed suit against Defendant for violating their civil rights and infringing on their constitutionally protected freedom of religion and freedom of speech. Plaintiffs claim that UFU should be exempt from LCADS §604 which is not a neutral law and that LCADS §604 unconstitutionally compels and prohibits Plaintiffs' speech. Therefore, Plaintiffs seek declaratory and injunctive relief, and requests that Defendant drop all charges brought against Plaintiffs under the statute. Both Plaintiffs and Defendant filed summary judgment motions. We grant Defendant's cross-motion and deny Plaintiffs' motion for summary judgment.

## FACTS

Although UFU was first established in 1912 as a religious faith-based college, it is no longer categorized as a religious corporation primarily because of curricular changes that have been instituted during the past century. Currently, only a small number of religious courses are offered at the undergraduate level. Additionally, although UFU offers 83 majors, only one is related to the study of the United Faith religion. Due to its remote location and status as the sole post-secondary institution within a 200-mile radius, UFU welcomes students of all backgrounds. Across its campuses, UFU's faculty and student body is a diverse group of people from different religions, races, and ethnicities.

Plaintiffs assert in their brief that UFU takes pride in inspiring its students to give back and help the local communities while also raising awareness of various social issues. As a part of that initiative, UFU has sponsored delegations to attend and march in Lockwood City's Disability Visibility Parade and Suicide Awareness March mentioned in both the school bulletin and its recruitment brochure. Additionally, because it is the only post-secondary institution in the area, it even makes its campus available for community events like a senior citizen club and a food bank.

UFU's mission statement reflects its perception of their institution's purpose: "United Faith University" is dedicated to providing an education and environment that will enhance the intellectual, moral, and spiritual development of our students."

On March 10, 2022, a group of LGBTQ students and allies, through their student government representatives, followed the proper process and submitted a request to the Office of Student Services for UFU to sponsor a delegation to march in Lockwood City's LGBTQ Pride Parade ("Parade"). The Parade was organized in response to the recent increase in hate crimes against the LGBTQ community. Before UFU had the chance to answer the request, the students decided to bring up the matter a week later in UFU's town hall.

On March 17, 2022, at UFU's town hall, Shepard, the President of UFU, was asked whether the school would sponsor a delegation to march in the Parade. Shepard responded that she was unaware of any specific request for such sponsorship. She did, however, state, in her official capacity as President of UFU, that the United Faith religion holds that any sexual behavior engaged in by persons of the same sex or, by a married couple that is unrelated to reproduction, is sinful. She stated that the Parade promotes views that conflict with the fundamental religious convictions of UFU about same-sex relationships, marriage, and gender. Shepard continued by saying that students are more than welcome to march in the Parade with other community organizations, but the school is unable to endorse "immoral ideology."

After the town hall, local papers started reporting on the story unfolding at UFU. On March 21, 2022, in response to all the publicity, Plaintiffs amended UFU's Student Services page on the university's official website. Right next to the tab to download a form for event planning and adjacent to another tab related to funding requests from UFU, a disclaimer was added. The disclaimer stated: "[W]e want to establish a welcoming and secure environment where every

student can receive a quality United Faith education. We cannot, however, endorse a situation that goes against our religious principles. At United Faith University, we hold the view that same sex relationships are immoral; that any sexual activity performed by a married couple that is not related to reproduction is immoral; and, that God predetermined our gender at conception."

Shortly after UFU published the statement on its official school website, Plaintiffs received a notice from Defendant. In its notice of April 1, 2022, Defendant stated that Lockwood City is committed to combatting discrimination in places of public accommodation and that Defendant had received reports of Plaintiffs' violation of LCADS §604. Defendant further stated that Plaintiffs have 90 days to fully comply with the requirements of LCADS §604. Defendant clearly indicated that UFU must remove the disclaimer from its website and revise its Student Services page on or before June 30, 2022.

In its initial notice, Defendant fined UFU $50,000.00 for refusing to sponsor a delegation in Lockwood City's pride parade and an additional $50,000.00 for the statement posted on the school's official website. It is undisputed that Plaintiffs, since receiving Defendant's notice of April 1, 2022, have taken none of the requested steps to remedy the violation within the time frame specified. UFU took no remedial action against Shepard for the discriminatory statements she made at the town hall meeting. Shepard received no disciplinary action. The disclaimer was still not removed after the first fine. Defendant continued to fine UFU an additional $10,000.00 per day for the next month (July 2022), totaling $410,000.00 in fines. UFU did not take any corrective action because it believed LCADS §604 was a violation of its constitutionally protected religious beliefs and Free Exercise and its freedom of speech and they intended to bring suit requesting an injunction.

As a result, Plaintiffs have brought suit against Defendant for the excessive fines imposed on them by Defendant. Plaintiffs claim that compliance with Defendant's statute would compel them to violate their sincere religious beliefs and to speak in ways that are contrary to those religious beliefs which would deprive them of their First Amendment rights under the United States Constitution.

Lockwood City's Anti-Discrimination Statute §604 (LCADS §604) is the statute at issue in the case before this court.

Lockwood City's Anti-Discrimination Statute §604 (LCADS §604)

(a) It is a discriminatory practice and unlawful for a person or institution, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of disability, race, religion, color, sex, sexual orientation, marital status, national origin, or ancestry, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or, directly or indirectly, to publish, circulate, issue, display, post, or mail any written, electronic, or printed communication, notice, or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable, or undesirable because of disability, race, religion, color, sex, sexual orientation, marital status, national origin, or ancestry.

(b) As used in part (a), "place of public accommodation" means any place of business engaged in any sales to the public and any place offering services, facilities, privileges, advantages, or accommodations to the public, including but not limited to any business offering wholesale or retail sales to the public; any place to eat, drink, sleep, or rest, or any combination thereof; any sporting or recreational area and facility; any public transportation facility; a barber shop, bathhouse, swimming pool, bath, steam or massage parlor, gymnasium, or other establishment serving the health, appearance, or physical condition of a person; a campsite or trailer camp; a dispensary, clinic, hospital, convalescent home, or other institution for the sick, ailing, aged, or infirm; a mortuary, undertaking parlor, or cemetery; an educational institution; or any public building, park, arena, theater, hall, auditorium, museum, library, exhibit, or public facility of any kind whether indoor or outdoor.

(c) A place of public accommodation does not include

(i) a church, synagogue, mosque, or other place that is principally used for

religious purpose; or

(ii) any secular organization which proves that it is in its nature distinctly private. An organization is not in its nature distinctly private if, for example, it has more than 500 members, it provides regular meal service, and regularly receives payment for fees, and use of space, facilities, services, meals, or revenue in furtherance of trade or business.

(iii) a corporation duly incorporated under the laws of this state, or a religious corporation incorporated under either the education law or the religious corporation law, is deemed to be in its nature distinctly private.

(d) Any place of public accommodation that willfully or repeatedly violates this statute or the requirements of any standard, rule, or order promulgated pursuant to this statute, or regulations prescribed pursuant to this statute, shall be assessed a civil penalty of not more than $70,000.00 for each violation, but not less than $5,000.00 for each violation. Any place of public accommodation that fails to correct a violation within 90 days after receiving notice of such, shall be assessed a civil penalty of not more than $10,000.00 for each day during which such failure or violation continues.

## DISCUSSION

### Standard of Summary Judgment

An entry of summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" if it can affect the litigation's substantive outcome. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1988). "A dispute over a material fact is considered 'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Id. at 24. The standard for cross-motions for summary judgment is the same standard as a motion for summary judgment. Byrne v. Rutledge, 623 F.3d 46, 53 (2d Cir. 2010). A court will "evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration." Hotel Emps. & Rest. Emps. Union v. City of N.Y. Dep't of Parks & Recreation, 311 F.3d 534, 543 (2d Cir. 2002).

I. UFU is an Institution of Public Accommodation

The LCADS §604 (c)(i) states that the statute's public accommodation laws are not applied to "a church, synagogue, mosque, or other place that is principally used for religious purposes." UFU contends that as an institution with religious ties and a historic foundation, it should be considered a religious organization. Yet, UFU acknowledges that it is an educational institution. Its primary focus is to provide higher education across many fields and disciplines to students of all backgrounds. This Court rules that UFU is not a religious organization, notwithstanding the fact that the status of a religion organization and education institution are not mutually exclusive.

At its inception, UFU initially might have been regarded as a religious corporation, but it has since strayed from that course. When founded, UFU offered ministerial ordinations through a bachelor's degree program. That program is no longer available and only one major in United Faith religious studies is offered by UFU, which provides majors in 82 nonreligious subjects. The UFU student body is composed of students from a variety of religious backgrounds.

UFU's status and history are akin to those of Princeton, which was founded by Presbyterian ministers but has since taken a more secular route. The school motto is "*Dei sub numine viget*," which translates from Latin to "Under God she flourishes." While the school is no longer a religious entity, it has simply held on to sentimental and historic aspects of its past.[1] Similarly, UFU has held on to its historical element by keeping the university's original name and keeping certain design elements of religious significance.

In White v. Denver Seminary, the court held that even though an institution offered public accommodation services it was still a religious institution if it was operated by a religious

[1]https://www.princeton.edu/one-community/religious-life#:~:text=Religious%20Life%20at%20Princeton&text=Princeton%20is%20nonsectarian%2C%20and%20religious,seeking%20meaning%20in%20their%20lives

organization. That court further elaborated that "if a church itself operates a daycare center, a nursing home, a private school, or a diocesan school system, the operations of the center, home, school, or schools would not be subject to the requirements of the ADA or this part." White v. Denver Seminary, 157 F. Supp. 2d 1171, 1173 (D. Colo. 2001).

In its name and its mission statement, UFU continues to maintain a link to the United Faith religion. After UFU expanded its science department in 1974, however, the United Faith Temple officially severed ties with the school. The official United Faith religion does not oversee any of UFU's operations. Shepard is not a ministerial official, nor are there any reserved roles in the administration for ministerial officials. There are only a small minority of UFU's faculty and staff that are actively involved with the United Faith religion.

Thus, UFU currently lacks an official affiliation with the United Faith Temple. The court in Scheiber v. St. John's University., 84 N.Y.2d 120, 126 (1994), held that as an educational organization that operated in affiliation with a religious institution or organization (the Vincentian order), Saint John's University is considered a "religious institution." Therefore, it was afforded the protections of a religious institution under New York Human Rights Law regarding its employment policies because Saint John's University had not abandoned its religious heritage even though the school was founded with the intent of fulfilling a secular educational role. Although Saint John's University is a place of public accommodation, it fell within the exemption for entities that are "operated, supervised or controlled by or in connection with a religious organization." Unlike that university, UFU is solely a secular school and thus is not exempt from LCADS §604.

II. LCADS §604 is a Constitutional Statute

The First Amendment guarantees the Free Exercise of religion. Only the strictest of scrutiny justifies a breach of that guarantee. United States v. Carolene Products Co., 304 U.S. 144, 152-53, n.4 (1938). According to the Free Exercise Clause, legislation that restricts religious practice need not be supported by a compelling government interest if the law is neutral and of general applicability. Empl. Div., Dept. of Human Resources of Or. v. Smith, 494 U.S. 872, 877–78 (1990). Pursuant to Smith, if LCADS §604 is a neutral statute that only incidentally burdens religion, Defendant need only show a rational basis for enacting the statute. The United States Supreme Court has held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribed (or proscribes).'" Smith, 494 U.S. 872, 879 (1990). This Court agrees with Smith, and rules that LCADS §604 is a neutral law of general applicability, subject only to rational basis scrutiny.

Despite Plaintiffs' claim to the contrary, based on their non-exempt status, and despite being an institution with sincerely held religious beliefs and values, LCADS §604 is a neutral statute that provides safeguards to all individuals based on their identity, in all public establishments (aside from those specifically exempted). Therefore, it does not target religious practice. It even offers protection to people of all religious backgrounds in specified places. It does not even incidentally burden religion or religious practices in its language or in its application.

Since LCADS §604 is a neutral statute, Defendant need only prove that it had a rational basis for enacting the law. LCADS §604 satisfies rational basis review because the government has a legitimate interest in providing LGBTQ individuals and other individuals with "equal dignity in the eyes of the law." Obergefell v. Hodges, 576 U.S. 644, 681 (2015).

If LCADS §604 were not a neutral statute, even under Smith, then the government would be required to prove that it had a compelling interest in enacting the law. For laws determined not to be neutral or of general applicability, a strict scrutiny review is required. Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520, 531 (1993). Even if this law were deemed to target religion, this Court would hold that the statute could survive a strict scrutiny review because it is the least restrictive means to reach a compelling government goal of protecting all people from discrimination, in places of public accommodations, based on their identity.

## III. UFU's First Amendment Right to Freedom of Speech Is Not Violated

In addition to denying a student group funding for an activity, Plaintiffs also published discriminatory statements on its website. Shepard, while engaging in conduct directly related to her official capacity, orally made discriminatory statements. That does not constitute private speech. When an employee of an institution is speaking in their official capacity in their role of employment, their statements are not afforded the First Amendment protections of a citizen's private speech. Rather, the First Amendment does not protect public employees from discipline when they make statements while performing their official duties because they are not speaking in their capacity as citizens. Garcetti v. Ceballos, 547 U.S. 410, 421 (2006). Plaintiffs are hiding behind the First Amendment, claiming that their Free Exercise and speech rights are being violated, because they are unhappy with LCADS §604. However, as discussed above, pursuant to Garcetti, there is no First Amendment violation of either UFU's or Shepherd's free speech by compelling them to comply with a valid law.

The First Amendment guarantees that religious individuals and groups receive the proper protection while they work to spread the values that are so fundamental to their lives and faiths. Although these religious and philosophical objectives are protected, it is generally accepted that

they cannot be used as an excuse by business owners or other members of society or the economy to deny protected individuals the same access to goods and services as everyone else under a fair and widely applicable public accommodations law. Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719, 1720 (2018).

Since LCADS §604 is constitutionally sound and a neutral public accommodation law, this Court holds that Plaintiffs shall comply with the law and not discriminate against its student body on the basis of sex or sexual orientation. Plaintiffs must provide the same opportunities to its LGBTQ students as it does to the general student body. Discriminatory statements on its website are likewise prohibited under LCADS §604.

## CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is hereby granted in its entirety, and Plaintiffs' motion for summary judgment is denied.

Elizabeth Gray

**Elizabeth Gray**
**U.S. District Court Judge**

**UNITED STATES COURT OF APPEALS**
**FOR THE EIGHTEENTH CIRCUIT**

UNITED FAITH UNIVERSITY and its PRESIDENT, DR. ELLIS SHEPARD in her official capacity,

Appellants,

v.

THE CITY OF LOCKWOOD,

Appellee.

**No.:** 22-1491

Decided, December 22, 2022

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Before Thorne, Berman, White, Circuit Court Judges.

Thorne, Circuit Court Judge, delivered the opinion of the Court.

Appellants United Faith University ("UFU") and its President, Dr. Ellis Shepard ("Shepard") (collectively "Appellants") appeal from the order of the United States District Court for the District of Tourovia, which granted summary judgment to the City of Lockwood ("Appellee" or "Lockwood City") on Appellants' claim alleging that Lockwood City's Anti-Discrimination Statute §604 ("LCADS§ 604") violated Appellants' First Amendment rights. The facts are set forth in that decision and order dated on December 5, 2022.

This appeal raises the question of whether LCADS §604 is a valid statute. This question must be determined by examining whether the statute is neutral or whether it burdens or targets religion. UFU is required to comply with this statute only if it does not unconstitutionally abridge

First Amendment freedoms. Generally, to determine the constitutionality of a public accommodations statute, a court must apply a rational basis test to a neutral and generally applicable law but a rigorous strict scrutiny test to a law that is facially discriminatory and imposes a burden on religion. This Court holds that LCADS §604 is not a neutral law but rather one that discriminates against a religious institution and, therefore, that it is subject to strict scrutiny. Lockwood City is unable to demonstrate a compelling justification for LCADS §604; it places a burden on religion without a compelling reason for its enactment and is thus an unconstitutional infringement on Plaintiffs' First Amendment Free Exercise rights. This Court further holds that LCADS §604 both compels and prohibits Plaintiffs' speech and, therefore, violates the Free Speech rights protected under the First Amendment.

## PROCEDURAL HISTORY

On August 1, 2022, Plaintiffs filed suit against Defendant for violating their civil rights under 42 U.S.C. §1983 and infringing on their Freedom of Religion and Freedom of Speech. Plaintiffs and Defendant filed cross motions for summary judgment. On December 5, 2022, the District Court granted Defendant's cross-motion for summary judgment. Plaintiffs appealed to this Court on the grounds that LCADS §604 is not a constitutional statute as it unfairly burdens religion and compels and prohibits speech.

## STANDARD OF REVIEW

An appellate court's review of a district court's grant of summary judgment is plenary, and the same legal standards as those used in the district court are applied. Hoffman v. Allied Corp., 912 F.2d 1379, 1383 (11th Cir. 1990). Summary judgment is granted when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact that is "material" may impact the outcome of the suit under governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The standard of

review for the District Court's decision, granting summary judgment, is de novo. Stoe v. Barr, 960 F.3d 627, 629 (D.C. Cir. 2020).

## DISCUSSION

Under LCADS §604, UFU is a place of public accommodation; therefore, LCADS §604 applies to it. LCADS §604 (b) includes in its definition of public accommodations an educational institution. In the opinion of this Court, UFU is an educational organization, not a religious institution or corporation as defined in the statute (and, therefore, not included in the exemptions provided to such organizations under LACDS §604 (c)(iii)). LCADS §604 provides safeguards from discrimination to protected classes of people in places of public accommodation. Among those protected classes is the LGBTQ student group at UFU.

UFU appeals the constitutionality of LCADS §604. The Court has assessed whether UFU is in violation of LCADS §604 and concludes that LCADS §604 is unconstitutional because it is in fact not a neutral statute, is therefore subject to strict scrutiny, and clearly burdens the Free Exercise of religion.

The First Amendment to the United States Constitution prohibits Congress from enacting laws that prohibit the Free Exercise of religion. U.S. Const. amend. I. In 1940, by way of the Fourteenth Amendment, the U.S. Supreme Court incorporated the language of the First Amendment to the states. "The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws." Cantwell v. State of Connecticut, 310 U.S. 296, 303 (1940).

A law that burdens religious practice need not be justified by a compelling governmental interest if it is neutral and of general applicability. Empl. Div., Dept. of Human Resources of Or. v. Smith, 494 U.S. 872, 877–78 (1990). However, restrictions on religious exercise that are not

"neutral and of general applicability" must survive strict scrutiny. Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U. S. 520, 531 (1993). They must also be drawn in the narrowest terms to accomplish governmental interests. Id. at 523.

Laws are typically deemed neutral or discriminatory based on the presence or absence of exemptions. For two reasons, both related to exemptions, this Court holds that LCADS §604 is not a neutral statute. First, LCADS §604 provides secular exemptions in its public accommodation law but denies UFU, an educational institution, operating in a religious context, an exemption. In Fulton v. City of Philadelphia, 141 S. Ct. 1868, 1871 (2021), the Supreme Court held that the City of Philadelphia's request to the Catholic Social Services (CSS) to certify same-sex couples as foster parents violated the Free Exercise Clause of the First Amendment. Furthermore, the Court stated that the state cannot refuse to grant an exemption in circumstances of religious complexity when it already has a system in place of individual exemptions for other groups. Id. LCADS §604 (c)(ii) does include an exemption for other groups, such as private organizations with fewer than 500 members, and therefore pursuant to Fulton, Appellee must also provide an exemption to UFU. The Court finds that UFU has met the burden of showing its rights were infringed by demonstrating that LCADS §604 does not equitably apply to secular and religious organizations in its granting of an exemption.

Second, in addition to its omission of an exemption for UFU, either as a religious institution or as a private organization, LCADS §604 is not neutral because it forces UFU to contradict its religion and provide recognition and funding to a message that its religion firmly opposes and thus is violating UFU's freedom of religion. The Free Exercise Clause of the First Amendment protects against indirect coercion or penalties on religious exercise, not just outright prohibitions. Lyng v. Northwest Indian Cemetery Protective Assn., 485 U.S. 439, 450 (1988). This indirect coercion or

penalties on the Free Exercise of religion, not just outright prohibitions, are subject to constitutional scrutiny. Id. at 441.

Any time laws treat any comparable secular activity more favorably than religious exercise, they may violate the Free Exercise Clause because they are neither impartial nor generally applicable. Roman Catholic Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 67, (2020), aff'd, Tandon v. Newsom, 141 S. Ct. 1294, 1296 (2021). Here, the Appellee treats some comparable secular commercial businesses or other activities more favorably than those of a religious institution.

Not only does LCADS §604 infringe on UFU's First Amendment Right to freely exercise its religion but it violates UFU's First Amendment Right to Freedom of Speech. This is a two-fold problem because firstly LCADS §604 is forcing UFU to speak by sponsoring a delegation in a parade that contradicts its sincere religious beliefs, and it is prohibiting UFU's speech by requiring the institution to remove the disclaimer from its website.

There is a reason why religious speech has been historically protected under the First Amendment. Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2421 (2022). The Constitution was created by our founding fathers with the goal of preventing religious discrimination. Two fundamental principles that form the basis of our country are the freedom of speech and the freedom to practice one's religion. Id. at 2421. These are the two freedoms that UFU is prohibited from practicing in this case by being compelled to support ideas contradicting its religious beliefs.

Under the First Amendment, a speaker has the freedom to choose the content of their own speech without government coercion. The First Amendment safeguards a person's right to speak freely as well as their right to not speak. Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557, 573 (1995); Rumsfeld v. Forum for Academic and Institutional

Rights, Inc., 547 U.S. 47, 61 (2006). Content-based laws infringing First Amendment rights must survive strict scrutiny, "which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." Reed v. Town of Gilbert, 576 U.S. 155, 171 (2015).

Three components must be proven to state a claim for compelled speech, the speech must be: (1) objected to by the speaker, (2) required by a government action, and (3) forced. Laird v. Tatum, 408 U.S. 1, 11 (1972). Regarding the compulsion requirement, the Tenth Circuit has ruled that the governmental action must be regulatory, proscriptive, or coercive in nature to punish or threaten to punish protected speech. Semple v. Griswold, 934 F.3d 1134, 1135 (10th Cir. 2019). A plaintiff can demonstrate government pressure without naming a specific threat, such as jail time, fines, injunctions, or taxes; but a minor, completely subjective discouragement does not illegally prevent the enjoyment of a plaintiff's First Amendment rights. Id. at 1136.

Here, Lockwood City is compelling UFU to speak and support a certain idea that contradicts its beliefs. LCADS §604 would force UFU to both sponsor a student delegation in a parade contrary to its religious convictions. Such sponsorship might be construed as speech that bears the imprimatur of the sponsor. Furthermore, LCADS §604 requires that UFU remove a religious disclaimer, stating a core United Faith principle, from its website. This is a prohibition of speech based entirely on content. In addition, institutions covered by LCADS §604 may not publish any statements specific to any of the protected categories of persons. UFU's silence is being forced and their speech is being prohibited by this statute. UFU should not be compelled to support messages that contradict its entire foundation.

Just as the First Amendment prevents the government from limiting speech, it also prevents the government from pressuring people to express opinions or from making certain people bear

the cost for speech with which they disagree. United States v. United Foods, 533 U.S. 405, 408 (2001). UFU cannot be compelled to use its funding to support messaging with which it disagrees.

Finally, UFU has asked this Court to consider whether Smith should be overruled, insisting that any statute that abridges the First Amendment right to Free Exercise of religion should be subject to strict scrutiny. This issue is moot since UFU now has a favorable holding on its motion for summary judgment.

## CONCLUSION

For the foregoing reasons, the decision of the U.S. District Court for the District of Tourovia granting summary judgment to Appellee is hereby vacated. The case is remanded, and the District Court is directed to enter summary judgment in favor of Appellants.

Ada Thorne

**Ada Thorne**
**U.S. COURT OF APPEALS JUDGE**

NO. 23-012

IN THE
**UNITED STATES SUPREME COURT**

APRIL TERM, 2023

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THE CITY OF LOCKWOOD

Petitioner,

v.

UNITED FAITH UNIVERSITY, and its
PRESIDENT, DR. ELLIS SHEPARD,

Respondents.

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On Writ of Certiorari to the United States Court of Appeals
for the Eighteenth Circuit

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**ORDER GRANTING CERTIORARI**

The City of Lockwood has filed a petition for certiorari in this Court from the Order of the United States Court of Appeals for the Eighteenth Circuit.

IT IS HEREBY ORDERED that the petition for certiorari is granted. The questions before the Court are:

1. Whether a claim that a city's anti-discrimination law violates the First Amendment Free Exercise rights of a university should be evaluated under rational basis analysis per Empl. Div., Dept. of Human Resources of Or. v. Smith, 494 U.S. 872, 877–78 (1990), or under strict scrutiny analysis when a university is religiously affiliated but qualifies as a place of public accommodation under the law in question.

2. Whether a city's anti-discrimination law violates the First Amendment Free Speech rights of a religiously affiliated university by compelling or prohibiting speech contrary to its principles.