NO. 25-2825

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PASTOR ADEN RUSFELDT
PLAINTIFF - APPELLANT

v.

CITY OF NEW YORK, NEW YORK
DEFENDANT – APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NO. 22-CV-594

BRIEF FOR *AMICUS CURIAE* THE LIBERTY JUSTICE CENTER IN SUPPORT OF APPELLANT AND REVERSAL

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The Liberty Justice Center is a Section 501(c)(3) nonprofit corporation.[1] It does not have a parent corporation. And no public corporation possesses 10% or more of an ownership interest in the Liberty Justice Center.

[1] All parties consented to the filing of this brief. No counsel for any party authored any part of this brief. And no person or entity, other than *amicus curiae*, funded the preparation or submission of this brief.

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INTEREST OF *AMICUS CURIAE*

The Liberty Justice Center ("LJC") is a nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights. LJC is interested in this case because the protection of an individual's right to free speech, especially speech that offends, is a core value vital to a free society. LJC frequently represents individuals in cases where the government is trying to silence them or refusing to adhere to constitutionally required policies that allow them to exercise their free speech rights.

ARGUMENT

I. New York failed to meet its First Amendment obligations.

From the moment that officers from the New York City Police Department saw Pastor Aden Rusfeldt preaching at the LGBTQ+ PrideFest on June 27, 2021, the officers succumbed to the "heckler's veto" and tried to silence him in violation of his First Amendment rights. Once PrideFest participants began hurling objects at Rusfeldt because of his speech against their lifestyle, NYPD's priority was to silence and remove him from the scene instead of stopping the violence perpetrated against him. *See Rusfeldt v. City of New York*, 806 F. Supp. 3d 417 (SDNY 2025) (Op. and Order, R. Doc. 171 at 4).

Testimony from all officers showed that their priority was to prevent a violent event from occurring and that they were indifferent to Rusfeldt's speech. *Id*. at 4–6. But the only tactic the officers seriously pursued to prevent an unfortunate event was to silence and remove Rusfeldt from the scene instead of stopping the violent acts threatening him. *Id*.

Rusfeldt was peacefully standing on the sidewalk displaying signs and vocalizing his message. *Id*. PrideFest participants were hurling

objects and making violent threats against him. *Id*. But instead of preventing a violent event by holding the violent and threatening individuals accountable, NYPD arrested the peaceful street preacher and removed him from the scene to quiet the unruly mob. *Id*. Perhaps they thought it was easier to remove Rusfeldt instead of controlling an unruly mob. But by doing so, NYPD allowed the "heckler's veto" to silence Rusfeldt's freedom of speech instead of protecting his First Amendment rights.

II. The First Amendment protects offensive speech.

The Supreme Court has "said time and again that 'the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.'" *Matal v. Tam*, 582 U.S. 218, 244 (2017) (quoting *Street v. New York*, 394 U.S. 576, 592 (1969). "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

"Listeners' reaction to speech is not a content-neutral basis for regulation," *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134

(1992). "Speech cannot be … punished or banned, simply because it might offend a [crowd]." *Id.* at 134-35.

"Desirable as [the prevention of conflict] is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." *Buchanan v. Warley*, 245 U.S. 60, 81 (1917). "'The danger of viewpoint discrimination … is all the greater if the ideas or perspectives [the government is attempting to remove] are ones a particular audience might think offensive, at least at first hearing.'" *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1127 (2022) (quoting *Tam*, 582 U.S. at 250 (op. of Kennedy, J.)).

The NYPD "prohibit[ed] only one perspective"—Rusfeldt's perspective. *Id.* Rusfeldt never responded violently to the PrideFest participants, nor did he threaten them, even when they acted violently toward him. It is "indisputable that the officers curbed [Rusfeldt's] speech because of the potential reaction of the listeners" and "targeted [his] speech only once the audience's hostile reaction manifested." *Meinecke v. City of Seattle*, 99 F.4th 514, 523-24 (9th Cir. 2024). Accordingly, the NYPD "choose[] winners and losers in the marketplace

of ideas—which it may not do." *Id.* (citing *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1, 11 (2018)). "That is part and parcel of a heckler's veto." *Meinecke*, 99 F.4th at 524.

III. Free speech depends on government protection from the mob.

The heckler's veto cannot prevail in today's politically polarized society. If so, the first group that resorts to violence will always win and make the First Amendment a nullity.

"[T]he 'heckler's veto,' occurs when police silence a speaker to appease the crowd and stave off a potentially violent altercation." *Bible Believers v. Wayne Cty.*, 805 F.3d 228, 234 (6th Cir. 2015) (en banc). Its "hallmarks" include: "(1) a peaceful speaker; (2) a hostile crowd; and (3) a state actor that 'cuts off' only the peaceful speaker because of the crowd's reaction to their speech." *Balogh v. Virginia*, 120 F.4th 127, 136 (4th Cir. 2024).

"The heckler's veto doctrine, which, at bottom, prohibits a state from suppressing the speech of a peaceful speaker because of a hostile audience, was born out of several First Amendment concerns." *Id.* at 135. "Consequently, if speech provokes wrongful acts on the part of hecklers, the government must deal with those wrongful acts directly; it

may not avoid doing so by suppressing the speech." *Meinecke*, 99 F.4th at 518 (cleaned up).

"[T]he heckler's veto [is] one of the most persistent and insidious threats to First Amendment rights, imposed by the successful importuning of government to curtail 'offensive' speech at peril of suffering disruptions of public order." *Balogh*, 120 F.4th at 135 (cleaned up). "Though the heckler's veto may involve an understandable impulse to buy peace, a state offends the Constitution when its restrictions chill speech. Curbing speech under those circumstances is an impermissible form of content-based speech regulation." *Id.* (cleaned up). Because content-based speech regulations "can stand only if they survive strict scrutiny." *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015).

"Where the designed benefit of a content-based speech restriction is to shield the sensibilities of listeners, the general rule is that the right of expression prevails, even where no less restrictive alternative exists." *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813 (2000).

"Punishing, removing, or by other means silencing a speaker due to crowd hostility will seldom, if ever, constitute the least restrictive means available to serve a legitimate government purpose." *Bible*

Believers, 805 F.3d at 248 (citing *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Terminiello v. City of Chicago*, 337 U.S. 1 (1949); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *Cox v. Louisiana*, 379 U.S. 536 (1965); *Gregory v. City of Chicago*, 394 U.S. 111 (1969)). "A review of Supreme Court precedent firmly establishes that the First Amendment does not countenance a heckler's veto." *Id*. "In a balance between two important interests—free speech on one hand, and the state's power to maintain the peace on the other—the scale is heavily weighted in favor of the First Amendment." *Id*. at 252 (citing *Terminiello*, 337 U.S. at 4).

"[A] heckler's veto effectuated by the police will nearly always be susceptible to being reimagined and repackaged as a means for protecting the public, or the speaker himself, from actual or impending harm. After all, if the audience is sufficiently incensed by the speaker's message and" turns violent, "one method of quelling that response would be to cut off the speech and eject the speaker whose words provoked the crowd's ire." *Id*. at 255. But "before removing the speaker due to safety concerns, and thereby permanently cutting off his speech, the police must first make *bona fide* efforts to protect the speaker from the crowd's hostility by other, less restrictive means." *Id*.

"Maintenance of the peace should not be achieved at the expense of the free speech. The freedom to espouse sincerely held religious, political, or philosophical beliefs, especially in the face of hostile opposition, is too important to our democratic institution for it to be abridged simply due to the hostility of reactionary listeners who may be offended by a speaker's message." *Id.* "If the mere possibility of violence" determines whether speech is "safeguarded by the Constitution, surely the myriad views that animate our discourse would be reduced to the 'standardization of ideas . . . by . . . [the] dominant political or community groups.' Democracy cannot survive such a deplorable result." *Id.* (quoting *Terminiello*, 337 U.S. at 4-5).

CONCLUSION

The decision below should be reversed and judgment entered for Rusfeldt.

Dated: March 2, 2026

Respectfully Submitted,

/s/ Ryan Morrison

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 1,322 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), according to the word count calculated by Microsoft Word for Microsoft Office 365, which was used to prepare this brief in 14-point Century Schoolbook font in compliance with Fed. R. App. P. 32(a)(5) and (6).

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CERTIFICATE OF SERVICE

I certify that on March 2, 2026, the foregoing was filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit using the ACMS system, and that all participants in this case are represented by counsel that are registered ACMS users and that service will be accomplished by the ACMS system.

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