NO. _____

IN THE

Supreme Court of the United States

SEATTLE'S UNION GOSPEL MISSION,
Petitioner,

v.

MATTHEW S. WOODS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Washington

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Seattle's Union Gospel Mission is a nonprofit that exists to preach the gospel of Jesus Christ. Mission employees—all of whom must share and live out its beliefs—do so by meeting the needs of the homeless and evangelizing to them.

One of the Mission's many ministries is Open Door Legal Services, a legal clinic that assists those in Mission recovery programs and other vulnerable community members. Respondent Matthew Woods applied for an Open Door position with the stated intent of changing the Mission's religious beliefs and without satisfying the prerequisites of regular church attendance, a pastor's recommendation, and an explanation of his relationship with Jesus. Woods sued when the Mission hired a coreligionist instead.

A state trial court ruled for the Mission, noting that it is exempt from state non-discrimination law. But the Washington Supreme Court held that exemption violated the state constitution as-applied and declared the Mission's First Amendment rights limited to the ministerial exception, creating a split with six Courts of Appeals. The questions presented are:

1. Whether the First Amendment protects the Mission's right to hire coreligionists.

2. Whether denying the Mission a total exemption the state grants to secular, small businesses violates the Free Exercise Clause.

3. Whether the Washington Supreme Court violated the Free Exercise Clause by showing at least a "slight suspicion" of hostility to religious beliefs in deleting a total exemption the legislature bestowed.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

Petitioner Seattle's Union Gospel Mission is a Washington nonprofit organization, which the IRS places in the same tax-exempt category as a church. It has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent Matthew S. Woods is an individual and citizen of Washington.

LIST OF ALL PROCEEDINGS

Supreme Court of Washington, No. 96132-8, *Woods* v. *Seattle's Union Gospel Mission*, judgment entered Mar. 4, 2021.

Superior Court of King County, Washington, No. 17-2-29832-8, *Woods* v. *Seattle's Union Gospel Mission*, judgment entered July 9, 2018.

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The Washington Supreme Court's opinion reversing the judgment is reported at 481 P.3d 1060 (Wash. 2021), and reprinted at App.1a–60a.

STATEMENT OF JURISDICTION

Petitioner timely files this petition from the Washington Supreme Court's March 4, 2021 decision. This Court has jurisdiction under 28 U.S.C. 1257(a).

PERTINENT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

Excerpted Washington constitutional provisions and statutes appear at App.76a. Excerpted federal statutes are included at App.73a–75a.

INTRODUCTION

The Constitution's coreligionist exemption—recognized by the federal government and six circuits but not the Washington Supreme Court—allows religious organizations to condition employment on adherence to religious tenets so that religious groups can maintain self-identifying communities of like-minded believers. The exemption is crucial for free exercise to thrive; after all, a religious nonprofit's purpose will be undermined if it is forced to hire those who subvert the group's religious beliefs.

Yet that is the position in which Petitioner Seattle's Union Gospel Mission finds itself. The Mission is a nonprofit ministry that loves and cares for its homeless neighbors throughout greater Seattle. From a borrowed soup kettle used to care for those suffering from the Great Depression in 1932, the Mission has grown to serve and love over a thousand homeless individuals each day.

The Mission is about far more than providing for material needs. Its primary purpose is to bring the love of Jesus Christ and hope for a new life to those who most need it. The Mission seeks nothing less than to see every homeless neighbor loved, redeemed, and restored by meeting urgent physical needs while building relationships and offering faith.

This approach is spectacularly successful. Two years after program completion, 70% of Mission clients are working or going to school full time. The Mission understands that success to be rooted in its evangelism, a success that would quickly end if employees undermined the organization's religious convictions.

The Washington Supreme Court takes a different view. Even though Washington's Title VII analogue expressly *excludes* non-profit religious organizations from its definition of "employer" and has done so since the law was passed over 50 years ago, the court held the statutory exemption unconstitutional as applied to a nonprofit that seeks to hire coreligionists—effectively rewriting the law. The Washington Supreme Court demands that religious nonprofits hire those who *disagree with* and *seek to change* the nonprofit's beliefs for any job outside the ministerial exception.

The job here was a staff attorney in the Mission's legal-aid clinic, a position that involves talking with clients about Jesus and attending worship services and prayer meetings in addition to providing legal advice. Respondent Matthew Woods received the position notice and contacted a current staff attorney for information, disclosing he was in a sexual relationship that violated the Mission's religious-lifestyle requirements. When told that would bar employment, Woods applied anyway to "protest" those requirements and the Mission's religious beliefs. Woods's application described no personal relationship with Jesus Christ, disclosed that Woods was not active in a local church, did not provide his pastor's name and contact information as the Mission required, and included a cover letter asking the Mission to "change" its religious practices.

Though the Mission tried to help Woods find a position with a secular legal clinic, Woods sued after the Mission hired a coreligionist candidate. A Washington state trial court dismissed the action, holding that the Mission fell squarely within the statutory exemption for religious nonprofits.

Demeaning the Mission's pleas for religious autonomy as an excuse to discriminate, the Washington Supreme Court overrode the statutory exemption and held that the Mission has no First Amendment right to hire coreligionists. As a result, Washington law now requires houses of worship and other religious nonprofits to employ those who contradict the beliefs they were created to foster *unless* a position qualifies for the ministerial exception. This threatens to extinguish religious nonprofits like the Mission that are organized around and designed to promote a shared set of religious beliefs.

This leveling of religious nonprofits' autonomy and diluting of their doctrines was shocking. The Washington Supreme Court disagreed with the Mission's religious beliefs on matters of sexual behavior and thus jumped statutory and constitutional hurdles to ensure that ideological opponents could coopt non-ministerial positions and undermine the Mission's religious teachings. Unless this Court intervenes, anyone will be able to demand a job while contradicting a religious organization's core beliefs, and faith-based nonprofits will lose their autonomy to freely associate without state interference.

The federal government and Third, Fourth, Fifth, Sixth, Ninth, and Eleventh Circuits have all recognized that the First Amendment protects religious nonprofits' right to hire coreligionists. So should this Court, just as it relied on a long line of lower-court decisions to recognize the ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church & School* v. *EEOC,* 565 U.S. 171, 188 (2012).

The Court should do so now because religious nonprofits' ability to live their faith is at stake. The Mission is subject to potential damages, declaratory and injunctive relief, and attorney fees merely because it declined to hire someone whose religious beliefs differ sharply from its own. Though the Mission has stood firm, many churches and other religious nonprofits cannot survive years of invasive litigation and potential legal liability. To avoid these injuries, they are likely to self-censure or end their ministries, harming the people they serve. Because statutory exceptions are no longer enough to protect religious organizations' right to hire those who share and live out their beliefs, the Court should grant review and hold that the First Amendment mandates the coreligionist exemption.

There are two additional problems worthy of review. First, Washington's judicially-rewritten employment law now grants a broader exemption to small, secular businesses than it does the Mission, violating *Tandon* v. *Newsom*, 141 S. Ct. 1294 (2021) (per curiam). Second, by denigrating the Mission's faith, maligning the statutory religious exemption as a "license to discriminate," and suggesting that religious people cannot satisfy lawyers' ethical obligations, the court below showed far more than the "slight suspicion" of religious animus that *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1731 (2018), condemns.

This Court should grant review, resolve the conflict, and uphold the right to hire coreligionists. At a minimum, the Court should summarily reverse and direct entry of judgment for the Mission.

STATEMENT OF THE CASE

A. Seattle's Union Gospel Mission's beliefs, work, and employment policies

Seattle's Union Gospel Mission has been offering hope to hurting people for almost 90 years. App.159a. Not only is the Mission tax-exempt, the IRS categorizes it equivalent to a church under 26 U.S.C. 170(b)(1)(A)(i). App.163a–168a. The Mission is a "[p]assionate community of people who follow Christ in his relentless, redeeming love for all people." App.152a. It staffs over 20 ministries that seek "to serve, rescue, and transform those in greatest need through the grace of Jesus Christ" by "providing 24/7, 360-degree support services for homeless people in King County." App.114a, 152a.

Providing food, shelter, addiction-recovery, job placement, and legal services shows Christ's love to Seattle's vulnerable. Through ministries like these, Mission staff serve the homeless, pray with them, and discuss matters of faith. App.115a. Everything they do is to "inspire hope, bring healing, and point people to a new life through Jesus Christ." App.138a, 152a. The Mission takes seriously the Bible's teaching that it does people no good "to gain the whole world and forfeit [their] soul[s]" (Mark 8:36). App.114a. Indeed, the Mission's articles of incorporation dictate its purpose as "preaching of the gospel of Jesus Christ by conducting rescue mission work" and mandate that all other activities "be kept entirely subordinate and only taken on so far as seems necessary or helpful to the [Mission's] spiritual work." App.151a.

The Mission belongs to the Citygate Network (formerly the Association of Gospel Rescue Missions), a group of roughly 300 North American ministries. App.155a. Each ministry adheres to a similar statement of faith, code of conduct, and code of ethics. App.132a–133a, 155a–56a. They join forces to offer "hospitality to the destitute as both a catalyst for life transformation in Jesus and a fundamental expression of their Christian faith, thus propelling the church into the lead role in society's quest to alleviate homelessness." App.156a.

The Mission expresses its religious beliefs and accomplishes its religious purpose through its full-time employees, App.115a, who serve as the Mission's hands, feet, and mouthpieces. Consequently, the Mission requires paid staff and high-impact volunteers to affirm its statement of faith which declares, in part, that "the Bible is the inspired, infallible, authoritative Word of God." App.116a, 153a. Its employee handbook requires staff to abide by the Mission's understanding of the Bible's teachings by—for instance—refraining from "[a]cts or language which are considered immoral or indecent according to traditional biblical standards," including "extra-marital affairs, sex outside of marriage, [and] homosexual behavior." App.160a, 162a.

Hiring those who live out the Mission's religious beliefs is crucial to its ministries' success. The Mission firmly believes that Jesus is "the ultimate source of healing and hope." App.114a. Its goal is not just to care for the homeless but to lead them out of despair, addiction, and trauma to a new life in Christ. App.152a. And that new life begins when clients experience Christ's love and surrender their lives to

God. Every Mission employee's primary responsibility is to model and share this faith to everyone. Staff who reject biblical teaching cannot credibly urge others to surrender to God. App.115a–116a; App.35a–36a n.2 (Stephens, J., dissenting in part).

B. The Mission's legal services ministry and staff attorney position

One of the Mission's ministries is Open Door Legal Services, a legal-aid clinic where staff attorneys and volunteers help resolve warrants, child support orders, debt collection, and other issues impacting the Mission's homeless neighbors. App.119a–120a. Staff attorneys are the primary contact and form ongoing relationships with Mission clients, collaborating with Mission caseworkers. App.120a. Like all employees, staff attorneys talk about their faith, often pray with clients, and tell them about Jesus. App.120a, 130a–31a, 138a, 199a–200a. They also participate in regular Mission worship services, prayer meetings, staff meetings (including prayer and devotionals), trainings, and other events. App.120a–21a.

Open Door is one of over 70 legal clinics affiliated with the Christian Legal Society. App.121a. These clinics serve the "legal and certain spiritual needs of the poor, including evangelizing them, in a Christ honoring way." App.173a. Open Door's purpose is to see "Gospel transformation in the lives of its clients." App.117a. And experience proves that compassionate legal ministry has led hurting people to follow Christ. App.171a–173a. Staff attorneys' legal work is "intricately intertwined with [the Mission's] spiritual ministry" and their "personal relationship with Jesus is essential to th[e] job." App.200a.

In 2016, the Mission expanded Open Door, and a staff attorney position became available. Open Door sent a position notice to friends and volunteers, including Woods (a former summer intern and volunteer), that included numerous religious criteria, including (1) agreement with the Mission's statement of faith, mission-and-vision statement, and core values, (2) an active church/prayer life, (3) readiness to practice law in a manner that honors and glorifies God, and (4) eagerness to "share the gospel of Jesus Christ." App.174a, 178a.

C. Woods's application

After receiving the notice, Woods contacted a current staff attorney for information, disclosed he identified as bisexual and was in a same-sex relationship, and inquired whether that posed an obstacle to employment. App.181a–182a, 200a–01a. The staff attorney provided Woods with the Mission's religious-lifestyle requirements and recommended he contact Open Door's director with questions. *Ibid.*

Shortly thereafter, Woods sent the director an email (1) noting the Mission's expectation that employees "live by a Biblical moral code that excludes homosexual behavior," (2) disclosing "I currently have a boyfriend and can see myself getting married and starting a family with another man someday," and (3) asking "what impact that should have on pursing employment at" the Mission. App.184a–185a. The director quoted the employee handbook and explained that Woods was correct about the Mission's lifestyle expectations. App.184a. Though Woods was not "able to apply," the director wished him well and expressed a desire to meet. *Ibid.*

Woods applied anyway to "protest" the Mission's religious beliefs and lifestyle requirements. App.127a. Woods's application affirmed the Mission's statement of faith but described no personal relationship with Jesus Christ, instead focusing on social-justice issues. It disclosed that Woods was not active in a local church; Woods was therefore unable to provide his pastor's name and contact information as requested. App.189a–191a. Woods's cover letter asked the Mission to "change" its religious practices. App.195a.

Open Door's director met Woods for lunch and confirmed the Mission could not change its theology. App.147a. Because Woods did not comply with the Mission's religious lifestyle requirements, have an active church life, or exhibit a passion for helping clients develop a personal relationship with Jesus, his application was not viable. App.117a–118a, 129a, 139a–140a, 147a, 177a. The Mission selected another candidate who met its religious criteria. Yet the Mission continued reaching out to Woods: Open Door's director sent Woods a secular legal clinic's job posting and tried connecting him with the Mission's chief program officer, an ordained minister. App.122a, 197a–98a.

D. Lower court proceedings

Woods sued in the Superior Court of King County, alleging the Mission violated Washington's Law Against Discrimination (WLAD), which forbids sexual-orientation discrimination in employment. App.101a. He did so despite the Washington Legislature's express exclusion of "any religious or sectarian organization not organized for private profit" from the WLAD's "employer" definition. App.76a. Woods

claimed the religious exemption is "unconstitutional" because the staff attorney job is "wholly unrelated to [the Mission's] religious practices or activities." App.102a. He sought damages, declaratory and injunctive relief, and attorney fees. App.102a.

In answer, the Mission pointed to the WLAD's religious exemption and stressed that entertaining Woods's case or granting his requested relief would violate the First Amendment's Religion Clauses. App.104a–105a. The Mission later moved for summary judgment because it was statutorily exempt from Woods's lawsuit and the case should be dismissed, since additional discovery and trial would violate the First Amendment.[1] App.108a–112a.

The trial court agreed, granting the Mission summary judgment. App.68a–69a. It (1) harbored "no doubt that the Mission is a religious organization," (2) found ample support for the Mission's claim that an Open Door staff attorney's "job duties extend beyond legal advice to include spiritual guidance and praying with the clients," and (3) noted the Mission "put applicants on notice" that employees must "accept the Mission's Statement of Faith, which references the Bible as 'the inspired, the infallible, authoritative Word of God' as well as other Evangelical Christian doctrines." App.64a–67a.

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[1] For summary-judgment purposes only, the Mission stipulated that "if [it] were a secular employer, plaintiff would have established a prima facie case of sexual orientation discrimination under" Washington's burden-shifting framework, App.107a, which only requires an employer to articulate "a legitimate, nondiscriminatory reason" for its actions. *Mikkelsen* v. *Pub. Utility Dist. No. 1*, 404 P.3d 464, 473 (Wash. 2017).

The Washington Supreme Court granted Woods's petition for direct review. App.71a–72a. Woods argued that the WLAD's religious exemption "must be narrowed to protect the other fundamental rights embodied by the statute," App.80a, *i.e.*, confined to the ministerial exception, App.87a–88a. This was doubly true, Woods said, because expecting staff attorneys to share the Gospel violates Washington's Rules of Professional Conduct. App.79a–80a.

The Mission stressed that pretending the WLAD's religious "exemption did not exist . . . would violate the Mission's rights under the First Amendment." App.84a. The state cannot "force a church to hire employees who do not agree with or respect its religious beliefs." App.85a. "[I]t is for the Mission, not a court, to determine whether Mr. Woods would fairly express the Mission's religious message." App.82a. Religious hiring requirements like these, the Mission stressed, are constitutionally protected App.91a–95a.

The Washington Supreme Court ruled for Woods and reversed 9-0. It framed the issue as whether the WLAD's religious exemption violated the Washington Constitution's privileges and immunities clause (Wash. Const. art. I, sec. 12), under which courts ask (a) whether a privilege or immunity implicates a fundamental right and, if so, (b) whether that distinction is based on reasonable grounds. App.1a–60a. A six-justice majority held the WLAD exemption implicated two fundamental rights under federal law: "the right to an individual's sexual orientation and the right to marry." App.9a–10a (citing *Lawrence* v. *Texas*, 539 U.S. 558 (2003), and *Obergefell* v. *Hodges*, 576 U.S. 644 (2015)).

Even though "reasonable grounds exist for WLAD to distinguish religious and secular nonprofits" facially, the majority held the exemption would "still be unconstitutional as-applied to Woods" unless limited to the ministerial exception. App.12a–21a. Then, after citing a laundry list of reasons the ministerial exception did *not* apply, the majority remanded for "the trial court to determine whether staff attorneys can qualify as ministers." App.21a–22a.

The majority based its holding on three unexplained assumptions: (1) the Washington Legislature lacked "reasonable grounds" to protect all religious nonprofits' right to hire coreligionists, App.14a; (2) courts are required to "balance" or adjust religious nonprofits' *constitutional* rights in light of applicants' *statutory* right to non-discrimination in employment (such as the right "to one's sexual orientation"), App.2a, App.14a. 19a–22a; and (3) religious nonprofits' First Amendment rights in the employment context are limited to the "ministerial exemption," App.14a, 19a–20a.

A two-Justice concurrence, cited approvingly by the majority, illuminates the court's rationale.[2] App.21a–22a & n.6. First, the concurrence belittled the Mission's First Amendment right to hire coreligionists as a "license to discriminate." App.24a–25a.

[2] The concurrence's author, Justice Yu, also joined the majority opinion.

Second, it suggested that the legislature lacked "reasonable grounds" to protect the Mission's religious liberty because the Mission "cannot enjoy a free exercise right to discriminate against an employee who performs nonreligious duties" and expressed that it was the concurrence's "greatest hope" that, in the interest of "eradicating discrimination and [ ] fostering a diverse workforce," religious nonprofits would hire based on religious doctrines only when "absolutely necessary." App.24a–25a.

Third, the concurrence insisted that the First Amendment protects only religious nonprofits' "choice of ministers (not [their] choice of nonministers)," and it encouraged nonprofits not to exercise that right. App.25a (the ministerial exception is "not a mandate").

Last, the concurrence emphasized the Washington Supreme Court's "final authority over the practice of law and legal ethics in Washington" and declared it "not possible to simultaneously act as both an attorney and a minister while complying with the" Rules of Professional Conduct. App.28a–29a. The Mission, the concurrence concluded, could not require an "attorney to serve as minister and attorney at the same time," jeopardizing religious organizations' right to have on staff a lawyer—or any other professional with ethical duties—who shares the group's beliefs. App.30a. All this despite Woods's concession that staff attorneys can evangelize and still be lawyers. App.79a n.4 ("the record clearly reflects that SUGM's legal advice to clients is not influenced by religious ministration").

Two justices went even further and dissented in part. They would have held the WLAD's religious exemption *facially* invalid under the state privileges-and-immunities clause. App.32a. Even though "the state and federal constitutions afford protections for religious freedom," the dissent said those protections apply "only in the narrow context of ministerial employment," a constitutional exemption the dissent also scorned as a "privilege to discriminate." App.32a–33a, 42a, 48a.

The "dissent" recognized that the Mission "broadly assert[ed] [that] application of WLAD to its employment decision would violate its free exercise rights under the First Amendment" and had not limited itself to the argument that "its lawyers are ministers." App.50a–51a. But it rejected these "asserted defenses under the First Amendment to the United States Constitution except . . . the ministerial exemption," just as the majority and concurrence had done, App.38a, even while recognizing that limiting the Mission's ability to hire coreligionists would "substantially burden[ ] the exercise of [the Mission's] belief." App.56a.

REASONS FOR GRANTING THE WRIT

The coreligionist exemption "alleviates the burden of government interference with . . . religious organizations' missions,"[3] as this Court recognized in upholding Title VII's religious-employer exemption in *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327, 336 (1987). This "Court's opinion in *Amos,* together with Justice Brennan's concurring opinion in the case, indicates that prohibiting religious organizations from hiring only coreligionists can impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities." 31 O.L.C. 162, 172–73 (2007) (citing Mem. for Brett Kavanaugh, Assoc. Counsel to the Pres., from Sheldon T. Bradshaw, Deputy Assistant Att'y Gen., Office of Legal Counsel) (cleaned up). And this is true even of religious organizations whose charitable work is not designed to inculcate a particular faith. *Ibid.*

For Seattle's Union Gospel Mission—which is first and foremost a "gospel" mission—the Washington Supreme Court's rejection of the coreligionist doctrine is an existential threat. If the Mission cannot hire coreligionists, it must make the untenable choice of disavowing its faith or ending its evangelization of its homeless neighbors. And because the Washington Supreme Court has already signaled to its lower courts that lawyers cannot be ministers, the Mission

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[3] Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 85 Fed. Reg. 79,324, 79,344 (Dec. 9, 2020).

will be stuck defending its beliefs in state-court litigation for years with the scales tipped against it.

Only this Court can ensure the Mission's right to operate as a religious ministry. It should do so to resolve the split between the Washington Supreme Court, which does not recognize the coreligionist doctrine, and six Courts of Appeals, which do. The risk to the Mission's very existence, the burdens of litigation, the Washington Supreme Court's constricted reading of the First Amendment, and its attempt to prejudge the result of the Mission's defenses all favor this Court's immediate review of the federal questions presented. Every Washington religious nonprofit—including churches—are at risk of litigation unless this Court intervenes.

At minimum, this Court should reverse the Washington Supreme Court's ruling because its judicially-rewritten version of the WLAD treats the Mission worse than small secular employers, contrary to *Tandon* and *Fulton*. Washington cannot purport to solve a *state*-constitutional problem with a *federal*-constitutional violation. The lower court also exhibited not just a "slight suspicion" but substantial hostility toward the Mission's religious beliefs and religious exemption, contrary to *Masterpiece*. The court overrode the legislature's exclusion of religious nonprofits from the WLAD and flattened religious autonomy based on disagreement with the Mission's beliefs, which justices derided as discriminatory. The Mission did not receive the neutral decisionmaker the First Amendment requires.

This Court's prompt intervention is vital to more than the Mission. Hundreds of religious nonprofits in Washington and like-minded jurisdictions face the looming threat of lawsuits for hiring only those employees who share and exemplify their beliefs. The Washington Supreme Court's ruling would force a Jewish relief agency to hire an atheist director, a Muslim community center to hire a Satanist executive assistant, and a Christian church to hire an atheist website designer. With potential liability for damages and attorney fees, employment insurance will likely dry up. And religious organizations will be forced to choose between faith and mission. Review could not be more warranted.

I. The United States has long protected religious nonprofits' First Amendment autonomy to hire coreligionists.

Congressional statutes and executive actions over nearly 50 years attest that the First Amendment protects religious nonprofits' autonomy to hire coreligionists. The Court's precedent indicates the same. This longstanding tradition, established by all three branches of government, illuminates the First Amendment's scope and the Washington Supreme Court's error.

A. The Legislative Branch

Federal regulation of private employment began with Title VII of the Civil Rights Act of 1964. Though Congress generally barred employers from discriminating based on certain characteristics, Pub. L. No. 88-352, § 703, 78 Stat. 241, 255 (codified at 42 U.S.C. 2000e-2, as amended), it acknowledged constitutional

limits from the start. Congress exempted religious organizations employing "individuals of a particular religion to perform work connected with [their] religious activities," Pub. L. No. 88-352, § 702, 78 Stat. 241, 255 (codified at 42 U.S.C. 2000e-1 as amended), and certain religious colleges and schools' employment of "employees of a particular religion," Pub. L. No. 88-352, § 703(e)(2), 78 Stat. 241, 256 (codified at 42 U.S.C. 2000e-2 as amended).

Soon recognizing that the First Amendment demanded more religious autonomy, Congress enacted the Equal Employment Opportunity Act of 1972 and (1) expanded Title VII's religious exemption to include *all* "work connected with the carrying on by [religious organizations] of [their] activities"—religious or not, Pub. L. No. 92-261, § 3, 86 Stat. 103, 103–04 (codified at 42 U.S.C. 2000e-1); and (2) added language clarifying that "educational institution[s]" qualify too, *ibid.* Virtually all states recognize comparable exemptions. App.202a–51a.

Congress has maintained Title VII's broad, coreligionist exemption, a bipartisan consensus that aligns with what the First Amendment requires. That consensus also appears in the Americans with Disabilities Act of 1990 ("ADA"). Congress drafted the ADA's exemption to echo Title VII's and safeguard religious organizations' First Amendment right to "giv[e] preference in employment to individuals of a particular religion to perform work connected with the carrying on . . of [their] activities." 42 U.S.C. 12113(d)(1). This means a religious group "may require that all applicants and employees conform to the religious tenets of such organization." 42 U.S.C. 12113(d)(2).

Congress deeply rooted the coreligionist exemption in federal law. And Congress has broadened that exemption over time, keeping with its understanding of religious organizations' First Amendment rights. That understanding merits deference because "Congress is a coequal branch of government whose Members take the same oath [judges] do to uphold the Constitution of the United States." *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981).

B. The Executive Branch

The Executive Branch also recognizes that religious organizations have a First Amendment right to employ coreligionists. Take the general ban on federal contractors discriminating against employees based on "creed," Exec. Order No. 11246, § 202, 30 Fed. Reg. 12319, 12320 (Sept. 28, 1965), later retermed "religion," Exec. Order No. 11375, § 3, 32 Fed. Reg. 14303–04 (Oct. 17, 1967). Religious organizations have long enjoyed an exemption, initially through Department of Labor regulations importing Title VII's exemption of religious schools, 43 Fed. Reg. 49,240, 49,243 (Oct. 20, 1978), then through President George W. Bush's importation of Title VII's main religious exemption, Exec. Order No. 13279, § 4(c), 67 Fed. Reg. 77,141, 77,143 (Dec. 16, 2002), which Democrat and Republican administrations have retained for nearly 20 years.

More recently, the Department of Labor confirmed this exemption allows religious contractors to require employees' "adherence to [their] faith's tenets in word and deed," as those "tenets [are] understood by the employing contractor." 85 Fed. Reg. 79,324, 79,344–45 (Dec. 9, 2020). This reading aligns with the

memorandum on religious liberty Attorney General Sessions issued to guide the Executive Branch. The memo confirms that religious organizations may "employ only persons whose beliefs and conduct are consistent with [their] religious precepts." Mem. from the Att'y Gen. on Fed. Law Protections for Religious Liberty at 12a, 14a (Oct. 6, 2017), https://perma.cc/6S85-GAK3; 82 Fed. Reg. 49,668, 49,677–78 (Oct. 26, 2017) (cleaned up).

The Equal Employment Opportunity Commission agrees. Its compliance manual highlights that Title VII's religious exemption: (1) is not limited to jobs that involve "specifically religious activities," but (2) allows "religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices," which means (3) religious organizations may employ only those who share their "religious observances, practices, and beliefs," not just the same "self-identified religious affiliation." EEOC Compliance Manual, Section 12: Religious Discrimination, https://perma.cc/6A32-QF3H. The National Labor Relations Board ("NLRB") also generally declines to "assert jurisdiction over nonprofit, religious organizations." *St. Edmund's Roman Catholic Church*, 337 N.L.R.B. 1260, 1260 (2002); accord *Bd. of Jewish Educ.*, 210 N.L.R.B. 1037, 1037 (1974).

Because the Executive Branch implements the law, it most often puts the First Amendment into practice. Its "traditional way[ ] of conducting government" respects faith-based organizations' right to hire coreligionists. And this practice "can inform [this Court's] determination of 'what the law is.'" *NLRB* v. *Canning*, 573 U.S. 513, 525 (2014) (cleaned up).

C. The Judicial Branch

Given federal and state statutory exemptions for religious organizations, this Court has never had to decide whether the coreligionist doctrine is constitutionally *required*. *Cf. Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring). But precedent suggests it is. Early on, the Court declared that religious organizations have autonomy to hold or "entertain" their religious beliefs, "practice [their] religious principle[s]," and "teach [their] religious doctrine." *Watson* v. *Jones*, 13 Wall. 679, 728 (1871). Later, the Court grounded these rules in the First Amendment, which safeguards religious organizations' "independence from secular control or manipulation" on "matters of . . . faith and doctrine." *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

The Court has vigorously enforced this freedom. *Ibid.* Religious autonomy prevents states from interpreting "church doctrines and the importance of those doctrines to the religion," *Presbyterian Church in U.S.* v. *Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969), or deciding "what does or does not have religious meaning," *New York* v. *Cathedral Acad.*, 434 U.S. 125, 133 (1977). When it comes to employment, the Court barred the NLRB from exercising jurisdiction over religious schools where the "challenged actions were mandated by their religious creeds." *NLRB* v. *Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979). The NLRB's inquiry into—and conclusions regarding—administrators' "good faith" and the "relationship" between their policy and the school's "religious mission" might otherwise violate the Religion Clauses. *Ibid.*

Most telling is the Court's unanimous ruling upholding Title VII's religious exemption against Establishment Clause attack. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 483 U.S. 327 (1987). The Court "recognized that the government may (and sometimes must) accommodate religious practices," *id.* at 334, and listed ways in which nondiscrimination statutes harm religious groups' First Amendment rights: (1) interfering with their ability "to define and carry out their religious missions," (2) requiring them "to predict which of [their] activities a secular court will consider religious," and (3) obliging them to alter "the way [they] carried out [their] religious mission" due to "potential liability." *Id.* at 335–36. Given these constitutional concerns, the majority barred an "intrusive" analysis into "the nexus between the primary function of the activity [or job] in question" and a religious group's "rituals or tenets." *Id.* at 331 n.6, 339.

Justice Brennan's influential concurrence explains that the nature "of nonprofit activity" makes it improper for the government to decide whether a job "is religious or secular." *Id.* at 340 (Brennan, J., concurring). Individuals frequently practice their faith in community. *Id.* at 341. So the First Amendment must protect religious organizations' right to define themselves by deciding "that certain activities are in furtherance of [their] religious mission, and that only those committed to that mission should conduct them." *Id.* at 342. By upholding this right, Title VII's religious exemption "prevent[s] potentially serious encroachments on protected religious freedoms." *Texas Monthly, Inc.* v. *Bullock*, 489 U.S. 1, 18 n.8 (1989) (plurality opinion).

Intrusions such as these likely violate the Constitution, as demonstrated by this Court's ministerial-exception cases. *Our Lady of Guadalupe Sch.* v. *Morrissey-Berru*, 140 S. Ct. 2049, 2061 (2020); *Hosanna-Tabor*, 565 U.S. at 188. The First Amendment's text gives "special solicitude to the rights of religious organizations," including (1) the "right to shape [their] own faith and mission through [their] appointments," and (2) freedom from "government involvement in such ecclesiastical decisions." *Hosanna-Tabor,* 565 U.S. at 188–89.

Justices Alito and Kagan have underscored that "[r]eligious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith." *Id.* at 200–01 (Alito, J., concurring). Accord *Americans for Prosperity Found.* v. *Bonta*, 141 S. Ct. 2373, 2382 (2021) (recognizing First Amendment's associational protections).

Religious groups' "very existence is dedicated to the collective expression and propagation of shared religious ideals." *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). So "[w]hen it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters." *Id.* at 201. That principle is true not only of ministers but of any representative who disagrees with a religious organization's theological views.

Courts designed the ministerial exception to give religious organizations *complete autonomy* over a select group of employees—*ministers*. *Id.* at 194–95 (majority opinion). But, as this Court has recognized,

the ministerial exception was never intended to protect religious group's ability to hire only those who share its beliefs. *Our Lady of Guadalupe*, 140 S. Ct. at 2068–69. That function is served by the coreligionist exception identified by Title VII and its analogue in almost every state, App.202a–51a, which safeguards religious groups' right to establish *faith-based employment rules* for *all employees* but has no application to secular employment concerns. For religious organizations like the Mission, that deem hiring coreligionists essential, the coreligionist exemption is different than—but equally important as—the ministerial exception.

Few decisions are as closely linked to religious nonprofits' "independence . . . in matters of faith and doctrine" as their assessment of who is a coreligionist." *Our Lady of Guadalupe*, 140 S. Ct. at 2060 (quotation omitted). And this Court's precedents indicate that such an "internal management decision[ ]," "essential to the [Mission's] central mission" of forming a community of believers to share the Gospel, is constitutionally protected. *Ibid.*

In short, the Washington Supreme Court's "intervention into disputes between the [Mission] and [an applicant it does not regard as a coreligionist] threatens the [Mission']s independence in a way that the First Amendment does not allow." *Id.* at 2069. If governments can compel religious organizations like the Mission to hire employees who desire to change the group's beliefs—Woods's stated purpose here—then the Mission's most fundamental First Amendment freedoms mean nothing.

II. The Washington Supreme Court's rejection of the coreligionist doctrine creates a square 6-1 split.

The Washington Supreme Court's rejection of the coreligionist doctrine created a 6-1 split with the Third, Fourth, Fifth, Sixth, Ninth, and Eleventh Circuits, which recognize the coreligionist doctrine and its constitutional moorings. Only this Court may resolve which First Amendment interpretation is correct.

Washington's legislature respected religious nonprofits' autonomy to employ coreligionists by excluding them from the WLAD's definition of "employer." App.76a. The legislature specifically referenced the exemption when adding sexual-orientation and gender-identity classifications in 2006, Final Bill Report, https://perma.cc/994C-FCQD. But the Washington Supreme Court held that the exemption could not be applied to the Mission's staff-attorney position based on the federal right to "a sexual orientation" App.9a–10a. Instead, the court unanimously cabined the Mission's First Amendment rights to the ministerial exception. *Supra* pp.12–15.

Lower federal courts interpret the Religion Clauses differently. Six circuits agree on the coreligionist doctrine's constitutional bedrock. And their reasoning clarifies why the First Amendment protects religious nonprofits' right to employ those who share their beliefs.

The Third Circuit, in an influential decision, upheld a Catholic school's right not to renew a teacher's contract after she divorced and remarried. *Little* v. *Wuerl*, 929 F.2d 944, 945–46 (3d Cir. 1991). Applying Title VII would "arguably violate both the free exercise clause and the establishment clause," so the court declined to "forbid religious discrimination against non-minister employees where the position involved has any religious significance." *Id.* at 947–48. The Third Circuit found it "difficult to imagine an area of the employment relationship *less* fit for scrutiny by secular courts" than the question of whether an "employee's beliefs or practices make her unfit to advance" a religious nonprofit's mission. *Id.* at 949. It held that Title VII allows religious organizations "to employ only persons whose beliefs and conduct are consistent with [their] religious precepts." *Id.* at 951.

Later, the Third Circuit barred a Catholic school teacher's claim for sex discrimination after she was terminated for advocating abortion rights because how a discrimination claim is labeled does not determine "whether serious constitutional questions are raised by applying Title VII." *Curay-Cramer* v. *Ursuline Acad. of Wilmington*, 450 F.3d 130, 137, 139 (3d Cir. 2006). The First Amendment, the court advised, forbids "meddling in matters related to a religious organization's ability to define the parameters of what constitutes orthodoxy" or inquiring "into a religious employers' religious mission or the plausibility of its religious justification for an employment decision." *Id.* at 141.

The Fourth Circuit agreed that Title VII allows religious organizations to terminate an employee whose conduct is inconsistent with its doctrine based, in part, on "the doctrine of *constitutional* avoidance." *Kennedy* v. *St. Joseph's Ministries, Inc.*, 657 F.3d 189, 195 (4th Cir. 2011). It relied on *Little* to uphold a Catholic facility's right to dismiss a nursing assistant for donning Church-of-the-Brethren attire that conflicted with the facility's religious principles.

The Fifth Circuit similarly barred an EEOC sex-discrimination probe into a religious college involving a professor denied a full-time position. *EEOC* v. *Mississippi Coll.*, 626 F.2d 477, 479–80 (5th Cir. 1980). To avoid "conflicts [with] the religion clauses," the court held that if a religious organization "presents convincing evidence that the challenged employment practice resulted from discrimination on the basis of religion," the EEOC lacks jurisdiction to investigate "whether the religious discrimination was a pretext." *Id.* at 485.

Of note here, the Sixth Circuit subsequently ruled against a student-services specialist who was terminated by a religious college after disclosing she was a lesbian ordained by an LGBT-friendly church and declining to accept a different position. *Hall* v. *Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 622–23 (6th Cir. 2000). It reasoned that (1) religious groups have a "constitutionally-protected interest . . . in making religiously-motivated employment decisions," *id.* at 623, and (2) courts cannot "dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices," *id.* at 626.

The Ninth Circuit, in a split ruling, echoed similar principles in describing why World Vision qualifies for Title VII's religious exemption. Judge O'Scannlain identified "the constitutional briar patch of distinguishing between the sacred and the secular" when a religious nonprofit's "humanitarian relief efforts" are concerned. *Spencer* v. *World Vision, Inc.*, 633 F.3d 723, 731–32 (9th Cir. 2011) (per curiam) (O'Scannlain, J., concurring). And Judge Kleinfeld concurred in that statement and underscored that if government coerces a religious organization to employ persons "who rejected or even were hostile to the religions the institutions were intended to advance, then the shield against discrimination would destroy the freedom of Americans to practice their religions." *Id.* at 742 (Kleinfeld, J., concurring in Parts I and II of Judge O'Scannlain's opinion).

The Eleventh Circuit likewise has held that Title VII "allows religious institutions to employ only persons whose beliefs are consistent with the employer's when the work is connected with carrying out the institution's activities" so as to give disputes about who teaches at a divinity school "a wide-berth." *Killinger* v. *Samford Univ.*, 113 F.3d 196, 200–01 (11th Cir. 1997). Embracing a broad view of Title VII's religious exemption "avoid[ed] the First Amendment concerns which always tower over [courts] when [they] face a case that is about religion." *Ibid.*

In sum, federal appellate courts would protect the Mission's right to employ those it regards as coreligionists who live out its religious teachings. But the Washington Supreme Court, with little thought or explanation, swept this autonomy away.

III. As rewritten by the Washington Supreme Court, Washington's law violates the Free Exercise Clause by granting a broader exemption to secular, small businesses than it does to religious groups.

Because this is a religious-autonomy case, *Employment Division* v. *Smith*, 494 U.S. 872 (1990), does not control. *Hosanna-Tabor*, 565 U.S. at 190. This Court should review and hold that the coreligionist exception is constitutionally required. But the petition is worthy of review for additional reasons.

Government regulations "trigger strict scrutiny under the Free Exercise Clause[ ] whenever they treat *any* comparable secular activity more favorably than religious exercise." *Tandon*, 141 S. Ct. at 1296 (citing *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S. Ct. 63, 67–68 (2020) (per curiam)). The WLAD gives an *outright* exemption for small employers, those employing seven or fewer persons, which includes hundreds of secular businesses. RCW 49.60.040(11). As rewritten by the Washington Supreme Court, the WLAD gives religious employers only a *partial* exemption—protection for ministerial hires but not for coreligionist hires, so the law is "not . . . generally applicable." *Fulton* v. *City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021). "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Ibid.* (citing *Cuomo*, 141 S. Ct. at 66–67 (Kavanaugh, J., concurring)).

What's more, the WLAD now "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a

similar way." *Id.* at 1877. For example, if a secular for-profit business with only a half-dozen employees declined an applicant due to the organization's marriage views, the WLAD would not apply.[4] Accordingly, the WLAD must be "examined under the strictest scrutiny." *Id.* at 1881. And that fact is fatal because the small-employer exemption's existence undermines any contention that the WLAD's "non-discrimination policies can brook no departures." *Id.* at 1882 (citing *Church of the Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U.S. 520, 546–47 (1993)).

The Court need not reach this issue if it properly upholds religious autonomy and affirms the long-standing right of religious groups to hire only coreligionists. Such a result is consistent with the Religion Clauses and with the WLAD's express language *as the Legislature enacted it*. But the Washington Supreme Court's redrafting of the WLAD religious exemption means that religious employers now face a greater burden than do small businesses. And because there is "no compelling reason why [Washington] has a particular interest in denying an exception to [the Mission] while making [it] available to others," the ruling below cannot stand. *Id.* at 1882.

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[4] The Washington Supreme Court recognizes a common-law tort claim of wrongful discharge against small employers, but that claim does not exist for applicants like Woods. *Roberts* v. *Dudley*, 993 P.2d 901, 911 (Wash. 2000). ("[T]he tort of wrongful discharge in violation of public policy clearly applies *only* in a situation where an employee has been discharged.") (emphasis added). Even if the rule were otherwise, small employers would still get the benefit of no administrative processes, statutorily enhanced damages, and attorney fees under the WLAD, whereas the Mission is subject to all three. *Ibid.*

IV. The Washington Supreme Court's ruling shows substantial hostility towards the Mission's religious beliefs and religious exemptions generally.

In no event should this Court remand to the Washington Supreme Court for further proceedings. Through its opinion below, that court has shown outright hostility for the Mission's beliefs and toward religious exemptions.

"The Free Exercise Clause bars even subtle departures from neutrality on matters of religion." *Masterpiece*, 138 S. Ct. at 1731 (quotation omitted). Yet the Washington Supreme Court's "departure is hardly subtle." *Calvary Chapel Dayton Valley* v. *Sisolak*, 140 S. Ct. 2603, 2605 (2020) (Alito, J., dissenting from denial of injunctive relief). The history, effect, and content of the court's ruling demonstrate "a clear and impermissible hostility toward the [Mission's] sincere religious beliefs." *Masterpiece*, 138 S. Ct. at 1729.

First, as to history, the Washington Supreme Court's present narrowing of the WLAD's religious exemption sharply conflicts with its decision on the same legal issue just seven years earlier, in a case involving a security guard who sued his religious-hospital employer for race and disability discrimination. *Ockletree* v. *Franciscan Health Sys.*, 317 P.3d 1009, 1011–12 (Wash. 2014). Despite the employee's allegation of *race* discrimination and the employer's *lack of any religious justification*, the court's response was comparatively measured: (1) four justices held that the WLAD's religious exemption did not implicate a privilege or immunity, *id.* at 1014–17;

(2) four justices declared that it did, and the exemption was unconstitutional "as applied to WLAD claims based on discrimination that is unrelated to an employer's religious purpose, practice, or activity," *id.* at 1020 (Stephens, J., dissenting); and (3) one justice argued the exemption was unconstitutional unless an employee's "job description and responsibilities include duties that are religious or sectarian in nature," *id.* at 1028 (Wiggins, J., concurring in part in dissent).

But when Woods alleged *sexual orientation* discrimination after the Mission declined to hire him *for religious reasons* that were conceded to be sincere, the Washington Supreme Court ruled unanimously against the Mission, even though 8 of 9 justices remained the same.[5] App.1a–60a. Each of those eight justices was suddenly *less* tolerant of religious autonomy, despite the legal issues being identical. App.63a–64a. Not a single justice here questioned the privileges and immunities clause's application, nor did any justice credit that the Mission's hiring policies are grounded in its religious purpose, practice, and activities. All nine justices limited the WLAD's religious exemption to the ministerial exception, rendering the legislature's safeguard of religion superfluous. App.1a–60a. The only explanation is the court's hostility towards the Mission's religious beliefs, *Masterpiece*, 138 S. Ct. at 1730, specifically as those beliefs pertain to marriage and sexuality.

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[5] The ninth justice, Justice Yu, authored a concurrence sharply critical of the Mission's free-exercise rights.

Second, concerning result, the Washington Supreme Court effectively erased the Washington Legislature's religious exemption as it applies to coreligionist hiring—even though the Washington Legislature cited the religious exception in adding sexual orientation to the WLAD, Final Bill Report, https://perma.cc/994C-FCQD. It deemed the legislature's safeguard of religious nonprofits' free exercise of religion *unconstitutional* unless it mirrors the ministerial exception and achieves nothing state and federal law did not already require.[6] This forbids the legislature from accommodating religion and commands it violate religious nonprofits' autonomy. *Cf. Espinoza* v. *Mont. Dep't of Revenue*, 140 S. Ct. 2246, 2262 (2020). Under the Washington Supreme Court's logic, not even houses of worship may employ coreligionists in non-ministerial roles: Sikh gurdwaras must hire Hindus, Jewish synagogues must hire Muslims, and Christian churches must hire atheists. Such a groundless demolishing of religious communities smacks of "animosity to religion or distrust of its practices." *Masterpiece*, 138 S. Ct. at 1731.

Third, regarding content, the Washington Supreme Court majority held (without explanation) that the Mission's right to hire coreligionists needed "limitations," even though the legislature imposed none. App.14a. It "balanced" the Mission's and Woods's rights in the most lopsided way possible by confining the WLAD's religious exception to the

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[6] The remand issue is whether the Mission's Open Door lawyers satisfy the ministerial exception, App.3a, 22a, and the Washington Supreme Court's opinion tries to preordain the result. App.21a–22a & n.6, 26a–30a.

ministerial exception. App.19a–21a. The Mission went from a broad legislative exemption to no ability to hire coreligionists, putting the Mission in the position of having to shut its doors entirely or hire those who want to change the Mission's beliefs.

Religious nonprofits in Washington no longer enjoy "proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Masterpiece*, 138 S. Ct. at 1727 (cleaned up). They must employ those with conflicting views because the Washington Supreme Court dislikes their religious doctrines. In fact, the majority cited approvingly a concurrence, App.21a–22a & n.6, that (1) repeatedly denigrated the Mission's religious autonomy as nothing more than a "free exercise right to discriminate," App.24a, (2) expressed "greatest hope" that religious employers would hire based on religious doctrines only when "absolutely necessary," App.25a, and (3) paired the claim that Christian staff attorneys are legally forbidden to share the Gospel with the warning that "this court" "has final authority over the practice of law and legal ethics in Washington," App.28a–30a. *Cf. Masterpiece*, 138 S. Ct. at 1729–30. All three arguments—to which no justice objected—revealed "a negative normative evaluation of the [Mission's] justification for [its hiring decision] and the religious grounds for it." *Masterpiece*, 138 S. Ct. at 1731 (cleaned up).

The partial "dissent" was equally hostile. It declared the WLAD's religious exemption *facially unconstitutional* by focusing on the statute's nondiscrimination goal to the exclusion of the First Amendment. The dissent argued, quite implausibly, that (1) no portion of the WLAD "attempts to

safeguard free exercise rights," (2) the WLAD's purpose, irrespective of the First Amendment, "does not encompass safeguarding the free exercise of religion," and (3) the legislature cannot exempt religious nonprofits because doing so fails to "serve[ ] the legislature's *antidiscrimination* goal." App.46a–47a.

Vilifying religious autonomy as "carte blanche to discriminate" or a "constitutional privilege to discriminate," App.47a–48a, the dissent relied on *Masterpiece* and endorsed forcing the Mission to hire Woods as the application of "a neutral law of general applicability"—even though the legislature expressly exempted the Mission. App.51a, 58a. Every word of the analysis "presuppose[d] the illegitimacy of [the Mission's] religious beliefs and practices." *Masterpiece*, 138 S. Ct. at 1731.

The Washington Supreme Court's "hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Id.* at 1732. This Court should, at the least, invalidate its ruling because the Mission did not receive "a neutral decisionmaker who would give full and fair consideration to [its] religious objection as [it] sought to assert it in all of the circumstances in which this case was presented, considered, and decided." *Ibid.*

V. This case is an ideal vehicle to resolve a conflict with dire ramifications for houses of worship and other religious nonprofits.

The conflict between six circuits' precedent and the Washington Supreme Court's decision is clear, and resolving the clash immediately is imperative, particularly now that Washington churches have lost employment protections that federal courts would honor. Washington now orders houses of worship and other religious nonprofits to hire those who *protest, contradict, and seek to change* their beliefs. App.127a. Non-discrimination law's capacity to "destroy the freedom of Americans to practice their religions" is no longer hypothetical; it is a reality. *World Vision*, 633 F.3d at 742 (Kleinfeld, J., concurring). And because the Washington Supreme Court initiated this religious-autonomy demolition project, only this Court may apply the brakes.

If the Court declines to intervene, the Mission will be subjected to intrusive legal proceedings involving its religious tenets, precisely what the First Amendment prevents. Moreover, states like Washington will not simply denigrate "those who continue to adhere to traditional moral standards." *Espinoza*, 140 S. Ct. at 2267 (Thomas, J., concurring). They will "'stamp out every vestige of dissent' and 'vilify Americans who are unwilling to assent to the new orthodoxy.'" *Masterpiece*, 138 S. Ct. at 1748 (Thomas, J., concurring) (quoting *Obergefell*, 576 U.S. at 741 (Alito, J., dissenting)). They extend these efforts to religious nonprofits like the Mission, the last "buffers between the individual and the power of the State." *Hosanna-Tabor*, 565 U.S. at 199 (Alito, J., concurring) (quotation omitted).

The time has come for the Court to hold explicitly what it has long suggested: the First Amendment protects religious nonprofits' right to employ coreligionists. And this case is the perfect vehicle for five reasons.

First, it is undisputed that the Mission is an overtly religious nonprofit in the evangelical tradition. The IRS places it in the same tax-exempt category as a church. App.163a–168a.

Second, the Mission's religious employment criteria are uncontested and longstanding. No one questions the sincerity of the Mission's religious beliefs or the even-handedness with which the Mission applies its religious-lifestyle expectations. *E.g.*, App.56a ("I do not question whether SUGM based its employment decision on a sincere religious belief."); App.80a (same). And forcing religious organizations to hire those who do not share the group's religious beliefs is undeniably a significant burden. *E.g.*, App.56a ("I assume WLAD substantially burdens the exercise of that belief by preventing employment discrimination based on sexual orientation.").

Third, no one contests that the Mission serves everyone with love and compassion.[7] And not even Woods suggests that the Mission's religious views negatively influence legal advice. App.79a n.4. ("SUGM's legal advice to clients is not influenced by religious ministration" and does not violate ethical duties).

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[7] Seattle's Union Gospel Mission, Who are we?, https://perma.cc/RMT6-PBZ9.

Fourth, the Washington Supreme Court's holding is clear and uncomplicated: the First Amendment, in the employment context, requires nothing more than the ministerial exception. App.19a–20a. That directness will facilitate this Court's review.

Finally, the whole point of doctrines like the coreligionist exemption and the ministerial exception is to prevent a religious organization from being dragged through discovery and litigation proceedings that place its religious beliefs at issue. This Court must intervene or Washington and like-minded jurisdictions will continue reducing religious non-profits' First Amendment rights to hire coreligionists to a truncated version of the ministerial exception, shattering religious communities and potentially ending the invaluable social services they provide.

The Mission should not be forced to choose between its faith and serving its homeless neighbors to share the Gospel message. Certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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AUGUST 2021

APPENDIX

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[1] CP stands for the Clerk's Papers transmitted by the trial court as the record on appeal to the Washington Supreme Court.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW S. WOODS, an individual, Appellant, v. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Respondent.	No. 96132-8 En Banc Filed: March 4, 2021

MADSEN, J.—We begin with the proposition that the legislature is entitled to legislate. WASH. CONST. art. II, § 1. It is entitled to make distinctions and to carve out exceptions in its assessments of proper public policy, within the constraints of the state and federal constitutions. *See*, *e.g.*, WASH. CONST. art. I, § 12. One constraint on legislative power is that it may

not treat differently persons who are similarly situated unless a rational basis exists to do so and that it may not give persons immunity or privilege without a reasonable basis when a fundamental right is at stake. *Id.*; U.S. CONST. amend. XIV.

The issue in this case is whether the legislature extended a privilege or immunity to religious and other nonprofit, secular employers and whether, in providing the privilege or immunity, the legislature affected a fundamental right without a reasonable basis for doing so. Lawmakers enacted Washington's Law Against Discrimination (WLAD), ch. 49.60 RCW, to protect citizens from discrimination in employment, and exempts religious nonprofits from the definition of "employer." RCW 49.60.040(11). In enacting WLAD, the legislature created a *statutory* right for employees to be free from discrimination in the workplace while allowing employers to retain their *constitutional* right, as constrained by state and federal case law, to choose workers who reflect the employers' beliefs when hiring ministers. Consequently, we must balance under law these competing interests, and we look to both our state and federal constitutions for guidance—specifically article I, section 12; article I, section 11; the First Amendment; and, the United States Supreme Court decision in *Our Lady of Guadalupe School v. Morrissey-Berru*, ___ U.S. ___, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).

Here, Matthew Woods brought an employment discrimination action against Seattle's Union Gospel Mission (SUGM). At trial, SUGM successfully moved for summary judgment pursuant to RCW 49.60.040(11)'s religious employer exemption. Woods appealed to this court, contesting the constitution-

ality of the statute. SUGM now argues that RCW 49.60.040(11)'s exemption applies to its hiring decisions because its employees are expected to minister to their clients. Under *Our Lady of Guadalupe*, a plaintiff's employment discrimination claim must yield in a few limited circumstances, including where the employee in question is a minister. Whether ministerial responsibilities and functions discussed in *Our Lady of Guadalupe* are present in Woods' case was not decided below.

For the following reasons, we hold that RCW 49.60.040(11) does not violate article I, section 12 on its face but may be constitutionally invalid as applied to Woods. Accordingly, we reverse and remand the case to the trial court to determine whether SUGM meets the ministerial exception.

BACKGROUND

SUGM is a nonprofit, evangelical Christian organization providing services to Seattle's unsheltered homeless population. In 1999, SUGM opened its legal aid clinic, Open Door Legal Services (ODLS), to address its guests' many legal issues and facilitate the SUGM's gospel rescue work.

Woods, a professed Christian, signed SUGM's statement of faith when he began volunteering at the ODLS clinic as a law student. Later, as a lawyer, Woods inquired about the ODLS staff attorney position that became available in October 2016, disclosing that he was in a same-sex relationship. SUGM informed Woods that it was contrary to biblical teaching for him to engage in a same-sex relationship. Woods challenged this interpretation

and applied for the position. The ODLS director notified Woods there would be no change to its policy. SUGM did not hire Woods for the staff attorney position.

In November 2017, Woods filed a complaint against SUGM, alleging it had violated his right to be free from discriminatory employment under WLAD. Clerk's Papers (CP) at 1-7. Woods claimed that RCW 49.60.040(11)'s exemption is unconstitutional as applied to him because the staff attorney job duties were "wholly unrelated to [SUGM's] religious practices or activities." CP at 6. SUGM argued that the religious exemption to WLAD applied under RCW 49.60.040(11), which excludes religious and sectarian nonprofit organizations from the definition of "employer." SUGM successfully moved for summary judgment, and Woods sought direct review, which this court granted.

ANALYSIS

Standard of review

At issue is whether RCW 49.60.040(11) validly exempts SUGM from WLAD provisions under the facts of this case. This court reviews questions of statutory interpretation and constitutionality de novo. *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 789, 432 P.3d 805, *cert. denied*, 139 S. Ct. 2647 (2019). Our primary objective in interpreting a statute is to ascertain and give effect to the legislature's intent as manifested by the statute's language. *See In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). This court also reviews summary judgment de novo. *Wash. Educ. Ass'n v.*

Dep't of Ret. Sys., 181 Wn.2d 233, 241, 332 P.3d 439 (2014).

WLAD

"WLAD is a regulatory law enacted under the legislature's police power to promote the health, peace, safety, and general welfare of the people of Washington." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 773 n.2, 317 P.3d 1009 (2014) (plurality opinion) (citing RCW 49.60.010). Enacted in 1949, WLAD was promulgated with the "purpose of ending discrimination by employers 'on the basis of race, creed, color, or national origin.'" *Id.* at 773 (quoting *Griffin v. Eller*, 130 Wn.2d 58, 63, 922 P.2d 788 (1996)). The legislature has expanded WLAD to bar discrimination on the basis of age, sex, sexual orientation, and disability, and to incorporate a private right of action for employees and persons who use public accommodations. *Id.* (citing RCW 49.60.040).

As originally enacted, WLAD exempted from the definition of "employer" "any religious, charitable, educational, social or fraternal association or corporation, not organized for private profit." LAWS OF 1949, ch. 183, § 3(b).[1] The legislature rewrote WLAD's

[1] WLAD was modeled on a New York measure entitled the "Law Against Discrimination," which was enacted in 1945. Frank P. Helsell, *The Law Against Discrimination in Employment*, 25 WASH. L. REV. & ST. B.J. 225, 225 (1950) (citing 1945 N.Y. Laws 457). The New York law, as in WLAD, originally excluded religious nonprofit associations from the definition of "employer." 1945 N.Y. Laws 458; *see also* Morroe Berger, *The New York State Law Against Discrimination: Operation and Administration*, 35 CORNELL L.Q. 747, 750 (1949). The term "employer" in the New York law was "strictly defined" to avoid

definition of "employer" in 1957 to include secular nonprofit organizations, exempting only small employers and religious nonprofits. LAWS OF 1957, ch. 37, § 4. That definition is currently found in RCW 49.60.040(11), which provides, "'Employer' includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit."

We are asked to review whether the religious employer exemption violates article I, section 12 of the Washington State Constitution.

Constitutionality of RCW 49.60.040(11)

We presume statutes are constitutional, and the party challenging constitutionality bears the burden of proving otherwise. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006), *overruled in part by Chong Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019). "'[A]n as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional.'" *City of Seattle v. Evans*, 184 Wn.2d 856, 862, 366 P.3d 906 (2015) (alteration in original) (internal quotation marks omitted) (quoting *State v. Hunley*, 175 Wn.2d 901, 916, 287 P.3d 584 (2012)). "'Holding a statute unconstitutional as-applied prohibits future application of the statute in a similar context, but the statute is not totally invalidated.'" *Id.* (internal quotation marks omitted)

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constitutional inhibitions. *See* Current Legislation, 19 ST. JOHN'S L. REV. 170, 171-72 (1945).

(quoting *Hunley*, 175 Wn.2d at 916). A facial challenge must be rejected unless there is "*no set of circumstances* in which the statute[, as currently written,] can constitutionally be applied." *In re Det. of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999) (quoting *Ada v. Guam Soc'y of Obstetricians & Gynecologists*, 506 U.S. 1011, 1012, 113 S. Ct. 633, 121 L. Ed. 2d 564 (1992) (Scalia, J., dissenting)). When determining whether a law is facially invalid, courts must be careful not to exceed the facial requirements and speculate about hypothetical cases. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

Facial claims are generally disfavored. *State v. McCuistion*, 174 Wn.2d 369, 389, 275 P.3d 1092 (2012). They often rest on speculation and "'run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'" *Id.*

We have previously considered and upheld WLAD's religious employer exemption from a facial constitutional challenge in *Ockletree*. In that case, an African-American security guard at a Catholic hospital was terminated after he suffered a stroke. He sued the hospital for, among other things, a violation of WLAD, asserting that his termination was the result of illegal discrimination on the basis of race and disability. *Ockletree*, 179 Wn.2d at 772. The hospital moved to dismiss Larry Ockletree's WLAD claim, arguing that the hospital was exempt as a nonprofit

religious organization under RCW 49.60.040(11). This court issued three opinions in a 4-4-1 split. The lead opinion held that RCW 49.60.040(11) was not facially unconstitutional under article I, section 12's privileges and immunities clause. *Id.* at 788-89 (Johnson, J., lead opinion). The concurrence agreed that RCW 49.60.040(11) is not facially unconstitutional but said it would have held that the provision is unconstitutional *as applied* to Ockletree. *Id.* at 805 (Wiggins, J., concurring in part in dissent). Thus, five justices agreed that RCW 49.60.040(11)'s religious employer exemption is not facially invalid. *Id.* at 772 (Johnson, J., lead opinion), 805 (Wiggins, J., concurring in part in dissent).

Because Woods challenges the religious employer exemption under WLAD as it relates specifically to his case, he advances an as-applied challenge, and we review it as such.[2]

Article I, section 12

Article I, section 12 provides, "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." The

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[2] We do not opine on the effect of this decision on *every* prospective employee seeking work with any religious nonprofit such as universities, elementary schools, and houses of worship. *See Ockletree*, 179 Wn.2d at 777 (noting employers covered under RCW 49.60.040(11) include Catholic Community Services, Jewish Family Services, CRISTA Ministries, YMCA, YWCA, Salvation Army, and St. Vincent De Paul, as well as churches, synagogues, and mosques). Woods does not prove and we do not hold that no set of circumstances exist under which the religious employer exemption can be constitutionally applied.

purpose of article I, section 12 is to limit the type of favoritism that ran rampant during Washington State's territorial period. *Ockletree*, 179 Wn.2d at 775 (citing ROBERT F. UTTER & HUGH D. SPITZER, THE WASHINGTON STATE CONSTITUTION: A REFERENCE GUIDE 26-27 (G. Alan Tarr ed., 2002)).

Though Washington courts have, at times, analyzed article I, section 12 as equivalent to the federal equal protection clause, this court also recognized that the text and aims of the constitutional provisions differed. *Id.* at 775-76. Article I, section 12 was intended to prevent favoritism and special treatment to the few while disadvantaging others, and the Fourteenth Amendment was intended to prevent discrimination against disfavored individuals or groups. *Id.* at 776 (citing *State v. Smith*, 117 Wn.2d 263, 283, 814 P.2d 652 (1991) (Utter, J., concurring)). Due to these distinctions, our state's privileges and immunities clause can support an analysis independent of the Fourteenth Amendment. *Id.* at 776 (citing *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 83 P.3d 419 (2004)).

We apply a two-pronged test to determine the constitutionality of the religious employer exemption under our article I, section 12: (1) whether RCW 49.60.040(11) granted a privilege or immunity implicating a fundamental right and (2) if a privilege or immunity was granted, whether the distinction was based on reasonable grounds. *Schroeder v. Weighall*, 179 Wn.2d 566, 573, 316 P.3d 482 (2014).

Two of Woods' fundamental rights are present in the current case: the right to an individual's sexual orientation and the right to marry. *See Lawrence v.*

Texas, 539 U.S. 558, 577-78, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003); *Bowers v. Hardwick*, 478 U.S. 186, 215-20, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986) (Stevens, J., dissenting), *overruled by Lawrence*, 539 U.S. 558; *Obergefell v. Hodges*, 576 U.S. 644, 663-65, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). In *Lawrence*, the Supreme Court struck down criminal convictions of persons engaged in same-sex conduct, holding that a liberty interest exists in a person's private, intimate conduct. 539 U.S. at 577-78. In so holding, the Court observed that persons in same-sex relationships enjoy the same liberty as those in heterosexual relationships to make intimate and personal choices central to their personal dignity and autonomy. *Id.*; *see also Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992) ("At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."). *Lawrence* endorsed Justice Stevens' dissenting opinion in *Bowers*, explaining that this liberty extends to unmarried as well as married persons. *Lawrence*, 539 U.S. at 574, 577-78.

In *Obergefell*, the Supreme Court concluded the fundamental right to marry includes same-sex couples and is protected by due process and equal protection clauses of the Fourteenth Amendment. 576 U.S. at 672-74; *see also State v. Warren*, 165 Wn.2d 17, 34, 195 P.3d 940 (2008) (citing *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (plurality opinion); *Loving v. Virginia*, 388 U.S. 1, 12, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) (stating that the right to marriage is fundamental)); *see also State v. Vance*, 29 Wash. 435, 458, 70 P. 34

(1902) (identifying as a fundamental right of state citizenship the right "to enforce other *personal* rights" (emphasis added)); *Corfield v. Coryell*, 6 F. Cas. 546, 551-52 (C.C.E.D. Pa. 1823) (No. 3230) (listing the right "to pursue and obtain happiness and safety" as a fundamental right).

As *Lawrence*, *Obergefell*, and Justice Stevens' dissent in *Bowers* contemplate, individuals possess the fundamental rights to their sexual orientation and to marry whomever they choose. *See Lawrence*, 539 U.S. at 574, 577-78; *Obergefell*, 576 U.S. at 651-52 ("The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, *to define and express their identity*." (emphasis added)), 664 (identifying and protecting fundamental rights requires "courts to exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect"); *Bowers*, 478 U.S. at 216 (Stevens, J., dissenting) ("[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons." (citation omitted)).[3]

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[3] The fundamental right to sexual orientation does not appear to stem from just the federal constitution but from our state constitution as well. *See* WASH. CONST. art. I, §§ 3, 7, 12; *see also State v. Jackson*, 150 Wn.2d 251, 259, 76 P.3d 217 (2003) ("It is now settled that article I, section 7 is more protective than the Fourth Amendment."); *State v. Bartholomew*, 101 Wn.2d 631, 639, 683 P.2d 1079 (1984) ("[W]e have repeatedly noted that the

Here, Woods informed SUGM that he was involved in a same-sex relationship and voiced a desire to someday marry a man. *E.g.*, CP at 135 (Woods' cover letter to SUGM stated he could see "marrying and starting a family with another man."); *see also* CP at 114 (Decl. of Matt Woods) (stating Woods informed SUGM "that [he] had a boyfriend, and that [he] could see marrying a man"). Though this case also implicates the fundamental right to marry whomever one chooses, it is not limited to this context. Also implicated is the concomitant fundamental right to sexual orientation. Woods has invoked these fundamental rights, satisfying the first prong of the article I, section 12 test. *Schroeder*, 179 Wn.2d at 573.

Turning to the second prong of that test, we hold that reasonable grounds exist for WLAD to distinguish religious and secular nonprofits. RCW 49.60.040(11) itself is evidence of reasonable grounds. Courts routinely rely on statutory language to ascertain and carry out legislative goals when construing statutory and constitutional provisions. *See*, *e.g.*, *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *Wash. Water Jet Workers Ass'n v. Yarbrough*, 151 Wn.2d 470, 477, 90 P.3d 42 (2004) (citing *Anderson v. Chapman*, 86 Wn.2d 189, 191, 543 P.2d 229 (1975)). Meaning is discerned from the language itself, the context and related provisions in relation to the subject of the legislation, the nature of the act, the general object to be accomplished, and the *consequences* that would

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Supreme Court's interpretation of the Fourteenth Amendment does not control our interpretation of the state constitution's due process clause.").

result from construing a statute in a particular way. *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007). We find no persuasive reason not to examine and rely on statutory language when engaging in the context of article I, section 12's reasonable grounds analysis.

RCW 49.60.040(11) was originally included in the 1949 enactment of WLAD. Even when lawmakers rewrote the definition of "employer" in 1957, the statute continued to exempt religious nonprofits. This exemption has remained, despite the expansion of WLAD's protections. *See* LAWS OF 1957, ch. 37, § 1 (adding prevention of discrimination in employment in places of public resort, accommodation, or amusement); LAWS OF 2006, ch. 4 (expanding WLAD's protection against discrimination based on sexual orientation). RCW 49.60.040(11)'s inclusion in the enacting legislation and its continued existence demonstrate that the legislature plainly intended to include the exemption in WLAD.

Our state's protection of religion also explains the religious employer exemption. RCW 49.60.040(11); WASH. CONST. art. I, § 11. *Ockletree* noted the critically important distinction between religious and secular nonprofits: religious organizations have the right to religious liberty. 179 Wn.2d at 783-84 (citing WASH. CONST. art. I, § 11). The greater protection offered by article I, section 11 than that of the First Amendment is evidence for treating religious non-profits differently. *Id.* at 784; *see also First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 224, 840 P.2d 174 (1992) (noting article I, section 11 of Washington's constitution is "stronger than the federal constitution").

In addition, the United States Supreme Court has upheld the exemption for religious organizations from federal discrimination suits in order to avoid state interference with religious freedoms. *Ockletree*, 179 Wn.2d at 784 (discussing *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987)). As five justices agreed in *Ockletree*, article I, section 11 and avoidance of state interference with religion constitute real and substantial differences between religious and secular nonprofits, making it "reasonable for the legislature to treat them differently under WLAD." *Id.* at 783, 806 (Wiggins, J., concurring in part in dissent).

Though we also conclude reasonable grounds exist to RCW 49.60.040(11) as a matter of facial constitutionality, the exemption may still be unconstitutional as-applied to Woods. *See Ockletree*, 179 Wn.2d at 789 (Stephens, J., dissenting), 806 (Wiggins, J., concurring in part in dissent). Woods has identified fundamental rights of state citizenship: the right to one's sexual orientation as manifested as a decision to marry. The first requirement of our article I, section 12 analysis is therefore satisfied. *See Schroeder*, 179 Wn.2d at 573. To determine whether reasonable grounds exist to support a constitutional application of RCW 49.60.040(11)(a)'s exemption in this case, we look to the ministerial exception outlined by the United States Supreme Court.

Ministerial exception

Because WLAD contains no limitations on the scope of the exemption provided to religious organizations, we seek guidance from the First

Amendment as to the appropriate parameters of the provision's application. The Supreme Court's recent decision in *Our Lady of Guadalupe*, 140 S. Ct. at 2055, is instructive based on SUGM's argument that all of its employees are expected to minister to their clients.

In *Our Lady of Guadalupe*, the Court reviewed and clarified the ministerial exception it previously outlined in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp't Opportunity Comm'n*, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012). The *Hosanna-Tabor* Court addressed an employee's claims of wrongful termination under the Americans with Disabilities Act (ADA) of 1990 and state law.[4] The employer, a Lutheran church and school, moved for summary judgment arguing that the teacher's suit was barred by the First Amendment because the claims at issue concerned the employee relationship between a religious institution and one of its ministers. According to the employer, the employee teacher was a minister and was fired for a religious reason. *Id.* at 180.

The trial court granted summary judgment for the employer. It ruled that the facts surrounding the teacher's employment in a religious school with a sectarian mission supported the employer's characterization of the teacher as a minister, and the court inquired no further into the teacher's claims of retaliation. *Id.* at 180-81.

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[4] The employee teacher exerted claims for unlawful retaliation under both the ADA, 104 Stat. 327, 42 U.S.C. §§ 12101-12213 (1990), and the Michigan Persons with Disabilities Civil Rights Act, MICH. COMP. LAWS § 37.1602(a). *See Hosanna-Tabor*, 565 U.S. at 179-80.

The Sixth Circuit Court of Appeals vacated the ruling, directing the trial court to proceed to the merits of the teacher's retaliation claims. *Id.* at 181. The Supreme Court reversed and reinstated summary judgment for the employer, observing, "The First Amendment provides, in part, that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" *Id.* The Court acknowledged that while "there can be 'internal tension . . . between the Establishment Clause and the Free Exercise Clause,'" *id.* (alteration in original) (quoting *Tilton v. Richardson*, 403 U.S. 672, 677, 91 S. Ct. 2091, 29 L. Ed. 2d 790 (1971) (plurality opinion)), there was no such tension in the matter at hand. "Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers." *Id.*

Our Lady of Guadalupe revisited the ministerial exception. In that case, two teachers at Catholic primary schools were terminated and sued their employers for discrimination. 140 S. Ct. at 2057-59. Both trial courts granted summary judgment for the school employers based on the *Hosanna-Tabor* exception. *Id.* at 2058. The Ninth Circuit reversed, noting that while the respective teachers had "'significant religious responsibilities,'" their duties alone were not dispositive under *Hosanna-Tabor*: they did not have the formal title of minister, had limited formal religious training, and did not hold themselves out to the public as religious leaders or ministers. *Id.*

The Supreme Court disagreed with the Ninth Circuit, concluding the ministerial exception applied and foreclosed the teachers' employment claims. The

Court observed that the First Amendment precludes the government from interfering with the right of religious entities to decide matters of "faith and doctrine." *Id.* at 2060. Similarly, religious institutions are insulated from government intrusion on matters of "church government," which includes religious entities' internal management decisions, such as the selection of individuals who play key roles. *Id.* The ministerial exception, based on this notion, protects the freedom of religious institutions to choose and remove ministers without government interference. *Id.* at 2060-61.

Whether a position falls within the ambit of the ministerial exception depends on a "variety of factors." *Id.* at 2063. Importantly, the Court clarified that the factors discussed in *Hosanna-Tabor* were not meant to be a "checklist." *Id.* at 2067. The "recognition of the significance of those factors . . . did not mean that they must be met—or even that they are necessarily important—in all other cases." *Id.* at 2063. For example, the title of minister is not itself dispositive, especially considering some religions do not use the title or are not even formally organized. *Id.* at 2063-64. Ultimately, what matters "is what an employee does." *Id.* at 2064.

As explained below, *Our Lady of Guadalupe* and *Hosanna-Tabor* should guide our analysis here. Woods cites *Hosanna-Tabor* as supporting his contention that an inquiry into the secular nature of the attorney work performed by SUGM staff attorneys is permissible. He correctly notes that the Supreme Court performed such an inquiry in *Hosanna-Tabor*, and more recently in *Our Lady of Guadalupe*, to conclude that the ministerial exception

applied and barred the discrimination claims of the complaining employee teachers. 565 U.S. at 190.

Both cases recognize that a plaintiff's employment discrimination claim must yield where the employee in question is a minister. The claimant teacher in *Hosanna-Tabor* was determined to be a minister, which turned in part on how the church and the teacher held herself out to the world as a minister of the church. The organization "issued [the teacher] a 'diploma of vocation' according her the title 'Minister of Religion, Commissioned.'" *Id.* at 191. The receipt of such title "reflected a significant degree of religious training followed by a formal process of commissioning." *Id.* The teacher had to complete eight college-level courses in subjects such as biblical interpretation and church doctrine, obtain the endorsement of her local church, and pass an oral examination by a faculty committee at a Lutheran college. *Id.* She was then commissioned as a minister only upon election by the congregation and such status could be rescinded only upon a supermajority vote of the congregation. *Id.* Further, she claimed a special housing allowance on her taxes available only to employees earning their compensation in the exercise of the ministry. *Id.* at 192.

As for the teacher's job duties, she was charged with nurturing the Christian development of the students at her Lutheran school. In addition to secular subjects, she taught religion classes four days a week, led her students in prayer three times a day, took her students to weekly chapel services, and conducted such services herself twice a year. She also led her fourth graders in daily morning devotionals. *Id.* In short, the teacher "performed an important role

in transmitting the Lutheran faith to the next generation." *Id.*

The Court made clear in *Our Lady of Guadalupe* that the above circumstances were important to consider, but not "essential" to qualifying as a minister. 140 S. Ct. at 2062-63. "What matters, at bottom, is what an employee does." *Id.* at 2064. To that end, the Court concluded the Catholic school teachers at issue performed vital religious duties: guiding the faith lives of their students, providing instruction on subjects that included religion, praying and attending religious services with students, and preparing students for other religious activities. *Id.* at 2064-65. In short, though the teachers did not carry the official title of "minister," their "core responsibilities as teachers of religion were essentially the same." *Id.* at 2066. The teachers therefore qualified for *Hosanna-Tabor*'s ministerial exemption. *Id.*

Recognizing the need for a careful balance between the religious freedoms of the sectarian organization and the rights of individuals to be free from discrimination in employment, the Supreme Court has fashioned the ministerial exception to the application of antidiscrimination laws in accord with the requirements of the First Amendment. *See id.* at 2060-66; *Hosanna-Tabor*, 565 U.S. at 188-196. Here, Woods seeks employment as a lawyer with SUGM. SUGM has rejected his application because it maintains that all employees' first duty is to minister. In order to balance Woods' fundamental rights with the religious protections guaranteed to SUGM, we hold that article I, section 12 is not offended if WLAD's exception for religious organizations is

applied concerning the claims of a "minister" as defined by *Our Lady of Guadalupe* and *Hosanna-Tabor*.

This approach balances the competing rights advanced by Woods and SUGM. On one hand, Woods' sexual orientation and his right to marry are within his fundamental rights of citizenship. *Obergefell*, 576 U.S. at 656-60, 663-65; *Lawrence*, 539 U.S. at 574, 577-78; *Warren*, 165 Wn.2d at 34. On the other hand, SUGM has the right to exercise its religious beliefs, and central to this freedom is the messenger of those beliefs. WASH. CONST. art. I, § 11; *Hosanna-Tabor*, 565 U.S. at 201 (Alito, J., concurring) ("When it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters."). The First Amendment "gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189. Article I, section 11 of the Washington State Constitution offers even more robust protections. *See First Covenant Church of Seattle*, 120 Wn.2d at 224 (noting article I, section 11 of Washington's constitution is "stronger than the federal constitution"). The ministerial exception, recognized by the United States Supreme Court, every circuit court, and 12 other state supreme courts,[5] provides a fair and useful approach for determining whether application of RCW 49.60.040(11) unconstitutionally infringes on Woods' fundamental right to his sexual orientation and right

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[5] Douglas Laycock, Hosanna-Tabor *and the Ministerial Exception*, 35 HARV. J.L. & PUB. POL'Y 839, 846 (2012) (noting all 12 geographic circuits and 12 state supreme courts recognize the existence of the ministerial exception).

to marry.

Whether ministerial responsibilities and functions equivalent to those discussed in *Our Lady of Guadalupe* and *Hosanna-Tabor* are present in Woods' case that would similarly render an employment discrimination claim under WLAD unavailable is an open factual question that the trial court did not decide. While some of the criteria noted in *Our Lady of Guadalupe* and *Hosanna-Tabor* are present here, other criteria are not. Justice Yu's concurring opinion is helpful in this regard. *See* concurrence at 3-6. Whether an employee qualifies as a "minister" is a legal question and the title a legal term. *Hosanna-Tabor*, 565 U.S. at 190. Woods acknowledges that all SUGM employees are expected to evangelize, but there is no evidence that staff attorneys had titles as ministers or training in religious matters comparable to *Hosanna-Tabor*'s teacher. And while staff attorneys are expected to share their faith with clients as opportunities arise, there is no evidence that they are expected to nurture their converts' development in the Christian faith similar to the job duties performed by the teachers in *Our Lady of Guadalupe* and *Hosanna-Tabor*. Further, neither SUGM nor ODLS is a church or religious entity principally responsible for the spiritual lives of its members. SUGM employees are expected to be active members of local churches; SUGM employment alone does not appear to be sufficient religious affiliation. Employees held to be ministers in *Our Lady of Guadalupe* and *Hosanna-Tabor* led faith groups and taught religious doctrine. The record indicates that these duties occur outside SUGM, in local churches for SUGM employees. Moreover,

Woods sought employment with SUGM as a lawyer specifically, not as a religious minister or teacher, and there is no indication that religious training is necessary for the staff attorney position, unlike the teachers in *Hosanna-Tabor*.[6] *See* concurrence at 6 (citing *Hosanna-Tabor*, 565 U.S. at 191). It is best left to the trial court to determine whether staff attorneys can qualify as ministers and, consequently, whether Woods' discrimination claim under WLAD must be barred.

CONCLUSION

We conclude that RCW 49.60.040(11) does not facially violate article I, section 12 of our state constitution. However, we recognize that the provision may still be unconstitutional as applied to Matthew Woods. To properly balance the competing rights advanced by Woods and SUGM, we apply the federal ministerial exception test established in *Hosanna-Tabor* and clarified in *Our Lady of Guadalupe*. A material question of fact remains concerning whether the SUGM staff attorneys qualify as ministers. Accordingly, we reverse and remand to the trial court to answer this open factual question.

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[6] Justice Yu's concurring opinion also reviews the ethical constraints specific to lawyers. Concurrence at 4-7 (discussing relevant Rules of Professional Conduct). These considerations also serve to distinguish lawyers from ministers under *Hosanna-Tabor* and *Our Lady of Guadalupe*.

Madsen, J.

WE CONCUR:

Gordon McCloud, J.

Johnson, J.

Yu, J.

Owens, J.

Wiggins, J.P.T.

YU, J. (concurring) — I concur with the court's determination that the legislature's decision to exempt religious employers from the right to be free from discrimination is subject to a careful balance of rights under our state constitution, the First Amendment to the United States Constitution, and United States Supreme Court decisions. I am cognizant of the evolving legal landscape at the national level and agree that a limited "as applied" approach is an appropriate exercise of judicial restraint and a prudent way to resolve this case.

Our court's decision today is not a carte blanche license to discriminate against members of the LGBTQ+ community who are employed by religious institutions. Rather it recognizes the statutory prohibitions against discrimination while also recognizing a limited and narrow ministerial exception required to alleviate a substantial and concrete burden on the free exercise of religious freedom. As noted by the majority and the dissent (Justice Stephens dissenting in part and concurring in part), we utilize a two pronged analysis to determine whether a statutory provision violates article I, section 12 of the Washington Constitution. We ask: Does the statute grant a privilege or immunity and if so, are there reasonable grounds for such privilege or immunity? (*see* majority at 9; dissent in part at 11). I would hold that there are no reasonable grounds to afford the privilege of the WLAD exemption to SUGM because SUGM cannot enjoy a free exercise right to discriminate against an employee who performs nonreligious duties, such as a

staff attorney. However, because there are factual questions regarding the duties of the staff attorney, I ultimately concur in the court's decision to remand.

Our state law protects the right to employment free from discrimination on the basis of LGBTQ+ status (as well as on the basis of race, gender, etc.). The law also protects the right of religious institutions to choose their ministers. Thus, I agree with the majority that a religious institution, such as a church, has the freedom to discriminate on the basis of LGBTQ+ status when choosing its ministers in accordance with its religious doctrines. I also agree with the majority that this license to discriminate belongs only to religious institutions and not to other entities such as legal, medical, or commercial institutions. It is also important to point out that this license to discriminate exists only with respect to the institution's choice of ministers (not with respect to its choice of nonministers) and that this freedom to discriminate is not a mandate to do so.

Given our state's long-standing commitment to eradicating discrimination and to fostering a diverse workforce, it is my greatest hope that religious institutions will recognize and embrace the choice to limit the "ministerial exception" to those employees for whom such an exception is absolutely necessary and grounded in sound reason and purpose. After all, the right to exclude the LGBTQ+ community from ministerial employment by religious institutions is not a right that must be exercised. Rather, it is a choice by that religious institution and it is a choice that is not governed by an external judicial doctrine but rather one carved out by the religious entity itself. Religious institutions making such a choice should be

forewarned that today's decision bars redefining every aspect of work life as "ministerial." This court, like the United States Supreme Court, will insist that trial courts carefully evaluate claims that a particular employee who is not a traditional minister should nevertheless be reclassified, in hindsight, as a minister. In the case of lawyers licensed by the state, subject to the Rules of Professional Conduct, and obligated to let the client define the goal of the representation, such a claim will likely be difficult to prove.

Because this case is remanded for further proceedings, I write to offer guidance on the application of the "ministerial exception" as outlined in *Hosanna-Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission*, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012), and further developed in *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, ___ U.S. ___, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).

The task of reviewing whether any specific job falls within the ministerial exception remains an important judicial function; a charge that will require scrutiny of the actual job functions and the religious institution's explanation of the role. *See Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2066. The United States Supreme Court "called on courts to take all relevant circumstances into account and to determine whether each particular position implicated the fundamental purpose of the exception." *Id.* at 2067 (citing *Hosanna-Tabor*, 565 U.S. at 190). And the fundamental purpose of the exception is to respect matters of faith and doctrine, or ecclesiastical governance, so that we do not meddle or undermine the independence of

religious institutions.

The ministerial exception, required by both religion clauses of the First Amendment, is a guide that will help courts "stay out of employment disputes involving those holding certain important positions with churches and other religious institutions." *Id.* at 2060. Whether a particular employment position qualifies as "ministerial" is a question of law, and in this context, "minister" is a legal term, rather than a religious one, because the ministerial exception prohibits "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor*, 565 U.S. at 190. A person does not have to be "the head of a religious congregation" to qualify for the ministerial exception, but there is no "rigid formula" for determining when the exception applies. *Id.* Instead, we must consider "all the circumstances" of the employment position at issue. *Id.*

Here, some of the circumstances weigh in favor of finding the ministerial exception applies. Seattle's Union Gospel Mission (SUGM) describes Open Door Legal Services (ODLS) as a "ministry" that operates with an "evangelical purpose," and ODLS staff attorneys "show the love of God by loving the client holistically, not just attending to legal needs." Clerk's Papers (CP) at 371-73. However, as SUGM has acknowledged, there is "a difference between being engaged in the ministry of a church and being a minister" for purposes of the ministerial exception. Wash. Supreme Court oral argument, *Woods v. Seattle's Union Gospel Mission*, No. 96132-8 (Oct. 10, 2019), at 28 min., 21 sec., *video recording by* TVW, Washington State's Public Affairs Network,

http://www.tvw.org.

On the other hand, most of the circumstances of an ODLS staff attorney weigh against finding that such a position qualifies for the ministerial exception. Unlike the employer in *Hosanna-Tabor*, SUGM does not hold a staff attorney "out as a minister, with a role distinct from that of most of its members." 565 U.S. at 191. To the contrary, to the extent ODLS staff attorneys are tasked with furthering SUGM's religious mission, the same is true of "every Mission employee." CP at 64; *see also id.* at 699. Also unlike the employment position in *Hosanna-Tabor*, the ODLS staff attorney position does not require "a significant degree of religious training followed by a formal process of commissioning" as a minister. *Hosanna-Tabor*, 565 U.S. at 191. There is also no evidence that any ODLS staff attorney has held themselves out as a minister by claiming "a special housing allowance on [their] taxes that [is] available only to employees earning their compensation 'in the exercise of the ministry,'" or that staff attorneys were ever expected or required to do so. *Id.* at 192 (internal quotation marks omitted).

As noted by the majority, the Supreme Court has further clarified the inquiry by cautioning against the use of titles as an exclusive test since "what matters, at bottom, is what an employee does." *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2064. And unlike the teachers at issue in *Hosanna-Tabor* and *Our Lady of Guadalupe School*, the ODLS staff attorneys practice law first and foremost. They practice law in a context "primarily serving the homeless and others in great need." CP at 64. It is this court that has final authority over the practice of law and legal ethics in

Washington, and attorneys are required to comply with the Washington Rules of Professional Conduct (RPCs). There is no dispute that ODLS staff attorneys are required to comply with the RPCs. And in the context of a nonprofit legal aid organization serving the civil legal needs of vulnerable populations, I believe it is simply not possible to simultaneously act as both an attorney and a minister while complying with the RPCs.

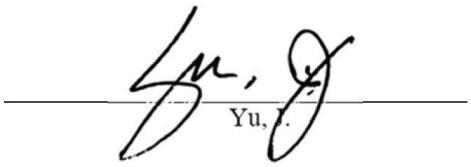
Without question, the RPCs do *not* prohibit religious considerations from being a factor in legal practice because "[i]n rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." RPC 2.1. However, in Washington, a lawyer must be guided by the client's interests, not the lawyer's (or their employer's) interests because the client has "the ultimate authority to determine the purposes to be served by legal representation." RPC 1.2 cmt. 1. Thus, "[c]oncurrent conflicts of interest can arise from . . . the lawyer's own interests." RPC 1.7 cmt. 1.

In the particular context of a legal aid organization serving the needs of vulnerable populations, the likelihood of concurrent conflicts of interest would be enormous if an attorney attempted to act as a minister and a lawyer at the same time. This conflict is likely if the necessary legal advice conflicts with the religious message of the lawyer. SUGM provides legal counsel to clients regardless of clients' own religious views, creating a high risk of conflict between SUGM's religious mission and the client's goals for representation. And because SUGM is providing desperately needed civil legal aid to

vulnerable populations, the likelihood that a client would feel coerced into acquiescing to SUGM's religious purposes would be very high if an ODLS staff attorney attempted to simultaneously play the dual roles of lawyer and minister. To provide just one example, if a same-sex couple had the goal of facilitating an adoption, a lawyer would be required to provide the clients with legal advice for achieving their goal, while a minister promoting SUGM's religious beliefs may be required to discourage the clients from pursuing such an adoption. When ODLS staff attorneys are faced with such situations, they properly respond as lawyers, not as ministers, because, as the ODLS director confirmed, "[o]ur legal advice is our legal advice." CP at 149-50.

Thus, in the particular context presented here, if SUGM raises the ministerial exception as an affirmative defense on remand, the facts asserted in this record strongly support a conclusion that an ODLS staff attorney cannot qualify for the ministerial exception as a matter of law. Unlike the educators in *Our Lady of Guadalupe School*, these staff attorneys are not charged with the responsibility of elucidating or teaching the tenets of the faith. They are first and foremost charged with providing objective legal advice that may, in fact, conflict with the employing entity's religious doctrine. A religious organization that chooses to employ an attorney in order to provide civil legal aid cannot control the legal advice by requiring the attorney to serve as minister and attorney at the same time.

I concur.



Yu, J.

González, C.J.

No. 96132-8

STEPHENS, J. (dissenting in part and concurring in part)—Matthew Woods applied for an attorney position at Open Door Legal Services (ODLS), a legal aid clinic of Seattle's Union Gospel Mission (SUGM). Though Woods had volunteered at the clinic for about three years starting in law school, SUGM rejected his employment application because Woods is bisexual. As a condition of employment, SUGM requires employees to obey a biblical moral code that excludes "'homosexual behavior.'" Clerk's Papers (CP) at 4 (quoting SUGM's Employee Code of Conduct). Woods sued, alleging SUGM violated Washington's Law Against Discrimination (WLAD), ch. 49.60 RCW. The superior court granted SUGM's motion for summary judgment and dismissed Woods's suit based on RCW 49.60.040(11). That statute categorically exempts "any religious or sectarian organization not organized for private profit" from WLAD's definition of "employer." RCW 49.60.040 (11). In other words, the court ruled that WLAD grants religious nonprofits a statutory privilege or immunity from WLAD liability for employment discrimination. We granted review to determine whether this statutory exemption is unconstitutional.

In my view, we should hold RCW 49.60.040(11) violates our state constitutional privileges and immunities clause because it favors religious nonprofits over all other employers without reasonable grounds for doing so. While both the state and federal constitutions afford protections for religious freedom, those protections extend to employers only in the narrow context of ministerial

employment and do not provide reasonable grounds for the categorical exemption from WLAD liability.[1]

On this basis, I dissent from the majority's holding under article I, section 12 of the Washington State Constitution, though I concur in the result to reverse the superior court's order granting summary judgment. I would hold the religious nonprofit exemption under RCW 49.60.040(11) violates article I, section 12's antifavoritism principles, and remand for further proceedings to give SUGM the chance to brief and argue its *affirmative defense* to WLAD liability based on the ministerial exception.

FACTS

SUGM incorporated in 1939 for the purpose of "preaching . . . the gospel of Jesus Christ by conducting rescue mission work in the City of Seattle." CP at 72. Its mission "is to serve, rescue and transform those in greatest need through the grace of Jesus Christ." *Id.* at 118. Its articles of incorporation

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[1] As explained below, whether the ministerial exception applies to the facts here is not before us on review but may be considered on remand. *See generally Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp't Opportunity Comm'n.*, 565 U.S. 171, 188, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012) (holding that the First Amendment to the United States Constitution's religion clauses contain a ministerial exception that prevents government from interfering with a religious group's employment practices related to ministerial or ecclesiastical offices); *see also Our Lady of Guadalupe Sch. v. Morrissey-Berru*, ___ U.S. ___, 140 S. Ct. 2049, 2069, 207 L. Ed. 2d 870 (2020) (determining the First Amendment's ministerial exception precluded two parochial school teachers from suing for alleged employment discrimination).

provide, "[A]ny phase of the work other than direct evangelism shall be kept entirely subordinate and only taken on so far as seems necessary or helpful to the spiritual work." *Id.* at 72. In November 1943, the Internal Revenue Service (IRS) recognized SUGM as exempt from federal income tax under 26 U.S.C. § 501(c)(3). The IRS classified SUGM under 26 U.S.C. §§ 509(a)(1) and 170(b)(1)(A)(i) as a publicly supported church or a convention or association of churches. In other words, SUGM is a religious nonprofit organization.

Woods is Christian. After entering law school, he decided to volunteer with SUGM's legal clinic, ODLS. As part of his volunteer service, Woods willingly signed SUGM's statement of faith, which requires, among other things, agreement that the Bible is the infallible word of God. SUGM belongs to the Association of Gospel Rescue Missions, a group of roughly 300 evangelical Christian ministries. All member associations must comply with a similar evangelical Christian statement of faith for their volunteers and employees. The statement of faith Woods signed did not mention sexual orientation.

As a volunteer, Woods helped ODLS clients resolve various legal issues involving divorce, child support, and immigration issues, and he represented his clients at administrative hearings. Woods found satisfaction in his volunteer work, which aligned with his faith. He hoped to someday obtain paid, full-time employment with SUGM. In 2014, shortly after Woods was admitted to practice law in Washington State, a staff attorney position with ODLS opened, and Woods received an e-mail encouraging him and other volunteers to apply. ODLS employs a managing

attorney, two staff attorneys, and an administrative assistant/interpreter. The job description listed several essential job duties and required knowledge, skills, and abilities, many of which had religious aspects. The application also required answers to several questions about the applicant's religious beliefs.

Woods is bisexual. Unsure whether SUGM would accept his sexual orientation, he reached out to a friend and colleague at ODLS whom he had known since they were undergraduates together. He asked her if she thought his sexual orientation might pose a problem. At first, she did not think so, but she later found a policy in SUGM's employee handbook that gave her pause. The handbook stated, "'All staff members are required to sign the doctrinal standard of Seattle's Union Gospel Mission. All staff members are expected to live by a Biblical moral code that excludes . . . homosexual behavior.'" CP at 4 (alteration in original) (quoting SUGM's Employee Code of Conduct). She suggested that Woods ask the ODLS director, David Mace, for more information.

Woods e-mailed Mace and disclosed his bisexuality. He informed Mace that he had a boyfriend and that he could see himself marrying a man someday. He asked if that would impact his chances of employment. Mace told him that he could not apply given SUGM's code of conduct and confirmed the employee handbook prohibited "homosexual behavior."[2] *Id.* at 226. Woods applied

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[2] SUGM's chief program officer stated, "[T]he Mission's sincerely held religious belief is that the Bible calls Christians to abstain from any sexual activity outside of heterosexual

anyway and, in his cover letter, he asked SUGM to reconsider its policy. SUGM refused to consider him for employment.

Woods sued under WLAD, alleging SUGM engaged in discriminatory employment practices by refusing to hire him because of his sexual orientation. He directly challenged the constitutionality of RCW 49.60.040(11), WLAD's religious nonprofit exemption, arguing it violates our state privileges and immunities clause, article I, section 12. SUGM stipulated it would be facing a prima facie case of sexual orientation discrimination if it were a secular employer. But because SUGM is a religious nonprofit exempt from WLAD under RCW 49.60.040(11), it moved for summary judgment on the ground that it is not an employer subject to WLAD liability.

The superior court issued a letter ruling and order granting SUGM's motion for summary judgment. It found that SUGM qualifies as a religious nonprofit employer and that the staff attorneys' job duties extend beyond providing legal counsel, to include providing spiritual guidance. The court ruled it would be impermissible to "determine . . . the relative merits of different religious beliefs." CP at 171. It concluded

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marriage, including abstaining from homosexual behavior. This belief is based, in part, on passages such as Romans 1:26-27, 1 Corinthians 6:9, and Matthew 19:4. The Mission further believes that a Mission employee who publicly rejects this teaching undermines the Mission's ability to carry out its religious purpose. For example, because Mission employees model this surrender for our clients, we believe it is very difficult for an employee to urge a recovering addict to surrender his or her life to God when the employee publicly rejects well-known Christian teaching." CP at 65.

a trial would improperly focus on which activities within SUGM are secular and which are religious, observing "societal tensions between religion and LGBTQ disputes 'must be resolved with tolerance [and] without undue disrespect to sincere religious beliefs.'" *Id.* (alteration in original) (quoting *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, ___ U.S. ___, 138 S. Ct. 1719, 1732, 201 L. Ed. 2d 35 (2018)). As a result, the superior court dismissed Woods's claims with prejudice. The court did not address the ministerial exception or any constitutional defenses to WLAD liability raised by SUGM.

We granted direct review.

ANALYSIS

The majority frames the issue in this case as whether RCW 49.60.040(11)'s religious nonprofit exemption can be constitutionally applied under the ministerial exception, but this approach evades the constitutional question actually before us. Woods contends the exemption violates article I, section 12 of the Washington State Constitution on both legislative favoritism grounds and equal protection grounds. Our state privileges and immunities clause requires that we consider the statutory exemption as it exists—not as we might rewrite it. Moreover, whether SUGM could successfully assert a constitutional *affirmative defense* to WLAD liability for acts of discrimination involving its ministers does not answer whether the (much broader) religious nonprofit exemption violates article I, section 12. Addressing the constitutionality of the exemption as

it was actually applied here, I would hold exempting SUGM from WLAD liability based on its status as a religious nonprofit violates article I, section 12 antifavoritism principles. I would also reject SUGM's asserted defenses under the First Amendment to the United States Constitution except insofar as it can prove the ministerial exception applies to Woods's employment.

A. The Religious Nonprofit Exemption Violates Article I, Section 12 Antifavoritism Principles

Article I, section 12 provides, "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

In years past, we interpreted article I, section 12 like the federal equal protection clause. *Schroeder v. Weighall*, 179 Wn.2d 566, 571, 316 P.3d 482 (2014). But over time "[o]ur cases . . . recognized that the text and aims of article I, section 12 differ from that of the federal equal protection clause." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 775-76, 317 P.3d 1009 (2014) (lead opinion). Congress passed the Fourteenth Amendment after the Civil War in part to prevent states from denying any person equal protection under the law. *See State v. Smith*, 117 Wn.2d 263, 283, 814 P.2d 652 (1991) (Utter, J., concurring). The framers of our privileges and immunities clause, in contrast, "intended to prevent people from seeking certain privileges or benefits to the disadvantage of others." *Id.* The clause aims to prevent "favoritism and special treatment for a few." *Id.* For this reason, we now apply an independent

analysis from the federal equal protection clause in cases involving legislative favoritism. *E.g., Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 359, 340 P.3d 849 (2015) (citing *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 805, 811, 83 P.3d 419 (2004)). Still, this independent, antifavoritism analytical framework "did not overrule our long line of article I, section 12 cases addressing laws that burden vulnerable groups" on state equal protection grounds. *Schroeder*, 179 Wn.2d at 577.

Under the antifavoritism framework, the terms "privileges" and "immunities" "pertain alone to those fundamental rights which belong to the citizens of the state by reason of such citizenship." *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902). The threshold question in our antifavoritism analysis is whether the challenged statute implicates or encroaches on a fundamental right of state citizenship. *Schroeder*, 179 Wn.2d at 572.[3]

As for the threshold question, the majority holds the fundamental rights implicated here are the right to an individual's sexual orientation and the right to marry. Majority at 9. But it locates these rights exclusively in federal due process cases that

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[3] If a statutory benefit does not first encroach on a fundamental right of state citizenship, this constitutional inquiry ends. *See, e.g., Grant*, 150 Wn.2d at 814; *Ventenbergs v. City of Seattle*, 163 Wn.2d 92, 102-05, 178 P.3d 960 (2008) (determining that while the constitutional inquiry under article I, section 12 must end because the right at issue there was not a fundamental right, courts would still analyze the disputed law under a general rubric of reasonableness because the legislature must exercise its police power in a reasonable way).

erroneously tie (and thereby limit) principles of antidiscrimination recognized as fundamental in Washington.[4] Majority at 9-11 (citing *Lawrence v. Texas*, 539 U.S. 558, 577-78, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003); *Bowers v. Hardwick*, 478 U.S. 186, 215-20, 106 S. Ct. 2841, 92 L. Ed. 2d 140 (1986) (Stevens, J., dissenting); *Obergefell v. Hodges*, 576 U.S. 644, 663-65, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015)). Whether a statute violates due process is distinct from whether a statute grants a privilege or immunity. The majority's analysis is plainly built on the wrong constitutional foundation.[5]

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[4] To be clear, I would welcome the recognition of marriage and the right to live free from discrimination based on sexual orientation as fundamental rights of state citizenship. But that is not what today's majority does. The majority recognizes those rights as fundamental rights under federal constitutional principles and subtly distances fundamental rights of state citizenship, concluding only that there may be "the right to one's sexual orientation as manifested as a decision to marry." Majority at 13. Importantly, the majority does not address *Andersen v. King County*, 158 Wn.2d 1, 30-31, 138 P.3d 963 (2006) (plurality opinion) (rejecting marriage equality as a fundamental right), *overruled by Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). The result is a "fundamental right to marry" and a "fundamental right to sexual orientation" under the due process clause of the federal constitution, but if the majority intends to protect these rights under our state constitution, it should explicitly hold they are fundamental to state citizenship.

[5] We have never equated fundamental rights guaranteed by the federal due process clause with the fundamental rights of state citizenship protected under article I, section 12. Those two categories of fundamental rights are distinct—they protect different rights for different reasons. It would be anachronistic for the framers of Washington's constitution in 1889 to have intended to safeguard rights that would not be protected under

Worse, after positing fundamental due process rights to open the door to a privileges and immunities analysis, the majority promptly abandons them and minimizes the import of WLAD. I would hold WLAD implicates a right we have long recognized as a fundamental right of state citizenship—the civil right to seek redress for discrimination. *Ockletree*, 179 Wn.2d at 794-97 (Stephens, J., dissenting) (recognizing that protection from discrimination is a "personal," civil right redressable at common law), *see id.* at 806 (Wiggins, J., concurring in part in dissent) ("I agree with the dissent that the exemption of religious and sectarian organizations in RCW 49.60.040(11) is subject to scrutiny under the privileges and immunities clause of article I, section 12 of the Washington Constitution."); *see also Cotten v. Wilson*, 27 Wn.2d 314, 317-20, 178 P.2d 287 (1947) (holding the right to sue in negligence is a privilege of state citizenship protected by article I, section 12). We should recognize Woods enjoys a fundamental right of state citizenship to seek redress for employment discrimination and proceed under our two part privileges and immunities analysis. *Schroeder*, 179 Wn.2d at 572-73. "First, we ask whether a challenged law grants a 'privilege' or 'immunity' for purposes of our state constitution." *Id.* at 573 (quoting *Grant*, 150 Wn.2d at 812). "If the answer is yes, then we ask

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federal due process for a generation. *See Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923). Moreover, fundamental rights of state citizenship are not necessarily fundamental federal constitutional rights. *See Ockletree*, 179 Wn.2d at 793 (Stephens, J., dissenting) (collecting cases and noting we have applied a standard less stringent than strict scrutiny to cases involving the fundamental right to sell cigars, animal feed, and eggs).

whether there is a 'reasonable ground' for granting that privilege or immunity." *Id.* (quoting *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 731, 42 P.3d 394 (2002)).

As to the first question, we must consider the religious nonprofit exemption as it was written and how it was actually applied in this case. The exemption categorically exempts religious nonprofits from WLAD, thereby creating a status-based privilege to discriminate in employment (or stated differently, an immunity from WLAD liability for employment discrimination). It operates solely on the basis of the employer's status as a religious nonprofit. *Ockletree*, 179 Wn.2d at 797 (Stephens, J., dissenting), 806 (Wiggins, J., concurring in part in dissent); *cf. Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 672-81, 807 P.2d 830 (1991) (holding that RCW 49.60.040 categorically exempts religious nonprofits, including subsidiaries of larger religious nonprofit entities, no matter if the subsidiary itself has an independent religious purpose). Because the exemption grants religious nonprofits a privilege or immunity within the meaning of article I, section 12, we next consider whether reasonable grounds exist for granting such a privilege.

The majority offers several justifications for a WLAD exemption that respects employers' religious freedoms. It describes the religious employer exemption as balancing the "*statutory* right for employees to be free from discrimination" against religious employers' "*constitutional* right . . . to choose workers who reflect the employers' beliefs when

hiring ministers."[6] Majority at 2. But, this description is both counter-factual and inconsistent with the majority's own fundamental rights analysis.

Contrary to the majority's description, the religious employer exemption reflects no balancing of interests based on an employer's exercise of religious freedoms. It applies only to religious nonprofits and, as observed in *Farnam*, it applies to all activities of such nonprofits regardless of whether they are religious activities. 116 Wn.2d at 676-77. Thus, a secular employer exercising protected religious rights cannot claim the exemption, while a religious nonprofit enjoys the legislatively granted immunity carte blanche. The majority, under the guise of an as-applied challenge, imagines an exemption that does not exist—and that was not applied here. It is undisputed that SUGM claimed, and was granted, the exemption based on its status as a religious nonprofit, period.

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[6] Today's majority repeats the rejected view of the lead opinion in *Ockletree*, which had insisted that "protection from discrimination in private employment is a creature of statutory enactment." 179 Wn.2d at 780. However, both the concurrence and dissent in *Ockletree* held that the statutory exemption implicates a fundamental right and is thus subject to scrutiny for reasonable grounds under article I, section 12. *Id.* at 806 (Wiggins, J., concurring in part in dissent), 794-97 (Stephens, J., dissenting). Indeed, given WLAD's recognition of the "civil right" to "obtain and hold employment without discrimination," RCW 49.60.030(1)(a), the dissent in *Ockletree* observed, "It is simply incredible for the lead opinion to suggest that Washington citizens enjoyed no state common-law remedy for discrimination until 1973—and that even today they must rely on state and federal legislative grace to vindicate their rights." 179 Wn.2d at 796.

Moreover, the majority's characterization of Woods's right to be free from discrimination as merely a statutory right contradicts its conclusion under the first part of its privileges and immunities analysis. There, the majority concluded Woods's claim implicates the fundamental constitutional rights to marriage and sexual orientation. Majority at 9. While I disagree with the majority's grounding of the relevant rights in the federal due process clause, it is true that Woods has a fundamental right to be free from discrimination based on sexual orientation. Under the majority's own framework, it is Woods's *constitutional rights* that we must balance against the religious employers' *statutory privilege*, not the other way around. The majority's failure to properly weigh the rights at issue in this case undermines its subsequent determination that reasonable grounds support the religious employer exemption.

"The article I, section 12 reasonable grounds test is more exacting than rational basis review. Under the reasonable grounds test a court will not hypothesize facts to justify a legislative distinction." *Schroeder*, 179 Wn.2d at 574. Instead, we "scrutinize the legislative distinction to determine whether it *in fact* serves the legislature's stated goal." *Id.* The distinction must depend on "real and substantial differences bearing a natural, reasonable, and just relation to the subject matter of the act." *State ex rel. Bacich v. Huse*, 187 Wash. 75, 84, 59 P.2d 1101 (1936), *overruled on other grounds by Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979). Put differently, "[t]he distinctions giving rise to the classification must be germane to the purposes contemplated by the particular law." *Id.* We "do not

extend the legislature permission to 'proceed incrementally,' instead [we] tak[e] a statute as [we] find it." *Ockletree*, 179 Wn.2d at 797 (Stephens, J., dissenting) (quoting Jonathan Thompson, *The Washington Constitution's Prohibition on Special Privileges and Immunities: Real Bite for "Equal Protection" Review of Regulatory Legislation?*, 69 TEMPLE L. REV. 1247, 1278-79 (1996)).

RCW 49.60.010 states the legislature's goal or purpose:

> This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.

In the context at issue, WLAD's stated goal is quite simply the "elimination and prevention of discrimination in employment." *Id.*

While legislatures sometimes include blanket exemptions for religious organizations in various statutes, and such exemptions may reflect legislative attempts to safeguard free exercise rights, *see State v. Arlene's Flowers, Inc.*, 193 Wn.2d 469, 520, 441 P.3d 1203 (2019), there is no evidence of that here. Contrary to the majority's characterization, WLAD's stated goal or purpose does not encompass safeguarding the free exercise of religion (or avoiding excessive entanglement with religion). *See generally* RCW 49.60.010. And we are not free to infer or "hypothesize" such a goal simply because the exemption exists. *See Schroeder*, 179 Wn.2d at 574 ("Under the reasonable ground test a court will not hypothesize facts to justify a legislative distinction."). Doing so risks the reasonable grounds standard—a heightened standard of review—devolving into rational basis review.

Indeed, the majority's reasoning appears to be circular by gleaning the legislature's goal or purpose from the legislative distinction itself. *See* majority at 11 (noting that "RCW 49.60.040(11) itself is evidence of reasonable grounds"). But we do not analyze reasonable grounds as a syllogism (i.e., legislative distinctions encompass legislative goals; the religious nonprofit exemption here is a legislative distinction; thus, the religious nonprofit exemption encompasses a legislative goal). The reasonable grounds test would be a pointless exercise if that were the case, a tautology. Instead, we look at the broader goal or purpose of the statutory scheme. *State ex rel. Bacich*,

187 Wash. at 84 (determining the distinction must bear a true "relation to *the subject matter of the act*" (emphasis added)). Here, the law against discrimination's goal or purpose is just that: antidiscrimination. *See generally* RCW 49.60.010. The question thus becomes whether exempting religious nonprofits *in fact* serves the legislature's *antidiscrimination* goal. It does not. The legislative distinction here is antithetical to WLAD's stated goal or purpose because it gives religious nonprofits carte blanche to discriminate in employment.

Despite bearing no relationship to WLAD's purpose, the majority argues *Ockletree* held the religious nonprofit exemption rests on reasonable grounds. Majority at 13. I disagree.

The *Ockletree* court could not agree on a common line of reasoning establishing reasonable grounds for the exemption so it establishes no precedent on that point of law. The lead opinion and Justice Wiggins agreed reasonable grounds existed but neither accepted the other's reasoning. *See Ockletree*, 179 Wn. 2d. at 783-86 (lead opinion), 806 (Wiggins, J., concurring in part in dissent). The dissent determined, on the other hand, no reasonable grounds existed. *Id.* at 797-800 (Stephens, J., dissenting).

Accordingly, *Ockletree* did not hold WLAD's stated goal or purpose encompasses fostering free exercise or avoiding entanglement with religion. Whether reasonable grounds ultimately justify the religious nonprofit employer exemption remains an open question.

To answer this question, we must focus on the exemption as it actually exists and was applied in this

case. The majority errs by instead aligning the statutory exemption with the ministerial exception developed under First Amendment doctrine. *See* majority at 13 ("To determine whether reasonable grounds exist . . . in this case, we look to the ministerial exception outlined by the United States Supreme Court."). But the United States Supreme Court's jurisprudence recognizing a limited constitutional privilege to discriminate has no bearing on whether the Washington legislature articulated reasonable grounds for granting religious employers a categorical privilege in RCW 49.60.040(11). This is particularly true given that the Supreme Court did not recognize the ministerial exception until 2012, fully 63 years after our legislature created WLAD's religious employer exemption. *See Hosanna-Tabor*, 565 U.S at 188-89 (first recognizing the ministerial exception); LAWS OF 1949, ch. 183, § 3(b) (exempting religious nonprofits from the definition of employer).[7]

Taking the religious employer exemption as we find it—a requirement for reasonable grounds review under article I, section 12—I would hold the categorical exemption of religious nonprofits from WLAD's definition of employer grants an

[7] To be fair, lower federal courts had recognized the ministerial exception well before the United States Supreme Court. *See McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972). But even this earliest articulation of the ministerial exception came 23 years *after* the Washington legislature exempted religious nonprofits from WLAD. The Washington State legislature could not have relied on this theory of federal constitutional law to provide reasonable grounds for its decision to exempt religious nonprofits from WLAD in 1949.

unconstitutional privilege to a favored class of employers. By its plain terms, the exemption categorically carves out religious nonprofits from WLAD, no matter if their activities have any religious purpose. RCW 49.60.040(11); *Farnam*, 116 Wn.2d at 672-81 (holding that the legislature categorically exempted all religious nonprofits entities from liability under WLAD, including subsidiaries not engaged in religious activities). Even if we were to impermissibly hypothesize that the exemption expresses a legislative intent to foster free exercise, it favors the free exercise rights of religious nonprofits over *all* other employers who might also hold sincere religious beliefs. That act of legislative favoritism unconstitutionally violates our state privileges and immunities clause because it does not rest on reasonable grounds—it does not serve WLAD's stated goals. *See, e.g., Schroeder*, 179 Wn.2d at 574.[8]

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[8] The majority fundamentally misunderstands the reasonable grounds analysis under article I, section 12 when it suggests we should not reach the question of facial invalidity as to the religious nonprofit exemption. *See* majority at 7-8. We are not at liberty to rewrite RCW 49.60.040(11), and that exemption categorically removes religious nonprofits from the definition of "employer" based solely on their status. Even framing the question as whether any circumstances exist under which the exemption can stand, it must fail because religious nonprofit status is not reasonable grounds for discrimination. The majority would collapse into its reasonable grounds analysis the separate—and as yet unaddressed—defense that SUGM may raise to application of WLAD based on the ministerial exception recognized under the First Amendment and article I, section 11. We cannot assume the existence of SUGM's unproven as-applied challenge to WLAD liability in order to rewrite the statute and then put the burden to Woods to challenge it. I would hold the

Recognizing that the religious nonprofit exemption violates article I, section 12 does not mean employers like SUGM stand defenseless to assert religious freedoms against allegations of discrimination under WLAD. The First Amendment's ministerial exception may still serve as a constitutional defense to suits brought under antidiscrimination laws. But it must remain just that—a constitutional defense. We should refuse to rewrite an unconstitutional statute. *See City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004). By erroneously applying *Hosanna-Tabor* in the context of article I, section 12, my colleagues risk endorsing government entanglement with religion, not to mention prematurely reaching constitutional claims that are not before us. SUGM does not advance any specific argument on direct review claiming that the ministerial exception applies and it does not explicitly argue its lawyers are ministers under *Hosanna-Tabor*. SUGM correctly recognizes, "[I]n *Hosanna-Tabor*, it was the *employer* who put the job role at issue as a constitutional, affirmative defense to a generally applicable law." Br. of Resp't at 25. That is not the posture of the case before us. Doctrinally speaking, courts consider *Hosanna-Tabor*'s reasoning when raised as a constitutional *defense* to WLAD under the First Amendment—not to construct reasonable grounds for the exemption under article I, section 12. Since SUGM asserted the ministerial exception as an affirmative defense in its answer, CP at 16, I would remand for further proceedings and allow the parties

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categorical exemption that is actually before us is unconstitutional.

to brief and argue about the applicability of that defense in the superior court. *See, e.g., Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 665-66, 286 P.3d 357 (2012) (plurality opinion) (remanding Title VII of the Civil Rights Act of 1964 claim for further proceedings to establish whether the ministerial exception applies).

A remaining question is whether SUGM should also be able to pursue other defenses grounded in claims of religious freedoms. Specifically, SUGM broadly asserts application of WLAD to its employment decisions would violate its free exercise rights under the First Amendment and article I, section 11 of the Washington State Constitution. As discussed next, this assertion is inconsistent with established law interpreting these constitutional provisions. WLAD liability generally applies to religious nonprofits for discriminatory employment practices except in the narrow context of ministerial employment.

B. WLAD—A Neutral Law of General Applicability—Does Not Violate SUGM's Right to Free Exercise under the First Amendment Absent a Showing the Ministerial Exception Applies

SUGM argues that allowing it to be held liable under WLAD by invalidating the religious nonprofit exemption violates its free exercise rights under the First Amendment. But WLAD is a neutral law of general applicability that survives constitutional scrutiny. Courts may apply WLAD to a religious employers' alleged employment discrimination except in the narrow context of ministerial employment.

"The First Amendment provides, in part, that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, ___ U.S. ___, 137 S. Ct. 2012, 2019, 198 L. Ed. 2d 551 (2017). The free exercise clause applies to the states through the Fourteenth Amendment. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213 (1940)). But "[n]ot all burdens on religion are unconstitutional," and "[t]he state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." *United States v. Lee*, 455 U.S. 252, 257-58, 102 S. Ct. 1051, 1055, 71 L. Ed. 2d 127 (1982).

We apply two levels of scrutiny to laws that allegedly burden religion under the free exercise clause. *Arlene's Flowers*, 193 Wn.2d at 519. We apply rational basis review to neutral laws of general applicability. *Id.* And we apply strict scrutiny to "laws that discriminate against some or all religions (or regulate conduct *because* it is undertaken for religious reasons)." *Id.*

"A law is not neutral for purposes of a First Amendment free exercise challenge if 'the object of [the] law is to infringe upon or restrict practices because of their religious motivation.'" *Id.* (alteration in original) (quoting *Lukumi Babalu Aye*, 508 U.S. at 533). The object of WLAD in the context at issue here is the "elimination and prevention of discrimination in employment." RCW 49.60.010. The legislature did not intend WLAD to infringe on or restrict

employment decisions *because* of their religious motivation. SUGM has not shown, for example, that the legislature enacted WLAD to burden religious employers' employment practices or to specifically target them based on their creeds. I would hold WLAD is neutral under First Amendment free exercise doctrine. The next question is whether WLAD is a law of general applicability.

A law generally applies if it does not selectively "impose burdens only on conduct motivated by religious belief." *Lukumi Babalu Aye*, 508 U.S. at 543. As currently drafted, WLAD generally applies to all employers *except* "any religious or sectarian organization not organized for private profit." RCW 49.60.040(11). WLAD does not seek to selectively burden religiously motivated conduct. Holding the religious nonprofit exemption unconstitutional under our state privileges and immunities clause does not change the general applicability of the statute. Without the unconstitutional exemption, WLAD applies to all employers *except* religious employers that raise and prove an affirmative defense based on the ministerial exception. I would therefore construe WLAD as a law of general applicability.

Because I would construe WLAD as a neutral law of general applicability, I would apply rational basis review. *See Arlene's Flowers*, 193 Wn.2d at 519, 523 ("WLAD is a neutral, generally applicable law subject to rational basis review."). WLAD easily meets that standard because it is rationally related to the government's legitimate interest in the "elimination and prevention of discrimination in employment." RCW 49.60.010.

That said, "the Religion Clauses ensure[] that the [government has] . . . no role in filling ecclesiastical offices." *Hosanna-Tabor*, 565 U.S. at 184. "Both Religion Clauses bar the government from interfering with the decision of a religious group" on the employment of its "ministers." *Id.* at 181. Because "there is a ministerial exception grounded in the Religion Clauses of the First Amendment," *id.* at 190, WLAD cannot constitutionally apply in the context of ministerial or ecclesiastical employment. "This does not mean that religious institutions enjoy a general immunity from secular laws, but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission. And a component of this autonomy is the selection of the individuals who play certain key roles." *Our Lady of Guadalupe*, 140 S. Ct. at 2060.

Application of WLAD to SUGM's discriminatory employment practices does not violate SUGM's free exercise rights under the First Amendment with reference to nonministerial positions. But that holding does not preclude SUGM or any religious employer from arguing a constitutional affirmative defense under the First Amendment's religion clauses based on the ministerial exception. *See generally id.*; *Hosanna-Tabor*, 565 U.S. 171. Whether SUGM's lawyers are ministers is not before us on review and remains to be addressed on remand. I next turn to SUGM's state constitutional claim that article I, section 11 shields SUGM from liability under the statute—it does not.

C. WLAD Does Not Violate SUGM's Right to "Absolute Freedom of Conscience in All Matters of Religious Sentiment, Belief and Worship" under Article I, Section 11 except in the Narrow Context of Ministerial Employment

Besides asserting its First Amendment rights, SUGM argues holding it liable under WLAD would violate article I, section 11 of the Washington State Constitution.

Article I, section 11 provides, in part, "Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion." "[W]e have specifically held [in some contexts] . . . that article I, section 11 is more protective of religious free exercise than the First Amendment is." *Arlene's Flowers*, 193 Wn.2d at 527 ("'[O]ur state constitutional and common law history support a broader reading of article [I], section 11, than of the First Amendment.'" (second alteration in original) (quoting *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224, 840 P.2d 174 (1992))). SUGM did not provide an independent state constitutional analysis, and neither party addresses what level of scrutiny should apply under article I, section 11. But even assuming without deciding strict scrutiny applies, SUGM's article I, section 11 argument fails.

Generally, "we have applied the same four-pronged analysis in an article I, section 11 challenge: where a party has (1) a sincere religious belief and (2)

the exercise of that belief is substantially burdened by the challenged law, the law is enforceable against that party only if it (3) serves a compelling government interest and (4) is the least restrictive means of achieving that interest." *Id.* (citing *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642, 211 P.3d 406 (2009)).

I do not question whether SUGM based its employment decision on a sincere religious belief that "'[a]ll staff members are expected to live by a Biblical moral code that excludes . . . homosexual behavior,'" CP at 4 (alteration in original) (quoting SUGM's Employee Code of Conduct), and I assume WLAD substantially burdens the exercise of that belief by preventing employment discrimination based on sexual orientation. *See* RCW 49.60.030(1)(a). So the question becomes whether WLAD serves a compelling governmental interest and is the least restrictive way to achieve that interest. *Arlene's Flowers*, 193 Wn.2d at 527.

In the context of racial discrimination in employment, the United States Supreme Court has held, "The Government has a compelling interest in providing an equal opportunity to participate in the work force without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal." *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 733, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014). The same result applies here. Preventing employment discrimination based on sexual orientation is a compelling governmental interest just like preventing employment discrimination based on race is. *See, e.g., Telescope Media Grp. v. Lucero*, 936 F.3d 740, 777 (8th Cir. 2019) ("If eradicating

discrimination based on race or sex is a compelling state interest, then so is Minnesota's interest in eradicating discrimination based on sexual orientation.").[9] Discrimination against protected classes "menaces the institutions and foundation of a free democratic state." RCW 49.60.010. WLAD serves a compelling governmental interest—it safeguards the right of protected classes to obtain and hold employment without discrimination. *See* RCW 49.60.030(1)(a).

Although "[t]he least-restrictive-means standard is exceptionally demanding," *Hobby Lobby*, 573 U.S. at 728, there is no less restrictive means available here to satisfy the government's compelling interest in eliminating and preventing employment discrimination based on sexual orientation. Our recent decision in *Arlene's Flowers* reveals this truth. There, a flower shop owner discriminated based on sexual orientation by refusing to provide custom floral arrangements for a same-sex wedding. 193 Wn.2d at 483-84. We concluded "public accommodations laws do not simply guarantee access to goods or services. Instead, they serve a broader societal purpose: eradicating barriers to the equal treatment of all

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[9] Jurists across the country have reached similar conclusions. *See, e.g., Gay Rights Coal. of Georgetown Univ. Law Ctr. v. Georgetown Univ.*, 536 A.2d 1, 32 (D.C. 1987) (concluding that the eradication of sexual orientation discrimination is a compelling governmental interest of the highest order that may override legitimate claims to free exercise of religion); *Hively v. Ivy Tech Cmty. Coll. of Ind.*, 853 F.3d 339, 355 (7th Cir. 2017) (Posner, J., concurring) (recognizing "[t]he compelling social interest" against discrimination based on sexual orientation under Title VII "as a sensible deviation from the literal or original meaning of the statutory language").

citizens in the commercial marketplace. Were we to carve out a patchwork of exceptions for ostensibly justified discrimination, that purpose would be fatally undermined." *Id.* at 531 (footnote omitted). We unanimously held WLAD survives strict scrutiny in an article I, section 11 challenge. *Id.* at 528-32.

The reasoning in *Arlene's Flowers* applies equally here because employment and public accommodation antidiscrimination laws serve the same purpose—"eradicating barriers to the equal treatment of all citizens." *See id.* at 531. Providing ad hoc exemptions for sincere religious beliefs would frustrate WLAD's goal of "elimination and prevention of discrimination in employment." RCW 49.60.010; *see Masterpiece Cakeshop*, 138 S. Ct. at 1727 (noting that if the Court did not confine the refusal to provide goods and services to ministers who object to LGBTQ lifestyles on moral and religious grounds, "then a long list of persons who provide goods and services . . . might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws that ensure equal access to goods, services, and public accommodations"). Allowing religious employers to discriminate against LGBTQ persons outside the context of ministerial employment would likewise lead to "a community-wide stigma" that WLAD aims to eliminate. *See Masterpiece Cakeshop*, 138 S. Ct. at 1727.

More to the point, like the court in *Arlene's Flowers*, I cannot locate "any case invalidating an antidiscrimination law under a free exercise strict scrutiny analysis." *See* 193 Wn.2d at 530-31 (collecting cases in which antidiscrimination laws

have survived strict scrutiny). I would therefore hold that SUGM's broadly asserted defense under article I, section 11 fails, even assuming strict scrutiny applies. *See id.* at 528-32. On remand, SUGM may seek to establish a narrow affirmative defense based on the ministerial exception, but that defense is not part of our article I, section 12 analysis and is not before us on review.

CONCLUSION

RCW 49.60.040(11)'s exemption of religious nonprofits from WLAD's definition of employer violates our state privileges and immunities clause on antifavoritism grounds. Applying reasonable grounds review, I would invalidate the categorical exemption as it was actually applied here—to categorically exempt SUGM from Woods's claims of employment discrimination. While I believe this is the correct holding under article I, section 12, such a holding does not deny employers like SUGM religious freedoms. Though broadly asserted claims of free exercise fail, the narrow ministerial exception may be asserted as a defense to WLAD liability. I would remand to the superior court so that SUGM may seek to prove that applying WLAD to its decision not to hire Woods violates its right under the federal and state religion clauses based on the ministerial exception. Accordingly, while I dissent from the majority's analysis and conclusion under article I, section 12, I concur in the result.

Stephens, J.

Fairhurst, J.P.T.

Superior Court for the State of Washington
in and for the County of King

JUDGE KAREN DONOHUE
Department 22

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RE: Woods v. Seattle's Union Gospel Mission
King County Superior Court Case
No. 17-2-29832-8

Dear Counsel,

This case involves the difficult balance between civil rights and the exercise of religious beliefs.

Mr. Woods is a bisexual Christian who believes in the teachings of Jesus Christ. His "world view is shaped by the ministry of Jesus Christ who teaches [him] that social justice is critical in a world where we have

enough resources that no one need go without their basic needs ....” Woods Decl., Ex 5. Mr. Woods wished to exercise his beliefs through an opportunity that he considered to be his dream job: working with the Open Door Legal Services (ODLS) clinic with Seattle’s Union Gospel Mission (the “Mission”). Woods Decl., Ex 6. He was denied the opportunity of being considered for this job despite possessing the required skills and education and despite his history of volunteering with, and being supportive of OLDS, because of his sexual orientation. Diskin Decl., Ex F. The Mission stipulated that it would be facing a prima facie case of sexual orientation discrimination were they a secular employer.

The Mission is a religious non-profit organization. The Mission’s Articles of Incorporation state that the “objects and purposes of this corporation are and shall be the preaching of the gospel of Jesus Christ by conducting rescue mission work in the City of Seattle, and to carry on such work as may be necessary or convenient for the spiritual, moral and physical welfare of any of those with who it may work .... and that any phase of the work other than direct evangelism shall be kept entirely subordinate and only taken on so far as seems necessary or helpful to the spiritual work ....” Mitchell Decl., Ex 1. On its website, the Mission describes the organization as “a passionate community of people who follow Christ in his relentless, redeeming love for all people. [Its] mission is to serve, rescue, and transform those in greatest need through the grace of Jesus Christ.”

The Mission brought a motion for summary judgment on the basis that it is statutorily exempt from the Washington Law Against Discrimination (WLAD) RCW 49.60.040(11)[1]. Mr. Woods alleges that there are genuine issues of material fact as to whether the religious exemption to WLAD is unconstitutional as applied.

Mr. Woods urges the court to find that Justice Wiggins' partial concurrence with the dissent in *Ockletree v. Franciscan Health System*, 179 Wn.2d 769 establishes a "job duties" test that would allow the court to undertake an objective examination of the job description at issue as well as the employee's responsibilities within the organization. Mr. Woods argues that the duties of an ODLS attorney are entirely secular and are just like the duties he performs in his current job as a public interest attorney.

Setting aside the question of how to interpret a 4-4-1 opinion and the determination of what the holding in *Ockletree* actually was, even if the court were to adopt Justice Wiggins' test, he clearly states that the exemption in 49.60.040(11) is reasonable to the extent that it relates to employees whose job responsibilities relate to the organization's religious practices. *Ockletree* at 806. Justice Stephens' dissent likewise states that the exemption in 49.60.040(11) is unconstitutional as applied to discrimination that is unrelated to an employer's religious purpose,

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[1] Since enacted, the legislature has not revised the religious employer exemption to limit the scope of RCW 49.60.040(11), despite broadening categories of protection.

practice, or activity. *Ockletree* at 789-90.

In *Ockletree*, there was clearly no relationship between the employment duties of Mr. Ockletree and religious beliefs or practices. Nor was there a nexus between the basis of the claimed discrimination (race and disability) and the organizations religious belief or practices. Here, however, there is an assertion that employment duties are based on religious beliefs and practices.

If we focus solely on the legal counseling duties there is no nexus between the job duties and the discrimination, but the Mission claims the job duties extend beyond legal advice to include spiritual guidance and praying with the clients. See e.g. Baier Decl. and Mace Decl. Ms. Baier declared that her job duties include spiritual guidance: She is encouraged to talk openly about her faith and ask her clients about their religious beliefs. Further, her faith "strongly influences" discussions about family law matters, domestic violence issues and immigration. Bair Decl. 1- 2.

The job duties and requirements for the staff attorney position include, aside from secular legal responsibilities:

- Work cooperatively with other Mission departments as a team to efficiently and positively accomplish the work of the Mission.
- Attend all Mission meetings and training sessions, as required.
- Must support the Legal Services mission

> statement: to seek justice for the poor and minister to the needy through the provision of legal services, to practice law in a manner that honors and glorifies God, and to love others and share the gospel of Jesus Christ.

It also put applicants on notice that a successful candidate would have to accept the Mission's Statement of Faith, which references the Bible as "the inspired, the infallible, authoritative Word of God" as well as other Evangelical Christian doctrines.

While individuals and other religious organizations may interpret the Bible differently, it is not for this or any court to determine the validity of the Mission's religious beliefs. "It is not the role of the courts to reject a group's expressed values because they disagree with those values or find them internally inconsistent." *Boy Scouts of America v. Dale*, 530 U.S. 640, 651, 120 S. Ct. 2446, 147 L.Ed.2d 554 (2000)(internal quotes omitted.)

If the court were to deny the motion for summary judgment, the case would then focus on which activities within the Mission are secular and which are religious. As the Supreme Court noted in *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987):

> [I]t 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. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.

EEOC v. RG and GR Harris Funeral Homes, Inc. 884 F.3d 560 (6th Cir. 2018), which Mr. Woods asks this court to rely upon, is persuasive in many respects. However, it is distinguishable in that the funeral home was not a religious institution; its Articles of Incorporation did not state any religious purpose. Here, there can be no doubt that the Mission is a religious organization.

Summary judgment is proper if, after viewing all the pleadings, affidavits, depositions, admissions, and reasonable inferences in favor of the nonmoving party, the court concludes that (1) there is no genuine issue as to any material fact; (2) reasonable persons could reach only one conclusion; and (3) the moving party is entitled to judgment as a matter of law. *Eugster v. State*, 171 Wn.2d 839, 843,259P.3d146 (2011); *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13P.3d1065 (2000).

If the court were to deny the Mission's motion all remaining factual questions revolve around the Mission's sincerely held religious beliefs and whether the roles of the staff attorneys include religious duties. There are no other genuine issues as to material facts. In case after case, the courts remind

us that judges and the courts cannot determine the importance of or the relative merits of different religious beliefs. The societal tensions between religion and LGBQT disputes "must be resolved with tolerance [and] without undue disrespect to sincere religious beliefs." *Masterpiece Cakeshop, Ltd. V. Colorado Civil Rights Comm'n* No. 16-111, 2018 WL 2465172 (U.S. June 4, 2018).

For the reasons stated above, the court thus grants the Mission's motion.

Karen Donohue
Judge, King County Superior Court

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendants.	NO. 17-2-29832-8 SEA ORDER GRANTING DEFENDANT SEATTLE'S UNION GOSPEL MISSION'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER having come for hearing on Defendant Seattle's Union Gospel Mission's Motion for Summary Judgment, and this Court having heard oral argument and considered the briefing of the parties and the pleadings and paper on record, including:

1. Defendant Seattle's Union Gospel Mission's Motion for Summary Judgment;
2. Declaration of Alissa Baier and its exhibits;
3. Declaration of Mary Douglas and its exhibits;
4. Declaration of David Mace and its exhibits;
5. Declaration of Terry Pallas and its exhibits;

6. Declaration of David Mitchell and its exhibits;
7. Plaintiff Matthew Woods' Opposition to Defendant's Motion for Summary Judgment;
8. Declaration of J. Denise Diskin and its exhibits;
9. Declaration of Matthew Woods and its exhibits;
10. Defendant's Reply in Support of Motion for Summary Judgment; and
11. Declaration of Nathaniel Taylor and its exhibits;
12. Plaintiff Matthew Woods' Briefing on Supplemental Authority Offered by Defendant at Oral Argument; and
13. Defendant Seattle's Union Gospel Mission's Reply to Plaintiff's Briefing on Supplemental Authority.

The court heard argument from counsel for both parties. Being fully advised, and for the reasons laid out in this court's June 25, 2018 memorandum opinion and order, the court hereby ORDERS that Defendant Seattle's Union Gospel Mission's Motion for Summary Judgment is GRANTED. Accordingly, all claims asserted against Defendant are dismissed with prejudice.

DATED: July 9, 2018

THE HONORABLE KAREN DONOHUE

Presented by:

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THE SUPREME COURT OF WASHINGTON

MATT WOODS, Appellant, v. SEATTLE'S UNION GOSPEL MISSION, Respondent.	No. 96132-8 **O R D E R** King County Superior Court No. 17-2-29832-8 SEA

Department I of the Court, composed of Chief Justice Fairhurst and Justices Johnson, Owens, Wiggins and Gordon McCloud, considered at its April 2, 2019, Motion Calendar whether this case should be retained for decision by the Supreme Court or transferred to the Court of Appeals. The Department unanimously agreed that the following order be entered.

IT IS ORDERED:

That this Court will retain this case for hearing and decision.

DATED at Olympia, Washington, this 3rd day of April, 2019.

For the Court

Fairhurst, C.J.

CHIEF JUSTICE

42 U.S.C. 2000e-1
Exemption

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

* * * * *

42 U.S.C. 2000e-2
Unlawful Employment Practices

(a) Employer practices

It shall be an unlawful employment practice for an employer--

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

* * * * *

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

* * * * *

42 U.S.C. 12112(a)
Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

* * * * *

42 U.S.C. 12113(d)
Defenses

* * * * *

(d) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

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Excerpts of RCW 49.60.040
Definitions

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(11) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

* * * * *

Excerpts of RCW 49.60.180
Unfair Practices of Employers

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

* * * * *

No. 96132-8

SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW S. WOODS, Plaintiff/Petitioner, v. SEATTLE'S UNION GOSPEL MISSION, Defendant/Respondent.	STATEMENT OF GROUNDS FOR DIRECT REVIEW BY THE SUPREME COURT

* * * * *

B. ISSUE PRESENTED FOR REVIEW

Washington law prohibits employers from discriminating against any person in the terms or conditions of employment because of sexual orientation. SUGM has an ongoing policy and practice of excluding from employment, regardless of the job duties of the position in question, all persons who engage in "homosexual behavior." Did the Superior Court err in finding that all employment with SUGM is exempt from Washington's Law Against Discrimination under RCW 49.60.040(11)?

* * * * *

No. 96132-8

SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW S. WOODS, Appellant,

v.

SEATTLE'S UNION GOSPEL MISSION, Respondent

AMENDED BRIEF OF APPELLANT

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* * * * *

ii. The RPCs prevent ODLS staff attorneys from placing SUGM's religious beliefs ahead of the ethical obligations to provide independent legal analysis, free from discrimination.

The Rules of Professional Conduct for attorneys licensed in Washington State also underscore that SUGM's religious beliefs cannot override the obligations of ODLS staff attorneys to represent their clients independently and without discrimination. SUGM argues that each of its programs is a "Ministry," and all employees, including ODLS attorneys, are united by the employees' prime directive of evangelizing. CP 706 (Pallas 125:11-127:2, "I think the primary thing is we are expecting

the staff attorney … to be a minister of the gospel first and foremost."). But ODLS attorneys, like all lawyers, owe an undivided ethical duty to their clients, not to their employer or to any religious institution. RPC 5.4. In giving counsel, lawyers may refer to moral, ethical and social factors that influence their advice, but the lawyer must be free to exercise independent judgment to give candid advice. RPC 2.1 and cmt 2.[4] A non-lawyer employer, even if it is a religious entity, cannot impose its values over the professional judgment of lawyer employees, mandating that they provide advice that prioritizes the employer's religious agenda over a client's legal objectives. Nor is ODLS allowed to commit discriminatory acts in connection with its lawyers' professional activities. RPC 8.4(g) ("it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status or marital status.").

The ODLS job description itself emphasized that staff attorneys must "strictly comply with the Washington Rules of Professional Conduct." CP 402. In order to comply with the RPCs, staff attorneys

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[4] It is important to note that the record clearly reflects that SUGM's legal advice to clients is not influenced by religious ministration. CP 723 (Mace 27:9-29:21). Also, nowhere does the record reflect that Mr. Woods would object to praying with clients upon request in keeping with his Christian faith. Mr. Woods does not assert that ODLS is performing legal services which violate the RPCs, but rather that the RPCs demand that ODLS staff attorneys perform their jobs without allowing religious beliefs to override their fundamental and secular obligations to their clients.

cannot be required to put SUGM's religious beliefs or practices ahead of their professional responsibilities and obligations as lawyers – a point that the trial court did not address.

* * * * *

Mr. Woods does not contest that SUGM's beliefs are sincerely held, but SUGM has presented no evidence that hiring him would substantially burden its beliefs, *i.e.*; it has not shown that hiring him would have a "coercive effect in the practice of [its] religion." *Niemann v. Vaughn Cmty. Church*, 118 Wn. App. 824, 831, 77 P.3d 1208 (2003), *aff'd*, 154 Wn.2d 365, 113 P.3d 463 (2005), citing *First Covenant Church of Seattle*, 120 Wn.2d at 218. As an ODLS attorney he would have led no religious services, performed no religious instruction, and SUGM's religious beliefs regarding sexual orientation would have been entirely irrelevant to his representation. CP 113, 723 (Mace, 27:9-29:21). SUGM is not being asked to endorse his sexual orientation in any way, only to offer him equal opportunity for employment as a staff attorney.

Indeed, affording Mr. Woods WLAD protection has a "clear justification … in the necessities of … community life" and prevents a "'clear and present, grave and immediate' danger to public health, peace, and welfare." *First Covenant Church of Seattle*, 120 Wn.2d at 226-27 (citations omitted). The WLAD's exemption for religious employers must be narrowed to protect the other fundamental rights embodied by the statute.

* * * * *

No. 96132-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MATTHEW S. WOODS,

Appellant,

v.

SEATTLE'S UNION GOSPEL MISSION,

Respondent.

BRIEF OF RESPONDENT

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* * * * *

G. The relief sought by Mr. Woods violates the Mission's rights under the First Amendment and article I, section 11.

Mr. Woods attempts to shift his constitutional burden of proof to the Mission, as if the Mission were asking this Court for relief from a law of general applicability. Am. App. Br. at 34 (The Mission "has provided no evidence that hiring [Mr. Woods] would substantially burden its beliefs."). But Mr. Woods has the burden of proving the WLAD exemption unconstitutional beyond a reasonable doubt. *See* Section III.A, *supra*, at 12. Mr. Woods cites no legal authority for the proposition that the Mission must articulate a specific burden on religious expression in

order to claim the WLAD exemption.[14] Nevertheless, the burden on the Mission's rights under the First Amendment and article I, section 11[15] is well established in the trial court record.

1. Mr. Woods openly opposed the Mission's religious beliefs and forcing the Mission to hire him would unconstitutionally regulate its religious expression.

Mr. Woods states that because he self-identifies as a Christian the Mission cannot claim that its employment decisions were based on religion. Am. App. Br. at 35-6. But the record demonstrates that Mr. Woods disagrees with the Mission's sincerely held religious beliefs, *see* section II.D, *supra*, at 8, and in prior pleadings he charged the Mission with holding "anti-gay religious belief[s]" and described its beliefs as "invidious." CP 97, 107.

Mr. Woods counters that he affirmed the Mission's Statement of Faith "multiple times as a volunteer and in his application for employment." Am. App. Br. at 36. But it is for the Mission, not a court, to determine whether Mr. Woods would fairly express the Mission's religious message. *See Employment Div., Dept. of Human Resources of Ore.*

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[14] The cases cited at pages 31-34 of Mr. Woods' brief involve laws of general applicability.

[15] The Washington constitution imposes even greater protection for the Mission's free exercise of religion than the First Amendment. *See First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224, 840 P.2d 174 (1992) (applying analysis from *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) in determining that the free exercise provisions of article I, section 11 of the Washington Constitution are "significantly different and stronger than the federal constitution.").

v. Smith, 494 U.S. 872, 887, 110 S. Ct. 1595, 108 L.Ed.2d 876 (1990) (The Supreme Court will not "question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds.") (internal quotations omitted); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 450, 89 S. Ct. 601, 21 L.Ed.2d 658 (1969) (holding that "the First Amendment forbids civil courts from" interpreting "particular church doctrines" and determining "the importance of those doctrines to the religion").

As described in section II.B, *supra*, at 5, the Mission requires all of its employees to express its religious beliefs and believes that publicly rejecting traditional Christian teaching on marriage and sexuality is tantamount to rejecting that the Bible is the infallible, inspired, authoritative word of God.[16]

Mr. Woods' rejection of the Mission's beliefs implicates the Mission's ability to accomplish its expressive religious purpose for the reasons Justices Alito and Kagan describe in their *Hosanna-Tabor* concurrence: "When it comes to the expression and inculcation of religious doctrine, there can be no doubt that *the messenger matters*. . . . both the content and credibility of a religion's message depend vitally on the character *and conduct* of its teachers. *A religion*

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[16] Sidestepping the doctrine of infallibility, Mr. Woods argued at the trial court level that many Christian churches are open and affirming. CP 90. The Mission designated a seminary professor as an expert in biblical hermeneutics who would testify that the Mission's beliefs on marriage and sexuality flow directly from the doctrine of infallibility contained in the Mission's statement of faith. RP 15.

cannot depend on someone to be an effective advocate for its religious vision if that person's conduct fails to live up to the religious precepts that he or she espouses." *Hosanna-Tabor*, 565 U.S. at 201, 132 S. Ct. 694 (Alito, J., concurring) (emphasis added).

2. Forcing the Mission, under threat of liability, to employ a person who opposes its religious beliefs would unconstitutionally interfere "with an internal church decision that affects the faith and mission of the church itself."

The WLAD employment provisions are not generally applicable because Washington—like all other states where sexual orientation is a protected class—has a religious exemption. But even if a court were to do what Mr. Woods requests—pretend the exemption did not exist—it would violate the Mission's rights under the First Amendment and article I, section 11.

Mr. Woods' desired remedy—civil liability and injunctive relief– would unconstitutionally interfere in the internal affairs of the Mission. The Supreme Court in *Hosanna-Tabor* emphasized that religious organizations' freedom of association is significantly greater than that enjoyed by secular groups: "the text of the First Amendment itself, [ ] gives special solicitude to the rights of religious organizations." *Hosanna-Tabor*, 565 U.S. at 189, 132 S. Ct. 694 (unanimous opinion). Moreover, there is distinction between constitutionally permissible state interference with "outward physical acts"—like denying unemployment benefits for ingestion of peyote—and "government interference with an

internal church decision that affects the faith and mission of the church itself." *Id.* at 190, 132 S. Ct. 694; *see Trinity Lutheran*, ___U.S.___, 137 S. Ct. 2012, 2021 n.2 ("This is not to say that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause."); *see generally Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 682-83, 130 S. Ct. 2971, 2986, 177 L. Ed. 2d 838 (2010) (the Supreme Court has emphasized "in diverse contexts" that its "decisions have distinguished between policies that require action and those that withhold benefits."); *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718, 101 S. Ct. 1425, 1432, 67 L. Ed. 2d 624 (1981) (recognizing the "substantial pressure" on an adherent to modify religious beliefs, burdening religious exercise, where a benefit is conditioned on "conduct proscribed by a religious faith.").

* * * * *

Here, Mr. Woods asks the state to force a church to hire employees who do not agree with or respect its religious beliefs—ignoring that the very way the church expresses its religious beliefs is through its employees.

Finally, and most importantly, the issue here is not race, but religious views on marriage and sexuality internal to the Mission. The *Obergefell* Court stated "it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts" their views on marriage and sexuality and that "[t]he First Amendment ensures

that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Obergefell v. Hodges*, ___U.S.___, 135 S. Ct. 2584, 2607, 192 L.Ed.2d 609 (2015). The Mission's religious belief "has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world." *Id.* ___U.S.___, 135 S. Ct. at 2594, 192 L. Ed. 2d 609.

IV. CONCLUSION

Mr. Woods bears the burden of proving the WLAD religious exemption unconstitutional beyond a reasonable doubt "after searching legal analysis." He acknowledges the sincerity of the Mission's sincerely held religious beliefs. He does not contest that the Mission's employment decisions were based on its sincerely held religious beliefs. But he wants this Court to completely rewrite existing article I, section 12 jurisprudence, then remand for a trial on how the Mission's purpose to share the gospel of Jesus Christ is carried out in its work serving the poor and vulnerable.

Mr. Woods' request for an invasive inquiry into the Mission's religious practices perfectly illustrates the reasonable grounds for WLAD religious exemption. The trial court correctly entered summary judgment and its ruling should be affirmed.

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No. 96132-8

SUPREME COURT OF THE STATE OF WASHINGTON

MATTHEW S. WOODS, Appellant,

v.

SEATTLE'S UNION GOSPEL MISSION, Respondent.

REPLY BRIEF OF APPELLANT

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Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C. provides guidance as to the extent of the First Amendment-derived free exercise right to discriminate on grounds *other than* being "co-religionist." *See gen.* 565 U.S. 171, 132 S.Ct. 694 (2012). There, the Supreme Court performed a fact-based analysis of religious versus secular job duties. *Id.* at 191-92. The result was that a church seeking to discriminate against an employee with a disability could only permissibly do so if the employee's job duties were ministerial – not by adopting any particular quota of religiosity, *id.* at 190 ("We are reluctant … to adopt a rigid formula") but because the duties and qualifications denoted the employee's responsibility for teaching and disseminating her employer's religious message. *Id.* at 192 ("In light of these considerations—the formal title given Perich by

the Church, the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church—we conclude that Perich was a minister covered by the ministerial exception.").

In this case, Mr. Woods has extensive personal knowledge about the job duties performed by SUGM's staff attorneys based on his long service to the organization as a full-time legal intern and a volunteer attorney. Based on his experience, he has offered evidence to raise material issues of fact regarding whether the job duties for the position are religious in nature. Mr. Woods asks that this Court narrowly tailor the religious employer exemption to only the accommodation absolutely necessary to avoid a concrete and substantial burden on SUGM's religious freedom, and allow Mr. Woods to pursue his claims.

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No. 96132-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MATTHEW S. WOODS,

Appellant,

v.

SEATTLE'S UNION GOSPEL MISSION,

Respondent.

RESPONDENT'S ANSWER TO AMICUS CURIAE BRIEFS OF WELA, ACLU, AND CENTER FOR JUSTICE, *ET AL.*

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I. INTRODUCTION

The single issue in this case is whether Mr. Woods has proved—beyond a reasonable doubt, through searching legal analysis—absence of "reasonable grounds" for the religious employer exemption under article I, section 12 of the Washington Constitution. He has not and cannot.

So, avoiding the legal issue, Amici offer policy-oriented arguments for limiting the exemption using an invasive, fact-specific inquiry into the religious qualifications and duties of *every job* at *every religious institution* that seeks to employ only co-religionists.

Amici offer no legal reason why their policy proposals are required under article I, section 12. Moreover, their proposals are not permitted under the First Amendment and article I, section 11 of the Washington Constitution.

* * * * *

2. Incredibly, amici claim that religious organizations may not consider religion in employment decisions regarding non-ministers.

Amici Center for Justice, *et al.* are honest about the extreme result they seek: they argue for a limitation of the WLAD exemption to ministers *even in employment decisions related to religion*.[33] Meaning, it would be unlawful discrimination in Washington State for religious nonprofits to hire employees *on the basis of religion*. Their proposed rule is unconstitutional. *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 623 (6th Cir. 2000) (Title VII exception for all employees recognizes "constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions."); *Little v. Wuerl*, 929 F.2d 944, 948 (3rd Cir. 1991) ("attempting to forbid religious discrimination against non-minister employees where

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[33] Amici Ctr. for Justice, *et al.* actually make the point twice. First, "the issue is whether a religious organization may use its views of a person's religious beliefs . . . as a litmus test for a job that . . . is not a ministry position," Amici Ctr for Justice, *et al.* Br. 5; and, second, "the issue is . . . whether a religious organization may use its views of a person's religious beliefs . . . as a litmus test for a job that is not a ministry position by its nature." Amici Ctr for Justice, *et al.* Br. 18.

the position involved has any religious significance is uniformly recognized as constitutionally suspect, if not forbidden.").[34]

Further, amici's argument is untethered from *Ockletree*; nothing in *Ockletree* suggests the exemption is or should be limited to "ministers" or that religious organizations do not have the right—grounded in statute or constitution—to make religious employment decisions for non-ministers.

3. Amici ignore the protections provided by Washington's Article I, Section 11 and the hybrid rights doctrine under the U.S. Constitution.

Article I, section 11 provides that "Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed," and this Court has made clear that its protection is "significantly different and stronger than" the First Amendment. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224 (1992). If state action substantially burdens a sincerely held religious belief, that state action is subject to strict scrutiny under article I, section 11 and therefore must be the least restrictive means of achieving a compelling governmental interest. *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642 (2009); *Backlund v. Board of Com'rs of King County Hosp. Dist. 2*, 106 Wn.2d 632, 641 (1986). Amici and Mr. Woods consistently ignore this and

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[34] *Biel* notes "had [the employer] asserted a religious justification for terminating [the employee], our holding would neither have commanded nor permitted the district court to assess the religious validity of that explanation." *Biel*, 911 F.3d at 611 n.6

suggest that the WLAD can be extended to prevent and punish the Mission's actions without offering either: (1) a compelling state interest—which has not been asserted by Washington or any other jurisdiction—in prohibiting religious employers from making religious employment decisions; or (2) how amici's proposed tests are narrowly tailored to achieve this interest.

The federal constitution also requires strict scrutiny of any state action that would purport to restrict the Mission's ability to make religious employment decisions. First, Mr. Woods and amici's arguments trigger hybrid rights analysis because they implicate not only the Mission's free exercise rights but also its religious autonomy, expressive association, and ability to speak.[35] *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 881-82, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990) (strict scrutiny is required in hybrid rights cases); *First Covenant*, 120 Wn.2d at 225. The Mission's core purpose is expressive.[36] And the Mission's ability to accomplish its expressive purpose is dependent on its ability to hire individuals who share its beliefs and its understanding of the evangelical purpose for its work. CP 65, 372, 402, 695; RP 15. As recognized by the lower court, CP 171, it is for the Mission to determine what its religious beliefs are, who shares those beliefs,

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[35] *See* Br. of Resp't 25-26, 44-46.

[36] *See* Reply. Br. of Appellant 45; CP 72, 403, 706 (quoting Mark 8:36). The Mission engages in religious speech through its employees, all of whom are required to share the Gospel through both their words and their personal conduct. CP 65, 372, 402, 695-96. This requirement is in the ODLS attorney job description. CP 402 ("share the Gospel of Jesus Christ.").

and who is qualified to and capable of accomplishing its evangelical purpose. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 120 S. Ct. 2446, 147 L. Ed. 2d 554 (2000). Mr. Woods has not asserted any state interest that could justify the sweeping burdens he seeks.

Second, this case implicates the Supreme Court's clearly articulated limitation on the reach of even generally applicable and neutral laws. The Mission gets to determine what it believes, who shares its beliefs, and exactly how to—and much "religion" is required to—accomplish its mission to "serve, rescue, and transform those in greatest need through the grace of Jesus Christ" *Compare* CP 77, 64-65, *with* CP 203 (Mr. Woods' cover letter expressing religious disagreement with how to accomplish the Mission's stated purpose). These are each an "internal [Mission] decision that affects the faith and mission of [the Mission] itself." *Hosanna-Tabor*, 565 U.S. at 190, 132 S. Ct. 694; *see Trinity Lutheran*, 137 S. Ct. at 2021 n.2. These decisions are reserved to the Mission and cannot be regulated or punished by even generally applicable and neutral laws.

G. Amici ask this Court to render an unconstitutional value judgment on the Mission's religious purpose and agree with amici's misinterpretation of the Mission's beliefs.

Amici Center for Justice, *et al.* offer heartbreaking statistics about LGBTQ youth to argue for limiting co-religionist exemptions to ministers. Amici indicate that "having staff who identified as LGBTQ" better serves that population and failure to do so is "denying LGBTQ clients a safe and accepting

resource."[37] This aligns with Mr. Woods' argument that "I am a good legal aid attorney because of my sexuality."[38]

This illustrates the Mission's point that relationships developed in the course of providing legal services allow an attorney to share other messages—in the Mission's case, the Gospel—in furtherance of the employer's purpose. The Mission has a religious purpose and takes an evangelistic approach where loving people holistically creates opportunities for all Mission employees to talk about the transforming power of Jesus. CP 64, 696.

Amici state that the Mission's religious employment practices are harmful to its clients and guests. Implicit in this argument is what Mr. Woods also suggests, that the Mission requires its employees to "preach its religious beliefs against marriage equality or same-sex relationships."[39] This is a false assumption, unsupported by the record, that runs contrary to the Mission's religious purpose to express the unconditional love of Christ to nonbelievers. CP 64, 696. It exemplifies the dangers of policy arguments and civil cases turning on (mis)interpretations and assumptions about religious doctrine. *See Amos*, 483 U.S. at 336, 107 S. Ct. 2862 (religious organization "might understandably be concerned that a judge would not understand its religious tenets and sense of mission.").

The Mission believes its employees must live

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[37] Br. of Amici Ctr. for Justice, *et al.* 15-16.

[38] Am. Br. of Appellant 13.

[39] Reply Br. of Appellant 20 n.5.

consistent with its beliefs about the Bible's teachings in order to effectively deliver the Gospel message. CP 65. That does not mean sitting in condemning judgment on its clients and guests, which is a caricature of the Mission's beliefs about the Gospel message.

Amici ask this Court to engage in multiple unconstitutional determinations about the relevance of the Mission's religious purpose, what it means to express its religious purpose, and the comparative values of the Mission's religious purpose and the purposes of other nonprofits. Respectfully, this Court cannot, consistent with the First Amendment or article I, section 11, make any of those determinations.

III. CONCLUSION

The WLAD exemption accommodates the Mission's constitutional rights to make religious employment decisions and serves the secular purpose of reducing state entanglement in religious affairs. It therefore satisfies reasonable grounds. The unprecedented results sought by amici and Mr. Woods would be a dramatic departure from *Ockletree* and are neither constitutionally required nor permitted. The Mission respectfully requests that the trial court's entry of summary judgment be affirmed.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATTHEW S. WOODS, an individual Plaintiff, v. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	Case No.: **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Matthew S. Woods ("Plaintiff" or "Woods") brings this Complaint for Declaratory and Injunctive Relief against Defendant Seattle's Union Gospel Mission ("Defendant" or "UGM"), and alleges as follows:

I. PARTIES

1. Plaintiff was and is a resident of King County and sought employment with Defendant in King County, Washington.

2. Defendant is a nonprofit organization operating in King County, Washington. It provides aid services to homeless and impoverished individuals.

II. JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over the parties pursuant to RCW 2.08.010.

4. This Court has personal jurisdiction over Defendant.

5. Venue is proper in this Court under RCW 4.12.020 because the events giving rise to this action occurred in King County.

III. FACTUAL ALLEGATIONS

6. Defendant had more than eight employees at all relevant time periods.

7. Upon information and belief, Defendant provides certain non-religious aid services to poor and/or homeless individuals in Seattle and greater King County, including emergency food and shelter, transitional housing, addiction and recovery support, dental services, mental health services, and legal services.

8. Upon information and belief, Defendant provides certain religious support services to poor and/or homeless individuals in Seattle and greater King County, including a youth ministry and prison ministry.

9. Upon information and belief, Defendant provides legal services through its Open Door Legal Services ("ODLS") program, which operates weekly free legal clinics in four locations in Seattle, Bellevue, and Everett. The ODLS program description reads:

> We're giving poor and homeless men and women a voice, so they can move on to the next stage of life. By clearing up their legal issues we equip them to leave chronic homelessness in the past.
>
> Our volunteer lawyers and paralegals meet with each client to hear their story. Then we help them build a plan to address the issue. We exist to provide affordable legal assistance to those in greatest need.

See http://www.ugm.org/site/PageServer?pagename=programs_legal (*last accessed November 15, 2017*). The ODLS program description and list of services do not reference religion.

10. Upon information and belief, the job duties of staff attorneys employed by Defendant are wholly unrelated to any religious practice or activity. UGM staff attorneys' duties are not religious or sectarian in nature; UGM staff attorneys do not provide ministerial services, UGM does not require its staff attorneys to lead or participate in religious services, and does not require that UGM staff attorneys lead prayer or participate in other religious activities with UGM staff or clients. UGM staff attorney duties are similar to the job duties of an attorney employed by a non-religious provider of free or low-cost legal services.

11. Upon information and belief, staff attorneys and other individuals employed by Defendant are asked to profess a personal Christian faith, contained in the organization's Statement of Faith. Defendant's Statement of Faith does not reference or prohibit homosexual behavior.

12. Woods is an attorney licensed by the Washington State Bar Association.

13. Woods is a bisexual man.

14. Woods is a Christian, and reviewed UGM's Statement of Faith prior to volunteering with the organization. He shares a common belief in the tenets expressed in UGM's Statement of Faith.

15. Between approximately June and September 2012, Woods served as an intern with ODLS while he

was in law school. Woods was supervised by the attorneys employed by UGM. He continued to volunteer for UGM's ODLS program as a law student and volunteer attorney through approximately March 2015.

16. At all times relevant to this lawsuit, the UGM Employee Code of Conduct contained a prohibition on same-sex romantic relationships. Upon information and belief, UGM's Employee Code of Conduct does not apply to student interns or volunteer attorneys.

17. During his tenure as an ODLS intern and volunteer, Woods was not required to sign the UGM Employee Code of Conduct.

18. During his tenure as an ODLS intern and volunteer, Woods was not aware of the UGM Employee Code of Conduct's prohibition of same-sex romantic relationships.

19. On or around October 4, 2016, Woods received notification of an open ODLS staff attorney position via email from ODLS Director David Mace.

20. In response to Mace's email of October 4, 2016, Woods inquired with ODLS staff attorney Alissa Baier about the open position. Baier responded that she, Mace, and other ODLS staff had been "wondering … if you would be looking for something new. Please do apply!"

21. On or around October 13, 2016, Woods contacted Mace expressing interest in the open staff attorney position, and disclosed that he was in in a same-sex relationship.

22. On or around October 14, 2016, Mace responded to Woods' inquiry and disclosure of his

relationship status, stating he was "sorry you won't be able to apply," citing UGM's Employee Code of Conduct.

23. UGM's Employee Code of Conduct states: "All staff members are required to sign the doctrinal standard of Seattle's Union Gospel Mission. All staff members are expected to live by a Biblical moral code that excludes … homosexual behavior … and any activity that would have an appearance of evil."

24. Woods submitted an application to the open staff attorney position in the days prior to November 11, 2016. His application met the qualifications described in UGM's call for applications.

25. In response to Woods' application to UGM, he was contacted by a UGM staff member requesting a phone interview. When Woods asked whether she was aware of his sexual orientation, she stated she would need to get back to him to schedule the interview.

26. Directing Attorney David Mace verbally confirmed to Woods that UGM would not consider his application for the open UGM staff attorney position because of Woods' sexual orientation: that is, his disclosure that he was in a same-sex relationship.

27. Woods was not selected for the UGM staff attorney position.

28. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has lost business opportunities, suffered monetary damages, and other compensable damage.

29. As of the date of this filing, UGM's Employee Code of Conduct prohibits UGM from hiring any person who discloses to UGM that they engage in

sexual behavior with members of the same sex.

IV. CAUSE OF ACTION

Violation of the Washington Law Against Discrimination

30. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-29 above.

31. UGM is subject to civil liability under RCW 49.60, *et seq*. because the job duties of the position for which Plaintiff applied and for which UGM refused to consider his application were unrelated to any religious practices or activities.

32. The Washington Law Against Discrimination, RCW 49.60, protects the citizens of Washington from discrimination on the basis of sexual orientation in employment. RCW 49.60.030; RCW 49.60.180.

33. The Washington Law Against Discrimination defines "sexual orientation" as "heterosexuality, homosexuality, bisexuality, and gender expression or identity." RCW 49.60.040(26). The definition includes "having or being perceived as having … behavior … different from that traditionally associated with the sex assigned to that person at birth." *Id.*

34. Plaintiff is a bisexual man in a romantic same-sex relationship and, for the purposes of the definitions set forth in the Washington Law Against Discrimination, he is protected based upon his "sexual orientation."

35. By categorically excluding from employment any individual, including Plaintiff, who engages in "homosexual behavior," Defendant has drawn a

classification that discriminates on the basis of sexual orientation.

36. As a result of this exclusion, individuals who, like Plaintiff, identify as homosexual, bisexual, or whose gender identity and/or expression encompasses behavior prohibited by Defendant's policy are excluded from employment, but heterosexual individuals are not excluded.

37. By excluding said individuals from consideration for any employment with UGM, Defendant has unlawfully discriminated – and continues to unlawfully discriminate – on the basis of sexual orientation in violation of the Washington Law Against Discrimination.

38. Defendant violated Plaintiff's rights under Washington's Law Against Discrimination, RCW 49.60, by refusing to consider Plaintiff for employment as a staff attorney because of his sexual orientation.

39. To the extent that Defendant asserts an exemption under RCW 49.60.040(11), this exemption is unconstitutional because the position for which Plaintiff sought employment was wholly unrelated to UGM's religious practices or activities.

V. DAMAGES

40. As a result of Defendant's actions, Plaintiff has lost nominal back pay and front pay, business opportunities, and other benefits in an amount to be established at trial.

41. As a result of Defendant's actions, Plaintiff has incurred out-of-pocket legal costs and expenses in an amount to be established at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for damages as appropriate to compensate for such injuries, as described above, under law as appropriate, including:

1. A money judgment against Defendant and in favor of Plaintiff in an amount to be determined at trial;

2. Declaratory relief pursuant to the Washington Law Against Discrimination;

3. Injunctive relief pursuant to the Washington Law Against Discrimination;

4. An award of statutory and reasonable attorneys' fees and costs of suit as allowed under law; and

5. For such other relief as the court deems just and equitable.

DATED this 16th day of November, 2017.

TELLER & ASSOCIATES, PLLC

By: /s/ Denise Diskin

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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW S. WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	NO. 17-2-29832-8 SEA **ANSWER**

* * * * *

V. AFFIRMATIVE DEFENSES

Having answered Plaintiff's claims, UGM raises the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim on which relief can be granted.

2. The Court lacks subject matter jurisdiction because Plaintiff's Complaint asks this Court to interpret UGM's religious doctrine in violation of the First Amendment to the U.S. Constitution and Article I, Section 11 of the Washington Constitution.

3. The Court lacks subject matter jurisdiction because UGM is a religious nonprofit and exempt from the employment provisions of RCW 49.60.

4. The relief sought by Plaintiff would violate UGM's freedom of association, freedom of speech, and free exercise of religion in violation of the First

Amendment to the U.S. Constitution and Article I, Section 11 of the Washington Constitution.

5. The relief sought by Plaintiff is barred by the ministerial exception.

6. Plaintiff was not qualified for employment with UGM based upon material disclosed in his application that did not pertain to sexual activity.

7. To the extent Plaintiff claims lost back pay, front pay, business opportunities, or other benefits, the loss is a result of Plaintiff's failure to mitigate.

8. To the extent Plaintiff would have been damaged, such damages are mitigated because the position for which he applied was eliminated for fiscal reasons in August 2017.

9. UGM reserves the right to add additional affirmative defenses.

* * * * *

THE HONORABLE KAREN DONOHUE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATT WOODS, an individual Plaintiff, v. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	Case No.: 17-2-29832-8 SEA **STIPULATION OF THE PARTIES**

THE PARTIES HEREBY STIPULATE:

Plaintiff noted a CR 30(b)(6) definition of Seattle's Union Gospel Mission on a number of different subjects, including "The definition of the term 'homosexual behavior' as used by Defendant in its Employee Handbook and/or as applied to Defendant's employees."

The Mission objected, stating that this term is explicitly stated to be part of a "Biblical moral code" and any definition required an examination into the details of the Mission's religious beliefs in violation of its First Amendment rights.

Plaintiff agrees to strike this subject of the CR 30(b)(6) deposition (without prejudice) in exchange for

the Mission's stipulation as follows:

The Mission stipulates that for purposes of its forthcoming dispositive motion on the application of the religious employer exemption under RCW 49.60.040(11), if the Mission were a secular employer, plaintiff would have established a prima facie case of sexual orientation discrimination under the burden shifting test in Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cty., 189 Wash. 2d 516, 533 (2017).

ELLIS, LI & MCKINSTRY PLLC

By:_____ Date: 5/15/2018

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The Honorable Karen Donohue
Hearing Date: June 15, 2018
With Oral Argument

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW S. WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	NO. 17-2-29832-8 SEA DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * * * *

C. The First Amendment and article I, section 11 compel the Court to dismiss the case; further discovery and trial would violate the Mission's free exercise of religion, impermissibly entangle this Court, and risk chilling religious expression.

1. There is no dispute of material fact.

Plaintiff will no doubt stress that the Court must construe all disputes of material fact in Plaintiff's favor as the non-moving party. Presumably Plaintiff

will argue that there is a dispute as to whether the alleged discrimination is related to the Mission's religious views (the *Ockletree* dissent test) and whether the qualifications and duties of the job for which Plaintiff applied are related to religion (the Justice Wiggins' concurrence test). But "when reasonable minds can reach but one conclusion," summary judgment is appropriate. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 788 (2005). Moreover, a material fact is one on which the outcome of the litigation depends. *In re Estate of Black*, 153 Wn.2d 152, 160 (2004).

Even with every reasonable inference and favorable construal, reasonable minds can conclude only that the Mission is a religious nonprofit and the Mission's requirement that employees abstain from homosexual behavior is related to the Mission's religious beliefs. Furthermore, although ODLS staff attorneys may often perform similar work to secular legal aid attorneys, their qualifications and duties are overtly related to religion and the Mission's religious purpose. Reasonable minds may differ as to the degree or importance of those relationships, but no reasonable mind could conclude the complete absence of a relationship. Thus even construing facts and inferences in Plaintiff's favor, the court must conclude that the RCW 49.60.040(11) exemption is constitutional as applied here.

To overcome these conclusions and survive summary judgment, Plaintiff bears the heavy burden of proving the exemption's unconstitutionality and *Ockletree*'s error. Under the plain language of WLAD and the direction of *Ockletree*, *any* relationship between the alleged discrimination and religion *or* the

job qualifications and duties and religion compels this Court to enter summary judgment.

2. Further discovery would have a chilling effect on the religious expression of the Mission and countless other faith-based organizations.

In *Spencer v. World Vision*, the Ninth Circuit observed the significant First Amendment problems presented by discovery into religious doctrine. "It is not only the conclusions that may be reached . . . which may impinge on rights guaranteed by the Religion Clauses, *but also the very process of inquiry leading to findings and conclusions*." *Spencer*, 633 F.3d at 731 (emphasis in original) (quoting *NLRB v. Catholic Bishop*, 440 U.S. 490, 502, 99 S.Ct. 1313 (1979)). "[I]nquiry into . . . religious views . . . *is not only unnecessary but also offensive*. It is well established . . . that courts should refrain from trolling though a person's *or institution's* religious beliefs." *World Vision*, 633 F.3d at 731 (emphasis added) (quoting *Mitchell v. Helms*, 530 U.S. 793, 828, 120 S.Ct. 2530, 147 L.Ed.2d 660 (2000)).

In the present case, Plaintiff has propounded 41 interrogatories, 44 requests for production, and sought a CR 30(b)(6) deposition on 15 different topics. The Mission has produced 649 pages of documents. Much of the discovery delves into the Mission's religious beliefs and the manner in which they were formulated or possibly reconsidered. The Mission moved for a protective order[61] before the parties reached a temporary compromise, a material element

[61] *See* Dkt. Nos. 18-20.

of which was the Mission being forced to stipulate to a material element of Plaintiff's case. If religious organizations are forced to reveal their internal discussions and deliberations about their theological views—including who took part in those discussions—it will have a severe chilling effect on the First Amendment right to free exercise for any such organization and those who choose to associate with it.

3. The Court cannot resolve any alleged factual issue without interpreting religious doctrine.

In additional to the intrusiveness of discovery itself, what issues would be decided at trial? Whether the Mission has a sincerely held religious belief on marriage? Whether the ODLS staff attorney position is related to the Mission's religious belief? In *Spencer v. World Vision*, the Ninth Circuit described the "religious" vs. "secular" job description inquiry to be a "constitutional minefield" and noted that the Supreme Court in *Amos* found "exactly this sort of inquiry problematic in the contest of determining whether a particular employee's duties were religious or secular." *Spencer*, 633 F.3d at 730. Indeed, the exact concern expressed by the *Amos* Court has now manifest itself in the form of Plaintiff's lawsuit:

> [I]t 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. *The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of*

> *mission*. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.

Amos, 483 U.S. at 336, 107 S.Ct. 2862 (emphasis added).

The Supreme Court in *Amos* went on to describe the potential chilling effect on religious expression created by lawsuits such as Plaintiff's: "While a church may regard the conduct of certain functions as integral to its mission, a court may disagree" and, as a result, "the [religious] community's process of self-definition would be shaped in part by the prospects of litigation." *Id.* at 343-44.

* * * * *

VI. CONCLUSION

The Mission is statutorily exempt from Plaintiff's claim. Not only is the statute constitutional as applied, it would violate the Mission's constitutional rights if the Court were to permit further discovery and trial. Accordingly, the Mission respectfully requests the Court dismiss the complaint under CR 56.

* * * * *

The Honorable Karen Donohue
Hearing Date: June 15, 2018
With Oral Argument

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	NO. 17-2-29832-8 SEA DECLARATION OF TERRY PALLAS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, Terry Pallas, declare as follows:

1. I am over the age of 18, competent to testify to the matters stated herein and make this declaration based on my personal knowledge.

2. I have served as Seattle's Union Gospel Mission Chief Program Officer since October 2016. I have worked at the Mission since 2006 and, prior to serving as Chief Program Officer, served as the Vice President for People and Culture and the Director of Men's Ministry. In my current role as Chief Program Officer, I head the Mission's Program Ministries division, including our Outreach ministry, Emergency

Shelters, Men's Recovery ministry, Women and Children's ministries, Open Door Legal Services ministry (or "ODLS"), 118 Designs, Dental Clinic, and Mental Health Outreach ministry. I am responsible for the overall direction, development, and vision of these ministries and for ensuring that these programs and activities operate in a manner consistent with the Mission's mission statement, goals, and core values. As part of these responsibilities, I oversee and provide input in hiring and, when necessary, discipline and termination, of employees.

3. I have a Master of Divinity graduate degree and am ordained through the Evangelical Church Alliance.

4. The Mission exists to preach the Gospel of Jesus Christ. Because of this, the primary responsibility of every Mission employee, even in the face of urgent physical need, is to preach the Gospel. We understand this to be our primary responsibility because we take Jesus's words seriously when he asks: "For what does it profit a man to gain the whole world and forfeit his soul?" Mark 8:36. In every one of our ministries and at every step of Mission guests' recovery process, we share the Gospel of Jesus Christ. Through both word and deed, we point our clients to Jesus as the ultimate source of healing and hope while alive, and the basis for salvation and eternal life after death for those who believe in Him.

5. For this evangelical purpose, the Mission operates over twenty ministries, primarily serving the homeless and others in great need. These ministries work collaboratively to create a "Gospel rescue" continuum of care: search & rescue, welcome

& embrace, provide & serve, heal & reconcile, and restore & equip.

6. Although guests can enter Mission programs at any appropriate stage of the continuum of care, the Mission's primary focus on King County's roughly 5,000 unsheltered homeless means that the Mission usually starts with physical needs for food and shelter. To do this, we operate several outreach ministries that bring food, coffee, blankets, and friendship. We emphasize relationship in this work because it often takes repeated encounters with any given homeless individual – frequently suffering from mental illness or substance addiction – to develop the trust to come off the streets and enter the Mission's emergency shelter. Once Mission guests begin to physically stabilize, the Mission can help with underlying mental health or addiction issues through long-term recovery programs, providing dental care, and helping clients with legal needs. We are also able to offer transitional housing, continuing education, and job placement.

7. The Mission has a number of ordained ministers on staff and conducts several chapel services daily, but we expect all employees to share the Gospel. All Mission employees are encouraged to develop trusting friendships with Mission clients, to pray with them, and to discuss issues of faith. We have designed our ministries to create opportunities for Mission employees to do just that.

8. The Mission expresses its religious beliefs and accomplishes its religious purpose through its employees. Because of this, we require our employees to affirm our statement of faith and live in accordance

with what the Bible teaches. One of the core teachings of the Bible is the call to surrender your life to God and live a life of obedience, even if you do not understand or agree with what the Bible teaches.

9. The Mission's statement of faith provides that "We believe the Bible to be the inspired, the infallible, authoritative Word of God." Based on this interpretation of the Bible, the Mission's sincerely held religious belief is that the Bible calls Christians to abstain from any sexual activity outside of heterosexual marriage, including abstaining from homosexual behavior. This belief is based, in part, on passages such as Romans 1:26-27, 1 Corinthians 6:9, and Matthew 19:4. The Mission further believes that a Mission employee who publicly rejects this teaching undermines the Mission's ability to carry out its religious purpose. For example, because Mission employees model this surrender for our clients, we believe it is very difficult for an employee to urge a recovering addict to surrender his or her life to God when the employee publicly rejects well-known Christian teaching.

10. In our ODLS ministry, volunteer lawyers are required to affirm the Mission's statement of faith. ODLS volunteers have significant interactions with clients and, as an outward-facing volunteer, ODLS volunteers must serve in a manner consistent with the Mission's religious beliefs and purpose. Recognizing that extensive reference checks and interviews would deter many volunteers from serving and consume substantial Mission resources, we rely on volunteers' representations concerning their alignment with the Mission's religious beliefs. If the Mission became aware of an ODLS volunteer who was

publicly not in alignment with the Mission's teachings–on sexuality or otherwise–we would likely end the volunteer relationship.

11. The requirement that ODLS volunteers affirm the Mission's statement of faith stands in contrast to other volunteer opportunities at the Mission, such as serving meals, where volunteers are not required to affirm the statement of faith. The Mission seeks to evangelize to volunteers and not just clients, and, in volunteer roles without the same level of client interaction, the Mission welcomes volunteers from every faith, orientation, and conviction.

12. ODLS staff attorneys share all Mission employees' responsibilities to spread the Gospel, and the ODLS ministry operates for the purpose of seeing Gospel transformation in the lives of its clients.

13. ODLS staff attorneys are required to participate in Mission events such as monthly All-Mission Worship Services (including prayer, worship music, Bible reading, a sermon, and, occasionally, communion), other prayer meetings, all staff meetings (most of which include prayer and devotionals), trainings, Christmas parties, and other events.

14. In mid-October, 2016, I was notified of Plaintiff's exchange with David Mace concerning Plaintiff's sexual orientation and the Mission's Biblical lifestyle expectations.

15. I have reviewed Plaintiff's description of his relationship with Jesus Christ in his application for employment. Similar answers from other applicants for Mission jobs usually trigger further scrutiny in a

follow-up interview, if not by the department head, then others who must approve all new hires, including me. Very generally speaking, people who describe their faith relationship with Christ in purely social justice terms similar to Plaintiff do not share the Mission's view that its work is a means to the end of developing a life-transforming, personal relationship with Jesus. The Mission attempts to explore these theological beliefs and approach to ministry in follow-up interviews for job candidates that are otherwise qualified.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 18 day of May, 2018, at Seattle, Washington.

TERRY PALLAS

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	NO. 17-2-29832-8 SEA DECLARATION OF DAVID MACE IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, David Mace, declare as follows:

1. I am over the age of 18, competent to testify to the matters stated herein and make this declaration based on my personal knowledge.

2. I serve as Director and managing attorney of Seattle's Union Gospel Mission's Open Door Legal Services ministry (ODLS). I have held this position since 2007.

3. The Mission opened ODLS in 1999. Currently there are four Mission employees working at ODLS: a managing attorney, two staff attorneys, and an administrative assistant/ interpreter.

4. ODLS provides legal aid to Mission guests as well as others in need of legal assistance. Many Mission guests have warrants, child support, debt collection, and other legal issues disproportionately impacting the poor and vulnerable, and on-site legal aid fits well with the Gospel rescue work of the Mission. Mission guests may schedule appointments with ODLS and individuals not participating in other Mission programs may attend an ODLS walk-in clinic. ODLS walk-in clinics occur weekly.

5. A network of volunteer lawyers staff ODLS's clinics. These volunteers serve with differing degrees of regularity, but typically once or twice a month. Volunteer lawyers generally do intakes, issue spot, offer initial advice or referral, and then pass the client's matter on to one of the staff attorneys for further follow-up when appropriate. During these clinics, volunteers are encouraged to pray with and offer spiritual guidance to clients but are not compelled to do so.

6. ODLS staff attorneys are Mission employees and have primary responsibility and serve as the point of contact for ODLS clients and matters. Because of the ongoing nature of this relationship, ODLS staff attorneys often develop relationships with clients, regularly praying with them, encouraging them, collaborating with the client's caseworker (for those in Mission programs), and otherwise trying to show the love of God by loving the client holistically, not just attending to legal needs. Staff attorneys are required to participate in many other Mission events such as monthly All-Mission Worship Services (including prayer, worship music, Bible reading, and a sermon), other prayer meetings, all staff meetings

(most of which include prayer and devotionals), trainings, Christmas parties, and other events.

7. ODLS is part of a network of over seventy legal aid clinics affiliated with the Christian Legal Society. **Exhibit 1** is a true and accurate copy of the Christian Legal Society introductory manual for new Christian legal aid clinics, explaining the evangelical purpose of Christian legal aid ministry. ODLS operates with the same evangelical purpose.

8. I met Plaintiff, Matthew Woods, through his volunteer work at ODLS. We developed a positive working relationship during his 2012 summer internship at ODLS, and that relationship continued as he regularly volunteered in law school and after his graduation. Matt volunteered regularly until he accepted a job at the federal district court, and, after that, continued to volunteer sporadically.

9. As a volunteer intern, Plaintiff spent more time at ODLS than a typical volunteer but did not have the duties and responsibilities of a staff attorney, nor was he expressly subject to the qualifications and requirements, including the Biblical lifestyle expectations, the Mission requires of its employees

10. **Exhibit 2** is a true and accurate copy of an email, dated October 4, 2016, that I sent to various listservs (which included ODLS volunteer attorneys) to announce the open ODLS staff attorney position. This email included the ODLS staff attorney job description.

11. **Exhibit 3** is a true and accurate copy of the ODLS staff attorney job description included with my

October 4th email.

12. **Exhibit 4** is a true and accurate copy of an email exchange, dated October 14, 2016, between Plaintiff and me regarding his interest in the ODLS staff attorney position, his concern about the Mission's statement of faith and the standards of conduct required of employees, and my confirmation that Plaintiff would not be able to apply for the staff attorney position because he did not agree with the Mission's Biblical lifestyle expectations.

13. I did not author the Mission's Statement of Faith, the employee handbook's description of a Biblical moral code, or any other policy statement regarding standards of conduct for employees.

14. Following my email exchange with Plaintiff, I informed my supervisor of Plaintiff's inquiry regarding his ability to apply for the ODLS staff attorney position. I then contacted Plaintiff to arrange a meeting between Plaintiff and the Mission's chief program officer, who is an ordained minister.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 17th day of May, 2018, at Seattle, Washington.

DAVID MACE

THE HONORABLE KAREN DONOHUE
Hearing Date: June 15, 2018
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATTHEW S. WOODS, an individual Plaintiff, v. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	Case No.: 17-2-29832-8 SEA PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * * * *

A. SUGM is a Religious Non-Profit, But is Not Wholly Exempt from the WLAD.

SUGM argues that its status as a religious non-profit facially qualifies it exemption from the WLAD under RCW 49.60.040)(11). Woods disputes, however, that the religious exemption applies to the ODLS staff attorney job. *See, Ockletree v. Franciscan Health System*, 179 Wn.2d 769, Dissent nn.1 & 6, 317 P. 3d 1009 (2014). ODLS cannot be a "ministry" of SUGM due to the nature of the specialized legal services it provides, nor, under the RPCs, can SUGM ethically require ODLS attorney employees to subjugate their

professional legal judgment to SUGM's spiritual goals. Rules of Professional Conduct ("RPC") 1.2, 5.4, 8.4(2)(g). Factual disputes about the relevance of SUGM's beliefs to the duties and ethical obligations of an ODLS staff attorney mandate denial of SUGM's Motion. SUGM's faith simply has no bearing on Woods' discrimination claim.

* * * * *

In *Ockletree*, the Court created a constitutional bright line: The anti-discrimination protections afforded under the WLAD are not constitutionally applicable to those who have religious job duties, but in contrast, the WLAD fully applies to protect employees without religious or sectarian job functions, regardless of their beliefs. *See also Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171, 132 S. Ct. 694, 703 (2012) (the First Amendment "ministerial exception" applies only to "ministers").

Here, unlike the defendant in *Ockletree*, SUGM asserts its religious beliefs broadly insulate its discriminatory policy on sexual orientation, and it asserts that an ODLS lawyer's job duties are religious. These factual differences compel close examination of the WLAD's religious exemption when it would be used offensively to infringe on the civil rights of protected classes whose jobs are not ministerial, and to confront directly whether religious groups that target marginalized populations for discrimination do so in violation of Washington's Constitution.

* * * * *

D. The Religious Exemption is Unconstitutional as Applied to Woods, Because Staff Attorney Job Duties are not Religious or "Ministerial".

Because the *Ockletree* Concurrence is binding precedent, this Court should hold that SUGM's anti-gay hiring policy cannot be constitutionally applied to Woods, and deny SUGM Summary Judgment.

Even if this Court finds the Dissent and Concurrence too dissimilar in rationale to create binding precedent, however, limiting the application of the exemption to ministerial employees would preserve both the free exercise rights of religious employers and the constitutional and civil rights of employees. While SUGM represents that all its employees must evangelize as a core job responsibility, that assertion is not borne out in ODLS's job descriptions, structure, hiring procedures, or relationships with clients or the larger organization. Moreover, SUGM cannot articulate any logical connection between its anti-gay religious belief and the duties performed by its non-ministerial employees. Mace, ODLS's Director, testified that sexual orientation had never come up as a legally relevant issue in his eleven years with ODLS, but also testified that the ability to work effectively and build relationships with unhoused individuals was a "core point" of the ODLS staff attorney position. Ex. E (Mace 28:1-21; 170:23-171:1).

Woods appreciates that this Court must be "fully convinced, after a searching legal analysis, that the [exemption] violates the constitution" as applied to him. *Sch. Districts' Alliance for Adequate Funding of*

Special Educ. V. State, 170 Wn.2d 599, 605, 244 P.3d 1 (2010). But SUGM is incorrect that the State Supreme Court recognized the Legislature's reasonable ground for the exemption in "cases like this." Mtn, 20. Rather, *Ockletree* held that the exemption was not constitutional as applied to individuals whose job duties are not religious in nature.

* * * * *

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MATT WOODS, an individual Plaintiff, v. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	Case No.: 17-2-29832-8 SEA DECLARATION OF PLAINTIFF MATT WOODS IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, Matt Woods, being over the age of 18 and a resident of the State of Washington declare that the following statements are true, correct, based on my personal knowledge, and made under penalty of perjury:

* * * * *

17. Even though I was told my application would not be accepted, I applied for the staff attorney job anyway, to ask for reconsideration and to protest SUGM's discriminatory policy. In reliance on Mr. Mace's statement that I did not meet eligibility

requirements, I did not try to answer every question on the ODLS application fully. I believed that if ODLS was willing to reconsider its policy, we would likely have an opportunity to discuss other details about my application at a later date.

* * * * *

Excerpts from Deposition of Terry Pallas (CP695-709)

30(b)(6) DEPOSITION UPON ORAL EXAMINATION OF TERRY PALLAS

9:31 o'clock a.m.

May 23, 2018

1139 34th Avenue, Suite B

Seattle, Washington

* * * * *

[CP695-96]

Is it your understanding that neither employees, nor Union Gospel Mission hold this as a binding agreement?

A If an employee does not agree with the handbook, nor the Statement of Faith, whether they are just coming into employment or if their, if their theology or thoughts have changed while being an employee, then it would be reason for dismissal from the Mission.

Q Has UGM ever dismissed any employee for essentially revising their beliefs?

A We have, if somebody is unwilling to sign the Statement of Faith, we have a series of meetings and conversations with them. If they still do not agree with either the Code of Conduct or the Statement of Faith, then steps are taken to terminate the employment.

* * * * *

Q Okay. And if you'll turn a few pages in advance to Page 43 on the bottom right, if you look under the first paragraph under the top heading, Spiritual Life. I'm going to read to you starting with the second sentence, which is, "The Mission is not the place to 'take in' what you need to 'give out'." What does that mean?

A It means that we believe that every single employee needs to be completely and totally filled with the Holy Spirit. The Holy Spirit can only come from a person that has given their life to Jesus wholly and completely and that is the absolute driving force in their life.

We expect every single employee to be coming to work every single day clothed with the righteousness of Christ that can only come through the Holy Spirit. And so we expect people, as they arrive through the doors, to be fully spiritually prepared to be able to give out, not just in their professional life, but more importantly we want people to be able to be able to share the gospel of Jesus Christ for people's salvation. And so if they are not in their personal life, outside of their normal work hours, involved in discipleship, personal discipleship, prayer, active church life, meeting with other people to encourage them in their faith and continuing to grow personally, that they would have a personal responsibility upon themselves to care for their own spiritual nurturing and life. That's what that means. That means we want people when they show up for work to be fully prepared --

Q Sure.

A -- to share the gospel. And we believe that that can only be done by the power of the Holy Spirit bubbling up inside of somebody so much so that it will spill on to other people that they interact with through the day.

* * * * *

Q How many employees does Union Gospel have?

A Approximately 220.

Q And there's a number of different services you offer, everything from meal service to you have a Men's Shelter, and as well as the ODLS Clinic. Does Union Gospel Mission employ people to prepare food?

A Yes.

Q Are there positions where that is the primary responsibility of any employee?

A No.

Q Does Union Gospel Mission employ staff to clean the shelters?

A Yes.

Q And is cleaning the shelters the primary job responsibility of any particular position?

A No.

Q The people who clean the shelters, what other kind of work do they do?

A They share the gospel of Jesus Christ. So the primary reason why we employ people at Seattle's Union Gospel Mission is to be ministers of the

gospel. At new employee orientation where this handbook is handed out, when I do an executive brief, I first and foremost tell everybody, you may be a Case Manager, but you are a minister of the gospel who happens to be a Case Manager. You are a minister of the gospel who happens to work in food services. You are a minister of the gospel who happens to be cleaning a toilet or scrubbing a floor or doing whatever it is. All 220 employees' first and primary goal has to be consistent with our primary mission and that's to preach the gospel of Jesus Christ. The way that that's carried out is always going to be secondary, and that's what their job title may say, but first and foremost they have to be willing and ready and prepared to share the gospel.

* * * * *

[CP697]

Q Do you have any information about how the Standards of Conduct were developed?

A Yes.

Q Tell me about that.

A The Union Gospel and Rescue Mission movement approximately 100 years ago began in multiple cities across the United States and each had a very traditional and fundamental view of scripture, wanting to preach the gospel of Jesus Christ, wanting to see as many folks saved as possible. And they believed that would be best by caring for the immediate needs of people that were trying to survive on the streets; people that were hungry, people that were without safe shelter. And so many

cities started to adopt both the, what's it called? The -- I'm just blanking on the word right now. The Statement of Faith. And so if you look throughout our Association, which has hundreds and hundreds of Rescue Missions, the Code of, the Statement of Faith is very, very similar, if not exactly the same because they use the same template to create the Statement of Faith.

Q And what was that template?

A Well, it was just, just what you are looking at; the Statement of Faith. And so this Standard of Conduct was both derived from a historical precedent of the Association of Gospel Rescue Missions throughout the country and also the Standards of Conduct are taken directly from an orthodox view of scripture.

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[CP700-701]

Who is an acceptable pastoral reference from UGM's point of view?

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A There is a specific office of the pastor described in scripture, that somebody has charge over a flock of believers and to shepherd those believers. Shepherd with a small S. Jesus would be referred to as the Shepherd with a big S.

So what we're looking for is the individual to be attending, but even more than attending, we want people that are part, an active part of a faith community. So pastoral reference would be someone who's charged to be the shepherd of that

congregation, that knows the applicant well and can attest for their active involvement with their faith community.

* * * * *

Q Okay. And when you use the word church, what do you mean?

MR. TAYLOR: Object as also calling for an interpretation of religious beliefs.

A We're a multi-denominational, evangelical Christian ministry. And so churches, there is discretion in there, what we believe as a Christ-affirming, healthy, vibrant, life-giving denomination and/or church. There are some that would consider themselves churches that we would believe are outside of our understanding of scripture and they probably would not be the best fit with Seattle's Union Gospel Mission.

Q And without inquiring into your values about what are and aren't qualifying churches, have there been some people who have submitted pastoral references that UGM considered to not be adequate?

A If it is in opposition to our Statement of Faith, then that's probably outside of what we believe first and foremost, the very first statement in our Statement of Faith that we believe the Bible to be the inherent, authoritative Word of God, infallible, authoritative Word of God, inspired, as Timothy 3:16 says. So "infallible" means that we take a very conservative and orthodox view of scripture. Additionally, if there was a church outside of what we would believe is the core tenets of faith, then

that would also disqualify somebody from employment

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[CP703]

How often does an applicant's answers about their spiritual relationship trigger further scrutiny?

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A Almost always there is going to be further discovery into an applicant's answers. So the very first screening is simply a snapshot, and for those that are passed along to the hiring manager to interview, the interview process should be strenuous for us to ask and uncover and to find out somebody's personal story of how they came to know Jesus Christ as their Lord and Savior, to be able to articulate their gospel story clearly and articulately and for that to be backed up by references. So it's not just them presenting themselves in a certain way or putting on a mask and pretending to be something they are not. We try to be as strenuous as possible to have a process that goes through multiple layers to try to make sure that people are who they say they are when they present themselves for employment at the Seattle's Union Gospel Mission.

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[CP704]

Does ODLS screen or vet volunteers for the legal clinic?

A Yes.

Q Can you describe that process for me for volunteer, we're going to call it vetting.

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A I'm getting there, but it helps to understand the context of just general volunteers that are transactional in nature, like serving a meal, and then there's a different level that's a high-impact volunteer. A high-impact volunteer is somebody that's going to have regular interaction with guests that can be more personal in nature. There's much more opportunity we believe for high-impact volunteers to be able to share the gospel since that's what we are established to do, that's our main focus. We want to know that high-impact volunteers will sign the Code of Conduct or the Statement of Faith and be in agreement with who we are. And ultimately it would be wonderful if they were people of faith that could draw folks, folks into a relationship with Christ.

Q So other than having, doing this criminal background check and making sure that a volunteer is safe, and then having these high-impact volunteers sign the Statement of Faith, what other, are there any other steps in the vetting process for an ODLS volunteer?

A We currently have our Volunteer Engagement Manager that approves our high-impact volunteers.

* * * * *

[CP705]

Q Is it required that an ODLS attorney offer prayer?

A Not every single time, but of course, we would encourage the attorneys to offer prayer and to lead spiritually.

Q So it sounds like your testimony is that it is not required, but it is encouraged?

A We hope that we are employing people that, like I said earlier, their faith is just bubbling up so much that it's going to be apparent to anybody that they are around. And so --

Q If an ODLS staff attorney did not offer prayer with a client, would that be grounds for some sort of follow-up discussion with their manager or discipline or anything along the lines of an employment counseling?

A I think if an employee said that they didn't see reason to pray or didn't honestly, they didn't want to or, you know, that, yeah, there will be discussion around that to try to dig in to why, to dig in to where they are at with their faith.

People that are in love with Jesus Christ, there's a compulsion to share what He's done. When your life has been transformed, there is an internal drive that makes you want to share that joy with other people.

Q I understand. But if in an attorney's judgment, prayer, offering prayer would in some circumstance be inappropriate for the given situation, ODLS would respect that; is that your testimony?

A We want to respect people and where they are at and we want to look for any opportunity that we can to inject a spiritual element into what we're doing.

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[CP706]

How does the staff attorney job differ from a volunteer ODLS attorney duty?

A I think the primary thing is we are expecting the staff attorney, the employee to be a minister of the gospel first and foremost. As stated this morning, their primary job, I often quote Mark 8:36 where Jesus says, "What does it profit an individual if they gain the whole world yet lose their soul." And I quote it to new employees, I quote it in All Mission Services because what it does is it sets the precedence.

It says what does it profit an individual if they get their legal issues resolved, what does it profit an individual if they walk the rest of their life in recovery, what does it profit an individual even if they get a house and a nice car and a job and they are not brought back into right relationship with God through the blood of Jesus Christ?

* * * * *

That's what makes Seattle's Union Gospel Mission distinctive from any other service provider is that gospel is our middle name and that is exactly what is core to who we are.

So if there's one thing that's specifically distinguishing, if you are going to step on to our staff, we want you to be crazy about Jesus and it should just exude everything you do in your life, every relationship you have, whether it's at work or outside of work. It should just emanate from who you are. So there's that hope and prayer that we

have that anybody that comes on staff, that's the individual that we're looking for.

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[CP708]

Q When Mr. LaRose talks in the next two bullet points about the legal team's knowledge that Mr. Woods is gay, what significance does that have that he's documenting that they didn't know?

* * * * *

A Yeah, it's, you have to be able to distinguish, you know, is this a gay lifestyle, is this a same-sex relationship where they are acting upon that temptation, and so if there is any kind of action taken based on that temptation, that's the point where it becomes a sin. And so none of us can help from being tempted, but each one when they are tempted, from the Book of James, chooses to the grab ahold of that temptation and that's the point where sin is conceived.

And so as a Christian, somebody who is able to sign the Statement of Faith and say that they are in love with Jesus, there should be a problem internally with them acting upon something where the Word is very clear is a sin. So yes, that's a problem if somebody is acting in a way that is contrary to scripture.

Q Okay. And my question was what is the significance to you that it was not known until Matt brought it up?

A If we had a volunteer in a high-impact role, that is, not just has the temptation, like I said, but is acting

out that temptation, then they would not be a high-impact volunteer. We're not going to have people teaching Bible studies, leading discipleship groups, or in the relationship as close and personal as a staff attorney because our expectation is they are living out their faith and so in love with Jesus that that's bubbling outside of them. So to have a behavior or life circumstances in which you are acting and behaving contrary to the scripture of God is in direct contrast with what we're trying to accomplish as a Mission. And so you can't hold the two together. They are exclusionary.

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[CP709]

Q Okay. Is it in UGM's annual report?

MR. TAYLOR: Same objection.

A No.

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aware of the prohibition on homosexual behavior would be by reading the Employee Handbook or drawing inferences from UGM's use of scripture or being told by a UGM employee that that is the policy?

MR. TAYLOR: Same objection.

A No. Because there's many more people that know of our policy. It doesn't have to be an employee. It doesn't have to be on our website. It doesn't have to be in social media. We're a conservative, fundamental Christian organization. That's who we are.

* * * * *

Excerpts from Deposition of David Mace (CP727-41; CP151-53)

DEPOSITION UPON ORAL EXAMINATION OF DAVID MACE

10:00 o'clock a.m.

May 24, 2018

1139 34th Avenue, Suite B

Seattle, Washington

* * * * *

[CP727]

Q And we've talked a little bit about this, but some homeless individuals that ODLS serves identify as lesbian, gay, bisexual or transgender; correct?

A (Nods affirmatively.)

MR. TAYLOR: Can you answer out loud for the record?

A Oh, yes.

MS. DISKIN: Thank you.

* * * * *

[CP729]

Q And what do you review at that stage?

A I look through their application that they've submitted to the Mission. And they also would, certainly for a staff attorney position, would always have submitted a resume as well, oftentimes a cover letter. And I would read through for basic

legal qualifications. You know, certainly they wouldn't have made it to that stage if they didn't have a JD, but I would look at any concerns that I may have about their legal background and their legal services background. You know, it might be somebody with 25 years of experience working for a phone company, but, you know, not necessarily somebody that I needed at ODLS. And so I look at the more detailed aspects of their legal careers and try to spot any red flags. Like with most hiring processes, I'm looking for people to eliminate at that point, not making choices.

And then I also look at their answers to the religiously-oriented questions in the application, how they describe their relationship with Jesus, how they describe their church involvement, see if there's anything that gives me concern or pause there. And just anything else that in general makes me nervous.

* * * * *

[CP730-31]

A Then --

Q Sorry. Go ahead.

A So at that stage then there's some people that I would just reject outright and just say, "I'm not interested." I might kick it back to them and say, you know, "I want more about this. Could you guys make another phone contact before I set up an interview?" Or I might decide to pass them through the interview process and clarify any issues through the interview process.

Q Okay. And then do you yourself do an in-person

interview with a potential employee?

A Yes.

Q Okay. And are you the final decision maker as to whether that employee gets hired or not?

A Well, we do the interviews with the entire office. So all four of us would interview any new applicant and I get input from everybody. It's a very collaborative process.

Q And by the four, you mean the two staff attorneys and --

A ODLS employees; right.

Q The ODLS employees. Okay.

A Right. And within ODLS, I am then the final decision maker, although with significant input from my staff because it's a small office that works very closely together and if they are expressing concerns, I'm going to be really very interested in that.

And then nobody is going to get hired and placed in our department without my approval, but anybody that I approve then has to be signed off on by my immediate supervisor and the Chief Operations Officer of the Mission, and so they could veto essentially an applicant that we had chosen.

Q Okay. So you have authority to present a final option for veto and you are not necessarily required to provide two or more options for your supervisors to choose among?

A Correct.

Q Would you say that's accurate?

A Yes.

Q Okay. Have you ever had a recommended hire be vetoed by your supervisors?

A No, because the reasons -- they wouldn't veto somebody for legal qualification reasons or office fit type reasons; they are going to trust my judgment on that.

Q Okay.

A So there's, what they are looking for is more does the person spiritually align with the direction of the Mission, requirements of the Mission, and the process is designed to screen for that first. And so it would be unusual that somebody would pass the initial screening and then make it to them and then have them veto it because they would vetoing for those initial reasons.

Q Okay. Talking about that initial screening for a moment, in your knowledge and understanding, are there candidates who are screened out for faith-based reasons before they get to you?

A Yes.

Q Okay.

A And I also screen people out for those reasons at that stage, like I said, I kind of go in and look at those issues and look over the shoulder of what the screeners are doing and if I'm uncomfortable with it, I might just tell them to just reject somebody, you know, even before they get do the phone interview sometimes.

Q Okay. Turning for a moment to the hiring process for volunteers and law student interns. Well, let me

first ask, is there a different process for a general volunteer than for a law student intern in terms of hiring?

MR. TAYLOR: Object to the use, just to the use of the term "hiring", but --

Q I'm struggling with that term, also. Is there, I could say something like onboarding, would that be --

A Selecting.

Q Selecting. Okay. We can use selecting. So is there a different process for selecting a volunteer to work with ODLS than a law student intern to work with ODLS?

A Yes. Again, using the intern term broadly, sometimes we would select them like a typical volunteer, which doesn't really involve my staff. I'm the primary person for recruiting and screening and selecting volunteers in general, but for somebody who's going to come in for the summers for sure and possibly for a longer term internship during the school year, our interview process would look more like the hiring of an employee where we would have them come and do an interview with the entire staff. But the formal Mission part of the process is still not part of that. So we handle it internally within ODLS very similar to bringing on an employee, but there's not that Mission oversight to that process.

Q Okay. So the initial phone screening that we talked about for employees does not occur in bringing on a law student intern; is that accurate?

A Not in the same form; yeah.

Q Okay.

A So I still have an initial screening for the spiritual requirements of the position, but it's usually done through email where I would respond to somebody who has sent me their resume and cover letter and say, you know, "We're a Christian organization. You know, we want all of our interns to be aligned with the Mission Statement of Faith. Here's a copy of the Statement of Faith. Are you able to sign this as affirming you believe in it and not just that you support it" or something along those lines. And I don't offer an interview to anybody who has not been willing to sign the Statement of Faith as personally affirming it.

Q Okay. And when you are selecting a student intern, you mentioned a few minutes ago that the Mission oversight is not part of that process. So are you the final decision maker for the selection of a law student intern?

A As relates to volunteer interns. Now while last summer was the first time that we had a paid position, a paid student summer intern, and that we had some specific, the Advisory Committee actually wanted to create a paid internship, so they donated the money specific to that position. But the way that we created it as a paid position rather than paying like a stipend having them be a nonemployee, we brought them on as a temporary employee. So that meant that they had to go through the entire Mission process. So then they did have to go through the phone screen and the drug testing, the criminal background check and all of that kind of stuff and be approved by our COO

and the whole shebang.

You know, we had selected the person that we wanted for that, and then we just kind of ran them through the Mission process, but the Mission had the opportunity to screen them and veto them and vet all of the various, all the same folks as we would an employee.

Q Okay.

A And that will hold true for any future paid summer intern who's coming on as a temp for the Mission.

* * * * *

[CP741]

And later in November 2016 you went on to have lunch with Mr. Woods; correct?

A Yes.

Q Do you recall what you and Mr. Woods discussed during that lunch?

A We discussed his application and his disappointment that we would, about the UGM policy and, you know, and also just had a more social conversation as well, just about how each other was doing and his work and that sort of thing.

Q Okay. At that point that you had lunch with Mr. Woods, did you relay to him that UGM would not be further considering his application?

A Yes.

* * * * *

It was important to me not to, not to pretend like we were advancing his application, that was not a viable application, to communicate to Mr. Woods

clearly what was happening. And so I felt like I had done that in email, but I also, you know, I wanted to give him a chance to talk that through as well.

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[CP151]

Q Okay. I want to turn to paragraph 6 and the second sentence where you write, "ODLS staff attorneys often develop relationships with clients, regularly praying with them", and then the sentence goes on. Are ODLS staff attorneys required to pray with clients?

MR. TAYLOR: Object to the form of the question.

A "Required" is a, there's no specific circumstances where prayer is a required part of the services that we provide, but it is a consistent and common practice with, you know, with all of our cases. And I wouldn't employ an attorney who never prayed with their clients.

Q An ODLS staff attorney wouldn't pray with a client who did not want to pray; correct?

A Right.

Q So the circumstances under which that might occur would be upon client request; correct?

[CP152-53]

MR. TAYLOR: Object to form of the question.

A No, I mean, we often offer to pray for a client without them, without waiting for them to request it. If a client declines, then certainly we're not going to push the issue forward, but it's discretionary to

the attorney or the volunteer in the specific situation that they are in. But it's a, I, you know, it's something that is a regular part of our practice. So that's why I said I wouldn't have somebody on staff who never prayed with clients. There would be something wrong there.

Q And I don't mean to be disrespectful, I'm just hoping to get some clarity. Is it a requirement that ODLS staff attorneys offer prayer to clients?

A Again, when you state it as a requirement, it makes it sound like there are times where it's compulsory in that specific instance. I don't micromanage my attorneys like that. They are big people who have minds of their own and they understand their relationships with their clients much better than I do. So they have full discretion to decide when and if and how to pray for a client under any specific circumstances, but they do on a regular basis. And if somebody said, you know, "It's never come up for me to pray with a client", that would not be an accurate definition of how we're supposed to be practicing law in our office.

Q Right. And it's not something you are checking on them doing necessarily?

A Right. Right. Just like I don't, you know, check over their legal work. You know, they are competent professionals who know how to do their jobs and they know what their expectations are. I wouldn't hire somebody who didn't operate in that, you know, with that full understanding.

* * * * *

ARTICLES OF INCORPORATION
of
UNION GOSPEL MISSION ASSOCIATION OF SEATTLE

WHEREAS, we, the undersigned, have been, upon motion duly made, seconded and unanimously carried at the regular annual meeting held pursuant to proper notice and in accordance with the provisions of the constitution of the Union Gospel Mission Association of Seattle, held at Swedish Tabernacle, in the City of Seattle, King County, Washington, this 10th day of November, 1939, delegated and authorized to incorporate the said association under the laws of the State of Washington, in the name of the UNION GOSPEL MISSION ASSOCIATION OF SEATTLE:

NOW, THEREFORE, it is hereby agreed by and between the undersigned, the same being all the officers and trustees of the Union Gospel Mission Association of Seattle, to-wit:

Dr. N.A. Jepson	R.O. Fleming
Alvin E. Westin	A.J. Wendells
H.M. Gustafson	Frank Novak
Nels Rasmussen	Irving H. Rowell
Henry Ragge	S.S. Sanger
F.H. Pottenger	D.M. James
Calvin Sanders	C.M. Dolgner
Swan Westrom	Thomas Stave
Charles K. Finn	Ray O. Anderson

ARTICLE I.

That we have associated and do hereby associate ourselves together for the purpose of end with the

intention of forming a religious and charitable corporation under the laws of the State of Washington, the name of which corporation shall be the

"UNION GOSPEL MISSION ASSOCIATION OF SEATTLE".

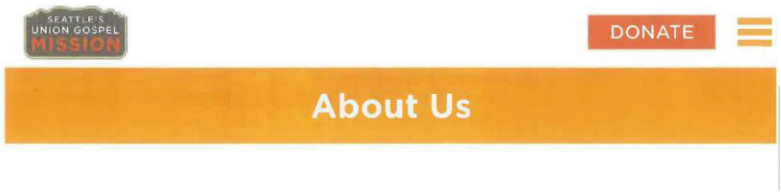
ARTICLE II.

The principal place of business of this corporation shall be at Seattle, King County, Washington.

ARTICLE III.

The objects and purposes of this corporation are and shall be the preaching of the gospel of Jesus Christ by conducting rescue mission work in the City of Seattle, and to carry on such work as may be necessary or convenient for the spiritual, moral and physical welfare of any of those with whom it may work, such methods of work shall be adopted as may be deemed wise and expedient by the Board of Trustees, and that any phase of the work other than direct evangelism shall be kept entirely subordinate and only taken on so far as seems necessary or helpful to the spiritual work; to acquire, hold, manage, mortgage, rent, lease, sublease, sell, convey and otherwise encumber and dispose of property of every kind and nature, real, personal or mixed, but for the sole end of carrying out and securing the foregoing objects and purposes.

* * * * *



Who are we?

Seattle's Union Gospel Mission is a passionate community of people who follow Christ in his relentless, redeeming love for all people. Our mission is to serve, rescue, and transform those in greatest need through the grace of Jesus Christ.

Relationship is key in all we do. By providing 24/7, 360-degree support services for homeless people in King County, we seek to be a consistent friend to those who are isolated and in need. We go where people live, listen to their stories, and regularly connect with each person to provide emergency care and invite them into our recovery programs.

Our goal is to inspire hope, bring healing, and point people to a new life through Jesus Christ.

The task is enormous, but when we think of homeless people, we like to say: There are more of us than there are of them.

As a non-profit Christian ministry, Seattle's Union Gospel Mission bases its work on the teachings of Jesus Christ. We take seriously His command to feed hungry people, clothe those who are naked, and provide shelter for those who are homeless. We consistently combine our faith with action by serving those in greatest need regardless of their religious beliefs, ethnicity, sexual orientation, or gender identity.

We affirm our Christian identity with the following statement of faith:

1. We believe the Bible is the inspired, infallible, authoritative Word of God.
2. We believe there is one God, eternally existent in three Persons: Father, Son and Holy Spirit.
3. We believe in the deity of our Lord Jesus Christ, His virgin birth, His sinless life, His miracles, His vicarious and atoning death through His shed blood, His bodily resurrection, His ascension to the right hand of the Father, and His personal future return in power and glory.
4. We believe that regeneration by the Holy Spirit is absolutely essential for the salvation of lost and sinful men and women, leading to verbal confession and inward belief in the Lordship and bodily resurrection of Jesus Christ.
5. We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life.

6. We believe in the bodily resurrection of the just and unjust, the everlasting blessedness of the saved, and the everlasting conscious punishment of the lost.
7. We believe in the spiritual unity of believers in Christ.

Excerpts from
Association of Gospel Rescue Missions
Webpage (CP454-56)

About Us

For more than a century, one group has been tracking with the tragic conditions of desperate and disenfranchised people in North America. The Association of Gospel Rescue Missions (AGRM) has been on the sidewalks and in the face of what to many has been a faceless problem. AGRM-member facilities have a reputation for being havens of hope for all who enter.

Founded in 1913, AGRM has some 300 rescue mission members across North America. Each year, AGRM members serve approximately 66 million meals, provide more than 20 million nights of shelter and housing, assist some 45,000 people in finding employment, provide clothing to more than 750,000 people, and graduate nearly 17,000 homeless men and women from addiction recovery programs into productive living. The ramification of their work positively influences surrounding communities in countless ways.

While rescue is in the name of the association, the followers of Jesus running these missions see that aspect as just the beginning. In total, they are about:

Rescue – Pulling people to safety from adverse conditions, and from choices and habits that lead to damaged health and death

Redemption – Presenting people with a gospel that is about life transformation in Jesus, and the reclamation of His creation

Rehabilitation – Helping people break the bonds of addiction and desperate behavior, and experience a life of healing and wholeness

Re-assimilation – Preparing people to dwell in community, and to have meaningful roles that lead to stability and missional living

* * * * *

Vision Statement

AGRM will foster and feed a movement of diverse, energetic disciples who will see the practice of hospitality to the destitute as both a catalyst for life transformation in Jesus and a fundamental expression of their Christian faith, thus propelling the church into the lead role in society's quest to alleviate homelessness.

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Excerpts from Union Gospel Mission's Employee Handbook (CP350-64)

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[CP355]

PURPOSE AND STATEMENT OF FAITH

The purpose for which this corporation is organized is set forth in Article 1 1 1 of the Articles of Incorporation filed April 3, 1940 in Seattle, WA, King County; said purpose being as follows:

> "The objects and purposes of this corporation are and shall be the preaching of the gospel of Jesus Christ by conducting Rescue Mission work in the city of Seattle, and to carry on such work as may be necessary or convenient for the spiritual, moral and physical welfare of any of those with whom it may work, such methods of work shall be adopted as may be deemed wise and expedient by the Board of Trustees and that any phase of the work other than direct evangelism shall be kept entirely subordinate and only taken on so far as necessary or helpful to the spiritual work; to acquire, hold, manage, mortgage, rent, lease sublease, sell convey and otherwise encumber and dispose of property of kind and nature, real, personal or mixed but for the sole end of carrying out and securing the foregoing objects and purposes"

STATEMENT OF FAITH

1. WE BELIEVE THE BIBLE TO BE THE ONLY INSPIRED, INFALLIBLE, AUTHORITATIVE WORD OF GOD.

2. WE BELIEVE THAT THERE IS ONE GOD, ETERNALLY EXISTENT IN THREE PERSONS: FATHER, SON AND HOLY SPIRIT.
3. WE BELIEVE IN THE DEITY OF OUR LORD JESUS CHRIST, IN HIS VIRGIN BIRTH, IN HIS SINLESS LIFE, IN HIS MIRACLES, IN HIS VICARIOUS AND ATONING DEATH, THROUGH HIS SHED BLOOD, IN HIS BODILY RESURRECTION, IN HIS ASCENSION TO THE RIGHT HAND OF THE FATHER, IN HIS PERSONAL RETURN IN POWER AND IN GLORY.
4. WE BELIEVE THAT THE SALVATION OF LOST AND SINFUL MEN, REGENERATION BY THE HOLY SPIRIT IS ABSOLUTELY ESSENTIAL.
5. WE BELIEVE IN THE PRESENT MINISTRY OF THE HOLY SPIRIT BY WHOSE INDWELLING THE CHRISTIAN IS ENABLED TO LIVE A GODLY LIFE.
6. WE BELIEVE IN THE BODILY RESURRECTION OF THE JUST AND UNJUST, THE EVERLASTING BLESSEDNESS OF THE SAVE, AND THE EVERLASTING, CONSCIOUS PUNISHMENT OF THE LOST.
7. WE BELIEVE IN THE SPIRITUAL UNITY OF BELIEVERS IN CHRIST.

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[CP357]

THE HISTORY OF THE UNION GOSPEL MISSION

On April 4, 1932, in the midst of the depression, Dr. Francis Peterson and leaders of Seattle area churches organized the Union Gospel Mission to reach out to homeless and hungry people.

The number of people in need was overwhelming. Dr. Peterson, in later years, recalled one evening when he "stood on the steps leading out of the Mission and counted 500 hungry men."

Under Dr. Peterson's direction, the Union Gospel Mission moved promptly to feed and comfort the desperate people crowding through the Mission's doors.

Early programs included a shelter ministry for women and an outreach program for inner city youth. During World War Two and the Korean War, over 200,000 servicemen came to U.G.M.' s Victory Service Center, a home away from home for those lonely men.

The year 1952 marked the year the Mission purchased our present Men's Center facility, doubling our capacity for beds. With the numbers of homeless men increasing almost daily, it was filled to overflowing immediately.

As the 1960's and 1970's were rocked with turmoil and change, our Mission leaders strove to keep up with the changes on the streets and in the city.

They saw that urban mission work encompassed more than feeding and sheltering the hungry and homeless. They began programs oriented towards community ministries; caring for fixed income seniors, at-risk youth, low income and poverty level families, all over the brink of disaster.

In more recent years the Mission's work has become

particularly heartbreaking as more families and children in trouble come through our doors. The Union Gospel Mission Women and Family Shelter on King Street was established in 1982 to take in the flood of homeless families on the streets, but always more come than can be sheltered.

The doors of the Mission have been open 24 hours a day since 1932, offering hope and comfort to hurting, needy people.

[CP358]

SPIRITUAL LIFE

The successful mission worker is one who has stability in his/her walk with the Lord. The mission is not the place to 'take in' what you need to 'give out'. That comes from being an active member of a local church. All staff members are expected to be active in a local church. When you are asked to take leadership in the church, think about your role at the mission. When in question, consult the Executive Director.

Staff members are generally expected to be part of mission sponsored spiritual programs such as retreats, staff prayer and Bible study, Annual Dinner, etc., except when job responsibility interferes.

STATEMENT OF FAITH

All staff members are required to sign the doctrinal standard of the Union Gospel Mission (hereafter referred to as U.G.M.).

All staff members are expected to live by a Biblical moral code which excludes extra-marital affairs, sex outside of marriage, homosexual behavior, drunkenness, illegal behavior, use of illegal drugs and any

activity which would have an appearance of evil.

* * * * *

DEVOTIONS

The U.G.M. has a devotional meeting every Tuesday at 10:00 A.M. All staff are urged to attend. This is a time of prayer requests, announcements, and learning. Check with your supervisor for information.

* * * * *

[CP364]

STANDARDS OF CONDUCT

The following types of conduct are not permitted and could result in disciplinary action up to and including termination depending upon the severity of the infraction. This is not meant to be a complete list, but will serve as a guide-line for unacceptable behavior.

A profession after being hired, that he/she is no longer a believer and follower of the teachings of Jesus Christ and will not accept the counsel of other believers.

Habitual tardiness or absenteeism.

Insubordination.

Accepting gifts of more than a nominal value from anyone with whom you do business on behalf of U.G.M.. The determination on whether or not a gift or bequest is nominal shall be at the discretion of the Executive Director.

Failure to protect proprietary information which could be considered harmful to U.G.M.'s security, reputation, employees, or its clients.

Involvement in the initiation, authorship, or transmittal of threatening or defamatory communication, either written or oral, concerning U.G.M., employees, or its clients.

Sexual harassment or other unlawful harassment of another employee.

Unauthorized departure from your job, department or organization premises.

Disorderly conduct including fighting, threatening, insulting, or abusing other employees.

Acts or language which are considered immoral or indecent according to traditional biblical standards as determined by the Board of Trustees.

Theft or misuse of organization or personal property.

Gambling on U.G.M. premises.

Unauthorized solicitation of funds or distribution of literature on U.G.M. time or in working areas.

Possession or use of alcoholic beverages on company property or appearing for duty under the influence of alcohol or drugs.

Possession or use of illegal drugs.

Unauthorized personal use of any U.G.M. property, including U.G.M. telephones.

Possession of explosives, firearms, or weapons of any type on U.G.M. premises.

Internal Revenue Service District Director	Department of the Treasury P.O. Box 2508 Cincinnati, OH 45201
Date: FEB 27, 1998	Person to Contact: Brett Siereveld Telephone Number: 513-241-5199 Fax Number: 513-684-5936 Federal Identification Number 91-0595029
Union Gospel Mission Assn. of Seattle Box 202 Seattle, WA 98111-0202	

Dear Sir or Madam:

This is in response to your request for a letter affirming your organization's exempt status.

In November 1943, we issued a determination letter that recognized your organization as exempt from federal income tax under section 101(6) of the Internal Revenue Code of 1939 (now section 501(c)(3) of the Internal Revenue Code). Your organization is classified as a publicly supported organization, and not a private foundation, because it is described in sections 509(a)(1) and 170(b)(3)(A)(i) of the Code. Donors may deduct contributions to your organization as provided in section 170 of the Code. That letter is still in effect.

As of January 1, 1984, your organization is liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remunerations of $100 or more paid to each of its employees during a calendar year. Your organization is not liable for the tax

imposed under the Federal Unemployment Tax Act (FUTA).

If your organization is a church or a qualified church-controlled organization as defined in section 3131(w)(3) of the Code, it may elect to exclude the wages paid to its employees (other than for services performed in an unrelated trade or business) for social security taxes. This election must be made by filing Form 9274 by the day before the date the organization's first quarterly employment tax return would be due under the revised law. If your organization makes this election, its employees who earn $100 or more during a calendar year become liable for the payment of self-employment tax (under section 1402 of the Code) on the wages the organization pays them.

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Requests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

As this letter could help resolve any questions about your organization's exempt and foundation status, you should keep it with the organization's permanent records.

If you have any questions, you may contact us at the address or telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,

C. Ashley Bullard
District Director

Internal Revenue Service	Department of the Treasury P.O. Box 2508 Cincinnati, OH 45201
Date: April 24, 2003	Person to Contact: Ms. K. Hilson 31-07340 Customer Service Representative Toll Free Telephone Number: 8:00 a.m. to 6:30 p.m. EST 877-829-5500 Fax Number: 513-263-3756 Federal Identification Number: 91-0595029
Seattles Union Gospel Mission Box 202 Seattle, WA 98111-0202	

Dear Sir:

This letter is in response the amendment to your organization's Articles of Incorporation file with the state on January 30, 2003. We have updated our records to reflect the name change as indicated above.

In November 1943 we issued a determination letter that recognized your organization as exempt from federal income tax under section 101(6) of the Internal Revenue Code of 1939 (now section 501(c)(3) of the Internal Revenue Code). Your organization is classified as a publicly supported organization, and not a private foundation, because it is described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code. Donors may deduct contributions to your organization

as provided in section 170 of the Code. That letter is still in effect.

As of January 1, 1984, your organization is liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remunerations of $100 or more paid to each of its employees during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

If your organization is a church or a qualified church-controlled organization as defined in section 3121(w)(3) of the Code, it may elect to exclude the wages paid to its employees (other than for services performed in an unrelated trade or business) for social security taxes. This election must be made by filing Form 8274 by the day before the date the organization's first quarterly employment tax return would be due under the revised law. If your organization makes this election, its employees who earn $100 or more during a calendar year become liable for the payment of self-employment tax (under section 1402 of the Code) on the wages the organization pays them.

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other Federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return.

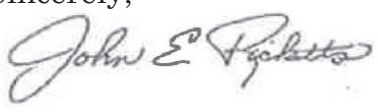
If your organization had a copy of its application for recognition of exemption on July 15, 1987, the law requires you to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of $20 a day for each day you do not make these documents available for public inspection.

As this letter could help resolve any questions about your organization's exempt and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,



John E. Ricketts, Director, TE/GE
Customer Account Services

Excerpts from Christian Legal Society Recommendations (CP380-90)

[CP380]

Coordinators, Core Groups and Volunteers

The recruitment of lawyers is the most challenging of the issues involved in setting up a Christian Legal Aid clinic. The starting point for successful recruitment comes from the Biblical foundation for this work. A Christian's obligation to care about justice for the poor is manifest through both the Old and New Testament. Scriptural verses dealing with this subject are far too numerous for citation here. Representative, however are the following:

> **Proverbs 28:27** He who gives to the poor will lack nothing, but he who closes his eyes to them receives many curses.
>
> **Proverbs 29:7** The righteous care about justice for the poor, but the wicked have no such concern.
>
> **Proverb 31:8-9** Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.
>
> **Psalms 140-12** I know that the Lord secures justice for the poor and upholds the cause of the needy.
>
> **Ps. 82:3,4** Vindicate the weak and the fatherless, do justice to the afflicted and destitute, rescue the weak and needy, deliver them out of the hand of the wicked.

> **Jer. 22:16** He pled the cause of the afflicted and needy, then it was well.

The phrases instructing that we "defend rights," "do justice" and "plead causes" appear to be directed chiefly to lawyers whose training, experience and practice is centered upon these concepts.

A compelling argument for the Christian Lawyer's responsibility to care about justice for the poor is made by Christian Legal Society attorney Stephen S. Duggins of the Chattanooga, Tennessee law firm of Stophel & Stophel, P.C.:

> God does not mince words about the Christian obligation to provide legal assistance to the poor. Proverbs 29:7, is painfully blunt: "The righteous care about justice for the poor, but the wicked have no such concern." Given the complexity of the present American Legal System, most agree that "justice for the poor" requires that the poor have access to competent counsel. While the assistance of counsel does not guarantee justice, it does seem to be at least a prerequisite to justice. To be sure, Proverbs 29:7 also means much more than that, but that is part of its meaning. There are numerous scriptural passages dealing with God's concern for justice and with Christian obligations to seek justice. Proverbs 29:7 is so forceful, and so difficult to avoid.

* * * * *

[CP382-83]

Testimonies, Reports and Cases in Christian Legal Aid Clinics

Testimonies of real-life stories are almost always more convincing and motivating in causing people to respond to the needs and opportunities than bare statistics and clinic descriptions, although both are needed. Try to obtain such real-life experiences from Christian lawyers, law students and paralegals that have been involved in serving the poor previously. If none are available, someof the true events reflected below may be useful.

Read these accounts as they appear in the attachment. Ask the rhetorical question: How fulfilled and excited would you be if you were the person whom God had used to provide this kind of help and result in the life of Jim, Tom, or Maria? We find that lawyers, law students and paralegals in other Christian legal aid clinics report that their volunteer services have proved to be some of the most fulfilling and rewarding experiences of their professional careers, and that sponsors need and are most supportive of Christian legal aid services.

Real life experiences

Albuquerque, New Mexico

A somewhat remarkable scene occurred at an interview office in Albuquerque, New Mexico recently. Jim, a 42-year-old homeless carpenter addicted to crack cocaine, was bowing his head and sincerely praying with a 73-year-old semi-retired volunteer Christian lawyer to recommit his life to Christ. This followed a 28-year life of addiction to alcohol and drugs, a broken marriage, a long history of DUIs and minor criminal offenses, and unsuccessful attempts at

cures in secular drug rehabilitation programs. Jim appeared at the office of a drug rehabilitation program for legal help – that is, advice on what to do in response to an outstanding bench warrant for his arrest for violation of a court-ordered alcohol and drug rehabilitation-counseling program. Addicted to drugs starting at 14, this father of three teen-age children with an ex-wife in Houston, Texas, presented a history of job losses and bouts of homelessness caused by alcohol and drug problems, a bad temper and disagreements with job bosses. Committing his life to Christ at the age of 15, he later left the church after an angry disagreement with his priest. Now rarely attending a church and seldom reading his Bible or praying, Jim seemed an unlikely candidate for being rehabilitated. But Jim left the interview with advice concerning his legal problem, a fresh encounter with God and a resolve and plan to return to God, to begin to rebuild his life and to try to rejoin his family.

Honolulu, Hawaii

Tom Rulon worked with one young drug addict who, Rulon says, "came to us in pretty bad shape." Working as a waiter on a cruise liner, the young man had burned out working double shifts. During a port call, he got drunk and missed the boat. he was fired and had been living on the streets for about two weeks before he sought Rulon's help to get his job back.

Rulon saw that the young man's needs went far beyond this particular vocational crisis. For starters, he was depressed and didn't know where his life was going. As Rulon worked to get the waiter rehired (accomplished by taking his case to a union representative), he also talked to the man about how God had an overall plan for his life. The young man

seemed receptive and accepted one of Rulon's pocket New Testaments.

Rulon never expected to see the fellow again, but a few months later Rulon took his family on a seven-day inner-island cruise. And guess who served as his waiter? That's right–the young man whom Rulon had helped. The rehired waiter was so excited to see Rulon that he immediately pulled out his dog-eared New Testament and showed how he had highlighted many passages. "I'm following Jesus," the young man said, "and things are turning out okay. I'm going back to school."

* * * * *

[CP390]

The Guidelines

The Biblical commands to lovingly help those afflicted by poverty also provides us with a great privilege to share in His compassion for them by assisting in various legal and other ways.

It is suggested that a basic Christian legal aid clinic should include:

1. A joint commitment by both the local sponsoring churches or Christian organizations and of the Christian Legal Community faithfully and prayerfully to attempt to carry out the biblical commands and opportunities to serve legal and certain spiritual needs of the poor, including evangelizing them, in a Christ honoring way;

* * * * *

From: Mace, David

Sent: Tuesday, October 4, 2016 9:07 AM

* * * * *

Subject: ODLS is hiring!

Hello ODLS volunteers, I have exciting news! ODLS is adding a full time staff attorney position and we are ready to fill it. If you or anyone you know might be interested, here is a link to the posting: https://www.paycomonline.net/v4/ats/index.php?/job/apply&clientkey=0CC84378EF47065006EC78DC46A36DA8&job=6258.
Please be praying that we find the right person for the job! If you have any questions, please don't hesitate to contact me.
Thanks!
David Mace
Director - Open Door Legal Services
Seattle's Union Gospel Mission
206.682.4642
206.903.6504 (fax)
P.O. Box 14165
Seattle, WA 98114
www.opendoorlegalservices.org
www.ugm.org

Staff Attorney, Full-Time

Job Details

Level
Undisclosed
Salary Range
$50,252.00 - $55,401.00 Salary/year
Job Location
Open Door Legal Services [WA, USA]
Travel Percentage
Undisclosed
Position Type
Full Time
Job Shift
Undisclosed
Education Level
Undisclosed
Job Category
Undisclosed

Description

Seattle's Union Gospel Mission is currently looking for an **Staff Attorney** to join the **Open Door Legal Services** team in **Seattle, WA**.
Seattle's Union Gospel Mission is a private faith-based organization that helps the community to reach out with compassion to those who have lost hope. And as a community, we empower one another to build, lead and give back.
The **Staff Attorney** is responsible for representing clients in all of the various legal issues handled by the Legal Services department, and assisting the Director of Legal Services with operation and coordination of the department.

Our **Open Door Legal Services** team is looking for its newest member and we think that could be you!

Essential Job Duties

1. Provide legal counsel, referrals, and direct representation services to clients.
2. Represent clients in court hearings, administrative hearings, or other legal proceedings both in person and by telephonic appearance.
3. Oversee the provision of quality legal services and education to clients by volunteer attorneys, law students and paralegals.
4. Conduct client intakes, including initial interview, conflicts checks, criminal history checks and licensing checks.
5. When necessary, assist with handling in-person, telephone, and e-mail contact with the public, clients, volunteers, and donors efficiently and effectively.
6. Coordinate regularly scheduled legal clinics, including scheduling of volunteers and clients, legal advice to clients, and supervision of attorney volunteers. .
7. Strive to anticipate and proactively assist with the needs of the department and the workload of the ODLS Director.
8. Work cooperatively with other Mission departments as a team to efficiently and positively accomplish the work of the Mission.

9. Attend all Mission meetings and training sessions, as required.
10. Any other job-related duties as assigned by supervisor.

Knowledge, Skills and Abilities

1. The successful candidate will have an active church/prayer life and demonstrate a strong desire to serve the Mission by ministering to those whom it serves.
2. Must agree with Seattle's Union Gospel Mission **Statement of Faith, Mission and Vision Statements** and have a personal ethos and work ethic that reflects the Missions **Core Values**.
3. Sensitivity to cultural diversity is required.
4. Seattle's Union Gospel Mission accepts and encourages the involvement of volunteers at all levels in the organization. All Mission employees are expected to assist in the creation of meaningful and productive roles in which volunteers might serve in the organization, and to interact positively and cooperatively with our volunteers.
5. Ability to successfully pass pre-employment drug and criminal background screenings.
6. High proficiency with Microsoft Word, Excel, and Outlook required.
7. Excellent oral and written communication, grammar, attention to detail, and organizational skills required.

8. Ability to maintain a professional demeanor, work under pressure and handle sensitive/ difficult situations calmly and effectively required.
9. Ability to work comfortably with the diverse clients served by ODLS required.
10. Ability to maintain strict confidentiality regarding all client/sensitive information and to strictly comply with the Washington Rules of Professional Conduct required.
11. Self-motivation, with high standards for personal work product, and the performance of ODLS as a whole required.
12. Ability and willingness to work both independently and within a team setting required.
13. Ability to successfully pass pre-employment drug and criminal background screenings.
14. Must support the Legal Services mission statement: to seek justice for the poor and minister to the needy through the provision of legal services, to practice law in a manner that honors and glorifies God, and to love others and share the gospel of Jesus Christ.

Qualifications

Physical Requirements

1. Ability to stand, walk or sit for extended periods of time; bend, stoop or reach.
2. Regularly lift and/or carry up to 40 pounds.
3. Talk on telephone and use computer

extensively

Education

Juris Doctor degree and WSBA admission to practice law required.

Experience

Experience within a legal work setting is preferred. Minimum of two years of experience in a professional office environment strongly preferred.

Statement of Faith

- We believe the Bible to be the inspired, the infallible, authoritative Word of God.
- We believe that there is one God, eternally existent in three Persons; Father, Son, and Holy Spirit.
- We believe in the deity of our Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father, and in His personal return in power and glory.
- We believe that for the salvation of lost and sinful men, regeneration by the Holy Spirit is absolutely essential.
- We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a Godly life.
- We believe in the bodily resurrection of the just and unjust, the everlasting blessedness of the saved, and the everlasting conscious punishment of the lost.

- We believe in the spiritual unity of believers in Christ.

Mission Statement
To serve, rescue and transform those in greatest need, through the grace of Jesus Christ.
Vision Statement
To forcefully impact poverty and brokenness, affecting such significant change that our communities point to God!
Core Values

- Bold and courageous
- Diverse brilliance
- Passionate urgency
- Strategic effectiveness
- Pursuit of excellence
- Sacred trust

Subject: RE: ODLS Job Opening

---------- Forwarded message ----------
From: **Matt Woods**
Date: Thu, Oct 13, 2016 at 11:58 AM
Subject: Re: ODLS Job Opening
To: "Baier, Alissa"

Thanks, Alissa. I'll certainly get in touch with David. I appreciate it!

Matt

On Thu, Oct 13, 2016 at 11:56 AM, Baier, Alissa wrote:

Hey Matt,

Good to see you yesterday! I'm looking through our intranet site, and I don't see any actual code of conduct form that requires signature. But I did find two sections in the Employee Handbook that you would want to consider:

STATEMENT OF FAITH

All staff members are required to sign the doctrinal standard of Seattle's Union Gospel Mission. All staff members are expected to live by a Biblical moral code that excludes extra-marital affairs, sex outside of marriage, homosexual behavior, drunkenness, illegal behavior, use of illegal drugs, and any activity that would have an appearance of evil.

STANDARDS OF CONDUCT

As stated previously, all staff members are expected

to live by a Biblical moral code which excludes extra-marital affairs, sex outside of marriage, homosexual behavior, drunkenness, illegal behavior, use of illegal drugs and any activity which would have the appearance of evil. The following types of conduct are also not permitted and could result in disciplinary action up to and including termination. This is not meant to be a complete list, but will serve as a guideline for unacceptable behavior.

I recommend emailing or talking to David about your concerns and see what he thinks. We would love to have you here at ODLS, but he makes the final call. Regardless of what happens with the job, you're welcome back to volunteer at any time, too.

Best,

Alissa Baier

Attorney - Open Door Legal Services

Seattle's Union Gospel Mission

206-682-4642

206-903-6504 (fax)

P.O. Box 14165

Seattle, WA 98114

www.ugm.org

From: Matt Woods [mailto]
Sent: Thursday, October 13, 2016 11:33 AM

To: Baier, Alissa
Subject: Re: ODLS Job Opening

Thanks again for taking some time to chat with me,

Alissa! I'm not having any success finding the Code of Conduct on the UGM site. If you're able to locate it, could you send it my way, or if not, I can ask David if he's able to track it down? Thanks!

Matt

From: Mace, David

Sent: Friday, October 14, 2016 1:07 PM

To: Matt Woods

Subject: RE: ODLS Staff Attorney Opening

Hi Matt, it? s good to hear from you! You are correct that the Mission? s code of conduct excludes homosexual behavior. Here is the relevant portion of the employee handbook:

All staff members are required to sign the doctrinal standard of Seattle? s Union Gospel Mission. All staff members are expected to live by a Biblical moral code that excludes extra-marital affairs, sex outside of marriage, homosexual behavior, drunkenness, illegal behavior, use of illegal drugs, and any activity that would have an appearance of evil.

I? m sorry that you won? t be able to apply for the job, but I would love to catch up with you sometime if you have time. There have also been a number of other job openings in the legal services community lately. Let me know if you would like me to pass along any relevant opportunities to you as they come up.

David Mace
Director - Open Door Legal Services
Seattle's Union Gospel Mission
206.682.4642
206.903.6504 (fax)
P.O. Box 14165
Seattle, WA 98114
www.opendoorlegalservices.org
www.ugm.org

From: Matt Woods
[mailto:matt.woods16@gmail.com]
Sent: Thursday, October 13, 2016 12:31 PM
To: Mace, David
Subject: ODLS Staff Attorney Opening

Hi David,

I hope all is well at O DLS! I was glad to get a chance to catch up with Alissa yesterday and hear about all of the exciting changes at O DLS, including the new staff attorney position. I'm certainly being thoughtful and prayerful about applying because I've loved the opportunities I've had getting to be a part of serving the clients at O DLS.

I wanted to discuss one thing with you before getting too far into the application process though. My understanding of the UGM employee statement of faith and standards of conduct is that they expect employees to live by a Biblical moral code that excludes homosexual behavior. I currently have a boyfriend and can see myself getting married and starting a family with another man someday. What are your thoughts on what impact that should have on pursuing employment at UGM? I appreciate your time and thoughts!

All the best,
Matt

Application for Staff Attorney, Full-Time

Application Information

Name	Woods, Matt S	Primary Phone	[redacted]
Date Of Application	11-01-2016	Secondary Phone	[redacted]
Application ID	64368	Email Address	[redacted]
Address	[redacted]	City, State, Zip Code	[redacted]
Referral Source		Referral Name	

Education

	Type	Institution	Dates Attended
1	G	University of Washington School of Law Seattle WA.	09/20/2011 To 05/30/2014
2	U	Seattle Pacific University Seattle WA.	09/20/2004 To 06/12/2008

Attended As	Major/ Minor	Degree	GPA	Graduated
	N/A / N/A	JD	0.00	Yes
	Journalism/ English/ Business	BA	0.00	Yes

Employment

	Employer	Date of Employment	Job Title/ Pay Rate
1	U.S. District Court	03/01/2015 To 11/01/2016 1 Year/ 8 Months	Social Security Law Clerk $65000.00 /yr.

Job Duties	Can Contact? (Supervisor)	Reason for Leaving	Current Employer
Draft opinions in Social Security disability cases.	Yes (Judge Richard Martinez)	N/A	No

References

	Name	Company	Title
1	Stephanie Earhart		
2	Helenka Koltonowska		
3	Andrea Woods		

Relationship	Email Address	Time Known	Phone
Supervisor	[redacted]	4 Years and 0 months	[redacted]
Supervisor	[redacted]	3 Years and 0 Months	[redacted]
Co-law student	[redacted]	6 Years and 0 months	[redacted]

Questions

Knockout Questions

1. Can you provide proof of eligibility to work in the United States of America?	Answer: Yes
2. Can you provide evidence that you are legally able to work in the United States? Please note that as required by the immigration reform and control	Answer:

act of 1986, Seattle's Union Gospel Mission cannot employ you unless you can produce work authorization and identity documents as specified by law.	
3. Can you provide proof that you are at least 18 years old?	Answer: Yes
4. If offered employment, would you be willing to submit to preemployment background and drug screenings?	Answer: Yes
Global Questions	
1. Have you accepted Jesus Christ as your Lord and Savior?	Answer: Yes
2. Please describe your relationship with Jesus Christ.	Answer: My worldview is shaped by the ministry of Jesus Christ, who teaches me that social justice is critical in a world where we have enough resources that no one need go without their basic needs, yet so many tragically do.

3. Have you carefully read Seattle's Union Gospel Mission's Statement of Faith, Mission and Vision Statements, and Core Values as outlined in the job posting?	Answer: Yes
4. Have you carefully read Seattle's Union Gospel Mission's Statement of Faith, Mission and Vision Statements, and Core Values as outlined in the job posting?	Answer:
5. Do you agree without reservation with Seattle's Union Gospel Mission's Statement of Faith, Mission and Vision Statements, and Core Values as outlined in the job posting?	Answer: Yes
6. Do you agree without reservation with Seattle's Union Gospel Mission's Statement of Faith, Mission and Vision Statements, and Core Values as outlined in the job posting?	Answer:
7. If not, with which statements do your personal beliefs differ?	Answer:
8. Because Seattle's Union Gospel Mission is an interdenominational Christian organization, would you be willing to work and cooperate with other Christians whose	Answer: Yes

doctrine may be different than your own?	
9. Because Seattle's Union Gospel Mission is an interdenominational Christian organization, would you be willing to work and cooperate with other Christians whose doctrine may be different than your own?	Answer:
10. Are you currently active in a local church?	Answer: No
11. If yes, what is the name of your church and what city is it located in?	Answer:
12. What is your Pastor's name and contact information?	Answer: N/A
13. What is your Pastor's name and contact information?	Answer:
14. If you are not currently active in a local church, please explain why.	Answer: I consider my church to be the weekly Bible study in which I participate with about eight other men.
15. Are you currently eligible to work in the United States?	Answer: Yes

16. Can you provide evidence that you are legally able to work in the United States? Please note that as required by the immigration reform and control act of 1986, Seattle's Union Gospel Mission cannot employ you unless you can produce work authorization and identity documents as specified by law.	Answer: Yes
17. If applicable for this position, do you meet the Mission Driver Criteria?	Answer: Yes
18. Are you still currently employed?	Answer: Yes
19. Have you ever been employed with us before?	Answer: No
20. If yes, please tell us when and where.	Answer:
21. Have you ever volunteered with Seattle's Union Gospel Mission?	Answer: Yes
22. Have you ever volunteered with Seattle's Union Gospel Mission?	Answer:
23. If yes, please tell us where and the name of a volunteer reference.	Answer: Open Door Legal Services – David Mace

24. Do you have any relatives who are currently employed by Seattle's Union Gospel Mission?	Answer: No
25. Do you have any relatives who are currently employed by Seattles Union Gospel Mission?	Answer:
26. If yes, please list their name(s) and department(s).	Answer:
27. Are you a past or present volunteer intern through a Mission Graduate Internship, Christian Service Internship, or Serve Seattle Internship program? If yes, please list dates of involvement and most recent program supervisor.	Answer:
28. Are you currently participating in Mission program housing?	Answer:
29. What job status/shift are you looking for?	Answer: Full Time
30. What wage/salary are you looking for?	Answer: 50000 - 55000
31. When are you available for employment?	Answer: 11-21-2016
32. If no, what accommodation, if any, would be needed for you to perform the essential job functions?	Answer:

33. Highest Level of Education Completed	Answer: Graduate School/Master's
34. Can you perform the essential job functions with or without reasonable accommodation?	Answer: Yes
35. If no, what accommodation, if any, would be needed for you to perform the essential job functions?	Answer:
36. How did you hear about this position?	Answer: Union Gospel Mission Website
37. If "Other" please specify:	Answer:
38. If "Other" please specify:	Answer:

Statement

Acknowledged Yes

Signature Matt S Woods [11/01/2016]

MATT WOODS

[redacted] | [redacted] | WSBA #48120

November 1, 2016

Open Door Legal Services
Seattle's Union Gospel Mission
318 2nd Ave. Ext. S
Seattle, WA 98104

To Whom It May Concern,

As a former legal intern and volunteer attorney at Open Door Legal Services, I consider the opportunity to be a staff attorney at Open Door to be a dream job. I understand that the Union Gospel Mission's employee code of conduct holds that all staff members are expected to live by a Biblical moral code that excludes, among other things, homosexual behavior. As a bisexual man who is open to the idea of marrying and starting a family with another man, I am therefore excluded from employment. As a Christian, I firmly believe that a change in that policy would benefit the organization's mission to serve, rescue, and transform those in greatest need through the grace of Jesus Christ.

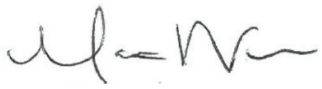
Discrimination based on sexual orientation in public employment has been prohibited in Washington since 1991 by an executive order of Governor Booth Gardner. The Washington Law Against Discrimination, enacted in 2006, extended that prohibition against discrimination to private employers of eight or more employees. While the Union Gospel Mission may enjoy exemption from that law as a religious nonprofit organization, I ask that this be an

opportunity to evaluate the purpose behind those protections.

Diversity in employment is important because members of minority cultures are uniquely situated to be able to see where the general culture fails its most vulnerable members. I am not a good legal aid attorney in spite of my sexuality; I am a good legal aid attorney because of my sexuality. The richness of perspective that I have to offer because of my minority experience helps me empathize with and serve the oppressed in a way that others who have not shared my experience cannot.

I appreciate your willingness to evaluate what is at stake by adhering to a policy that excludes certain members of society from participating in your important ministry. Thank you for your consideration.

Sincerely,



Matt Woods

From: Mace, David
Sent: Wednesday, November 9, 2016 10:15 AM
To: Matt Woods
Subject: **F**W: KCBA Staff Attorney Position Opening
Attachments: Project Safety Staff Attorney-Job Description-.pdf

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Hi Matt, here's a new job posting I thought you might be interested in. Also, I'm going to need to reschedule our meeting. I need to pick my daughter up from school tomorrow, so I'm going to be working from home. Do you have any openings in your schedule next week? I'm free for lunch any day but Monday.

David Mace
Director - Open Door Legal Services
Seattle's Union Gospel Mission
206.682.4642
206.903.6504 (fax)
P.O. Box 14165
Seattle, WA 98114
www.opendoorlegalservices.org
www.ugm.org

From: Judy Lin [mailto:JudyL@kcba.org]
Sent: Wednesday, November 9, 2016 10:01 AM
To: ATJ Community
Subject: [atj-community] KCBA Staff Attorney Position Opening

Dear Colleagues,

KCBA is hiring for a VOCA-funded staff attorney position. Please distribute the attached job announcement to anyone who might be interested.

Thank you!
Judy Lin
Senior Managing Attorney, Family Law Pro Bono Programs
King County Bar Association
1200 Fifth Avenue, Suite 700
Seattle, WA 98101
206-267-7023
JudyL@kcba.org
www.kcba.org
CONNECTwithKCBA

The Honorable Karen Donohue
Hearing Date: December 15, 2018
With Oral Argument

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MATTHEW WOODS, an individual, Plaintiff, vs. SEATTLE'S UNION GOSPEL MISSION, a Washington nonprofit, Defendant.	NO. 17-2-29832-8 SEA DECLARATION OF ALISSA BAIER IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, Alissa Baier, declare as follows:

1. I am over the age of 18, competent to testify to the matters stated herein and make this declaration based upon my personal knowledge.

2. I have been a staff attorney at Seattle's Union Gospel Mission's Open Door Legal Services since January 11, 2013.

3. My job duties as a Mission employee include not only providing legal assistance and advice to my clients, but spiritual guidance. I am encouraged to love and show compassion for them as my neighbors, to talk openly about my faith, to ask my clients about

their own religious beliefs, to pray with them in our meetings, and to explicitly tell them about Jesus and the Gospel. For example, when I work with a client on their family law matters, my faith strongly influences our discussion about their decisions whether or not to reconcile with a spouse or to file for divorce, how to parent their children, how to forgive abusers, and other difficult relationship issues. My faith also informs my immigration work. I am able to explain the Christian concepts of redemption and new life when I assist victims of domestic violence with U visa or VAWA petitions, which allow them to gain legal immigration status out of the horrible things that they once experienced. Furthermore, I have built a practice that includes asylum applications for Christians who have been persecuted in their home countries, and discussing our faith and religious practices is essential to preparing their cases. Overall, my legal work at ODLS is intricately intertwined with my spiritual ministry to our clients, and my personal relationship with Jesus is essential to this job.

4. I would describe the Plaintiff, Matthew Woods, as a colleague and friend. We knew each other in undergraduate school at Seattle Pacific University, where we took classes in the same department and both served as staff editors for the student newspaper. We also developed a friendship as he volunteered at ODLS both during his last two years of law school and after his graduation from law school.

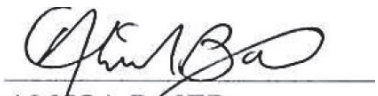
5. In October 2016, Mr. Woods emailed me about an open staff attorney position at ODLS (my former position, as I had recently moved into a new immigration attorney position). We met for coffee on

October 12, 2016. Mr. Woods asked me about my comfort level with the Mission's policies and expectations for employees and whether any of it bothered my conscience or my personal Christian beliefs and practices. I told him no. Eventually he disclosed to me that he was in a same-sex relationship and raised the prospect of whether it would be awkward, for example, to bring his male partner to a Mission Christmas Party. I explained that, while Mission volunteers are only asked to sign a Statement of Faith, Mission employees are also expected to sign a Code of Conduct regarding various behavioral expectations, including a prohibition of certain romantic and sexual relationships. I told him that I did not remember the language specifically, but I could try to find a copy for him. I also advised that he speak directly with David Mace, the 0DlS director. Until that October 12, 2016 discussion, I was not aware of Mr. Woods' sexual orientation. I did not learn that he identified specifically as bi-sexual until I read local news media's coverage about this lawsuit in November 2017.

6. Exhibit 1 is a true and correct copy of an email exchange between Mr. Woods and myself surrounding that October 12 meeting.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED this 16th day of May, 2018, at Seattle, Washington.



ALISSA BAIER

50 State Survey of Religious Exemptions

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Ala.	Ala.Code § 25-1-22	No	n/a	Age is the only protected class
Alaska	Alaska Stat. § 18.80.210	No	Alaska Stat. § 18.80.300(5)	Definition of "employer" excludes a "religious association or corporation" that is "is not organized for private profit"
Ariz.	Ariz. Rev. Stat. § 41-1463	No	Ariz. Rev. Stat. § 41-1462	Does not apply "to a religious corporation, association, educational institution or society with respect to the employment of

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities"
Ark.	Ark. Code Ann. § 16-123-107	No	Ark Code Ann. § 16-123-103(a)	"The provisions of this subchapter relating to employment shall not be applicable with respect to employment by a religious corporation, association, society, or other religious entity."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Cal.	Cal. Gov. Code § 12940	Yes	Cal. Gov. Code § 12926(d)	"'Employer' does not include a religious association or corporation not organized for private profit."
Colo.	Colo. Rev. Stat. § 24-34-402	Yes	Colo. Rev. Stat. § 24-34-402(6)	"[T]his section shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				association, educational institution, or society of its activities."
Conn.	Conn. Gen. Stat. § 46a-81c	Yes	Conn. Gen. Stat. § 46a-81p	Does "not apply to a religious corporation, entity, association, educational institution or society with respect to the employment of individuals to perform work connected with the carrying on by such corporation, entity, association, educational institution or society of its activities, or with respect to matters of

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				discipline, faith, internal organization or ecclesiastical rule, custom or law which are established by such corporation, entity, association, educational institution or society."
Del.	Del. Code Ann. tit. 19, § 711	Yes	Del. Code Ann. Tit. 19, § 710(7)	"The term 'employer' with respect to discriminatory practices based upon sexual orientation or gender identity does not include religious corporations, associations or societies whether supported, in

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				whole or in part, by government appropriations, except where the duties of the employment or employment opportunity pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under § 511(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 511(a)]."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Fla.	Fla. Stat. § 760.10	No	Fla. Stat. § 760.10(9)	"This section shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment or public accommodation to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. This section shall not prohibit a religious corporation, association,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities."
Ga.	Ga. Code Ann. § 45-19-29	No	Ga. Code Ann. § 45-19-34	"It is not an unlawful practice for an employer to hire and employ employees or to select an individual in any

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				training program on the basis of religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal functions of that particular employer's responsibilities."
Haw.	Haw. Rev. Stat. § 378-2	Yes	Haw. Rev. Stat. § 378-3(5)	Does not "[p]rohibit or prevent any religious or denominational institution or organization, or any

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained"

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Idaho	Idaho Code § 67-5909	No	Idaho Code § 67-5910(1)	"This chapter does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities."
Ill.	775 Ill. Comp. Stat. 5/1-102 & 5/2-102	Yes	775 Ill. Comp. Stat. 5/2-101(B)(2)	"'Employer' does not include any place of worship, religious corporation, association, educational institution,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				society, or non-profit nursing institution conducted by and for those who rely upon treatment by prayer through spiritual means in accordance with the tenets of a recognized church or religious denomination with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such place of worship, corporation, association,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				educational institution, society or non-profit nursing institution of its activities."
Ind.	Ind. Code § 22-9-1-2	No	Ind. Code 22-9-1-3(h)(1)-(2)	"'Employer' ... does not include: (1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes; [or] (2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution"

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Iowa	Iowa Code § 216.6	Yes	Iowa Code § 216.6(6)(d)	Does not apply to "[a]ny bona fide religious institution or its educational facility, association, corporation, or society with respect to any qualifications for employment based on religion, sexual orientation, or gender identity when such qualifications are related

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				to a bona fide religious purpose."
Kan.	Kan. Stat. § 44-1009	No	Kan. Stat. § 44-1002(b) & (i)	"'Employer' … shall not include a nonprofit fraternal or social association or corporation." The term "[u]nlawful discriminatory practice … shall not apply to a religious or private fraternal and benevolent association or corporation."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Ky.	Ky. Rev. Stat. § 344.040	No	Ky. Rev. Stat. § 344.090(1) & (2)	"[I[t is not an unlawful practice for: (1) An employer to hire and employ employees … on the basis of his religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. (2) A religious corporation, association, or society to employ an individual on

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				the basis of his religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity."
La.	La. Stat. § 23:332	No	La. Stat. § 23:332(H)(1)	"[I]t shall not be unlawful discrimination in employment for: (1) An employer to hire and employ employees ... on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise."
Me.	5 Me. Stat. § 4571 & 4572	Yes	5 Me. Stat. § 4553(4)	"'Employer' does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				fraternity, except for purposes of disability-related discrimination ...."
Md.	Md. Code, State Gov. § 20-606	Yes	Md. Code, State Gov. § 20-605(a)(1)	"[T]his subtitle does not prohibit: (1) an employer from hiring and employing employees ... on the basis of the individual's sex, age, religion, national origin, or disability, if sex, age, religion, national origin, or disability is a bona fide occupational qualification reasonably necessary to the normal

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				operation of that business or enterprise"
Mass.	Mass. Gen. Laws ch. 151B, § 4	Yes	Mass. Gen. Laws ch. 151B, §4(18)	"[N]othing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				from limiting admission to or giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Mich.	Mich. Comp. Laws § 37.2202	No	Mich. Comp. Laws § 37.2208	"A person subject to this article may apply to the commission for an exemption on the basis that religion … is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise…. An employer may have a bona fide occupational qualification on the basis of religion ... without obtaining prior exemption from the commission …."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Minn.	Minn. Stat. § 363A.08	Yes	Minn. Stat. § 363A.20	"The provisions of section 363A.08 shall not apply to a religious or fraternal corporation, association, or society, with respect to qualifications based on religion or sexual orientation, when religion or sexual orientation shall be a bona fide occupational qualification for employment."
Miss.	Miss. Code § 25-9-149	No	n/a	Law applies only to state employment.

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Mo.	Mo. Rev. Stat. § 213.055	No	Mo. Rev. Stat. § 213.010(8)	"'Employer' … does not include corporations and associations owned or operated by religious or sectarian organizations."
Mont.	Mont. Code Ann. § 49-2-303	No	Mont. Code Ann. § 49-2-101(11)	"'Employer' means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				provide accommodations or services that are available on a nonmembership basis."
Neb.	Neb. Rev. St. § 48-1104	No	Neb. Rev. St. § 48-1103(1)	Act does not apply to "[a] religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities"

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Nev.	Nev. Rev. Stat. § 613.330	Yes	Nev. Rev. Stat. § 613.320(1)(b)	Does not apply to "[a]ny religious corporation, association or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of its religious activities."
N.H.	N. H. Rev. Stat. § 354-A:7	Yes	N. H. Rev. Stat. § 354-A:18	"Nothing contained in this chapter shall be construed to bar any religious or denominational institution or organization, or any

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
N.J.	N.J. Rev. Stat. § 10:5-12	Yes	N.J. Rev. Stat. § 10:5-12(a)	"[I]t shall not be an unlawful employment practice ... for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee"
N.M.	N.M. Stat. Ann. § 28-1-7	Yes	N.M. Stat. Ann. § 28-1-9(B)	Does not "bar any religious or denominational institution or organization that is operated, supervised or controlled by or that is operated in connection with a religious or denominational organization from imposing discriminatory

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				employment or renting practices that are based upon sexual orientation or gender identity"
N.Y.	N.Y. Exec. Law § 296	Yes	N.Y. Exec. Law § 296(11)	"Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
N.C.	N.C. Gen. Stat. § 143-422.2	No	None	
N.D.	N.D. Cent. Code § 14-02.4-03	No	N.D. Cent. Code § 14-02.4-08	"[I]t is not a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a position, to discharge an individual from a position ... on the basis of religion, sex, national origin, physical or mental disability, or marital status in those circumstances where

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				religion, sex, national origin, physical or mental disability, or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise"
Ohio	Ohio Rev. Code Ann. § 4112.02	No	Ohio Rev. Code Ann. § 4112.02(O)	"This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities."
Okla.	Okla. Stat. tit 25, § 1302	No	Okla Stat. tit. 25, § 1307	"This chapter[] does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				association, or society of its religious activities."
Or.	Or. Rev. Stat. § 659A.030	Yes	Or. Rev. Stat. § 659A.006(5)(c)	"It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation: … (c) In other employment positions that involve religious activities, as long as the employment

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				involved is closely connected with or related to the primary purposes of the church or institution and is not connected with a commercial or business activity that has no necessary relationship to the church or institution."
Pa.	43 Pa. Cons. Stat. § 955	No	43 Pa. Cons. Stat. § 955(10)	"Nothing in this clause shall bar any religious or denominational institution or organization or any charitable or educational organization which is

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				operated, supervised or controlled by or in connection with a religious organization ... from giving preference to persons of the same religion or denomination ... or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
R.I.	R.I. Gen. Laws § 28-5-7	Yes	R.I. Gen.Laws § 28-5-6(8)(ii)	"'Employer'" does not include "a religious corporation, association, educational institution, or society with respect to the employment of individuals of its religion to perform work connected with the carrying on of its activities."
S.C.	S.C. Code § 1-13-80	No	S.C. Code § 1-13-80(I)(5)	"This chapter does not apply to a religious corporation, association, educational institution, or society with respect to the employment of

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution, or society of its activities."
S.D.	S.D. Codified Laws § 20-13-10	No	S.D. Codified Laws § 20-13-18	Does "not apply to any bona fide religious institution with respect to any qualifications for employment based on religion when such qualifications are related to a bona fide religious purpose."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Tenn.	Tenn. Code Ann. § 4-21-401	No	Tenn. Code Ann. § 4-21-405	"This chapter shall not apply to religious corporations, associations, educational institutions, or societies, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				institution, or society, of its religious activities."
Tex.	Tex. Labor Code § 21.051	No	Tex. Labor Code § 21.109	"""(a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				employment or giving a preference to members of the same religion. (b) Subchapter B[] does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the performance of religious activities by the corporation, association, or society.""""

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Utah	Utah Code § 34A-5-106	Yes	Utah Code § 34A-5-102(1)(ii)	"'Employer' does not include: (A) a religious organization, a religious corporation sole, a religious association, a religious society, a religious educational institution, or a religious leader, when that individual is acting in the capacity of a religious leader; (B) any corporation or association constituting an affiliate, a wholly owned subsidiary, or an agency of any religious organization, religious

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				corporation sole, religious association, or religious society"
Vt.	Vt. Stat. Ann. 21, § 495	Yes	Vt. Stat. Ann. 21, § 495(e)	"The provisions of this section prohibiting discrimination on the basis of sexual orientation and gender identity shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment that is calculated by the organization to promote the religious principles for which it is established or maintained."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Va.	Va. Code Ann. § 2.2-3905	Yes	Va. Code Ann. § 2.2-3905(E)	"The provisions of this section shall not apply to the employment of individuals of a particular religion by a religious corporation, association, educational institution, or society to perform work associated with its activities."
Wash.	Wash. Rev. Code § 49.60.180	Yes	Wash. Rev. Code § 49.60.040(11)	"'Employer' includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				or sectarian organization not organized for private profit."
W.Va.	W. Va. Code § 5-11-9	No	W. Va. Code R. § 77-3-7.3	"The employment discrimination provisions in these rules do not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation,

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				association, educational institution, or society of its religious and religion-related activities. This exemption does not protect those activities of a religious institution that are for all practical purposes devoid of religious content and meaning."
Wis.	Wis. Stat. § 111.321	No	Wis. Stat. § 111.337(2)(am)	"[I]t is not employment discrimination because of creed: ... (am) For a religious association not organized for private profit or an organization or corporation which is

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
				primarily owned or controlled by such a religious association to give preference to an applicant or employee who adheres to the religious association's creed, if the job description demonstrates that the position is clearly related to the religious teachings and beliefs of the religious association."

State	Employment Non-Discrimination Law	Sexual Orientation Protected Class	Religious Exemption	Provision
Wyo.	Wyo. Stat. § 27-9-105	No	Wyo. Stat. § 27-9-102(b)	"'Employer' ... does not mean religious organizations or associations."