No. 21-144

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

BRIEF OF WESTMINSTER THEOLOGICAL SEMINARY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

For nearly 100 years, Westminster Theological Seminary, a 501(c)3, has stood its ground, even -- and especially -- when that required standing alone in a changing culture. Westminster's mission statement is: "Westminster exists to train specialists in the Bible to proclaim the whole counsel of God for Christ and His global church." Each seminary employee is integral to fulfilling that religious mission. The Westminster curriculum is grounded in the Word of God, and the Seminary has a deeply held religious belief that the whole counsel of God must be taught. Ministry at Westminster is not one-dimensional, and it is essential that each employee be a dedicated coreligionist.

"But to Christ, despite all, we hold." These are the words from founder J. Gresham Machen which launched Westminster almost 100 years ago, and they have remained true to Westminster's conviction ever since. The founding of Westminster began in 1929 when Machen (who had spent 23 years as an esteemed scholar at Princeton Theological Seminary) resigned from his Princeton post where liberalism had been gaining a foothold.

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[1] All parties have consented to the filing of this *amicus* brief through blanket consents pursuant to Rule 37.3(a). In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund the preparation and submission of this brief. Counsel for both parties received 10 day notice under Rule 37.2(a).

In the face of cultural compromise, Machen and his co-founders chose obedience to the truth of the Bible and the centrality of Christ. This came with a cost as they sacrificed jobs, status, legacy, and financial security. When the founders opened the door to Westminster Theological Seminary, the school had few resources, no land, and no name recognition, but Machen reminded all that the Seminary's pursuit meant going against growing trends in culture with a reliance on Christ and Scriptural truth – a religious mission which they would all fight for.

Today, Westminster's expert faculty trains students with the insight, conviction, and ingenuity they inherited from the founders. Over four thousand Westminster alumni serve churches in over 50 countries; 300+ alumni teach as professors around the world; 60+ alumni have founded and led schools and seminaries; 500+ books have been published by Westminster faculty. Each of these results, along with the ability to remain true to Westminster's deep religious beliefs -- without constant hostile workplace claims -- could be at great risk if this Court does not affirm that the First Amendment protects religious nonprofits' right to hire coreligionists in any and every employment position in order to advance their religious missions.

SUMMARY OF THE ARGUMENT

The Washington Supreme Court's decision has placed religious nonprofits on a precipice of disaster. If state courts are allowed to force religious organizations to hire employees who oppose their views, religious nonprofits will soon be erased from

American society. If the coreligionist doctrine is rejected, organizations with religious missions will be subject to constant hostile workplace lawsuits, heightened legal liability, significant hardships, and the eventual destruction of their religious missions.

The Washington Supreme Court's ruling is antithetical to the First Amendment rights of freedom of religion, expression, and association. No organization should be specifically targeted for erasure and increased legal liability specifically because it is religious and adheres to established and sincere Christian beliefs concerning marriage and sexuality. And yet, this is what has happened to Seattle's Union Gospel Mission and what is on the horizon for *amicus* and similar religious nonprofits if this Court does not intervene.

ARGUMENT

I. Decisions Like the Washington Supreme Court's Create Unsustainable Risks for Religious Nonprofits.

If the Washington Supreme Court's ruling is left to stand, no religious organization can maintain a religious identity without risking constant accusations of a hostile work environment by those who do not share the same religious beliefs. Potential employees who are seeking litigation and large settlements with employers they can accuse will have a heightened opportunity -- and a potential heyday -- to target religious employers. After all, if a religious employer requires its employees to sign a statement of faith, to attend chapel once a week, to observe Biblical

standards in a marriage relationship, or a host of other conventional religious commitments, a person who does not share the same religious beliefs (like Mr. Woods) will have more opportunity to raise a hostile work environment claim. Such a person should never be able to force their way into a known religious work environment in the first place, particularly where all parties involved know that the person holds opposing or different religious views and has the goal of insisting the religious organization change its religious beliefs, standards, or mission to match his.

Similar to Seattle's Union Gospel Mission, *amicus* makes its religious mission abundantly clear to all potential employees. It is clear that a person with different or no religious beliefs will not thrive inside an organization with a clear religious mission. Whenever a religious employer believes that a potential employee will be at odds with the mission of the organization, does not hold the same religious beliefs, or cannot effectively communicate or advance the religious mission, the judiciary must not create an obligation for the employer to make the hire. If there is no right for religious organizations to hire coreligionists, there is an assurance that hostile workplace claims will be more common, and donations given for the purpose of advancing a religious purpose will instead be used to settle aggressive lawsuits with those who oppose the religious mission or to pay court-ordered judgments.

The Washington Supreme Court has no right to put Seattle's Union Gospel Mission or any other religious employer in such a trap.

A. The forcible hiring of employees who oppose a religious mission will create a hostile workplace, open religious nonprofits to legal liability, and uniquely violate their First Amendment rights.

Without the ability to hire only those who share the religious employer's religious beliefs, a religious employer cannot operate a workplace consistent with its beliefs, and its First Amendment rights have dissolved. If Seattle's Union Gospel Mission cannot require employees to share its faith, practice shared religious beliefs, and share the faith as part of their jobs, then the Mission's entire reason for existing has -- for all intensive purposes -- been declared illegal under Washington State Law.

Certainly, this is an outcome the First Amendment was designed to prohibit.

The inevitable conflict between employer and employee when a religious employer is not permitted to hire only coreligionists was on clear display before the Washington Supreme Court. Mr. Woods, while asserting to be Christian, has a contrary view on issues of human sexuality and marriage -- a view that Seattle's Union Gospel Mission and other similar religious organizations find to be in direct contradiction to sacred Scripture. Yet, the Washington Supreme Court held that a religious employer cannot limit its hiring to those who share its faith. If not reversed, this means that a religious employer will not be able to promote, advocate, or require its employees to affirm what it believes

Scripture clearly teaches on marriage, sexuality, and other subjects.

Without a clear recognition of First Amendment rights, religious employers will be subject to claims of a hostile work environment should they operate consistent with their faith and for a clearly religious purpose. In fact, the Washington Supreme Court's decision creates an environment where a religious employer will automatically create a hostile work environment simply by conducting its ministry (or "business") consistent with its faith, should one of its employees disagree with the employer's religious beliefs. As with Mr. Woods, who disagreed with the Petitioner's views on sexuality and marriage, the Washington Supreme Court gave a license to all employees to effectively silence religious employers on matters of faith or be subject to claims of religious discrimination.

This is not what was anticipated by the First Amendment.

Moreover, the forcible hiring of employees who oppose a religious nonprofit's viewpoint could easily and frequently result in truly hostile workplaces. If an employer is forced to hire someone who has expressly stated that he will not uphold the mission of the employer -- and in fact opposes the beliefs of the employer, as Mr. Woods does -- this could easily result in a hostile workplace with a variety of employees, managers, and others in constant disagreement and turmoil. Not only would the mission of the organization be at real risk, but also, with someone in a management position who is opposed to the very

mission of the organization, this opens all employees under such a manager to possible persecution and harassment simply for sharing the employer's religious views. A harmonious work environment becomes quite literally impossible, thanks to court intervention that effectively discards the Free Exercise Clause.

Additionally, the Washington Supreme Court's decision effectively doubles the legal liability of religious nonprofits if an employee who is not a coreligionist harasses employees who subscribe to different beliefs. In *Vance v. Ball State University*, 570 U.S. 421, 445 (2013), Justice Alito noted: "[T]his approach will not leave employees unprotected against harassment by co-workers who possess the authority to inflict psychological injury....In such cases, the victims will be able to prevail simply by showing that the employer was negligent in permitting this harassment to occur…"

And yet, if the religious employer is not allowed to hold its employees to standards that meet its religious mission because the Washington Supreme Court says this is "discrimination," how can a religious employer effectively stop the harassment perpetrated by an employee who it can neither correct nor corral, for fear of being accused of discrimination? On the one hand, the religious nonprofit is liable for "discrimination," but on the other hand, it is liable for negligence in permitting the harassment. Which legal liability should a religious nonprofit choose? And why, in the face of the First Amendment, should a religious organization be uniquely forced into heightened risks of legal liability at all? Under the Washington

Supreme Court's ruling, a religious organization that simply lives out its faith, advances its faith-based mission, and sets its own definition of who is a coreligionist is now subjected to an expanded array of legal liability and lawsuits that may be brought by employees – or even applicants – who disagree with its sincerely held religious beliefs.

The Washington Supreme Court has effectively handcuffed religious employers from stopping an employee who holds different religious beliefs -- whom they must now hire -- from inflicting psychological injury (per *Vance*) on a religious employee without risking a "discrimination" claim. This has become quite the circular conundrum, and the sights of the state court are set solely on religious organizations who stand to incur massive legal liability merely for trying to further their beliefs. Such religious organizations have been marched to the edge of a cliff by the Washington Supreme Court and, for all practical purposes, been pushed off to certain destruction as they are forced to hire those who disagree with their beliefs and wish to actively work to change them. No religious mission will succeed for long when it is forced to hire those who will work in opposition to it.

The predictable increase in hostile workplace claims and massive legal liability will erase religious organizations from society. *Amicus* asks this Court to stop such a preventable danger from percolating any longer. It is an impossible burden for a religious nonprofit to be required to hire someone who is not a coreligionist and who will neither share nor advance the religious mission of the nonprofit.

B. To avoid untenable legal liability, the religious mission would have to be compromised or abandoned altogether as the right to freedom of association is ignored.

With the Washington Supreme Court's decision, it is practically impossible for a religious nonprofit -- like Seattle's Union Gospel Mission or *amicus*, were it located in Washington state -- to hold any religious viewpoint or to require religious qualifications for any job, other than the most narrowly drawn definition of a minister, under the ministerial exception of *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 188 (2012). In a bizarre twist, the Washington Supreme Court has made itself the arbiter of which employees are allowed to be religious and which ones may not be. For *amicus*, as a seminary, most employees would not qualify under a narrow ministerial exception, and yet, hiring only coreligionists who subscribe to *amicus*' religious mission and beliefs is central to its existence as an organization.

Effectively, the very existence and maintenance of a religious identity as a nonprofit in Washington now violates the non-discrimination statute. If this is allowed to stand, the First Amendment has been largely mooted out in Washington, as this new reality touches not only the Free Exercise Clause, but also the right to freedom of expression and the freedom of association. Which state courts will follow suit, believing they are empowered to strip religious nonprofits of the right to maintain a real religious

identity without fear of discrimination and hostile workplace environment claims? Is Pennsylvania, where *amicus* is located, next?

When organizations -- like Seattle's Union Gospel Mission and *amicus* -- are formed to advance a specific religious mission, there is an almost intimate association between the employees of the organization who are advancing a religious mission in the world together. This Court has recognized that the right of intimate association protects an individual's decisions regarding those with whom he or she will form deep personal attachments or make intense personal commitments. *Roberts v. United States Jaycees*, 468 U.S. 609, 617, 619-20 (1984); *see also*, *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977). This Court has distinguished these associations as having "a high degree of selectivity in decisions to begin and maintain the affiliation." *Roberts*, 468 U.S. at 620. Such an individual right of freedom of association necessarily extends to religious nonprofits as they advance a highly selective mission that requires coreligionists to carry it out successfully.

At least, there is the right to expressive association recognized by this Court in *Hurley v. Irish American GLIB Association*, 515 U.S. 557 (1995) and *Boy Scouts of America et al. v. Dale*, 530 U.S. 640 (2000). Every employee of the Mission and of *amicus* is hired and chosen to share the same goal: to advance the religious mission of the organization. When the judiciary refuses to allow this right to expressive association, religious organizations are banned from

limiting their hires to coreligionists, and the mission of the organization is destroyed.

II. Religious Nonprofits Have the First Amendment Right to Autonomy From the Government as They Conduct Their Religious Mission.

Religious nonprofits must be allowed to hire those employees who can best fulfill the organization's mission without the constant threat of lawsuits hanging over their heads. A religious organization's mission must be allowed to be defined by the organization, not by the government, the courts, or any other outside influence.

Indeed, since a religious mission chosen by a religious organization is highly selective and religiously personal to that specific organization, there is no more room for the judiciary to tread into this realm than there is for it to tread upon the hiring of a minister. In the succinct words of the Fifth Circuit: "[W]e cannot conceive how the federal judiciary could determine whether an employment decision concerning a minister was based on legitimate or illegitimate grounds without inserting ourselves into a realm where the Constitution forbids us to tread, the internal management of a church." *Combs v. Central Texas Annual Conference*, 173 F.3d 343, 350 (5th Cir. 1999).

"The Free Exercise Clause rationale for protecting a church's personnel decisions concerning its ministers is the necessity of allowing the church to choose its representatives using whatever criteria it

deems relevant." *Bollard v. California Province of the Society of Jesus,* 196 F.3d 940, 945 (9th Cir.1999). This same rationale ought to guard religious organizations, as they operate with an equally religious and equally sincere mission as a church does.

While it is correct that ministers act as the church's "lifeblood," *McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972), so do employees who fulfill the religious mission of religious organizations. Indeed, it would offend the Free Exercise Clause simply to require religious organizations such as Seattle's Union Gospel Mission or *amicus* to articulate a religious justification for their personnel decisions. *See Rayburn v. Gen. Conf., Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir. 1985) ("[T]he free exercise clause of the First Amendment protects the act of a decision rather than a motivation behind it.").

Religious organizations have the First Amendment right to govern their own internal affairs without the interference of an arm of government. This right to freedom from interference in religion must not be limited only to those organizations that expressly identify as a "church" or a "temple" or a "mosque" or only to those who extend the title "minister" or "pastor" or "priest" in the job description of their employees.

If a religious nonprofit is not allowed the freedom to define and maintain its own mission through hiring only coreligionist employees, the religious mission is moot and so is the First Amendment. When the judiciary extends its power so far as to erase religious missions through the risk of heightened legal liability,

the threat of increased hostile workplace claims, and the elimination of First Amendment freedoms, religious identities will disappear from the nonprofit world.

If the Washington Supreme Court's decision is left to stand, a religious organization will no longer be allowed to have a religious purpose, a religious mission, or a religious job description. In effect, this will ban the existence of religious nonprofits, as the forcible hiring of employees who do not agree with a religious organization's mission will eventually result in these employees becoming managers and executives who will eventually change the core mission of the organization. Courts do not have the power to force this result, but this is what the Washington Supreme Court has done.

CONCLUSION

Over 150 years ago, in *Watson v. Jones* 80 U.S. 679 (1871), this Court first recognized the Church Autonomy principle which has allowed churches to determine how their own organization will be governed, without the meddling of government. The Autonomy principle has stopped arms of the government from defining and controlling the religious missions and the governance of churches. *See, e.g.*, *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America*, 344 U.S. 94, 116 (1952) (explaining that the Free Exercise Clause protects the power of religious organizations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine"); *Kreshik v. Saint Nicholas Cathedral*,

363 U.S. 190, 191 (1960) (per curiam) (forbidding the courts as well as the legislature from interfering with Free Exercise rights).

Religious nonprofits should be free to operate with the same autonomy.

Plainly, the First Amendment foundationally protects the rights of religious individuals and organizations to operate freely in society; to advance their religious missions; to hire those who embrace their religious beliefs; and to remain true to the conventional religious doctrines upon which they were founded. No individual has a right to be hired by a religious organization when his or her beliefs-- or when the effect of his or her lifestyle choices -- will ruin the religious mission of the organization.

Such a precedent, if it is allowed to spread throughout the nation's courts, will effect the erasure of the Free Exercise Clause while it simultaneously subjects religious nonprofits to untenable legal liability that will force their closure.

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