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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.

BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON AND AMERICAN CIVIL LIBERTIES UNION

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I. IDENTITY & INTEREST OF AMICI

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with over 8 million members and supporters dedicated to defending the principles of liberty and equality embodied in the Constitution. The ACLU of Washington is a state affiliate of the ACLU with over 135,000 members and supporters. The ACLU and the ACLU of Washington (collectively, "*Amici*") submit this *amici curiae* brief in support of Appellants. As organizations that advocate for First Amendment liberties as well as equal rights for lesbian, gay, bisexual, and transgender ("LGBT") people, *Amici* and their members have a strong interest in the application of proper standards when evaluating constitutional challenges to civil rights laws.

II. INTRODUCTION

Both parties focus their arguments on whether a statutory exemption for religious nonprofit employers is unconstitutional as applied to Matthew Woods, who was denied a position at Seattle's Union Gospel Mission ("SUGM") because of his sexual orientation. The parties raise critical legal questions, including the importance of robust antidiscrimination laws and the scope of First Amendment rights. However, this case presents a preliminary question that this Court should address first: whether courts are permitted to make factual determinations

that touch on religious matters. The lower court stopped short of ruling as to whether the religious exemption in the Washington Law Against Discrimination ("WLAD") is unconstitutional as applied, because it mistakenly thought that the religious beliefs of the employer constrained it from conducting a robust analysis as to the material facts. But resolving factual questions in matters involving religious institutions and individuals is both constitutional and necessary pursuant to *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 317 P.3d 1009 (Wash. 2014).

Amici urge this Court to reverse the lower court to the extent that it held that courts are precluded from determining whether the exemption was unconstitutional as applied in this matter, and remand the case for further factual development. *See Becerra v. Expert Janitorial, LLC*, 181 Wn.2d 186, 199, 332 P.3d 415 (Wash. 2014) (remanding after "find[ing] the trial court did not consider all the relevant factors at summary judgment or sufficiently identify why it deemed certain factors to be not relevant"); *Progressive Animal Welfare Soc'y v. Univ. of Washington*, 125 Wn.2d 243, 247, 253, 884 P.2d 592 (Wash. 1994). Determining whether a religious exemption applies, and is constitutional as applied, is an appropriate judicial function, and this Court should affirm that religious entities can still be subject to the rigors of judicial review without courts becoming entangled in religious matters. Such a holding is critical to

confirm that religious entities are not above the law.

Here, the lower court abdicated its responsibility to resolve whether there were genuine issues of material facts as to the duties of the position at issue or, alternatively, the nature of the discrimination, simply because one of the parties was a religious organization. This Court need not endorse either factual inquiry as the standard for whether the religious exemption is unconstitutional as applied in order to direct the lower court to apply both standards in the first instance. Because the lower court did not complete its summary judgment analysis, this Court should decline to establish a standard for evaluating whether the religious exemption is unconstitutional as applied—doing so may not be necessary to resolve this case. *See id.* at 271–72 ("Because this case is before us on summary judgment, and because we remand, we decline to create a standard at this time.").[1]

III. STATEMENT OF THE CASE

Mr. Woods sued SUGM for violating the WLAD when it rejected him for a position as a staff attorney because of his sexual orientation. The WLAD establishes the "right to obtain and hold employment without discrimination" on the basis of sexual orientation, among other grounds.

[1] Should the Court wish to establish a new standard, it should first permit additional briefing, as the current briefing has only applied the standards described in *Ockletree*, and have not addressed alternative options.

RCW § 49.60.030(1)(a). SUGM moved for summary judgment, arguing that WLAD's statutory exemption, which excludes nonprofit religious organizations from the scope of covered employers, bars Mr. Woods from seeking relief. RCW § 49.60.040(11). The parties do not dispute that Mr. Woods was not hired because of his sexual orientation, and that SUGM is a nonprofit religious organization. Letter Op. at 1 (CP 168–75). Mr. Woods, however, maintained that there are genuine issues of material fact as to whether the WLAD religious exemption is unconstitutional as applied, which require the court to address whether the position's job duties were secular or religious in nature. *Id.* at 2–3.

The lower court recited the parties' arguments as to what the job duties entailed and whether they were religious in nature, but did not determine whether there were questions of material fact. *Id.* at 3. The court did not state that there were no material issues of fact, nor did the court analyze whether, given those facts, the exemption was unconstitutional as applied. Instead, the court observed that:

> 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. . . . 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.

Id. at 3. On that basis, the court granted summary judgment in SUGM's

favor, holding that it was exempt from WLAD. *Id.* at 2.

IV. ARGUMENT

A. *Ockletree* Requires the Superior Court to Analyze Whether the Religious Exemption Is Constitutional As Applied.

The plurality opinion in *Ockletree* recognizes that the WLAD religious exemption could be unconstitutional as applied under the Washington Constitution. Although the Justices did not agree as to which factors to consider in making that determination, a plurality held that such an analysis was necessary when applying the exemption. Here, the lower court declined to undertake such an analysis on the ground that it would be required to "determine the importance of or the relative merits of different religious beliefs." Letter Op. at 3. This is not the case, and not consistent with either of the plurality opinions in *Ockletree*. Courts can evaluate whether there is a religious component to job duties, and whether the discrimination at issue is related to religious practice, without having to rule on the "merits" of those beliefs. *See infra* Parts III.B–C.

In *Ockletree*, the Court endeavored to respond to two certified questions regarding the WLAD exemption: First, whether the WLAD religious exemption is facially unconstitutional under Article I, § 11 or § 12 of the Washington Constitution. The lead opinion, authored by Justice C. Johnson, held that the exemption is facially constitutional, and a

majority of the Court joined in that holding. *Ockletree*, 179 Wn.2d at 788–89. Second, whether the exemption was unconstitutional as applied to an employee claiming he was discriminated against by a religious non-profit organization on the basis of race and disability. *Id.* at 771–72. To that question, a majority of the Court determined that there were grounds under which the exemption would be facially unconstitutional—but the dissent, authored by Justice Stephens, and concurrence, authored by Justice Wiggins, diverged as to what test should be applied.

Although there was not a majority opinion as to the test for an as-applied challenge to the exemption, none of the opinions held that a court *cannot inquire* into the religious nature of the position to determine whether the WLAD religious exemption would be unconstitutional. The lead opinion found that there was a reasonable ground for distinguishing between religious and secular employers, *id.* at 785, but it did not go so far as to say that inquiring into the facts of an employment discrimination case against a religious employer would be unconstitutional. The lead opinion noted that it would be reasonable for the legislature to have "cho[sen] to avoid potential entanglements between the state and religion" and to have concluded that religious organizations should be relieved of the burden imposed by the "nature of the inquiry for discrimination claims." *Id.* at 785–86. But the opinion did not suggest that courts were

barred from such an inquiry.[2]

In fact, there was a plurality holding that WLAD *could* be unconstitutional as applied to an employee that works for a religious institution. The dissent concluded that it would be unconstitutional for the exemption to apply in cases of "discrimination that is unrelated to an employer's religious purpose, practice, or activity." *Id.* at 789. The concurrence instead suggested that "the constitutionality of the exemption depends entirely on whether the employee's job responsibilities relate to the organization's religious practices." *Id.* at 806.

Thus, as proposed by the plurality, the lower court should have determined whether there are material questions of fact as to either the responsibilities required by the position Mr. Woods applied for, or whether the discrimination he suffered was related to SUGM's religious practice. Neither analysis requires the court to "determine the validity" of UGM's religious beliefs, only to evaluate the *nexus* between the employer's asserted religious beliefs and the job's responsibilities or the discrimination claim. The lower court did not extend that analysis beyond the legal counseling duties entailed by the position, declining to determine whether the job required additional responsibilities and whether the full

[2] Indeed, the lead opinion "stress[ed]" that they were *not* holding that "the state free exercise clause *requires* such a broad exemption for religious organizations under WLAD." *Id*. at 786 n.11.

list of responsibilities relate to SUGM's religious practices. It should be directed to do so on remand, in order to determine whether the religious exemption is unconstitutional as applied in this matter.

B. The Lower Court Must Determine Whether the Employee's Job Responsibilities Relate to the Organization's Religious Practices.

The test proposed by the *Ockletree* concurrence—evaluating whether the employee's job responsibilities relate to the organization's religious practices—is a completely permissible inquiry. Courts conducting such an analysis are not, as the lower court feared, determining the "relative merits of different religious beliefs." Letter Op. at 3. Instead, as the concurrence recognized, "[t]his test permits an objective examination of an employee's job description and responsibilities in the organization," and avoids any "intrusive inquiry into religious doctrine." *Ockletree,* 179 Wn.2d at 806.

In other contexts, including federal laws barring employment discrimination, the "ministerial exception doctrine" permits a comparable factual inquiry. The U.S. Supreme Court first confirmed the existence of the ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012), and addressed how the "freedom of a religious organization to select its ministers," protected by the Establishment and Free Exercise

Clauses of the First Amendment, "is implicated by a suit alleging discrimination in employment." *Id.* at 188. Although grounded in the First Amendment, not based in statute like the WLAD religious exemption, the ministerial exception doctrine likewise "precludes application of [employment discrimination laws] to claims concerning the employment relationship between a religious institution and its ministers." *Id.* at 188.

The analysis used to determine whether the ministerial exception applies confirms that courts are not barred from inquiring into the factual circumstances of an employment relationship—indeed, they *must* sort through such facts—when determining the constitutionality of a religious exemption's application. The Court in *Hosanna-Tabor* declined to "adopt a rigid formula for deciding when an employee qualifies as a minister," instead evaluating several factors touching on "all the circumstances of [their] employment." *Id*. at 190.

> The Court focused on four major considerations to determine if the ministerial exception applied: (1) whether the employer held the employee out as a minister, (2) whether the employee's title reflected ministerial substance and training, (3) whether the employee held herself out as a minister, and (4) whether the employee's job duties included "important religious functions."

Biel v. St. James Sch., 911 F.3d 603, 607 (9th Cir. 2018) (quoting *Hosanna-Tabor*, 565 U.S. at 192), *rehearing en banc denied*, 926 F.3d 1238 (9th Cir. 2019). Each of these considerations involve fact-based

inquiries into the conditions of a putative minister's employment. Here as well, the lower court may inquire into the circumstances of Mr. Wood's prospective employment by SUGM, and can consider factors similar to those outlined in *Hosanna-Tabor*. The existence of an exemption does not preclude a factual evaluation as to who qualifies for that exemption.

Courts applying *Hosanna-Tabor* routinely make findings of fact related to the religious nature of an employee's position to determine whether the ministerial exception bars a claim—even if those findings evaluate religious duties. *Biel*, 911 F.3d at 607. Indeed, after such fact finding, many courts have concluded that, contrary to the assertions of the religious employers, particular employees are not ministers, and so their claims are not barred. *See, e.g.*, *Kant v. Lexington Theological Seminary*, 426 S.W.3d 587, 596 (Ky. 2014) ("When an employee operates in a nonministerial capacity, however, the employee should be entitled to full legal redress."); *Richardson v. Nw. Christian Univ.*, 242 F. Supp. 3d 1132, 1145–46 (D. Or. 2017); *Herx v. Diocese of Fort Wayne-S. Bend Inc.*, 48 F. Supp. 3d 1168, 1177 (N.D. Ind. 2014).

Courts must conduct precisely this factual analysis to apply the law properly, finding the line between employees protected by antidiscrimination laws, and those for whom inquiry into the conditions of their employment would constitute "excessive entanglement with religious

doctrines." *Ockletree*, 179 Wn.2d at 806. "We cannot read *Hosanna-Tabor* to exempt from federal employment law all those who intermingle religious and secular duties but who do not preach their employers' beliefs, teach their faith, carry out their mission and guide their religious organization on its way." *Biel*, 911 F.3d at 611 (internal quotation marks and citations omitted); *Demkovich v. St. Andrew the Apostle Par.*, 343 F. Supp. 3d 772, 785 (N.D. Ill. 2018) ("federal courts have been able to evaluate, on a case-by-case basis, when an employee's particular case would pose too much of an intrusion into the religious employer's Free Exercise and Establishment Clause rights").

The lower court thus erred in refusing to resolve if there were factual questions as to whether the "roles of the staff attorneys include religious duties." Letter Op. at 3. In some cases, discovery may be necessary to resolve whether the ministerial exception applies, and it may be necessary to make factual findings regarding the job duties, description of the position, and related factors.

An employer's assertion of the ministerial exception does not exempt the employer from proper judicial inquiry as to whether the exception is properly invoked: to hold otherwise is to abdicate judicial responsibility. *See Puri v. Khalsa*, 844 F.3d 1152, 1162 (9th Cir. 2017); *Kelley v. Decatur Baptist Church*, No. 5:17-CV-1239, 2018 WL 2130433,

at *5 (N.D. Ala. May 9, 2018) ("disputed [factual] issues prevent the court from applying the ministerial exception as a matter of law"); *Lishu Yin v. Columbia Int'l Univ.*, No. 3:15-CV-03656, 2017 WL 4296428, at *6 (D.S.C. Sept. 28, 2017) ("the court finds that there are not enough facts to establish that Plaintiff qualifies as a minister under the ministerial exception," noting other ministerial exception cases "were decided by summary judgment, which allows for a more thorough record, unlike a motion to dismiss"); *Collette v. Archdiocese of Chicago*, 200 F. Supp. 3d 730, 733–34 (N.D. Ill. 2016) ("A factual record focused on [the employee's] functional role . . . is therefore needed to determine whether that role was ministerial.").

There are also numerous states that limit religious exemptions from employment antidiscrimination laws to "ministers," whether by statute or legal precedent, which necessitates factual inquiries into the religious role and nature of a position. *See, e.g., King v. Warner Pac. Coll.*, 296 Or. App. 155, 163, 172, 437 P.3d 1172 (Or. Ct. App. 2019) (placing evidentiary burden on employer to prove applicability of exception where "employment involved is closely connected with or related to the primary purposes of the church or institution" among other factors); *Melendez v. Kourounis*, No. A-0744-16T1, 2017 WL 6347622, at *4 (N.J. Super. Ct. App. Div. Dec. 13, 2017) (reviewing factual

circumstances of plaintiff's role in reaching whether religious employer's decisions were exempt from antidiscrimination law); *Scheiber v. St. John's Univ.*, 84 N.Y.2d 120, 126–27, 615 N.Y.S.2d 332 (N.Y. 1994) (finding the record insufficient to support that employee was terminated "to effectuate [employer's] religious mission").

Respondents' contention that a job-duties test has been rejected by the U.S. Supreme Court and the Ninth Circuit is incorrect. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 107 S. Ct. 2862, L. Ed. 2d 273 (1987), upheld the Title VII provision that exempts religious organizations from the prohibition against employment discrimination *on the basis of religion*. *Id.* at 329–30. However, the Court did not hold that such an exemption was necessary, only that it is a "permissible legislative purpose" to alleviate governmental interference with religious organizations. *Id.* at 335. Likewise, *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2011), addresses the appropriate test for determining whether an organization itself qualifies for the Title VII exemption. *Id.* at 724. Indeed, the concurrences in *Spencer* confirm that a factual inquiry into the nature of a religious organization and its activities may be necessary to determine the applicability of a religious exemption. *Id.* at 741–42. Although the cases address ways to mitigate governmental entanglement with religion, neither case precludes an

inquiry such as the one described by the concurrence in *Ockletree*.

Whether courts hold that the ministerial exception applies or not, there is no constitutional bar to conducting discovery and inquiring into the factual circumstances as to whether the ministerial exception *should* apply. Otherwise, employees subjected to discrimination by religious organizations—whether on the basis of sex, race, disability, or other grounds—would be completely precluded from advancing employment discrimination claims once the religious organization invokes the ministerial exception, with no requirement that the religious organization show the exception is applicable. The same is true here. The lower court is not precluded from conducting an analysis under the job duties test proposed by the concurrence, and is the proper venue to conduct that inquiry in the first instance.

C. The Lower Court Must Evaluate Whether the Employment Discrimination Is Based on Grounds Related to SUGM's Religious Purpose or Practice.

The lower court also declined to review factual questions concerning SUGM's sincerely held religious beliefs, Letter Op. at 3, despite the *Ockletree* dissent's proposal that the exemption is unconstitutional as applied to "claims based on discrimination that is unrelated to an employer's religious purpose, practice, or activity." *Ockletree*, 179 Wn.2d at 789. Under the dissent's test, at a minimum,

religious employers must "articulate a sincerely held religious belief" that would be burdened if they are subject to WLAD. *Id.* at 803. While the lower court was correct that it is not its role to evaluate the *validity* of SUGM's religious purpose and practice, it can determine its *sincerity*. Courts "must necessarily inquire whether the claimant's belief is 'religious' and whether it is sincerely held." *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 726, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981). As the U.S. Supreme Court addressed in *United States v. Seeger*, 380 U.S. 163, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965), where a conscientious objector refused a military draft:

> The validity of what he believes cannot be questioned. . . . But we hasten to emphasize that while the 'truth' of a belief is not open to question, there remains the significant question whether it is 'truly held.' This is the threshold question of sincerity which must be resolved in every case. It is, of course, a question of fact—a prime consideration to the validity of every claim for exemption as a conscientious objector.

Id. at 184–85. In so doing, courts have had little trouble avoiding entanglement and other affronts to religious freedom.

For example, courts can conduct an inquiry into whether the stated religious basis for an employment decision was sincere when evaluating whether a religious exemption from an antidiscrimination law applies. In a case before a New Jersey state appellate court, an elementary school

teacher who was terminated by a Catholic parochial school after she disclosed she was pregnant and unmarried sued the school for violating state law prohibiting discrimination. *Crisitello v. St. Theresa Sch.*, No. A-1294-16T4, 2018 WL 3542871, at *1 (N.J. Super. Ct. App. Div. July 24, 2018). The appellate court reversed the trial court, which had precluded the teacher from conducting discovery as to the school's treatment of other employees who violated the religious standards:

> Contrary to the trial court's repeated statement that plaintiff sought for the court to make determinations about defendant's "dogma and polity[,]" neither allowing broader discovery nor considering plaintiff's position on summary judgment required such determinations . . . . Under these circumstances, the only issue the trial court had to consider related solely to defendant's conduct rather than defining or determining the propriety of its "dogma and polity."

Id. at *5. Indeed, in determining whether a religious exemption from state law applies, state courts frequently conduct inquiries that require an evidentiary record as to religious institutions' practices, operations, and purposes—while not becoming entangled. *See, e.g*, *Farrow v. Saint Francis Med. Ctr.*, 407 S.W.3d 579, 591–92 (Mo. 2013); *Mid Vermont Christian Sch. v. Dep't of Emp't & Training*, 2005 VT 100, ¶¶ 8–9, 178 Vt. 448, 450–51, 885 A.2d 1210 (Vt. 2005); *Unity Christian Sch. of Fulton, Illinois v. Rowell*, 2014 IL App (3d) 120799, ¶¶ 25–40, 6 N.E.3d 845, 851–54 (Ill. App. Ct. 2014) (collecting cases); *Thorson v. Billy*

Graham Evangelistic Ass'n, 687 N.W.2d 652, 656–57 (Minn. Ct. App. 2004).

There are numerous other kinds of claims that would be precluded if the lower court's reasoning were correct and courts were barred from evaluating the sincerity of religious beliefs. For example:

- A key component of deciding federal Religious Freedom Restoration Act ("RFRA") claims is the nature of the claimant's religious beliefs, and whether they are burdened by government activity. *See, e.g.*, *Oklevueha Native Am. Church Of Hawaii, Inc. v. Lynch*, 828 F.3d 1012, 1015–16 (9th Cir. 2016) (holding RFRA claimants had not met evidentiary burden to show prohibition posed a "substantial burden" on their religious beliefs); *United States v. Zimmerman*, 514 F.3d 851, 853 (9th Cir. 2007) (remanding for claimant to "(1) articulate the scope of his beliefs, (2) show that his beliefs are religious, (3) prove that his beliefs are sincerely held and (4) establish that the exercise of his sincerely held religious beliefs is substantially burdened"); *United States v. Bauer*, 84 F.3d 1549, 1559 (9th Cir. 1996) ("It is not enough in order to enjoy the protections of [RFRA] to claim the name of a religion as a protective cloak. Neither the government nor the court has to accept the defendants' mere say-so.").

- In federal employment discrimination cases under Title VII, whether courts are analyzing ministerial exception defenses as described above, or claims of religious discrimination, they are empowered to require a factual showing to demonstrate the sincerity of the religious beliefs at issue. *See, e.g.*, *Berry v. Dep't of Soc. Servs.*, 447 F.3d 642, 655 (9th Cir. 2006) (requiring employee to establish a "bona fide religious belief" as part of failure to accommodate claim); *Tiano v. Dillard Dep't Stores, Inc.*, 139 F.3d 679, 682 (9th Cir. 1998) (same).
- Courts regularly assess the sincerity of religious beliefs by those making free exercise claims. *See, e.g.*, *Parks v. Brooks*, 302 F. App'x 611, 612 (9th Cir. 2008) (reversing summary judgment as "sincerity of Parks' alleged religious belief cannot be determined without a factual determination"); *Luckette v. Lewis*, 15 F. App'x 451, 452 (9th Cir. 2001) ("Because a clear finding of sincerity or lack thereof is required by our case law, we reverse and remand for the district court to make this essential determination."); *State v. Balzer*, 91 Wn. App. 44, 54–55, 954 P.2d 931 (Wash. Ct. App. 1998) (reviewing testimony to determine sincerity of claimant's religious beliefs). "To merit protection under the free exercise clause of the First Amendment, a religious claim must . . . be

sincerely held" and "rooted in religious belief." *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994) (internal quotation marks omitted), *supplemented*, 65 F.3d 148 (9th Cir. 1995).

These cases reflect a foundation of our nation's approach to religious liberty: "[C]hurches are not—and should not be— above the law." *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985). Courts "violate[] no constitutional rights by merely investigating the circumstances of [an employee's] discharge . . . if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge." *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628, 106 S. Ct. 2781, 91 L.Ed.2d 512 (1986). The First Amendment "does not provide carte blanche to disregard antidiscrimination laws." *Biel*, 911 F.3d at 611; *see also Crisitello*, 2018 WL 3542871, at *4 ("Only when the underlying dispute turns on doctrine or polity should courts abdicate their duty to enforce secular rights. Judicial deference beyond that demarcation would transform our courts into rubber stamps invariably favoring a religious institution's decision regarding even primarily secular disputes."). Accordingly, the lower court is not prohibited from determining whether Mr. Woods was subject to discrimination that is unrelated to SUGM's religious purpose, practice, or

activity.[3]

V. CONCLUSION

The lower court was correct that courts do not evaluate the relative merits of different religious beliefs—but that is not the issue presented by the WLAD religious exemption asserted by SUGM, or by Mr. Woods's argument that such exemption is unconstitutional as applied in this case. While SUGM and Mr. Woods raise important legal questions, there is an antecedent matter that this Court should first undertake, by affirming that the lower court can address factual questions regarding religious entities. Holding that courts are empowered to inquire whether a religious exemption properly applies confirms that religious entities are not above the law, and the lower court has at least two approaches to do so that were proposed by this Court in *Ockletree*. The as-applied challenge here requires a factual analysis that numerous courts have undertaken without intruding into religious doctrine. Accordingly, this case should be remanded for the court to analyze the facts and make an initial determination as to whether the exemption is constitutional.

[3] The Superior Court's invocation of *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719, 201 L. Ed. 2d. 35 (2018), for the proposition that such cases "must be resolved with tolerance, without undue disrespect to sincere religious beliefs" is inapposite. *Id.* at 1732. There have been no allegations or evidence of hostility to religion in the adjudication, which was the basis of the holding of *Masterpiece Cakeshop*. *Id.* Here, the religious institution must simply meet an evidentiary burden before being granted summary judgment in its favor.

Respectfully submitted this 26th day of August, 2019.

By: */s/Lisa Nowlin*

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