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.*

Nathaniel L. Taylor, WSBA No. 27174
Abigail J. St. Hilaire, WSBA No. 48194
ELLIS, LI & MCKINSTRY PLLC
2025 First Avenue, Penthouse A
Seattle, WA 98121
(206) 682-0565
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Federal and Other State Cases

Constitutional Provisions

Statutes

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.

II. ARGUMENT

A. The WLAD's religious exemption cannot be narrowly construed because its language is unambiguous.

Amici WELA and Center for Justice, *et al.* both argue for a narrow construction of the WLAD's religious employer exemption, citing *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224 (2002).[1] Amici argue that this

[1] Amicus WELA Br. 3; Amici Ctr. for Justice, *et al.* Br. 5.

narrow construction should take the form of rewriting the exemption to limit its application to "ministers," and suggest the exemption's application should be determined based on a "substantive, fact-centered analysis"[2] or a "totality of the circumstances" test.[3]

But the exemption is unambiguous and *Fraternal Order of the Eagles* observes—in the context of a WLAD exemption—that "[a]n unambiguous statute is not subject to judicial construction." *Id.* at 239. Courts "may not create legislation under the guise of interpreting a statute," *Kilian v. Atkinson*, 147 Wn.2d 16, 21 (2002), or "add words where the legislature has chosen not to include them." *State v. Arlene's Flowers, Inc.*, 193 Wn.2d 469, 509, *petition for cert. filed*, _ U.S.L.W. _ (U.S. Sept. 11, 2019) (No. 19-333). Amici are asking this Court to do exactly what it rejected less than four months ago in *Arlene's Flowers*, when the Court observed that "the legislature has provided no indication in the text of the WLAD that it intended to import a fact-specific, case-by-case, constitutional balancing test into the statute." *Id.*

B. The employment provisions of the WLAD are not applicable to the Mission and Amicus WELA's argument that the exemption must be limited to what is required by the Free Exercise Clause is wrong.

---

[2] Amici Ctr. for Justice, *et al.* Br. 3.

[3] Amicus WELA Br. 9.

Amicus WELA begins the core of its argument with this remarkable assertion: "it is beyond dispute that the WLAD is a neutral and generally applicable law."[4] The Mission begs to differ; the employment provisions of the WLAD are not applicable *because of the statutory exemption* that is the very issue in this case.

Begging the question, Amicus WELA argues that the religious employer exemption "is no broader than the reach of the Free Exercise Clause," citing solely to Justice Stephens' dissent in *Ockletree v. Franciscan Health System*, 179 Wn.2d 769 (2014).[5] But the *Ockletree* dissent states no such thing. The dissent held the exemption lacked reasonable grounds as applied to discrimination unrelated to religion "because" it would violate the Establishment Clause. *See Ockletree*, 179 Wn.2d at 789, 803-04 (Stephens, J., dissenting). Amici leap from there to the faulty conclusion that a religious exemption violates the Establishment Clause if it is not required by the Free Exercise Clause.

The *Ockletree* dissent does not make this mistake, instead,

---

[4] Amicus WELA Br. 11. The phrase "generally applicable" occurs seven times in Amicus WELA's brief, but "reasonable grounds" occurs only once.

[5] Amicus WELA Br. 11 n.3 (citing *Ockletree*, 179 Wn.2d at 789 (Stephens, J., dissenting)). Amicus WELA's brief also contains two and a half pages of argument under the heading entitled "The WLAD Religious Exemption is Constitutional Only as it Applies to Bona Fide 'Ministers.'" Yet that section simply describes *Hosanna-Tabor* (which does not support Amicus' argument) and is devoid of all other authority. Amicus WELA Br. 13-15.

observing that it only violates the Establishment Clause if a religious exemption "is not required by the Free Exercise Clause *and* . . . either burdens nonbeneficiaries markedly or cannot reasonably be seen as removing a significant state-imposed deterrent to the free exercise of religion." *Ockletree*, 179 Wn.2d at 801 (Stephens, J., dissenting) (emphasis added) (quoting *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 15, 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989)).

It is well established that, when it comes to legislative action, "[t]here is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference." *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664, 675, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970); *see Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 144-45, 107 S. Ct. 1046, 94 L. Ed. 2d 190 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices . . . .").

"This space between the two Clauses gives government some room to recognize the unique status of religious entities and to single them out on that basis for exclusion from otherwise generally applicable laws." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, _U.S._, 137 S. Ct. 2012, 2031, 198 L. Ed. 2d 551 (2017) (Sotomayor, J., dissenting). Justices

Sotomayor and Ginsburg gave the present type of case as an example: "Nor must a State require nonprofit religious entities to abstain from making employment decisions on the basis of religion. It may instead avoid imposing on these institutions a '[f]ear of potential liability [that] might affect the way' it 'carried out what it understood to be its religious mission' and on the government the sensitive task of policing compliance." *Id.* (quoting *Corporation 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)).

In *Texas Monthly*, cited by the *Ockletree* dissent, the U.S. Supreme Court noted that the Title VII religious employer exemption upheld in *Amos* "prevented potentially serious encroachments on protected religious freedoms." *Texas Monthly*, 489 U.S. at 18 n.8., 109 S. Ct. 890. That is, religious employer exemptions can permissibly further the purposes of the First Amendment's Religion Clauses.

And just this year in *Arlene's Flowers*, this Court also cited *Amos* approvingly, noting that the Title VII religious exemption for all employees of religious organizations "does not violate the establishment clause because it serves a secular purpose—to minimize governmental interference with religion—and neither advances nor inhibits religion." *Arlene's Flowers, Inc.*, 193 Wn.2d at 520 (citing *Amos*, 483 U.S. at 335-

38, 107 S. Ct. 2862). *Arlene's Flowers* further observed that "[e]xemptions for religious organizations are common in a wide variety of laws, and they reflect the attempts of the Legislature to respect free exercise rights by reducing legal burdens on religion." *Id.* (quoting *Elane Photography, LLC v. Willock*, 309 P.3d 53, 75 (N.M. 2013)).

The application of the exemption here—to a religiously-motivated hiring decision at an overtly evangelical religious organization—furthers the same First Amendment purposes and therefore satisfies the "reasonable grounds" test of article I, section 12.[6]

C. Amici's proposal is extreme and unprecedented: All states where sexual orientation is a protected class have statutory exemptions broader than the ministerial exception and Amicus ACLU's claim to the contrary is false.

Sexual orientation is a protected class in private employment in twenty-one other states plus the District of Columbia.[7] Because such protections would otherwise interfere with the constitutional right of religious organizations to make religious decisions in their hiring, every

---

[6] *See Ockletree*, 179 Wn.2d at 785 (four justice lead), 803-04 (Stephens, J., dissenting). That the *Ockletree* dissent analyzed and relied upon a separate federal constitutional issue (the Establishment Clause) to arrive at its holding suggests there was no other way to establish a lack of reasonable grounds. *See Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 752 (2002) ("if a case can be decided on nonconstitutional grounds, an appellate court should refrain from deciding constitutional issues.")

[7] https://www.hrc.org/state-maps/employment (last visited Sept. 19, 2019)

jurisdiction has an exemption broader than the ministerial exception.[8]

Amicus ACLU falsely claims[9] that "there are numerous states that limit religious exemptions from employment discrimination laws to 'ministers' whether by statute[10] or legal precedent . . . .," citing cases from Oregon, New Jersey (an unpublished decision), and New York. None support Amicus ACLU's claim.

In the first case, *King v. Warner Pac. Coll.*, 437 P.3d 1172 (Or. 2019), the court upheld summary judgment for the religious employer based on a statutory exemption and did not reach the ministerial exception or suggest the statutory exemption should be limited. *Id.* at 1175, 1185.[11]

The unpublished New Jersey case cited by Amicus ACLU

---

[8] *See* Cal. Gov't Code §§ 12922, 12926(d), 12926.2; Colo. Rev. Stat. § 24-34-402(6)(7); Conn. Gen. Stat. § 46a-81p; Del. Code Ann. tit. 19, § 710(7); D.C. Code § 2-1401.03(b); Haw. Rev. Stat. § 378-3(5); 775 Ill. Comp. Stat. 5/2-101(B)(2); Iowa Code § 216.6(6)(d); Me. Rev. Stat. tit. 5, § 4573-A; Md. Code Ann., State Gov't §§ 20-604(2), 20-605; Mass. Gen. Laws ch. 151B, §§ 1(5), 4; Minn. Stat. §§ 363A.20(2), 363A.26; Nev. Rev. Stat. §§ 613.320, 613.350; N.H. Rev. Stat. Ann. §§ 354-A:2, 354-A:18; N.J. Stat. Ann. § 10:5-12(a); N.M. Stat. Ann. § 28-1-9(B)(C); N.Y. Exec. Law § 296(11); Or. Rev. Stat. § 659A.006; R.I. Gen. Laws § 28-5-6; Utah Code Ann. § 34A-5-102(1)(i)(ii); Vt. Stat. Ann. tit. 21, § 495(e); RCW 49.60.040(11); Wis. Stat. § 111.337(2).

[9] Amicus ACLU Br. 12.

[10] Amicus ACLU cites no statutes.

[11] The court deferred to the employer's assertion that the job was "closely connected with *or related to* the primary purposes" of the employer as required by the relevant provision of the statute "because our determination involves judicial self-restraint rooted in an express legislative, if not constitutional, respect for a religious perspective." *Id.* And the Oregon exemption for churches or religious shelters does not even require demonstration of relatedness to the employer's primary purpose in the case of sexual orientation. *Compare* Or. Rev. Stat. 659A.006(4), *with* (5).

involved an orthodox priest who sued for race discrimination. The court took all of three sentences to determine that the ministerial exception applied and did not scrutinize the scope of New Jersey's religious exemption (which nevertheless permits religiously based employment standards). *Melendez v. Kourounis*, No. A-0744-16T1, 2017 WL 6347622, at *4 (N.J. Super. Ct. App. Div. Dec. 13, 2017).[12]

Finally, Amicus ACLU cites *Scheiber v. St. John's University*, 84 N.Y.2d 120, 638 N.E.2d 977 (N.Y. 1994). There the court noted that the Catholic university employer *could* have terminated a twenty-year employee for religious reasons consistent with a statutory religious exemption. But the employer denied a religiously motivated decision and claimed the termination was performance related. It also advertised the vacant position without a religious limitation and stated in the job posting that it was an equal opportunity employer. *Id.* at 124, 128. The case did not discuss the employee's duties or the ministerial exception.

Every state where sexual orientation is a protected class in

---

[12] In dicta, the court cited a N.J. Supreme Court case, which, also in dicta, erroneously wrote that *federal courts interpreting the Title VII exemption* sometimes use a "ministerial function" test. *See Welter v. Seton Hall Univ.*, 608 A.2d 206, 213 (N.J. 1992) (cited by *Melendez*, 2017 WL 6347622, at *4). *Welter* never cites and does not appear to have considered *Amos*. The Mission is unaware of any New Jersey case limiting the scope of the exemption, which provides that "nothing herein contained shall be construed to bar an employer from . . . following the tenets of its religion in establishing and utilizing criteria for employment of an employee." N.J. Stat. Ann. §10:5-12(a).

employment has a broad religious exemption that is not just limited to ministers. Amicus ACLU's claim to the contrary is false.

D. Mr. Woods concedes the Mission holds sincere religious beliefs on marriage and sexuality; this satisfies the *Ockletree* dissent and renders Amicus ACLU's sincerity argument irrelevant.

Amicus ACLU argues that courts *can* inquire into whether religious beliefs are *sincere*.[13] To a limited extent this is true.[14] But here it is irrelevant because Mr. Woods *concedes* sincerity.[15] He writes the "sincerity of [the Mission's] religious beliefs are not at issue in this case."[16] "Mr. Woods does not contest that [the Mission's] beliefs are sincerely held."[17] And "Mr. Woods does not dispute that [the Mission] has sincere religious beliefs" on marriage and sexuality.[18]

Mr. Woods' concession is understandable given the Mission's

---

[13] Amicus ACLU Br.15.

[14] The inquiry is necessarily limited. *See Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 714, 101 S. Ct. 1425, 1430, 67 L. Ed. 2d 624 (1981) (explaining inquiry is to whether belief is religious or a matter of personal conviction and stating "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection").

[15] ACLU is wrong in stating that the trial court intentionally avoided a determination of sincerity. The sincerity of the Mission's beliefs was not disputed by Mr. Woods at summary judgment and the trial court noted that some factual questions "revolve around the Mission's sincerely held religious beliefs," not whether the beliefs themselves were sincere. CP 171.

[16] Am. Br. of Appellant. 26.

[17] Am. Br. of Appellant 34.

[18] Reply Br. of Appellant 4.

religious beliefs and religious conduct expectations for employees flow directly[19] from its statement of faith: "We believe the Bible to be the only inspired, infallible, authoritative word of God." Its conduct requirements have existed in the employee handbook since the earliest version that could be located (from 1995). CP 332, 358, 702 (conduct requirements based in interpretation of scripture and would not be changed).

Not only have these religious doctrines been shared by the majority of Christian churches for millennia, the Mission and similarly situated organizations have no incentive[20] to fabricate religious beliefs related to sexual conduct. The beliefs are often misunderstood, then disparaged as "bigoted" and "judgmental." Adherence to these religious doctrines generates unfavorable publicity,[21] and, post-*Ockletree*, invites litigation.[22]

The Mission's sincere religious beliefs also justify application of the exemption under *Ockletree*'s dissent, which in one instance conditions the as-applied constitutionality of the exemption on "requiring a religious

---

[19] CP 697-98, 700.

[20] E.g., eligibility for unemployment benefits, avoidance of military draft, avoidance of land use regulations, employees seeking accommodation, etc. *See generally* various cases cited in Amicus ACLU Br. 15-18.

[21] CP 45; https://www.seattletimes.com/seattle-news/politics/a-blast-from-the-past-in-the-gay-rights-wars/ (last visited Sept. 24, 2019) (describing a private religious school's beliefs as "retrograde").

[22] *See infra*, Section II.E, at 11.

employer to articulate a sincerely held religious belief that concerns one of Washington's 'growing list of protected classes'. . . ." *Ockletree*, 179 Wn.2d at 803 (Stephens, J., dissenting).

E. *Ockletree* has unintentionally generated lawsuits against churches for exercising sincerely held religious beliefs, whereas amici's alarmist scenarios are purely hypothetical.

To the Mission's knowledge, there have been three lawsuits (including this one) leveraging *Ockletree*, and all three involve church defendants and issues of marriage and sexuality that relate to the religious beliefs of the church defendants.[23] Presumably this was not the intent of the *Ockletree* dissent or concurrence, which explicitly limited constitutional challenges to claims "unrelated"[24] to religion. *Id.* at 804 n.6 (Stephens, J. dissenting), 806 (Wiggins, J., concurring).

Amici now want this Court to re-define "unrelated" and expand the unintended consequence of *Ockletree* by calling for a result that will further entangle the state with religion and suppress free exercise. They

---

[23] The two others are *Zmuda v. Archdiocese of Seattle and Eastside Catholic School*, King County Sup. Ct. No. 14-2-07007-1 (Catholic high school administrator terminated for same sex marriage in violation of Catholic doctrine and employment contract; sued for sexual orientation discrimination; case settled); *Thorp v. New Life Church on the Peninsula*, Kitsap County Sup. Ct. No. 17-2-02133-18 (married but separated church office employee terminated for co-habiting with boyfriend; claims marital status, sex, and religious discrimination; summary judgment for employer; appeal pending in Div. I).

[24] "Unrelated" means "discrete, disjoined, separate." Webster's Third New Int'l Dictionary 2507 (1993).

claim that "tens of thousands of people" are at risk of discrimination by religious employers,[25] but offer no proof of religious nonprofits asserting the WLAD exemption in bad faith since *Ockletree*.[26] Instead, as Amicus WELA notes, the result in *Ockletree* "affords WLAD protection for thousands of employees working for religious corporations" regarding employment decisions unrelated to religion.[27]

Mr. Woods is using *Ockletree* to attack the religious practices of the Mission. This case is an opportunity for the Court to emphasize that *Ockletree* does not prevent religious organizations from hiring only those whose beliefs and conduct are consistent with their religious precepts.

F. Amici propose a religious vs. secular job duties test and restricting religious hiring decisions to ministers; both proposals violate the First Amendment and Washington's Article I, Section 11.

1. Amici ACLU (and Mr. Woods) argue for an unconstitutional inquiry into the Mission's beliefs and practices—a religious vs. secular job duties test—by conflating it with the ministerial exception.

---

[25] Amicus WELA Br. 2; Amici Ctr. for Justice, *et al.* Br. 6.

[26] It is worth noting that the largest religious non-profit employers in Washington—the three major Catholic hospital chains—are all equal opportunity employers with respect to religion and sexual orientation. Those three chains are Providence (https://www.providenceiscalling.jobs/eeo/ (last visited September 23, 2019)); Peace Health (https://www.peacehealth.org/equal-opportunity-affirmative-action (last visited Sept. 23, 2019)); and CHI Franciscan (https://www.chifranciscan.org/about-us/notice-of-nondiscrimination (last visited Sept. 23, 2019)).

[27] Amicus WELA Br. 9.

Amici ACLU challenge the Mission's reliance on *Amos* and *Spencer v. World Vision*[28] by suggesting that *Hosanna-Tabor's*[29] ministerial exception supports the invasive "religious v. secular" duties distinction Mr. Woods asks this Court to recognize.[30] It does not.

The ministerial exception is an employer-invoked affirmative defense that determines whether an employee's claim can *even be considered*—not whether a religious reason justifies an employment decision. *Hosanna-Tabor*, 565 U.S. at 194-95, 132 S. Ct. 694. This limited inquiry is entirely different than the religious vs. secular job duties or purpose tests rejected by *Amos* and *Spencer*.[31]

Noting that it was "reluctant" to "adopt a rigid formula," the Supreme Court identified four nonexclusive considerations to evaluate ministerial exception claims: (1) how the organization held the employee out; (2) substance and training reflected in the employee's title; (3) how the employee held themselves out; (4) whether employee performed

---

[28] 633 F.3d 723 (9th Cir. 2011).

[29] *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).

[30] Amicus ACLU Br. 13-19.

[31] ACLU also appeals to various other cases, none of which approve a religious vs. secular job duties test.

"important religious functions." *Id.* at 190, 192.[32] The purpose of this inquiry is to identify the legal category of employees who are prohibited from bringing any claim (whether or not grounded in religion) related to employment. The ministerial exception does this by taking account of the employee's overt and "important religious functions." It has never been applied to parse the 'religious' or 'secular' nature of a particular job or activity. Rather, "[t]he Supreme Court . . . has repeatedly cautioned courts against venturing into th[at] constitutional minefield." *Spencer*, 633 F.3d at 730. The ministerial exception is applied in a very different context for a very different purpose. And it causes far less entanglement than the "religious vs. secular" test that remains unequivocally condemned by the Supreme Court in *Amos*.

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

---

[32] *Biel v. St. James Sch.*, 911 F.3d 603 (9th Cir. 2018), *petition for cert. filed.* (U.S. Sept. 16, 2019) (19-348) has been criticized for rigidly applying these considerations because it "conflicts with *Hosanna-Tabor*, decisions from [the Ninth Circuit] and sister courts, decisions from state supreme courts, and First Amendment principles." *Biel v. St. James Sch.*, 926 F.3d 1238, 1239, 19 (9th Cir. 2019) (Nelson, J., dissenting) (nine justices dissenting from denial of re-hearing en-banc); *see Sterlinski v. Catholic Bishop of Chicago*, 934 F.3d 568, 570 (7th Cir. 2019).

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 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

---

[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.

[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

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 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, 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

---

[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.").

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

---

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

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

---

[38] Am. Br. of Appellant 13.

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

would not understand its religious tenets and sense of mission.").

The Mission believes its employees must live 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.

DATED this September 24, 2019

Respectfully submitted,

ELLIS, LI & McKINSTRY PLLC

/s/ Nathaniel L. Taylor

Nathaniel L. Taylor, WSBA No. 27174
Abigail J. St. Hilaire, WSBA No. 48194
Ellis, Li & McKinstry, PLLC
2025 First Avenue, Penthouse A
Seattle, WA 98121
Telephone: (206) 682-0565
Fax: (206) 625-1052
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2019, I filed *Respondent's Answer to Amicus Curiae Briefs of WELA, ACLU, and Center for Justice, et. al.* via email and copied each attorney of record registered with the Washington State Appellate Courts' portal.

Dated this 24th day of September, 2019.

/s/ An Nguyen
An Nguyen, Paralegal

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, September 24, 2019 4:29 PM
To: 'An Nguyen'
Cc: akashyap@legalvoice.org; ander@stellerlaw.com; Abigail St. Hilaire; denise@stellerlaw.com; ejohnson@shermanhoward.com; gverdugo@kellerrohrback.com; iruiz@plaintifflit.com; isaacinseattle@outlook.com; jessew@mhb.com; jneedlel@wolfenet.com; kcolby@clsnet.org; mcfarfam@verizon.net; noemiv@mhb.com; Nathaniel L. Taylor; rschipper@shermanhoward.com; sara@stellerlaw.com; slark@shermanhoward.com; smcfarla@worldvision.org; dmach@aclu.org; imartinez@aclu-wa.org; kmcruer@aclu-wa.org; lkaley@aclu.org; lnowlin@aclu-wa.org; pleadings@aclu-wa.org; rsaxe@aclu.org; Kristen Waggoner; John Bursch; Rory Gray; gahrend@ahrendlaw.com; david@albrechtlawfirm.com
Subject: RE: Woods v. SUGM, Case No. 96132-8

Received 9-24-19.

From: An Nguyen [mailto:anguyen@elmlaw.com]
Sent: Tuesday, September 24, 2019 4:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: akashyap@legalvoice.org; ander@stellerlaw.com; Abigail St. Hilaire <asthilaire@elmlaw.com>; denise@stellerlaw.com; ejohnson@shermanhoward.com; gverdugo@kellerrohrback.com; iruiz@plaintifflit.com; isaacinseattle@outlook.com; jessew@mhb.com; jneedlel@wolfenet.com; kcolby@clsnet.org; mcfarfam@verizon.net; noemiv@mhb.com; Nathaniel L. Taylor <ntaylor@elmlaw.com>; rschipper@shermanhoward.com; sara@stellerlaw.com; slark@shermanhoward.com; smcfarla@worldvision.org; dmach@aclu.org; imartinez@aclu-wa.org; kmcruer@aclu-wa.org; lkaley@aclu.org; lnowlin@aclu-wa.org; pleadings@aclu-wa.org; rsaxe@aclu.org; Kristen Waggoner <kwaggoner@adflegal.org>; John Bursch <jbursch@adflegal.org>; Rory Gray <rgray@adflegal.org>; gahrend@ahrendlaw.com; david@albrechtlawfirm.com
Subject: Woods v. SUGM, Case No. 96132-8

Good afternoon,

We understand the Court's website is down. Attached for filing is *Respondent's Answer to Amicus Curiae Briefs of WELA, ACLU, and Center for Justice, et al.* Please let us know if you need anything further from us.

Thank you,
An

Ellis | Li | McKinstry
An Nguyen - Paralegal
2025 First Avenue, Penthouse A
Seattle, WA 98121-3125
Main: 206.682.0565
www.elmlaw.com