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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I. INTRODUCTION

The Washington Law Against Discrimination (WLAD) has a sweeping exemption that purports to completely immunize all nonprofit religious organizations from the WLAD's ban on discrimination in employment. RCW 49.60.040(11). In 2014, the Washington Supreme Court found in *Ockletree v. Franciscan Health System*, 179 Wn.2d 769, 317 P.3d 1009 (2014), that the WLAD's blanket exemption for nonprofit religious employers violated the Washington State Constitution's Privileges and Immunities Clause, at least as applied to the claims raised by the plaintiff in that case. *Ockletree* was a watershed decision because it was the first recognition by a Washington court that the Legislature violated our state Constitution by granting nonprofit religious employers an unbounded exemption from the WLAD's fundamental civil rights protections for workers in our state.

However, the Court's decision in *Ockletree* included three separate opinions, none of which was joined in its entirety by a majority of the Court. As a result, it is difficult for workers, employers, or their attorneys to determine the precedential value of the Court's holdings in the case with any certainty, aside from its holding that plaintiff Larry Ockletree was entitled to pursue his WLAD claims for race and disability discrimination against his employer, a nonprofit religious hospital.

This case presents the question of whether a person can legally be denied employment under Washington State law by a religious organization

because of the person's sexual orientation, even when the employment focuses on providing secular legal services. Appellant Matthew Woods was actively encouraged by employees of Seattle's Union Gospel Mission (SUGM) to apply for a staff attorney position at its Open Door Legal Services (ODLS) program in 2016. This job involved providing legal services to people who are homeless or at risk of becoming homeless. SUGM employees encouraged Mr. Woods to seek this job because of his many years of past work for the organization, both as a full-time summer legal intern for ODLS during law school and as a volunteer law student and attorney for ODLS. The staff attorney job involved providing secular legal services to clients without regard to their sexual orientation or faith. This job required the candidate to be an attorney licensed by the Washington State Bar Association and to strictly comply with its Rules of Professional Conduct for attorneys. This job was for an organization that affirmatively sought, received, and spent public taxpayer funds to support its work.

Based on his positive past experiences working for SUGM and his devotion to using his legal education and skills to serve the most vulnerable people in our society, Mr. Woods was eager to seek this job opportunity. But as soon as he disclosed that he was in a committed intimate relationship with another man, SUGM told him that he was ineligible for the job because the organization has a policy of refusing employment to people who engage in "homosexual behavior." This policy was nowhere stated in SUGM's detailed job description for the staff attorney position, nor was it disclosed on SUGM's website or other publicly accessible materials.

This is a clear case of discrimination based on sexual orientation. Not surprisingly, given the undisputed facts and evidence, SUGM has stipulated in this case that if it were not a religious organization, its conduct toward Mr. Woods would constitute a prima facie case of discrimination based on sexual orientation under the WLAD.

Instead, SUGM maintains that it has a license under the WLAD to discriminate against LGBT[1] job applicants like Mr. Woods – regardless of whether the job involves performing services as an attorney, as a dentist, as a janitor, or as a cook. If SUGM's position is accepted, then Washington's Law Against Discrimination and the Washington State Constitution effectively provide no protection to LGBT people who are denied employment opportunities with nonprofit religious organizations who wish to discriminate against their employees based on sexual orientation.

II. ASSIGNMENT OF ERROR

The trial court erred in entering the order of July 9, 2018, granting SUGM's Motion for Summary Judgment, following the trial court's issuance of a letter opinion on June 25, 2018.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. 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

[1] Lesbian, gay, bisexual, and transgender.

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)?

2. What test applies to determine whether a nonprofit religious organization is exempt from the Washington Law Against Discrimination's ban on employment discrimination?
3. What holdings of the Washington Supreme Court's fractured decision in *Ockletree* are precedential?
4. Did the trial court improperly grant summary judgment because there were disputed issue of genuine material fact regarding the religious nature of the job duties for the ODLS staff attorney position?

IV. STATEMENT OF THE CASE

A. Mr. Woods and His Work with SUGM Prior to 2016

Mr. Woods is a Christian. CP 111. He is also a bisexual man. CP 135. He earned his bachelor's degree in 2008 from Seattle Pacific University, an evangelical Christian college. *Id*. In 2011, he started law school as a student at the University of Washington School of Law. CP 120.

During his first year in law school, Mr. Woods began volunteering at SUGM's Open Door Legal Services Program (ODLS). CP 111. In December 2011, before he started volunteering, he affirmed his agreement

with SUGM's Statement of Faith, a pledge required of all employees and legal aid volunteer volunteers. CP 112, 118. The Statement of Faith signed by Mr. Woods did not reference any restrictions on working at SUGM based on the person's sexual orientation. *Id.*

Mr. Woods' work at a volunteer at ODLS led to him spending the summer after his first year of law school as a legal intern for ODLS, where he was paid through funding provided by the Public Interest Law Association at the University of Washington School of Law. CP 112. After completing his summer legal internship, Mr. Woods continued during law school to volunteer for ODLS. *Id.*

As a volunteer and as a legal intern at ODLS, Mr. Woods advised and represented clients on a wide range of issues, including divorce, child support, and immigration issues. *Id.* He found satisfaction in his work with ODLS, which he felt was in alignment with his Christian faith. CP 113.

During many years as a volunteer and as a legal intern at ODLS, Mr. Woods' sexual orientation was never implicated in his work for clients. *Id.* He never consulted any religious text or theological authority for his work, which focused on obtaining secular legal remedies for clients. *Id.* He was also never asked to attend SUGM All Mission meetings, worship services of any kind, or other events not related to ODLS's legal work. *Id.*

ODLS's Director David Mace testified that Mr. Woods performed well in his work. CP 734 (Mace 101:16–103:18). Mr. Mace and other attorneys in the office liked Mr. Woods and respected his legal abilities. *Id.*

After passing the bar exam in 2014, Mr. Woods continued volunteering for ODLS as a lawyer until February of 2015. CP 111, 120.

B. SUGM and Its Open Door Legal Services Program

SUGM is a Christian non-profit organization serving people who are homeless in Seattle through a number of different programs. CP 63-64. The organization employs more than 200 people, whose work includes providing temporary shelters, food, supplies, addiction recovery, a dental clinic, and a legal aid clinic. CP 63.

Until 2017, the organization's funding included public taxpayer funds through contracts that SUGM entered into with the City of Seattle. CP 653. SUGM's contracts to receive public funds from the City of Seattle were in effect in 2016, when Mr. Woods applied for a position at SUGM. *Id.*

SUGM describes itself as an "interdenominational Christian organization." CP 702 (Pallas 85:24–86:1). It requires its employees to serve people who are homeless without regard to faith, sex, sexual orientation, or any other legally protected class. CP 751. SUGM employs two Chaplains, and a small number of employees qualify for an IRS ministerial housing allowance based on their credentials and job duties. CP 710 (Pallas 158:13–25).

In 1999, SUGM started its ODLS program. CP 371. ODLS employs a managing attorney, two to three staff attorneys, and an interpreter. *Id.* The evidence in the record indicates that ODLS:

> [P]rovides legal services to all clients without regard to religion. [Its] focus is on serving Seattle's homeless population along with those in danger of becoming homeless. [ODLS provides] legal services with the goal of eliminating barriers that frequently prevent people from transitioning out of homeless. [ODLS'] typical casework involves quashing warrants, helping to reduce or replace court fines with community service, addressing child support and medical debts, as well as helping with family law issues such as divorce, parenting plans, and domestic violence protection orders.

CP 719.

Like all SUGM programs, ODLS holds itself out to the public as serving clients without regard to their faith or sexual orientation. CP 727 (Mace 54:13-18); CP 751. ODLS requires that staff have "sensitivity to cultural diversity" and includes sexual orientation diversity in that requirement. CP 727 (Mace 53:18–54:12). The organization is aware that a disproportionately high number of LGBT people are unhoused or live in severe poverty. *Id.* (Mace 54:20–55:15). However, OLDS Director Mace has not found sexual orientation to be a legally relevant issue in ODLS's work, even in family law representation. CP 149 (Mace 28:9-17). Mr. Mace testified that the ODLS program "observe[s] many homosexual clients." *Id.*

C. SUGM Encouraged Him to Apply Then Deemed Him Ineligible

After graduating from law school in 2014, Mr. Woods volunteered for civil legal service organizations, including ODLS, before accepting a law clerk position at the U.S. District Court in March 2015. CP 367.

On October 4, 2016, Mr. Woods received an email from ODLS Director Mace, inviting him and others to apply for a new staff attorney job.

CP 113, 122, 399. The email contained a link to the staff attorney job description. CP 399-403.

The job description listed ten "Essential Job Duties," which focused on the ability to provide high-quality legal services to clients. CP 401-02. The "Essential Job Duties" included no specific reference to religious requirements for the position, but did state generally that the attorney would "[w]ork cooperatively with other Mission departments as a team to efficiently and positively accomplish the work of the Mission" and "[a]ttend all Mission meetings and training sessions as required." *Id.*

The job description then listed 14 items under "Knowledge, Skills and Abilities." *Id.* In addition to emphasizing "sensitivity to cultural diversity," the "ability to work comfortably with the diverse clients served by ODLS," and the requirement "to strictly comply with the Washington Rules of Professional Conduct," this list also referenced some expectations regarding the applicants' religious values, including:

- 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.
- Must agree with SUGM's Statement of Faith, Mission and Vision Statements and have a personal ethos and work ethic that reflects the Mission's Core Values
- 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.

CP 402. The job description made no reference to SUGM's Standards of Conduct, which (as discussed below) Mr. Woods was later to learn stated SUGM's policy of refusing to hire people who engage in "homosexual behavior." CP 401-03. The Statement of Faith included in the job description similarly provided no explicit indication that SUGM employees were prohibited from engaging in "homosexual behavior." CP 402-03.

In terms of educational requirements, the job description stated only that a J.D. degree and Washington State Bar Admission were required. CP 402. In terms of experience, the job description stated: "Experience within a legal work setting is preferred. Minimum of two years of experience in a professional office environment strongly preferred." *Id.* As reflected by these requirements, SUGM does not require staff attorneys to obtain any religious education, and ODLS Director Mace holds exclusively secular degrees. CP 722 (Mace 13:20-14:16). ODLS only provides secular legal services (*e.g.,* divorce services), and routinely refers ODLS clients to other secular legal services. *Id.* (Mace 15:4-16:9). ODLS distinguishes its legal staff from "employee-ministers" who "perform[] a substantial portion of his/her work carrying out ministerial duties" and may apply for special IRS treatment and housing allowances, if SUGM approves their application. CP 698-99 (Pallas 39:9-41:8). No ODLS employee has ever sought or obtained classification as a minister from SUGM. CP 699 (Pallas 42:1-6).

Based on the job description and his many years of prior experience at ODLS, Mr. Woods believed he was well-qualified for the job. CP 113. On October 5, 2016, he sent an email to his friend Alissa Baier, who worked as an ODLS staff attorney. CP 129. Mr. Woods expressed interest in applying for the job and asked if he could meet with Ms. Baier. CP 129. Ms. Baier responded immediately and said that she, Mr. Mace, and another staff attorney, Lily, had been "wondering how your current job is going and if you would be looking for something new. Please do apply!" CP 128.

Ms. Baier and Mr. Woods met soon after. CP 113-14. At that meeting, Mr. Woods disclosed his sexual orientation to Ms. Baier and asked whether the SUGM community would be welcoming if he brought his boyfriend to a work function. *Id.* Ms. Baier initially indicated that she did not think it would be a problem, but then indicated that there "might be something in a handbook." *Id.* She suggested asking Mr. Mace for more information. *Id.*

The next day, Ms. Baier sent Mr. Woods an email. CP 114, 124. She said she had found "two sections in the Employee Handbook that you would want to consider." CP 124. The first section was labeled "Statement of Faith," which indicated that "[a]ll 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." *Id.* This Statement of Faith was different from the Statement of Faith that Mr. Woods had previously signed as a volunteer for SUGM; in particular, the

prior Statement of Faith that Mr. Woods had signed as a volunteer made no reference to prohibiting "homosexual behavior." CP 114, 118. The second section was labeled "Standards of Conduct," which indicated that "homosexual behavior" was "not permitted and could result in disciplinary action up to and including termination." CP 124. These provisions in the Employee Handbook regarding SUGM's ban on "homosexual behavior" by employees had not been included in the job description for the staff attorney position. CP 401-03.

Ms. Baier recommended contacting David Mace. CP 124. She indicated "[w]e 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." *Id.*

On October 14, 2016, Mr. Woods sent an email to Mr. Mace. CP 405. Mr. Woods told Mr. Mace he was "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 ODLS." *Id.* Mr. Woods asked:

> 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 exclude 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?

Id.

Mr. Mace responded the following day. *Id.* He indicated that "[y]ou are correct that the Mission['s] code of conduct excludes homosexual behavior." *Id.* Mr. Mace said he was "sorry that you won[']t be able to apply for the job," but offered to pass along other job openings in the legal services community. *Id.*

Mr. Woods decided to apply for the position anyway, although he did not try to answer every question on the application fully due to Mr. Mace's statement that Mr. Woods did not meet eligibility requirements. CP 115. Mr. Woods believed that if ODLS was willing to reconsider its policy of refusing to hire people who engage in "homosexual behavior," there would likely be an opportunity to discuss other details about his application at a later date. *Id.* In his cover letter, Mr. Woods wrote:

> 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 thing, 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.

CP 135. Mr. Woods noted the importance of diversity in employment because members of minority cultures are uniquely situated to be able to see where the general culture fails its most vulnerable members, noting that

"I am not a good legal aid attorney in spite of my sexuality; I am a good legal aid attorney because of my sexuality." *Id.*

D. Mr. Woods Filed a Complaint Seeking Relief Under the Washington Law Against Discrimination

In November 2017, Mr. Woods filed a complaint against SUGM in King County Superior Court, seeking nominal damages and injunctive remedies for violating his right to be free from discriminatory employment practices under the Washington Law Against Discrimination. CP 1-7. After a limited period of discovery, SUGM moved for summary judgment, arguing that Mr. Woods should be unable to seek relief because of the WLAD's exemption of employment discrimination claims against nonprofit religious organizations. CP 18-82. The parties' briefing on summary judgment focused in large part on interpretation of the Washington Supreme Court's holding in *Ockletree*, a case where a majority of the Court held that the WLAD's exemption for religious employers was unconstitutional as applied to the claims presented in that case. CP 18-167. The Honorable Karen Donohue granted SUGM's motion for summary judgment, first issuing a letter decision issued on June 25, 2018, followed by an order entered on July 9, 2018. CP 168-75. This appeal followed.

V. ARGUMENT

A. Standard of Review: De Novo

Appellate review of a trial court's summary judgment decision is de novo. *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014).

"Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.*; CR 56(c). The trial court must consider all facts and reasonable inferences in the light most favorable to the nonmoving party, here, Mr. Woods. *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cty*., 189 Wn.2d 516, 526, 404 P.3d 464 (2017).

"Constitutional challenges are questions of law and are also reviewed de novo." *City of Redmond v. Moore,* 151 Wn.2d 664, 668, 91 P.3d 875 (2004).

B. In *Ockletree*, the Court Held that the WLAD's Blanket Exemption for Nonprofit Religious Organizations Violated the Washington Constitution, but Left Other Questions Unanswered.

In *Ockletree*, the Supreme Court held for the first time that the categorical exemption of nonprofit religious organizations from the WLAD's prohibition on discrimination in employment violated the Washington State Constitution's Privileges and Immunities Clause. However, the Court's fractured 4-4-1 decision in the case leaves many other questions unclear, including core questions at issue in this case. To date, no appellate court in Washington has substantively interpreted or applied *Ockletree* in another employment discrimination case.

i. Overview of the *Ockletree* decision.

In *Ockletree*, plaintiff Larry Ockletree brought claims under the WLAD for race and disability discrimination against Franciscan Health

System, a nonprofit religious hospital. The federal court hearing the case certified two state law questions to the Washington Supreme Court:

> (1) The Washington Law Against Discrimination excludes religious non-profit organizations from its definition of "employer" (RCW 49.60.040(11)). Such entities are therefore facially exempt from WLAD's prohibition of discrimination in the workplace. Does this exemption violate Wash. Const. Article I, § 11 or §12?
>
> (2) If not, is RCW 49.60.040(11)'s exemption unconstitutional as applied to an employee claiming that the religious non-profit organization discriminated against him for reasons wholly unrelated to any religious purpose, practice, or activity?

Ockletree, 179 Wn.2d at 772. Article I, §11 of the Washington Constitution concerns religious freedom, while Article I, §12 is commonly known as the Privileges and Immunities Clause.

The Court issued three separate opinions, none of which was joined in its entirety by a majority. Justice Charles Johnson, joined by three justices, issued an opinion designated as the lead. These four justices expressed their view that the WLAD exemption was not facially unconstitutional, and did not reach the "as applied" question in the second certified question. *Id.*at 788-89. Justice Stephens, joined by three justices, issued an opinion designated as the dissent. These four justices expressed their view that the WLAD's categorical exemption violated the Washington Constitution's Privileges and Immunities Clause and "would hold it is invalid as applied to Ockletree and all similarly situated plaintiffs." *Id.* at 804 (Stephens, J., dissenting).

Justice Wiggins issued a concurrence in which he "concur[red] in part in the result reached by the dissenting opinion." *Id.* at 805 (Wiggins, J., concurring in part). His concurrence formed a five-justice majority with the dissent to hold that "WLAD's exclusion of religious nonprofit organizations from the definition of 'employer,' under RCW 49.60.040(11), is unconstitutional as applied to Larry Ockletree." *Id.* However, Justice Wiggins also agreed in part with the lead opinion's conclusion that the WLAD's exemption for religious employers "is not facially unconstitutional," forming a five-justice majority ruling with the lead opinion on the first certified question. *Id.*

Beyond those two points, it is difficult to discern with certainty which, if any, other provisions in the 4-4-1 decision constitute a majority holding that establishes precedent. This difficulty is due in part to the different questions answered by the dissent and the concurrence.

In his concurrence, Justice Wiggins expressed his view that the second certified question from the federal court was improper, and reformulated the question to focus instead on whether an employee's "job description and responsibilities" are related to religious practice or activity. *Id.* He concluded "I believe the constitutionality of the exemption depends entirely on whether the employee's job responsibilities relate to the organization's religious practices. In other words, RCW 49.60.040(11) is constitutionally applied in case in which the job description and responsibilities include duties that are religious or sectarian in nature." *Id.* at 806. Justice Wiggins further expressed his view that "the exemption is

reasonable only to the extent that it relates to employees whose job responsibilities relate to the organization's religious practices. When the exemption is applied to a person whose job qualifications and responsibilities are unrelated to religion, there is no reasonable ground for distinguishing between a religious organization and a purely secular organization." *Id.* In other words, Justice Wiggins' concurrence announced a "job duties" test for determining whether the WLAD's exemption for religious organizations is constitutional.

By contrast, Justice Stephens' dissent focused on answering the second certified question as it was presented by the federal court, *i.e.*, whether the WLAD exemption may be constitutionally applied "to an employee claiming that the religious non-profit organization discriminated against him for reasons wholly unrelated to any religious purpose, practice, or activity." *Id.* at 789 (Stephens, J., dissenting). Justice Stephens' dissent was limited to answering whether the WLAD exemption could be applied in a case where the alleged employment discrimination by a religious organization (in that case, race and disability discrimination) was not grounded in the employer's religious purpose, practice, or activity. The dissent did not reach the different question presented in this case, where SUGM's refusal to consider Mr. Woods for employment was grounded in its requirement that employees follow a Biblical moral code, which SUGM interprets to prohibit employees from engaging in "homosexual behavior."

ii. The rules for determining precedent from fractured decisions by the Washington Supreme Court are not clear.

It is also difficult to determine which provisions of *Ockletree* are precedential because the Washington Supreme Court's rule for determining precedent from a fragmented decision is not clear. As Justice Madsen recently observed, "our jurisprudence has been less than clear on how to determine what, if any, legal principles from a fractured opinion are precedential," and she urged the court "to end an era of confusion about what constitutes precedent from our fractured opinions." *King Co. v. Vinci Const. Grands Proj.*, 188 Wn.2d 618, 636-37, 398 P.3d 1093, (2017) (Madsen, J., concurring in dissent).

As Justice Madsen noted, the Washington Supreme Court has applied, but not expressly adopted, a test articulated by the United States Supreme Court, which is often called the *"Marks* test." *Id.* The *Marks* test provides that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds . . . .'" *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977) (citations omitted). In interpreting its own decisions, the Washington Supreme Court has cited *Marks* for the proposition that "[w]here there is no majority agreement as to the rationale for a decision, the holding of the court is the position taken by those concurring on the narrowest

ground." *Davidson v. Hensen*, 135 Wn.2d 112, 128, 954 P.2d 1327 (1998) (citations omitted).

However, the Washington Supreme Court has also applied a differently worded test in other cases, stating the rule as "when there is no majority opinion, the holding is the narrowest ground upon which a majority agreed." *In re Pers. Det. of Francis*, 170 Wn.2d 517, 532 n.7, 242 P.3d 866 (2010). In a related vein, the Court has also held that "[a] principle of law reached by a majority of the court, even in a fractured opinion, is not considered a plurality but rather binding precedent." *In re Detention of Reyes*, 184 Wn.2d 340, 346, 358 P.3d 394 (2015). However, in a concurring opinion in *Reyes*, Justice Gordon McCloud emphasized that this formulation was not complete, noting "a principle of law to which a majority of justices agree can constitute binding precedent – even when located in separate opinions – but two additional prerequisites have to be met: (1) that principle of law must be *necessary* for the decision in the case rather than just dicta and (2) that principle of law must be the *narrowest* ground of agreement rather than the broadest." *Id.* at 353-54 (Gordon McCloud, J., concurring) (emphasis in original).

Further difficulty emerges in determining whether two opinions share a common rationale or merely a common result. Under the *Marks* test, some courts have held that where the reasoning for a holding differs, but a majority agree as to the result, then the result alone represents the court's holding. *United States v. Davis*, 825 F.3d 1014, 1016 (9th Cir. 2016). However, where one opinion is a logical subset of other broader opinions,

representing a narrower opinion sharing a "common denominator" of the court's reasoning, the reasoning for the result may be considered precedential. *Id.* at 1021.

iii. Does the concurrence's "job duties" test represent the holding of the Court?

The concurrence's "job duties" test may be regarded as the controlling opinion under a straightforward application of *Marks* because it represents the position taken by the member of the Court (Justice Wiggins) who concurred on the narrowest grounds. In addition, both the dissent and the concurrence agreed that the WLAD's categorical exemption for employers is unconstitutional as applied in some circumstances. Because the concurrence reasoned that reviewing job duties for the position provided an objective method of testing the relationship between the religious beliefs of an employer and an employee's job description and responsibilities in the organization, it arguably represents the narrowest principle upon which the concurrence and dissent agreed. But again, the answer is not clear. As a result, having further guidance from the Supreme Court on this question would assist trial courts, workers, employers, and their attorneys in understanding the Court's fractured decision in *Ockletree* and its application to other cases.

C. If the "Job Duties" Test is the Applicable Test, the Trial Court Erred in Granting Summary Judgment to SUGM.

In ruling on SUGM's motion for summary judgment, the trial court examined the "job duties" test from Justice Wiggins' concurrence. CP 170-

71. However, the court erred on multiple grounds when it granted summary judgment to SUGM.

i. Summary judgment was improperly granted because Mr. Woods presented genuine issues of material fact as to the staff attorney job duties.

In granting summary judgment to SUGM, the trial court overlooked genuine issues of material fact regarding the job duties of the staff attorney position. The court granted impermissible inferences in SUGM's favor, finding that "the job duties extend beyond legal advice to include spiritual guidance and praying with the clients," CP 170, while ignoring evidence presented by Mr. Woods that raised genuine issues of material fact regarding SUGM's claims. CP 113.

For example, the court cited the declaration of ODLS staff attorney Alissa Baier, who stated that she was "encouraged" to discuss her own personal religious beliefs and those of her clients while providing legal representation. CP 170. Even if "encouragement" could be construed as a job duty, Mr. Woods provided materially contradictory testimony, based on his many years of working at ODLS as a legal intern and volunteer. He stated that he "never believed it was a requirement" that he discuss religious matters with clients, and that he observed the work of ODLS to be "focused on obtaining secular legal remedies for our clients." CP 113. He observed that the work performed by ODLS was no different than what he does as a legal aid attorney at his current secular position with the Northwest Justice Project. CP 115. Moreover, ODLS Director David Mace testified that

discussing matters of faith with was not required by staff attorneys, but that he hoped staff attorneys were open to it. CP 151.

The court also appeared to accept without question, both as a matter of fact and as a matter of law, that other items listed in the staff attorney job description constituted religious job duties, including working cooperatively with other Mission departments, attending Mission meetings and training sessions, supporting the ODLS mission statement, and accepting the Mission's Statement of Faith. CP 170-71. This was error.

For example, a genuine issue of material fact exists regarding the religious nature of attendance at meetings. Mr. Woods provided evidence that not only had he not attended an all-staff meeting during his tenure at SUGM, but he never attended any religious meeting during his tenure there.[2] CP 113. Regardless, there is no basis to assume as a matter of fact or law that requiring an employee to attend staff meetings that include prayer means that the employee's job duties are religious in nature; if that is the rule, then any nonprofit religious employer could easily assert a blanket exemption from the WLAD simply by requiring employees to attend meetings where prayers are offered.

Further, if requirements such as willingness to accept an organization's religious mission are sufficient to make otherwise secular job duties religious in nature, then Mr. Ockletree should not have been eligible for WLAD remedies either, as CHI Franciscan Health (as his employer,

[2] There is no evidence that Mr. Woods would have objected to attending such meetings as a staff attorney.

Franciscan Health Services, is now known) also states a religious mission: "The mission of Catholic Health Initiatives is to nurture the healing ministry of the Church, supported by education and research. Fidelity to the Gospel urges us to emphasize human dignity and social justice as we create healthier communities."[3]

In this case, Mr. Woods was indisputably qualified to perform the staff attorney job and had extensive knowledge of the actual work performed by ODLS staff attorneys through years of work as a legal intern and volunteer. He had volunteered with ODLS for several years with no issue, he was respected by ODLS Director Mace, he served clients with care and compassion, and he was invited to apply for the position. CP 113; 734 (Mace 101:16-23). As a summer intern, he was entrusted with significant representation duties. CP 727-28 (Mace 56:10-57:10). By all measures, he was an exemplary candidate.

In short, Mr. Woods has substantial knowledge of ODLS and the duties of its staff attorneys. Because there were material facts in dispute as to the true nature of the staff attorney job duties, the trial court erred in granting summary judgment.

[3] Available at https://www.chifranciscan.org/about-us/overview/mission-vision-and-values.html (last viewed 10/15/2018).

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

[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.

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 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.

iii. The trial court granted summary judgment based on an erroneous presumption that a trial would improperly focus on which activities within SUGM are secular and which are religious.

The trial court also erred in concluding that any material facts in dispute regarding the job duties of the staff attorney position could only be resolved through an improper inquiry into "the Mission's sincerely held religious beliefs and whether the roles of the staff attorneys include religious duties." CP 183. In reaching this conclusion, the trial court applied the wrong legal standard. The trial court appeared to erroneously rely upon the U.S. Supreme Court's decision in *Corporation 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). The court interpreted *Amos* to stand for the proposition that that any inquiry into the job duties of the staff attorney

position would require the court to determine "the importance of or the relative merits of different religious beliefs." CP 183.

The trial court was incorrect. Mr. Woods recognizes that SUGM asserts biblical authority to deny employment to LGBT employees. However, the source, merits, or sincerity of its religious beliefs are not at issue in this case. Instead, the WLAD's religious exemption is unconstitutional as applied to Mr. Woods because of the secular nature of attorney work performed by ODLS lawyers. The record shows that ODLS lawyers hold exclusively secular degrees, they work in conjunction with other secular legal aid clinics, prayer may be "encouraged" but it cannot be mandated under the RPCs, and no ODLS lawyers serve SUGM as IRS-designated "employee ministers." Examining these facts and inquiring into the actual job duties of a staff attorney does not ask a court to determine the importance or the relative merits of SUGM's religious beliefs.

Indeed, the U.S. Supreme Court has approved an individualized, fact-intensive inquiry by which courts can determine whether a religious organization is exempt from Title VII's anti-discrimination protections with respect to employees who fall within the "ministerial" exception to the law. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC,* 565 U.S. 171, 132 S. Ct. 694, 181 L.Ed.2d 650 (2012). The Court expressly declined to adopt a "rigid formula for deciding when an employee qualifies as a minister." *Id*. at 190. In that case, the Court looked to a number of non-exclusive factors to determine whether the plaintiff fell within the ministerial exception, including the employee's formal title, the substance

reflected in that title, the employee's use of that title, and the "important religious functions" the employer performed as part of her job. *Id*. at 191-92. *Hosanna-Tabor* demonstrates that there is no constitutional or other legal barrier to courts or juries inquiring into issues of disputed fact regarding the actual job duties of a person employed by a religious organization under Title VII. There should be no similar barrier under Washington law. As such, Mr. Woods deserves to have his case heard fully and on the merits.

D. The Religious Exemption Privileges SUGM While Infringing on Mr. Woods' Fundamental Rights.

The WLAD's exemption provides a benefit to religious nonprofit employers that secular nonprofit employers do not receive: liberation from the responsibilities placed upon Washington employers to protect fundamental civil rights and uphold the important public principle of freedom from discrimination and its associated ills. No other class of employer except those employing fewer than eight employees are granted such a privilege, RCW 49.60.040(11), and even small employers can be subject to the WLAD when public policy so demands. *Roberts v. Dudley*, 140 Wn.2d 58, 69-70, 993 P.2d 901 (2000) (small employers are not exempt from WLAD's condemnation of discrimination as against public policy). This Court has already determined that the WLAD's religious employer exemption constitutes a privilege or immunity under Article I, §12. *Ockletree*, 179 Wn.2d at 797 (Stephens, J., dissenting), 806 (Wiggins, J., concurring in part).

A law which grants a privilege or immunity to any citizen, group, or organization violates Article I, §12 unless there is "reasonable ground for distinguishing between those who fall within the class and those who do not." *Id.* at 797 (Stephens, J., dissenting). A reasonable distinction must have a "natural, reasonable, and just relation to the subject matter of the act." *Id.* at 783, quoting *State ex rel. Bacich v. Huse*, 187 Wn. 75, 84, 59 P.2d 1101 (1936), *overruled on other grounds by Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 947, 603 P.2d 819 (1979).

SUGM's exclusion of Mr. Woods from the staff attorney position does not satisfy those "reasonable grounds." ODLS provides secular legal services, and its employees do not perform ministerial functions, are not required to undergo religious training, or hold other religious roles in the organization. But SUGM defines all its employees as "ministers" and characterizes discretionary acts such as praying with clients and attending meetings at which prayer occurs as "job duties." Thus, it asserts immunity from civil rights responsibilities that secular nonprofit employers, including other nonprofit legal aid organizations and other organizations providing social services to people who are homeless, must observe. At the time Mr. Woods submitted his application, SUGM was also receiving public taxpayer funds from the City of Seattle to perform its work, while claiming an exemption from the WLAD that other nonprofit organizations that provide similar services do not receive.

When an employee performs discrete secular work, and particularly when that employee is subject to overriding independent ethical obligations

such as the Rules of Professional Conduct, which mandate non-discrimination and paramount fidelity to a client's objectives, the WLAD's religious exemption holds no just or reasonable relationship to that employment. Instead of shielding free exercise, the exemption allows religious employers to perpetuate the same threats to safety and welfare the WLAD seeks to prevent.

i. This Court should apply strict scrutiny to the exemption and recognize the State's compelling interest in eradicating discrimination.

While establishing "reasonable grounds" for a privilege may be enough to protect the "solemn and fundamental right to sell cigars, animal feed, and eggs," *Ockletree*, 179 Wn.2d at 793 (Stephens, J., dissenting) (citations omitted), the Court should apply a heightened level of scrutiny to the religious employer exemption because it abridges Mr. Woods' fundamental rights. *Id.* at 794 (Stephens, J., dissenting) ("The WLAD exemption is subject to heightened scrutiny if it grants a privilege or immunity of state citizenship to religious nonprofits."), 796 (Stephens, J., dissenting) ("the right to be free from discriminatory employment practices is easily as fundamental as the commercial rights that our early article I, section 12 cases addressed."). Indeed, this Court has indicated that where fundamental rights are at issue, strict scrutiny is appropriate. *Macias v. Dep't of Labor and Industries*, 100 Wn.2d 263, 271, 668 P.2d 1278 (1983) (applying strict scrutiny to a law on grounds that it abridged fundamental right to travel).

Under strict scrutiny, a law must be held to meet a compelling state interest justifying its infringement upon a fundamental right. *Id.* at 274. In *Macias*, this Court determined that the income protection afforded by workers compensation benefits was far more important than the administrative burden to the state in providing them to migrant farmworkers. *Id.* While the state's interest in protecting religious employers' right to free exercise is more important than avoiding the administrative burdens of the workers compensation system, Mr. Woods was no less deprived of protection in his livelihood than the farmworkers in *Macias*. His rights are no less fundamental, and the exemption is not narrowly tailored to only that which is necessary to protect free exercise. *Ockletree*, 179 Wn.2d at 786 n.11, 801 (Stephens, J., dissenting). Moreover, the WLAD requires liberal construction in order to achieve its protective purpose, RCW 49.60.020, requiring that courts view with caution any construction that would narrow the coverage of the law. *Marquis v. City of Spokane*, 130 Wn.2d 97, 108, 922 P.2d 43 (1996), citing *Shoreline Comm. Coll. Dist. No. 7 v. Empl. Sec. Dep't*, 120 Wn.2d 394, 406, 842 P.2d 938 (1992). Therefore, the state cannot justify any abridgement of Mr. Woods' rights that is not necessary to alleviate a substantial and concrete burden on free exercise. *Ockletree*, 179 Wn.2d at 803 (citations omitted) (Stephens, J., dissenting). As discussed below, SUGM has failed to articulate how employing Mr. Woods as a staff attorney concretely burdens its free exercise, and therefore Mr. Woods asks that this Court find the WLAD applicable to his application for ODLS employment.

ii. The Washington State Constitution's free exercise clause does not preclude application of the WLAD to SUGM with respect to Mr. Woods.

Washington's State Constitution protects "[a]bsolute freedom of conscience in all matters of religious sentiment, belief and worship … but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state." Const. art. I, § 11. In light of the difference between the First Amendment of the United States and the broader language of Article I, §11, and applying the *Gunwall* factors, this Court has already determined that this portion of §11 is to be interpreted separately and more broadly than the First Amendment. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 224, 229-30, 840 P.2d 174 (1992) (finding a statue regulating the outside appearance of churches violated Article I, §11's free exercise protections evaluated separately from the First Amendment's).

The question becomes how to balance the protections of the WLAD and the fundamental right to employment without discrimination and SUGM's freedom to exercise its religious beliefs without undue state interference. First, the answer lies in the text of Washington's Constitution itself: free exercise is protected *except as to "practices inconsistent with the peace and safety of the state."* Const. art. I, §11 (emphasis added). The legislature has determined that discrimination is just such a practice, passing the WLAD to protect "the public welfare, health, and peace of the people of this state." RCW 49.60.010. This Court has repeatedly held the WLAD

to express a public policy of the highest priority. *See, e.g. Int'l Union of Operating Engineers, Local 286 v. Port of Seattle*, 176 Wn.2d 712, 722, 295 P.3d 736 (2013), quoting *Antonius v. King County,* 153 Wn.2d 256, 267–68, 103 P.3d 729 (2004) (quoting *Xieng v. Peoples Nat'l Bank of Wash.,* 120 Wn.2d 512, 521, 844 P.2d 389 (1993) (quoting *Allison v. Hous. Auth.,* 118 Wn.2d 79, 86, 821 P.2d 34 (1991)); *accord Marquis,* 130 Wn.2d at 109. Thus, religious beliefs alone are not sufficient to take precedence over the legislature's interest in public peace and safety. *See City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 642 n.3, 211 P.3d 406 (2009) (recognizing the government may require compliance with reasonable police power regulation under the peace and safety clause of Art. I §11 in the absence of a substantial burden on religious belief or conduct).

Nor is the legislature's obligation to preserve peace and safety discretionary – it is not permitted the authority to define the meaning and scope of a constitutional provision by statute. *See Open Door Baptist Church v. Clark Cty.*, 140 Wn.2d 143, 168-70, 995 P.2d 33 (2000) (rejecting argument for unconditional religious freedom regarding zoning laws based on Art. 1 §11); *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 714, 911 P.2d 389 (1996) (the construction of the meaning and scope of a constitutional provision is exclusively a judicial function). Indeed, churches have long been subject to laws addressing public peace and safety, abridging free exercise in matters seemingly less significant than discrimination (*e.g.*, zoning, tuberculosis testing, and medical malpractice liability). *See Open Door Baptist Church*, 140 Wn.2d at 166-69(requiring church to apply for

conditional use permit for building based on the necessity and validity of zoning as an exercise of police power, and rejecting challenge based on Art. I §11); *CJC v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 728, 985 P.2d 282 (1999) (rejecting church's argument that Art. I, §11 prevented Court from imposing tort duty on religious organization, based on peace and safety clause) (plurality opinion); *State ex rel. Holcomb v. Armstrong*, 39 Wn.2d 860, 864, 239 P.2d 545 (1952) (denying application for mandamus to register student at public university where student refused X-ray exam for tuberculosis on religious grounds, and rejecting Art. I, §11 challenge due to public interest in protecting health of students and employees of the university); *State v. Verbon*, 167 Wash. 140, 148-49, 8 P.2d 1083 (1932) (upholding conviction of religious healer for practicing medicine without a license based on "preservation of the public health and general welfare," and rejecting challenge based on Art. I, §11); *State v. Balzer*, 91 Wn. App. 44, 65-66, 954 P.2d 931 (1998), *review denied*, 136 Wn.2d 1022 (1998) (upholding conviction for religious use of marijuana, rejecting appeal based on Art. I, §11, and stating that the defendant's "free exercise of religion must yield to the 'peace and safety of the state'"); *State v. Norman*, 61 Wn. App. 16, 21-24, 808 P.2d 1159, *review denied*, 117 Wn.2d 1017 (1991) (upholding manslaughter conviction for withholding medical treatment from child on religious grounds, rejecting Art. I §11 challenge due to peace and safety of the state).

SUGM will no doubt argue that where its sincerely held religious beliefs are substantially burdened by a law or regulation, the law is

enforceable against it only if the state shows its compelling interest in maintaining the law and that it represents the least restrictive means of achieving that interest. *City of Woodinville,* 166 Wn.2d at 642. 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.

iii. *Amos* is inapposite: the exemption should not be applied beyond what is necessary to protect SUGM's free exercise rights.

At summary judgment, SUGM and the trial court relied heavily upon the U.S. Supreme Court's decision in *Amos* to support the argument that any inquiry into ODLS staff attorney job duties requires the organization to "predict which of its activities a secular court will consider religious … Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission." 483 U.S. at 336. But *Amos* does not immunize SUGM from inquiry into any actual job duties held by employees. *See also Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628, 106 S. Ct. 2718, 91 L.Ed.2d 512 (1986) (no constitutional rights violated by investigating whether religious-based reason was in fact the reason for discharge). *Amos* addressed an exemption in Title VII that permits religious employers to hire only people of a particular religion– in that case, addressing whether a Mormon organization could refuse to employ a non-Mormon building engineer. 483 U.S. at 330. The question in *Amos* was not, as this case presents, whether free exercise was burdened by honoring the fundamental civil rights of any other protected class. *Id.* at 339 (analysis of intrusion upon religious beliefs limited to specific language of §702 exempting claims of religious discrimination alone). Had that plaintiff, like Mr. Woods, brought claims that he was terminated due to his sex, race, or other protected class, the church would have been subject to Title VII.

This is a crucial difference. Mr. Woods affirmed the Statement of Faith multiple times as a volunteer and in his application for employment, and affirmed his belief in SUGM's stated Mission and that his desire to serve SUGM's poor and vulnerable clientele is derived from his Christian faith. CP 112, 118, 131, 133. Where civil rights are on the line, the U.S. Supreme Court has declined to uphold a policy derived from religious beliefs, and found no *per se* violation of free exercise. *Bob Jones Univ. v. United States*, 639 F.2d 147, 153–54 (4th Cir. 1980), *aff'd*, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983) ("[a]bandonment of the policy would not prevent the University from teaching the Scriptural doctrine of nonmiscegenation. Nor is any individual … forced to personally violate his beliefs; no student is forced to date or marry outside of his race.").

SUGM may also argue that the Supreme Court in *Amos* upheld the statutory "co-religionist" exemption under Title VII because it was "rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." 483 U.S. at 339. However, the *Amos* Court applied mere rational basis review under the federal Equal Protection Clause to reach this conclusion. *Id.* As discussed above, the Washington Constitution's Privileges and Immunities Clause requires much more than mere "rational basis" scrutiny when examining a Washington state law that grants a privilege or immunity affecting a fundamental right.

Where an employee performs secular work requiring no religious training or religious leadership, there is compelling reason to expect

employers to articulate a specific burden placed upon its free exercise, and limit the WLAD exemption to only the discrimination which is strictly necessary to alleviate that burden. SUGM has not shown that employing Mr. Woods as a staff attorney – that his mere presence as an ODLS employee who happens to be in a relationship with another man - would have infringed upon or substantially burdened its free exercise of religion. Therefore, Mr. Woods asks that this Court undertake an analysis which both recognizes and respects SUGM's free religious exercise while also upholding the state's non-discretionary and compelling interest: he asks that the Court respect his right to employment free from discrimination on the basis of his sexual orientation.

VI. CONCLUSION

Matthew Woods is a Christian. He is also a legal aid attorney who has demonstrated his devotion to serving the most vulnerable in our society through many years of work. And he is also a bisexual man who is in a committed intimate relationship with another man.

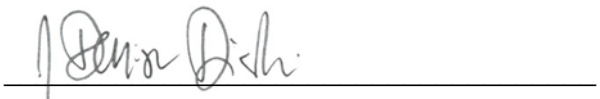
For years, Mr. Woods worked at SUGM's Open Door Legal Services program. He served ODLS clients as a full-time summer legal intern, as a law student volunteer, and as a volunteer attorney. His sexual orientation was never a factor in this work. Instead, his work was so impressive that SUGM employees actively encouraged him to apply for what he considered his dream job – only to be told that he was ineligible as soon as he informed SUGM of his sexual orientation.

Mr. Woods respectfully requests that this Court hold that the WLAD's blanket exemption for nonprofit religious employers violates the Washington State Constitution as applied to him, and permit him to pursue his claims for sexual orientation discrimination. He additionally respectfully requests that the Court take this opportunity to clarify and build upon its landmark decision in *Ockletree* by providing clearer guidance regarding employment antidiscrimination protections for Mr. Woods and other Washingtonians who seek to earn their livelihood and serve their communities through employment with nonprofit religious organizations.

DATED THIS NOVEMBER 8, 2018.

Respectfully submitted,

TELLER & ASSOCIATES, PLLC



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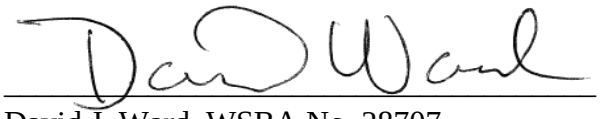

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 8th day of November, 2018, I served the foregoing AMENDED BRIEF OF APPELLANT with the Clerk of the Court via e-filing and Respondent's counsel via email:

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