No. 21-144

In the Supreme Court of the United States

SEATTLE'S UNION GOSPEL MISSION,
Petitioner

v.

MATTHEW S. WOODS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WASHINGTON

BRIEF OF *AMICUS CURIAE* GRACE YOUTH AND FAMILY FOUNDATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae is the Grace Youth and Family Foundation, a religious non-profit association located in Pennsylvania that serves youth, families, homeless, and abused individuals. GYFF is a youth education and development organization which operates an emergency shelter and provides resources for homeless individuals and victims of abuse. GYFF creates summer programs for kids, provides mentoring, job training, alcohol and drug programs, mission training, and family and youth counseling. GYFF is a religious organization which meets material needs as it reaches persons with the Gospel of Jesus Christ. GYFF believes religious organizations must remain free to hire any or all of their staff based not only on whether the staff member agrees with the religious beliefs of the organization but on the staff member's commitment to live consistent with those beliefs. GYFF is increasingly experiencing the conflict between the prevailing culture's push to marginalize people and religious organizations who hold orthodox Christian teaching on human sexuality, marriage, and gender. GYFF believes the Washington Supreme Court's unconstitutional disregard of coreligionist hiring will be harmful not only to religious organizations but also to the people they seek to serve.

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[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or any person other than *amicus curiae* or their counsel contributed money intended to fund preparation or submission of this brief. Counsel for all parties received timely notice of the intent to file and have consented in writing to the filing of this brief.

SUMMARY OF THE ARGUMENT

Washington lawmakers "enacted Washington's Law Against Discrimination (WLAD), ch. 49.60 RCW, to protect citizens from discrimination in employment." *Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060, 1062 (Wash. 2021). Sexual orientation and religion are two among several protected categories.

In addition, the law recognized religious organizations' right to employ coreligionists by excluding religion from WLAD's list of protected classes applicable to a religious "employer" App. 76a. This ensured that religious organizations are protected in seeking employees and hiring employees who both a) believe what the organization believes and who b) seek to live consistent with those beliefs.

Human sexuality is inseparable from most religious doctrinal beliefs and expectations as to conduct. While an employee may have a certain sexual desire, employees of many religious organizations are expected to abstain from engaging in certain actions and may be expected to believe the religious teaching about the morality of such actions. For instance, a religious organization may teach that even consensual sex with a non-spouse is immoral even though prospective employees may have sexual desire for people who are not their spouse. The religious organization knows people have desires to do things they teach are wrong, but they seek to hire people who a) believe what the organization does about those desires and b) seek to live consistent with

those beliefs. Recognition of coreligionist protections for religious organizations is essential to religious freedom, freedom of speech, and association. Without it, religious groups cannot adhere to these teachings that are core to their understanding of what the Bible teaches.

But the Washington Supreme Court has determined to impose its own beliefs about human sexuality above the rights of Seattle's Union Gospel Mission ("SUGM")—its *constitutional* rights (religion, speech, association) and its admittedly constitutional statutory exemption. *See Ockletree v. Franciscan Health System*, 317 P.3d 1009, 1017 (Wash. 2014) ("exemptions for religious organizations from civil discrimination suits protect religious freedom by avoiding state interference with religious autonomy and practice"); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987). Washington's Supreme Court eliminated the fundamental rights of religious organizations in order to protect Woods' "fundamental rights" to "sexual orientation and the right to marry," citing this Court's language in *Obergefell* about the right of individuals "to define and express their identity." *Woods*, 481 P.3d at 1065-1066, citing *Obergefell v. Hodges*, 576 U.S. 644, 651-52 (2015).

This Court should grant the Petition to affirm that the long-recognized co-religionist hiring doctrine is constitutionally mandatory, contrary to Washington's alarming decision. Unless the Court steps in to provide meaningful First Amendment protection, states will have carte blanche to prevent faith-based

nonprofits from associating around and promoting religious views. Here, the particular religious views are even those the Court in *Obergefell* declared to be "decent and honorable." *Obergefell*, 576 U.S. at 672.

ARGUMENT

I. This Case is a Product of the Over Expansive Application of *Obergefell* and *Bostock*.

There is an alarming surge in the use of anti-discrimination laws to compel uniformity of thought and action about sexual mores, contrary to *Obergefell*'s admonition that religious organizations and persons should be free to organize their lives around these issues. This is hardly a shocking development. Indeed, it was a foreseeable result of this Court's rulings in *Obergefell*, 576 U.S. 644, and *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020). These opinions correspond to the fervent cultural promotion of sexual moral codes that clash with the moral codes of many faith traditions. The Court put its thumb on the scale on issues of profound cultural and religious significance but was unable to lift a finger to relieve the burdens it had just created. *Obergefell*, 576 U.S. at 711 (Roberts, C.J., dissenting) ("[f]ederal courts . . . do not have the flexibility of legislatures to address concerns of parties not before the court"). Justice Thomas warned of "potentially ruinous consequences for religious liberty." *Id.* at 734 (Thomas, J., dissenting). The Court's lofty promises to preserve religious liberty, *id.* at 679-680, now ring hollow. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), provided

narrow protection against open government hostility to religion. The warnings proved prescient, as even the majority's reference to the First Amendment rights of religious organizations in *Obergefell* has been ignored and undercut by the Washington court. *See Obergefell*, 576 U.S. at 679-80 ("The First Amendment ensures that religious organizations . . . are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered.").

A clear ruling is needed to guard the liberty of religious organizations to employ those who believe and who seek to live consistent with those beliefs in order to preserve their identity and pursue their mission while remaining faithful to their core beliefs.

Obergefell and *Bostock* have led to brazen efforts to coerce uniformity of thought about the nature of marriage and sexuality, redefining basic biology and concepts that have stood for millennia. Attempts to compel uniform thought are dangerous to a free society where the government must respect a wide range of diverse viewpoints. In the past, "[s]truggles to coerce uniformity . . . have been waged by many good as well as by evil men." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 640 (1943). These efforts are ultimately futile. "Compulsory unification of opinion achieves only the unanimity of the graveyard." *Id.* at 641. Religious organizations and individuals are especially threatened by laws and policies that prohibit "discrimination" based on sexual orientation and/or gender identity.

Strong convictions about marriage and sexuality often characterize a system of religious doctrine. SUGM holds religious beliefs about marriage and sexuality that are baked into the religious worldview that undergirds its mission, message, and choice of messengers. The Constitution guarantees SUGM and other religious organizations "independence from secular control or manipulation" in matters of "faith and doctrine." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1951). Washington crushes that independence, and its assault on religious freedom will inevitably create additional collateral damage unless this Court steps in.

II. Operating a Religious Organization in Accordance with that Organization's Religious Doctrine is Not Invidious, Irrational, or Arbitrary Discrimination.

This case is an employment discrimination action against a religious organization. But the action of a *religious* organization, motivated by its *religious* doctrine, is not arbitrary, irrational, unreasonable, or invidious. Indeed, SUGM's selection of employees who support its religious mission is not "discrimination" at all. This is not a case where the law may proscribe refusal to conduct business with an entire group based on personal animosity or *irrelevant* criteria. It is *relevant* for a religious employer to consider a prospective employee's agreement (or disagreement) with its religious doctrine and mission. A court's refusal to consider religious motivation and relevance—and distinguish that from invidious

discrimination—"tends to exhibit hostility, not neutrality, towards religion." *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 142 (1987); *see also Thomas v. Review Bd. of Ind. Emp't*, 450 U.S. 707, 708 (1981).

Religious organizations do not engage in invidious discrimination when they select employees from a pool of applicants based on whether the employee agrees with the religious beliefs of the organization and whether the employee lives consistent with those beliefs. Religious organizations do not exist merely to provide a framework to exchange human labor or services. Religious organizations hire employees to speak and act on the employer's behalf, but its importance is not limited to expressions towards outsiders. The importance of hiring coreligionists extends also to the building of an internal community of like-minded coreligionists to strengthen each other in their faith and encouragement to one another to live out their faith. If employees are not committed to the association's purposes, they are likely to be disloyal or misrepresent the group. The ability to encourage and provide accountability for their coworkers over the shared commitment to live faithfully to their beliefs is compromised. Over time, the association's fundamental identity may be distorted beyond recognition.

The clash between anti-discrimination principles and the First Amendment should not be difficult to reconcile. Sexual beliefs and actions based on those beliefs ought to be treated no differently than any other religious belief and actions that a religious organization associates around and expects

employees to share. The problem arises instead because strong cultural forces have been pushing to castigate and marginalize anyone whose traditional beliefs about sexual morality contradict with the current zeitgeist.

Government has no right to legislate a particular view of sexual morality and compel religious institutions and individuals to facilitate it. When the D.C. Circuit addressed the question "of imposing official orthodoxy on controversial issues of religious, moral, ethical and philosophical importance, upon an entity whose role is to inquire into such matters" it concluded that "[t]he First Amendment not only ensures that questions on difficult social topics will be asked, it also *forbids government from dictating the answers*." *Gay Rights Coalition of Georgetown Univ. Law Ctr. v. Georgetown Univ.,* 536 A.2d 1, 24 (D.C. 1987) (emphasis added). Religious voices have shaped views of sexual morality for centuries. These deeply personal convictions shape the way people of faith live their daily lives, both privately and in public. Advocates of social change with respect to sexuality tend to be "anything but indifferent toward the teachings of traditional religion—and since they are not indifferent they are not tolerant." Michael W. McConnell, *"God is Dead and We have Killed Him!" Freedom of Religion in the Post-Modern Age*, 1993 BYU L. REV. 163, 187 (1993). Political power can be used to squeeze religious views out of public debate about controversial social issues, as this case demonstrates.

III. The Coreligionist Doctrine is Constitutionally Mandatory to Preserve a *Trilogy* of Core First Amendment Rights—Speech, Association, and Religion.

Speech, association, and religion would qualify as fundamental rights even without the First Amendment. These three intertwined rights are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," so that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg,* 521 U.S. 702, 721 (1997).

Without the robust protection for hiring co-religionists long recognized by this Court, Petitioner would forfeit all three core First Amendment rights. These basic liberties "are protected not only against heavy-handed frontal attack, but also from being stifled by *more subtle governmental interference*." *Bates v. City of Little Rock,* 361 U.S. 516, 523 (1960); *Healy v. James*, 408 U.S. 169, 183 (1972) (emphasis added). Here, Washington's anti-discrimination law is wielded as a sword to force a religious organization to hire an employee who refuses to abide by the organization's religiously based conditions for employment. The state court's distortion of this Court's longstanding protection for religious hiring thwarts SUGM's ability to form a cohesive association with persons who will faithfully disseminate its message.

Recognizing the unique constitutional protection for religion, the Civil Rights Act of 1964 (Title VII) accommodates religious employers by exempting

them from the prohibition against religious discrimination. 42 U.S.C. § 2000e-1. This Court upheld the exemption against Establishment and Equal Protection Clause challenges, observing that government should not interfere with "the ability of religious organizations to define and carry out their religious missions." *Amos,* 483 U.S. at 335-336 (building engineer discharged by nonprofit gymnasium associated with church). This broad exemption allows a religious employer to terminate (or refuse to hire) an employee "for exclusively religious reasons, *without respect to the nature of their duties*." *Spencer v. World Vision, Inc*., 619 F.3d 1109, 1111 (9th Cir. 2010 (emphasis added). In *Spencer*, the Ninth Circuit upheld World Vision's termination of three employees who performed maintenance, office, and shipping services. All of them initially signed the required "Statement of Faith, Core Values, and Mission Statement" but later were terminated when they renounced the religious doctrine that defines World Vision's mission. *Id*. at 1112. Similarly, the constitution protects SUGM's right to select employees who support its religious identity and mission, especially when that religious expectation for employees happens to contradict prevailing orthodoxy of society.

A. A Religious Organization is Engaged in Speaking a *Message* Inextricably Linked to its *Mission*. The Organization Must Retain the Exclusive Right to Select its Employees.

"Religious groups are the archetype of associations formed for expressive purposes, and their fundamental rights surely include the freedom to choose who is qualified to serve as a voice for their faith." *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC,* 565 U.S. 171, 200-201 (2012) (Alito, J., concurring). Every religious organization has a religious *mission* and the right to disseminate its *message* to further that mission. Religious organizations are "dedicated to the collective expression and propagation of shared religious ideals." *Id.* at 200. The free exercise of religion requires that an organization "retain the corollary right to select its voice." *Petruska v. Gannon University*, 462 F.3d 294, 306 (3d Cir. 2006). Even secular expressive associations enjoy comparable rights to join together to advocate a cause and select those who will disseminate its message.

Religious speech, "far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression . . . government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). *See also Lamb's Chapel v. Center Moriches Union Free*

School Dist., 508 U.S. 384 (1993); *Bd. of Ed. of Westside Community Schools (Dist. 66) v. Mergens,* 496 U.S. 226 (1990); *Widmar v. Vincent,* 454 U.S. 263 (1981); *Heffron v. International Soc. for Krishna Consciousness, Inc.,* 452 U.S. 640 (1981). Regardless of motives, the State "may not substitute its judgment as to how best to speak" for that of an organization. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.,* 487 U.S. 781, 791 (1988); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2376 (2018) (crisis pregnancy centers protected against compelled speech regarding state-financed abortions). Compelling an organization to retain an unwanted employee (or pay a hefty fine) is tantamount to compelled speech. *See, e.g., Wooley v. Maynard*, 430 U.S. 705, 717 (1977); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995). Even a secular business may create a unique brand, free of government compulsion, to convey a message to the public. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1760 (2017) (trademark); *United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001) (mushroom producer).

B. A Religious Association Conveys its Message Not Only Through Speech, but Also the *Conduct* of its Representatives.

Religion is a comprehensive worldview, not a compartment detached from daily life. Representatives of a religious organization not only speak *about* religion—they must model its values in their interactions with each other, first inside but also outside of the organization itself. This Court has long

recognized that a religious organization can require conformity to its moral standards as a condition of membership. *Watson v. Jones,* 80 U.S. (13 Wall.) 679 (1872). That same principle applies to employees hired by a religious organization.

CONCLUSION

This Court should grant the Petition, reverse the decision of the Washington Supreme Court, and affirm the constitutional right of a religious organization to hire persons who will faithfully believe, live consistent with, represent, and fulfill its religious mission.

Respectfully submitted,

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