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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

WYOMING RESCUE MISSION,
Plaintiff,

v.

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION; CHARLOTTE A. BURROWS,** in
her official capacity as the Chair of the
Equal Employment Opportunity
Commission; and **ROBIN SESSIONS
COOLEY,** in her official capacity as Director
of the Wyoming Department of Workforce
Services,

Defendants.

Civil Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

INTRODUCTION

1. This civil rights suit seeks to protect a Christian homeless shelter from ongoing and threatened harm caused by the Equal Employment Opportunity Commission (“EEOC”) and the Wyoming Department of Workforce Services (“the Department”).

2. The Wyoming Rescue Mission (“the Mission”) is a private, 501(c)(3) nonprofit religious organization that serves the community by offering a homeless shelter, free meals, clothing vouchers, faith-based recovery programs, and life-rebuilding assistance to the people of Casper, Wyoming.

3. The Mission’s religious beliefs not only compel it to serve the hungry, the homeless, and the impoverished, but also to spread the Gospel of Jesus Christ “to all the world” (Mark 16:15) through its ministry.

4. The Mission fulfills its religious purpose by maintaining a body of likeminded believers, so it only hires people who agree with and adhere to its religious beliefs (*see* 1 Corinthians 1:10).

5. In 2020, the Mission decided not to hire a self-proclaimed “non-Christian” for one of its thrift store associate positions—a position that is expected to teach the Mission’s Discipleship Recovery Program guests how to spread the Gospel and model Christ.

6. The applicant filed a charge of discrimination, and Defendants then subjected the Mission to a 16 month-long investigation to determine if the Mission engaged in religious discrimination under the Wyoming Fair Employment Practices Act of 1965 (“FEPA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”).

7. The Mission was forced to obtain counsel and expend time and resources responding to Defendants’ requests.

8. During the investigation, the Mission repeatedly pointed out to Defendants that it was exempt as a religious organization from liability under FEPA and Title VII for refusing to hire someone who did not agree with its religious beliefs.

9. But instead of recognizing FEPA’s and Title VII’s religious exemptions, Defendants cabined them to only protect the Mission’s hiring decisions for its ministers.

10. Both the Department and the EEOC issued probable cause determinations, finding probable cause that the Mission violated FEPA and Title VII for refusing to hire the applicant. The Department asked the Mission to conciliate the matter, which would have required it to pay back pay, refrain from its religious hiring practices, provide written compliance reports to the Department, submit to inspection and examination, and post compliance notices on its property, among other things. The Mission declined to conciliate and pay significant penalties for engaging in its constitutionally protected hiring practices.

11. The EEOC decided not to sue the Mission at that time, but it said it reserved the right to sue the Mission later.

12. The Mission currently has at least one open store associate position that it needs to fill, but it is refraining from filling that position because Defendants' interpretation and application of FEPA and Title VII would force the Mission to hire those who do not share its religious beliefs.

13. And because Defendants' enforcement of the laws prohibit the Mission from expressing any preference or limitation based on religion, the Mission has also removed its employment application and other notices from its website that says it only considers applicants who share and agree with its religious beliefs.

14. The Mission's hiring process has thus been severely restricted by Defendants' interpretation and application of FEPA and Title VII and the threat of liability and penalties thereunder.

15. Because of Defendants' interpretation and application of FEPA and Title VII, as shown through its probable cause determinations, the Mission faces an ongoing injury and threat of future enforcement under those laws if it were to prefer and hire coreligionists for its open positions.

16. The Mission needs declaratory and injunctive relief to protect its right to hire coreligionists.

JURISDICTION & VENUE

17. This civil rights action raises federal questions under the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Religious Freedom Restoration Act of 1993 (“RFRA”), 42 U.S.C. § 2000bb, *et seq.*

18. This Court has original jurisdiction over the Mission’s federal claims under 28 U.S.C. §§ 1331, 1343, 1346, and 1361.

19. This Court can grant the requested declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202; Fed. R. Civ. P. 57 and 65; and 42 U.S.C. § 2000bb-1.

20. This Court can award costs and attorney’s fees under 42 U.S.C. § 1988(b) and 28 U.S.C. § 2412.

21. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1) because a substantial part of the events giving rise to the Mission’s claims occurred within this district.

PARTIES

22. Plaintiff Wyoming Rescue Mission is a 501(c)(3) nonprofit Christian rescue mission organized under the laws of the state of Wyoming, located in Casper, Wyoming. *See* Amended Articles of Incorporation, attached as **Exhibit 1**.

23. Defendant Equal Employment Opportunity Commission is a federal agency that administers, interprets, and enforces Title VII, 42 U.S.C. § 2000e, *et seq.* The EEOC is responsible for, among other things, investigating complaints and bringing enforcement actions against employers for unlawful discrimination under Title VII.

24. Defendant Charlotte A. Burrows is the Equal Employment Opportunity Commission Chair. She is responsible for the investigation and enforcement of Title VII. She is sued in her official capacity only.

25. Defendant Robin Sessions Cooley is the Director of the Wyoming Department of Workforce Services. Director Cooley, through the Department of Workforce Services' Workforce Labor Standards Office, administers, interprets, and enforces the Wyoming FEPA, Wyo. Stat. Ann. § 27-9-101, *et seq.* Defendant Cooley will be referred to below as "the Department." She is sued in her official capacity only.

STATEMENT OF FACTS

I. Wyoming Rescue Mission

A. **The Mission's religious beliefs provide the foundation for its purpose, mission, and vision.**

26. The Mission is a Christian rescue mission that has served the people of Casper since 1978 by providing free meals to the community, shelter to the homeless, addiction recovery programs and services, life skills classes, job training, counseling, and clothing and essentials for those who lack necessities.

27. The Mission's very purpose is founded on its Christian religious beliefs, which guide every aspect of its operations, services, and programs. *See Ex. 1 at 1.*

28. The Mission exists to "restore[] with the love of Christ those struggling with homelessness back to society as independent community members." Wyoming Rescue Mission Bylaws, Art. II, Sec. A, attached as **Exhibit 2**.

29. The Mission's vision is to "nurture sanctuaries of radical hospitality where the homeless and needy experience the transforming love of Jesus thus propelling the church into the lead role alleviating poverty in Wyoming." *Ex. 2, Art. II., Sec. B.*

30. The Mission's religious beliefs are rooted in the Holy Bible, which it believes "to be the inspired, infallible, Authoritative Word of God." *Ex. 2, Art. III.*

31. The Mission offers its programs and services because the Bible teaches Christians to care for the poor and homeless, to feed the hungry, and to help those struggling with addiction.

32. Last year, the Mission served 60,862 free meals to the public; provided 41,037 beds for men, women, and children; enrolled 92 Discipleship Recovery Program participants; offered over 5,000 case management sessions; and gave 1,208 thrift store vouchers worth \$39,649.92 that provided free clothing and essentials to impoverished families and guests.

33. The Mission's religious beliefs also instruct that Christians should disciple one another: they should assist fellow believers in their Christian walk, provide Biblical teaching, give lifestyle guidance, and help each other represent Christ to the world.

34. In addition, the Mission's sincerely held religious beliefs require it to spread the Gospel of Jesus Christ to everyone at every possible chance.

35. So the Mission's overarching goal is to "propagate the Gospel of Jesus Christ" to all people it interacts with—including shelter guests, recovery program attendees, and thrift store customers. Ex. 1 at 1.

36. The Mission thus fulfills its religious purpose, mission, and vision both through acts of service and through the teaching and spreading of Christian beliefs and values.

37. For example, one way the Mission advances its mission, vision, and goal of spreading the Gospel is through its Discipleship Recovery Program. The program follows a one-year Bible-based addiction recovery model that addresses drug and alcohol addiction and helps participants with their medical, emotional, psychological, and mental health needs. The program includes Biblical counseling and is designed to help participants transition to sober, independent living in fellowship with Jesus Christ.

B. The Mission’s employment practices are essential to fulfilling its calling.

38. The Mission employs more than 60 employees.

39. As a Christian nonprofit ministry that seeks to restore and transform lives and lead others into a relationship with Jesus Christ, the Mission requires all employees to agree with its religious beliefs and to adhere to its religious tenets. *See* Ex. 2, Art. VII, Sec. B (detailing employees’ religious qualifications).

40. The Mission must hire like-minded believers to be of one accord and to fulfill its distinctly religious purpose, mission, and vision.

41. The Mission hires like-minded believers to maintain a Christian community within the Mission that facilitates Biblically rooted employee fellowship, community, dependency, assistance, and camaraderie.

42. Preserving an internal Christian community of fellow believers fosters personal accountability and encouragement in each person’s Christian walk and helps shield employees from being exposed to sinful habits, behavior, and temptations, which is critically important for the Mission’s recovery program guests (who have often recently struggled with such behaviors and addictions).

43. The Mission’s internal religious community enables Mission employees to live and lead by example, engage in discipleship, and develop spiritual maturity and growth.

44. For example, Mission employees regularly pray, take communion, share devotions, and discuss scripture together.

45. The Mission’s requirement that all employees agree with its religious beliefs and adhere to its religious tenets comes as no surprise to job applicants.

46. Before having to remove it, the Mission’s “Career Opportunities” webpage explicitly stated that “Employees are expected to commit to the precepts in our

Statement of Faith, and to help the Mission fulfill its mission statement, vision statement and ends statement.”

47. And the Mission’s employment application provides:

[The Mission] considers every position one of ministry and a vital and valued part of our team. Therefore, it is essential that all employees of the Mission have a personal relationship with Jesus Christ and subscribe to our Statement of Faith and Ministry Principles. Employees must be willing to lead and/or participate in Bible study, prayer, devotions and sharing the Gospel.

Wyoming Rescue Mission Employment Application at 1, attached as **Exhibit 3**.

48. The application also asks the applicant to describe their relationship with God, asks whether the applicant is a member of a church, and asks if the Mission can contact the applicant’s pastor as a reference. Ex. 3 at 1.

49. The last two pages of the employment application—titled “Affidavit, Consent & Release”—set forth the Mission’s Statement of Faith and Ministry Principles. Ex. 3 at 3.

50. The Mission’s Statement of Faith details the Mission’s religious beliefs, and its Ministry Principles detail the Christian lifestyle requirements for all Mission employees. Ex. 3 at 3–4; *see also* WRM Standard of Employee Conduct Policy, attached as **Exhibit 4** (describing conduct policy, which prohibits conduct not “in accordance with biblical standards” like sexual conduct outside of biblical marriage, gambling, and abuse of alcohol and drugs, among others).

51. The Mission’s Ministry Principles inform applicants that all employees are “mission workers” who should “always advertis[e] [their Christian] beliefs” and must “Genuinely Liv[e] the Christian Life.” Ex. 3 at 3.

52. Applicants must read and sign the “Affidavit, Consent & Release” before applying, affirming that they “believe and agree with the Statement of Faith listed above and agree to conduct [themselves] in compliance with the Ministry Principles

throughout [their] employment with WRM, should [they] be offered a position.” Ex. 3 at 4.

53. Each year, the Mission receives dozens of applications for job postings at every position that do not profess agreement with the Mission’s religious beliefs and tenets. The Mission screens out any such applications so that only coreligionists advance in the interviewing process.

54. This application process enables the Mission to vet potential employees to ensure they hold the same religious beliefs and will abide by its tenets so that the Mission can advance its mission.

C. The Mission’s thrift stores help fund the Mission and are part of its Discipleship Recovery Program.

55. The Mission has two thrift stores called Rescued Treasures, one of which opened in 2021.

56. Both make clear that they are a ministry of Wyoming Rescue Mission:





57. Because Rescued Treasures are ministries of the Mission, they seek to advance the same religious purpose, mission, and vision.

58. And because the Mission believes *every* person can achieve restoration by following God’s plan and purpose (*see* Jeremiah 29:11), Rescued Treasures’ express goal is to “assist in bringing people to redemption in Christ.”

59. The thrift stores play an integral and necessary part of the Mission’s goal “to see lives transformed and healed through the Grace of Jesus Christ.”

60. Rescued Treasures opens each day with a corporate prayer, and employees are expected to pray and offer Biblical support, encouragement, and discussion with one another throughout the day. Employees are also expected to disciple recovery program guests, live a Biblical lifestyle, and share the Gospel of Jesus Christ with others.

61. So like all other Mission employees, employees who work at Rescued Treasures must agree with the Mission’s religious beliefs, adhere to its religious tenets, and undergo the same application process.

62. Rescued Treasures are a key component of the Mission’s Discipleship Recovery Program.

63. In the Discipleship Recovery Program, discipleship guests (those in the recovery program) participate in the “Servanthood Training Program” at Rescued Treasures, where they work alongside Mission employees.

64. Servanthood Training helps discipleship guests find a pathway to work by giving them a chance to build the confidence and training they will need as they are restored back to community and independence with the love of Christ.

65. Servanthood Training not only allows discipleship guests to acquire important (and often hard to come by) work experience, but it also allows Mission employees to teach them, both vocationally and spiritually.

66. Discipleship guests also see and learn how Rescued Treasures employees model Christ, disciple one another, and share the Gospel with Rescued Treasures patrons.

67. For instance, a store associate and discipleship guest might have a theological discussion about the Biblical principles of hard work and good stewardship; a store cashier may start a daily devotional with a program guest; or a donation processor might lead a program guest in praying over donated goods. These are just a few examples of the important spiritual role Rescued Treasures employees have with respect to discipleship program guests.

68. Through Servanthood Training, discipleship guests thus gain two important skillsets: (1) they grow in their faith by working with Rescued Treasures employees and they learn how to represent Christ and spread the Good News to others—who may or may not have a relationship with Jesus; and (2) they gain practical and beneficial work experience that can benefit them in the future.

69. And as ministries of the Mission, every dollar spent at Rescued Treasures finances the Mission’s programs and operations.

70. Rescued Treasures also facilitates the Mission’s voucher program, which provides low-income families and Mission guests with free clothes and needed essentials.

71. The thrift stores therefore also further the Mission’s religious beliefs to care for God’s creation by eliminating waste and to be a good steward of God’s resources.

II. Federal and State Employment Non-Discrimination Law

A. Title VII of the Civil Rights Act of 1964

72. Title VII of the Civil Rights Act of 1964 prohibits discrimination “against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion” 42 U.S.C. § 2000e-2(a)(1).

73. It also prohibits employers from limiting, segregating, or classifying “employees *or applicants* for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of . . . religion” *Id.* § 2000e-2(a)(2) (emphasis added).

74. Title VII similarly forbids employers from “print[ing] or publish[ing] or caus[ing] to be printed or published any notice or advertisement relating to employment . . . indicating any preference, limitation, specification, or discrimination, based on . . . religion” *Id.* § 2000e-3(b).

75. Title VII contains an express statutory exemption for religious employers.

76. That exemption provides that Title VII “shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with

the carrying on by such corporation, association, educational institution, or society of its activities.” *Id.* § 2000e-1(a) (“Title VII’s religious exemption”).

77. Title VII broadly defines “religion” as including “all aspects of religious observance and practice, as well as belief.” *Id.* § 2000e(j).

78. Title VII contains other categorical exemptions. It does not apply to employers with fewer than 15 employees, *id.* § 2000e(b), or to employers with respect to their employees outside of the United States, *id.* § 2000e-1(a).

79. Any person “claiming to be aggrieved” by an “unlawful employment practice” can file a complaint with the EEOC. *Id.* § 2000e-5(b).

80. Likewise, any member of the EEOC can file a complaint alleging that an employer has engaged in an unlawful employment practice. *Id.*

81. The EEOC *must* investigate any such complaint, whether filed by a third party or a member of the EEOC. *Id.*

82. The EEOC has received more than 60,000 complaints of discrimination each year since 1997.

83. The EEOC is “empowered” to “prevent any person from engaging in any unlawful employment practice.” *Id.* § 2000e-5(a).

84. The EEOC can sue an employer to enforce Title VII. *Id.* § 2000e-5(f).

85. The complaining person has a right to intervene in such a lawsuit. *Id.*

86. And if the EEOC elects not to sue an employer, the person claiming to be aggrieved will be issued a right to sue letter and can sue the employer for an alleged Title VII violation. *Id.*

87. An employer that violates Title VII can face all the enforcement actions under 42 U.S.C. § 2000e-5, including EEOC investigations and suits, private lawsuits, injunctions forcing affirmative action, costs, attorney’s fees, and compensatory and punitive damages.

88. The Mission is an “employer” as defined by Title VII, but the EEOC interprets Title VII’s religious exemption to not apply to the Mission as explained below. *See infra* ¶¶ 108–140.

B. The Wyoming Fair Employment Practices Act of 1965

89. Wyoming’s FEPA makes it unlawful for an “employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of employment against, a qualified disabled person or any person otherwise qualified, because of . . . creed” Wyo. Stat. Ann. § 27-9-105(a)(i).

90. FEPA exempts religious organizations and associations from its provisions by defining “employer” as any government agency or municipality, “and every other person employing two (2) or more employees within the state; *but it does not mean religious organizations or associations.*” *Id.* § 27-9-102(b) (emphasis added) (“FEPA’s religious exemption”).

91. “Any person” who believes he or she was discriminated against in violation of FEPA can file a complaint with the Department. *Id.* § 27-9-106(a).

92. The Department has the power and duty to investigate discrimination complaints, issue determinations, engage in mediation, subpoena witnesses and records, enforce subpoenas in court, enact regulations, and generally to enforce FEPA, with or without the aid of other state agencies, institutions, or employees. *Id.* § 27-9-104(a).

93. If an employer does not cooperate with the Department in its investigation, the Department may obtain a court order compelling witness testimony and the production of documents. *Id.* § 27-9-104(a)(vi).

94. Failing to obey such an order “may be punished by the court as a contempt of court,” *id.*, which can result in both civil and criminal fines and penalties, *id.* §§ 6-5-306, 6-1-102; *see also Stephens v. Lavitt*, 239 P.3d 634, 637–40 (Wyo. 2010).

95. The Department is also authorized “to enter into agreements, exchange information and otherwise assist the equal employment opportunity commission, and to accept from the equal employment opportunity commission reimbursement for services rendered.” *Id.* § 27-9-104(a)(vii).

96. After a hearing, a hearing officer can require an employer to cease and desist from a discriminatory or unfair practice; require remedial action such as hiring, retaining, reinstating, or upgrading of employees; require the posting of notices and making of reports to ensure compliance with FEPA; require the payment of backpay and front pay; and require any other relief he deems necessary. *Id.* § 27-9-106(n).

97. The Department must order compliance with a hearing officer’s decision and can enforce that order in state court. *Id.* § 27-9-106(m).

98. A complainant can also sue an employer in state court by seeking judicial review of a hearing officer’s decision. Wyo. Admin. Code 053.0024.3 § 6.

99. The Department interprets FEPA’s religious exemption to not apply to the Mission as explained below. *See infra* ¶¶ 100–133.

III. The Prior Charge of Discrimination

A. The Department tells the Mission it cannot make religiously based employment decisions.

100. The Department operates a job postings website.

101. In the past, the Mission utilized and would accept employment applications through the Department’s job postings website.

102. In late 2019, the Department called the Mission and asked the Mission what it would do if it discovered a current employee decided he or she did not agree

with the Mission's beliefs anymore and expressed his or her nonbelief to the Mission.

103. The Mission responded that as a religious organization it requires all of its employees to agree with and adhere to its religious beliefs.

104. In that same phone call, the Department asserted that the Mission could not legally terminate a current employee for expressing nonagreement with its religious beliefs, and therefore the Mission also could not hire based on agreement with religious beliefs either.

105. The Department then informed the Mission that it could not list job postings on the Department's website that conditioned employment based on agreement with and adherence to the Mission's religious beliefs.

106. Because the Mission could not give up its religious hiring practices, it was forced to stop posting on the Department's website, removing its access to an important pool of potential job applicants and creating a competitive disadvantage for the Mission.

107. Since the Mission has been forced off the Department's website, it has had difficulty finding qualified candidates and has had to use other resources to seek out candidates elsewhere.

B. Defendants investigate the Mission for hiring only coreligionists.

108. In September 2020, the Mission posted an open position¹ for the job of store associate at one of its Rescued Treasures thrift stores.

109. Because Rescued Treasures is part of the Mission's Discipleship Recovery Program, the job posting explained that applicants must be a person of "strong faith" who will live out and "[a]gree with the WRM Statement of Faith."

¹ The posting *was not* on the Department's job postings website. The last time the Mission posted on the Department's site was October 25, 2019.

110. In October 2020, the Mission conducted a telephone pre-screen interview of one of the applicants.

111. During the pre-screen interview, the Mission again advised the applicant that it is a Christian ministry and that all employees must agree with the Mission's statement of faith and demonstrate Christian principles in their life and work as a condition of employment.

112. The applicant responded that she did not have any faith.

113. The applicant also did not provide the name of a church she attended, nor did she provide a spiritual reference.

114. The applicant was not hired, and the Mission hired a coreligionist instead.

115. On October 26, 2020, the applicant filed a dual Charge of Discrimination with the Department and the EEOC, alleging that the Mission denied her employment for "not hav[ing] Christian beliefs" and discriminated against her based on her religion, "non-Christian," in violation of FEPA and Title VII. Charge of Discrimination at 4, attached as **Exhibit 5**.

116. The Charge of Discrimination was initially processed by the Department pursuant to a workshare agreement with the EEOC. *See Ex. 5 at 6*.

117. The Department then launched an investigation against the Mission and instructed the Mission to respond to the Charge or face administrative subpoena or issuance of a failure to comply notice. *Ex. 5 at 1*.

118. The Mission filed a Verified Position Statement in response, explaining that the Charge of Discrimination should be dismissed because the Mission had a statutory right under both FEPA's and Title VII's religious exemptions to limit employment to individuals who share its religious beliefs. *See The Mission's Verified Position Statement at 6–10, attached as Exhibit 6-1*.

119. Nine months later, the Department issued a Predetermination Notice, which ignored FEPA's and Title VII's categorical religious exemptions and

concluded that the “evidence collected to date supports a finding that Respondent [the Mission] perpetrated a violation of state and federal statutes. The evidence supports reasonable cause to believe discrimination occurred.”

120. The Mission promptly responded that the Department’s Predetermination Notice was legally incorrect, and it reiterated that it was statutorily exempt from claims of religious discrimination under both FEPA and Title VII. *See* Mission Response to Predetermination Notice, attached as **Exhibit 6-2**.

C. The Department cabins FEPA’s religious exemption and Title VII’s religious exemption and finds “probable cause” that the Mission discriminated.

121. In December 2021, the Department issued its Final Determination and Proposed Conciliation Agreement. *See* WDWS Final Determination and Proposed Conciliation, attached as **Exhibit 7**.

122. Apart from some minor formatting, the Final Determination was a verbatim copy of the Predetermination Notice.

123. The Department concluded that the applicant was a member of “the protected group, non-Christian” and that she “was not chosen for the store associate position due to [her] non-Christian beliefs.” Ex. 7 at 4.

124. Although the Department found that the Mission is a “religious organization,” it concluded that the Mission discriminated against the applicant in violation of FEPA and Title VII for failing to hire her for being a “non-Christian.” Ex. 7 at 3–5.

125. The Department entered a finding that “there is probable cause to believe discrimination occurred.” Ex. 7 at 5.

126. Instead of applying the broad statutory religious exemptions under Title VII and FEPA, the Department cabined those exemptions to apply only in instances involving a “ministerial” employee. *See* Ex. 7 at 5.

127. The Department cited *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171 (2012), explaining that the “ministerial’ exception should be tailored to th[e] purpose” of protecting the Mission’s ability to make employment decisions based on an applicant’s “non-Christian beliefs.” Ex. 7 at 4–5.

128. The Department stated that only employees who lead religious organizations, conduct worship services or important religious ceremonies or rituals, or who serve as a messenger or teacher of its faith fall within the ministerial exception. Ex. 7 at 5.

129. As such, the Department determined that the “ministerial” exception did “not apply for the position of store associate” because that position was only required to “maintain a Christ-like attitude,” “to assist customers, stock[] the store, and receiv[e] donations from donors,” and did not have to perform any of the above-mentioned ministerial duties. Ex. 7 at 5.

130. The Department thus rejected FEPA’s and Title VII’s statutory exemptions by saying those exemptions apply only when the Mission makes employment decisions for its *ministerial employees*.

131. After finding probable cause, the Department proposed a conciliation agreement that would have required the Mission to:

- a. Pay the applicant \$3,272.00 in back pay;
- b. Refrain from making employment decisions—including the hiring, discharging, and other terms and conditions of employment—on the basis of creed and religion;
- c. Review its Equal Employment Opportunity policy and distribute the same to all employees;
- d. Furnish written reports concerning compliance to the Department and allow the Department to enter and inspect the Mission’s premises, examine witnesses, and examine and copy documents;

- e. Provide training within 90 days to its department heads and administrative staff and furnish copies of said training records to the Department;
- f. Sign and conspicuously post a notice on its premises that states the Mission has settled a charge of discrimination with the Department; and
- g. To provide a written report to the Department detailing the Mission's implementation of the conciliation agreement, describing training materials provided and a copy of a revised EEO policy.

Ex. 7 at 6–10.

132. The Mission declined to conciliate the matter, informing the Department it improperly narrowed FEPA's and Title VII's religious exemptions.

133. The Department then sent the complaint to the EEOC for "further processing."

D. The EEOC also finds "reasonable cause" that the Mission discriminated.

134. The EEOC postponed its own investigation until the Department issued its final findings and orders. *See* Ex. 5 at 6.

135. The EEOC must "review charges closed" by the Department because of "a result of unsuccessful conciliation." 29 C.F.R. § 1601.77.

136. The Notice of Charge of Discrimination explained the EEOC would "mak[e] its own determination as to whether reasonable cause exists to believe that discrimination has occurred," considering "all facts and evidence provided by [the Mission] to the [Department]" when it "reviews the [Department's] final findings and orders." Ex. 5 at 6.

137. The EEOC reviewed the entire administrative record and "found reasonable cause to believe that violations of the statute(s) occurred with respect to

some or all of the matters alleged in the charge.” See EEOC Conciliation Failure and Notice of Rights at 1, attached as **Exhibit 8**.

138. Like the Department, the EEOC concluded Title VII’s religious exemption did not apply.

139. Although the EEOC decided not to sue the Mission at that time, it issued the applicant a right to sue letter, and the EEOC reserved the right to “sue [the Mission] later.” Ex. 8 at 1.

140. The Department’s and EEOC’s investigation of the applicant’s charge of discrimination against the Mission lasted more than 16 months, which caused Mission leadership to devote significant time to the investigation that they otherwise would have devoted to advancing the Mission’s purpose, mission, and vision. The Mission was forced to divert resources away from typical day-to-day duties in order to respond to the Defendants, was forced to hire counsel, and was forced to locate and prepare various documents.

IV. The Curtailed Religious Exemptions’ Effects on the Mission

A. The Mission intends to hire members of the same faith for its current open positions.

141. As explained above, the Mission requires *all* of its employees to be coreligionists; that is, to hold the same religious beliefs as the Mission and to adhere to the Mission’s religious tenets and conduct requirements.

142. The Mission has a current opening for a donation center associate position at Rescued Treasures, the same position that led to the prior Charge of Discrimination.²

² The prior job position was titled “store associate.” The Mission rebranded this position as the “donation center associate,” which serves as an entry position for both store associates and cashiers, But the qualifications, duties, and responsibilities remain the same.

143. The position has spiritual qualifications that require candidates to “[m]aintain a personal relationship with Jesus Christ,” “live a Godly life in public and private, thereby providing a Christian role model for those we seek to reach,” and “[a]gree with the WRM Statement of Faith.” See Rescued Treasures Donation Center Associate Job Posting, attached as **Exhibit 9**.

144. The donation center associate—as with *all* employees—is also tasked with various spiritual duties that they are expected to uphold every day. He or she must:

- a. “Grow spiritually in the Lord through prayer, memorization, meditation and study of the Word, and unity in Christian fellowship”;
- b. “Be a consistent witness for Jesus in attitude, speech, and actions demonstrating a daily walk with Jesus Christ”;
- c. “Encourage guests, staff, volunteers, and customers to accept God’s gift of salvation and grow in their faith”;
- d. “Join in corporate worship and instruction with an external group of believers whose beliefs are in agreement with the WRM Statement of Faith”; and
- e. “Faithfully uphold WRM’s ministry in prayer.”

Ex. 9 at 1–2.

145. And as part of the Mission’s Discipleship Recovery Program, the donation center associate is expected to: model Christ by showing respect and courtesy; share the Gospel with Rescued Treasures patrons; teach program guests how to spread the Good News to others; and demonstrate to guests how to be a good steward of God’s resources.

146. The Mission also routinely has other open positions available.

147. For example, the Mission recently hired various shelter associates and donation center assistants.

148. In all, the Mission plans to fill over 30 positions in the coming year given current openings and its anticipated openings due to yearly averages for staff turnover. Some of these positions include the Rescued Treasures store section lead, shelter cook, shelter associate, and Rescued Treasures cashiers.

149. All positions, including these positions, have the same religious qualifications and duties as the donation center associate. *See supra* ¶ 144.

150. All positions also have spiritual responsibilities to “always advertis[e]” their Christian religious beliefs, “pursue discipleship to Jesus Christ” with others, live a “life visibly consistent with Biblical standards,” and “[c]ommit to a wholehearted ministry perspective of the workplace, including to the salvation and spiritual welfare of mission guests and partners,” among others. Ex. 3 at 3–4.

151. And all positions are positions “of ministry” where “employees must be willing to lead and/or participate in Bible study, prayer, devotions and sharing the Gospel.” Ex. 3 at 1.

152. Accordingly, all positions are integral to the Mission’s religious purpose, mission, and vision because each position must model Christ and spread the Gospel to recovery program guests, shelter guests, WRM volunteers, and the rest of the public.

153. As an exercise of its religious beliefs, the Mission desires to continue its hiring practice of only hiring coreligionists.

B. The Mission faces an ongoing and imminent injury under Defendants’ interpretation and application of FEPA and Title VII.

154. The Mission’s freedom to hire fellow coreligionists is threatened by the Department’s and EEOC’s interpretation and application of FEPA and Title VII.

155. Given the threat posed by Defendants’ interpretation and application of FEPA and Title VII, the Mission is now refraining from filling its current open

donation center associate position, since preferring coreligionists would be in violation of the law, as interpreted and applied by Defendants.

156. The Mission also has removed its employment application from its website because that application plainly states that the Mission only considers applicants who share its religious beliefs.

157. And the Mission has removed its “Career Opportunities” webpage that stated that “[e]mployees are expected to commit to the precepts in our Statement of Faith, and to help the Mission fulfill its mission statement, vision statement and ends statement.”

158. Were it not for Defendants’ unconstitutional interpretation and application of FEPA and Title VII, the Mission would immediately fill its open donation center associate position with a coreligionist, repost its employment application on its website, and once again express through its website that the Mission expects its employees to share and live out its religious beliefs.

159. And given that the Mission often has higher turnover in the fall, the Mission faces an ongoing injury by being put to the following choice:

- (A) Continue to halt its donation center associate hiring to avoid potential liability. This burdens the Mission in multiple ways—spiritually by limiting its ability to advance its mission and spread its message; operationally by causing the Mission to be understaffed; and financially by diverting other employees and staff away from their typical duties to fill the gap; or,
- (B) Resume its religiously based donation center associate hiring to alleviate these burdens, but then expose itself to legal enforcement and liability.

160. What is more, because of the threat posed by Defendants’ interpretation and application of FEPA and Title VII, the Mission has also been chilled from engaging in religiously motivated employment decisions for *current* employees.

161. After the probable cause determinations, the Mission has been uncertain whether it can discipline or terminate current employees for failing to agree with or abide by the Mission's religious beliefs and tenets.

162. This uncertainty has caused the Mission to alter its internal employment decisions for at least one employee who openly expressed disagreement with the Mission's beliefs.

163. As a result, the Mission is suffering an ongoing injury and burden on its religious exercise because of the Department's and EEOC's actions.

164. In addition, there is a credible threat of future enforcement by the Department and EEOC because both agencies have already enforced FEPA and Title VII against the Mission by forcing the Mission to cooperate in a long and burdensome investigation on pain of potential court enforcement and penalties.

165. The Mission needed to hire counsel and produce various documents and responses during the investigation.

166. The threat of enforcement is even more substantial given that the Department and EEOC already found probable cause to believe the Mission violated FEPA and Title VII by failing to hire a self-proclaimed "non-Christian" for the store associate position.

167. There is also a threat of future enforcement based on the Mission's recent decisions to hire coreligionists.

168. Because the Mission opened a second Rescued Treasures store just last year, it had to fill various open positions at that store, including donation center associate positions.

169. Due to Defendants' probable cause determinations, the Mission faced (and still faces) extreme uncertainty about whether it could legally prefer hiring coreligionists.

170. Yet the Mission had no choice but to fill these positions in order to continue its purpose, mission, and vision.

171. The Mission received multiple applications from applicants that did not express agreement with the Mission's religious beliefs and practices, as it often does.

172. But rather than forego its religious exercise, the Mission screened out those applicants—as it does for all non-believing applicants—and hired coreligionists instead.

173. The Mission's recent decisions to hire coreligionists—including for its donation center associate positions—violated Defendants' interpretation and application of FEPA and Title VII and therefore subject the Mission to possible enforcement and penalties.

174. The threat of enforcement is bolstered by the fact that *any person* can file a complaint with either the Department or EEOC for alleged violations of FEPA and Title VII.

175. Finally, the EEOC has not ruled out suing the Mission for declining to hire the applicant who filed the prior Charge of Discrimination. *See* Ex. 8 at 1.

176. Because Defendants have ignored—or at least severely limited—the statutory religious exemptions, the Mission needs judicial relief that declares it has a *constitutional* right to hire coreligionists for all its open positions, including for the donation center associate position.

177. The Mission also needs judicial relief to protect its ability to continue its religious exercise and to express its collective message.

178. Without judicial relief, the Mission will face an impossible and unlawful choice: (a) violate its religious beliefs, undermine its very purpose, and change its hiring practices and hire non-Christians, or (b) adhere to its religious beliefs, fulfill its mission, and face legal liability and penalties under FEPA and Title VII.

CLAIMS FOR RELIEF

**First Claim for Relief
Violation of the First Amendment: Coreligionist Exemption
(Against all Defendants)**

179. The Mission incorporates by reference paragraphs 1–178.

180. The Mission is a religious organization under the First Amendment.

181. Both religion clauses of the First Amendment protect the Mission’s “power to decide for [itself], free from state interference, matters of [internal] government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

182. This fundamental right to religious autonomy goes beyond protecting the Mission’s mere selection of ministers or clergy; it also safeguards the Mission’s decisions about other internal management and administrative matters. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 656 (10th Cir. 2002).

183. The First Amendment ensures the Mission is free to make such internal management and employment decisions in order to “define and carry out [its] religious mission[]” without fear of liability under employment laws, such as FEPA and Title VII. *See Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 335–36 (1987).

184. Rooted in the fundamental right to religious autonomy is the coreligionist exemption, which protects the Mission’s right to select employees according to religious principles free from government interference and without facing liability under employment laws.

185. The Mission thus has a constitutional right to employ only coreligionists—individuals who agree with its religious beliefs and who will adhere to its religious tenets.

186. As enacted by the Wyoming legislature, FEPA's religious exemption would have protected the Mission's right to employ coreligionists, including for its store/donation center associate position. *See* Wyo. Stat. Ann. § 27-9-102(b).

187. Likewise, as enacted by Congress, Title VII's religious exemption would have protected the Mission's right to employ coreligionists, including for its store/donation center associate position. *See* 42 U.S.C. § 2000e-1(a).

188. But the Department and EEOC have effectively erased those exemptions by stating they only protect the Mission's right to employ coreligionists for its ministerial positions, not for all positions. *See* Ex. 7 at 5; Ex. 8 at 1.

189. As such, Defendants have determined that the Mission cannot prefer coreligionists for its store/donation center associate position and any other position that might be considered "non-ministerial."

190. Defendants' interpretation and application of FEPA and Title VII have already chilled the Mission's exercise of this First Amendment right by causing the Mission to refrain from filling its open donation center associate positions and to remove its employment application and other statements about its religious beliefs from its website.

191. Defendants' interpretation and application of FEPA and Title VII thus violate the Mission's First Amendment right to manage its own internal affairs and to employ coreligionists for its donation center associate position and all other positions.

**Second Claim for Relief
Violation of the First Amendment: Ministerial Exception
(Against all Defendants)**

192. The Mission incorporates by reference paragraphs 1–178.

193. The "ministerial exception" requires government to "stay out of employment disputes involving those holding certain important positions with . . .

religious institutions.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020).

194. The ministerial exception bars all employment discrimination suits when the pertinent employment decision concerns a ministerial employee.

195. Both the Department and the EEOC already found the Mission’s store associate position (now called donation center associate) not to be a ministerial employee.

196. But the Mission’s store/donation center associate position is a ministerial position because he or she serves as a messenger of the Mission’s faith. *See Our Lady*, 140 S. Ct. at 2063–64; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 199 (2012) (Alito, J., concurring).

197. The store/donation center associate position has distinctly religious job duties that requires it to be a Christian role model to the Mission recovery program attendees and the public; lead and engage in corporate worship, prayer, and Bible study; be a witness for Jesus to program attendees and the public; and spread the Gospel of Jesus Christ by encouraging guests, staff, volunteers, and customers to accept God’s gift of salvation and grow in their faith.

198. The Mission desires to fill this position with a coreligionist and without regard to FEPA’s or Title VII’s nondiscrimination requirements, but has refrained from doing so since Defendants have found the store/donation center associate position to be non-ministerial.

199. Defendants’ failure to correctly apply the ministerial exception to the Mission’s store/donation center associate position violate the Mission’s First Amendment right to be free from government interference in its selection of ministerial employees.

Third Claim for Relief
Violation of the Free Exercise Clause: Not Neutral or Generally Applicable
(Against all Defendants)

200. The Mission incorporates by reference paragraphs 1–178.

201. The Mission’s religious beliefs compel it to care for the homeless, the addicted, the poor, and the hungry.

202. The Mission’s religious beliefs also compel it to preach and spread the Gospel of Jesus Christ at every opportunity.

203. And the Mission’s religious beliefs compel its employees to disciple one another.

204. The Mission exercises its religion through all of its programs and services and by sharing its beliefs with the public and those the Mission serves.

205. The Mission also exercises its religion through its selection of employees, which ensures the Mission furthers its purpose, mission, and vision.

206. Defendants’ interpretation and application of FEPA and Title VII substantially burdens the Mission’s religious exercise by forcing the Mission to decide between adhering to its religious beliefs (its hiring practices) or complying with state and federal employment law.

207. Defendants’ interpretation and application of FEPA and Title VII are not neutral and generally applicable because the availability of an exemption now turns on a government official’s unilateral and unfettered determination as to whether particular job duties are sufficiently religious.

208. Defendants’ interpretation and application of FEPA and Title VII are not neutral and generally applicable because Defendants knowingly ignored FEPA’s and Title VII’s plain and unambiguous statutory exemptions.

209. Despite finding the Mission to be a “religious organization,” Ex. 7 at 3, Defendants still narrowly construed the statutory religious exemptions.

210. Defendants' conduct creates at least a slight suspicion of animosity toward the Mission's religious beliefs, thus triggering strict scrutiny. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993).

211. Defendants' interpretation and application of FEPA and Title VII do not serve any compelling governmental interests.

212. Defendants' interpretation and application of FEPA and Title VII are not narrowly tailored to achieve any purported compelling governmental interest.

213. Defendants' interpretation and application of FEPA and Title VII fail strict scrutiny and violate the Free Exercise Clause as applied to the Mission.

**Fourth Claim for Relief
Violation of the First Amendment: Expressive Association
(Against all Defendants)**

214. The Mission incorporates by reference paragraphs 1–178.

215. The First Amendment protects the right of people “to associate with others in pursuit of . . . religious . . . ends.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000).

216. The First Amendment prohibits the government from forcing people to associate with others in an association expressing messages.

217. The Mission is an expressive association because its “very existence is dedicated to the collective expression and propagation of shared religious ideals.” *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring).

218. So, “there can be no doubt that the messenger matters in that religious expression.” *Id.* at 201.

219. Everyone the Mission employs is expected to and does express the Mission's religious message.

220. The Mission thus employs only likeminded believers in order to fulfill its purpose, mission, and vision, and to *express its religious beliefs* to those it serves and to the public.

221. Defendants' interpretation and application of FEPA and Title VII force the Mission to expressively associate with self-proclaimed "non-Christians."

222. The forced inclusion of a person who does not agree with the Mission's religious views would erode its ability to express its message.

223. Defendants do not serve any compelling or even valid interest in a narrowly tailored way by infringing on the Mission's freedom of expressive association.

224. Defendants' interpretation and application of FEPA and Title VII violate the Mission's First Amendment right to expressive association.

**Fifth Claim for Relief
Violation of the Free Speech Clause: Content / Viewpoint Discrimination
(Against all Defendants)**

225. The Mission incorporates by reference paragraphs 1–178.

226. The First Amendment's Free Speech Clause protects the Mission's ability to speak, to create, to publish, and to distribute speech about its religious beliefs.

227. The Mission's Statement of Faith, Ministry Principles, Employment Application, and website communicate with its employees, volunteers, guests, and customers about its religious beliefs.

228. Defendants' interpretation and application of FEPA and Title VII restrict and chill the Mission's speech.

229. The Department engaged in content-based speech discrimination by prohibiting the Mission from posting religious qualifications in its job postings on the Department's job posting website.

230. The Department's content-based discrimination has caused the Mission to chill its speech by refraining from taking disciplinary employment action against employees who expressed non-agreement with the Mission's religious beliefs.

231. And the EEOC's interpretation and application of Title VII is a content-based speech restriction on the Mission because it prohibits the Mission from

printing or publishing a statement that applicants must agree with the Mission's beliefs and practices. *See* 42 U.S.C. § 2000e-3(b).

232. Defendants have thus chilled the Mission's speech because their interpretation and application of FEPA and Title VII have caused the Mission to remove its open donation center associate job postings, remove its employment application from its own website, and remove statements from its website that express the Mission's faith based requirements that all employees be coreligionists.

233. Defendants do not serve any compelling or even valid interest in a narrowly tailored way by infringing and chilling the Mission's freedom of speech and thus violate the Free Speech Clause as applied to the Mission.

**Sixth Claim for Relief
Violation of the Religious Freedom Restoration Act
(Against Defendants EEOC and Burrows)**

234. The Mission incorporates by reference paragraphs 1–178.

235. RFRA, 42 U.S.C. § 2000bb, *et seq.*, applies to EEOC's "implementation" of Title VII. 42 U.S.C. § 2000bb-3(a).

236. The Mission exercises its religion as explained in paragraphs 201–205 above.

237. EEOC's interpretation and application of Title VII—*i.e.*, curtailing Title VII's religious exemption to only exempt the Mission's hiring decisions with respect to ministerial employees—substantially burdens the Mission's religious exercise by forcing it to either alter its hiring practices and undermine its religious exercise or to continue its hiring practices and face significant penalties and liability under Title VII.

238. EEOC's interpretation and application of Title VII does not serve any compelling governmental interests.

239. EEOC's interpretation and application of Title VII is not the least restrictive means of furthering any purported compelling government interest.

240. EEOC's interpretation and application of Title VII violates RFRA as applied to the Mission.

PRAYER FOR RELIEF

WHEREFORE, Wyoming Rescue Mission requests that this Court enter judgment against Defendants, and order the following relief:

- A. Declare that Defendants' interpretation and application of FEPA and Title VII violate the Mission's First Amendment rights to:
 - a. prefer employees who are coreligionists and share and live out its religious beliefs, including for its store/donation center associate position,
 - b. expressive association,
 - c. free speech, and
 - d. free exercise of religion;
- B. Declare that the Mission's store/donation center associate position is a ministerial position for purposes of the First Amendment;
- C. Declare that the EEOC's interpretation and application of Title VII against the Mission violates the Religious Freedom Restoration Act;
- D. Enter a preliminary and permanent injunction, enjoining Defendants from enforcing (including through investigations) FEPA and Title VII against the Mission for engaging in its constitutionally protected activities, including its right to prefer employing coreligionists, its right to engage in religious exercise, its right to communicate its beliefs to others, and its right to associate for expressive purposes;
- E. Enter a preliminary and permanent injunction, enjoining EEOC from enforcing (including through investigations) Title VII against the Mission in any manner that would interfere with the Mission's

religious exercise of preferring coreligionists as protected by the Religious Freedom Restoration Act;

F. Costs and Attorney's fees;

G. Grant any other relief this Court deems equitable, just, and proper; and

H. Retain jurisdiction of this matter as necessary for enforcing this Court's orders.

Respectfully submitted this 20th day of September 2022,

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DECLARATION UNDER PENALTY OF PERJURY

I, Brad Hopkins, a citizen of the United States and a resident of the State of Wyoming, declare under penalty of perjury under 28 U.S.C. § 1746 that the above I true and correct to the best of my knowledge.

Executed this 20th day of September, 2022, at 7:30, AM.



Brad Hopkins