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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 **UNION GOSPEL MISSION OF YAKIMA,**
13 **WASH.,**

Plaintiff,

14 v.

15 **ROBERT FERGUSON, ET AL.,**

Defendants.

Civil Case No.: 1:23-cv-03027

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

MAY 31, 2023 AT 9:00 A.M.
WITH ORAL ARGUMENT

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1 Plaintiff Union Gospel Mission of Yakima, Wash. (“the Mission”) moves
2 this Court, pursuant to Fed. R. Civ. P. 65, to issue a preliminary injunction
3 enjoining Defendants from enforcing (including through investigations) the
4 Washington Law Against Discrimination (“the WLAD”) against the Mission for:

5 (A) preferring and hiring only coreligionists—those who agree with and will
6 adhere to its religious tenets and behavior requirements—for its non-ministerial
7 positions, including its IT technician and operations assistant positions; and

8 (B) publishing and communicating its religious beliefs and behavior
9 requirements for non-ministerial employees to others, including by publishing its
10 Religious Hiring Statement.

11 This Motion is supported by the brief below, the Verified Complaint (ECF
12 No. 1) and its exhibits, and the Declaration of James Johnson and its exhibits.

13 INTRODUCTION

14 Since 1936, the Mission has served the Yakima community by “provid[ing]
15 Christ centered rescue, recovery and restoration to men, women and children in
16 need.” Johnson Decl. ¶ 5. The Mission’s religious beliefs guide and permeate
17 everything it does. To accomplish its religious calling, the Mission maintains an
18 internal community of coreligionists—hiring those who agree with and live
19 according to the Mission’s religious beliefs and practices. *Id.*, ¶¶ 31–34.

20 The Washington Law Against Discrimination (“WLAD”) prohibits sexual
21 orientation discrimination in employment. For 85 years of its history, the Mission
22 did not have to worry about its religiously-based hiring because it was exempted
23 from the WLAD. But all that changed recently when the Washington Supreme

1 Court reduced the WLAD’s religious employer exemption to the “ministerial
2 exception.” *See Woods v. Seattle’s Union Gospel Mission*, 197 Wash. 2d 231
3 (2021), *cert. denied*, 142 S. Ct. 1094 (2022). Defendants (collectively, “the State”)
4 are actively enforcing this new interpretation and view the Mission’s Christian
5 behavior requirements on marriage and sexuality as unlawful sexual orientation
6 discrimination. Less than a year ago, the State began investigating a Christian
7 university for having similar employee behavior requirements about marriage and
8 sexuality.

9 The Mission now faces significant liability for requiring non-ministerial
10 employees to agree with and adhere to its religious beliefs on marriage and
11 sexuality. The threat has forced the Mission to pause hiring—and remove job
12 postings—for an IT technician and operations assistant, because those positions
13 would not be protected under the ministerial exception.

14 But “[t]he Washington Supreme Court’s decision to narrowly construe [the
15 WLAD’s] religious exemption”—and the State’s decision to enforce it—has
16 “created a conflict with the Federal Constitution.” 142 S. Ct. at 1096–97 (Alito, J.,
17 respecting the denial of certiorari). The WLAD now interferes with the Mission’s
18 autonomy “to decide for [itself] free from state interference, matters of [internal]
19 government,” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N.*
20 *Am.*, 344 U.S. 94, 116 (1952), and infringes the Mission’s religious exercise,
21 association, and speech. Injunctive relief is needed.

1 FACTS

2 **A. Union Gospel Mission of Yakima, Wash.**

3 **1. The Mission is a Christian ministry.**

4 Founded in 1936 to “spread the Gospel of the Lord Jesus Christ,” the Mission
5 exists to follow Christ in helping people move from homelessness to wholeness.”
6 Johnson Decl., ¶¶ 4–7. The Mission’s religious beliefs are rooted in the Holy Bible
7 and guide everything the Mission does. *Id.*, ¶¶ 8–9.

8 Every day the Mission provides desperately needed lodging, food, and
9 assistance to the hungry and hurting of Yakima, regardless of who they are, their
10 beliefs, or their orientation or identity. *Id.*, ¶ 10. The Mission’s Christian beliefs
11 instruct it to: (a) perform acts of service by caring for the homeless, hungry, sick,
12 and impoverished; (b) share the Gospel of Jesus Christ to everyone it encounters;
13 and (c) maintain an internal community of shared faith to facilitate Christian
14 fellowship, mentoring, and discipleship. *Id.*, ¶¶ 4–24. The Mission accomplishes
15 these goals through its employees. *Id.*, ¶ 21.

16 **2. The Mission follows its Christian beliefs on marriage and sexuality.**

17 The Mission also believes “God created humans in His image”; that “He made
18 humanity expressed in two complementary and immutable sexes, male and female,
19 each displaying features of His nature”; and that “[f]or their joy and well-being,
20 God commanded human sexual expression to be completely contained within the
21 marriage of one man to one woman.” *Id.*, ¶ 26.

22 To convey a clear and consistent message to its staff and to the world, the
23 Mission requires all employees to embrace and follow its beliefs, including

1 prohibiting them from engaging in sexually immoral conduct. *Id.*, ¶¶ 27–29. The
2 Mission believes that holding fellow believers accountable in their Christian lives
3 is a necessary part of discipleship and biblical love. *Id.*, ¶ 30.

4 **3. The Mission’s religious hiring criteria advances its purpose.**

5 The Mission employs more than 150 likeminded believers to be its hands,
6 feet, and mouthpiece. *Id.*, ¶¶ 31–33. As such, the Mission only employs
7 coreligionists—those who both *agree* with the Mission’s Christian beliefs and
8 practices (internally) and who *align* their conduct with those beliefs (externally).
9 *Id.*, ¶ 34. The Mission will not employ someone who actively engages in sexually
10 immoral conduct, including homosexual behavior. *Id.*, ¶ 35.

11 Potential applicants are informed throughout the application process that the
12 Mission is a Christian organization that expects all employees to agree with and
13 live out the Mission’s religious beliefs. *Id.*, ¶¶ 36–39. Hired applicants must sign
14 and agree to comply with the Mission’s Statement of Faith, core values, job
15 description duties and requirements, and employee handbook. *Id.*, ¶ 40.

16 Not everyone is a good fit. Every year, the Mission receives numerous
17 applications that profess disagreement with—and at times open hostility to—its
18 religious beliefs, particularly those about marriage and sexuality. *Id.*, ¶ 41. The
19 Mission screens out these applications. *Id.*, ¶ 42. This allows the Mission to
20 maintain a community of unified believers, helping to ensure that employees: (a)
21 do Christ-centered acts of service; (b) evangelize and share the Gospel; (c) engage
22 in Christian fellowship and discipleship; and (d) are shielded from sinful habits,
23 behaviors, and temptations. *Id.*, ¶ 43. Hiring only coreligionists also guards against

1 the risk of sending mixed or contradictory messages about the Gospel of Jesus
2 Christ to those the Mission yearns to reach. *Id.*, ¶ 44.

3 **B. The Washington Law Against Discrimination.**

4 **1. The WLAD now applies to religious organizations.**

5 The WLAD prohibits employers from refusing to hire, discharging, barring
6 from employment, or otherwise discriminating against a person in the
7 compensation or other terms or conditions of employment because of sexual
8 orientation. *Id.* § 49.60.180(1), (2), (3). It also includes a “publication ban,” which
9 prohibits publishing any statement that purports to limit employment based on
10 sexual orientation. *Id.* § 49.60.180(4). And its “disclosure provision” forbids
11 asking employees or applicants “to disclose ... sincerely held religious affiliation
12 or beliefs,” including beliefs about marriage and sexuality. *Id.* § 49.60.208.

13 Since its enactment in 1949, the WLAD exempted religious organizations to
14 avoid “potential entanglements between the state and religion.” *Ockletree v.*
15 *Franciscan Health Sys.*, 179 Wash. 2d 769, 785 (2014); *see also* Wash. Rev. Code
16 Ann. § 49.60.040(11) (“‘Employer’ . . . does not include any religious or sectarian
17 organization not organized for private profit.”). This complete exemption
18 “relieved” religious organizations “of the burden of predicting when their religious
19 beliefs would be regarded as sufficient justification for an employment decision.”
20 *Ockletree*, 179 Was. 2d at 785–86.

21 But in 2021, the Washington Supreme Court drastically narrowed that
22 exemption, holding that it no longer applies to claims of sexual orientation
23 discrimination when such claims are asserted by a “non-ministerial” employee.

1 *Woods v. Seattle’s Union Gospel Mission*, 197 Wash. 2d 231, 241–52 (2021), *cert.*
2 *denied*, 142 S. Ct. 1094 (2022).

3 **2. The State has already enforced the WLAD against a Christian**
4 **university with similar beliefs.**

5 The State of Washington has enforced the judicially rewritten WLAD
6 against a Christian organization with similar employment requirements as the
7 Mission. *See* Johnson Decl., ¶¶ 45–51. Several months after the *Woods* decision,
8 Defendant Ferguson launched an investigation against Seattle Pacific University
9 because the university’s code of conduct prohibits employees from engaging in
10 sexual intimacy outside of marriage between one man and one woman. *Id.* ¶¶ 46–
11 48. In so doing, Defendant Ferguson claimed that such a prohibition unlawfully
12 “permit[s] or require[s] discrimination on the basis of sexual orientation.” Ver.
13 Compl., Ex. 5 (ECF No. 1-5). He then encouraged people to file complaints against
14 the university with his civil rights team. *See Attorney General Ferguson Confirms*
15 *Civil Rights Investigation of Seattle Pacific University*, Office of the Attorney
16 General (July 29, 2022), <https://perma.cc/37NP-5Q72>.

17 After the university sued, Defendant Ferguson stated that the First
18 Amendment’s protections “do not extend to discrimination against non-ministerial
19 employees, to whom the WLAD’s prohibition of employment discrimination on
20 the basis of sexual orientation would apply.” Motion to Dismiss at 17, *Seattle*
21 *Pacific University v. Ferguson*, No. 3:22-cv-05540 (W.D. Wash. Oct. 26, 2022).

22 **C. The WLAD interferes with the Mission’s internal employment**
23 **decisions and threatens penalties.**

The WLAD’s religious employer exemption now only protects the Mission’s

1 employment decisions for its “ministerial” employees. But the Mission employs
2 non-ministerial employees too, like its IT technician and an operations assistant.
3 Johnson Decl., ¶¶ 52–57. Yet the Mission intends to fill these positions with
4 coreligionists—as it does for every position—because all employees must
5 represent Christ, engage in discipleship, and advance the Mission’s Christian
6 calling. *Id.*, ¶¶ 58–63. As a result, the Mission faces substantial penalties—
7 including burdensome attorney general and Commission investigations backed by
8 contempt and criminal prosecution; compulsory administrative law proceedings;
9 orders forcing hiring, reinstatement, payment of backpay and damages; and other
10 affirmative action orders—for filling them with coreligionists Wash. Rev. Code
11 Ann. §§ 49.60.120, 49.60.140, 49.60.160, 49.60.310, 49.60.250, 49.60.030.

12 To guard against these threatened penalties, the Mission has removed its IT
13 technician posting and refrained from posting its operations assistant position, both
14 of which need to be filled by July 1. Johnson Decl. ¶¶ 68, 80–82. The Mission also
15 stopped using *Indeed.com* to advertise positions because, shortly after the State
16 began investigating Seattle Pacific University, the Mission’s religious hiring
17 requirements were publicly criticized thus increasing the risk of WLAD
18 enforcement. *Id.*, ¶ 69. The Mission also received hostile applications and was
19 threatened with physical harm for hiring only coreligionists. *Id.*, ¶¶ 67, 71.

20 To be more transparent with and to further notify potential applicants of its
21 need to hire likeminded people of faith, the Mission has adopted a Religious Hiring
22 Statement that it intends to publish on its website. *Id.*, ¶ 73-74; Ver. Compl., Ex. 8

23

1 (ECF No. 1-8). But the WLAD’s publication ban prohibits the Mission’s speech
2 that employees must follow its beliefs about marriage and sexuality. *Id.* ¶ 72.

3 The State’s enforcement of the WLAD is forcing the Mission to decide
4 between (a) following its sincerely held religious calling or (b) foregoing those
5 beliefs to comply with the WLAD to avoid punishment. *Id.* ¶¶ 72–81. An
6 injunction is needed to prevent the ongoing harm.

7 LEGAL STANDARD

8 A preliminary injunction is warranted when the plaintiff shows: (1) a
9 likelihood of success on the merits; (2) it will suffer or is suffering irreparable
10 harm; (3) its harm outweighs any harm to defendants; and (4) the injunction is in
11 the public interest. *Am. Beverage Ass’n v. City & Cnty. of San Francisco*, 916 F.3d
12 749, 754 (9th Cir. 2019).

13 ARGUMENT

14 **I. The Mission is likely to succeed on the merits of its claims.**

15 **A. Enforcement of the WLAD infringes the Mission’s First 16 Amendment right to hire only coreligionists.**

17 The First Amendment protects the autonomy of religious organizations. This
18 includes the right to form “voluntary religious associations to assist in the
19 expression and dissemination of any religious doctrine” and to adopt rules
20 requiring “conformity of the members . . . to the standard of morals required of
21 them.” *Watson v. Jones*, 80 U.S. 679, 728–29, 733 (1871). And it includes
22 “independence . . . to decide for themselves, free from state interference, matters of
23 [internal] government.” *Kedroff*, 344 U.S. at 116.

1 The constitutional right to religious autonomy thus gives religious
2 organizations freedom to make internal membership and employment decisions. It
3 does so through two similar, but separate, protections: the ministerial exception
4 and the coreligionist exemption. The ministerial exception applies only to a
5 religious group’s “ministerial” employees and prevents the government from
6 interfering with decisions involving those employees, whether or not those
7 decisions are rooted in religious belief. *See Our Lady of Guadalupe Sch. v.*
8 *Morrissey-Berru*, 140 S. Ct. 2049 (2020). The State recognizes this protection but
9 believes religious organizations’ constitutional right to autonomy stops there. *See*
10 *Motion to Dismiss at 17, Seattle Pacific University v. Ferguson*, No. 3:22-cv-
11 05540 (W.D. Wash. Oct. 26, 2022) (“the First Amendment clearly protects . . .
12 employment practices with respect to [an organization’s] ministers, [but] those
13 protections do not extend to . . . non-ministerial employees”).

14 But “the guarantee of [religious] autonomy is not so narrowly confined.”
15 *Seattle’s Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J.,
16 respecting the denial of certiorari). The coreligionist exemption, in contrast, applies
17 to *all employees* but is limited to decisions rooted in religious belief, practice, or
18 adherence. *Id.*

19 **1. Both Religion Clauses require the coreligionist exemption.**

20 This case is about the coreligionist exemption, which furthers both Free
21 Exercise and Establishment Clause principles.

22 First, because the Free Exercise Clause “mandate[s]” a certain level of
23 “noninterference” with religious groups’ employment decisions,

1 *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*,
2 483 U.S. 327, 334 (1987), the coreligionist exemption protects religious groups’
3 free exercise of religion. Religious groups exercise their religion by living out their
4 faith at work, and employees must be able to be an example to each other in word
5 and deed to encourage holy living.

6 Second, the coreligionist exemption prevents Establishment Clause violations
7 by keeping government officials from wading into religious groups’ faith-based
8 decisions. *See NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 501–04 (1979)
9 (the “very process of inquiry” by the government into religious schools’
10 employment decisions “impinge on rights guaranteed by the Religion Clauses”). It
11 also avoids the excessive entanglement that would occur if government officials
12 could investigate and second-guess whether a position is sufficiently “religious” to
13 merit First Amendment protection. Indeed, “[t]he prospect of church and state
14 litigating in court about what does or does not have religious meaning touches the
15 very core of the constitutional guarantee against religious establishment.” *New*
16 *York v. Cathedral Academy*, 434 U.S. 125, 133 (1977). The coreligionist
17 exemption avoids this problem by letting religious groups freely engage in the
18 “process of self-definition.” *Amos*, 483 U.S. at 342–44 (Brennan, J., concurring).

19 The Ninth Circuit has recognized this *constitutional* right to prefer
20 coreligionists while analyzing Title VII’s religious exemption. In *E.E.O.C. v.*
21 *Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 618 n. 13 (9th Cir. 1988), the Ninth
22 Circuit explained that “even without [Title VII’s religious exemption], the First
23 Amendment would limit Title VII’s ability to regulate the employment

1 relationships within churches and similar organizations.” And in a split ruling in
2 *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2011), Judge O’Scannlain
3 concluded that a “cramped reading” of Title VII’s religious exemption “raises
4 serious questions under both the Free Exercise Clause and the Establishment
5 Clause.” *Id.* at 729 (O’Scannlain, J., concurring). So he refused to wade into “the
6 constitutional briar patch of distinguishing between the sacred and the secular”
7 when a religious nonprofit’s “humanitarian relief efforts” were concerned. *Id.* at
8 731–732. Judge Kleinfield concurred: “If the government coerced staffing of
9 religious institutions by persons who rejected or even were hostile to the religions
10 the institutions were intended to advance, then the *shield against discrimination*
11 *would destroy the freedom of Americans to practice their religions.*” *Id.* at 742
12 (Kleinfield, J., concurring) (emphasis added).

13 Other federal courts of appeal agree. *See Hall v. Baptist Memorial Health*
14 *Care Corp.*, 215 F.3d 618, 623 (6th Cir. 2000) (religious groups have a
15 “constitutionally-protected interest . . . in making religiously motivated
16 employment decisions”); *Little v. Wuerl*, 929 F.2d 944, 947, 951 (3d Cir. 1991)
17 (penalizing a Catholic school for deciding to “employ only persons whose beliefs
18 and conduct are consistent with [its] religious precepts” “would arguably violate
19 both Religion Clauses”); *EEOC v. Mississippi College*, 626 F.2d 477, 485 (5th Cir.
20 1980) (Title VII’s religious exemption avoids “conflicts [with] the religion
21 clauses”); *Killinger v. Samford Univ.*, 113 F.3d 196, 201 (11th Cir. 1997) (same);
22 *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir.
23 2002) (religious autonomy protects religiously motivated employment decisions).

1 **2. The WLAD violates the coreligionist exemption.**

2 The State’s enforcement of the WLAD raises the very constitutional concerns
3 discussed above and violates the coreligionist exemption as applied to the Mission.
4 This infringement on religious autonomy is per se unconstitutional. *See, e.g.,*
5 *Bryce*, 289 F.3d at 659.

6 Everything the Mission does is rooted in its religious beliefs. Its purpose is to
7 “spread the Gospel of the Lord Jesus Christ.” And it does so through its shelter and
8 emergency services, recovery programs, outreach efforts, health clinics, and
9 interactions with the people of Yakima. The Mission’s Christian beliefs compel it
10 to serve the poor and needy and to disciple one another.

11 None of this is possible without employees who agree with and live out the
12 Mission’s religious beliefs; who seek to advance the same mission; and who desire
13 to transform lives through Jesus Christ. After all, the Mission is an organization
14 made up of *individuals* who the Mission depends on to live out the faith, put belief
15 into action, and to aid one another in their spiritual growth. Employees who reject,
16 disagree, or live a life contrary to that faith cannot credibly demonstrate it to
17 others. Instead, they would actively undermine it.

18 As enacted by the Washington Legislature, the WLAD codified what the
19 Constitution required: religious organizations could prefer coreligionists for *all*
20 positions. Wash. Rev. Code Ann. § 49.60.040(11). But that protection is gone.
21 Now the State will parse out the Mission’s employees position-by-position to
22 decide if they are “religious” enough to be considered “ministerial” and thus merit
23

1 statutory protection, creating the very entanglement problems the Religion Clauses
2 forbid.

3 The consequences are severe. Religious organizations like the Mission cannot
4 decline to hire someone to a non-ministerial position who disagrees with it about
5 marriage and sexuality. This forces the Mission “to hire messengers and other
6 personnel who do not share [its] religious views,” which “undermine[s] not only
7 [its] autonomy . . . but also [its] continued viability.” *Woods*, 142 S. Ct. at 1096.
8 The State’s commandeering of the Mission’s employment decisions through the
9 WLAD leads to the forced inclusion of employees “who fundamentally disagree”
10 with the Mission, “infring[ing] [its] right[] to freely exercise religion.” *Id.* Because
11 the WLAD no longer protects the Mission’s right to hire coreligionists for non-
12 ministerial positions, the Mission’s *constitutional* right to do so must step in.

13 **B. The WLAD is not neutral and generally applicable and violates**
14 **the Free Exercise Clause.**

15 The WLAD violates the Free Exercise Clause for another reason: it is neither
16 neutral nor generally applicable and cannot satisfy strict scrutiny. *See Church of*
17 *the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993); *see*
18 *infra* § I.E.

19 “Neutrality and general applicability are interrelated” and “failure to satisfy
20 one requirement is a likely indication that the other has not been satisfied.”
21 *Lukumi*, 508 U.S. at 531. A law “lacks general applicability if it prohibits religious
22 conduct while permitting secular conduct that undermines the government’s
23 asserted interests in a similar way.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868,

1 1877 (2021). One exemption is enough: “government regulations are not neutral
2 and generally applicable . . . whenever they treat *any* comparable secular activity
3 more favorably than religious exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296
4 (2021) (per curiam).

5 The “purpose” of the WLAD is to “eliminat[e] and prevent[] discrimination.”
6 Wash. Rev. Code Ann. § 49.60.010. But the WLAD is “underinclusive for those
7 ends.” *Lukumi*, 508 U.S. at 543. For one, it completely exempts secular employers
8 with fewer than eight employees, giving them the freedom to discriminate in their
9 employment decisions. *See* Wash. Rev. Code Ann. § 49.60.040(11). It also
10 exempts “distinctly private” organizations from the WLAD’s public
11 accommodation provision, *id.* § 49.60.040(2), and permits public or private
12 educational institutions to separate and give preferential treatment based on sex, *id.*
13 § 49.60.222(3). Because these exemptions undermine the State’s purported interest
14 in eliminating and preventing discrimination to “a similar or greater degree” than
15 would accommodating the Mission, the WLAD is not generally applicable.
16 *Lukumi*, 508 U.S. at 543.

17 For another, the WLAD “provid[es] a mechanism for individualized
18 exemptions.” *Fulton*, 141 S. Ct. at 1877 (quotation marks and citation omitted).
19 Indeed, the Commission is authorized “by regulation or ruling in a particular
20 instance” to permit *any* employment practice if the Commission finds the practice
21 “to be appropriate for the practical realization of equality of opportunity between
22 the sexes.” Wash. Rev. Code Ann. § 49.60.180(3). So the Commission has
23 unfettered discretion to hand out exemptions if it believes doing so is “appropriate”

1 for the “equality of opportunity between the sexes.” And such exemptions would
2 allow the employer to discriminate based on sexual orientation. *See id.* §
3 49.60.040(26), (27) (broadly defining “sex” as “gender” and “gender expression or
4 identity” as part of “sexual orientation”).

5 **C. The WLAD violates the Mission’s right to expressive association.**

6 The State’s forced inclusion of nonbelievers also infringes the Mission’s First
7 Amendment right “to associate with others in pursuit of . . . religious . . . ends.”
8 *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000). This right to expressive
9 association includes “freedom not to associate” with people who “may impair [the
10 group’s] ability” to express its views. *Id.* at 647–48. The right applies if (1) “the
11 group engages in ‘expressive association,’” and (2) “the forced inclusion” of a
12 person “affects in a significant way the group’s ability to advocate public or private
13 viewpoints.” *Id.* The Mission satisfies both elements.

14 First, the Mission “engage[s] in some form of expression.” *Id.* at 648. The
15 Mission was created with the express purpose “to spread the Gospel of the Lord
16 Jesus Christ,” which it does through all its employees. Johnson Decl., ¶ 4. Indeed,
17 the Mission’s employees share the Gospel, spread Christian teachings, and pray
18 with virtually everyone—shelter guests, recovery program participants, thrift store
19 shoppers, and the homeless on the streets. *Id.* ¶¶ 19–24. The Mission also
20 expresses its views during and through its hiring process. It tells every applicant
21 that it is a Christian ministry that seeks to transform lives not only through its
22 services but also by spreading its faith and being an example to other Christians.
23 *Id.* ¶ 36–40. In short, the Mission’s “very existence is dedicated to the collective

1 expression and propagation of shared religious ideals” and “there can be no doubt
2 that the messenger matters” in the Mission’s religious expression. *Hosanna-Tabor*,
3 565 U.S. 171, 200–201 (2012) (Alito, J., concurring).

4 Second, by subjecting the Mission to possible penalties for hiring only
5 likeminded individuals, the State forces the Mission to hire people who “would
6 significantly affect” its ability to convey its religious message. *Dale*, 530 U.S. at
7 650. Courts must “give deference to an association’s view of what would impair its
8 expression.” *Id.* at 653. And just as in *Dale*, an employee who disagrees with the
9 Mission’s religious beliefs on marriage and sexuality “force[s] [the Mission] to
10 send a message, both to [fellow-members] and the world, that [the Mission]
11 accepts homosexual conduct as a legitimate form of behavior,” *id.* at 653,
12 undermining the Mission’s religious mission and Christian message and beliefs.

13 The reason why is obvious. If employees openly disagreed with the Mission’s
14 beliefs about marriage and sexuality, those employees could not effectively
15 communicate—let alone defend—those beliefs to others. Fortunately, “[t]he right
16 to expressive association allows [a religious organization] to determine that its
17 message will be effectively conveyed only by employees who sincerely share its
18 views.” *Slattery v. Hochul*, 61 F.4th 278, 288 (2d Cir. 2023).

19 **D. The WLAD violates the Free Speech Clause.**

20 The Mission expresses its religious hiring requirements through its website
21 and various documents. *See* ECF Nos. 1-4, 1-6, 1-7, 1-8. But the WLAD’s
22 publication and disclosure provisions regulate speech based on content and
23 viewpoint. *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015). A law is content-

1 based if it regulates speech “because of the topic discussed or the idea or message
2 expressed.” *Id.* at 163 The publication and disclosure provisions are thus
3 presumptively unconstitutional and must overcome strict scrutiny, which they
4 cannot. *Id.*; *see infra* § I.E.

5 **1. The publication provision limits speech based on viewpoint.**

6 The WLAD’s publication provision facially restricts speech based on
7 viewpoint—“the idea or message expressed.” *Id.* The provision makes it unlawful
8 to “express[] any limitation, specification, or discrimination as to . . . sexual
9 orientation” through (1) “any statement, advertisement, or publication,” (2) “any
10 form of application for employment,” or (3) “any inquiry in connection with
11 prospective employment.” Wash. Rev. Code Ann. § 49.60.180(4). By its plain
12 terms, the publication provision regulates speech based on the view espoused.
13 Employers can print statements encouraging people of all sexual orientations to
14 apply; they cannot print statements informing applicants they must hold certain
15 views about sexuality or marriage.

16 But the Mission’s website, Religious Hiring Statement, and other documents
17 do just that: they tell applicants they must agree with, adhere to, and live out the
18 belief that “God commanded human sexual expression to be completely contained
19 within the marriage of one man to one woman.” ECF No. 1-2. Such statements
20 “express a[] limitation” based on sexual orientation and are barred by the WLAD.

21 **2. The disclosure provision shuts off an entire category of speech.**

22 Likewise, the disclosure provision facially restricts speech based on subject
23 matter—the “topic discussed.” *Reed*, 576 at 163. It flatly prohibits an employer

1 from “[r]equir[ing] an employee to disclose his or her sincerely held religious
2 beliefs.” Wash. Rev. Code Ann. § 49.60.208. To be sure, religious employers
3 remain exempt from this provision under the WLAD’s religious employer
4 exemption for its ministerial employees, but not others. As a result, a secular
5 employer can ask employees about their political or philosophical beliefs, but—
6 under *Woods*’ reasoning—a religious employer cannot ask its employees about
7 their religious beliefs about sexual orientation. The WLAD thus unconstitutionally
8 shuts off an entire category of speech. *See Reed*, 576 at 169 (“[A] speech
9 regulation targeted at specific subject matter is content based even if it does not
10 discriminate among viewpoints within that subject matter.”). Yet the Mission’s
11 application plainly asks about applicants’ religious beliefs about marriage and
12 sexuality, thus threatening the Mission with penalties under the WLAD.

13 **E. The WLAD fails strict scrutiny.**

14 Because the WLAD infringes the Mission’s First Amendment rights, it must
15 survive strict scrutiny, the “most demanding test known to constitutional law.” *City*
16 *of Boerne v. Flores*, 521 U.S. 507, 534 (1997). This means that the State must
17 prove enforcement of the WLAD specifically against the Mission serves a
18 compelling interest and is narrowly tailored to achieve that interest. *Fulton*, 141 S.
19 Ct. at 1881; *Dale*, 530 U.S. at 648; *Reed*, 576 at 171. It cannot do so.

20 A compelling interest cannot be “broadly formulated” or based on speculation.
21 *Fulton*, 141 S. Ct. at 1881–82 (citation omitted). So the State cannot assert “a
22 compelling interest in enforcing [their] non-discrimination policies generally”;
23 instead it must give a compelling reason to deny an exception to the Mission. *Id.*

1 But there can be no compelling interest in forcing a *religious ministry* to employ
2 people who have conflicting *religious beliefs*. See *Slattery*, 61 F.4th at 289 (an
3 interest in preventing discrimination “cannot overcome the expressive rights of an
4 association dedicated to . . . opposing that specific conduct”). Any alleged interest
5 in preventing discrimination does not “justify such a severe intrusion” on the
6 Mission’s “freedom of expressive association” and religious exercise and speech.
7 *Dale*, 530 U.S. at 659.

8 In any event, the WLAD’s exemptions are fatal to any asserted compelling
9 interest. As discussed, the WLAD contains categorical exemptions for small
10 employers, distinctly private clubs, and educational institutions, *and* a mechanism
11 for individualized exemptions, *supra* § I.B., thus undermining any contention that
12 its “non-discrimination policies can brook no departures.” *Fulton*, 141 S. Ct. at
13 1882. “[A] law cannot be regarded as protecting an interest of the highest order
14 when it leaves appreciable damage to that supposedly vital interest unprohibited.”
15 *Lukumi*, 508 U.S. at 547 (cleaned up).

16 Nor is the WLAD narrowly tailored to achieve any interest in
17 nondiscrimination or otherwise. If the government “can achieve its interests in a
18 manner that does not burden religion, it must do so.” *Fulton*, 141 S. Ct. at 1881.
19 The Washington Legislature narrowly tailored the WLAD by enacting a total
20 exemption for religious employers, but the Washington Supreme Court gutted that
21 exemption. Yet the existence of both individualized and categorical exemptions in
22 the WLAD shows that there are less restrictive alternatives that still accomplish the
23 State’s interests, whatever those interests may be.

1 **II. The other preliminary injunction factors weigh heavily in favor of**
2 **granting injunctive relief.**

3 In First Amendment cases, the preliminary injunction analysis essentially
4 reduces to a single question: whether the plaintiff is likely to succeed on the merits.
5 *See Am. Beverage Ass'n*, 916 F.3d at 758. That is because a likely First
6 Amendment violation “compels a finding that the balance of hardships tips sharply
7 in [the Mission’s] favor” and “it is always in the public interest to prevent the
8 violation of a party’s constitutional rights.” *Id.* (cleaned up and citations omitted).
9 The loss of constitutional rights, “for even minimal periods of time, unquestionably
10 constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

11 For close to 100 years, the Mission has pursued its religious convictions and
12 mission by preferring coreligionists for *all positions* without the threat of
13 government punishment. That’s because, as enacted, the WLAD completely
14 exempted religious organizations. But that freedom was suddenly gutted by the
15 *Woods* decision and the State’s subsequent enforcement of the newly interpreted
16 WLAD against religious organizations who hold disfavored beliefs on marriage
17 and sexuality. A preliminary injunction would simply allow the Mission to
18 continue its longstanding religious hiring practices and to fill its IT technician and
19 operations assistant positions while this litigation proceeds, preserving the
20 Mission’s constitutional rights in the meantime. Meanwhile, a preliminary
21 injunction will not harm the State at all.

22 **CONCLUSION**

23 The Court should issue a preliminary injunction.

1 Respectfully submitted this 5th day of April 2023,

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CERTIFICATE OF SERVICE

I hereby certify that on April 5th, 2023, I electronically filed the foregoing paper with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record.

s/ Katherine Anderson
Katherine Anderson