

APPEAL NO. 23-2606
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

UNION GOSPEL MISSION OF YAKIMA WASHINGTON,
Plaintiff-Appellant,

v.

ROBERT FERGUSON, in his official capacity as Attorney General of Washington State; ANDRETA ARMSTRONG, in her official capacity as Executive Director of the Washington State Human Rights Commission; and DEBORAH COOK, GUADALUPE GAMBOA, JEFF SBAIH, and HAN TRAN, in their official capacities as Commissioners of the Washington State Human Rights Commission,
Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Washington
Case No. 1:23-cv-03027-MKD

**BRIEF OF *AMICI CURIAE* ANTIOCH ADOPTIONS AND THE
DOWNTOWN SOUP KITCHEN D/B/A DOWNTOWN HOPE CENTER IN
SUPPORT OF APPELLANT**

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CORPORATE DISCLOSURE STATEMENT

Antioch Adoptions is a religious nonprofit corporation recognized as tax-exempt under § 501(c)(3). It issues no stock and has no parent corporation.

The Downtown Soup Kitchen d/b/a Downtown Hope Center is a religious nonprofit corporation recognized as tax-exempt under § 501(c)(3). It issues no stock and has no parent corporation.

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INTEREST OF AMICI CURIAE

Like appellant Union Gospel Mission of Yakima, Washington (“Mission”), *amici curiae* are Christian ministry organizations that require their employees to affirm and abide by religious standards.

Antioch Adoptions is a nonprofit Christian ministry in Washington and Arizona whose goal is to make family a reality for every foster child currently on the path to adoption. Since its establishment in 2000, Antioch Adoptions has finalized over 600 fee-free adoptions. It assists Christian parents with foster care licensing and closely follows the family through the process to a finalized adoption. Each year in the United States, there are more 25,000 young adults aging out of foster care into lives of severe crisis (trafficking, incarceration, unplanned pregnancy, homelessness, drug abuse, etc.). At Antioch Adoptions, the focus is on permanency for foster children, and the ministry takes very seriously the best interests of the adoptive parents and the foster child when placing a child in a home.

Every family accepted into Antioch Adoptions’ program comes through relationships with partner churches. These families are, therefore, fellow believers in Jesus Christ. At one of the most challenging and difficult times in their lives, families look to the Antioch Adoptions staff to provide biblically-based and doctrinally-sound mentorship and counseling. Families also look to Antioch Adoptions to lead and support them in prayer as commanded by our Lord and Savior

Jesus Christ. The partnership with Christ-centered churches is vital. In more than 23 years, including as a Child Placing Agency with the states we serve, the ministry's unique, faith-based, trauma-informed methods have proven extremely successful.

The Downtown Soup Kitchen d/b/a Downtown Hope Center is a private, nonprofit religious organization that provides free shelter, food, showers, clothing, laundry services, job-skills training, and religious instruction to the homeless in Anchorage, Alaska. Over the past 40 years, Hope Center has extended a helping hand to thousands of individuals and families from all walks of life. Each month, Hope Center provides over 12,000 warm lunches, 1,200 showers, and over 2,200 loads of laundry to those in need, and shelters 70 homeless women each night—all for free.

Hope Center is a biblically-based, faith-driven organization that serves people in destitute conditions and desperate situations, seeking to move them from human suffering to human flourishing through the life-transforming power of the Gospel. Hope Center carries out this mission through a variety of programs, but all are actuated by a shared Christian conviction in the dignity of every human life, especially the poor. To accomplish its mission, Hope Center employs people who themselves have experienced the love of God in Christ Jesus and who extend that love to everyone they serve. Their employees not only support the religious mission but also share the religious convictions that give it life.

Washington’s aggressive enforcement of the Washington Law Against Discrimination (“WLAD”) threatens the very identity of Christian ministries like *amici*. Their religious missions are not simply statements on paper. They are embodied in and lived out by the leaders and staff who carry on their work every day. For ministries like these, it is imperative that employees both support the religious mission and share the religious convictions that animate it. Hope Center and Antioch Adoptions respectfully submit this brief to explain why faith-based personnel policies are both mission-critical and constitutionally protected.¹

SUMMARY OF ARGUMENT

Christian ministries are more than providers of social services. They are communities of Christian believers serving the poor and vulnerable in Jesus’ name. From the inception of the church, Christians have been known for their care of those in need. Christian churches and parachurch ministries carry on this faith-driven work today, and they do so out of deep religious conviction. Their biblical belief in the dignity of every person, and their desire to see lives transformed through the power of the Gospel, are what unite their personnel in community, ministry, and service.

¹ Consistent with Fed. R. App. P. 29(a)(4)(E), no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to its preparation or submission. Counsel for each set of parties granted consent to the filing of this brief.

For Christian ministry organizations, faith and mission are inseparable. What they believe shapes what they do. But faith and mission aren't self-sustaining. They depend on and are given expression through a ministry's appointments—its selection of leaders and staff who embody the faith and live out the mission every day. Personnel define the religious mission and, in so doing, define the community itself. *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327, 339 (1987); *id.* at 342 (Brennan, J., concurring).

Faith infuses every part of ministry work. Yet the WLAD, as interpreted and enforced by state officials, rewrites the internal religious structures of ministry organizations, segregating personnel based on an artificial ministry/"secular" distinction and demanding an entangling inquiry into religious belief and practice. This is constitutionally untenable. The Religion Clauses protect the autonomy of religious organizations in "matters of faith, doctrine, [and] internal organization," *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976); preclude government from probing the relationship between personnel policy and religious mission, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979); and require deference to faith leaders' insistence that staff share must their religious convictions, *see Our Lady of Guadalupe v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2021).

The growing literature of "social influence theory" confirms what religious communities have long understood: associating with fellow believers strengthens

faith and mission. See Helen Alvaré, *Church Autonomy After Our Lady of Guadalupe School: Too Broad? Or Broad As It Needs to Be?*, 25 TEX. REV. L. & POLITICS 319, 355-70 (2021). Humans are wired to learn not only through instruction but also through modeling—by observing what others around them do and say. For Christian ministries, this is critical to success, internally and externally. Employees minister to one another by inwardly modeling biblical faith and encouraging each other in the ministry’s work. They also outwardly model the faith and exhibit the love of Jesus to clients, guests, and everyone they serve. This is Gospel work through and through.

Coreligionist exemptions in state and federal law act as constitutional prophylactics. They inoculate against “intrusive inquir[ies] into religious belief,” and they “alleviat[e] significant governmental interference” with religious mission. *Amos*, 483 U.S. at 339. But because Washington officials have interpreted away these critical safeguards in the WLAD, this Court should hold that the First Amendment protects faith-based hiring standards.

ARGUMENT

I. Christian ministry organizations are communities of Christian believers carrying out a faith-shaped mission.

Since our nation’s inception, Christian believers have come together in ministry organizations to care for the poor and vulnerable and to embody Christ’s commandment to serve. Gospel missions like appellant Union Gospel Mission of

Yakima and *amicus* Downtown Hope Center have been around since the late 1800s, offering radical hospitality in Jesus’ name to those dealing with hunger, homelessness, addiction, and abuse. Ministries like *amicus* Antioch Adoptions that care for children through foster care and adoption have been around even longer. *See Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1875 (2021).

The work of Christian ministry goes beyond “charity” and “social services.” From the inception of the church, followers of Jesus have been known for their care of people on the margins of society. Amidst pagan and even medieval societies where the poor were too easily dismissed and discarded, Christians stood out because they allied themselves with and served the most vulnerable. *See* TOM HOLLAND, *DOMINION: HOW THE CHRISTIAN REVOLUTION REMADE THE WORLD* 137–44 (2019); JOHN DICKSON, *BULLIES AND SAINTS: AN HONEST LOOK AT THE GOOD AND EVIL OF CHRISTIAN HISTORY* 191–95 (2011). Christians did this not to ingratiate themselves with authorities, to fulfill civic duties, or to log *pro bono* hours. Rather, Christians served and continue to serve the poor because they are imitating God himself—a God who they believe took on human flesh and “dwelt among us” (*John* 1:14, ESV), who revealed Himself in the person of Jesus, who laid down His own life so that all, through Him, might experience saving grace and new resurrection life.

“We love,” Christians affirm, “because He first loved us” (*1 John* 4:19). In a world that treats the poor and vulnerable with indifference, Christian ministries offer love, spiritual support, and needed services, whether adoption and foster care placement or shelter, meals, and job training. In ministries like the Mission, *amici*, and many others, individuals and families will encounter a community of people committed to their healing, restoration, and flourishing. This is what Christ-shaped hospitality looks like—extending to others, especially the “least of these” (*Matthew* 25:40), the same radical welcoming grace that God in Christ has extended to us.

For Christians, *faith* and *mission* have always been inseparable. What we believe about God and His graceful intervention into the human story shapes both our worship and our work. It’s why many ministries insist that their staff be Christian and share their beliefs. It is not because they see non-Christians as less valuable or second-rate. To the contrary, it is precisely *because* Christians affirm the God-given worth and dignity of *every* human being that they join hands with one another to lovingly serve their neighbors. Their faith both draws them together in community and propels them outward in ministry. See Matthew K. Richards et al., *Religious-Based Employment Practices of Churches: An International Comparison in the Wake of Hosanna-Tabor*, 26 *TEMPLE INT’L & COMP. L.J.* 263, 269 (2012) (“[R]eligious organizations routinely require their employees to affirm a personal

conviction of the faith, to comply with the faith’s teachings, and to adhere to religious-based standards of personal behavior.”).

To accomplish this work, a variety of civil-law structures may be adopted. Ministries often organize as nonprofit corporations, assemble boards of directors, appoint leaders, and hire staff. But this doesn’t erase their essential identity: communities of fellow believers working together to transform lives through the power of the Gospel. This identity is destroyed, and the mission scuttled, if the community is forced to admit those who don’t share its uniquely religious values and aims. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

The joinder of faith and mission is as old as Christianity itself. One of the church’s earliest challenges arose when certain “widows were being neglected in the daily distribution” of food. Church leaders thought it unwise to “give up preaching the word of God to serve tables.” So, from among the “full number of the disciples,” they appointed “seven men of good repute, full of the [Holy] Spirit and of wisdom,” to carry on this work. This freed up church leaders to continue devoting themselves “to prayer and to the ministry of the word.” *Acts* 6:1-6.

Thus, from its inception, the church has insisted that even its charitable work be carried on by fellow believers, by persons chosen from among the body of Christians and “full of the Spirit.” Today these activities are sometimes called “parachurch” ministry, but they are no less central to the Gospel—and no less

constitutionally protected. *See Spencer v. World Vision, Inc.*, 633 F.3d 723, 728, 732 (9th Cir. 2011) (O’Scannlain, J., concurring).

When ministries select only fellow believers to carry on the work of serving the poor, they are keeping up a 2000-year-old practice. The purpose of this practice has never been to exclude, but rather to expand the work of the church and the spread of the Gospel. The above *Acts* passage concludes thus: “And the word of God continued to increase, and the number of the disciples multiplied greatly....” *Acts* 6:7. This same work continues today through ministries like the Mission, *amici*, and countless others.

II. As interpreted and enforced, WLAD divides faith from mission, rewrites a ministry’s internal religious structure, and overrules faith leaders’ decision on core religious matters.

The First Amendment protects the right of religious organizations to both “*define and carry out* their religious missions.” *Amos*, 483 U.S. at 339 (emphases added). A key way they do this is “through [their] appointments,” their selection of leadership and staff. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). Some religious organizations choose not to base hiring decisions on an employee’s religious beliefs and practices. Others require employees to broadly support the religious mission even though employees need not identify with a particular (or any) faith tradition. And some organizations limit hiring to coreligionists—those that profess and practice the same faith. The Religion

Clauses protect these decisions because they give religious organizations the right to shape their “*own* faith and mission” and to decide such matters “*for themselves*, free from state interference.” *Id.* at 188, 186 (emphases added).

At a minimum, religious ministries have a right to say no to those who seek to undermine their mission. As Justice Brennan observed in his concurrence in *Amos*, “[d]etermining that certain activities are in furtherance of an organization’s religious mission, and that *only those committed to that mission should conduct them*, is ... a means by which a religious community defines itself.” 483 U.S. at 342 (Brennan, J., concurring) (emphasis added). For any organization, it can be said, personnel is policy. But for religious organizations, the stakes are higher. Those who join hands in ministry define and give shape to what an organization believes and does. For them, personnel is not just policy. It is *identity*.

A contrary rule wreaks havoc on ministry. If the First Amendment did not protect faith-based personnel decisions, then private plaintiffs, government bureaucrats, and judicial activists would have *carte blanche* to remold ministry in service of secular aims. That is what Washington officials are attempting to do here, employing a new set of legal tools to demand an intrusive inquiry into an organization’s beliefs and practices and the degree to which any of them can be called “secular.” See *Woods v. Seattle’s Union Gospel Mission*, 481 P.3d 1060, 1068-69 (Wash. 2021). But many organizations don’t divide up ministry this way.

The Mission and *amici* certainly do not. Washington’s interpretation of the WLAD invites the “host of problems” the Supreme Court foresaw in *Our Lady*, 140 S. Ct. at 2068.

The Supreme Court has long warned government decisionmakers not to burden religious organizations in this way, not to impose secular legal standards that require religious leaders to explain in “good faith” how their personnel policies “relat[e] to the ... religious mission.” *Catholic Bishop*, 440 U.S. at 502. “[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious.” *Amos*, 483 U.S. at 336. That is why the coreligionist exemption exists in federal law, in the laws of almost all states, and until recently in Washington. For “[i]t is not only the conclusions that may be reached ... , but also the very process of inquiry” that “impinge[s] on rights guaranteed by the Religion Clauses.” *Catholic Bishop*, 440 U.S. at 502.

As officially interpreted, the WLAD not only effaces a ministry’s personnel policy; it fundamentally alters its internal religious structure. It is a ministry’s leadership that sets personnel policy and, here, the Mission’s leaders have determined that staff must share their religious convictions. Through aggressive enforcement of the WLAD, however, Washington officials seek to overrule that decision, substituting their own secular preferences for the Mission’s religious

standards. The Religion Clauses prohibit carving up ministry this way. Government may not blue-pencil a ministry's internal structure so as to limit control by religious leaders—however much the government might disapprove of the values those leaders espouse. *See Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 108–09 (1952). And secular courts may not overrule religious leaders' decisions “on matters of discipline, faith, [and] internal organization”—however unwise a court thinks those decisions may be. *See Serbian*, 426 U.S. at 713. “It is of the essence of” religious organizations that they, and they alone, get to decide who may “unite themselves” therein “to assist in the expression and dissemination” of the faith. *Watson v. Jones*, 80 U.S. 679, 729 (1871). Washington officials are “bound to accept” ministry leaders' decision on such a core religious issue. *Serbian*, 426 U.S. at 713.

III. Social influence theory confirms the power of religious modeling: associating with fellow believers strengthens faith and mission.

When Justice Brennan observed that a religious community “defines itself ” by preferring “those committed to [its] mission,” *Amos*, 483 U.S. at 342, he was articulating not just a constitutional insight but a practical one. There is a growing literature known generally as “social influence theory,” and when applied in religious contexts, is often called the sociology or psychology of religion. Its key observation is that values are maintained and passed on not only by word—that is, by teaching—but also by deed, by observing the conduct of others in one's immediate environment. “Beliefs and norms are more successfully maintained and

transmitted in group settings in the presence of a majority— or at least some crucial number—of knowledgeable, confident, expert, relatable individuals who speak in favor of, and role-model, the desired beliefs and norms.” Alvaré, *supra*, at 355.

This insight is captured in aphorisms like: “You are the company you keep.” As Professor Cass Sunstein has observed, “much of human behavior is a product of social influences.” CONFORMITY: THE POWER OF SOCIAL INFLUENCES 7 (2019). “Most of what we think—about facts, morality, and law—is a product not of firsthand knowledge but of what we learn from what others do and think.” *Id.* at 6. “[T]he actions and statements of other people provide information about what is true and what is right.” *Id.* at xxv (original emphasis deleted).

One of the pioneers in this field, Stanford psychologist Albert Bandura, points out that religiosity is not simply, or even primarily, a matter of “intrapsychic self-engagement with a Supreme Being.” *On the Psychosocial Impact and Mechanisms of Spiritual Modeling*, 13 INT’L J. PSYCHOL. RELIGION 167, 171 (2013). It is, rather, “socially grounded.” *Id.* How others around you speak and act influences your own behavior, a phenomenon that psychologists call “modeling.” This is particularly important in religious settings. Bandura emphasizes the “influential role of modeling in transmitting values, spiritual belief systems, and spiritual lifestyle practices.” *Id.* at 171.

Other scholars have observed that “all faiths rest on network influences,” that “belief is firmest among those whose social network and religious affiliation are coterminous.” Rodney Stark & William Sims Bainbridge, *Networks of Faith*, 85 AM. J. SOCIOLOGY 1376, 1389-90 (1980). And this is not just an empirical fact; it is rooted in human nature. To quote Bandura again, humans have “an advanced cognitive capacity for observational learning that enables them to shape and structure their lives through the power of modeling.” Bandura, *supra*, at 167.

Within religious communities, it is a commonplace that faith and morals are “caught, not taught.” Of course, this is an oversimplification—they are taught, too. But the “[r]eligious education [that] is vital to many faiths,” *Our Lady*, 140 S. Ct. at 2064, is not just didactic classroom instruction; it is the living witness—the faithful patterns of behavior—by both leaders and peers. Religious traditions thus have long stressed the power of modeling. “Throughout history, religious traditions have emphasized the value of keeping good company and attending to the example of good or holy persons, arguing that people tend to become more like those with whom they associate.” Alvaré, *supra*, at 363 (quoting Doug Oman, *Spiritual Modeling and the Social Learning of Spirituality and Religion*, ch. 10 in 1 AM. PSYCHOL. ASS’N, HANDBOOK OF PSYCHOLOGY, RELIGION AND SPIRITUALITY: CONTEXT, THEORY, AND RESEARCH (Kenneth I. Pargament, Julie J. Exline & James W. Jones eds., 2013), at 187 (internal quotation marks omitted)).

“Iron sharpens iron” (*Proverbs* 27:17). Like other religious traditions, Christians join with their fellow believers in a variety of social contexts—parachurch ministries especially—because they know that faith is formed and fostered through association. Long before social science affirmed this truth, one New Testament author put it this way: “[L]et us consider how to stir up one another to love and good works, not neglecting to meet together ... but encouraging one another” (*Hebrews* 10:24-25). Religious association thus has purposes both endogenous and transcendent. Being with fellow believers strengthens and sharpens faith. It also, simultaneously, propels the community outward in ministry and service, spurring them toward the good works that faith commends.

The life-transforming work of ministries like the Mission, *amici*, and many others would never happen without bodies of faithful Christians—board members, executives, and staff—committed unwaveringly to seeing the Gospel lived, not just taught, in their communities. For this, they need each other: leaders and peers, mentors and models. For “[t]he people with whom one regularly associates, either through preference or imposition, delimit the behavioral patterns that will be repeatedly observed, and hence, learned most thoroughly.” Alvaré, *supra*, at 364 (quoting Oman, *supra*, at 150-51) (internal quotation marks omitted).

The Supreme Court has recognized the direct link between a group’s inward identity and its outward expression. *See Dale*, 530 U.S. at 648. The specific

composition of the community matters because members embody the group's values and determine how those values are expressed both internally and externally. *See Amos*, 483 U.S. at 342 (Brennan, J., concurring). "Religious groups are the archetype of associations formed for expressive purposes," *Hosanna-Tabor*, 565 U.S. at 200 (Alito & Kagan, JJ., concurring), and the Supreme Court long ago affirmed their right to be selective about who may "assist in the expression and dissemination" of the faith, *Watson*, 80 U.S. at 728. Social science is beginning to catch up to these insights. *See also* Thomas C. Berg, *Partly Acculturated Religious Activity: A Case for Accommodating Religious Nonprofits*, 91 NOTRE DAME L. REV. 1341, 1354 (2016) ("[R]eligious beliefs are intertwined with the energy and commitment that make [religious] entities vigorous.").

But ministries are selective about their staff for another reason, too. It is not just that committed Christian employees are able to inspire and energize one another and inwardly model biblical faithfulness. Equally importantly, employees are religious models outwardly for clients, guests, and those they serve. The point of ministry work is to see lives transformed through the power of the Gospel. Christians want those they serve to know that God loves them, that He has a purpose for their lives, and that in Christ He has forgiven their sins and opened the way for their salvation, healing, and restoration. For people to grasp this, they must see it lived out, not just preached. *See Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*,

41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring) (“A religious school is entitled to limit its staff to people who will be role models by living the life prescribed by the faith.”).

IV. The Religion Clauses protect faith-based hiring standards.

Washington’s enforcement of the WLAD proceeds on the erroneous premise that the faith-infused work of ministries can be parsed into separate “ministry” and “secular” components. While some organizations may draw such a distinction in operations and personnel, ministries like the Mission and *amici* do not. Faith permeates every part of their work, including the choice of those who perform it.

Statutory coreligionist exemptions are designed to “avoi[d] ... intrusive inquir[ies] into religious belief” and “alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.” *Amos*, 483 U.S. at 339. This language from *Amos* has “a clear constitutional ring.” *Serbian*, 426 U.S. at 710 (quotation omitted). And the constitutional right to further one’s religious mission necessarily includes the right to choose “only those committed to [it].” *Amos*, 483 U.S. at 342 (Brennan, J., concurring). The Supreme Court has made clear that the First Amendment protects “internal management decisions that are essential to [an organization’s] religious mission,” and requires deference to the “religious institution’s explanation of the role of such employees in the life of the religion.” *Our Lady*, 140 S. Ct. at 2060,

2066. Faith-based personnel standards, like the Mission's requirement that employees share its values, enjoy similar constitutional protection.

CONCLUSION

Amici respectfully request that this Court reverse the lower court's decision, hold that the First Amendment protects the right of religious organizations to employ coreligionists, and ensure that the faith-driven, life-transforming work of ministries like the Mission can continue.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the length limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 29 because it contains 4,080 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief also complies with the requirements of Fed. R. App. P. 32(a) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 (Version 2310) in 14-point Times New Roman.

/s/Ian Speir
Ian Speir

CERTIFICATE OF SERVICE

I certify that on November 15, 2023, the foregoing brief was served on counsel for all parties by means of the Court's ECF system.

/s/Ian Speir
Ian Speir

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

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