

No. 24-7246

**In the United States Court of Appeals
for the Ninth Circuit**

UNION GOSPEL MISSION OF YAKIMA WASHINGTON,

Plaintiff-Appellee,

v.

NICK BROWN, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Washington
(1:23-cv-03027-MKD) (Dimke, J.)

**BRIEF OF BRIGHAM YOUNG UNIVERSITY; BAYLOR UNIVERSITY; BIOLA
UNIVERSITY; THE CATHOLIC UNIVERSITY OF AMERICA; GEORGE FOX
UNIVERSITY; WHEATON COLLEGE; YESHIVA UNIVERSITY; AVE MARIA
SCHOOL OF LAW; AVE MARIA UNIVERSITY; AZUSA PACIFIC UNIVERSITY;
BENEDICTINE COLLEGE; BRIGHAM YOUNG UNIVERSITY-HAWAII;
BRIGHAM YOUNG UNIVERSITY-IDAHO; COLLEGE OF THE OZARKS;
COLORADO CHRISTIAN UNIVERSITY; DIVINE MERCY UNIVERSITY;
FRANCISCAN UNIVERSITY OF STEUBENVILLE; HARDING UNIVERSITY;
JOHN PAUL THE GREAT CATHOLIC UNIVERSITY; OKLAHOMA CHRISTIAN
UNIVERSITY; REGENT UNIVERSITY; SAMFORD UNIVERSITY; UNIVERSITY
OF MARY; AND WYOMING CATHOLIC COLLEGE AS *AMICI CURIAE*
SUPPORTING APPELLEE UNION GOSPEL MISSION OF YAKIMA
WASHINGTON AND AFFIRMANCE**

Steve Sandberg
David Andersen
Aaron Worthen
Brigham Young University
Office of General Counsel
109 MCDB
Provo, UT 84602
(801) 422-4636

Christopher A. Bates
R. Shawn Gunnarson
Alan Hurst
Jarom M. Harrison
Kristen Clarke
Kirton | McConkie
36 South State Street, Suite 1900
Salt Lake City, UT 84111
(801) 328-3600

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. THE CHURCH AUTONOMY DOCTRINE ENTITLES RELIGIOUS COLLEGES AND UNIVERSITIES TO EXERCISE THEIR RELIGION BY FILLING NON-MINISTERIAL POSITIONS WITH THOSE WHO SHARE THEIR FAITH.....	4
A. The First Amendment Protects the Freedom of Religious Schools to Choose Employees Who Will Effectively Advance Their Religious Missions.	4
B. Many Religious Schools Rely on Non-Ministerial Employees to Advance Their Religious Missions.	7
C. Deciding Whom to Employ in Non-Ministerial Positions Is an Internal Decision Reflecting the School’s Faith and Religious Mission.....	11
D. Religious Educational Institutions Define Themselves by Employing People Committed to the Institution’s Religious Mission.....	14
1. <i>Some religious schools require compliance with a faith-based code of conduct.</i>	16
2. <i>Some religious schools require affirmations of faith.</i> ..	19
3. <i>Some religious schools encourage formal affiliation with a particular religious organization.</i>	21

II.	WASHINGTON LAW IS NEITHER NEUTRAL NOR GENERALLY APPLICABLE AND CANNOT SATISFY STRICT SCRUTINY AS APPLIED TO UNION GOSPEL MISSION.....	23
A.	WLAD Is Neither Neutral nor Generally Applicable and Therefore Must Meet Strict Scrutiny under <i>Fulton</i>	23
B.	WLAD Violates <i>Tandon’s</i> Most-Favored-Nation Principle.....	27
C.	Strict Scrutiny Also Applies Under <i>Catholic Charities</i> to the Extent WLAD Grants a Denominational Preference to Small Religious Employers.....	29
D.	WLAD Cannot Satisfy Strict Scrutiny as Applied to Union Gospel Mission.....	29
	CONCLUSION	32

TABLE OF AUTHORITIES

CASES

<i>Bowen v. Kendrick</i> , 487 U.S. 589 (1988).....	11
<i>Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Review Comm’n</i> , 605 U.S. 238 (2025).....	29, 32
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , 508 U.S. 520 (1993).....	23, 24, 30, 32
<i>Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos</i> , 483 U.S. 327 (1987).....	5, 7, 8
<i>Fulton v. City of Philadelphia</i> , 593 U.S. 522 (2021).....	3, 23, 24, 26, 27, 30, 31, 32
<i>Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal</i> , 546 U.S. 418 (2006).....	30
<i>Hall v. Baptist Mem. Health Care Corp.</i> , 215 F.3d 618 (6th Cir. 2000).....	9
<i>Hill v. Colorado</i> , 530 U.S. 703 (2000).....	32
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC</i> , 565 U.S. 171 (2012)	6, 11, 12
<i>Kedroff v. St. Nicholas Cathedral of Russ. Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952).....	4–5
<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971).....	14

<i>MoChridhe v. Acad. of Holy Angels</i> , 29 N.W.3d 753 (Minn. Ct. App. 2025)	9
<i>MoChridhe v. Acad. of Holy Angels</i> , 2026 WL 681036 (Minn. Feb. 25, 2026) (No. A25-0559)	9
<i>NLRB v. Cath. Bishop of Chi.</i> , 440 U.S. 490 (1979)	8, 14
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 591 U.S. 732 (2020)	3, 4, 5, 6, 7, 8, 12
<i>Pulsifer v. Westshore Christian Acad.</i> , 142 F.4th 859 (6th Cir. 2025)	6
<i>Seattle’s Union Gospel Mission v. Woods</i> , 142 S. Ct. 1094 (2022)	12–13
<i>Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.</i> , 41 F.4th 931 (7th Cir. 2022)	6
<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021) (per curiam)	3, 4, 27, 28, 32
<i>Union Gospel Mission of Yakima Wash. v. Brown</i> , 162 F.4th 1190 (9th Cir. 2026)	2
<i>Woods v. Seattle’s Union Gospel Mission</i> , 481 P.3d 1060 (Wash. 2021) (en banc)	2, 25, 26, 28

STATUTES AND RULES

WASH. CONST. art. I, § 12	25
WASH. REV. CODE § 49.60.030(1)	24
WASH. REV. CODE § 49.60.030(1)(a)	24, 28

WASH. REV. CODE § 49.60.040(11)	24, 25, 28
---------------------------------------	------------

OTHER AUTHORITIES

Athanasius G. Sirilla, <i>The “Nonministerial” Exception</i> , 99 NOTRE DAME L. REV. 393 (2023).....	8
BEULAH HEIGHTS UNIV., <i>Soul of Beulah</i>	21
BRIGHAM YOUNG UNIV., <i>Aims of a BYU Education</i>	16
BRIGHAM YOUNG UNIV., <i>BYU Mission Statement</i> (Nov. 4, 1981).....	16
BRIGHAM YOUNG UNIV., <i>Church Educational System Honor Code</i>	17
BRIGHAM YOUNG UNIV., <i>Ecclesiastical Conditions of Employment and University Standards Policy</i>	16, 17
BRIGHAM YOUNG UNIV., <i>Ecclesiastical Endorsements and Resources</i>	17
C. Shane Reese, <i>Becoming BYU: An Inaugural Response</i> , BYU: SPEECHES (Sep. 19, 2023)	10
CEDARVILLE UNIV., <i>Faculty and Staff Community Covenant</i>	20
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <i>General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints</i> § 26.4.....	17, 18
Douglas Laycock, <i>Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy</i> , 81 COLUM. L. REV. 1373 (1981).....	5, 7, 8
FORDHAM UNIV., <i>Mission Statement</i>	22
FORDHAM UNIV., <i>Recruitment of Jesuits to the Faculty</i>	22

FRESNO PAC. UNIV., FAITH REQUIREMENTS FOR EMPLOYMENT (2024)	20
GEORGE FOX UNIV., <i>Employee Handbook: Statement of Faith</i>	20
GEORGE M. MARSDEN, THE SOUL OF THE AMERICAN UNIVERSITY REVISITED (2021).....	15
Helen M. Alvaré, <i>Church Autonomy After Our Lady of Guadalupe School: Too Broad? Or Broad as It Needs to Be?</i> , 25 TEX. REV. L. & POL. 319 (2021)	12, 13
Kathleen A. Brady, <i>Religious Organizations and Free Exercise: The Surprising Lessons of Smith</i> , 2004 BYU L. REV. 1633.....	11
OAKWOOD UNIV., <i>Faith and Values</i>	18
OAKWOOD UNIV., <i>Mission and History</i>	18
OAKWOOD UNIV., <i>Our Beliefs</i>	19
OAKWOOD UNIVERSITY FACULTY HANDBOOK (2008).....	19
OAKWOOD UNIVERSITY FALL 2024 ENROLLMENT STATISTICS (2024)	18
OLIVET NAZARENE UNIV., EMPLOYEE STATEMENT OF MISSION, FAITH, AND LIFESTYLE COVENANT (2023)	21
POINT UNIV., STATEMENT OF FAITH (2025)	21
R. Shawn Gunnarson, James C. Phillips, and Christopher A. Bates, <i>Religious Employment and the Tensions Between Liberty and Equality</i> , 51 BYU L. REV. 279 (2025)	14
REGENT UNIV., <i>New Faculty</i>	20
REGENT UNIV., <i>Statement of Faith</i>	20

S. WESLEYAN UNIV., <i>Doctrinal Statement</i>	21
<i>Seattle Pacific Files Lawsuit in Support of Religious Freedom</i> , SEATTLE PAC. UNIV., (July 28, 2022).....	10
UNIV. OF S.F., COLLECTIVE BARGAINING AGREEMENT	22
UNIV. OF S.F., <i>Mission Statement</i>	22
WHEATON COLL., <i>Statement of Faith and Educational Purpose</i>	20
THE YALE CORPORATION: CHARTER AND LEGISLATION (1976)	15
YESHIVA UNIVERSITY EMPLOYEE HANDBOOK (2022)	10

INTEREST OF *AMICI CURIAE*¹

Amici are 24 religious colleges and universities with over 158,000 total students. *Amici* hold different religious beliefs but are united in our commitment to defending the religious freedom of churches, religious schools, and other faith-based organizations. Religious freedom for all Americans will be seriously harmed unless this Court affirms the right of religious employers to choose employees whose conduct and beliefs are in harmony with the employers' religion.

SUMMARY OF ARGUMENT

Religious colleges and universities exercise their religion through their employment decisions. The freedom to form a workplace united around a common faith is indispensable to a religious institution's identity.

Washington's misapplication of its own law threatens that freedom. The Washington Law Against Discrimination (WLAD) contains an exemption for religious employers from the statute's

¹ No counsel for any party authored this *amicus* brief in whole or in part and no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

proscription against employment discrimination. But the Washington Supreme Court has construed that exemption to apply only when a claimant is covered by the ministerial exception. *See Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060 (Wash. 2021) (en banc). *Woods* leaves religious employers vulnerable to discrimination suits when they employ fellow believers. That result violates the religious autonomy of religious institutions to exercise their religion through their employment choices.

A three-judge panel of this Court unanimously concluded that WLAD, as applied to Union Gospel Mission's selection of non-ministerial employees, likely violates the First Amendment's church autonomy doctrine. *Union Gospel Mission of Yakima Wash. v. Brown*, 162 F.4th 1190, 1201–09 (9th Cir. 2026). The panel determined that Union Gospel Mission's policy of hiring only co-religionists who subscribe to the organization's religious beliefs and practices is “an ‘internal management decision that is essential to [its] central mission’” and that the First Amendment therefore protects that policy from state interference. *Id.* at 1209 (internal brackets omitted)

(quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020)).

That decision was correct and should be affirmed. Many religious organizations, including religious schools like *amici*, must have the autonomy to employ both ministerial and non-ministerial co-religionists to advance their religious missions. Employing those who share common religious beliefs and standards of personal conduct reflects a religious organization's faith and values and defines it as an institution set apart from secular concerns. It also sends the message that the organization exists to pursue a distinct religious mission and to inculcate its religion in its employees and other community members.

Affirmance is also correct on alternate grounds. *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), and other cases require strict scrutiny when a law is not neutral toward religion or generally applicable. A parallel rule applies under *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam). It holds that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable

secular activity more favorably than religious exercise.” *Id.* at 62. Both rules apply here. Because the Washington Supreme Court held that WLAD’s religious exemption applies only to a religious organization’s ministerial employees, while the statute does not apply at all to any employer with fewer than eight employees, the statute as applied here is not neutral or generally applicable. Strict scrutiny must apply—a demanding standard that the state does not satisfy.

For these reasons, the *en banc* Court should affirm the district court judgment and order the entry of a preliminary injunction for Union Gospel Mission.

ARGUMENT

I. THE CHURCH AUTONOMY DOCTRINE ENTITLES RELIGIOUS COLLEGES AND UNIVERSITIES TO EXERCISE THEIR RELIGION BY FILLING NON-MINISTERIAL POSITIONS WITH THOSE WHO SHARE THEIR FAITH.

A. The First Amendment Protects the Freedom of Religious Schools to Choose Employees Who Will Effectively Advance Their Religious Missions.

The First Amendment secures the right of religious organizations “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 737 (quoting *Kedroff v. St. Nicholas*

Cathedral of Russ. Orthodox Church in N. Am., 344 U.S. 94, 116 (1952)).

This principle, known as the church autonomy doctrine, guarantees religious entities “autonomy with respect to internal management decisions that are essential to the institution’s central mission.” *Id.* at 746. It includes a religious entity’s right to hire only persons of its own faith or those fully committed to its religious mission, even if they do not qualify as ministers.

Behind the church autonomy doctrine lies “the idea that furtherance of the autonomy of religious organizations often furthers individual religious freedom as well.” *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring in the judgment) (citing Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1389 (1981)). That is because for many people, religion is not solely a matter of individual faith and belief, but rather “derives meaning in large measure from participation in a larger religious community.” *Id.*

Religious schools possess the same constitutionally protected autonomy. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Our Lady of Guadalupe*, 591 U.S. 732. Various circuit decisions affirm that the church autonomy doctrine applies with full force to religious schools. *See, e.g., Pulsifer v. Westshore Christian Acad.*, 142 F.4th 859, 864–66 (6th Cir. 2025); *Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 942–45 (7th Cir. 2022).

A component of the church autonomy doctrine is the “ministerial exception.” *See Hosanna-Tabor*, 565 U.S. at 188; *Our Lady of Guadalupe*, 591 U.S. at 746–47. That exception requires courts to “stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” *Our Lady of Guadalupe*, 591 U.S. at 746. The ministerial exception protects the right of religious schools to choose “ministerial” employees—those “entrusted with the responsibility of ‘transmitting the ... faith’” to students—free from state interference. *Id.* at 754 (quoting *Hosanna-Tabor*, 565 U.S. at 192).

But the church autonomy doctrine is not limited to the ministerial exception. *See id.* at 747 (recognizing that none of the Court’s prior

church autonomy cases “was exclusively concerned with the selection or supervision of clergy”). One of the “internal management decisions that [is] essential to [a religious] institution’s central mission” is the selection of employees crucial to performing its religious mission. *Id.* at 746. “Determining that certain activities are in furtherance of an organization’s religious mission, and that only those committed to that mission should conduct them,” is an important “means by which a religious community defines itself.” *Amos*, 483 U.S. at 342 (Brennan, J., concurring in the judgment). Those principles apply to ministerial and non-ministerial employees alike.

B. Many Religious Schools Rely on Non-Ministerial Employees to Advance Their Religious Missions.

Like all religious employers, religious schools rely on both ministerial and non-ministerial employees to advance their religious missions. “Such institutions can only be run through employees.” Laycock, 81 COLUM. L. REV. at 1408. Employees at religious schools teach courses, raise and manage money, serve food, maintain the physical property, run communications, and perform numerous other tasks that are necessary for the school to function. Religious schools “rely on employees to do the work of” the school “and to do it in accord with church

teaching.” *Id.* at 1409. Employees, in turn, “accept[] responsibility to carry out part of the [school’s] religious mission” in their area of assigned duties. *Id.* at 1408.

A religious school’s ministerial employees are unquestionably essential to its religious mission. But for many schools, so are employees who perform non-ministerial duties—who essentially ensure the entire operation runs smoothly. Those employees “play a vital role” in the school’s work as well. Athanasius G. Sirilla, *The “Nonministerial” Exception*, 99 NOTRE DAME L. REV. 393, 410 (2023).

The overriding mission for most religious schools is fostering “[t]he religious education and formation of students.” *Our Lady of Guadalupe*, 591 U.S. at 738; *see also NLRB v. Cath. Bishop of Chi.*, 440 U.S. 490, 503 (1979). Activities that might otherwise appear secular are frequently “infused with a religious purpose” because they contribute to that overall religious goal. *Amos*, 483 U.S. at 344 (Brennan, J., concurring in the judgment).

Consider a few examples.² A librarian does not teach courses or interact with students beyond helping with the checkout and return of books. But by choosing materials for the catalog and assisting with research and other library operations, the librarian unquestionably “support[s] the mission of” the school to educate students in the faith. *MoChridhe v. Acad. of Holy Angels*, 29 N.W.3d 753, 762 (Minn. Ct. App. 2025), *review granted*, 2026 WL 681036 (Minn. Feb. 25, 2026) (No. A25-0559).

A “student services specialist” at a religious medical college helps student organizations organize and plan activities but has no direct duties to witness directly to students or share spiritual insights. *Hall v. Baptist Mem. Health Care Corp.*, 215 F.3d 618, 622 (6th Cir. 2000). Still, that specialist advances the college’s religious mission by facilitating student engagement in the campus community, “interpreting school policies,” and “ensuring that all student activities [a]re consistent with the [school’s] mission” of “preaching, teaching, and healing.” *Id.*

² *Amici* do not suggest that the jobs described in these examples could never qualify as ministerial positions. These examples show, instead, that jobs lacking the traditional hallmarks of a ministerial position can still contribute to a school’s religious mission.

Many religious schools—including *amici*—affirm the importance of *all* employees to the school’s religious mission. At his inauguration in 2023, for example, Brigham Young University President Shane Reese described both faculty and staff as “consecrated colleagues ... who labor tirelessly to make our inspired mission a reality for our students.”³ The president of Seattle Pacific University similarly characterized the “faith commitment” of both faculty and staff as “an essential foundation [of its] identity as a Christian University.”⁴ And Rabbi Dr. Ari Berman, president of Yeshiva University, tells all employees that they are “essential” to the school’s religious mission to provide an education “rooted in Jewish thought and tradition.”⁵

Because inculcating the faith is a collective effort that spreads across all aspects of campus life, even employees whose duties lack

³ C. Shane Reese, *Becoming BYU: An Inaugural Response*, BYU: SPEECHES (Sep. 19, 2023), <https://speeches.byu.edu/talks/c-shane-reese/becoming-byu-an-inaugural-response>.

⁴ *Seattle Pacific Files Lawsuit in Support of Religious Freedom*, SEATTLE PAC. UNIV., (July 28, 2022), <https://spu.edu/about-spu/press-room/Press/ag-lawsuit>.

⁵ YESHIVA UNIVERSITY EMPLOYEE HANDBOOK 1 (2022), https://www.yu.edu/sites/default/files/inline-files/YU_Employee%20Handbook_AC_March%202022.pdf.

“explicitly religious content” or are not expressly “designed to inculcate [religious] views,” *Bowen v. Kendrick*, 487 U.S. 589, 621 (1988), contribute to a school’s religious mission.

C. Deciding Whom to Employ in Non-Ministerial Positions Is an Internal Decision Reflecting the School’s Faith and Religious Mission.

Religious organizations, including religious schools, “put their beliefs into action [through] shaping organizational structure, developing rules for church discipline, [and] clarifying the rights and duties of members and employees.” Kathleen A. Brady, *Religious Organizations and Free Exercise: The Surprising Lessons of Smith*, 2004 BYU L. REV. 1633, 1676. Their “very existence is dedicated to the collective expression and propagation of shared religious ideals.” *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring).

Hiring decisions reflect those religious ideals. Through such decisions, a religious school identifies and selects for the qualities it believes are most important in those who assist the school in carrying out its mission. Traits like dependability, proficiency, and relevant work experience matter. But that is not all. Because religious schools exist to express and promote their religious ideals, equally important to many

such schools is a shared commitment to the school’s doctrine and beliefs. “This locates the matter of many of their appointments within the realm of religious decisions about faith, doctrine, and religious mission.” Helen M. Alvaré, *Church Autonomy After Our Lady of Guadalupe School: Too Broad? Or Broad as It Needs to Be?*, 25 TEX. REV. L. & POL. 319, 333 (2021).

All this is true of “ministerial” employees “entrusted with the responsibility of ‘transmitting the ... faith.’” *Our Lady of Guadalupe*, 591 U.S. at 754 (quoting *Hosanna-Tabor*, 565 U.S. at 192). But it likewise is true of non-ministerial employees. A non-ministerial employee may not be tasked with overtly “transmitting ... the faith” the same way a preacher or instructor might be, but a religious school still must have the autonomy to decide that the employee should “personify” the religious institution’s “beliefs.” *Hosanna-Tabor*, 565 U.S. at 188, 192. How employees conduct themselves on and off the job reflects an organization’s values and expectations. “To force [a religious school] to hire ... personnel who do not share [its] religious views would undermine not only [its] autonomy,” but “also [its] continued viability.” *Seattle’s*

Union Gospel Mission v. Woods, 142 S. Ct. 1094, 1096 (2022) (Alito, J., respecting the denial of certiorari).

Non-ministerial employees at religious schools help to shape and communicate the school’s religious message. “Admissions officers speaking about a school’s priorities to incoming parents and students help both to shape the future religious tone of the school and to communicate about the school’s commitment to its religious beliefs.” Alvaré, 25 TEX. REV. L. & POL. at 331. Communications staff “help articulate or even shape an institution’s public persona.” *Id.* “Finance officers charged to invest in line with a religion’s beliefs will communicate those beliefs to donors, employees, and the wider world.” *Id.* at 331–32. Coaches and other extracurricular activity leaders “exemplify the meaning of sport [and other activities] within a religious framework and may also be important role models of faith in a student’s life.” *Id.* at 331.⁶

Requiring *all* employees—groundskeepers, bookkeepers, and IT specialists, not just those in public-facing ministerial roles—to follow religious conduct standards reflects the importance of the underlying

⁶ Many coaches and extracurricular activity leaders likely qualify as ministerial employees, particularly at schools that expect all activity leaders to play a role in transmitting the faith to students.

religious beliefs and doctrines. After all, a religious school does not only aim to educate students for success in the marketplace. Its “*raison d’être*” is no less than “the propagation of a religious faith.” *Cath. Bishop of Chi.*, 440 U.S. at 503 (internal quotation marks omitted) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 628 (1971) (Douglas, J., concurring)). Forming a community bound by common religious standards is a matter of institutional identity for a religious school—and a vital means of unifying its students and staff around its religious mission. A religious institution’s freedom to align all employment decisions with a common faith is fundamental to that mission. See R. Shawn Gunnarson, James C. Phillips, and Christopher A. Bates, *Religious Employment and the Tensions Between Liberty and Equality*, 51 BYU L. REV. 279, 312–13 (2025).

D. Religious Educational Institutions Define Themselves by Employing People Committed to the Institution’s Religious Mission.

Religious colleges and universities were present in America long before our nation’s Founding. Education was originally a religious enterprise. Harvard was founded to train clergy; Yale was founded to train more orthodox clergy amid concerns that Harvard had strayed from

the faith. GEORGE M. MARSDEN, *THE SOUL OF THE AMERICAN UNIVERSITY REVISITED* 38, 45–47 (2021); *see also Act for Liberty to Erect a Collegiate School, 1701, in THE YALE CORPORATION: CHARTER AND LEGISLATION* 4, 4 (1976) (establishing Yale for the purpose of “upholding & Propagating ... the Christian Protestant Religion by a succession of Learned & Orthodox men”).

Because they considered education a religious project, these schools required their teachers to share their religious beliefs. In its early decades, Harvard lacked “a formal theological test for those who taught at the college,” but “that was only because such a test did not need to be stated.” MARSDEN, *SOUL OF THE AMERICAN UNIVERSITY*, at 37. When one of Harvard’s early presidents “questioned the practice of infant baptism, there was no choice but for him to resign.” *Id.* Only twenty years after its founding, Yale dismissed its rector (effectively, its president) when he announced his conversion to Anglicanism. *Id.* at 46.

Harvard, Yale, and other schools have since ended their religious affiliations, yet America’s religiously affiliated schools have grown dramatically in number and diversity. Today, many religious schools from many faith traditions seek to preserve their religious character

through religiously inspired codes of conduct, mandatory statements of faith, or other religiously motivated hiring requirements or preferences.

1. *Some religious schools require compliance with a faith-based code of conduct.*

Brigham Young University (BYU), established and guided by The Church of Jesus Christ of Latter-day Saints, is the flagship institution of the Church Educational System (CES). “[T]he common purpose of all education at BYU” is to build faith in “the restored gospel of Jesus Christ.”⁷ BYU and other CES institutions seek to “develop disciples of Jesus Christ who are leaders in their homes, the Church, and their communities.”⁸ “To succeed in this mission the university must provide an environment enlightened by living prophets and sustained by those moral virtues which characterize the life and teachings of the Son of God.”⁹

⁷ BRIGHAM YOUNG UNIV., *Aims of a BYU Education*, <https://aims.byu.edu/aims-of-a-byu-education> (last visited July 22, 2026).

⁸ BRIGHAM YOUNG UNIV., *Ecclesiastical Conditions of Employment and University Standards Policy*, <https://policy.byu.edu/view/ecclesiastical-conditions-of-employment-and-university-standards-policy> (last visited July 22, 2026).

⁹ BRIGHAM YOUNG UNIV., *BYU Mission Statement* (Nov. 4, 1981), <https://aims.byu.edu/byu-mission-statement>.

“To best accomplish this purpose,” BYU and other CES schools “select[] and retain[] employees who are committed to and represent the teachings, practices, and doctrine of the Church of Jesus Christ.”¹⁰ This includes a commitment to act in accordance with a religiously inspired Honor Code.¹¹ Also, employees who are members of the Church of Jesus Christ must obtain an ecclesiastical endorsement¹² and, when applying for employment, must “accept as conditions of employment that they will hold and be worthy to hold a current temple recommend” or ensure that their conduct is consistent with holding a temple recommend.¹³ A temple recommend is a certificate provided to members who attest to local Church leaders that they affirm the Church’s beliefs and observe specific conduct standards of the Church.¹⁴ These combined conduct standards

¹⁰ BRIGHAM YOUNG UNIV., *Ecclesiastical Conditions of Employment*.

¹¹ BRIGHAM YOUNG UNIV., *Church Educational System Honor Code*, <https://policy.byu.edu/view/church-educational-system-honor-code> (last visited July 22, 2026).

¹² BRIGHAM YOUNG UNIV., *Ecclesiastical Endorsements and Resources*, <https://honorcode.byu.edu/ecclesiastical-endorsements-and-resources> (last visited July 22, 2026).

¹³ BRIGHAM YOUNG UNIV., *Ecclesiastical Conditions of Employment*.

¹⁴ See THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints* § 26.4.

include, among other things, abstaining from illegal drugs, alcohol, tobacco, marijuana, vaping, tea, and coffee; abstaining from sexual relations outside marriage between a man and a woman; paying tithing; and being modest, neat, and clean in dress and grooming.¹⁵

BYU and the other CES schools are not alone. Oakwood University, in Huntsville, Alabama, serves similar purposes for a different religious group. “[A] historically black, Seventh-day Adventist institution,” Oakwood was founded in 1896 on the land of a “former slave plantation” in order “to educate the recently-freed African-Americans of the South.”¹⁶ Today, Oakwood serves about 1,200 students, whom it aims “to transform ... through biblically-based education for service to God and humanity.”¹⁷ The school “promote[s] strong moral principles and encourage[s] students to develop a close relationship with God.”¹⁸

¹⁵ *See id.* § 26.4.1.

¹⁶ OAKWOOD UNIV., *Mission and History*, <https://oakwood.edu/our-story/mission-history> (last visited July 22, 2026).

¹⁷ *Id.*; *see also* OAKWOOD UNIVERSITY FALL 2024 ENROLLMENT STATISTICS (2024), <https://oakwood.edu/wp-content/uploads/Fall-Semester-2024-Enrollment-Statistics.pdf>.

¹⁸ OAKWOOD UNIV., *Faith and Values*, <https://oakwood.edu/our-story/faith-values> (last visited July 22, 2026).

Like BYU, Oakwood reinforces its religious character through a code of conduct. According to its faculty handbook, “full-time members of the faculty ... must, in general, be members in good and regular standing of the Seventh-day Adventist Church.”¹⁹ “Every faculty member has, by reason of his/her acceptance of employment, an obligation to *conduct his/her personal and professional life* in harmony with the teachings of the Church.”²⁰ Even tenured faculty may be terminated “for inexcusable or persistent defiance and opposition to the standards and teachings of the Seventh-day Adventist Church as set forth in the ‘Statement of Fundamental Beliefs.’”²¹

2. *Some religious schools require affirmations of faith.*

Many religious schools secure their religious character by requiring formal statements of faith. Regent University, for example, requires all prospective employees to certify their belief in the Holy Trinity, the Virgin Birth of Jesus, the infallibility of the Bible, and that “Christ will

¹⁹ OAKWOOD UNIVERSITY FACULTY HANDBOOK 15 (2008), <https://www.oakwood.edu/zPublic/human-resources/accordion/Handbooks/Full-time-Faculty-Handbook.pdf>.

²⁰ *Id.* (emphasis added).

²¹ *Id.* at 40; see OAKWOOD UNIV., *Our Beliefs*, <https://oakwoodsda.com/about/our-beliefs> (last visited July 22, 2026).

personally return to earth in power and glory.”²² Wheaton College requires its employees to reaffirm its statement of faith annually, including such tenets as Jesus Christ’s ascension into heaven, the direct creation of Adam and Eve in God’s image, the existence of the devil, and “the bodily resurrection of the just and unjust.”²³ Similar mandatory statements of faith can be found at schools from many Christian denominations, including George Fox University (Quaker),²⁴ Fresno Pacific University (Mennonite),²⁵ Cedarville University (Baptist),²⁶

²² REGENT UNIV., *New Faculty*, <https://www.regent.edu/employment/new-faculty/#required-documentation> (last visited July 22, 2026); *see also* REGENT UNIV., *Statement of Faith*, <https://www.regent.edu/about-regent/vision-mission/#tab-statement-of-faith> (last visited July 22, 2026).

²³ WHEATON COLL., *Statement of Faith and Educational Purpose*, <https://www.wheaton.edu/about-wheaton/statement-of-faith-and-educational-purpose> (last visited July 22, 2026).

²⁴ GEORGE FOX UNIV., *Employee Handbook: Statement of Faith*, <https://www.georgefox.edu/offices/hr/handbook/chapter05.html#5.1> (last visited July 22, 2026).

²⁵ FRESNO PAC. UNIV., FAITH REQUIREMENTS FOR EMPLOYMENT 2 (2024), <https://www.fresno.edu/sites/default/files/Documents/human-resources/faith-requirements-employment-2024-09-30-accessible.pdf>.

²⁶ CEDARVILLE UNIV., *Faculty and Staff Community Covenant*, <https://www.cedarville.edu/offices/human-resources/staff-standards> (last visited July 22, 2026).

Southern Wesleyan University (Wesleyan),²⁷ Point University (Churches of Christ),²⁸ Olivet Nazarene University (Church of the Nazarene),²⁹ and Beulah Heights University (Pentecostal).³⁰

3. *Some religious schools encourage formal affiliation with a particular religious organization.*

Other schools require or encourage formal affiliation with a particular religious organization. Fordham University and the University of San Francisco, for example, both owe their existence to the Society of Jesus, a Catholic monastic order commonly known as the Jesuits. Both welcome faculty of all faiths, but both have mission statements inspired by Catholicism that combine concern for students' spiritual welfare with goals like "the alleviation of poverty, the promotion of justice, [and] the protection of human rights and respect for the

²⁷ S. WESLEYAN UNIV., *Doctrinal Statement*, <https://www.swu.edu/about/employment/doctrinal-statement> (last visited July 22, 2026).

²⁸ POINT UNIV., STATEMENT OF FAITH 1 (2025), https://point.edu/wp-content/uploads/2025/08/Point-University-Statement-of-Faith-and-Expectations_8.2025.pdf.

²⁹ OLIVET NAZARENE UNIV., EMPLOYEE STATEMENT OF MISSION, FAITH, AND LIFESTYLE COVENANT 3 (2023), https://www.olivet.edu/wp-content/uploads/2023/08/Statement_of_Mission_Faith_and_Lifestyle.pdf.

³⁰ BEULAH HEIGHTS UNIV., *Soul of Beulah*, <https://beulah.edu/about/soul-of-beulah> (last visited July 22, 2026).

environment” (Fordham)³¹ and “being people for others” (USF).³² And, to preserve their Jesuit cultures, both schools have announced a preference for hiring Jesuits.³³ Under laws like WLAD, these schools’ hiring preferences might constitute unlawful discrimination if applied to any non-ministerial role.

In short, religious schools exercise their faith through their employment decisions, including the choice of non-ministerial employees. The district court’s decision ruling that WLAD likely violates the First Amendment as applied to Union Gospel Mission should be affirmed—as the panel held—on the basis of the church autonomy doctrine.

³¹ FORDHAM UNIV., *Mission Statement*, <https://www.fordham.edu/about/mission-statement> (last visited July 22, 2026).

³² UNIV. OF S.F., *Mission Statement*, <https://www.usfca.edu/who-we-are/reinventing-education/our-mission-and-values> (last visited July 22, 2026).

³³ See UNIV. OF S.F., COLLECTIVE BARGAINING AGREEMENT art. XVI (2016), [https://myusf.usfca.edu/sites/default/files/documents/HR/OGC/USFFAC BA.2016-2024_1.pdf](https://myusf.usfca.edu/sites/default/files/documents/HR/OGC/USFFAC%20BA.2016-2024_1.pdf) (“In recognition of the character and heritage of the University ... the University may appoint or retain members of the Society of Jesus ... on a priority basis.”); FORDHAM UNIV., *Recruitment of Jesuits to the Faculty*, <https://bulletin.fordham.edu/undergraduate/academic-policies-procedures/university-policies/recruitment-of-jesuits-to-faculty> (last visited July 22, 2026) (“[T]he recruitment and hiring of highly qualified Jesuits is considered an institutional priority.”).

II. WASHINGTON LAW IS NEITHER NEUTRAL NOR GENERALLY APPLICABLE AND CANNOT SATISFY STRICT SCRUTINY AS APPLIED TO UNION GOSPEL MISSION.

Other grounds under the First Amendment likewise support affirmance. Specifically, WLAD violates the First Amendment because it is not neutral or generally applicable and does not satisfy strict scrutiny.

A. WLAD Is Neither Neutral nor Generally Applicable and Therefore Must Meet Strict Scrutiny under *Fulton*.

When a law is not neutral toward religion or generally applicable, it is subject to strict scrutiny under the Free Exercise Clause—meaning the government must show that the law is narrowly tailored to fulfill a compelling interest through the least restrictive means. *See Fulton*, 593 U.S. at 533.

“Government fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature.” *Id.* And although “the minimum requirement of neutrality is that a law not discriminate on its face,” controlling Supreme Court precedent establishes that “[o]fficial action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533–534 (1993). That is because

“[t]he Free Exercise Clause protects against governmental hostility which is masked, as well as overt.” *Id.* at 534.

The standard governing general applicability is no less clear. “A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S. at 534.

Measured by these standards, WLAD, as interpreted by the Washington Supreme Court, is neither neutral nor generally applicable.

WLAD’s text declares that “[t]he right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, ... [or] sexual orientation ... is recognized as and declared to be a civil right.” WASH. REV. CODE § 49.60.030(1). That guarantee includes “[t]he right to obtain and hold employment without discrimination.” *Id.* § 49.60.030(1)(a). But statutory definitions limit the reach of this non-discrimination requirement. The term *employer* “includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.” *Id.* § 49.60.040(11). Read on its face, WLAD thus exempts both (1) any

business with fewer than eight employees, and (2) any nonprofit “religious or sectarian organization.” *Id.*

But the Washington Supreme Court significantly narrowed the religious exemption in *Woods*, 481 P.3d at 1060. There, a job applicant sued a religious employer under WLAD for declining to hire him because he was in a same-sex relationship. The court focused on whether the WLAD religious exemption violated the Washington Constitution’s Privileges and Immunities Clause. *See id.* at 1064. That Clause provides, “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.” WASH. CONST. art. I, § 12.

To determine whether the WLAD religious exemption violated the state constitution, the court asked (1) whether the exemption “granted a privilege or immunity implicating a fundamental right,” and (2) “whether the distinction was based on reasonable grounds.” *Woods*, 481 P.3d at 1065 (citation omitted). On the first point, the court found that rejecting *Woods* because he was in a same-sex relationship implicated “the right to an individual’s sexual orientation and the right to marry.” *Id.* On the

second point, the court accepted that “reasonable grounds exist for WLAD to distinguish religious and secular nonprofits.” *Id.* at 1066. But the court questioned whether “the exemption may still be unconstitutional as-applied.” *Id.* at 1067. To avoid that prospect, the court turned to the ministerial exception. Limiting the religious exemption to instances when the ministerial exception also applies “provides a fair and useful approach for determining whether application of [the exemption] unconstitutionally infringes on Woods’ fundamental right to his sexual orientation and right to marry.” *Id.* at 1070. The case was remanded for “the trial court to determine whether staff attorneys can qualify as ministers and, consequently, whether Woods’ discrimination claim under WLAD must be barred.” *Id.*

So interpreted, WLAD is neither neutral nor generally applicable. *Woods* reduces WLAD’s religious exemption to the scope of the ministerial exception while leaving WLAD’s small-business exemption untouched. By exposing religious employers but not small businesses to non-discrimination claims, WLAD as construed in *Woods* “restricts practices because of their religious nature.” *Fulton*, 593 U.S. at 533. That result renders WLAD anything but neutral toward religion. Nor is WLAD

generally applicable when the statute “prohibits religious conduct,” namely applying religious criteria to the selection of employees for non-ministerial positions, “while permitting secular conduct that undermines the government’s asserted interests in a similar way,” namely applying otherwise prohibited criteria in selecting *all* employees for a small business. *Id.* at 534.

Unless WLAD survives strict scrutiny, it violates the Free Exercise Clause as applied to Union Gospel Mission.

B. WLAD Violates *Tandon’s* Most-Favored-Nation Principle.

WLAD also is not neutral or generally applicable as applied to Union Gospel Mission under the standard set forth in *Tandon*, which established a parallel framework for resolving free exercise claims. In *Tandon*, claimants challenged a COVID-era California statewide executive order restricting the number of people from different households that could gather for in-home religious worship. The Supreme Court held that “government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more

favorably than religious exercise.” 593 U.S. at 62. That is the situation here.

WLAD’s definition of *employer* “does not include any religious or sectarian organization not organized for private profit.” WASH. REV. CODE § 49.60.040(11). But *Woods* sharply limited WLAD’s religious exemption by concluding that it violates the Washington Constitution unless the employer also qualifies for protection under the ministerial exception. *See* 481 P.3d at 1069–70. Under this limiting construction, WLAD’s prohibition on employment discrimination, WASH. REV. CODE § 49.60.030(1)(a), thus prohibits Union Gospel Mission from selecting non-ministerial employees in harmony with its religious beliefs. But neither *Woods* nor any subsequent decision has modified the exemption for employers with fewer than eight employees. *Id.* § 49.60.040(11). By reducing the statute’s religious exemption to the bare scope of the ministerial exception while preserving in full the small-business exemption, Washington law “treat[s] ... comparable secular activity more favorably than religious exercise.” *Tandon*, 593 U.S. at 62. This disparate treatment “trigger[s] strict scrutiny under the Free Exercise Clause.” *Id.*

C. Strict Scrutiny Also Applies Under *Catholic Charities* to the Extent WLAD Grants a Denominational Preference to Small Religious Employers.

Disparate treatment of religious denominations triggers strict scrutiny under *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025). That is because “[t]he First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny.” *Id.* at 241. WLAD, as interpreted by the Washington Supreme Court, subjects religious organizations to differential treatment based on size by exempting religious employers with fewer than eight employees from the statute’s reach while applying with full force to larger religious organizations (when it comes to non-ministerial employees). To the extent such disparate treatment reflects a denominational preference for religious organizations that, for theological or other reasons, confine employment to a small handful of individuals, strict scrutiny applies on that basis as well.

D. WLAD Cannot Satisfy Strict Scrutiny as Applied to Union Gospel Mission.

WLAD as interpreted by the Washington Supreme Court “can survive strict scrutiny only if it advances ‘interests of the highest order’

and is narrowly tailored to achieve those interests.” *Fulton*, 593 U.S. at 541 (quoting *Lukumi*, 508 U.S. at 546). That test demands more than compiling government interests pitched “at a high level of generality.” *Id.* Rather than accepting “broadly formulated interests justifying the general applicability of government mandates,” the compelling interest test “scrutinize[s] the asserted harm of granting specific exemptions to particular religious claimants.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006); accord *Fulton*, 593 U.S. at 541. Properly applied, strict scrutiny asks “not whether the [state] has a compelling interest in enforcing its non-discrimination policies generally, but *whether it has such an interest in denying an exception to [Union Gospel Mission].*” *Fulton*, 593 U.S. at 541 (emphasis added). As for narrow tailoring, the government must demonstrate that “so long as [it] can achieve its interests in a manner that does not burden religion, it must do so.” *Id.*

Washington cannot meet that burden. It asserts that WLAD’s ban on LGBT discrimination in employment serves the compelling interests of advancing LGBT equality and preventing discrimination. But that interest, stated “at a high level of generality,” falls short of the “more

precise analysis” required by the First Amendment. *Id.* And Washington’s maintenance of a complete exemption for small businesses “undermines [its] contention that its non-discrimination policies can brook no departures.” *Id.* at 542. The state “offers no compelling reason why it has a particular interest in denying an exception to [Union Gospel Mission] while making [one] available to others.” *Id.*

Narrow tailoring is no less problematic because Washington has not tried to “achieve its interests in a manner that does not burden religion.” *Id.* at 541. If the state can adequately achieve employment equality while accommodating small businesses, it is unclear why it cannot similarly accommodate religious employers. There also is no indication that the Washington Supreme Court even attempted to narrowly tailor WLAD as applied to Union Gospel Mission. Instead, WLAD now imposes the maximum burden on religion that the Washington Supreme Court apparently believes is permissible under the Free Exercise Clause.

Keeping a complete exemption for small businesses while sharply restricting the exemption for religious employers may reflect Washington’s legal priorities. But on that view, “narrow tailoring must refer not to the standards of *Versace*, but to those of *Omar* the

tentmaker.” *Hill v. Colorado*, 530 U.S. 703, 749 (2000) (Scalia, J., dissenting). The narrow tailoring “standard ‘is not watered down’; it ‘really means what it says.’” *Tandon*, 593 U.S. at 65 (quoting *Lukumi*, 508 U.S. at 546).

Whether analyzed under *Fulton*, *Tandon*, or *Catholic Charities*, WLAD as interpreted by the Washington Supreme Court violates the First Amendment. *See Fulton*, 593 U.S. at 542; *Tandon*, 593 U.S. at 62; *Catholic Charities*, 605 U.S. at 241. The preliminary injunction requested by Union Gospel Mission should issue.

CONCLUSION

The district court judgment should be affirmed.

Respectfully submitted,

Steve Sandberg
David Andersen
Aaron Worthen
Brigham Young University
Office of General Counsel
109 MCDB
Provo, UT 84602
(801) 422-4636

/s/ Christopher A. Bates
Christopher A. Bates
R. Shawn Gunnarson
Alan Hurst
Jarom M. Harrison
Kristen Clarke
Kirton | McConkie
36 South State Street
Suite 1900
Salt Lake City, UT 84111
(801) 328-3600

Counsel for Amici Curiae

July 23, 2026

CERTIFICATE OF COMPLIANCE

I, Christopher A. Bates, hereby certify that:

1. This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(3) and Fed. R. App. P. 32(g)(1) because it contains 5,701 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f);
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook font, size 14.

July 23, 2026

/s/ Christopher A. Bates

Christopher A. Bates
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing motion on July 23, 2026 using the Ninth Circuit ACMS system, which will send notice of such filing to all registered ACMS users.

July 23, 2026

/s/ Christopher A. Bates

Christopher A. Bates
Counsel for Amici Curiae