No. 21-144

In the
Supreme Court of the United States

SEATTLE'S UNION GOSPEL MISSION,
Petitioner,

v.

MATTHEW S. WOODS,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Washington

BRIEF OF AMICUS CURIAE FIRST LIBERTY INSTITUTE IN SUPPORT OF PETITIONER

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First Liberty Institute is a nonprofit, public interest law firm dedicated to defending religious liberty for all Americans.[1] First Liberty provides pro bono legal representation to individuals and institutions of all faiths — Catholic, Jewish, Muslim, Native American, Protestant, the Falun Gong, and others.

As an amicus, First Liberty maintains an interest in preserving the freedom of all faith traditions to further their religious missions. The religious organizations we represent seek the freedom to operate in communities that share a common commitment to their religious beliefs and principles, independent of government control and intervention. One of the core features of the First Amendment is that the government must respect the autonomy of religious organizations. By ignoring every religious autonomy issue except for the ministerial exception, the opinion below threatens to severely curtail religious liberty throughout the state of Washington.

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[1] Attorneys from First Liberty Institute authored this brief as amicus curiae. No attorney for any party authored any part of this brief, and no one apart from amicus curiae made any financial contribution toward the preparation or submission of this brief. The parties were timely notified and consented in writing to the filing of this brief.

SUMMARY OF ARGUMENT

The Washington Supreme Court erred in concluding that the *only* First Amendment doctrine that could protect the employment decisions of the Seattle's Union Gospel Mission ("SUGM") was the ministerial exception. The court ignored all other First Amendment issues that could arise when the state threatens the ability of religious nonprofit organizations, including churches, synagogues, and mosques, to hire employees who share the organizations' religious beliefs. Most importantly, the court ignored the First Amendment's guarantee of religious autonomy and independence from government entanglement. The religious autonomy doctrine, rooted in both Religion Clauses, protects the right of churches and other religious organizations to decide for themselves matters of faith, doctrine, and governance. It prohibits state and federal governments from intruding into the internal operations of religious institutions or dictating how they must carry out their missions.

Because of the statutory religious exemption to Title VII, which allows religious organizations to make employment decisions based upon their religious beliefs, courts have rarely needed to address the issue of whether states can lawfully require religious organizations to make employment decisions that violate or conflict with their religious tenets. Under the opinion below, however, the state may require a church to hire someone opposed to its religious mission, and such a mandate would raise no federal constitutional concerns if the position at issue is non-ministerial. This

is an exceptionally broad holding that invades the autonomy of religious organizations of all faiths in the state.

The ministerial exception is an important doctrine protecting churches from state interference, but it is not the only protection the Religion Clauses afford religious organizations. At the very least, the conclusion that the state's religious nonprofit exemption violates the state's constitution when applied to claims that invoke the right to "a sexual orientation" raises significant issues about excessive government entanglement and religious autonomy that this Court should consider.

The opinion below misread this Court's cases to erroneously conclude that the ministerial exception was the only federal constitutional doctrine available to protect SUGM. Only this Court can step in to correct the error and ensure that states abide by the First Amendment's vigorous protection of religious liberty.

ARGUMENT

I. The Opinion Below Rests Entirely on an Erroneous Reading of this Court's Ministerial Exception Cases.

This case presented the highest court in Washington with a state law question that largely parallels the federal law question at issue in the Supreme Court's *Amos* decision. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987). In *Amos*, this Court considered whether the statutory religious employer exemption to federal employment discrimination law

violated the federal Constitution. *Id.* at 330. Here, the state court was asked whether a statute that exempts religious nonprofit employers from the state's employment discrimination laws violates the state's constitution.[2] *Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060 (Wash. 2021).

The majority opinion below began its analysis using a state law framework for evaluating the constitutionality of the exemption and then abruptly changed course during its "as applied" analysis. *Id.* at 1067. At that point, the opinion locked onto this Court's First Amendment ministerial exception cases and drew two false conclusions from those cases that only this Court can correct. *Id.* at 1067–70.

The state court's opinion effectively concluded that the ministerial exception represents both a ***ceiling*** and a ***floor*** to religious liberty protections available in the state. First, the court erroneously assumed that the ministerial exception rationale could provide the *only* reasonable grounds for exempting religious non-profit employers from the state's employment law. *See id.* at 1067. Second, the court erroneously assumed that the ministerial exception was the *only* constitutional doctrine that could protect a religious organization from a lawsuit like this one. *See id.* at 1067–70.

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[2] The cases do have notable differences. For instance, *Amos* primarily concerned an Establishment Clause challenge. 483 U.S. at 330. Here, the state constitution's privileges and immunities clause is at issue. *Woods*, 481 P.3d at 1065. Still, both cases concern the lawfulness of statutes exempting religious employers from certain employment laws.

A. The Washington court erred by construing the ministerial exception as a ceiling, looking only to the ministerial exception to decide whether reasonable grounds supported the statutory exemption for religious nonprofits.

Washington state's employment discrimination statute expressly states that it does not apply to religious nonprofits. Wash. Rev. Code Ann. § 49.60.040(11). In the trial court, the plaintiff brought a facial and an as applied challenge to the statute, arguing that the religious nonprofit exemption violated the privileges and immunities clause of the state constitution. The court framed the state law question as follows: "We apply a two-pronged test to determine the constitutionality of the religious employer exemption under our article I, section 12: (1) whether RCW 49.60.040(11) granted a privilege or immunity implicating a fundamental right and (2) if a privilege or immunity was granted, whether the distinction was based on reasonable grounds." *Woods*, 481 P.3d at 1065.

When the state court considered the "facial" challenge to the religious nonprofit exception, the court appropriately concluded that "reasonable grounds exist for WLAD [Washington's Law Against Discrimination] to distinguish religious and secular nonprofits." *Id.* at 1066. It listed three reasons for this conclusion. First, the religious nonprofit exemption's "inclusion in the enacting legislation and its continued existence demonstrate that the legislature plainly intended to include the exemption in WLAD." *Id.* at 1067. Second,

the distinction furthers the "state's protection of religion" and religious organizations' "right to religious liberty" under the state's constitution. *Id.* Third, the exemption serves the important function of "avoid[ing] state interference with religion." *Id.*

On this point, the majority opinion relied on a previous Washington Supreme Court case in which five justices agreed that "article I, section 11 [of the state's constitution] and avoidance of state interference with religion constitute real and substantial differences between religious and secular nonprofits, making it 'reasonable for the legislature to treat them differently under WLAD.'" *Id.* (quoting *Ockletree v. Franciscan Health Sys.*, 317 P.3d 1009, 1017 (Wash. 2014) (plurality)). The lead *Ockletree* opinion expressly adopted the reasoning of *Amos*. 317 P.3d at 1017–18. It explained that the U.S. Supreme Court "recognized that exemptions for religious organizations from civil discrimination suits protect religious freedom by avoiding state interference with religious autonomy and practice" and "upheld the exemption on the basis that it 'is rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions.' . . . We agree with this reasoning." *Id.* (citing *Amos*, 483 U.S. at 336, 339).

Yet, when the *Woods* court approached the same question for the as applied challenge, it did not consider whether any of these reasons could support reasonable grounds as applied to this case. The court's opinion instead considered only one factor – whether the ministerial exception doctrine applies. No

explanation is given for ignoring all other considerations. The majority simply writes: "To determine whether reasonable grounds exist to support a constitutional application of RCW 49.60.040(11)(a)'s exemption in this case, we look to the ministerial exception outlined by the United States Supreme Court."[3] *Woods*, 481 P.3d at 1067. Thus, the court's opinion assumes that the ministerial exception rationale can provide the only possible "reasonable grounds" to justify the religious nonprofit exemption as applied, despite acknowledging at least three other possibilities just a few paragraphs earlier.

Justice Stephens' opinion concurring in part and dissenting in part criticizes the logic of the majority opinion on this point.[4] "The majority errs by instead aligning the statutory exemption with the ministerial exception developed under First Amendment doctrine." *Id.* at 1079 (Stephens, J., dissenting in part). Justice Stephens points out that this Court's ministerial exception jurisprudence presents an entirely different question from "whether the Washington legislature articulated reasonable grounds for granting religious employers a categorical privilege in RCW 49.60.040(11)." *Id.* at 1079-80 (Stephens, J., dissenting in part).

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[3] *See also Woods*, 481 P.3d at 1067 ("Because WLAD contains no limitations on the scope of the exemption provided to religious organizations, we seek guidance from the First Amendment as to the appropriate parameters of the provision's application.").

[4] Amicus disagrees with Justice Stephens' conclusions, but he does appropriately note some logical flaws in the majority's opinion.

The court erred by concluding that the ministerial exception doctrine could provide the only reasonable grounds for the statutory exception, and ignoring state and federal religious liberty grounds such as those raised in *Ockletree* and *Amos*. *Ockletree*, 317 P.3d at 1017-18; *Amos*, 483 U.S. at 336, 339. The lower court compounded this error by its misreading of the ministerial exception, which resulted in the court improperly taking other available federal constitutional defenses off the table.

B. The Washington court erred by construing the ministerial exception as a floor, ignoring all other potential constitutional defenses – including the First Amendment right to religious autonomy.

The opinion again and again erroneously assumes that the only federal constitutional defense that could be available to SUGM, or other religious nonprofits, is the ministerial exception. *See, e.g., Woods*, 481 P.3d at 1062 ("In enacting WLAD, the legislature created a statutory right for employees to be free from discrimination in the workplace while allowing employers to retain their constitutional right, as constrained by state and federal case law, to choose workers who reflect the employers' beliefs *when hiring ministers*.") (emphasis added). The opinion repeatedly assumes the ministerial exception is the only constitutional right supporting SUGM when addressing "competing rights." *Id.* at 1070. ("To properly balance the competing rights advanced by Woods and SUGM, we apply the federal ministerial

exception test established in *Hosanna-Tabor* and clarified in *Our Lady of Guadalupe*."); *id.* at 1069 ("Recognizing the need for a careful balance between the religious freedoms of the sectarian organization and the rights of individuals to be free from discrimination in employment, the Supreme Court has fashioned the ministerial exception to the application of antidiscrimination laws in accord with the requirements of the First Amendment.").

Of course, this Court has never held that the ministerial exception is the only protection available for religious nonprofits faced with employment law claims. The ministerial exception itself arises from the broader principle of religious autonomy, the guarantee of independence in matters of faith, doctrine, and governance that is rooted in both religion clauses of the First Amendment. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060-61 (2020). The government can unconstitutionally violate religious liberty rights in other ways beyond intrusion into the church-minister relationship. *See, e.g., N.L.R.B. v. Cath. Bishop of Chicago*, 440 U.S. 490, 502 (1979). But the majority opinion below ignores the possibility that SUGM could raise other federal constitutional defenses.[5]

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[5] The dissent acknowledges that there could be other constitutional defenses raised beyond the ministerial exception, pointing to other potential Free Exercise claims. "A remaining question is whether SUGM should also be able to pursue other defenses grounded in claims of religious freedoms." *Woods*, 481 P.3d at 1081 (Stephens, J., dissenting in part). Amicus disagrees as to the dissent's ultimate conclusion on these issues, but he again points out a logical flaw in the majority's reasoning.

Consequently, the majority opinion remanded the case only for consideration of whether the ministerial exception applies. "Accordingly, we reverse and remand the case to the trial court to determine whether SUGM meets the ministerial exception." *Woods*, 481 P.3d at 1070. By doing so, the court functionally instructed the lower court on remand to ignore all other constitutional defenses available to SUGM. The opinion therefore threatens SUGM's ability to assert its First Amendment right to religious autonomy or its right to be free from excessive government entanglement in its internal affairs. The application of these constitutional defenses are key issues that SUGM is entitled to litigate if the statutory defense is no longer available. A state supreme court has no right to take it off the table and prematurely remove SUGM's right to invoke it. This Court should grant the petition to correct the erroneous misunderstanding of federal law that the ministerial exception is the only First Amendment doctrine that could protect religious employers.

II. The Religious Autonomy Doctrine Extends Beyond the Ministerial Exception to Protect the Independence of Religious Organizations Like SUGM.

By assuming that the ministerial exception was the only constitutional defense SUGM could invoke, the Washington Supreme Court ignored a long line of federal cases highlighting the importance of the religious autonomy doctrine. Perhaps the majority opinion, like the dissenting opinion, prematurely dismissed all other constitutional defenses on the false assumption that *Smith* would preclude their

applicability. *See Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). However, just as *Smith* is not applicable to the ministerial exception, it also is not applicable to its parent doctrine, religious autonomy.

A. The Religion Clauses demand application of the religious autonomy doctrine, which broadly precludes the government from interfering in matters of church governance.

In *Hosanna-Tabor*, this Court stated unanimously that the ministerial exception was rooted in both Religion Clauses of the First Amendment. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 184 (2012) ("The Establishment Clause prevents the government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own."). In *Our Lady of Guadalupe*, the Court explained that the ministerial exception is an arm of the broader religious autonomy doctrine. 140 S. Ct. at 2060 ("The constitutional foundation for our holding [in *Hosanna-Tabor*] was the general principle of church autonomy to which we have already referred: independence in matters of faith and doctrine and in closely linked matters of internal government."); *see also Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 655 (10th Cir. 2002)) (concluding that church autonomy doctrine is based on the Religion Clauses and rooted in a "long line of Supreme Court cases"). The ministerial exception is just "one component" of religious autonomy. *Our Lady*

of Guadalupe, 140 S. Ct. at 2060. It is precisely because religious organizations have freedom over matters of faith and doctrine that they must have the ability to freely select the ministers who disseminate that faith and doctrine. *Id.*; *see also Amos*, 483 U.S. at 341 (1987) (Brennan, J., concurring) (writing "religious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to: 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'") (quoting 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)). Thus, the ministerial exception flows out of broader religious autonomy principles that prevent state interference.

Such improper state interference can sometimes arise from the mere process of judicial scrutiny into religious decisions. *See N.L.R.B. v. Catholic Bishop of Chi.*, 440 U.S. 490, 502 (1979) ("It is not only the conclusions that may be reached by [the government] which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."); *Amos*, 483 U.S. at 343 (concluding that courts should grant deference to religious organizations to ensure that government intrusion does not "chill" free exercise activity); *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976) (church has authority to resolve internal governance disputes); *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952) (state action attempting to transfer church authority to another violates Free Exercise Clause).

This Court's religious autonomy decisions "constitutionalized two related principles: first, that civil courts should not decide ecclesiastical questions; and second, that churches have a First Amendment right to be free from state interference in their internal affairs." Michael W. McConnell & Luke W. Goodrich, *On Resolving Church Property Disputes*, 58 ARIZ. L. REV. 307, 316 (2016); *see also Amos*, 483 U.S. at 345–46 (Brennan, J., concurring) ("Concern for the autonomy of religious organizations demands that we avoid the entanglement and the chill on religious expression that a case-by-case determination would produce. We cannot escape the fact that these aims are in tension."); *Hall v. Baptist Memorial Health Care Corp.*, 215 F.3d 618, 626 (6th Cir. 2000) ("[T]he First Amendment does not permit federal courts to dictate to religious institutions how to carry out their religious missions or how to enforce their religious practices.").

The religious autonomy doctrine grants broad protections to religious organizations like SUGM to make internal decisions about its faith, doctrine, and governance without government interference. Yet, the Washington Supreme Court would overlook government infringements into faith and doctrine, as long as the minister-church relationship was not impaired.

B. *Smith* does not impact the application of the church autonomy doctrine.

Contrary to the dissent's implications, *Smith* does not limit religious autonomy protections. *Woods*, 481 P.3d at 1081 (Stephens, J., dissenting in part) ("WLAD is a neutral law of general applicability that survives

constitutional scrutiny. Courts may apply WLAD to a religious employers' alleged employment discrimination except in the narrow context of ministerial employment.") Religious autonomy protections, such as the ministerial exception, are required exceptions to otherwise generally applicable rules. In *Smith*, the Court abandoned its previous practice of applying strict scrutiny to neutral government laws of general applicability that burdened religious practice. 494 U.S. at 879. However, the Court never suggested that abandoning the strict scrutiny standard in *Smith* impacted its church autonomy precedents. Rather, the Court cited *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969), *Kedroff*, and *Milivojevich* to affirm the rule that "[t]he government may not … lend its power to one or the other side in controversies over religious authority or dogma." *Id.* at 877.

Moreover, the Court outright rejected the argument that its decision in *Smith* "precludes recognition of a ministerial exception." *Hosanna-Tabor*, 565 U.S. at 190 (reasoning that even though the federal law at issue "is a valid and neutral law of general applicability," it did not overcome the school's religious autonomy rights). The Court distinguished between "government regulation of only outward physical acts" and "government interference with an internal church decision that affects the faith and mission of the church itself." *Id.* at 171. Because the ministerial exception flows out of the church autonomy doctrine, neither are limited by *Smith* and therefore both can be raised by SUGM.

III. The Court Should Grant the Petition to Ensure that Lower Courts Properly Consider the Religious Autonomy Doctrine.

The Washington Supreme Court may have misinterpreted this Court's recent focus on the ministerial exception as an instruction that the ministerial exception is the only constitutional doctrine applicable to employment law claims against religious organizations. What the state court failed to understand is that most employment discrimination claims arise under Title VII or a similar state analogue with an exception allowing religious organizations to make employment decisions based upon their religious beliefs. *See* 42 U.S.C. §§ 2000e-1(a), 2000–2(e)(1).[6] The existence of Title VII's statutory religious exemption has reduced the need for federal courts to address constitutional conflicts that arise when the government pressures religious organizations to make employment decisions that violate or conflict with their religious

[6] *See Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) ("Congress intended the explicit exemptions to Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices"). Because the exemption provides that religious employers may consider "religion" and Title VII defines "religion" broadly to include "all aspects of religious observance and practice, as well as belief," 42 U.S.C. § 2000e(j), therefore, religious organizations may choose to "employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little*, 929 F.2d 944 at 951; *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198-200 (11th Cir. 1997).

tenets.[7] The Washington Supreme Court's opinion, however, allows the state to compel a church to hire someone opposed to its religious beliefs or mission. The opinion held that the religious nonprofit exemption was unconstitutional at least as applied to the plaintiff's claim of sexual orientation discrimination, noting that there may be circumstances in which the religious nonprofit exemption is still constitutional. *Woods*, 481 P.3d at 1065 n.2.

This is a strange outcome. The purpose of exempting religious nonprofits is either to allow religious organizations to work alongside others who share the same set of religious beliefs (co-religionists) or to prevent unconstitutional government encroachment into the internal operations of religious organizations or both. Yet the opinion undercuts both rationales. It threatens religious nonprofits' ability to work with co-religionists when it comes to issues of sexual morality – issues in which many faiths hold strong views. According to the opinion below, however, not only can the state meddle in the internal operations of religious organizations, including churches, synagogues, and mosques, regarding standards of moral conduct for employees, but such government interference with the internal operations of religious nonprofit organizations would raise no federal constitutional concerns as long as the position at issue is non-ministerial. This is an exceptionally broad

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[7] *See Amos*, 483 U.S. at 339 (concluding "the statute effectuates a more complete separation of the two [church and state] and avoids the kind of intrusive inquiry into religious belief that the District Court engaged in in this case").

holding that has the potential to invade the autonomy of religious organizations of many faiths across the state.[8]

As government continues to expand its reach into all aspects of society, and many state and local governments seek to intrude ever more into the internal operations of religious organizations, the religious autonomy issues will only increase. Lower courts need guidance. Without clarity on these issues, state courts and legislatures will continue to misunderstand their constitutional duty to protect the freedom of religious organizations – narrowing it only to the right to choose ministers.

The Court should take this opportunity to explain that its focus on the ministerial exception does not mean that the ministerial exception is the only constitutional constraint on state regulation of religious organization's employment decisions. Only this Court can ensure that First Amendment religious autonomy principles are applied by lower courts.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari or grant, vacate, and remand to consider issues of religious autonomy and other available constitutional defenses.

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[8] The majority itself acknowledges the breadth of religious nonprofits that could be impacted: "universities, elementary schools, and houses of worship. . . Catholic Community Services, Jewish Family Services, CRISTA Ministries, YMCA, YWCA, Salvation Army, and St. Vincent De Paul, as well as churches, synagogues, and mosques." *Woods*, 481 P.3d 1065 n.2.

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