

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 BILLY GRAHAM EVANGELISTIC
ASSOCIATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The **Billy Graham Evangelistic Association** (BGEA) was founded by Billy Graham in 1950 and, continuing the lifelong work of Billy Graham, exists to support and extend the evangelistic calling and ministry of Franklin Graham by proclaiming the Gospel of the Lord Jesus Christ to all it can by every effective means available to it and by equipping the church and others to do the same. BGEA ministers to people around the world through a variety of activities including prayer rallies, evangelistic festivals and celebrations, television and internet evangelism, the Billy Graham Rapid Response Team, the Billy Graham Training Center at the Cove, and the Billy Graham Library. Through its various ministries and in partnership with others, BGEA strives to represent Jesus Christ in the public square, to cultivate prayer, and to proclaim the Gospel. BGEA believes that, to fulfill its mission, it is essential that its employees share its religious beliefs and acknowledge that those beliefs are put into action through BGEA in pursuit of its religious mission and objectives. Accordingly, BGEA only hires coreligionists.

¹ No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for Petitioner and Respondent were timely notified of this brief as required by Supreme Court Rule 37.2, and all parties consented to its filing.

SUMMARY OF THE ARGUMENT

Proclaiming the Gospel of Jesus Christ is the focus of everything BGEA does, as Christ has called His followers to go and “make disciples of all nations.” Matthew 28:19. BGEA believes that this calling extends to all of its employees—from accountants to event planners to Rev. Franklin Graham himself—because every employee is a member of the Body of Christ. 1 Corinthians 12:12–27. This common calling unites, empowers, and defines BGEA, and should motivate the work of each of its employees. Colossians 3:23–24.

The First Amendment to the United States Constitution protects BGEA’s freedom to define itself in this way. Religious organizations like BGEA have generally enjoyed the right to condition employment on adherence to the tenets of their faith. But that right is under attack by those who would seek to change BGEA’s religious beliefs, or at least cabin them to the four walls of a church or a particular job description. Like both the Respondent and the Washington Supreme Court, they seek to use antidiscrimination laws to change religious organizations like Petitioner and BGEA from the inside out—one lawsuit and one hire at a time. *Seattle’s Union Gospel Mission v. Woods* is the latest and most perilous front line in this attack. And this Court is the last line of defense.

This Court should grant review of this case and uphold both religious organizations’ right to hire coreligionists and the necessary deference such

organizations should enjoy in their religious hiring decisions.

ARGUMENT

I. The Billy Graham Evangelistic Association: A Community Dedicated to the Collective Expression and Propagation of the Gospel of Jesus Christ

BGEA’s mission is “proclaiming the Gospel of the Lord Jesus Christ to all we can by every effective means available.”² BGEA wants to expose as many people as possible to the truth that God loves them, that God has provided atonement for their sin, and that there is a way to have fellowship and peace with God, through Jesus Christ. 1 Corinthians 15:3; 2 Corinthians 5:21. It accomplishes this mission as a community, working in communion as members of the Body of Christ, with each member called to fill a particular role, 1 Corinthians 12:4–11, and all called to reflect the sacrificial love of Jesus Christ, Philippians 2:5–11.

A shared vision for BGEA’s mission motivates and empowers each of its employees to spread the Gospel in both word and deed, both through their professional work for BGEA and in their private lives. Indeed, a core tenet of BGEA is that “the ministry of evangelism (sharing and proclaiming the message of salvation only possible by grace through faith in Jesus Christ) and discipleship (helping followers of Christ

² Billy Graham Evangelistic Association, *Mission Statement*, <https://billygraham.org/about/what-we-believe/> (last modified June 24, 2020).

grow up into maturity in Christ) is a responsibility of all followers of Jesus Christ.”³ BGEA thus encourages and facilitates opportunities for all of its employees, no matter their title or function, to serve directly in the evangelistic ministries, events, and programs of BGEA. And at the same time, BGEA strongly believes that no gift, role, or calling in the Body of Christ, and therefore among its employees, is any less important than any other, as Scripture explicitly provides in Romans 12:4–8.

BGEA’s mission to share the Gospel likewise impacts even the most mundane office task at BGEA. In fact, every employment position at BGEA exists because the ministry determined that it was somehow necessary or helpful in supporting the organization’s mission to proclaim the Gospel of Jesus Christ. That religious mission is BGEA’s explicit purpose, and the sole reason it hires any individual for any position is to maximize its effectiveness in pursuit of that purpose. And this belief is represented consistently in BGEA’s organizational documents. For example, every position has the same basic requirements, including that the individual called to serve in a given role affirms that the purpose of their employment with BGEA is to further its religious mission, and that they are prepared to do the work accordingly. Each role and every task is purposed for the furtherance of the Gospel, and accordingly, has eternal significance.

³ Billy Graham Evangelistic Association, *Billy Graham Evangelistic Association Statement of Faith*, <https://billygraham.org/about/what-we-believe/> (last modified June 24, 2020) (citing Matthew 28:18–20; Acts 1:8; Romans 10:9–15; 1 Peter 3:15).

Colossians 3:17 (“And whatever you do, in word or deed, do everything in the name of the Lord Jesus.”); Colossians 3:23-24 (“Whatever you do, work heartily, as for the Lord and not for men, knowing that from the Lord you will receive the inheritance as your reward. You are serving the Lord Christ.”). Thus, sharing in BGEA’s mission and beliefs makes BGEA’s employees more effective, motivates and sustains them, and defines the BGEA community. Those beliefs are then reinforced and that community further strengthened by daily devotions and prayer.

BGEA builds this community and furthers its mission one hire at a time, and because its mission, grounded in Scripture and the Gospel of Jesus Christ, motivates and pervades everything BGEA does, it necessarily only hires coreligionists.

II. The First Amendment Protects BGEA’s Right to Define Itself by Employing Coreligionists.

The First Amendment to the United States Constitution protects BGEA’s right to define itself by hiring coreligionists. This Court has long recognized the First Amendment as guaranteeing religious organizations’ right to hold religious beliefs, practice religious principles, and teach religious doctrine. *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 728 (1871). Furthermore, the free exercise clause guarantees religious organizations the right “to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); *accord Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060 (2020)

(quoting *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012)).

In recognition of these principles and the autonomy of religious organizations, nondiscrimination statutes such as Title VII of the Civil Rights Act and Washington’s Law Against Discrimination contain exceptions allowing religious organizations to condition employment on an employee’s status as a coreligionist. 42 U.S.C. 2000e-1(a); RCW 49.60.040(11). And federal courts have recognized that when religious organizations make such religious hiring decisions they are engaging in “what is ultimately an internal administrative matter of a religious activity.” *Feldstein v. Christian Science Monitor*, 555 F. Supp. 974, 978 (D. Mass. 1983); accord *Little v. Wuerl*, 929 F.2d 944, 948 (3d Cir. 1991) (“[A]ttempting to forbid religious discrimination against non-minister employees where the position involved has any religious significance is uniformly recognized as constitutionally suspect, if not forbidden.”); *Killinger v. Samford Univ.*, 113 F.3d 196, 200–01 (11th Cir. 1997) (holding that Title VII of the Civil Rights Act “allows religious institutions to employ only persons whose beliefs are consistent with the employer’s when the work is connected with carrying out the institution’s activities”). As such, interference by the state, acting through the courts, in a religious organization’s religion-based hiring decision, is prohibited by the Free Exercise Clause of the First Amendment.

What is more, civil courts are not equipped to second-guess a religious organization’s determination of whether a given employee or applicant is a

coreligionist, or whether and to what degree a given belief or tenant should impact a hiring decision. See *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 450 (1969) (holding the government cannot interpret “church doctrines and the importance of those doctrines to the religion”); *New York v. Cathedral Acad.*, 434 U.S. 125, 133 (1977) (noting the court can’t interpret “what does or does not have religious meaning”); *Our Lady of Guadalupe*, 140 S. Ct. at 2069–70 (Thomas, J., concurring) (“[t]he Religion Clauses require civil courts to defer to religious organizations’ good-faith claims that a certain employee’s position is ‘ministerial’”); *Little*, 929 F.2d at 948 (refusing to review a church’s hiring decision because it would force the Court to interpret church teachings and whether the plaintiff had violated them); *Maguire v. Marquette University*, 627 F. Supp. 1499, 1505–07 (E.D. Wis. 1986), *vacated in part on other grounds*, 814 F.2d 1213 (7th Cir. 1987) (holding that judicial involvement in the hiring process of a university’s Catholic theology department, even to determine whether the school chose to employ adherents to a certain religion, would represent “an excessive government entanglement with religion” (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 613 (1971))). Nor should civil courts analyze whether the hiring of coreligionists is necessary to the accomplishment of a religious organization’s mission. See *Presbyterian Church*, 393 U.S. at 449 (“First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.”); *Curay-Cramer v.*

Ursuline Acad. of Wilmington, 450 F.3d 130, 141 (3d Cir. 2006) (holding courts should avoid questions of sincerity of religious nonprofit’s “religious justification for an employment decision”). Indeed, “[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.” *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring).

A religious organization’s ability to define itself by hiring coreligionists is also protected by the Establishment Clause. The Establishment Clause “proscribes governmental ‘coercion of religious orthodoxy,’” *Our Lady of Guadalupe*, 140 S. Ct. at 2070, n. 31 (Thomas, J., concurring) (quoting *American Legion v. Am. Humanist Assn.*, 139 S. Ct. 2067, 2093 (2019) (Thomas, J., concurring)), including State action that would create excessive entanglement with religion, *Lemon*, 403 U.S. at 613; *see also Little*, 929 F.2d at 949 (observing that court review of plaintiff-employee’s religious discrimination claim would require inquiry into religious mission and thereby involve excessive entanglement). “[D]etermining whether a person is a ‘co-religionist’ . . . would risk judicial entanglement in religious issues.” *Our Lady of Guadalupe*, 140 S. Ct. at 2068–69 (majority opinion).

III. The Supreme Court of Washington's Decision in *Seattle's Union Gospel Mission* Threatens BGEA's First Amendment Rights.

In *Corporation of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, this Court described how nondiscrimination statutes threatened religious organizations like BGEA, recognizing that “it 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.” 483 U.S. at 336. In *Seattle's Union Gospel Mission*, the Washington Supreme Court underscored the point and even brought some of those threats to fruition. Specifically, the Court narrowed the religious exemption to Washington's Law Against Discrimination to the bounds of the ministerial exception, in effect holding that SUGM had no right to condition employment of non-ministers on adherence to its religious beliefs. *Woods v. Seattle's Union Gospel Mission*, 197 Wash. 2d 231, 250–51 (2021) (Pet. App. 19a–20a). The Washington Supreme Court thereby rejected the right to hire coreligionists recognized by federal law and six of the circuit courts of appeals. See 42 U.S.C. 2000e-1(a); *Little*, 929 F.2d at 945–46 (3d Cir.); *Curay-Cramer*, 450 F.3d at 141 (3d Cir.); *Kennedy v. St. Joseph's Ministries, Inc.*, 657 F.3d 189, 196 (4th Cir. 2011); *EEOC v. Mississippi Coll.*, 626 F.2d 477, 485 (5th Cir. 1980); *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000); *Spencer v. World Vision, Inc.*, 633 F.3d 723, 731–32 (9th Cir. 2011) (per curiam) (O'Scannlain, J., concurring); *id.* at 742 (Kleinfeld, J., concurring with

Judge O’Scannlain); *Killinger*, 113 F.3d at 200–01 (11th Cir.).

As a result, SUGM could now be compelled by the state, acting through the courts, to hire an applicant who not only opposes its religious beliefs, but openly seeks to change them. This result interferes with SUGM’s independence to form a community of believers to share the Gospel and thereby define itself. *See Our Lady of Guadalupe*, 140 S. Ct. at 2060. “[W]hen it comes to the expression and inculcation of religious doctrine, there can be no doubt that the messenger matters.” *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). The ramifications of this error extend beyond SUGM. They threaten BGEA and all similar religious organizations.

BGEA pursues its mission to proclaim the Gospel of the Lord Jesus Christ as a religious community motivated and defined by the shared religious beliefs of its employees. The Washington Supreme Court’s decision would force religious organizations to choose between hiring employees that could hinder or even undermine a religious mission or risking exposure to lawsuits, damages, injunctive relief, and attorneys’ fees for hiring coreligionists. BGEA’s mission to proclaim the Gospel would be hampered by any employee who did not share that same vision. Furthermore, without coreligionist protections, in the context of an organization like BGEA, where there is an express religious motivation for every task, and every employee is actively involved in regular prayer and religious devotion and is encouraged to participate in any and all of the ministry programs beyond the scope of their direct responsibilities,

BGEA could be forced to hire someone opposed to or even offended by BGEA's religious expression. BGEA believes that the work of Christian evangelism is primarily a spiritual endeavor, requiring that those engaged in its work be unified in belief, united in prayer, and striving together with focused purpose under the empowerment of the Holy Spirit. Colossians 1:28–29. Government interference in hiring decisions for any role in its ministry would have a deleterious impact on BGEA's effectiveness, and the very real threat of a “substantial potential for chilling religious activity” is undeniable. *Amos*, 483 U.S. at 345 (Brennan, J., concurring).

The Washington Supreme Court's reasoning would also threaten BGEA's First Amendment rights because its sole reliance on and understanding of the ministerial exception invites courts to meddle in religious organizations' religious affairs. *But see Amos*, 483 U.S. at 339 (majority opinion) (holding that the district court should not have analyzed nexus between the job at issue and the subject group's religious beliefs). Rather than deferring to a religious organization to determine who in fact qualifies as a coreligionist, the Washington Supreme Court strictly limited religious organizations' First Amendment rights to the ministerial exception. *Woods*, 197 Wash. 2d at 250–51 (Pet. App. 20a). Yet, it is clear from the stifled rubric employed by the Washington Supreme Court, that exclusive reliance on judicial application of the ministerial exception would severely burden BGEA's hiring and undermine its mission.

BGEA's beliefs and interpretations of Scripture as relates to its employees' callings, missions, and

motivations would be overruled by judicial assessment of such considerations as a person's title, whether there was any duty of the person to nurture development of faith, or whether the organization was "principally responsible for the spiritual lives of its members." *Id.* at 251–52 (Pet. App. 21a). Indeed, "it 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.

Finally, the Washington Supreme Court's decision highlights another threat to the First Amendment rights of religious organizations like BGEA—courts that are hostile to religious autonomy in general or to certain religious beliefs in particular. The majority's exclusive reliance on and application of the ministerial exception evidences an unwritten premise that religious organizations' First Amendment rights must take a back seat to the "right to one's sexual orientation as manifested as a decision to marry." *Woods*, 197 Wash. 2d at 246 (Pet. App. 14a). Justice Yu's concurring opinion goes even further by mischaracterizing SUGM's right to hire coreligionists as a "right to discriminate," imposing on SUGM Justice Yu's own presumptions of what qualify as religious versus "nonreligious duties," and urging religious organizations to apply their faith to hiring decisions only when "absolutely necessary and grounded in sound reason and purpose." *Id.* at 253–54 (Yu, J., concurring) (Pet. App. 24a–25a). Yet, it is not for a court to decide what religious beliefs a religious organization may require its employees to share and live out, or when such requirements are "absolutely necessary" and have "reason and purpose." *See*

Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n, 138 S. Ct. 1719, 1731 (2018) (“The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” (quoting *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993))). Thus, this Court’s intervention is also necessary to counter the threat posed by similarly hostile courts—a threat to which the coreligionist doctrine would provide a reliable shield.

CONCLUSION

Every employee of BGEA is a member of the Body of Christ and a minister of Christ in the public square. This common belief unites and defines BGEA and empowers it to accomplish its mission. Yet, the reasoning of the Washington Supreme Court would undermine BGEA’s right and ability to hire only those who share in and strive to accomplish its mission. Accordingly, the petition for writ of certiorari should be granted.

Respectfully submitted,

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