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SUPREME COURT OF THE STATE OF WASHINGTON

CERTIFICATION FROM WESTERN DISTRICT OF WASHINGTON,
UNITED STATES DISTRICT COURT

IN

LARRY C. OCKLETREE,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM, a Washington Corporation, d/b/a
ST. JOSEPH HOSPITAL, and JOHN AND JANE DOE(S) 1-10

Defendants.

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SUPREME COURT OF
STATE OF WASHINGTON
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AMICI CURIAE BRIEF OF PACIFIC NORTHWEST CONFERENCE
OF THE UNITED METHODIST CHURCH, OLYMPIA DIOCESE OF
THE EPISCOPAL CHURCH, AND PRESBYTERY OF SEATTLE OF
THE PRESBYTERIAN CHURCH USA

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I. INTRODUCTION

Amici Curiae submit this brief in support of the Defendant Franciscan Health System (hereafter, “Franciscans”), responding to the questions certified to this Court by the Hon. Ronald B. Leighton. The Amici assert that certain religious exemptions from civil frameworks for religious non-profits are necessary and proper under the Washington State Constitution in order to preserve religious freedom and to prevent government interference in religious affairs.

II. IDENTITY AND INTEREST OF AMICI

Amici herein are the congregations of religious faithful organized under the Pacific Northwest Conference of the United Methodist Church, the congregations organized under the Olympia Diocese of the Episcopal Church, and the congregations organized under the Presbytery of Seattle of the Presbyterian Church USA (hereafter, collectively, “the Congregations”).

The Congregations serve the religious needs of their congregants, provide a physical place of religious worship, engage in community support and charity, carry out the religious mission of their faiths, and foster the entire religious life of their faithful.

~~The Congregations are non-profit religious organization, many of~~
whom employ various staffs of between eight to fifteen persons and

operate under the religious non-profit exemption to the Washington Law Against Discrimination (hereafter, WLAD), RCW 49.06 *et seq.* Thus, the Congregations may employ more than eight persons without submitting to the prospect of litigation, defense costs, administrative process, record keeping and additional burdens which would divert limited financial and human resources, impact their ability to minister, decrease autonomy, determine their internal order, and to interfere with their ability enact their religious missions as they see them to be.

WLAD is a civil framework designed for the operation of secular businesses and is not suited to or appropriate to regulate the functioning of a religious organization, a fundamentally different organization than a secular for-profit business.

The Congregations do not support the right to discriminate on the bases of gender, age, disability, or other improper basis, nor do they seek to be free to so discriminate. The Congregations do seek to avoid the crippling financial, administrative, pastoral, and internal burdens that are necessarily incumbent with the imposition of a civil framework such as WLAD to their unique and constitutionally protected and guaranteed place in this State.

III. CERTIFIED QUESTIONS

1. The Washington Law Against Discrimination excludes

religious non-profit organizations from its definition of “employer” (Wash. Rev. Code 49.60.040(11)). Such entities are therefore facially exempt from the WLAD’s prohibition of discrimination in the workplace. Does this exemption violate Wash. Const. Article 1, sect 11 or section 12?

2. If not, is Wash Rev. Code 49.60.040(11)’s exemption unconstitutional applied to an employee claiming that the religious non-profit organization discriminated against him for reasons wholly unrelated to any religious purpose, practice or activity?

IV. SUMMARY OF ARGUMENT

Religious liberty is protected under both the Washington and United States Constitutions; the State cannot offer less religious liberty than is demanded by the United States Constitution. WLAD excludes from its definition of an “employer” to whom its regulations apply “any religious or sectarian organization not organized for public profit.” RCW 49.60.040(11) (“the exemption”). Because religious liberty is necessarily embodied and given life through religious organizations and their unique functions, the exemption is necessary and appropriate for the fostering and functioning of religious liberty in this state. Religious organizations are not secular for-profit businesses, and to try to shoehorn them into such a

secular framework denies their very essence.

The civil frame work of WLAD does impose burdens that can and should be alleviated. Washington courts have already found that the administration of WLAD and its accompanying impacts are burdens that are appropriately and constitutionally lifted from secular small businesses. *Griffin v. Eller*, 130 Wn.2d 58, 67, 922 P.2d 788 (1996). Similar alleviation of such burden upon religious entities does not violate Equal Protection in the United States Constitution, but instead furthers the state's interest in avoiding governmental interference in internal church decisions. *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327, 335, 107 S.Ct. 2862, 97 L.Ed.2d 273 (1987).

Such alleviation to religious organizations and their functions is also a legitimate, even compelling, state interest at the state level. Washington guarantees “[A]bsolute freedom of conscience in all matters of religious sentiment, belief and worship... .” Given its “absolute” commitment to religious liberty, Washington can offer no less protection to constitutionally guaranteed religious liberty than it does to secular small business, who have no such guarantee.

Moreover, the exemption does not provide the “sponsorship, financial support, [or] active involvement of sovereign religious activity”

that would violate the Establishment Clause or provide a “privilege” to religious organizations that cause secular entities to be disadvantaged. It simply allows the Congregations to proceed with their rights of conscience, sentiment, belief and worship. This is an entirely different and unique function and purpose of the Congregations than that of any secular business.

Simply put, invalidating the religious exemption in WLAD and imposing the accompanying burden of its civil framework on religious entities in this State would violate the Washington Constitution by interfering with the exercise of religious liberty through its administrative burden, its financial impact on the ability of the congregations to carry out their religious mission, and its intrusion upon the inner decision making of the congregations. As such, Mr. Ockeltree’s individual rights, whatever this court determines them to be, must give way in this instance to the constitutional rights directly and absolutely guaranteed to religious organizations.

V. ARGUMENT

In theory, there is no difference between theory and practice. In practice, there is. Yogi Berra.

Mr. Ockeltree’s proposition certainly sounds outrageous in theory:
religious organizations want the freedom to discriminate illegally, disturb

the peace and safety of the state, engage in licentious behavior, and escape any consequences for it.

In practice, of course, things are not quite so simple.

The Congregations do not seek the freedom to discriminate on the basis of race, gender, disability or other inappropriate bases. The Congregations do seek to conduct their unique internal affairs without improper interference, to not be subjected to administrative burdens that impact their ability to minister as they see fit, and to avoid the cost and mission-impact involved in defending against non-meritorious claims. These are real threats and are the threats that the exemption is properly drawn to protect against. The exemption should be affirmed.

High rhetorical labels that rail against the “powerful minority” of the religious faithful or the “benign favoritism” of long established guarantees are only persuasive in highlighting the reasons why religious organizations continue to need those guarantees and why courts must be vigilant in protecting them.

The truth is that it is sometimes permissible, indeed, sometimes necessary, to treat religious organizations differently than non-religious organizations. This is because religious organizations *are* different and religious freedom occupies a unique place in our liberty, our culture, our Constitution, and our jurisprudence in order to live and breathe. Those

laws and public policies that threaten to burden or inhibit that religious liberty must be scrutinized to ensure that liberty continues to breathe freely. To say that religious freedom is fine as long as it operates as a secular for-profit business is not freedom; such a standard chokes religious freedom. This is where the discussion truly begins.

In this discussion, it is important to remember that the United States Constitution is the supreme law of the land. It establishes the floor of protection for religious exercise and liberty, not a ceiling; Washington can only offer more, not less protection. The very minimum of those protections are set forth as to the ministerial exception in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. ___, 132 S.Ct. 694 (2012) and *Erdman v. Chapel Hill Presbyterian Church*, 175 Wn.2d 659, 286 P.3d 357 (2012).

But these authorities do not establish the ceilings of constitutional protections. When one examines the language, the reasoning, and the constitutional theory that require those decisions, and apply them to the question herein, it is clear that the exemption in WLAD is indeed permissible, appropriate and even necessary.

A. The Court must recognize the special solicitude given to the rights of religious organizations.

Plaintiff herein, Mr. Ockletree, operates on the faulty premise that

religious non-profits, such as the Congregations, and secular organizations, are similarly situated for purposes of regulation regarding internal order. They are not.

There are real and substantial differences between religious organizations and secular organizations. This is the very reason that the United States Constitution gives special solicitude to the rights of religious organizations, and so too must this Court. *Erdman*, 175 Wn.2d at 364. The Court must do so both because of the supremacy of the United States Constitution and because of the Washington Constitution's promise that "[A]bsolute freedom of conscience in all matters of religious sentiment, belief and worship shall be guaranteed to every individual..." Const. art. 1 sect. 11.

Religious organizations enact and embody individual religious liberty. Indeed, religious liberty is given life through religious organizations such as the Congregations, and by diminishing their autonomy and resources, the ability to exercise religious liberty and religious mission is threatened.

- 1. Religious belief is exercised and flourishes through religious organizations such as the Congregations.**

Numerous authorities and commentators recognize that the religious exercise of the individual requires the robust health and liberty of

that individual's religious organization.

“Religious associations and assemblies facilitate, enhance and actualize the religious exercise of individuals. . . . The dignity of the group or congregation is derivative of the dignity of its members.” Alan E. Brownstein, *Protecting the Religious Liberty of Religious Institutions*, Journal of Contemporary Legal Issues, Forthcoming, retrieved at <http://ssrn.com/abstract=2220899>. The culture and religious tradition of a religious order is supported by its communal and associational nature. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). As Justice Brennan noted “religious activity derives meaning in large measure from participation in a larger religious community. Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals.” *Amos*, 483 U.S. at 342 (Brennan, J., concurring (footnote omitted)).

Additionally, the Congregations recognize that they or their brethren in the faith community may additionally engage in other activities, such as charitable health care, that advance the spiritual and ethical goals of religious faith. Organizations that are established and run primarily to advance a spiritual message, such as charitable care, are a direct extension of the larger religious institution itself. After all, giving a man a cracker is often simply a way of feeding him, but sometimes it is an

act of spiritual ethics, and sometimes even a sacrament. *Salvation Army v. Department of Community Affairs of New Jersey*, 919 F.2d 183, 188 (3rd Cir. 1990). This is also part of the free exercise of religion. “Soup kitchens, hospitals, adoption agencies, and other social services are provided by many religious groups, often at a substantial sacrifice – a pattern of giving that has characterized American churches since colonial days.” Victor E. Schwartz and Christopher E. Appel, *The Church Autonomy Doctrine: Where Tort Law Should Step Aside*, University of Cincinnati Law Review, Vol. 80: Iss. 2, Article 6, p. 436.

These outcomes – some life-defining to particular religious adherents, others producing profound social goods – are the product of organizations that are especially vulnerable to the coercive forces of law. *Supra*.

Thus, the unique nature of a religious organization and its unique function in religious life, faith and liberty demonstrates that such organizations are not similarly situated to secular organizations for purpose of analysis.

2. Protection of religious liberty requires protection for the embodying religious organization to determine its internal order.

Religious liberty operates through religious organizations such as the Congregations, and protecting the free exercise of religion necessarily

requires protection for the religious institutions and faith communities that make religious exercise possible and meaningful. Schwartz & Appel, *supra* at 430. Religious organizations produce unique individual and social goods that merit special legal protection. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 901-902, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (O'Connor concurrence)(citation omitted). A church that is silent and with no impact is an irrelevant social club. King, Martin L. Jr., "Letter from a Birmingham Jail", *The Norton Anthology of African American Literature*, Ed. Henry Louis Gates, Jr. and Nellie Y McKay, New York: Norton (1997). Exercise of religious liberty requires protection of the encompassing religious body.

Implicit in Mr. Ockletree's argument is the position that religious organizations should only survive if they are subjected to the rules and administrative burdens of secular for-profit businesses and survive on that basis. But religious organizations need to be given space and sensitive protection if they are to make the generative and regenerative contribution to social life that they and they alone can make. W. Cole Durham, Jr. & Alexander Dushke, *Traditionalism, Secularism, and the Transformative Dimension of Religious Institutions*, 1993 BYU L. Rev. 412, 426 (1993). ~~Fostering an environment where religion can and does grow by virtue of~~ free will, not coercion, is the commitment made by the founding fathers

and which has been reaffirmed again and again.

B. The recognized deleterious impacts upon religious organization of imposing the civil WLAD framework are real, not speculative.

Just as religious organizations are of a different character and nature than secular organizations, the statutory scheme and accompanying enforcement mechanisms of WLAD are not mere neutral taxes on a neutral activity, but have real and profound internal impacts on the Congregations.

Tax laws involve routine and factual inquiries for enforcement. *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 109 S.Ct. 890, 103 L.Ed.2d 1 (1989). Application of the WLAD framework to the Congregations is not merely a tax or financial penalty that can simply be externally imposed through a simple inquiry into external facts, but a financial and administrative burden that will impact the internal order, resources and the ability to fulfill the Congregations' religious mission. Much of this burden and its results are inevitable regardless of whether the Congregation has actually violated WLAD, or is simply, and wrongfully, accused of doing so. It is the invasive and burdensome effects of WLAD as well as the unique character of religious organizations such as the Congregations that risks violations of religious liberty.

1. The WLAD framework would exponentially financially impact

the Congregations and thus impact their ability to carry out their religious missions.

There can be no argument that there are financial consequences of imposing WLAD-based litigation upon religious organizations. Allegations of violation require investigation and result in substantial litigation and defense costs. The financial costs of investigation and defense costs are incurred whether there is actually a violation or not. Directing non-profit funds to this type of financial cost is a drain on the Congregations' abilities to use funds for their religious missions.

This is not speculation; this Court has previously noted that the expense of potential litigation to small secular for-profit business is "potentially disastrous." *Griffin*, 130 Wn.2d at 67. The United States Supreme Court has also acknowledged, "[F]ear of potential liability might affect the way an organization carries out what it understands to be its religious mission." *Amos*, 483 U.S. at 336.

The exact impact of permitting such litigation cannot be precisely quantified, of course. However, on a federal level, litigation under anti-discrimination laws increases exponentially over time. One lawsuit seems innocuous, but it portends the possibility of many to come. Vivian Berger et al, *Summary Judgment Benchmarks for Settling Employment Discrimination Lawsuits*, 23 Hofstra Lab. & Emp. L.J. 45, 45 (2005)

(“The number of employment discrimination lawsuits rose continuously throughout the last three decades of the twentieth century. In the federal courts, such filings grew 2000%”). Thus, once the gate is open, these religious non-profit organizations, and this Court, can expect to experience a vast increase in religious-based employment litigation and its consequent costs to the organizations, regardless of actual merit of the claim. Few, if any, of the Congregations or other non-profit religious organizations can absorb such increased financial burden without serious impact to the ability to minister, to offer services, to create community, to live the religious mission.

Indeed, if, as this Court has previously found, the cost of litigation, meritorious or not, rests more heavily on small businesses with fewer assets and profit margins, how much greater then is the financial impact, and resultant impact on mission, for a nonprofit organization? Such burden is a weed choking the ability of religious organizations to fulfill their mission.

This Court has also recognized the substantial interest of the State in the well being of small businesses, even though small businesses are not guaranteed “absolute freedom” as the religious organizations are. *Griffin, supra*. How much greater is that interest in protecting the well being of nonprofit religious organizations, such as the Congregations, who are

guaranteed “absolute freedom?”

2. Imposing the civil WLAD framework on the Congregations carries with it the ability for governmental intrusion into the internal order of the Congregations.

Far greater than the financial and administrative burdens imposed in defending against meritless litigation, and even greater than the concern that fear of potential liability will affect the way the congregations carry out their religious missions, is the prospect for interference in the internal ordering of the Congregations. That is, through secular based regulations and enforcement thereof by civil courts, the judicial system directly impacts the internal decision making of the religious organizations, who have been guaranteed “absolute freedom.”

This is also the type of concern that animates the ministerial exception. The type of intrusion at risk is government interference with an internal decision affecting faith and mission. *Hosanna Tabor*, 132 S.Ct. at 705. A civil court necessarily intrudes into the realm of church beliefs and doctrine when it imposes a civil framework on employment decisions. *Erdman*, 286 P.3d at 369.

However, the type of intrusion protected by the ministerial exception is only the most egregious type of intrusion, that is, fear of influencing the choice of persons who actually represent and shepherd the faith. Similar intrusions and effects will still be felt even outside of the

contours of the ministerial exception, and the kinds of impacts to be guarded against can easily occur outside of its necessary protections. *Amos*, 483 U.S. at 335. By imposing the civil framework of WLAD on them, the Congregations will still be playing a guessing game as to when liability may or may not attach and will still be attempting to order themselves in a secular manner in order to escape potential liability. The Supreme Court itself has recognized 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. The line is hardly a bright one.” *Amos*, 483 U.S. at 336. The civil court system, which is not competent in these areas, will still be directly and indirectly imposing civil framework on religious organizations.

The ministerial exception provides some buffer between church and state, but that buffer is not the endpoint of necessary protection. The exemption of religious organizations from the civil WLAD framework is a more complete and appropriate separation to avoid the dangers that have been well recognized as the basis for the ministerial exception.

3. The burden to religious organizations is not lifted in an “as applied” analysis but is increased.

Mr. Ockletree suggests that even if the exemption is facially constitutional, it should be declared unconstitutional as to him, and thus to

others whose positions are “not religious.” This only increases the risk of intrusion as the prospective plaintiffs seek further and further fact finding to support or detract from the “religious” or “not religious” character of their position or of the institutional defendant. The exemption again precludes this type of searching and inappropriate inquiry and examination by civil authorities.

Additionally, Mr. Ockletree suggests that the exemption should be found unconstitutional as applied because his dismissal is not a religiously based decision in that there is no doctrine involved and no question of whether he is of a particular religious faith or not. Neither does this remove the fear of intrusion because again, the Congregations will be subjected to searching examination of doctrine and practice to determine if the dismissal is “religious” or not. Again, theory and practice follow separate routes.

In practical terms, Mr. Ockletree’s position merely transfers the internal examination and intrusion from the type of position being filled (“minister”) to the source or type of decision being implemented. This transfer of focus does not remove the impermissible intrusion as there will be more extensive litigation and intrusion as the courts continue to wrestle with the question of determining the correct or permissible source of a decision. Religious organizations will be placed in the position of trying

to guess as to when a decision is correctly religiously motivated or whether it has provided the proper paper trail to support such a contention. *See, Amos, supra*. Further, the civil system would itself face a perpetual church-state conflict that will take decades to resolve, if ever, as continual individual examinations wind through a system that is ill equipped to measure the potentially religious nature of employment decisions and effects.

Thus, the risks and costs only increase with the proposed “as applied” analysis, not only to the Congregations, but to the State as well as these ongoing “tests” are played out in the court system for decades to come.

C. Washington’s exemption survives Equal Protection analysis

The Franciscans and Mr. Ockletree disagree as to the correct level of scrutiny to be applied in determining the constitutionality under Washington law, and Mr. Ockletree goes so far as to state that under *any* test this Court should employ, the exemption fails in the face of Mr. Ockletree’s asserted fundamental rights. The Congregations provide the following observations to assist the Court in addressing these issues.

- 1. It is not the act of alleviating burden upon religious organizations that involves strict scrutiny; the burdening of religious liberty does.**

Mr. Ockletree mistakenly asserts that any classification of religion

in a statute requires strict scrutiny of that statute. This is incorrect and he has not provided a single case where this has been done in Washington. Instead, the only pronouncement on the appropriate level of scrutiny, one which Mr. Ockletree takes great pains to urge this Court to ignore, is that this matter only requires rational basis scrutiny. *Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 807 P.2d 830 (1991). In fact, the government is not precluded from acknowledging religion or from taking religion into account in making law and policy. *Lynch v. Donnelly*, 465 U.S. 668, 715, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984).

Mr. Ockletree does point to several cases listing classifications that require strict scrutiny, and religion is contained in those classifications, and asserts that the exemption must be subjected to strict scrutiny for its alleviation of burden upon religious organizations. But this is a gross misreading of constitutional law and the jurisprudence of religious liberty in this State. It is when a classification or statute *burdens* religious exercise that strict scrutiny is performed. *Open Door Baptist Church v. Clark Cty.*, 140 Wn.2d 143, 995 P.2d 33 (2000); *Munns v. Marten*, 131 Wn.2d 192, 930 P.2d 318 (1997).

If this Court were to apply the civil WLAD framework to religious organizations, this would then have the direct and indirect effect of burdening the guaranteed “absolute freedom” to exercise religious belief

and worship, and it is *that* burden that is then subject to strict scrutiny. A statute is not unconstitutional simply because it allows churches to advance religion, because advancing religion is the very purpose of a religious organization.

Instead, it is long and well established under Federal law that *alleviating* a significant burden to religious exercise, such as the burden at issue here, does not violate the Constitution and this State cannot lower that constitutional protection that allows religious organizations to breathe freely and flourish. Indeed, minimizing the governmental interference in the decision making process is not only permissible, it is a state interest in and of itself. *Amos*, 483 U.S. at 327. Thus, even if the exemption were subjected to the type of strict scrutiny Mr. Ockletree advocates, the exemption would still pass due to the compelling state interest it fulfills.

2. The Privileges and Immunities Clause does not trump the absolute religious freedom guaranteed under the Religious Freedom clause.

Mr. Ockletree further asserts that this Court must recognize a higher level of scrutiny is due him through the Privileges and Immunities Clause, and under such an examination, the exemption again must fail. This is not true. Any rights due Mr. Ockletree under the Privileges and Immunities clause must still be measured against the guarantees of “absolute freedom” guaranteed to the Congregations in the Washington

Constitution. Those rights, however defined, cannot outweigh that absolute freedom.

The religious freedoms embodied in the First Amendment are without question among the most precious rights we are privileged to enjoy. Religious persecution had a great deal to do with the founding of our nation, as our forebears battled against it and sought to ensure that future generations would not be oppressed because of religion, prevented from its free exercise, or subjected to a state-imposed set of beliefs. These are not merely rights that a state and its courts may choose to recognize, but rather rights that *courts must recognize in full*. *Erdman*, 175 Wn.2d at 364 (emphasis added).

Washington courts thus recognize that its religious protections are not some scrawny weakling to back down as soon as sand is kicked in its face. These protections, these rights, which the courts *must* recognize in full, are robust and are intended to withstand even the strongest challenges, even with the most worthy alternative goals in mind.

Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have "act[ed] as critical buffers between the individual and the power of the State." *Roberta v. United States Jaycees*, 468 U.S. 609, 619, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984). *In a case like the one now before us - where the goal of the civil law in question, the elimination of discrimination against persons with disabilities, is so worthy - it is easy to forget that the autonomy of religious groups, both here in*

the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs.

Hosanna Tabor, 132 S.Ct. 697 (Alito, J. concurrence) (emphasis added).

D. The exemption survives any Establishment clauses analysis

As noted in *Amos*, an exemption statute will always have the effect of advancing religion. 483 U.S. at 337. The question is whether the accommodation has devolved into an unlawful fostering of religion. Religion is fostered when government directs a subsidy exclusively to religious organizations that is not required by the Free Exercise Clause and that either burdens nonbeneficiaries markedly or cannot be reasonably seen as removing a significant state-imposed deterrent to the free exercise of religion. *Texas Monthly v. Bullock*, 489 U.S. 1, 15, 109 S.Ct. 890, 103 L.Ed.2d 1 (1989). Because the exemption alleviates a burden to the exercise of religion, rather than burdening secular for-profit businesses, the exemption does not “foster” religion.

Additionally, the exemption does not comparatively burden nonbeneficiaries because they are of an entirely different nature than the religious organizations with no religious mission to fulfill. Instead, the Washington Legislature wisely recognized that religious organizations are

simply not “employers” in the same sense as secular organizations and properly made accommodation of that undeniable truth.

E. Mr. Ockletree’s prior restraint argument should be disregarded.

RCW 49.60.010 states that it was enacted in part as “an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state” Mr. Ockletree then argues that the religious exemption contained within WLAD is itself unconstitutional because it violates the peace and safety of the state. This is interesting circular logic but not persuasive. The Legislature clearly determined that the exemption does not violate the peace and safety of the people of this state because they included the religious exemption in the same statutory scheme as the quoted purpose of the statutory scheme. Statutes should be read harmoniously. *Becker v. Pierce County*, 126 Wn.2d 11, 17, 890 P.2d 1055 (1995).

Further, the cases cited by Mr. Ockletree regarding religious practices in violation of the peace and safety of the state all concern medical care and bodily integrity, not employment.

Finally, Mr. Ockletree asserts that the exemption violates the constitution because it permits undefined and unidentified acts of “licentiousness.” This is a prior restraint argument and without further citation and argument, should simply be disregarded.

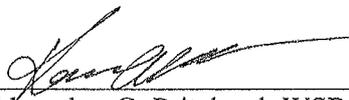
VI. CONCLUSION

The unique nature, purpose and history of religious organizations render them fundamentally different from secular for-profit businesses. They are the vehicles through which religious faith is lived and religious liberty is exercised. Because they are not the same as secular for-profit businesses, they cannot be held to be similarly situated, and to try to treat them with civil law based frameworks inevitably changes their ability to minister and to carry out their missions financially or through internal order and decision. To attempt to turn religious organization into secular businesses is to doom their very unique purpose and existence.

Alleviating religious organizations from civil frameworks intended to govern secular for-profit businesses is not unconstitutional; the impacts of trying to make religious organizations be secular is. The exemption should be upheld.

Respectfully submitted this 8 day of April, 2013.

HELSELL FETTERMAN LLP

By 
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Attorneys for Amici Curiae

DECLARATION OF SERVICE

I, Laura T. Milliard, declare that on this 9th day of April, 2013, I provided to the Washington State Supreme Court for filing a copy of the Amici Curiae Brief of Pacific Northwest Conference of The United Methodist Church, Olympia Diocese of The Episcopal Church, and Presbytery of Seattle of The Presbyterian Church USA via email and served upon the parties indicated below:

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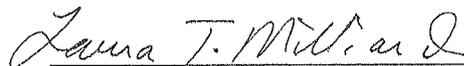
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I declare under penalty of perjury that the foregoing is true and correct.

Dated this 9th day of April, 2013 at Seattle, Washington.



Laura T. Milliard
Legal Secretary

OFFICE RECEPTIONIST, CLERK

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From: Milliard, Laurie T. [<mailto:lmilliard@helsell.com>]
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Enclosed please find Motion to Allow Filing of Amici Curiae Brief and Amici Curiae Brief of Pacific Northwest Conference of the United Methodist Church, Olympia Diocese of the Episcopal Church, and Presbytery of Seattle of the Presbyterian Church USA.

Thank you.

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