Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CEDAR PARK ASSEMBLY OF GOD OF KIRKLAND, WASHINGTON,

Plaintiff,

v.

MYRON "MIKE" KREIDLER, in his official capacity as Insurance Commissioner for the State of Washington; JAY INSLEE, in his official capacity as Governor of the State of Washington,

Defendants.

Civil No. 3:19-cv-05181

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Washington Senate Bill 6219 coerces Plaintiff Cedar Park Assembly of God to pay for insurance coverage of abortion and abortifacient drugs and devices (collectively referred to as "abortion"), in contravention of the Church's sincerely held religious beliefs. SB 6219 contains numerous exemptions, but none of them protect the Church or similarly situated religious organizations. Defendants argue that a separate statute provides sufficient protections for groups like Cedar Park. But Washington's Attorney General has made it clear that any such "protections" are hollow at best: Cedar Park will still have to pay for abortion through increased premiums or fees. RCW § 48.43.065(3). Accordingly, Cedar Park's complaint states a claim that SB 6219 violates the Free Exercise Clause of the First Amendment by forcing the Church to violate its sincerely held religious reliefs, on pain of fines and even jail time. Similarly, SB 6219's calculated discrimination against churches supports valid claims for violation of the Equal Protection Clause of the Fourteenth Amendment, the church autonomy doctrine, and the Establishment Clause of the First Amendment.

Enforcement against Cedar Park is imminent and its claims are ripe. Cedar Park therefore has standing, and this Court retains Article III subject matter jurisdiction. The Court should deny Defendants' Motion to Dismiss in its entirety.

FACTUAL BACKGROUND

In 2018, Washington State enacted Senate Bill 6219, requiring employers—including churches—to cover abortion in their employee healthcare plans. First Amended Verified Complaint ("VC") ¶ 48. Under SB 6219, codified at RCW § 48.43.073, "if a health plan issued or renewed on or after January 1, 2019, provides coverage for maternity care or services, the health plan must also provide a covered person with substantially equivalent coverage to permit the abortion of a pregnancy." VC Ex. A at § 3(1). Health plans "may not limit in any way a person's access to services related to the abortion of a pregnancy." *Id*. at § 3(2)(a). SB 6219 further requires insurance plans issued or renewed on or after January 1, 2019, to provide coverage for "[a]ll contraceptive drugs, devices, and other products, approved by the federal food and drug

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administration," including those available over-the-counter. VC Ex. A at § 2(1), codified at RCW § 48.43.072. Under Washington law, violations of the Insurance Code, which includes SB 6219, can result in fines, civil liability, and even criminal liability, including imprisonment. VC ¶ 59; RCW § 48.01.080.

Cedar Park Assembly of God teaches that all people have value because they are made in God's image, so a substantial part of the Church's ministry is focused on preserving and celebrating life from its very beginning till its natural end. VC ¶¶ 27–30. Cedar Park operates according to its Constitution and Bylaws, including its "Position Regarding Sanctity of Human Life":

> Under the *Imago Dei* principle, all human life is sacred and made by God, in His image. Because all humans are image-bearers, human life is of immeasurable worth in all of its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. As such, we as Christians are called to defend, protect, and value all human life.

Id. at ¶ 25. The Church believes and teaches that abortion ends a human life, and therefore "violates the Bible's command against the intentional destruction of innocent human life." *Id*. at ¶¶ 27–28. Accordingly, Cedar Park believes and teaches that participation in, facilitation of, or payment for abortion or abortifacient drugs and devices in any circumstance is a grave sin. *Id*. at ¶ 29. Because of its religious beliefs, Cedar Park offers health insurance coverage to its employees in a way that does not cause it to pay for abortions or abortifacient drugs and devices, and its current group insurance plan excludes coverage for these items. *Id*. at ¶ 47.

Cedar Park expects its employees to abide by and agree with the Church's ethical standards, including its religious beliefs and teachings on the sanctity of life, in both their work life and private life. VC ¶ 31. All employees are required to sign a statement agreeing to follow Cedar Park's standards of conduct. *Id*. at ¶ 32.

Because Cedar Park provides comprehensive maternity coverage in its employee health care plan, SB 6219 requires the Church to also provide abortion coverage. VC ¶ 63. That abortion

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mandate impermissibly forces it to choose between violating state law and violating its deeply held religious beliefs. SB 6219's provisions will apply to Cedar Park on August 1, 2019, when the Church renews its health care plan. VC ¶ 8.

ARGUMENT

In order to survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss, Cedar Park's complaint need only "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2002)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556). The plausibility standard "does not impose a probability requirement" and simply "calls for enough fact to raise a reasonable expectation that discovery will reveal evidence" of Defendants' liability. *See Twombly*, 550 U.S. at 556. Cedar Park's factual and legal allegations clear this low procedural bar.

Dismissal under Rule 12(b)(1) is only permissible when a complaint does not allege sufficient facts establishing subject matter jurisdiction. The verified complaint satisfies that standard by alleging the Church intends to continue to offer health insurance coverage excluding abortion when its plan renews August 1, 2019. That will trigger application of SB 6219, damaging Cedar Park.

I. Cedar Park's claims are justiciable.

A. Cedar Park's Verified Complaint raises valid facial and as-applied claims and Defendants' contrary arguments apply the wrong standard.

Defendants rely on an incomplete standard to argue that Cedar Park is unable to pursue a facial challenge. Defendants' Mot. to Dismiss Br. (MTD) at 8 (citing *Foti v. Menlo Park*, 146 F.3d 629, 635 (9th Cir. 2011)). While the test in some contexts has traditionally been that Plaintiff is required "to establish that no set of circumstances exists under which [the law] would be valid, or that the [law] lacks any plainly legitimate sweep," the analysis differs in the First Amendment context where a law is facially invalid "if a substantial number of its applications are

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unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 472–73 (2010) (cleaned up). "The proper framework to apply …is not to require the challenger to disprove every possible hypothetical situation in which the restriction might be validly applied, but rather to apply the appropriate constitutional test to determine whether the challenged restriction is invalid on its face (and thus incapable of any valid application)." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1122 (10th Cir. 2012); *see also Bruni v. City of Pittsburgh*, 824 F.3d 353, 363 (3d Cir. 2016).

B. SB 6219 inflicts a tangible injury-in-fact on the Church, and Defendants cannot hide behind so-called "exemptions" that offer no real protection.

Defendants do not contest the fact that SB 6219 requires employers to cover abortion in employee benefit plans. Instead, they argue RCW § 48.43.065 protects Cedar Park from being forced to purchase health insurance that is repugnant to the Church's beliefs. MTD at 10. But this "protection" does not meaningfully protect Cedar Park's ability to refuse to purchase insurance coverage for abortion. Initially, RCW § 48.43.065(3)(a) states "[n]o individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion." But the very next subsection states that "[t]he provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's …exercise of the conscience clause in (a) of this subsection." *Id*. at § 48.43.065(3)(b). Moreover, an insurance carrier cannot be forced to pay for that additional coverage and can charge Cedar Park for it. RCW § 48.43.065(4).

The statute does not explain how to reconcile these provisions that create an exemption, require continued coverage for the objectionable items, and do not require the carrier to provide them for free. But Washington's Attorney General attempts to do so in an opinion regarding the exclusion of reproductive health services in employer-sponsored healthcare plans. It concludes that "[t]he insurance commissioner has authority to require health care insurance carriers to include the cost of [the objectionable coverage] as a component in the rate setting actuarial analysis, where

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an employer raises a conscientious objection to paying these costs directly as part of that employer's employee health care benefit package." AGO 2002 No. 5.[1]

The Attorney General's opinion explains that the language in RCW § 48.43.065(3)(b) "appears to preclude requiring an enrollee to pay an extra charge to receive such services, especially when read in conjunction with the Legislature's statement recognizing the right of individuals enrolled in such plans 'to receive the full range of services covered under the plan.'" AGO 2002 No. 5. Therefore, RCW § 48.43.065(3)(a) "may not preclude all mechanisms whereby an employer would provide payments to others without direct purchase of the services to which the employer objects." *Id.*

Importantly, "nothing in the conscientious objection law requires health carriers to provide services 'without appropriate payment of premium or fee' as reflecting the overall principle that the provision of these services should be in accordance with recognized insurance principles." *Id*. The opinion noted that the phrase "'appropriate payment of premium or fee'" provides little guidance, but can be interpreted to mean that "[i]nclusion of the cost of [the objectionable] coverage as a component … in the actuarial analysis of a carrier's rates is therefore permissible under RCW 48.43.065." *Id*. "While some employers may object to even indirect participation," the Attorney General concluded, "the Legislature balanced the competing values of religious and moral autonomy on the one hand and access to care on the other by providing a *limited* right of conscientious objection." *Id*. (emphasis added). In other words, under the "exemption," Cedar Park can be forced to provide coverage, payment, and facilitation of the very services to which it objects on the basis of conscience. And under the plain language of SB 6219, that is exactly what will occur.

Additionally, the Attorney General made clear that refusal to provide coverage for reproductive health services, while providing similar services, constitutes an unfair trade practice

[1] Interpretation of "Conscientious Objection" Statute Allowing Employers to Refrain from Including Certain Items in the Employee Health Care Benefit Package (Aug. 8, 2002), *available at* https://www.atg.wa.gov/ago-opinions/interpretation-conscientious-objection-statute-allowing-employers-refrain-including.

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under RCW §§ 48.30.300 and .010, even when that refusal is "on the basis of the 'conscientious objector' statute, RCW § 48.43.065." AGO 2002 No. 5. If an employer offers a health care plan that exempts reproductive health coverage (while providing similar, but not objectionable, coverage), it "would constitute an unfair practice [under the above statutes] and is not an option for either insurance carriers or employers." AGO 2002 No. 5.

In sum, the law Defendants claim exempts churches like Cedar Park from SB 6219's abortion mandate also makes them subject to increased premiums to pay for abortion and other objectionable items. As RCW § 48.43.065(3)(b) makes clear, if Cedar Park excludes abortion coverage from its employee benefit plan, its insurance carrier *must still cover abortion* for Cedar Park's employees. The Washington Attorney General has proposed that the way to solve this conundrum is for the carrier to increase the employer's premiums to cover abortion, but characterize the increase as an administrative, overhead, or contingency expense. AGO 2002 No. 5. This "exemption" offers little more than a fig leaf of protection to religious employers like Cedar Park. And Defendants cannot hide behind it to avoid defending Cedar Park's free exercise constitutional claims. SB 6219 substantially burdens Cedar Park's religious exercise, causing it cognizable injury.

C. Cedar Park's claims are ripe because it will be coerced to violate SB 6219's mandatory coverage requirements when the Church renews its health plan.

Cedar Park is required to purchase a health care plan that provides coverage for abortion and abortifacient drugs when it renews its health plan on August 1, 2019. VC ¶ 8. As discussed above, no law exempts Cedar Park from compliance with SB 6219's mandatory provisions requiring such coverage. In evaluating whether a genuine threat of prosecution exists for a controversy to be considered "ripe," this Court looks to three factors: (1) "whether the plaintiffs have articulated a 'concrete plan' to violate the law in question," (2) "whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings," and (3) "the history of past prosecution or enforcement under the challenged statute." *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1139 (9th Cir. 2000).

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Cedar Park has a "concrete plan" to violate SB 6219, subjecting it to liability, and therefore its claims are ripe. Cedar Park's current insurance plan excludes coverage for abortion, and plans to continue to offer a plan excluding such coverage when its insurance plan is renewed on August 1, 2019.

Importantly, Cedar Park's only viable option to meet its commitment to care for the health of its employees and their families is to provide group health insurance. VC ¶¶ 42–44. This is not a "conclusory" allegation, as Defendants argue. *See* MTD at 10 n.6. Cedar Park has evaluated becoming self-insured and determined that it is not feasible, due to the enormous increased cost. VC ¶ 43. It would cost the Church roughly $243,125 annually, and that number is expected to double within the next several years due to increase in plan use. *Id*. In order to pay for those considerable expenses, Cedar Park would have to divert funds away from its religious ministries, resulting in substantial harm to the Church. *Id*. Cedar Park's Verified Complaint substantiates the allegation that group health insurance is its only viable option, and these facts must be taken as true for purposes of deciding the Motion to Dismiss. Moreover, there is no law or requirement that a church must change its behavior to eliminate the religious burden the government wrongly imposes upon it. Cedar Park is not required to explore alternative insurance options when Defendants violate the Church's beliefs by requiring the inclusion of abortion coverage in its insurance plan.

The Church is therefore under an imminent threat of enforcement, contrary to Defendants' contentions. MTD at 11. By refusing to comply with SB 6219, Cedar Park will be subject to various fines, penalties, and even jail time under RCW § 48.01.080. VC ¶ 59. Cedar Park would also be liable for engaging in allegedly unfair trade practices under RCW §§ 48.30.300 & .010. VC ¶¶ 60–62. Importantly, SB 6219 does not apply only to health insurance carriers, but applies to health plans, imposing requirements on the *purchaser* of the health plan, contrary to Defendants' argument. *See* MTD at 12 n.7. RCW § 48.43.065 makes distinctions between providers and purchasers of health care plans, and the Attorney General makes it clear that requirements for

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"health plans" also impose requirements on those who purchase health plans. AGO 2002 No. 5. The mandatory coverage provisions in SB 6219 unequivocally apply to Cedar Park.

Finally, Cedar Park's contention that Defendants have exempted at least one insurance issuer from SB 6219 does not undermine the Church's argument that it is under an imminent threat of enforcement. *See* MTD at 12. SB 6219 fully exempts religious objectors in the health care industry pursuant to RCW § 48.43.065(2)(a), but requires other religious organizations like Cedar Park to provide payment for abortion through increased premiums or fees. RCW § 48.43.065(3). This discriminatory exemption confirms that Defendants can easily avoid violating Cedar Park's constitutionally protected freedom. Because Cedar Park has a concrete plan to violate SB 6219, it is exposed to imminent liability and its claims are therefore ripe for adjudication.

II. The primary jurisdiction doctrine does not apply because this case involves issues of law, Kreidler has no subject-matter expertise, and he is a named defendant.

Defendants urge this Court to dismiss Cedar Park's claims without prejudice to allow the Defendant Kreidler to promulgate rules governing SB 6219's enforcement. MTD at 12–13. But the primary jurisdiction doctrine invoked by Defendants does not apply in this case for at least three reasons. First, the applicability of SB 6219 and any exemptions to it is an issue of law. Second, the Attorney General opinion cited above (which was solicited by Defendant Kreidler) demonstrates Kreidler has no expertise in this area. And third, Kreidler would be issuing a rule regarding a case where he is actually a defendant.[2]

"The primary jurisdiction doctrine allows courts to stay proceedings or to dismiss a complaint without prejudice pending the resolution of an issue within the special competence of an administrative agency." *Clark v. Time Warner Cable*, 523 F.3d 1110, 1114 (9th Cir. 2008).

> [T]he doctrine is a "prudential" one, under which a court determines that an otherwise cognizable claim implicates technical and policy questions that should be addressed in the first instance by the agency with regulatory authority over the relevant industry rather than by the judicial branch. [It is ordinarily applied where there is] (1) a need to resolve an issue that (2) has been placed by Congress within

[2] In addition, Cedar Park would be prejudiced if the case were dismissed. Its insurance plan will be renewed on August 1, 2019, making the Church imminently subject to liability under SB 6219. Dismissal would prejudice Cedar Park by precluding a timely resolution of this case.

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> the jurisdiction of an administrative body having regulatory authority (3) pursuant to a statute that subjects an industry or activity to a comprehensive regulatory authority that (4) requires expertise or uniformity in administration.

Id. at 1115 (cleaned up). "[W]here the agency declines to provide guidance at all or in a timely way, the court may proceed with the litigation on its own." Hilliard, James, *Tapping Agency Expertise: The Doctrine of Primary Jurisdiction*, 96 ILL. B.J. 256, 258 (May 2008).

The primary jurisdiction "doctrine does not apply when the agency itself is the [party]." *C.A.B. v. Aeromatic Travel Corp.*, 489 F.2d 251, 254 (2d Cir. 1973) (internal citations omitted); *see also Interstate Commerce Comm'n v. All-American, Inc.*, 505 F.2d 1360, 1362 (7th Cir. 1974) ("[I]n cases where the appropriate administrative body is before the court, the doctrine should not apply since a principal function of the rule, acquainting the court with the agency's position concerning the matter, has been satisfied."). Because Defendant Kreidler is the Insurance Commissioner for the State of Washington—the administrative agency with authority to promulgate regulations governing SB 6219—the primary jurisdiction doctrine does not apply here.

The doctrine also does not apply where the issue involves a question of law. *Balt. & Ohio Chic. Terminal R. Co. v. Wis. Cent. Ltd.*, 154 F.3d 404, 411 (7th Cir. 1998) (explaining that because the issue in that case was an "issue of law rather than a matter within the special expertise" of an administrative agency, it did not need to be "referred to the agency"). At issue here is the constitutionality of SB 6219, VC ¶¶ 75–151, and how it is affected by other Washington statutes like RCW § 48.43.065—an issue of law not within the technical expertise of the Insurance Commissioner. Defendant Kreidler's lack of expertise is demonstrated by the fact that he previously requested the Attorney General opinion noted above involving a nearly-identical issue.

Defendant Kreidler's current proposed rule also does not resolve Cedar Park's objections to SB 6219. *See* Office of Insurance Commissioner (OIC), "Health Plan Coverage of Reprod. Healthcare & Contraception Rulemaking Stakeholder Draft," Sept. 20, 2018, http://bit.ly/2LwNY2m. It only makes the unremarkable assertion that the proposed rules "do[] not diminish or affect any rights or responsibilities provided under RCW 48.43.065." *Id.* at 2.

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Defendants argue that the proposed rule "eliminate[s] any ambiguity…about how the religious and conscience rights of individuals and organizations will harmonize with the requirements imposed on carriers to provide particular services." MTD at 13. But the proposed rule does not change the fact that RCW § 48.43.065 will still require Cedar Park to provide payment for abortion through increased premiums or fees. Waiting on Defendant Kreidler to finalize this ineffective rule (which has already been pending for seven months) will only prejudice Cedar Park's ability to obtain injunctive relief before SB 6219's substantial harms take effect on Cedar Park's August 1, 2019 plan renewal date. For these reasons, this Court should decline to apply the primary jurisdiction doctrine.

III. Cedar Park has stated a claim under the Free Exercise Clause because SB 6219 is not neutral and generally applicable due to numerous exemptions.

Free exercise jurisprudence is largely governed by two Supreme Court cases: *Employment Division v. Smith* and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*. An "across-the-board criminal prohibition" on possession of the hallucinogenic drug peyote was upheld in *Smith* because it was deemed both neutral and generally applicable. 494 U.S. 872, 879-884 (1990). Three years later, the Court struck down a targeted ordinance that prohibited the killing of animals for religious reasons, but allowed it in almost all other circumstances, including hunting and slaughterhouses. *Lukumi*, 508 U.S. 520, 543-44 (1993). Read together, these seminal cases and their progeny describe the outer limits of the constitutionality of government restrictions on religious liberty as well as the legal principles used to analyze all free exercise claims. The most important of these principles is that laws targeting religion are only the baseline of what the First Amendment protects against. Laws burdening religiously-motivated conduct are also subject to strict scrutiny when they lack neutrality or general applicability. *Smith*, 494 U.S. at 879.

SB 6219 is neither neutral nor generally applicable because it:

(1) Provides **exemptions** for secular conduct, but not for similar religious conduct. *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 365 (1999) (Alito, J.);

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(2) Is **gerrymandered** so as to single out religious conduct for disfavored treatment. *Lukumi*, 508 U.S. at 532-40;

(3) Applies **differential treatment** among religions or types of religious organizations. *Id.* at 536; and

(4) Was enacted with **discriminatory intent** or hostility toward religious conduct, *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729-31 (2018).

SB 6219 is therefore subject to strict scrutiny, which it cannot survive. This Court should find that Cedar Park has stated a claim under the Free Exercise Clause and deny Defendants' Motion to Dismiss.

A. SB 6219 imposes an impermissible burden on Cedar Park's exercise of religion by forcing the Church to violate its religious beliefs on abortion.

Cedar Park alleges that SB 6219 imposes a substantial burden on the Church's religious exercise, triggering Free Exercise scrutiny. VC ¶¶ 81–82.[3] The Church believes that abortion ends a human life and therefore the Church teaches that participation in, facilitation of, or payment for abortion in any circumstance is a grave sin. VC at ¶ 29. SB 6219's requirement that the Church pay for abortion coverage violates Cedar Park's religious beliefs. The religious exemption in RCW § 48.43.065(3) does not alleviate this burden because it allows the insurance carrier to increase Cedar Park's premiums to cover the cost of abortions not expressly included in the plan. *Infra* Section I.B. Accordingly, SB 6219 renders "unlawful the religious practice itself," by requiring Cedar Park to provide insurance coverage for abortion. *See Braunfeld v. Brown*, 366 U.S. 599, 606 (1961).This mandate–enforced by fines and jail time–is a prototypical substantial burden.

B. SB 6219 is neither neutral nor generally applicable.

1. SB 6219 provides secular exemptions that undermine the Defendants' stated interest in providing women access to health benefits.

The allegations in the Verified Complaint demonstrate SB 6219 is not generally applicable

[3] To trigger Free Exercise protection, Cedar Park need only show that its religion is burdened, not that it is substantially burdened. *Lukumi*, 508 U.S. at 531 (recognizing that laws that have an "incidental effect of burdening" religion are subject to the Free Exercise Clause). Regardless, SB 6219 substantially burdens Cedar Park's free exercise of religion.

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because it has multiple exemptions—all of which significantly undermine the Defendants' stated interest in providing women with better access to health benefits. VC ¶¶ 87–91. "[S]elective laws that fail to pursue legislative ends with equal vigor against both religious practice and analogous secular conduct are not governed by *Smith*; such underinclusive laws are subject to surpassingly strict scrutiny under the Free Exercise Clause and *Lukumi*." Richard F. Duncan, *Free Exercise is Dead, Long Live Free Exercise*, 3 U. PA. J. CONST. 850, 883 (2001). Even a *single* exemption undermining a state's asserted interest eliminates general applicability. *Fraternal Order of Police*, 170 F.3d at 366 (striking down a prohibition on police officers growing beards because it allowed a medical exemption); *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214, 1234–35 (11th Cir. 2004) (holding that a single exemption for clubs and lodges to zoning district limited to retail shopping "violate[d] the principles of neutrality and general applicability because private clubs and lodges endanger [the town's] interest in retail synergy as much or more than churches and synagogues").[4]

There are numerous exemptions here. Washington law exempts 13 different types of insurance plans from the definition of "health plans," including temporary plans, plans for the disabled, and student-only plans. VC ¶ 58 (citing RCW § 48.43.005(27)).[5] SB 6219 also allows for an exemption if necessary to avoid violating federal conditions on state funding, and exempts plans that do not provide comprehensive maternity care coverage. VC Ex. A. at § 3(1) & 3(5). All of these exemptions undermine Defendants' stated purpose of protecting women's access to reproductive health benefits. MTD at 19. If exempting religious organizations like Cedar Park from paying for abortion undercuts that interest, so does exempting colleges and universities that have health insurance policies for their students. The same is true for plans that do not cover

[4] Defendants argue in their motion to dismiss that one exemption does not affect general applicability, relying on *Stormans v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015). MTD at 18. But here there are many exemptions and the language quoted by Defendants is from that court's individualized exemption analysis. That language has no application to the categorical exemptions at issue in this case.

[5] The fact that these exemptions are contained in a related statute is irrelevant. *Lukumi* analyzed the entire body of Florida law on the treatment of animals in assessing general applicability. 508 U.S. at 526, 537, 539, 544-45.

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maternity care, may only exist for a year, cover people with disabilities, or might jeopardize state funding.

Defendants assert that "courts examine whether the exemptions are tailored to specific, secular purposes so as to not impair the general applicability of a law," citing *Stormans*. MTD at 17. But *Stormans* makes no such statement. Instead, it focused on whether the categorical exemptions there undermined the government's stated purpose in the law at issue. 794 F.3d at 1080. Indeed, "categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice." *Lukumi*, 508 U.S. at 542.

> [T]he Court's concern [with] the prospect of the government's deciding that secular motivations are more important than religious motivations…is only further implicated when the government does not merely create a mechanism for individualized exemptions, but…creates a categorical exemption for individuals with a secular objection but not for individuals with a religious objection.

Fraternal Order of Police, 170 F.3d at 365.

Unlike *Stormans*, the same interests Defendants use to justify SB 6219 are undermined by the plans that are categorically exempted. The state is no less interested in access to health care for women who are students, disabled, only have access to plans for a limited amount of time, or work for an employer that does not cover maternity care. Defendants make the impermissible value judgment that secular reasons for not covering abortion in these plans are important enough to overcome the State's interest in women's health, but religious reasons are not. *See Fraternal Order of Police*, 170 F.3d at 366. This defeats general applicability.

2. A law can lack general applicability even if it does not apply only to religiously motivated conduct.

There is no requirement that a law only apply to religiously motivated conduct in order for it to fail the test for general applicability. Defendants assert that this type of animus is required by taking several general statements in *Lukumi* out of context. MTD at 17–19.[6] But *Lukumi* qualified

[6] Defendants' general assertion that "Cedar Park must show any exemption resulted from religious animus" is likewise unfounded. MTD at 18–19. Only two justices in *Lukumi* even mentioned animus. *Midrash*, 366 F.3d at 1234 n.16 (citing *Lukumi*, 508 U.S. at 540-42 (Kennedy, J., concurring)). Defendants' reliance on *Stormans* for this assertion also is misplaced. The Ninth Circuit merely observed in the context of individualized exemptions that one exemption

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these general statements numerous times, using phrases like, "*almost* the only conduct subject to [the] Ordinances…is the religious exercise," and "forbid *few* killings but those occasioned by religious sacrifice." 508 U.S. at 535, 543 (emphasis added). Moreover, limiting general applicability to laws that only burden religious exercise is blatant discrimination, and that is only the beginning of what the Free Exercise Clause guards against. "[W]e need not define with precision the standard used to evaluate whether a prohibition is of general application, for these ordinances fall well below the minimum standard necessary to protect First Amendment rights." *Id*. at 543. The full extent of the First Amendment's protection of free exercise is much broader.

Importantly, *Lukumi* found that a law was not generally applicable despite its applicability to secular conduct as well as to conduct motivated by religious belief. The ordinance there prohibiting the slaughter of animals outside of certain zoning districts was not generally applicable, even though it did "appear to apply to substantial nonreligious conduct." 508 U.S. at 539 & 545. Yet, the Court found that exemptions for "small numbers of hogs and/or cattle" implicated the same cruelty and health interests that the City articulated for restricting religious sacrifices, defeating any argument that the ordinance was not generally applicable. *Id.* at 545.

This reading of *Lukumi* is borne out by subsequent appellate courts. The Third Circuit stated the test as follows:

> A law fails the general applicability requirement if it burdens a category of religiously motivated conduct but exempts or does not reach a substantial category of conduct that is not religiously motivated and that undermines the purposes of the law to at least the same degree as the covered conduct that is religiously motivated.

Blackhawk v. Pa., 381 F.3d 202, 209 (3rd Cir. 2004). Nowhere does that case state that a law must apply only to religious conduct in order to fail the test of general applicability. In *Midrash*, the zoning code prohibiting religious organizations in a certain district was not generally applicable even though it also prohibited secular uses like museums and public utilities. 366 F.3d at 1234-35. Likewise, the Ninth Circuit said in *Stormans*, "A law is not generally applicable if its prohibitions

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does not necessarily eliminate general applicability, but a fact-specific showing of animus or discriminatory application does. 794 F.3d at 1082.

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substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect." 794 F.3d at 1079 (citing *Lukumi*, 508 U.S. at 542–46). The Ninth Circuit also quotes the "only against conduct motivated by religious belief" language from *Lukumi*, but its analysis of whether a law is underinclusive does not address any such requirement. It is limited to whether the enumerated exemptions undermined the government's stated interest. 794 F.3d at 1080. Defendants' contention that a law is generally applicable unless it solely applies to religious organizations has no legal basis.

3. SB 6219 is not neutral in its operation.

"Neutrality and general applicability are interrelated, and . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531. Defendants argue that neither the express "purposes nor the language [of SB 6219] focuses on religion" and therefore SB 6219 must be neutral. MTD at 16. But that is not the test. SB 6219 is not neutral because it is gerrymandered to favor secular conduct, it treats religious health care companies more favorably than churches like Cedar Park, and targets conscientious objectors. Defendants fail to account for any of these problems. *See* MTD at 15–17.

a. SB 6219 is impermissibly gerrymandered.

SB 6219's numerous exemptions eliminate general applicability and indicate it is not neutral. VC ¶¶ 87–91. Determining an impermissible objective of suppressing religious belief is not only evaluated by assessing the face of the statute, but also from "the effect of a law in its real operation." *Lukumi,* 508 U.S. at 535. A law is impermissibly gerrymandered against religious organizations if it favors secular conduct, *id.* at 537, or "proscribe[s] more religious conduct than is necessary to achieve [its] stated ends." *Id.* at 538.

By offering myriad secular exemptions, *see* VC ¶ 55, 58, 91, Washington has failed to pursue its proffered objectives "with respect to analogous non-religious conduct," *See Lukumi,* 508 U.S. at 546. The First Amendment prevents Cedar Park and other similarly-situated organizations from "being singled out for discriminatory treatment" by Defendants' refusal to grant them an exemption that would have no worse effects on the government's stated interest than those already

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approved. *Id.* at 538. Defendants' obstinance "devalues [Cedar Park's] religious reasons" for acting. *See id.* at 537. Providing secular exemptions "while refusing religious exemptions is sufficiently suggestive of discriminatory intent so as to trigger heightened scrutiny under *Smith* and *Lukumi*." *Fraternal Order of Police*, 170 F.3d at 365.

SB 6219 also proscribes more conduct than is necessary to achieve its end of furthering women's access to healthcare. *Lukumi*, 508 U.S. at 542 (holding a law that hinders "much more religious conduct than is necessary in order to achieve the legitimate ends asserted in [its] defense," is "not neutral"). Exempting Cedar Park would only affect the church's employees, all of whom share the Church's beliefs about abortion. *See* VC ¶¶ 25–32. Forcing Cedar Park to provide coverage that would not be used by its employees makes SB 6219 broader than necessary and further indicates it is impermissibly gerrymandered.

b. SB 6219 treats churches less favorably than other religious organizations.

Differential treatment of types of religious organizations is also sufficient to eliminate neutrality. There is no need to show the government favors one creed over another. *Larson v. Valente*, 456 U.S. 228, 246 n.23 (1982) (striking down a law treating "well-established churches" more favorably than "churches which are new").

As discussed above, the law that purports to exempt churches like Cedar Park from SB 6219 also makes them subject to increased premiums to pay for abortion. It contains the following condition: "[t]he provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause…." RCW § 48.43.065(3)(b). Under RCW § 48.43.065(3) & (4), an insurance carrier cannot be forced to pay for the coverage, but it can require that Cedar Park pay an increased premium or extra fees to cover abortion as an administrative, overhead, or contingency expense. AGO 2002 No. 5. There is no similar requirement for religious health care providers, carriers, or facilities, which are exempted from SB 6219 by RCW § 48.43.065(2)(a). Instead that provision states, "[t]he provisions of this

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section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan services." RCW § 48.43.065(2)(b). The only thing that must be done is the *insurance carrier* must notify enrollees of the lack of coverage and provide them with prompt written information about how they might access these services. RCW § 48.43.065(2)(b).

Health care providers, religiously sponsored health carriers, and health care facilities that have a conscientious or moral objection to providing insurance coverage for abortion are completely exempt without being subject to additional fees. VC ¶ 88. Cedar Park is not, making SB 6219 not neutral. *See Masterpiece Cakeshop,* 138 S. Ct. at 1731 ("The Free Exercise Clause bars even subtle departures from neutrality on matters of religion.") (cleaned up).

c. SB 6219 intentionally discriminates against religious organizations like Cedar Park.

Discriminatory intent is not necessary to show lack of neutrality, but it can be an indicator of an anti-religious objective. "[U]pon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and the rights it secures." *Lukumi*¸508 U.S. at 547. The government "cannot impose regulations that are hostile to the religious beliefs of affected citizens and cannot act in a manner that passes judgment upon or presupposes the illegitimacy of religious beliefs and practices." *Masterpiece Cakeshop*, 138 S. Ct. at 1731. "Factors relevant to the assessment of governmental neutrality include the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Id.* (cleaned up).

Here, legislators specifically requested that the law be amended to add exemptions for religious organizations like Cedar Park, but those requests were rejected.[7] And Washington State

[7] *See* Proposed Amendment to Substitute Senate Bill 6219 by Senator O'Ban, *available at* https://bit.ly/2UtTAye (last accessed Apr. 5, 2019); Proposed Amendment to Substitute Senate Bill 6219 by Senator Shea, *available at* https://bit.ly/2G4krqE (last accessed Apr. 5, 2019). Both of these proposed amendments would have allowed Cedar Park and other similarly-situated employers to refuse to comply with SB 6219's abortion mandate.

Senator Steve Hobbs, SB 6219's sponsor, explicitly stated that religious organizations can sue if they do not want to provide insurance coverage for abortion. VC ¶ 53 (citing Matt Markovich, *Catholic Bishops of Wash. Ask Gov. Inslee to Veto Abortion Insurance Bill*, KOMO News, March 5, 2018, https://bit.ly/2Uuu5Nf (last visited Apr. 11, 2019)). Responding to religious organizations' concern that SB 6219 would compel them to pay for abortions, Hobbs quipped: "Health care is about the individual, not about [religious organizations]." *Id*. These statements, as well as the historical background of the statute, indicate SB 6219 was enacted to target organizations like Cedar Park.[8]

The animus expressed by the State of Washington is not simply a "favored explanation;" it is supported by concrete evidence. *See* MTD at 17 (citing *In re Century Aluminum Co. Sec. Litig.* 729 F.3d 1104, 1108 (9th Cir 2013)). These facts "tend[] to exclude the possibility that the alternative explanation is true." *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d at 1108. The abortion mandate in SB 6219 is not neutral.

C. SB 6219 does not survive strict scrutiny.

Under strict scrutiny, "a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Lukumi*, 508 U.S. at 546 (quotation marks omitted). In applying strict scrutiny, courts "look[ ] beyond broadly formulated interests" and instead "scrutinize[ ] the asserted harm of granting specific exemptions to particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao do Vogetal*, 546 U.S. 418, 431 (2006). Defendants do not even attempt to argue that SB 6219 survives strict scrutiny, instead arguing that it survives the much less demanding rational basis review. MTD at 19–20. But SB 6219 fails under either standard. VC ¶¶ 95–98.

[8] Contrary to Defendants' inference, no *legislator* testified that RCW § 48.43.065 protects religious objectors from SB 6219. *See* MTD at 5. Only pro-abortion private citizens testifying in favor of the bill mentioned that provision. Wash. House Health Care & Wellness Comm., Public Hrg. Feb. 7, 2018, https://www.tvw.org/watch/?eventID =2018021058 at 33:12 through 39:30.

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1. SB 6219 does not serve a rational, much less compelling, government interest, as evidenced by its multiple exemptions.

SB 6219's exemptions demonstrate that it "cannot be regarded as protecting an interest of the highest order" because the existing exemptions permit "appreciable damage to that supposedly vital interest." *Lukumi*, 508 U.S. at 547 (cleaned up). The underinclusiveness of SB 6219 demonstrated above "is alone enough to defeat" the asserted state interest. *Brown v. Entm't Merch. Ass'n*, 564 U.S. 786, 802 (2011).

In *O Centro*, the government's ban on hallucinogenic tea was not subject to an exemption. But the existence of a *single* exemption for peyote in another part of the controlled substances law indicated that no compelling interest existed to justify the ban on tea. 546 U.S. 418. The exemptions to SB 6219 are far more vast and varied than the single exemption in *O Centro*, so the government must show that "granting the requested religious accommodations would seriously compromise its ability to administer the program." *Id.* at 435. Washington cannot meet its burden to make that showing because it has "seriously compromised" SB 6219's universality through multiple exemptions.

Indeed, the government does not even have a *rational* interest in forcing a pro-life church to provide insurance coverage for abortion. The only people affected by an exemption for Cedar Park would be Church employees, all of whom share the Church's beliefs. *See* VC ¶¶ 25–32. Forcing Cedar Park to pay for abortion coverage for people who will not use it is not rational.

2. SB 6219 is not narrowly tailored nor is it the least restrictive means of accomplishing the government's stated interests.

"A statute is narrowly tailored if it targets and eliminates no more than the exact source of the evil it seeks to remedy" *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (cleaned up). The government must also show that SB 6219 "is the least restrictive means of achieving" its interests. *Thomas*,450 U.S. at 718. If means less burdensome on religious freedom exist, the government "must use [them]." *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000).

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Washington has multiple ways to accomplish its alleged interests without compelling churches to violate their sincerely held religious beliefs. It could provide religious organizations an exemption from SB 6219 that does not require them to facilitate abortion by paying correspondingly higher premiums. This would allow the government to enforce the law against those who do not object on the basis of religion, while respecting the religious beliefs of organizations such as Cedar Park. The government has already demonstrated it can make such an exemption, as religious health care providers, health carriers, and health care facilities are exempted without having to pay anything to subsidize the conduct that violates their convictions. RCW § 48.43.065(2)(a). Moreover, Washington law exempts 13 different types of health care plans by excluding them from the definition of "health plan." RCW § 48.43.005(27). Such an exemption should be extended to Cedar Park and similar religious employers. Finally, the government itself could provide abortion coverage directly to employees whose health plans exclude coverage of abortion. All these options are "workable," *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003), and much "less restrictive" of religious freedom, *Playboy*, 529 U.S. at 824. In light of all these viable alternatives, Defendants' contention that SB 6219 is narrowly tailored fails.

D. SB 6219 violates the Free Exercise Clause because it requires Cedar Park to violate its long-established historical religious practice of opposing abortion.

Cedar Park has stated an additional independent Free Exercise claim, because SB 6219 requires Cedar Park to violate long-established religious practices involving opposition to abortion. VC ¶ 109. While satisfying the *Smith* test is a necessary threshold to surviving scrutiny under the Free Exercise Clause, it is not always sufficient. The Supreme Court has expressly rejected the idea "that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). And there is "no merit" to the assertion that *Smith* neutrality is sufficient to exclude long-established historical religious practices from Free Exercise clause protection. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012) (unanimously barring application of employment discrimination laws against teacher

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in religious school on free exercise grounds, without applying the *Smith* test). The Court in *Hosanna-Tabor* explained that "*Smith* involved government regulation of only outward physical acts," whereas the case before it "concern[ed] government interference with an internal church decision that affects the faith and mission of the church itself." *Id*. at 190. Making the same point, the Court recently noted that—notwithstanding what might be required of *secular* officiants through "neutral and generally applicable" laws—it would be unconstitutional to compel objecting clergy "to perform [a same-sex wedding] ceremony." *Masterpiece Cakeshop*, 138 S. Ct. at 1727. Likewise, coercing Cedar Park to participate in or facilitate abortion through its employer-sponsored healthcare plan violates the Free Exercise Clause.

E. SB 6219 violates Cedar Park's hybrid Free Exercise rights because the law violates additional fundamental rights.

Cedar Park has also stated a Free Exercise claim under the Ninth Circuit's recognition of the "hybrid" effect of the free exercise of religion and equal protection interests at issue in this case. VC ¶ 108. Under *Smith*, "strict scrutiny [is] imposed in 'hybrid situation[s]' in which a law 'involve[s] not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections." *Miller v., Reed,* 176 F.3d 1202, 1207 (1999) (citing *Smith*, 494 U.S. at 881–82). Such "hybrid rights" are exempted from *Smith's* general "rational basis test." To establish a hybrid-rights claim, a "plaintiff must make out a colorable claim that a companion right has been violated." *Miller*, 176 F.3d at 1207 (citing *Thomas,* 165 F. 3d at 703, 707). Cedar Park has stated a claim that SB 6219 violates both the Equal Protection and the Free Exercise Clauses. Accordingly, SB 6219 is subject to strict scrutiny.

IV. Cedar Park has stated a church autonomy claim.

SB 6219 impermissibly interferes with Cedar Park's internal operating procedures in violation of the Free Exercise and Establishment Clauses of the First Amendment. VC ¶¶ 140–50. History teaches—and our Constitution recognizes—that religious freedom demands a government that does not interfere with the internal affairs of religious institutions. *Watson v. Jones*, 80 U.S. 679, 730 (1871). Indeed, in *Smith*, the Supreme Court acknowledged the continuing validity of

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earlier cases protecting a church's right to institutional autonomy—specifically, *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440 (1969); and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952). *See Smith*, 494 U.S. at 877. Those cases held that First Amendment protection extends not only to matters of faith, but also to "church administration," *Serbian Eastern Orthodox Diocese*, 426 U.S. at 710, "internal organization," *id*. at 713, and "the operation of … churches," *Kedroff*, 344 U.S. at 107. In other words, church autonomy has a carefully defined scope that gives religious organizations and denominations independence from secular control. Churches have the power to decide for themselves—free of state interference—matters of church governance as well as those of faith and doctrine. *Kedroff*, 344 U.S. at 116.

Defendants argue that the church autonomy doctrine does not apply to generally applicable laws, relying on *Biel v. St. James School*, 911 F.3d 603 (9th Cir. 2018). MTD at 23. But *Biel* nowhere states this principle. Regardless, as discussed above, SB 6219 is not generally applicable.

SB 6219 necessarily interferes with Cedar Park's internal administration. Defendants order the Church to provide specific employee benefits directly at odds with Cedar Park's religious beliefs. The Church has stated a claim that SB 6219 violates the church autonomy doctrine.

V. Cedar Park has stated an Equal Protection claim by alleging SB 6219 treats similarly situated organizations differently.

"The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike." *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (cleaned up). Distinctions among similarly-situated groups that affect fundamental rights "are given the most exacting scrutiny." *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Discriminatory intent is presumed when a government treats similarly-situated groups differently and impinges on a fundamental right. *See Plyler,* 457 U.S. at 216–17 ("[W]e have treated as presumptively invidious those classifications that … impinge upon the exercise of a 'fundamental right.'"). Cedar Park has alleged that Defendants treat churches differently than similarly-situated employers, implicating the fundamental right to Free Exercise of Religion. VC ¶ 117–23. Because discriminatory intent is presumed in such situations, *Plyler,*

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457 U.S. at 216–17, this Court must presume that Defendants had the requisite "intent or purpose to discriminate against [the Church and similarly-situated religious organizations] based upon membership in a protected class," and Cedar Park has stated a claim under the Equal Protection Clause. *See* MTD at 20 (citing *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)).

Washington law exempts religious health care organizations from paying for objectionable procedures like abortion, *and* does not condition this exemption on paying increased premiums to facilitate that procedure. RCW § 48.43.065(2)(a)(b). These organizations are treated more favorably than religious organizations like Cedar Park. Defendants argue that RCW § 48.43.065(3)(a) provides Cedar Park an exemption, MTD at 21, but fail to mention that RCW § 48.43.065(3)(a) & (4) require the Church to provide extra premiums or fees for abortion and abortifacient coverage if the Church does not directly provide coverage for those items in its health care plan.

Washington law also exempts 13 different types of insurance plans from the definition of "health plans" to which SB 6219 applies, RCW § 48.43.005(27). VC ¶ 58. Some of these are comprehensive health care plans similar to Cedar Park's. For example, RCW § 48.43.005(27)(l) excludes "short-term limited purpose or duration" and "student only" health care plans approved by the insurance commissioner following a written request for exclusion from the definition of "health plan." So schools providing comprehensive health insurance to its students are not required to comply with SB 6219. There is no constitutionally relevant difference between a church employee benefit plan excluding abortion and a student benefit plan excluding abortion. The same is true for a plan that excludes maternity coverage or that is limited to a certain length of time. Defendants cannot treat these organizations differently absent a showing that SB 6219 meets strict scrutiny, which it cannot do. The Church has stated an Equal Protection claim.

VI. Cedar Park has stated an Establishment Clause claim.

SB 6219 discriminates between religious organizations like Cedar Park and religious health care organizations. VC ¶¶ 131–32. Discrimination based on religious status is especially odious because a "proper respect for both the Free Exercise and the Establishment Clauses compels the

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State to pursue a course of 'neutrality' toward religion." *Comm. for Pub. Educ. & Religious Liberty v. Nyquist*, 413 U.S. 756, 792–793 (1973). Defendants enacted SB 6219 with full knowledge that many religious organizations object to participating in, paying for, facilitating, or otherwise supporting abortion. VC ¶ 133. Yet no exemption is available to religious employers who, like Cedar Park, believe that paying for abortion, either directly or indirectly, causes them to sin. *Id*. at ¶ 134. Indeed, SB 6219 was designed to make it impossible for the Church and other similarly-situated religious employers to comply with their religious beliefs. *Id*. at ¶ 135.

SB 6219 is not neutral toward religion because it contains a vast scheme of exemptions, treats religious organizations differently, and was motivated by a desire to suppress religious conduct. The Church has stated a claim that SB 6219 violates the Establishment Clause.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motion to Dismiss in its entirety.

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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