

No. 24-7246

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNION GOSPEL MISSION OF YAKIMA WASHINGTON,

Plaintiff-Appellee,

v.

NICK BROWN, in his official capacity as Attorney General of Washington State;
ANDRETA ARMSTRONG, in her official capacity as Executive Director of the
Washington State Human Rights Commission; DEBORAH COOK, in her official
capacity as Commissioner of the Washington State Human Rights Commission;
GUADALUPE GAMBOA, in her official capacity as Commissioner of the
Washington State Human Rights Commission; JEFF SBAIH, in his official
capacity as Commissioner of the Washington State Human Rights Commission;
HAN TRAN, in his official capacity as Commissioner of the Washington State
Human Rights Commission,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Washington
Case No. 1:23-cv-03027-MKD

**EN BANC BRIEF OF AMICUS CURIAE JEWISH COALITION
FOR RELIGIOUS LIBERTY IN SUPPORT OF PLAINTIFF-APPELLEE
AND AFFIRMANCE**

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Donald S. Lutz, <i>Colonial Origins of the American Constitution: A Documentary History</i> (1998), https://oll.libertyfund.org/pages/1641-massachusetts-body-of-liberties	7
George Washington's Letter to the Hebrew Congregation of Newport, Rhode Island, Ambassador John L. Loeb, Jr. Institute for Religious Freedom and Democracy (Aug. 18, 1790), https://loeb.columbian.gwu.edu/george-washingtons-letter-hebrew-congregation-newport-rhode-island	9, 16
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Michael McConnell, <i>The Origins and Historical Understanding of Free Exercise of Religion</i> , 103 Harv. L. Rev. 1409 (1990).....	6
O.I.A. Roche, <i>The Jefferson Bible</i> 377 (1964)	10
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Thomas C. Berg et al., <i>Religious Freedom, Church-State Separation, and the Ministerial Exception</i> , 106 Nw. U. L. Rev. Colloquy 175 (2011).....	8

INTEREST OF AMICUS CURIAE

The Jewish Coalition for Religious Liberty is an association of American Jews concerned with the current state of religious-liberty jurisprudence. It aims to protect the liberty of all Americans to freely practice their faith and foster cooperation between Jews and other faith communities in pursuing that mission. Recognizing religious organizations’ ability to vindicate the right to religious autonomy protects the religious liberty and freedoms of all Americans, including religious minorities.

To those ends, amicus urges the Court to affirm the decision below.¹

INTRODUCTION

The right to religious autonomy is an important protection against “[s]tate interference” in “matters of faith and doctrine.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746 (2020) (quotation marks omitted). That right, which is grounded in both of the Religion Clauses, shields religious organizations from improper governmental “dictate[s]” or “influence” concerning religious matters—including choices about who may carry out an organization’s religious mission—even when the government acts on a neutral and generally applicable basis.

¹ Amicus submits this brief with an accompanying motion for leave to file pursuant to Federal Rule of Appellate Procedure 29 and Ninth Circuit Rule 29-2. No counsel for a party authored this brief in whole or in part. No party or party’s counsel contributed money for the preparation or submission of this brief. No person or entity other than amicus or its counsel contributed money for the preparation or submission of this brief.

Id. It is therefore critical that religious organizations be able to assert this right as a standalone claim when it is infringed.

As the unanimous panel decision correctly explained, the district court properly enjoined Washington from enforcing the Washington Law Against Discrimination (“WLAD”) against Union Gospel Mission of Yakima (“Union Gospel”) for preferring and hiring coreligionists for non-ministerial positions. Union Gospel is a Christian ministry whose mission is to “spread the Gospel of the Lord Jesus Christ” through Christ-centered rescue, recovery, restoration, shelter, meals, health care, and discipleship. It carries out that mission through employees who agree with and live by its faith. Washington’s contrary rule would empower the State to investigate, penalize, and second-guess Union Gospel’s religious determination that a unified community of believers is necessary to its ministry. That is precisely the kind of interference with “faith and mission” that the Religion Clauses forbid. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171, 190 (2012).

The district court held that Union Gospel was likely to succeed because the WLAD is not neutral and generally applicable in light of its secular exemptions. But the Ninth Circuit panel’s alternative rationale—grounded in religious autonomy—is equally important. Religious autonomy is an independent constitutional guarantee, not a contingent protection that applies only when a law contains secular exemptions.

A governmental attempt to “dictate or even . . . influence” matters of faith and doctrine, *Our Lady of Guadalupe*, 591 U.S. at 746—including a religious organization’s sincere determination that those who carry out and sustain its mission must share its religious commitments—is one of the central infringements that the First Amendment guards against, even if the tool that the government uses is a religiously neutral and generally applicable law. This Court should therefore affirm the injunction on religious-autonomy grounds: Where a religious organization’s challenged employment decision is rooted in sincerely held religious beliefs and concerns its faith and mission, no state can override that decision by limiting constitutional protection to positions it deems “ministerial.”

Crucially, this right to religious autonomy must be enforceable as a standalone claim. Union Gospel brought this pre-enforcement action because Washington’s threatened enforcement forced it to choose between following its religious convictions and exposing itself to investigations, penalties, and orders compelling employment decisions contrary to its faith. If religious autonomy could be invoked only as a defense to a lawsuit (as the State now argues), Union Gospel would have no meaningful way to prevent the very interference the First Amendment forbids whenever the government used means other than a lawsuit to intrude on religious matters. Such a rule would make religious autonomy a second-class right by placing religious organizations at the mercy of state officials and requiring them either to

compromise their religious identity or risk punishment before obtaining judicial review. To vindicate religious organizations’ right to religious autonomy in matters of faith and doctrine, this Court should affirm the district court’s preliminary injunction on religious-autonomy grounds and make clear that the right may be asserted as a standalone claim to stop governmental infringement.

ARGUMENT

I. Religious Autonomy Is A First Amendment Right That Applies Even When Governmental Action Is Neutral And Generally Applicable.

The right to religious autonomy grants “a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). This right, rooted in both of the First Amendment’s Religion Clauses, protects religious organizations from improper governmental influence even when the government acts on a neutral and generally applicable basis.

In *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), the Supreme Court adopted a narrow view of what the Free Exercise Clause requires based on concerns that subjecting generally applicable and religiously neutral laws to strict scrutiny would amount to “courting anarchy.” 494

U.S. at 888.² But *Smith*’s analysis is inapplicable in religious-autonomy cases, and its restriction does not govern such claims. Assertions of the right to religious autonomy are evaluated by asking whether the government has “attempt[ed] . . . to dictate or even to influence” “matters of faith and doctrine.” *Our Lady of Guadalupe*, 591 U.S. at 746 (quotation marks omitted). Where the right to religious autonomy is at stake, the fact that a law may be neutral and generally applicable is irrelevant. The Supreme Court has relied on the right to religious autonomy to protect a religious entity’s determination on “questions of discipline, or of faith, or ecclesiastical rule, custom, or law,” *Watson v. Jones*, 80 U.S. 679, 727 (1871); its “right to use and occupy” church property, *Kedroff*, 344 U.S. at 96; and its “freedom to select its own ministers,” *Hosanna-Tabor*, 565 U.S. at 189. Those protections were not contingent on finding that the challenged governmental action lacked religious neutrality or general applicability.

These distinct inquiries protect related but separate interests and liberties. And protection of the right to religious autonomy—even when the governmental

² Amicus has previously argued that *Smith*’s rule is mistaken, and that experience with religious-liberty claims under other laws (like the Religious Freedom Restoration Act) has shown *Smith*’s concerns were overstated. See, e.g., Br. of Amicus Curiae Jewish Coalition for Religious Liberty in Supp. of Pet’rs, *Roman Catholic Diocese of Albany v. Lacewell*, No. 20-1501, 2021 WL 2182223 (U.S. May 25, 2021).

action at issue is neutral and generally applicable—is firmly rooted in history and the Supreme Court’s precedents.

A. The Founders Recognized Religious Autonomy As A Core Right.

The right to religious autonomy has deep roots in our Nation’s history. *See generally* Branton J. Nestor, *Judicial Power and Church Autonomy*, 100 Notre Dame L. Rev. 1899, 1959 (2025) (tracing “the history and tradition of the church autonomy doctrine”). Indeed, many among the early English settlers fled to America with hopes of escaping religious interference. Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1422 (1990). Under the Crown, these settlers’ religious institutions experienced interference on matters fundamental to their religious character, including the election of church leaders and the determination of doctrine. *Id.* America was to be different. These colonists sought to ensure that, in this Nation, they would be free to “elect their own ministers and establish their own modes of worship.” *Hosanna-Tabor*, 565 U.S. at 182.

To those ends, the colonists immediately took measures to protect the right to religious autonomy. In Massachusetts, for example, they forbade the government from placing “[i]njunctions . . . upon any Church, Church officers or member in point of Doctrine, worship or Discipline, whether for substance or circumstance [sic] besides the Institutions of the lord.” The Mass. Body of Liberties of 1641, reprinted

in Donald S. Lutz, *Colonial Origins of the American Constitution: A Documentary History* (1998), <https://oll.libertyfund.org/pages/1641-massachusetts-body-of-liberties>. They provided that “[e]very Church hath free libertie of Election and ordination of all their officers from time to time, provided they be able pious and orthodox.” *Id.* And, critically, they ensured that “[e]very Church hath free libertie of Admission, Recommendation, Dismission, and Expulsion, or deposall of their officers, and members, upon due cause.” *Id.*

Roger Williams, founder of the Colony of Rhode Island and Providence Plantations, echoed these sentiments just three years later. In Rhode Island, he insisted, government “magistrates, as magistrates, [shall] have no power of setting up the form of church government, electing church officers,” or “punishing with church censures.” Roger Williams, *The Bloudy Tenent of Persecution for Cause of Conscience* 214 (1644), <https://www.gutenberg.org/files/65739/65739-h/65739-h.htm>. This right to religious autonomy derived from the fact that “[a]ll civil states, with their officers of justice, in their respective constitutions and administrations, are proved essentially civil, and therefore not judges, governors, or defenders of the spiritual.” *Id.* at 2.

This history carried through the Founding, and the Founders likewise recognized religious autonomy as a critical right.

In 1783, Benjamin Franklin—then serving as minister to France—received an inquiry from the French papal nuncio about whether the Confederation Congress would approve the pope’s appointment of a French bishop to oversee the Catholic Church in America. Franklin responded that because Congress “can not . . . intervene in the ecclesiastical affairs of any sect,” seeking such approval would be “absolutely useless.” Thomas C. Berg et al., *Religious Freedom, Church-State Separation, and the Ministerial Exception*, 106 Nw. U. L. Rev. Colloquy 175, 181 (2011) (citation omitted). Congress itself reiterated that response in a resolution, directing Franklin “to notify to the apostolical nuncio . . . that the subject of his application to doctor Franklin, being purely spiritual, it is without the jurisdiction and powers of Congress, who have no authority to permit or refuse it.” 2 John G. Shea, *Life and Times of the Most Rev. John Carroll, Bishop and First Archbishop of Baltimore, 1763–1815* 217 (1888).

Evincing the same understanding, newly elected President George Washington wrote to the United Baptist Churches in Virginia that “[i]f [he] could have entertained the slightest apprehension that the Constitution framed in the Convention, where [he] had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly [he] would never have placed [his] signature to it.” Bruce Frohnen, Letter from George Washington to the United Baptist Churches in Virginia (May 10, 1789), *The American Republic: Primary*

Sources 69, 70 (2002). In a similar letter written to the Synod of the Reformed Dutch Church in North America, Washington underscored the two realms of civil and ecclesiastical authority, remarking that while ““true religion affords to government its surest support,”” a ““just government”” protects religious institutions ““in their religious rights.”” 12 Jared Sparks, *The Writings of George Washington* 167 (1855). Washington likewise promised the Jewish community of Newport, Rhode Island that they would be free to follow their faith in America, not merely at the “toleration” of the majority but as a matter of their “inherent natural rights.” *George Washington’s Letter to the Hebrew Congregation of Newport, Rhode Island*, Ambassador John L. Loeb, Jr. Institute for Religious Freedom and Democracy (Aug. 18, 1790), <https://loeb.columbian.gwu.edu/george-washingtons-letter-hebrew-congregation-newport-rhode-island>.

Thomas Jefferson shared this view. In 1804, he wrote to the Ursuline Sisters of New Orleans (a Catholic order) to assure them that the Louisiana Purchase would not threaten their religious autonomy. Previously, the Sisters had expressed anxiety over “the property vested in [their order] by the former governments of Louisiana.” James P. McClure, Letter from Thomas Jefferson, President, U.S., to the Ursuline Nuns of New Orleans (July 13, 1804), 44 *The Papers of Thomas Jefferson* 78, 78–79 (2019). Jefferson remarked that the “principles of the constitution and government of the United [S]tates are a sure guarantee to you that it will be preserved

to you sacred and inviolate, and that your institution will be permitted to govern itself according to it[s] own voluntary rules, without interference from the civil authority.” *Id.* And Jefferson similarly assured a Jewish correspondent that each religion’s “peculiar dogmas” are “the exclusive concern of the respective sects embracing them, and no rightful subject of notice to any other.” O.I.A. Roche, *The Jefferson Bible* 377 (1964).

B. The Supreme Court’s Precedents Protect Religious Autonomy Even When The Government Acts On A Neutral And Generally Applicable Basis.

The Supreme Court’s precedents have long protected the right to religious autonomy by forbidding governmental intrusion into church affairs and decisionmaking.

The Supreme Court first recognized the right to religious autonomy in 1872 in *Watson v. Jones*, 80 U.S. 679. There, the Court considered a dispute between two Presbyterian factions over who controlled the property of a church. The General Assembly of the Presbyterian Church had recognized one faction, and the Court declined to question that determination. The Court explained that “whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.” *Id.* at 727.

In *Kedroff*, the Supreme Court applied the right to religious autonomy again—this time to recognize that the “[f]reedom to select the clergy, where no improper methods of choice are proven, . . . must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference.” 344 U.S. at 116. At issue in *Kedroff* was the right to use a Russian Orthodox cathedral in New York City. *Id.* at 95–96. A group of North American churches, having split from the Supreme Church Authority in Moscow, claimed that the right to use the cathedral belonged to an archbishop elected by them. *Id.* at 96. The Supreme Church Authority disagreed, claiming the right belonged to an archbishop appointed by its patriarch. *Id.* New York’s highest court sided with the North American churches. *Id.* at 97. The court relied on a state law that required every Russian Orthodox church in the state to recognize as authoritative all determinations made by the governing body of the North American churches. *Id.*

The Supreme Court reversed. In declaring the state law unconstitutional, the Court explained that the controversy between the churches was “strictly a matter of ecclesiastical government, the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of North America.” *Kedroff*, 344 U.S. at 115. Because the state law directed the “pass[ing] [of] control of matters strictly ecclesiastical from one church authority to another,” it impermissibly inserted the “power of the state into the forbidden area of religious

freedom contrary to the principles of the First Amendment.” *Id.* at 119. In sum, a “[c]hurch’s choice of its hierarchy” is “an ecclesiastical right.” *Id.*

The Court reaffirmed these principles in *Serbian Eastern Orthodox Diocese for United States and Canada v. Milivojevic*, 426 U.S. 696 (1976). There, the Court confronted a dispute over control of the American-Canadian Diocese of the Serbian Orthodox Church. *Id.* at 698. Dionisije Milivojevic sued the church after it removed him as bishop of the American-Canadian Diocese. *Id.* The Illinois Supreme Court “reinstat[ed] Dionisije” on the grounds that his removal failed to comply with church laws and regulations. *Id.* at 708.

The Supreme Court again reversed. *Milivojevic*, 426 U.S. at 698. The Court explained that the First Amendment “permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.” *Id.* at 724. “When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.” *Id.* at 724–25. Accordingly, the Illinois Supreme Court erred when it took upon itself “the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Id.* at 720.

The Supreme Court's more recent precedents have continued to protect religious autonomy, and have done so without asking whether the government's action was neutral or generally applicable.

In *Hosanna-Tabor*, the Supreme Court held that the right to religious autonomy prohibited a court from entertaining an employment discrimination claim brought by a teacher against the religious school where she taught. 565 U.S. at 179. The teacher claimed she had been fired in violation of the Americans with Disabilities Act. *Id.* The school responded that it had fired her for violating Lutheran doctrine. *Id.* at 180. The Court held that the suit was barred by the “ministerial exception,” explaining that it “concern[ed] government interference with an internal church decision that affects the faith and mission of the church.” *Id.* at 190.

The Supreme Court squarely held in *Hosanna-Tabor* that the right to religious autonomy applies even where governmental action may be neutral and generally applicable under cases like *Smith*. The Court explained that while “[i]t is true that the ADA’s prohibition on retaliation, like Oregon’s prohibition on peyote use, is a valid and neutral law of general applicability,” “a church’s selection of its ministers is unlike an individual’s ingestion of peyote.” 565 U.S. at 190. “*Smith* involved government regulation of only outward physical acts,” but “[t]he present case” concerns “government interference with an internal church decision that affects the faith and mission of the church itself.” *Id.*

In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017), the Supreme Court reiterated this point. The Court made clear that not every “application of a valid and neutral law of general applicability is necessarily constitutional.” *Id.* at 461 n.2. That is why, the Court explained, it had held in *Hosanna-Tabor* that “the Religion Clauses required a ministerial exception to the neutral prohibition on employment retaliation contained in the Americans with Disabilities Act.” *Id.*

Similarly, in *Our Lady of Guadalupe*, the Supreme Court held that the right to religious autonomy requires courts “to stay out of employment disputes involving those holding certain important positions with churches and other religious institutions.” 591 U.S. at 746. As in *Hosanna-Tabor*, the Court made clear that the right to religious autonomy applies regardless of whether the government’s action is neutral or generally applicable. It explained that “[t]he constitutional foundation for [its] holding” was “the general principle of church autonomy” rooted in “the Religion Clauses.” *Our Lady of Guadalupe*, 591 U.S. at 747. The Religion Clauses together “protect the right of churches and other religious institutions to decide matters ‘of faith and doctrine’ without government intrusion,” such that “[s]tate interference” is unconstitutional. *Id.* at 746. That differs from the analytical framework in cases like *Smith*, which instead asks only whether the government has

acted on a neutral and generally applicable basis. 494 U.S. at 879; *see also, e.g., Fulton v. City of Phila., Pa.*, 593 U.S. 522, 532–33 (2021).

In sum: The right to religious autonomy, as reflected in this Nation’s history and the Supreme Court’s precedents, safeguards important liberties that may otherwise go unprotected if a religious organization is limited to arguing that governmental action is not neutral or generally applicable. It is therefore critical that religious organizations be able to affirmatively invoke this right, which is distinct from other First Amendment protections.

II. The Court Should Vindicate The Right To Bring Suit To Stop Infringements On The Right To Religious Autonomy.

The State now argues that religious organizations like Union Gospel should be forbidden from invoking the right to religious autonomy as a standalone claim. That second-class treatment of the right is both harmful and wrong: Religious autonomy is not merely a defense to be raised against a lawsuit if and when the government chooses to bring one, but a freestanding First Amendment protection that (like other rights) may be invoked affirmatively to stop governmental interference in matters of faith, doctrine, and mission. Curtailing litigants’ ability to assert this right would produce dangerous results inconsistent with this Nation’s proud traditions.

A. Treating Religious Autonomy Solely As A Defense Against A Lawsuit Leads To Dangerous Results.

Since its inception, our Nation has “serv[ed] as a refuge for religious freedom.” *Masterpiece Cakeshop v. Colorado C.R. Comm’n*, 584 U.S. 617, 649 (2018) (Gorsuch, J., concurring). That commitment is embedded in our national DNA. George Washington, in writing to the Hebrew Congregation in Newport, Rhode Island, declared that “[a]ll possess alike liberty of conscience and immunities of citizenship,” and that “the Government of the United States, which gives to bigotry no sanction, to persecution no assistance[,] requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.” *Washington’s Letter to the Hebrew Congregation in Newport, Rhode Island, supra*. He concluded with a fervent wish: “May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants; while every one shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.” *Id.*

Threats to this promise of religious liberty can come in many forms, not just in a lawsuit. Recent upticks in religiously motivated violence provide a tragic example.

“Cases of antisemitism and hate crimes towards Jewish Americans have surged in recent years.” Callum Sutherland, *The Rise of Antisemitism and Political Violence in the U.S.*, Time Magazine (June 2, 2025), <https://time.com/7287941/rise->

of-antisemitism-political-violence-in-united-states/. A 2024 report on the state of antisemitism in America found that 33% of American Jews had been the personal targets of antisemitism in the past year, and 56% of American Jews had changed their behavior out of fear (for example, hiding their identities by forgoing religious garments in public)—two statistics representing sharp increases over previous years. The American Jewish Committee, *The State of Antisemitism in America 2024* (Feb. 12, 2025), <https://www.ajc.org/AntisemitismReport2024>. These reports are accompanied by a startling increase in attacks on synagogues. See Combat Antisemitism Movement, *Threats to American Synagogues Soar in First Two Months of 2023*, <https://combatantisemitism.org/wp-content/uploads/2023/03/Targeting-of-Jewish-Institutions-Report-5-3.pdf>.

Against this backdrop, demand for state-provided security grants for synagogues and other religious institutions has risen. In 2024, for example, 37% of recipients of security grants from a New York grant program (“Securing Communities Against Hate Crimes”) were Jewish groups. Marc Rod, *Under half of nonprofit security grant applications funded in 2024, despite additional funding*, Jewish Insider (Aug. 30, 2024), <https://jewishinsider.com/2024/08/under-half-of-nonprofit-security-grant-applications-funded-in-2024-despite-additional-funding/>. Likewise in 2024, 29% of grants in Texas went to Jewish groups. *Texas, California Federations Turn to NSGP-State for Security Aid*, Jewish Federations of North

America (Aug. 15, 2025), <https://www.jewishfederations.org/blog/all/texas-california-federations-turn-to-nsgp-state-for-security-aid-498337>. Synagogues and other Jewish organizations rely on these grants for security and “have long advocated for the program[s].” Luke Tress, *New York awards record \$63.9M in security funding for organizations at risk of hate crimes*, Jewish Telegraphic Agency (Dec. 3, 2024), <https://www.jta.org/2024/12/03/ny/new-york-awards-record-63-9m-in-security-funding-for-organizations-at-risk-of-hate-crimes>.

Religious schools are similarly reliant on funding for security. Pennsylvania, which launched a grant program in the wake of the 2018 massacre at the Tree of Life Synagogue, recently awarded nonprofit security grant funds to Jewish day schools. Andrew Guckes, *Local Synagogues, Schools Receive State Security Funds*, Philadelphia Jewish Exponent (Oct. 29, 2024), <https://www.jewishexponent.com/local-synagogues-schools-receive-state-security-funds/>. So too did California and Florida. *Cal OES Announces Release of \$47 Million in Awards to Help Nonprofit and Faith-Based Organizations Enhance Security and Safety*, California Governor’s Office of Emergency Services (Feb. 14, 2023), <https://www.news.caloes.ca.gov/cal-oes-announces-release-of-47-million-in-awards-to-help-nonprofit-and-faith-based-organizations-enhance-security-and-safety-2/>; Danielle Prieur, *Governor DeSantis announces an additional \$40 million to protect Jewish day schools, HBCUs*, Central Florida Public Media (May 8, 2024),

<https://www.cfppublic.org/education/2024-05-08/desantis-40-million-protect-jewish-day-schools>.

If religious autonomy were solely a defense to a lawsuit, vulnerable religious groups would have little to no recourse should the government deny them critical security grants based on their criteria for selecting the people who carry out their religious mission. Suppose, for example, that a state conditioned receipt of such grants on an organization's compliance with a "law against discrimination" like the one in this case. Synagogues, student groups, and any other religious organizations that limit leadership positions to those who share their "religious mission," *Our Lady of Guadalupe*, 591 U.S. at 762, could lose critical funding for security. And if a state simply revokes funding instead of bringing a lawsuit, the organization would have no way to assert its religious-autonomy rights.

That poses a threat to the very "faith and mission" of religious organizations dependent on security grants or other types of government funding. *Hosanna-Tabor*, 565 U.S. at 188. "To force religious organizations to hire messengers and other personnel who do not share their religious views would undermine not only the autonomy of many religious organizations but also their continued viability." *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., respecting the denial of certiorari). If religious organizations are unable to vindicate their religious-autonomy rights anytime the government uses enforcement tools

short of a lawsuit, they will have to choose between compromising their mission and withdrawing from the public sphere. That “would greatly impoverish our Nation’s civic and religious life.” *Id.*

B. This Case Illustrates The Danger Of Treating Religious Autonomy Solely As A Defense.

The facts of this case offer a prime illustration of the danger inherent in treating religious autonomy as only a defense to a lawsuit. Union Gospel came to court because Washington made clear that the WLAD, as interpreted by the Washington Supreme Court, applies to Union Gospel’s non-ministerial hiring decisions, and because the State refused to disavow enforcement against Union Gospel if it continued hiring only those who share and live by its faith. For Union Gospel, that threat is existential. Union Gospel exists to “spread the Gospel of the Lord Jesus Christ,” carries out that mission through shelters, meals, recovery programs, clinics, and other ministries, and believes that all employees—not just those the State might call “ministers”—must be part of a unified Christian community in order to effectively pursue that mission.

Before the district court, the State tried to blunt the controversy by disavowing enforcement as to two specific jobs: an IT technician and an operations assistant. But that limited concession does not solve the problem. Union Gospel had numerous other open positions that the State may deem non-ministerial—ranging from thrift-store employees and cooks to nurses, safety-team members, and other staff—and the

State would not assure Union Gospel that it could fill those positions with coreligionists without facing investigation or enforcement. The result was that Union Gospel remained under continuing threat if it staffed its ministry as its faith requires.

This scenario is emblematic of the problem with denying religious entities the right to initiate litigation on religious-autonomy grounds. If religious autonomy may be invoked only defensively, then the State may infringe on that right by any means short of bringing a lawsuit. Washington could threaten enforcement, refuse to disavow investigations, and leave Union Gospel to choose between pausing its hiring, altering its religious standards, narrowing its ministry, or risking investigations, administrative proceedings, penalties, and orders compelling employment decisions contrary to its faith. That is constitutionally intolerable.

The right to religious autonomy protects against governmental intrusion into matters of faith, doctrine, and mission. And in a Nation committed to protecting religious organizations against improper governmental interference of all stripes, religious autonomy must be enforceable when the infringement occurs—not just when the State chooses to bring a lawsuit.

III. The Court Should Recognize That The Right To Religious Autonomy Protects More Than Just “Coreligionist” Hiring.

The right to religious autonomy protects more than a religious organization’s ability to distinguish between members and nonmembers of a faith. It also protects

the organization’s authority to define for itself the beliefs, practices, and standards of conduct necessary to advance its mission. A rule limited to “coreligionist” status would invite courts and government officials to treat religion as a broad demographic category while disregarding the theological commitments that give a religious community its identity. The First Amendment does not permit the State to decide that nominal affiliation is enough, or to separate an organization’s religious label from the doctrines and practices through which that organization understands and carries out its faith.

That principle matters in concrete ways, especially for minority faiths. A rule that merely permits a Jewish organization to hire Jewish applicants over non-Jewish ones, while forbidding it to consider the beliefs and practices that make an applicant suited to the organization’s religious work, would offer little protection. Judaism (like many other religions) encompasses a broad range of beliefs and practices—an Orthodox synagogue, a Reform congregation, a Jewish day school belonging to any denomination, a kosher kitchen, and a Shabbat program may all require employees who understand and adhere to particular religious observances in order to successfully accomplish their goals. In that setting, the relevant question is not whether an applicant can claim a religious label, but whether an applicant can faithfully support the organization’s mission as that organization understands it. Put simply, a Jewish person who rejects an organization’s practices regarding kashrut,

Shabbat observance, prayer, or communal discipline would be poorly suited for that organization.

The same point explains why the right at issue here cannot be reduced to a state-defined permission to prefer generic “coreligionists.” Union Gospel does not seek to hire Christians for the sake of preferring Christians as such. It instead seeks to hire employees who agree with and live by its religious tenets, because it believes those employees create the faith community through which it carries out its mission. The First Amendment protects that religious judgment. By contrast, if a court could say that a religious organization may prefer members of its faith in name, while forbidding it from considering the practices and commitments that make those persons capable of advancing the organization’s faith and mission, that protection would ring hollow. Religious autonomy therefore must protect a religious organization’s own sincere understanding of what shared religious beliefs and practices its work requires, rather than substituting the government’s broad denominational categories for the organization’s religious self-definition.

CONCLUSION

This Court should affirm.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Ninth Circuit Rule 29-2(c)(3) because it contains 5,079 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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s/ Trenton J. Van Oss

TRENTON J. VAN OSS

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. I certify that all participants in the case are registered ACMS users and that service will be accomplished by the appellate ACMS system.

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