IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEATTLE PACIFIC UNIVERSITY

Plaintiff,

v.

NICHOLAS W. BROWN, in his official capacity as Attorney General of Washington

Defendant.

No. 3:22-cv-05540-BJR

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN OPPOSITION

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

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INTRODUCTION

Seattle Pacific University has educated students and served the Seattle community for nearly 150 years. It has created and fostered a distinctive religious community through education rooted in Christian faith and Free Methodist traditions. It forms that community by asking that its leaders, educators, and staff share the University's Christian faith, worship at a local church, and follow religious practices concerning human sexuality in accordance with that faith. This religious employment practice is a longstanding feature of SPU and other religious institutions, and it has long been protected by federal and state law. But after a recent change to state law, SPU's religious hiring practices are at risk, and the Washington Attorney General's Office (AGO) launched a yearslong investigation into SPU. The AGO suddenly closed that investigation—but it still refuses to disavow future enforcement. The risk to SPU's religious community continues.

This case is ready for resolution today. The undisputed facts show that SPU maintains religious employment policies that are arguably proscribed by the Washington Law Against Discrimination (WLAD). That was enough for the Ninth Circuit to rule that SPU has pre-enforcement standing—and nothing relevant to that court's analysis has changed. The AGO repackages the same arguments the Ninth Circuit already rejected, claiming it cannot know when SPU will apply its policies. But it does not dispute that SPU maintains these written policies, asks employees on job applications and in interviews if they will abide by them, and has declined to hire employees on that basis. The AGO now attempts to moot the case by closing its investigation, but the AGO continues to argue that SPU's practices are unlawful and refuses to commit to future non-enforcement. It cannot meet the formidable burden required to establish mootness.

SPU is entitled to summary judgment because its religious employment practices are protected by the First Amendment. Courts have long recognized that religious institutions may choose their own polities and their own members and staff, free from interference by state authorities or federal courts. This protection—church autonomy—has deep constitutional roots, and protects SPU in two ways: first, it protects SPU from state action that would, as here, force it to disaffiliate with

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the Free Methodist Church, and second, it protects SPU's hiring practices themselves. Courts have recognized that religious groups may use religious criteria in hiring, and Title VII and state laws such as the WLAD have historically exempted religious employers for this reason.

The Free Exercise Clause also protects SPU because the WLAD is not generally applicable. Laws are not generally applicable, and so trigger strict scrutiny, when they (1) exempt comparable secular conduct or (2) use systems of individualized exemptions. The WLAD contains a sweeping exemption: over 60 percent of Washington employers are fully exempt, free under state law to engage in blatant race, sex, or sexual orientation discrimination, while SPU is threatened for its sincere religious exercise about human sexuality. The WLAD also offers individualized exemptions via the case-by-case BFOQ exemption. So the WLAD must face strict scrutiny, which it fails.

The Free Speech and Assembly Clauses likewise protect SPU's ability to engage in expressive association and assemble with others for religious exercise. SPU's religious message would be impaired if it were forced to accept community members whose actions contradicted SPU's religious message. And SPU would then be penalized for continuing to assemble with the Free Methodist Church. The First Amendment also protects SPU from denominational discrimination, which is precisely what it faces because the WLAD singles out a particular set of religious beliefs as unprotected. The AGO has now admitted that it has never investigated any other religious employer for WLAD violations. If that is not a case of denominational discrimination, it is difficult to imagine what would be. SPU is entitled to summary judgment on all its remaining counts and a permanent injunction in its favor.

STATEMENT OF UNDISPUTED FACTS

A. SPU's founding as a Free Methodist institution

SPU is a private, Christian liberal arts university that seeks to form graduates of competence and character and to model a grace-filled community. Porterfield Ex.B at 1. Since its founding as a Free Methodist seminary in 1891, the University has faithfully served its local Seattle community

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consistent with the principles of Free Methodism. For example, in recent years, it has created programs to help students find affordable meals, organized events to educate the evangelical community about racial justice, and hosted a community of individuals experiencing homelessness. Porterfield ¶4. SPU is now a nationally ranked liberal arts university that remains affiliated with the Free Methodist Church. Porterfield ¶¶4-5; *id*. Ex.C at 2.

The Free Methodist Church—so named for its abolitionist roots—is an evangelical Protestant denomination with ministries in the United States and 100 other countries. Porterfield Ex.A at 3-4; *id.* at 8. The Church's teachings, rituals, and forms of ecclesial organization are laid out in the Book of Discipline. *Id.* at 3, 5-6. The Free Methodist Church expects all Christians to live out and model the faith. *Id.* at 38. Because the Free Methodist Church believes that each human being is created in the image of God, it rejects anything that would violate a person's dignity or diminish his or her value. *Id.* at 44. Therefore, the Church is committed to upholding the dignity of every human being regardless of that person's race, ethnicity, color, socioeconomic status, disability, gender, or other distinction, including sexual orientation. *Id.* at 44-48, 53. Because every person bears the image of God, every person deserves to be treated fairly and without bias. *Id.* at 44, 53.

The Free Methodist Church also holds sincere religious beliefs about sex and marriage. Free Methodists believe that sexual intimacy is a gift from God and great blessing within marriage. *Id.* at 53. Given this religious understanding, SPU also believes that premarital and extramarital sex betrays the marital bond, and that same-sex sexual intimacy does not align with God's created order and best intention for the human family. *Id.* at 53-54. Free Methodists also believe strongly in educating the next generation. *Id.* at 57. Accordingly, the Church established many colleges—including SPU—within 40 years of its founding. *Id.* at 90-91.

B. SPU's mission and its formation of a religious community

As a Free Methodist university, SPU's mission is to give students a transformative and holistic college experience that prepares them to enter the world as professionals. Osborne Ex.H at 41. SPU has adopted a Statement of Faith and various policies that guide its mission. The Statement

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of Faith is structured around four pillars: (1) historically orthodox, (2) clearly evangelical, (3) distinctively Wesleyan, and (4) genuinely ecumenical. Porterfield Ex.C at 1-3. SPU's other guiding policies also include its lifestyle expectations and statement on human sexuality, which align with Free Methodist doctrine. Porterfield Ex.D, F.

Both SPU's religious exercise and its ability to share its faith depend on its ability to form and maintain an on-campus religious community. Indeed, SPU believes that fostering "a developmental community" where students can "grow and develop in their faith" requires a "community of employees who live [their faith] out and … act as models and ambassadors to students about what it looks like to live a faithful Christian life." Osborne Ex.B at 221:5-13. SPU believes that when a school employs people who take their faith seriously, religious discussion and religiously inspired actions will naturally follow, Porterfield ¶13, and will show students "what it looks like to live out th[e] Free Methodist faith tradition," Osborne Ex.B at 223:20-25–24:1-21. For example, SPU's religious community has enabled SPU employees to pray with students and other colleagues. *See* Osborne Ex.C at 41:11-25–42:1-6; Osborne Ex.D at 54:1-19.

As part of this community formation, SPU requires that all its regular faculty and staff (excluding student employees) affirm its statement of faith and agree to abide by certain lifestyle expectations. Porterfield ¶16; Osborne Ex.I at 3; Osborne Ex.B at 100-01, 142-43. SPU's lifestyle expectations prohibit employees from engaging in certain behaviors, which include illegal activities, harassment and discrimination, on-campus alcohol or tobacco use, and sexual conduct inconsistent with SPU's religious beliefs. Porterfield Ex.D. These lifestyle expectations for regular faculty and staff are critical for SPU to fulfill its religious mission: SPU's "distinctive community of faith" allows the university to pass down its religious beliefs to the next generation. Porterfield ¶18; *accord* Osborne Ex.B at 221:5-18. Failure to maintain these lifestyle expectations would also disaffiliate SPU from the Free Methodist Church, regardless of whether SPU changed its policy voluntarily or under compulsion of law. Porterfield Ex.A at 54; *id.* at 90-91; Osborne Ex.B at 189:11-16; Porterfield ¶10-11.

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C. SPU's application of its religious hiring policies

SPU integrates its statement of faith and lifestyle expectations throughout its hiring process. The policies first appear on the standard application form, where the applicant is asked to review and indicate whether he or she agrees with SPU's mission statement and statement of faith. Osborne Ex.J at 2; Osborne Ex.B at 58:19-25. The application form also discloses the lifestyle expectations and asks applicants if they will agree to follow them if hired. Osborne Ex.J at 2. While these items were not always included on the application, SPU has worked diligently in recent years to ensure that applicants are aware of its standards. Osborne Ex.A at 73:15-24. The managers involved in hiring for the position review these applications and interview candidates, *id.* at 131:6-25–32:1-9, then Human Resources invites the top candidate for a "Mission Fit" interview, Osborne Ex.B at 59:1-4; Osborne Ex.A at 36:16-25–37:1-2. The applicant is asked during this interview whether he or she agrees with the Statement of Faith and can abide by the lifestyle expectations. Osborne Ex.A at 36:16-25–37:1-2, 37:22-25–38:1-6. If the applicant can do so, he or she is eligible for hire. Osborne Ex.B at 95:15-24. Once hired, SPU trusts that its employees answered honestly, addressing potential violations of its lifestyle expectations only if it becomes apparent that an employee may be noncompliant. Osborne Ex.B at 60:23-25–61:1-8; Osborne Ex.A at 144:9-17.

To *abide* by SPU's lifestyle expectations does not mean that an employee must *agree* with them, Osborne Ex.A at 114:18-24; Osborne Ex.B at 141:3-13, only that the applicant complies with the lifestyle expectations while he or she is an SPU employee. Osborne Ex.B at 147:14-21, 215:3-12; Osborne Ex.A at 108:18-21, 208:9-13. SPU neither asks applicants for their sexual orientation nor makes employment decisions based upon sexual orientation. Osborne Ex.A at 208:9-13; Osborne Ex.B at 147:14-21, 215:3-12. If during any stage of the hiring process an applicant states that he or she cannot affirm SPU's statement of faith or abide by *any* of its lifestyle expectations, the applicant is not eligible to be hired. Osborne Ex.B at 160:4-10. SPU has identified prior instances where candidates were not hired after a mission fit interview because they disclosed that they were cohabitating with opposite-sex partners. Osborne Ex.A at 208:9-21; Porterfield ¶15 &

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Ex.E. Separately, two potential misapplications of University policy occurred in 2017 and 2019 where specific documents suggest applicants were no longer considered after disclosing their sexual orientation, but neither decision resulted from any official change in University policy. Osborne Ex.B at 217:15-25–18:1-4. Indeed, SPU and its Human Resources witnesses consistently testified that applicants are moved forward in the hiring process regardless of sexual orientation, and applicants are eligible to be hired if they agree to abide by the lifestyle expectations. Osborne Ex.B at 147:14-21, 215:3-12; Osborne Ex.A at 108:18-21, 208:9-13.

D. Washington employment law

The Washington Law Against Discrimination (WLAD) prohibits employment discrimination, but it exempts many employers from this command. RCW 49.60.180. For example, the WLAD does not apply to employers with fewer than eight employees, RCW 49.60.040(11), meaning that it exempts a strong majority of Washington employers.[1] And even for covered employers, the WLAD still authorizes discrimination based on a protected characteristic through its "bona fide occupational qualification" (BFOQ) exemption, RCW 49.60.180(1), which applies whenever "excluding members of a particular protected status group" would be "essential to … the purposes of the job." *Hegwine v. Longview Fibre Co., Inc.*, 172 P.3d 688, 698 (Wash. 2007); *see also* Wash. Admin. Code § 162-16-240 (defining BFOQ to include any characteristic that "will be essential to or will contribute to the accomplishment of the purposes of the job").

For the first 72 years of its existence, the WLAD also completely exempted "any religious or sectarian organization not organized for private profit" from its employment provisions. RCW 49.60.040(11). But this all changed in 2021, when the Washington Supreme Court severely curtailed the scope of the WLAD's explicit exemption. *See Woods v. Seattle's Union Gospel Mission*, 481 P.3d 1060 (Wash. 2021). According to *Woods*, the exemption would violate the state consti-

[1] Per Washington's Employment Security Department, in 2024, over 61% of Washington employers employed four or fewer employees (138,210 out of 226,371), and over 76% of Washington employers employed nine or fewer employees (173,235 out of 226,371). *See* Osborne Ex.K.

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tution if it allowed religious employers to make employment decisions based on same-sex relationships, even when those decisions were rooted in religious belief or practice. *Id.* at 1069-70. As a result of *Woods*, the WLAD's religious-employer exemption is now no broader than the First Amendment's ministerial exception when it comes to sexual orientation. *Id.*

The *Woods* decision made the WLAD's religious exemption narrower than the one found in Title VII, which exempts a religious organization "with respect to the employment of individuals of a particular religion" and does not limit the exemption's scope to ministerial employees. 42 U.S.C. § 2000e-1(a); § 2000e-2(e); § 2000e(j). The *Woods* decision also drew skepticism from two U.S. Supreme Court Justices, who explained that because "the guarantee of church autonomy is not … narrowly confined" to "a religious organization's employment decisions regarding formal ministers," the Washington Supreme Court "may … have created a conflict with the Federal Constitution." *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094, 1096 (2022) (Alito, J., joined by Thomas, J., concurring in the denial of certiorari). They further indicated that the "Washington Supreme Court's decision may warrant [the Court's] review in the future." *Id.* at 1096-97.

E. SPU's decision to maintain its religious policies and the AGO's investigation

In early 2021, SPU was sued over its policies by a private plaintiff while *Woods* was pending and members of the SPU community debated the University's hiring policies. Porterfield ¶34; Osborne Ex.B at 186:15-25–87:1-2. Some faculty members and students called on the Board of Trustees to change SPU's lifestyle expectations, but in the spring of 2022, the Board voted to retain them. *Id.* at 186:20-23. The day after the Board's vote, students organized a sit-in at the University President's office. More than 100 complainants then sent letters to the Washington Attorney General (most of which were copied and pasted), alleging that the Board had breached its fiduciary duties and asking the AGO to take legal action. Osborne Ex.E at 87:5-25–88:1-10; *see also, e.g.*, Osborne Ex.L at 1-3. The AGO opened an inquiry and sent a letter to SPU accusing it of possible sexual-orientation discrimination and demanding that SPU turn over voluminous and sensitive documents related to its religious practices. Osborne Ex.M at 1-2. When SPU asked the AGO to

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clarify the scope of its probe, raised constitutional challenges to the probe, and disputed the AGO's interpretation of state and federal law, the AGO dismissed SPU's response as "rhetorical." Osborne Ex.N at 1; *see also id.* (highlighting AG Ferguson's personal involvement). The Attorney General then personally asked "[a]nyone who believes they were subject to possible employment discrimination by Seattle Pacific University" to contact his office. Osborne Ex.O at 1.

The inquiry against SPU is the first and last time that the AGO has ever used the WLAD to investigate a religious employer's hiring practices. Osborne Ex.E at 75:18-25; Def.MSJ.8. This remains true even though the AGO is aware of other religious employers—such as Union Gospel Mission of Yakima and World Vision—that likewise maintain religious hiring policies. Osborne Ex.E at 128:1-17, 139:2-15, 140:13-23; *see also* Osborne Ex.P at 6. The AGO takes no "position" on this disparity because it is "a civil law enforcement work group." Osborne Ex.E at 182:8-22. As to the WLAD's various exemptions, the AGO states that its interest is "to enforce the law as passed by the Legislature," and the exemptions do not undermine its interests "[b]ecause those are not forms of unlawful discrimination." Osborne Ex.P at 7-8; Osborne Ex.E at 177:22-23. The AGO has taken varying positions on whether SPU violates the WLAD by asking applicants about its lifestyle expectations on its employee-application form and during mission fit interviews. The AGO has variously claimed that SPU's employment policy "threatens the rights and proper privileges of Washington's inhabitants," *see* Osborne Ex.P at 8-9, refused to say whether SPU's employment policy violates the WLAD, *see* Osborne Ex.E at 181:13–82:6, and then suggested that "SPU's current employment actions appear to comply with the law," Def.MSJ.8.

F. This lawsuit

SPU brought this lawsuit seeking both prospective relief from enforcement of the WLAD and retrospective relief from the AG's probe. Dkt.16 at 16-27. This Court (prior to reassignment) dismissed the case, concluding that SPU's claims were not redressable and that *Younger* abstention applied. Dkt.33 at 36-37. On appeal, the Ninth Circuit reversed in part, explaining that *Younger* did not apply and that SPU had pre-enforcement standing to seek prospective relief against the

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AGO's enforcement of the WLAD, specifically, Counts II, VI, VII, IX, and X. *SPU v. Ferguson*, 104 F.4th 50 (9th Cir. 2024). Neither this Court nor the Ninth Circuit addressed the AGO's prudential ripeness arguments, and the AGO declined to press them on remand. Dkt.49.

Discovery concluded on April 15. The AGO then moved for summary judgment on September 10, announcing for the first time that, on August 14, it had closed the investigation into SPU's religious employment practices based on its current litigation position that "SPU's current employment actions appear to comply with the law." Def.MSJ.8. Despite closing its investigation, however, the AGO continues to maintain that SPU has no constitutional protections for its religious practices. *See, e.g.*, *id.* at 17-24. SPU now responds and moves for summary judgment.

LEGAL STANDARD

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When reviewing cross-motions for summary judgment, a court must consider each party's motion "on its own merits." *Acosta v. City Nat'l Corp.*, 922 F.3d 880, 885 (9th Cir. 2019).

ARGUMENT

I. This Court has jurisdiction.

The AGO claims it doesn't know when SPU might decline to hire a candidate based on its religious policies, so enforcement is speculative. Def.MSJ.14-15 The Ninth Circuit already rejected that precise argument. *SPU*, 104 F.4th at 59. So the AGO now disclaims enforcement while simultaneously arguing that SPU's policies are unprotected under the WLAD or First Amendment. The Ninth Circuit has repeatedly rejected similar mootness arguments. This Court has jurisdiction.

A. The AGO conflates ripeness with mootness. The case is not moot.

The AGO's arguments on constitutional ripeness simply repackage what the Ninth Circuit already rejected. For ripeness, the "constitutional component overlaps with the analysis of 'injury in fact' for Article III standing." *Project Veritas v. Schmidt*, 125 F.4th 929, 941 (9th Cir. 2025) (en

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banc). The Ninth Circuit already found that SPU had standing when it filed its complaint, specifically, that it had alleged a course of conduct arguably affected with a constitutional interest ("the existing employee conduct policy prohibiting same-sex marriage and intimacy"), that SPU's "policies arguably violate the WLAD," and that SPU faced a credible threat of enforcement ("the specter of potential administrative or judicial proceedings"). *SPU*, 104 F.4th at 59-61. The AGO rehashes its old arguments, then contends that the Court lacks jurisdiction because the AGO voluntarily closed its investigation three years into this case and just weeks before moving for summary judgment. Once again, "the Attorney General misunderstands the inquiry." *Id.* at 59. There's a term for later developments that might deprive a court of jurisdiction: mootness.

But the AGO doesn't argue mootness, for good reason. Mootness is "a formidable burden …. To show that a case is truly moot, a defendant must prove no reasonable expectation remains that it will return to its old ways." *FBI v. Fikre*, 601 U.S. 234, 241 (2024) (cleaned up). Thus, the Ninth Circuit has rejected disavowals that were either incomplete or still left the plaintiffs open to private enforcement. *See Planned Parenthood Great Nw. v. Labrador*, 122 F.4th 825, 841 (9th Cir. 2024) ("This case is not moot despite the Attorney General's efforts to make it so."); *Isaacson v. Mayes*, 84 F.4th 1089, 1100 (9th Cir. 2023) (plaintiffs faced a credible threat even though "the Arizona Attorney General has expressly disavowed enforcement," since private enforcement was possible). To succeed, "the government's disavowal must be more than a mere litigation position," *Lopez v. Candaele*, 630 F.3d 775, 788 (9th Cir. 2010), and "an executive action that is not governed by any clear or codified procedure cannot moot a claim," *Planned Parenthood*, 122 F.4th at 841. Here, the AGO's disavowal is vague, does not repudiate its interpretation of the WLAD, and gives SPU no guarantee that the AGO's conduct will not recur.

The disavowal is based not on a declaration that SPU's policies are permissible, but on the AGO's claim that SPU applied them inconsistently. But the AGO does not address four key points. First, the AGO doesn't dispute that SPU asks on job applications whether applicants will agree to

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abide by the lifestyle expectations. Def.MSJ.4. The AGO has not said whether this practice complies with the law or specifically disavowed enforcement based on this practice. Second, the AGO doesn't dispute that SPU asks employees in the mission fit interview whether they will abide by SPU's lifestyle expectations, a practice the AGO testified it "would have concerns about … under the WLAD."[2] Yet the Melody Declaration doesn't explain whether those concerns have been satisfied, much less specifically disclaim enforcement on that basis. Third, the AGO's brief suggests that it might still enforce the WLAD against SPU if SPU applied its employee lifestyle expectations to reject a candidate. Def.MSJ.15. Fourth, the Melody Declaration is unclear about whether SPU's conduct will be protected in the future. This is not a case where the AGO has "disavowed any interpretation of" the statute "that would make it applicable in any way" to SPU. *Johnson v. Stuart*, 702 F.2d 193, 195 (9th Cir. 1983). Far from it. The AGO elsewhere maintains that the First Amendment does not protect SPU's religious conduct. Def.MSJ.17-24. A credible threat remains.

Private enforcement illustrates this threat. When asked why it had not investigated other religious employers, the AGO referenced private enforcement, stating "[t]he matter is already in litigation … people … already have counsel representing them," making AGO enforcement unnecessary. Osborne Ex.E at 40:1-12. SPU has also previously been sued over its policies. Porterfield ¶34. Moreover, lack of enforcement history "carries 'little weight' when the challenged law is 'relatively new,'" as is the case with "[t]he WLAD, as interpreted by the Washington Supreme Court in *Woods* in 2021." *Union Gospel Mission of Yakima v. Ferguson*, No. 23-2606, 2024 WL 3755954, at *3 (9th Cir. Aug. 12, 2024). The AGO points to a splintered plurality decision in *Ockletree* in 2014, but that decision did not involve sexual-orientation discrimination. Either way, this is a far cry from the 40-year history of non-enforcement in *Foothills Christian Ministries v. Johnson*, 148 F.4th 1040, 1050 (9th Cir. 2025). History shows that SPU has been threatened with both AGO and private enforcement and SPU may face such threats again. This case is not moot.

[2] "[I]n your hypothetical, does it preclude employment by people who are in same-sex marriages? Q. Yes. A. Yes, I would have concerns about that under the WLAD for nonministerial positions."

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B. The case is prudentially ripe.

Because the Supreme Court and Ninth Circuit have both cast doubt on the prudential ripeness doctrine's "continuing vitality," *SBA List v. Driehaus*, 573 U.S. 149, 167 (2014); *accord SPU*, 104 F.4th at 65-66, this Court should reject the AGO's arguments on this front, Def.MSJ.9-17. But even if the doctrine applies, SPU's case is prudentially ripe.

The first prong is met where "[t]he First Amendment claim is primarily legal." *Planned Parenthood*, 122 F.4th at 840. SPU has identified a primarily legal issue: whether the First Amendment applies to the religious-employment policies both parties agree it has. Indeed, the AGO acknowledges that SPU "requires all employees to … abide by certain lifestyle expectations," Def.MSJ.4; and the AGO does not deny SPU has this written policy and uses it in the hiring process today, Def.MSJ.4, 15. Now the AGO claims enforcement is too speculative because it doesn't know when or whether someone might not be hired based on those policies. Def.MSJ.15-16. The Ninth Circuit rejected this argument in *Planned Parenthood*: the AG argued the claims were "riddled with contingencies and speculation that impede judicial review" because they required several steps, including "requesting the assistance of the Attorney General in the prosecution." 122 F.4th at 840. Yet that claim was ripe: "[t]he Opinion Letter specifies the conduct that the physician plaintiffs reasonably fear prosecution for doing." *Id.* Here, SPU's employment policies provide specific factual context, the AGO believes SPU has violated the WLAD in the past, Def.MSJ.13, and SPU has been sued over its policies in the past. Porterfield ¶34.

The AGO next claims its disavowal renders the case unripe, but the Ninth Circuit found a partial disavowal unpersuasive in a similar case. In *Yakima*, the AGO disclaimed enforcement of the WLAD as it related to the two open employment positions, but refused to say that it would not enforce against Yakima in the future. The Ninth Circuit was unpersuaded: "Here, not only did the State repeatedly refuse to disavow enforcement to the extent that YUGM seeks to hire non-ministerial employees, … but the State is only one enforcer of the WLAD." *Yakima*, 2024 WL 3755954, at *3. The AG's attempted disavowal is incomplete and does not change the ultimate legal question.

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SPU also meets the second prong of prudential ripeness: hardship. This prong asks "whether the challenged law 'requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious penalties attached to noncompliance.'" *Planned Parenthood*, 122 F.4th at 840. The WLAD, as interpreted in *Woods*, requires employers like SPU to modify their policies or face the risk of serious penalties. As in *Planned Parenthood*, "the Withdrawal Letter said nothing to disavow the Attorney General's interpretation of [state law], which is the source of the physician plaintiffs' constitutional injury." *Id.* Likewise, the AGO has not disavowed its interpretation of *Woods*, leaving the door open to future enforcement.

II. The WLAD violates SPU's right to church autonomy (Count II).

The First Amendment's Religion Clauses guarantee religious groups "independence in matters of faith and doctrine and in closely linked matters of internal government." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 747 (2020). The WLAD, as applied to SPU's religious hiring, violates this doctrine twice over. First, it interferes with SPU's religious affiliation with the Free Methodist Church. Second, it interferes with SPU's religiously motivated hiring practices.

A. SPU's denominational affiliation is protected from state interference.

Church autonomy protects the "internal government" and ecclesiastical affiliation of a religious institution. *Id.*; *see Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 723 (1976) (interference with "church polity" forbidden); *McRaney v. N. Am. Mission Bd.*, --- F.4th ---, 2025 WL 2602899, at *5 (5th Cir. Sept. 9, 2025) ("determination of religious polity"). Here, the WLAD violates this protection by interfering with SPU's religious denominational affiliation, forcing it to sever ties with the Free Methodist Church.

For many religious organizations, "religious activity derives meaning in large measure from participation in a larger religious community." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring). That is true of SPU, which has been affiliated with the Free Methodist Church since its founding. To maintain that affiliation, SPU's commitments must be consistent with the history, theology, mission, and

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character of the Church, including standards of conduct in keeping with the Church's beliefs and practices regarding human sexuality and marriage. Osborne Ex.B at 189:11-16; Porterfield Ex.A at 90-91; Porterfield ¶9.

As originally passed, the WLAD avoided this constitutional thicket by exempting religious employers altogether. RCW 49.60.040(11). But by narrowing that protection in *Woods*, the WLAD now interferes in these matters of religious "government" and affiliation. *Our Lady*, 591 U.S. at 747. If SPU were forced to change its religious policies on human sexuality, even under legal compulsion, it would be disaffiliated from its founding denomination. Osborne Ex.B at 189:11-16; Porterfield Ex.A at 90-91; Porterfield ¶10. That result cannot be squared with the First Amendment, which protects against "any attempt by government … even to influence" "matters of faith and doctrine," *Our Lady*, 591 U.S. at 746 (cleaned up), and protects against state interference in "church polity" "in much the same manner," *Milivojevich*, 426 U.S. at 709. Here, SPU's "decision[ ]" to affiliate with a religious denomination is a "matter[ ] of … ecclesiastical rule, custom, or law." *Id.* at 713-14. "[C]ivil courts exercise no jurisdiction[ ] in a matter which concerns … ecclesiastical government." *Id.*; *see also McRaney*, 2025 WL 2602899, at *10. The WLAD cannot penalize SPU for its "fundamentally theological choice[ ]" to affiliate with a denomination and adopt its form of ecclesial organization. *Catholic Charities Bureau v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 252 (2025).

B. The First Amendment protects SPU's ability to apply religious hiring requirements when hiring and overseeing employees.

The WLAD's interference with SPU's religious employment policies also violates another facet of church autonomy. The First Amendment protects the right of religious institutions to establish "religious eligibility requirements" for all its employees in a religious community. *Puri v. Khalsa*, 844 F.3d 1152, 1167 (9th Cir. 2017). So when, for example, a religious organization decides not to employ an individual who does not meet "the standard of morals" required of the organization's "members," *Milivojevich*, 426 U.S. at 713-14, the "broader church autonomy doctrine" protects that decision, *regardless* of whether she was a minister, *Bryce v. Episcopal Church*

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in Diocese of Colo., 289 F.3d 648, 656-58, 568 n.2, 660 (10th Cir. 2002). The key question for determining if this protection applies is whether the decision was "rooted in religious belief." *Id.* at 657 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972)); *see also id.* at 660 ("based on religious doctrine"). The church autonomy principle at issue in this case, therefore, applies to *all* of a religious organization's employees, but only those employment decisions and policies that are *rooted in religious beliefs*. *See Bryce*, 289 F.3d at 656-58 & n.2.[3]

Numerous courts have applied church autonomy in this way. In *Amos*, for example, the Supreme Court recognized it would "burden[ ] the exercise of religion" to penalize a religious group's requirement that employees be Church members, even for a non-ministerial position like a "building engineer." 483 U.S. at 330, 338. As the Court observed, the non-ministerial employee's lawsuit guaranteed "significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Id.* at 338-39. Similarly, in *Bryce*, the court barred a church employee's sex-discrimination suit. 289 F.3d at 651. The Tenth Circuit declined to decide whether the plaintiff was a "minister," then held that the "broader church autonomy doctrine" "extends beyond the … ministerial exception" to include "personnel decision[s]" "rooted in religious belief." *Id.* at 656-58 & n.2. Because the plaintiff challenged "a personnel decision" that was "based on religious doctrine," her suit was barred. *Id.* at 660. Other courts agree.[4]

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[3] The ministerial exception is related but distinct. That exception bars interference in personnel decisions involving individuals who perform important religious duties. *Our Lady*, 591 U.S. at 746-47. Even when a religious group offers no "religious reason" for its decision, if it relates to a minister, it is automatically protected. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 192, 194 (2012).

[4] *See, e.g.*, *Curay-Cramer v. Ursuline Acad. of Wilmington*, 450 F.3d 130, 140 (3d Cir. 2006) (dismissing Title VII claim that "would require an analysis of Catholic doctrine" without considering ministerial exception); *Butler v. St. Stanislaus Kostka Catholic Acad.*, 609 F. Supp. 3d 184, 198, 203-04 (E.D.N.Y. 2022) ("[e]ven if [plaintiff] did not qualify as a ministerial employee," the "long recognized" and "broader" "church autonomy doctrine" barred employment claim challenging Catholic beliefs on marriage); *Darren Patterson Christian Acad. v. Roy*, 699 F. Supp. 3d 1163, 1174, 1185 (D. Colo. 2023) (applying First Amendment to protect religiously motivated employment decisions for non-ministers); *Garrick v. Moody Bible Inst.*, 412 F. Supp. 3d 859, 872 (N.D. Ill. 2019) (church autonomy doctrine barred claims by non-ministerial employee when "alleged

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Here, the WLAD interferes with SPU's internal decision-making "on matters of discipline, faith, [and] internal organization." *Milivojevich*, 426 U.S. at 713. After *Woods*, the WLAD puts SPU at risk for applying its lifestyle expectations to non-ministerial employees. Porterfield ¶¶15, 31-35. But SPU, like many religious organizations, believes that the success of its religious mission depends on hiring those who abide by its faith commitments—no matter an employee's role. Porterfield ¶¶14-20. The WLAD effectively tells SPU that its religious hiring must be cabined to certain court-approved roles. In so doing, the WLAD interferes with SPU's religious hiring policy, which is motivated by "faith and doctrine" and part of the "sphere" of protected "internal management decisions … essential to [SPU's] … mission." *Our Lady*, 591 U.S. at 746.

C. The AGO misunderstands church autonomy.

The AGO declares that applying church autonomy would give religious employers "carte blanche" and "'a free pass' to violate all manner of regulations." Def.MSJ.18-19. But the same "dire" warnings about "'unfettered discretion' to violate employment laws" were raised in *Hosanna-Tabor*, and none came true. 565 U.S. at 195. So too here; church autonomy doesn't confer a "*general* immunity from secular laws," *Our Lady*, 591 U.S. at 746 (emphasis added), but applies only where a religious employer's policy is "based on religious doctrine," *Bryce*, 289 F.3d at 660. That's a narrower protection than the one that the WLAD itself grants to a *majority* of Washington's employers, who are exempt from *all* requirements of employment nondiscrimination. *See supra* at 6 n.1. In response, the AGO merely cites dicta in *McMahon v. World Vision*, 147 F.4th 959, 974-76 (9th Cir. 2025), which was resolved on ministerial exception grounds. *McMahon* did not rule on the church autonomy arguments raised here, which are fully consistent with the principle that religious employers "generally remain[ ] bound by state and federal laws prohibiting employment discrimination." *Id.* at 973 n.7.

Equally without merit is the AGO's speculation that a ruling for SPU would license hiring bans

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reasons for firing [plaintiff] were rooted firmly in its religious beliefs"); *Aparicio v. Christian Union*, No. 18-cv-592, 2019 WL 1437618, at *9 (S.D.N.Y. Mar. 29, 2019) (First Amendment prohibited employment claim based on non-ministerial employee's doctrinal disagreement).

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on women or interracially married employees. Def.MSJ.18-19. SPU's religious teachings prohibit such discrimination, Porterfield Ex.A at 46, 127, and the Supreme Court and Ninth Circuit have repeatedly rejected the offensive assertion that sincere religious objections to same-sex marriage are the equivalent of invidious discrimination. *Bostock v. Clayton County*, 590 U.S. 644, 681-82 (2020); *Bates v. Pakseresht*, 146 F.4th 772, 798 (9th Cir. 2025). None of the cases the AGO cites bear any resemblance to this case.[5] And if the AGO was truly concerned with rampant discrimination in religious institutions, why did it fail to raise this issue during the more than 70 years preceding *Woods*, when religious employers in Washington were completely exempt? Tellingly, the AGO admits it has never investigated any religious employer other than SPU under the WLAD. Osborne Ex.E at 75:18-25–76:1-6.

Nor would it be logical to "silo[ ]" church autonomy "to use as an affirmative defense"; it may be brought as a claim. *InterVarsity Christian Fellowship/USA v. Bd. Of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785, 806 (E.D. Mich. 2021) (citing cases) ("IVCF"); Def.MSJ.18. The Supreme Court has previously applied church autonomy doctrine to vindicate the rights of a plaintiff who raised the issue offensively. *See Milivojevich*, 426 U.S. at 707 (affirming diocese's claims against defrocked bishop); *McRaney*, 2025 WL 2602899, at *14 (noting that *Milivojevich* "did not order dismissal" but instead "reversed on the merits" and the lower court then "entered judgment on the merits"). And the Ninth Circuit in *Youth 71Five Ministries v. Williams* held only that the plaintiff had failed to identify authority allowing church autonomy to be raised as a "standalone claim[ ],"and "[w]ithout more, we cannot say that the district court abused its discretion" in rejecting the claim. --- F.4th ---, 2025 WL 2385151, at *10-11 (9th Cir. Aug. 18, 2025), *rehearing petition filed* Sept. 15, 2025. And here, SPU's church autonomy claim is akin to a defense; if the AGO

[5] Def.MSJ.19 (citing *Bob Jones Univ. v. United States*, 461 U.S. 574, 603-05 (1983) (involving school admissions standards, not employment); *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 303 (1985) (finding wage-and-hour law did not burden religious exercise); and *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1367-69 (9th Cir. 1986) (concluding that application of Title VII did not interfere with religious exercise)).

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had sued SPU, SPU indisputably could have raised church autonomy as a defense. It makes no sense to suggest it cannot raise the same constitutional right in a pre-enforcement challenge.[6]

III. The WLAD interferes with SPU's free exercise (Count VI).

The Free Exercise Clause subjects to strict scrutiny laws burdening religious exercise that are either not neutral or not generally applicable. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). The WLAD isn't generally applicable, and no one disputes that prohibiting SPU's religious employment policies burdens its religious exercise. The WLAD triggers, and fails, strict scrutiny.

A. The WLAD is not generally applicable.

Under "bedrock" free exercise "requirements," a law isn't "generally applicable" if it either treats "comparable secular activity more favorably than religious exercise," or "provid[es] a mechanism for individualized exemptions." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 686-87 (9th Cir. 2023) (en banc) ("FCA") (quoting *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) and *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)). Here, because the WLAD authorizes categorical and individualized exemptions, it flunks *Tandon* and *Fulton*.

Categorical exemptions (Tandon). The WLAD's employment provision carves out three categorical exemptions: (1) employers with fewer than eight employees, RCW 49.60.040(11); (2) employees in "domestic service," RCW 49.60.040(10); and (3) an employee employed "by his or her parents," *id*. The small-employer exemption exempts over 60% of Washington employers for *any* form of employment discrimination—undermining the State's interest far *more* than granting SPU a narrow religious accommodation. *See Fulton*, 593 U.S. at 534 ("A law also lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way."); *FCA*, 82 F.4th at 686, 689 (categorical exemptions trigger strict scrutiny under "bedrock" constitutional principles).

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[6] The AGO also mentions other religious employer cases, Def.MSJ.17; those include a decision the Ninth Circuit reversed, *McMahon,* 147 F.4th at 977, and three cases currently on appeal in another circuit. *See Zinski v. Liberty Univ.,* No. 25-1228 (4th Cir.); *Doe v. Catholic Relief Servs.*, No. 25-1569 (4th Cir.); *Gen. Conf. of Seventh-day Adventists v. Horton*, No. 25-1735 (4th Cir.).

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Despite the AGO's protests, Def.MSJ.20-21, *Foothills Christian Ministries*, 148 F.4th 1040, does not apply. In that case, the court held that short-term daycare programs were not "comparable" under *Tandon* to full-time daycare programs—after all, "a program that oversees children for only four hours a week does not present a threat to children's health and safety comparable to" a full-time program. *Id.* at 1052. The WLAD's exemptions are starkly different, particularly the small-employer exemption. Because of this exemption, *most* employers in the State can freely fire Black employees for their race, refuse to hire women because the employer believes women should stay at home, or fire employees for their sexual orientation without fear of WLAD liability. That exemption is nothing like the narrow one in *Foothills*—it poses a comparable, indeed a *more* significant, threat to the State's nondiscrimination interests than do SPU's lifestyle expectations.

Individualized discretion (Fulton). The WLAD also permits case-by-case exemptions to its nondiscrimination requirements under its BFOQ exemption. That exemption allows employers "[t]o refuse to hire any person because of," among other things, "sex, marital status, [and] sexual orientation" when those characteristics are "bona fide occupational qualification[s]." RCW 49.60.180(1). When deciding whether to investigate and sue, the AGO assesses whether this standard is met—that is, whether it "believes" that a "protected status will be essential to or will contribute to the accomplishment of the purposes of the job." Wash. Admin. Code § 162-16-240; *see* Osborne Ex.E at 152:22-25–53:1-19. This determination is inherently discretionary and case-specific: rather than relying on "automated assessments or tools that help" determine whether the BFOQ applies, the AGO exercises its own discretion "based on … the facts before us." Osborne Ex.E at 154:2-6. This discretion triggers strict scrutiny. *See Bates*, 146 F.4th at 796-98 (applying strict scrutiny to policy that "afforded to [state] officials" "substantial discretion" to make "judgments").

Olympus Spa v. Armstrong is irrelevant here. 138 F.4th 1204 (9th Cir. 2025); Def.MSJ.20. Though the State doesn't disclose as much, that case involved the WLAD's *public-accommodations* requirements. *Id.* at 1211. This is an employment case, and the WLAD contains multiple

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categorical exemptions unique to its employment nondiscrimination requirements—including one that exempts the majority of Washington employers—as well as the discretionary BFOQ exemption, which has no parallel in public accommodations. *Olympus Spa* doesn't control.

B. The WLAD fails strict scrutiny.

A law subject to strict scrutiny "must be invalidated unless it is justified by a compelling governmental interest and is closely fitted to further that interest." *Catholic Charities*, 605 U.S. at 252 (cleaned up). The State has the burden to overcome strict scrutiny. *Bates*, 146 F.4th at 798. Here, however, the State has not even *mentioned* strict scrutiny. *See* Def.MSJ.22 (rational-basis review only). Thus, the State has forfeited any strict-scrutiny argument. The State's forfeiture is unsurprising; it could not possibly meet strict scrutiny here. The AGO has decided, at least for now, that the State has no interest in enforcing the law against SPU, *see* Def.MSJ.1, so it cannot possibly articulate a "compelling" interest in doing so, *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2361 (2025).

IV. The WLAD violates SPU's right of expressive association (Count X).

The First Amendment protects both the freedom to associate with others for expressive purposes and the freedom not to associate. *303 Creative LLC v. Elenis,* 600 U.S. 570, 586 (2023); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622-23 (1984). "Government actions that may unconstitutionally burden" expressive association include "intrusion into the internal structure or affairs of an association." *Boy Scouts of Am. v. Dale,* 530 U.S. 640, 648 (2000) (quoting *Roberts,* 468 U.S. at 623). And "[t]here can be no clearer example of [such] an intrusion … than a regulation that forces the group to accept members it does not desire." *Roberts*, 468 U.S. at 623. Under *Dale*, an organization must demonstrate (1) that it "engage[s] in some form of expression," 530 U.S. at 648; and (2) that the forced association would "significantly affect [the organization's] ability to advocate" for its viewpoints, *id.* at 650. Once that demonstration is made, "the First Amendment prohibits" the forced association, absent satisfaction of strict scrutiny. *Id.* at 648, 659.

First, SPU's religious hiring policies are a form of expression. Courts have long held that it

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violates the First Amendment to "force" an expressive association to "send a message" by engaging in association that "would 'interfere with its choice not to propound a point of view contrary to its beliefs.'" *Id.* at 653; *303 Creative*, 600 U.S. at 586 (quoting *Dale*, 530 U.S. at 654); *see also Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 574-75 (1995) (forcing parade to include LGBTQ group would violate associational rights); *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 861-64 (7th Cir. 2006) (forcing student group to include members in same-sex relationships would violate associational rights); *Slattery v. Hochul*, 61 F.4th 278, 289-91 (2d Cir. 2023) (forcing non-profit to keep employees who had abortions would violate associational rights). And courts have relied on the same principles to protect LGBTQ associational rights. *See Apilado v. N. Am. Gay Amateur Athletic All.*, No. 2:10-cv-682, 2011 WL 5563206, at *1-3 (W.D. Wash. Nov. 10, 2011) (gay athletic organization could exclude straight members).

Religious groups like SPU are not like other employers—they are "the archetype of associations formed for expressive purposes," since their "very existence is dedicated to the collective expression and propagation of shared religious ideals." *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., joined by Kagan, J., concurring). It is "indisputable that an association that seeks to transmit … a system of values engages in expressive activity." *Dale*, 530 U.S. at 650. And selecting staff and faculty who are faithful representatives is key to SPU's religious autonomy, which is why there is hardly a "clearer example of an intrusion into the internal structure or affairs" of a religious group than to "force[ ] the group to accept members it does not desire." *Walker*, 453 F.3d at 861-63.

Second, forcing SPU to employ persons whose actions publicly contradict its faith would impair its ability to express its faith. *Slattery* recognized that "'[i]t would be difficult' … for an organization 'to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept members who engage in that conduct.'" 61 F.4th at 290. The WLAD thus "severely burden[s]" SPU's associational rights "by foreclosing" its "ability to reject employees whose actions suggest that they believe the opposite of the message [SPU] is trying to convey." *Slattery*, 61 F.4th at 288; *see Walker*, 453 F.3d at 863 (forcing religious group

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to accept members in same-sex relationships would "impair its ability to express" religious views).

Attempting to refute this conclusion, the AGO relies on dicta in *Hishon v. King & Spalding,* insisting that employment under Title VII is commercial activity that gets only "minimal constitutional protection." Def.MSJ.24. But *Hishon* held nothing of the sort. Instead, the Court applied the expressive-association framework to the employer's claim and held that the defendant failed to show its "ability to fulfill [its] function would be inhibited" by being forced to promote a woman as a partner. 467 U.S. 69, 78 (1984). And SPU, unlike a large law firm, is engaged in a religious mission, not a commercial one. There is no employment exception to the First Amendment. *See, e.g., Slattery*, 61 F.4th at 291. Because SPU engages in expressive association, the application of WLAD must pass strict scrutiny. *Dale*, 530 U.S. at 648. As described above, it cannot.

V. The WLAD imposes a denominational preference against SPU (Count VII).

As applied to SPU's lifestyle expectations, the WLAD also violates the First Amendment by imposing a "denominational preference." *Catholic Charities*, 605 U.S. at 248. "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." *Larson v. Valente*, 456 U.S. 228, 244-45 (1982). The WLAD violates this command, permitting some religious organizations to hire only those who abide by their faith—but not Free Methodist Church affiliates like SPU, whose lifestyle expectations the AGO deems "harmful discrimination." Osborne Ex.O.

In *Catholic Charities*, Wisconsin exempted some religious organizations from its unemployment-compensation system, but denied an exemption to certain Catholic organizations that didn't "engage[ ] in proselytization" or "limit[ ] their services to fellow Catholics." 605 U.S. at 249. Because "eligibility for the exemption" turned on "theological practices," this constituted a "preference for certain religions based on the commands of their religious doctrine" that triggered "strict scrutiny." *Id.* at 250. Here, Washington allows religious employers to maintain religious lifestyle expectations, but the AGO is treating SPU differently "based on the content of [the Free Methodist Church's] religious doctrine," *id.* at 248—the Church's belief that "effective Christian witness" is

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promoted by, *inter alia*, refraining from "same-sex sexual activity," Porterfield Ex.D. The AGO admits it "never" investigated or "enforced the WLAD" against any "religious employer" other than SPU. Def.MSJ.8-9. Government action "that differentiates between religions along theological lines is textbook denominational discrimination." *Catholic Charities*, 605 U.S. at 238.

The AGO's response is to claim this application of the WLAD isn't a denominational preference because it merely "happen[s] to have a 'disparate impact' upon" SPU's religious practices. Def.MSJ.23 (quoting *Youth 71Five Ministries*, 2025 WL 2385151, at *6). But the Ninth Circuit just held that a policy requiring prospective parents to "'support'" an adopted child's "sexual orientation" and "gender identity" was a denominational preference because such matters are "uniquely religious"—so the policy would "overwhelmingly block those prospective parents who hold traditional religious views" on those subjects. *Bates*, 146 F.4th at 776, 793-95. So too here. The WLAD is being wielded to single out the Free Methodist position on religious hiring and no other. The AGO's actions "run[ ] into a … neutrality principle 'fundamental to our constitutional order'": the prohibition on denominational preferences. *Id.* at 793; *see also supra* Part III.B (strict scrutiny not satisfied).

VI. The WLAD violates SPU's right of assembly (Count IX).

Finally, application of the WLAD here violates SPU's right "peaceably to assemble" with the Free Methodist Church and community members who agree to adhere to its lifestyle expectations. U.S. Const., amend. 1. The Supreme Court has repeatedly invoked the Assembly Clause to protect the ability to affiliate with groups disfavored by a state. *E.g.*, *NAACP v. Patterson*, 357 U.S. 449, 460-63 (1958); *Herndon v. Lowry*, 301 U.S. 242, 259-60 (1937). And a public university has been held to violate the Assembly Clause by forbidding a Christian student group from requiring its leaders to agree with its "'Doctrine'" and "'conduct'" standards. *IVCF*, 534 F. Supp. 3d at 796-98, 826-27. The AGO's anemic view of the Clause—as protecting only against the government "'seiz[ing] upon mere participation in a peaceable assembly … as the basis for a criminal charge,'" Def.MSJ.23—is simply not the law. *See NAACP*, 357 U.S. at 461 ("The fact that Alabama … has

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taken no direct action to restrict the right … does not end inquiry into the effect[.]").

Here, application of the WLAD would penalize SPU for its continued affiliation with the Free Methodist Church. *Supra* at 4. And it would negate SPU's control over the composition of the community that assembles on its campus to exercise religion and convey its Christian message. It therefore violates the Assembly Clause absent a showing of strict scrutiny, *e.g.*, *NAACP*, 357 U.S. at 463—which the AGO cannot make. *Supra* Part III.B.

VII. SPU is entitled to declaratory relief and a permanent injunction.

A party is entitled to a permanent injunction when it shows (1) "irreparable injury," (2) that "remedies available at law, such as monetary damages, are inadequate to compensate for that injury," (3) that the "balance of hardships" tips in its favor," and (4) that "the public interest would not be disserved." *Cottonwood Env't L. Ctr. v. U.S. Forest Serv.*, 789 F.3d 1075, 1088 (9th Cir. 2015). When the government is a party, these "last two factors merge." *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Here, SPU meets all four factors.

First, SPU has suffered an irreparable injury because the WLAD violates SPU's First Amendment rights. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mahmoud*, 145 S. Ct. at 2364. Second, SPU's religious exercise cannot be protected with money damages; it needs prospective pre-enforcement relief. *See SPU*, 104 F.4th at 61. And third, SPU meets the last two factors because it "is clear that it would not be equitable or in the public's interest to allow the state … to violate the requirements of federal law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). SPU is therefore entitled to a permanent injunction. For the same reasons, SPU is entitled to declaratory relief. Requesting "that the Attorney General [ ]not target SPU in a retaliatory or non-neutral manner" is "a request that falls well within traditional declaratory relief." *SPU*, 104 F.4th at 62.

CONCLUSION

The Court should enter summary judgment and a permanent injunction for SPU.

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Dated: October 1, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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