Freedom of Religion Under Attack in Washington State

By Paul Engel

April 13, 2022

- Do governments have the legal authority to dictate employment decisions to private organizations, especially religious ones?
- Does the Supreme Court of Washington have the power to ignore the law and dictate to a gospel mission who they have to employ?
- Why did the Supreme Court of the United States refuse to hear this case?

Imagine your rights are under attack. You seek assistance from those who have sworn to protect you, only to be attacked again. You reach out to what you think is your last hope, only to be rebuffed. Now consider how that must feel: To be abandoned by those who have sworn to protect you.

This is the situation Seattle's Union Gospel Mission finds itself in. Their freedom of religion is under attack, not by the laws of the State of Washington, but by a disgruntled job applicant. The Supreme Court of Washington placed their political preferences above their oath to support the Constitution of the State of Washington. Then, when the Mission seeks redress from the Supreme Court of the United States, they are rebuffed. Their cold consolation is the statement by two justices: That the court may have to deal with this infringement in the future. I've asked this before

and I’ll ask it again: Do you truly have Freedom of Religion when those who have sworn or affirmed to protect it fail to do so?

Background

This story starts with a gospel mission in Seattle Washington.

Petitioner Seattle’s Union Gospel Mission (Mission) was founded in 1932 to care for those suffering from the economic hardships attending the Great Depression. … The Mission is a tax-exempt community categorized as a church equivalent by the Internal Revenue Service under 26 U. S. C. §170(b)(1)(A)(i). It requires its paid staff to affirm its statement of faith, which declares “the Bible is the inspired, infallible, authoritative Word of God.” … Its employee handbook also requires staff to abide by the Mission’s understanding of the Bible by refraining from “[a]cts or language which are considered immoral or indecent according to traditional biblical standards,” including “extra-marital affairs, sex outside of marriage, [and] homosexual behavior.” …

SEATTLE’S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

By any reasonable definition, the Union Gospel Mission in Seattle is a religious based organization. They require all paid staff to affirm their statement of faith, and their employee handbook’s standards of conduct was quite clearly biblically based. Enter Matthew Woods.

In 2016, respondent Matthew Woods, a former summer intern and volunteer for the Mission, saw a job posting for a staff attorney position in the Mission’s legal aid clinic. He disclosed to the legal aid clinic’s staff that he identified as bisexual and was in a same-sex relationship, and he asked whether that would pose an obstacle to employment with the Mission. … The clinic’s director quoted the employee handbook and explained that Woods was not “able to apply,” but the

director wished him well and later sent Woods a secular legal aid clinic's job posting. …

Woods nevertheless applied for the Mission's staff attorney position to "protest" the Mission's employment policy. … His application also disclosed that Woods was not an active member of a local church and could not provide a pastor's name and contact information, as the application requested. Woods's cover letter asked the Mission to "change" its religious practices. …

After he applied, the clinic's director met Woods for lunch and confirmed that the Mission could not change its theology. … He explained that Woods's employment application was not viable because he did not comply with the Mission's religious lifestyle requirements, did not actively attend church, and did not exhibit a passion for helping clients develop a personal relationship with Jesus. The Mission hired a co-religionist candidate instead.

SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

There is a lot here, so let us unpack it point by point. First, the Mission clearly did not discriminate against Mr. Woods in general, since he was allowed to volunteer. The Mission, as a religious organization, has certain standards when it comes to paid staff. They did not hide this, neither did they change their position after Mr. Woods applied. In fact, the clinic's director went so far as to find another legal aid clinic job posting that would appear to be a better fit for Mr. Woods.

Second, Mr. Woods applied for a position that he knew he was unqualified for, specifically as a protest against the Mission's employment policy. In other words, he was not simply seeking employment, neither was he invested in advancing the Mission's stated purpose. Rather, he was mad at being denied a

job because of his sexual preferences and wanted to get back at them. In other words, Mr. Woods, by specifically asking the Mission to change there religious practices to accommodate him, was attempting to coerce the Mission and to deny them their religious freedom.

In 2017, Woods filed suit against the Mission in the Superior Court of King County. He alleged that the Mission violated Washington's Law Against Discrimination (WLAD), which forbids discrimination against sexual orientation in employment decisions. The Mission answered that entertaining the suit would violate the First Amendment's Religion Clauses. The Mission also argued that it fell into an express statutory exemption from the WLAD, which excludes "any religious or sectarian organization not organized for private profit" from its definition of "employer." … The Washington state trial court agreed, noting that the Mission "put applicants on notice" that employees must "accept the Mission's Statement of Faith" and that the staff attorney's duties would "extend beyond legal advice to include spiritual guidance and praying with the clients." … The trial court thus dismissed the suit based on the WLAD's statutory exemption.

SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

By filing suit against the Mission, Mr. Woods not only wishes to deny them their freedom of religion, but his coercion rises to the level of extortion. He is effectively saying, "Comply with my wishes, or else." Mr. Woods claims that the Missions employment practices violate Washington State's law against discrimination, which states:

This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil

rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, … are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, …

Revised Code of Washington §49.60.010

Yes, the Revised Code of Washington does list sexual orientation as a protected class, and that the state has created an agency to eliminate and prevent discrimination in, among other things, employment. Therefore, it's illegitimate for a person to exercise their rights to deprive the rights of another. Which is why the Washington law against discrimination includes this language.

"Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

Revised Code of Washington §49.60.040 (11)

Remember, Mr. Woods does not have a right to a specific job. What he is doing is attempting to use his freedom of sexual preferences to infringe on the freedom of religion of those who run the Mission. This is not a discussion of whether or not Washington's law against discrimination is legitimate or not, and it is unfortunate these types of laws are frequently used to deny the rights of religious organizations around the country. Since it clearly states that religious non-profit organizations are not considered employers under this law, it seems pretty clear that the Washington Legislature wished to

protect the religious freedom of these entities. The Superior Court of King County agree, noting that the Mission was quite up-front and straight-forward with their standards for paid staff. Sadly, Mr. Woods decided not to leave it there.

The Washington Supreme Court granted Woods's petition for direct review and reversed. The court held that as applied to Woods's lawsuit, the WLAD's religious exemption would violate protections for sexual orientation and same-sex marriage implicit in the Washington Constitution's Privileges and Immunities Clause, Art. I, §12, unless the court narrowed the scope of the WLAD religious exemption. It thus reasoned that the State Constitution would not be "offended if WLAD's exception for religious organizations is applied concerning the claims of a 'minister' as defined by Our Lady of Guadalupe and Hosanna-Tabor."

SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

Notice what the Washington Supreme Court did: They effectively rewrote the law, removing from the definition of employer the exemption for religious organizations and applying it solely to religious ministers. They found that Washington's law, as applied to this case, would violate Article I, Section 12 of the Washington Constitution:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Washington Constitution, Article I, Section 12

It is, in fact, Washington's law against discrimination that singles out classes of citizens for privileges or immunities. Furthermore, by placing sexual orientation above religious belief, the Washington Supreme Court has further granted special privileges to a class of citizen. If any corporation

has been granted immunities by this law, it's only to comply with Article I, Section 11, which the court seems to have completely ignored:

Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. …

Washington Constitution, Article I, Section 12

Here, the court effectively declared that religious organizations that require staff to follow their religious teachings is either licentious or inconsistent with the peace and safety of the state. Only those holding offices that the state considered religious would be protected for their beliefs.

Certiorari

The Supreme Court of the United States denied the Mission the opportunity to have them hear this case. Justice Alito did release a statement, which Justice Thomas joined:

The First Amendment gives "special solicitude to the rights of religious organizations" to operate according to their faith without government interference. Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, … In certain contexts, this autonomy requires courts to "stay out of employment disputes involving those holding certain important positions with churches and other religious institutions."… Consistent with this constitutional principle, Congress has long exempted religious employers from federal employment laws that would otherwise interfere with their ability "to define and carry out their religious missions" by imposing "potential liability" for hiring practices that favor co-religionists.

Because of such federal statutory exemptions and their state analogs, we have yet to confront whether freedom for religious employers to hire their co-religionists is constitutionally required, though the courts of appeals have generally protected the autonomy of religious organization to hire personnel who share their beliefs.

SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

Justice Alito notes that while the Supreme Court has yet to weigh in on the hiring practices, state and federal law, along with the courts of appeals, have. These entities have protected the autonomy of religious organizations to hire only those who share their beliefs. Yet even though the Washington Supreme Court has not protected that autonomy, Justices Alito and Thomas both agree with denying to hear this case. The reason why is interesting, but before we get there, let's look at what these two justices believe is at stake..

The Washington Supreme Court's reasoning presumes that the guarantee of church autonomy in the Constitution's Religion Clauses protects only a religious organization's employment decisions regarding formal ministers. But our precedents suggest that the guarantee of church autonomy is not so narrowly confined. As early as 1872, our church-autonomy cases explained that "civil courts exercise no jurisdiction" over matters involving "theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." … That is so because the Constitution protects religious organizations "from secular control or manipulation." … The religious organizations protected include churches, religious schools, and religious organizations engaged in charitable practices, like operating homeless shelters, hospitals, soup kitchens, and religious legal-aid clinics similar to the Mission's—among many others.

[SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari]

While Justice Alito references the Constitution of the United States, which protects our freedom of religion from federal intervention ("Congress shall make no law…" First Amendment), the standard of religious freedom he notes is correct. If the state is allowed to limit their protection of religious liberty to only certain classes of people, that would not only destroy church autonomy, but place the state in a position to determine who is and is not a member of the class they are willing to protect. Justice Alito went on:

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. If States could compel religious organizations to hire employees who fundamentally disagree with them, many religious non-profits would be extinguished from participation in public life—perhaps by those who disagree with their theological views most vigorously. Driving such organizations from the public square would not just infringe on their rights to freely exercise religion but would greatly impoverish our Nation's civic and religious life.

[SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari]

How can you have freedom of religion if governments can force you to exercise your faith in a way they endorse? When Thomas Jefferson coined the term "wall of separation between church and state", he meant that the church would be protected from state interference. Once again, we see a court breaking down that wall while claiming to be reinforcing it.

With all of this at stake, why did Justices Alito and Thomas agree to deny the request for the court to review this case?

This case illustrates that serious risk [of forcing religious organizations to hire people who do not share their beliefs]. Woods applied for a position with the Mission not to embrace and further its religious views but to protest and fundamentally change them. The Washington Legislature sought to prevent its employment laws from being used in such a way by exempting "any religious or sectarian organization not organized for private profit" from its definition of a covered "employer." … The Washington Supreme Court's decision to narrowly construe that religious exemption to avoid conflict with the Washington Constitution may, however, have created a conflict with the Federal Constitution.

The Washington Supreme Court's decision may warrant our review in the future, but threshold issues would make it difficult for us to review this case in this posture. The state court did not address whether applying state employment law to require the Mission to hire someone who is not a co-religionist would infringe the First Amendment. Further, respondent claims that the Washington Supreme Court's decision is not a final judgment because of its interlocutory nature, …, while petitioner contends that we have jurisdiction under Cox Broadcasting Corp. v. Cohn, … Given respondent's admission that "there is no prospect that this Court would be precluded from reviewing" these First Amendment questions "once there is a final state judgment," Brief in Opposition 21–22, I concur in the denial of certiorari.

SEATTLE'S UNION GOSPEL MISSION *v.* MATTHEW S. WOODS – Denial of Certiorari

Not surprisingly, everyone seems to be focused on the First Amendment, even though it does not apply. (Remember, "Congress shall make no law…") Instead, this case appears to violate the Fourteenth Amendments prohibition against states depriving people of the equal protection of the law.

… nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amendment XIV

Washington law clearly states that religious non-profit organizations are not considered employers. By limiting that clause to only ministers, the Washington Supreme Court has deprived the Mission of the equal protection of the law. Furthermore, by depriving the Mission control of their own staffing standards, the Washington Supreme Court has deprived the Mission of both liberty and property without due process of law, which is an established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual (The Free Legal Dictionary).

Conclusion

So why did Justices Alito and Thomas “punt” on this case? I believe there are three reasons. One, it appears the state courts did not consider the Constitution of the United States. Since it appears obvious the justices’ consider this a First Amendment issue, I believe that they wanted state courts to consider that first. Two, the Washington Supreme Court did not issue final judgment. Rather, they returned the case to the lower courts to reconsider. Thirdly, Mr. Woods, as the respondent, recognizes that there is nothing to prevent the Supreme Court of the United States from reviewing this case in the future.

I am not a legal scholar, so the rightness of denying certiorari is a little vague in my eyes. Yes, the case has not finished making its way through the state court system. The question of whether or not the Washington Supreme Court violated the Fourteenth Amendment by reinterpreting state law and violating both the laws and constitution of the State of Washington was not considered. That means more pain, effort,

and expense for the Mission. All of which could be better used for their mission to help the poor and needy in Seattle rather than lining the pockets of the attorneys. This should be one more reason for We the People to look closely at our state and local government rather than focusing all of our attention on Washington, D.C.

© 2022 Paul Engel – All Rights Reserved

E-Mail Paul Engel: paul@constitutionstudy.com