

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

SEATTLE PACIFIC UNIVERSITY,

Plaintiff,

vs.

ROBERT FERGUSON, in his official
capacity as Attorney General of
Washington,

Defendant.

NO. 3:22-cv-05540- RJB

FIRST AMENDED COMPLAINT

NATURE OF THE ACTION

1. Seattle Pacific University is a Christian university fully committed to engaging the culture and changing the world by graduating people of competence and character, becoming people of wisdom, and modeling grace-filled community. For more than 130 years, Seattle Pacific has carried out its mission of Christian education and service in the Pacific Northwest.

2. Now that mission is under fire—and government investigation—by Washington’s attorney general.

3. Seattle Pacific University, like many religious universities, is navigating complex issues regarding Christian teachings on justice, love, marriage, and human sexuality. Seattle Pacific holds to traditional Christian beliefs regarding marriage and sexuality, in alignment with the Free Methodist Church.

1 4. As part of its religious commitment, Seattle Pacific expects its faculty, staff
2 and leadership to agree with the University's statement of faith and to live out that faith
3 as a model for others, including by living according to the University's religious
4 teachings on marriage. Seattle Pacific relies on its faculty, staff, and leadership to provide
5 a Christian higher education by integrating faith and learning.

6 5. The U.S. Constitution recognizes and protects the right of Seattle Pacific
7 University to decide matters of faith and doctrine, to hire employees who share its
8 religious beliefs, and to select and retain ministers free from government interference.

9 6. Defendant does not recognize that right. Despite the Constitution's clear
10 prohibition on interference in matters of church governance, including entangling
11 investigations of religious employment decisions and the selection of ministers,
12 Washington's attorney general has launched a probe that does just that.

13 7. The attorney general has taken the position that policies like Seattle
14 Pacific's, which ask leaders to follow a religious organization's teachings, are unlawful
15 and unwelcome in Washington.

16 8. The attorney general is wielding state power to interfere with the religious
17 beliefs of a religious university, and a church, whose beliefs he disagrees with. He is
18 using the powers of his office (and even powers not granted to his office) to pressure
19 and retaliate against Seattle Pacific University. But governmental attempts to probe the
20 mind of a religious institution are a blatant form of entanglement barred by both
21 Religion Clauses of the First Amendment. Such "[s]tate interference ... obviously
22 violate[s] the free exercise of religion," and such "attempt[s] by government to dictate
23 or even to influence [religious] matters ... constitute one of the central attributes of an
24 establishment of religion." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049,
25 2060 (2020).

26 9. The Constitution prohibits government retaliation against speech and
27 religious exercise. But in retaliation for Seattle Pacific's religious speech and exercise, the

attorney general has launched a probe seeking information on internal religious matters and decisions, detailed review of religious hiring practices, communications with ministerial employees, and even the selection of the University's president, senior leadership, and board of trustees. The attorney general's probe inquires into confidential religious matters and is beyond the scope of authority granted under state law and the federal constitution.

10. Without relief, the University will suffer irreparable harm.

JURISDICTION AND VENUE

11. This action arises under the Constitution and laws of the United States. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

12. This Court has personal jurisdiction over Defendant because Defendant is a state official, and state officials have their principal place of business in Thurston County, Washington.

13. The Court has authority to issue the declaratory and injunctive relief sought under 28 U.S.C. §§ 2201 and 2202.

14. Venue lies in this district under 28 U.S.C. §§ 1391(b)(1) and (2).

IDENTIFICATION OF PARTIES

15. Seattle Pacific University ("the University") is a private institution of higher education affiliated with the Free Methodist Church USA.

16. Robert Ferguson is the attorney general of the State of Washington, and is sued in his official capacity only.

FACTUAL ALLEGATIONS

A. Seattle Pacific University and Its History of Faith and Service

17. Seattle Pacific University is a private, Christian liberal arts university in Seattle. It is committed to graduating people of competence and character, becoming people of wisdom, and modeling a grace-filled community.

1 18. Seattle Pacific University has long served the Seattle community. It is
2 committed to a transformative and holistic student experience, creating an environment
3 where students can thrive. It has created programs that help students who lack resources
4 to find affordable meals, hosted events to educate the local evangelical community on
5 racial justice, and repeatedly hosted a community of men and women experiencing
6 homelessness. Seattle Pacific was the first university to offer discounted tuition to
7 eligible community-college students wanting to transfer to a university.

8 19. The University is committed to serving a diverse community. It grounds
9 the work of diversity in the gospel of Jesus Christ. Seattle Pacific University was
10 originally incorporated as “Trustees of Seattle Seminary” by articles of incorporation
11 dated June 23, 1891. As stated in the original articles of incorporation, the purpose of the
12 corporation is to “found, maintain, conduct and operate an institution of learning ...
13 under the auspices of the Free Methodist Church.”

14 20. The Free Methodist Church is an evangelical Protestant denomination
15 with ministries in the United States and in 100 countries around the world. The
16 denomination is a longstanding member of the National Association of Evangelicals.
17 Theologically, the Free Methodist Church is Wesleyan Arminian and can best be
18 described by these five value statements entitled “The Free Methodist Way”: Life-Giving
19 Holiness, Love-Driven Justice, Christ-Compelled Multiplication, Cross-Cultural
20 Collaboration, and God-Given Revelation. Free Methodists believe in the historic central
21 tenets of Christianity as expressed in the Apostles’ Creed and the Nicene Creed.

22 21. The Free Methodist Church was founded in 1860 by B.T. Roberts, a
23 Methodist Episcopal minister. Roberts was an abolitionist who believed that all people
24 are made in the image of God and possess inherent dignity. The name “Free” Methodist
25 derives from Roberts’ opposition to slavery, as well as clergy domination, secret
26 societies, pew rents, and other practices he deemed contrary to the teachings of the Bible
27 and John Wesley.

1 22. Free Methodists believe God's salvation is available to all. Free Methodists
2 emphasize acts of mercy and Christian living as an outward expression of God's inward
3 transformation. Such outward expression is a manifestation of the Holy Spirit's work
4 and critical to evangelism.

5 23. The Free Methodist Church ordains clergy, but it is not a "high" church
6 with a strong clergy-laity distinction; it expects all Christians to live out and model the
7 faith. "Free" of clergy domination, is reflected, for example, in Free Methodist structure,
8 where lay Christians have equal representation in the denomination's government. For
9 example, the Board of Administration must be made up of equal numbers of clergy and
10 lay members.

11 24. Historically, Free Methodists spoke out against the institutions of slavery
12 and class distinctions. Free Methodists reject anything in law, persons, or institutions
13 that violates the dignity of persons created in God's image. Free Methodists are
14 committed to the dignity and worth of all humans, regardless of gender, race, ethnicity,
15 color, socioeconomic status, disability, or any other distinctions, including membership
16 in the LGBTQ community. Free Methodists respect all persons as made in God's image
17 and deserving of fairness and equity. Free Methodists regard racism as a particularly
18 egregious affront to the dignity and worth of persons because all persons are created in
19 the image of God. They stand against the evil of racism and oppose it in all its forms.

20 25. Free Methodists believe sexual intimacy is a gift from God and is a great
21 blessing in the sanctity of marriage between one man and one woman. They believe that
22 premarital sexual intimacy robs the marital union of this exclusive bond and that
23 extramarital intimacy is adultery and betrays the marriage bond. Free Methodists
24 further believe that same-sex sexual intimacy is not in keeping with God's best intention
25 for the human family. These views on sexual intimacy have been the consistent position
26 of the Free Methodist Church since its founding in 1860.

1 26. The University began its existence associated with the Free Methodist
2 Church, and that relationship continues to this day. Free Methodists believe strongly in
3 Christian liberal arts education; within forty years of its 1860 founding, the church had
4 established a number of colleges, including Seattle Pacific University. The Free
5 Methodist Church recognizes the University as one of the church's denominational
6 institutions. This means it is an educational institution of higher education whose
7 commitments are consistent with the history, theology, mission, and character of the
8 Free Methodist Church.

9 27. The University's President must also be a member of the Free Methodist
10 Church.

11 28. The University's bylaws require at least one-third of all members of the
12 University's Board of Trustees to be members of the Free Methodist Church. Each year,
13 every Trustee must reaffirm the Trustee's "continued commitment to the mission and
14 faith statement of the University" Bylaws, Article III, Section 6. If a Trustee is unable
15 or unwilling to provide the affirmation, the Chair of the Board of Trustees must take
16 appropriate action, which may include proposing the resignation or removal of the
17 Trustee.

18 29. The University has adopted policies, a mission statement, and a statement
19 of faith consistent with its Christian beliefs. SPU's Statement of Faith is structured
20 around four pillars: "historically orthodox, clearly evangelical, distinctively Wesleyan,
21 and genuinely ecumenical." SPU's guiding policies include its religious beliefs about
22 human sexuality, which are included in its employee conduct policies. Those beliefs are
23 explained in more depth in the University's Statement on Human Sexuality, attached as
24 Exhibit B.

25 30. The Statement on Human Sexuality is a statement of religious belief and
26 practice, emphasizing that the University "affirm[s] the fundamental worth of all human
27 persons," and describing the University's beliefs about "God's plan for human

1 flourishing,” including marriage, singleness, family, and the treatment of others. It
2 rejects sexual harassment and sexual exploitation as harmful to others, and emphasizes
3 the obligation to “to interact with one another with great responsibility, respect, and
4 with unselfish love.” It also states the basis for and the definitions of the University’s
5 beliefs about marriage and human sexuality, including that marriage is a covenant
6 between a man and a woman, and that sexual experience is intended between a man and
7 a woman in marriage. The Statement emphasizes that discussions of sexuality and
8 religious belief “must be treated with personal and spiritual sensitivity and with
9 scholarly care.”

10 31. The University requires all of its regular faculty and its staff (other than
11 student employees and temporary employees) to affirm its Statement of Faith and
12 mission statement, and to also abide by certain lifestyle expectations in keeping with the
13 University’s religious beliefs. One of these standards prohibits regular faculty and other
14 employees from engaging in sexual intimacy outside of marriage (with marriage
15 recognized as a marriage between one man and one woman). This view of marriage is
16 the University’s sincere religious belief and aligns with the beliefs of the Free Methodist
17 Church.

18 32. The University’s regular faculty and employees are key to enabling the
19 University to fulfill its religious mission. And part of their role is to express and model
20 a vibrant, growing Christian faith.

21 33. The University can fulfill its religious mission only with a faculty of
22 Christians who affirm the University’s Statement of Faith, who affirm the University’s
23 mission, who live out their Christian faith, and who bring their faith into all aspects of
24 their lives, including their teaching and scholarship.

25 34. If the University changed its employment policies to permit employment
26 of Christians in same-sex marriages, the University would be automatically disaffiliated
27 from the Free Methodist Church. The University would no longer be a denominational

1 institution. Disaffiliation would occur whether the University made this change
 2 voluntarily or under compulsion of law. This would result in the loss of a religious
 3 affiliation that has existed for over 130 years.

4 *B. The Current Controversy*

5 35. The Board of Trustees is committed to upholding the University's religious
 6 beliefs and values. Within the University and its faith community, some believe the
 7 University should permit covenanted same-sex marriages. Those discussions have and
 8 will continue within the Church and at the University. The University understands that
 9 these are difficult discussions, and believes they should be carried out in love, within the
 10 family of believers who are, with God's help and grace, able to hold the tension of deep
 11 disagreement within the strong bounds of a common faith. The University seeks the
 12 freedom to hold theological discussions and make determinations of faith, doctrine, and
 13 policy without government interference.

14 36. The University community has engaged in these discussions and
 15 determinations over the past several years. Recently, several public events have brought
 16 additional attention to and scrutiny of the University's religious beliefs and practices.

17 37. While discussions and determinations were ongoing, in January 2021,
 18 Seattle Pacific University was sued by a faculty applicant alleging sexual orientation
 19 discrimination. That case (which was settled) sparked debate within the community. In
 20 March 2021, the University was discussed, alongside many other evangelical
 21 universities, in a lawsuit challenging the Title IX exemption for religious colleges and
 22 universities as unconstitutional. *Hunter v. Dept. of Education*, No. 21-00474 (D. Ore.). That
 23 lawsuit remains pending.

24 38. In 2021, some faculty members and students publicly called on the Board
 25 to change the University's statement on human sexuality. Faculty members took what
 26 was described as a "no-confidence vote" in the Board.

39. A working group of students, faculty, and trustees came together to study the issue. In May 2022, the group presented its recommendations, which outlined different options available to the University. After this review process, the Board voted to retain its existing employee conduct policies, which are consistent with the Statement on Human Sexuality.

40. On May 26, 2022, the day following the Board's announcement, students organized a sit-in at the University President's office, calling for changes to the statement on human sexuality. National news outlets ran stories about the controversy on May 30, 2022. *See, e.g., Students protest against Seattle university's ban on hiring LGBTQ employees*, NPR (May 30, 2022, 5:00 AM), <https://perma.cc/ED7B-HJNN>.

41. Upon information and belief, some students complained to Washington Attorney General Bob Ferguson, asking that the Attorney General take legal actions against the University's Board of Trustees.

42. According to the Attorney General, he received "hundreds" of complaints against Seattle Pacific University in May and June 2022.

43. To Seattle Pacific's knowledge, the complaints to the Attorney General are not complaints by employees or applicants for employment challenging adverse employment actions, but are instead complaints by those who disagree generally with the University's religious beliefs on marriage and sexuality and related religious hiring policies.

44. The Attorney General has stated that some or all of the people who have filed complaints with the Attorney General are members of the Seattle Pacific community, and that they have been involved in protests and public action to call on the University to change its religious policies.

45. Public discussion and calls on the Attorney General to act have, in some cases, demonstrated animus toward Seattle Pacific and its religious beliefs.

C. The Probe

1 46. Just over a week after the media coverage, on June 8, 2022, the office of the
2 attorney general sent a letter to Seattle Pacific University. The letter announces a probe
3 into the University and demands prompt production of voluminous and sensitive
4 internal information on the University's religious policies and their application to any
5 and all faculty, staff, and administrators. A true and correct copy of that letter is attached
6 as Exhibit A.

7 47. The letter states that it was sent due to information that the University
8 discriminates based upon sexual orientation, "including by prohibiting same-sex
9 marriage and activity." Ex. A at 1. The letter also seeks information relating to "faculty,
10 staff, or administrators." Ex. A at 2.

11 48. The letter demands sensitive private information regarding hiring
12 decisions, discipline, and employment disputes with "any" faculty, staff, or
13 administrators, including ministerial employees, as defined by *Hosanna-Tabor v. EEOC*,
14 565 U.S. 171 (2012), and *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049
15 (2020).

16 49. The letter demands sensitive personal and religious associational data,
17 including the names and contact information of "each prospective, current, or former
18 faculty, staff, or administrator to whom the University applied the policies." Based upon
19 this statement and knowledge of previous investigations, the University believes that
20 the attorney general's office will seek to communicate directly with ministerial
21 employees or prospective, current, or former senior leadership of the University,
22 inquiring into the University's religious and doctrinal decisions, without regard to
23 whether those individuals held ministerial roles at the University.

24 50. The letter purports to investigate the discipline of "administrators," which
25 would encompass the University's senior leadership and trustees, investigating their
26 decisions regarding faith and doctrine.

1 51. The letter inquires into matters of religious policy and doctrine, and
2 promises further inquiry into how those policies are carried out.

3 52. The letter clearly indicates that the attorney general considers “prohibiting
4 same-sex marriage and activity” to be in violation of the law. *See id.* The First
5 Amendment protects the ability of religious organizations to follow the teachings of their
6 faith on marriage and sexual relationships outside marriage, and to maintain policies
7 consistent with those beliefs. *See, e.g., Bostock v. Clayton County*, 140 S. Ct. 1731, 1754
8 (2020) (recognizing “the promise of the free exercise of religion enshrined in our
9 Constitution; that guarantee lies at the heart of our pluralistic society,” including in
10 employment decisions); *Obergefell v. Hodges*, 576 U.S. 644, 679–80 (2015) (“The First
11 Amendment ensures that religious organizations and persons are given proper
12 protection as they seek to teach the principles that are so fulfilling and so central to their
13 lives and faiths . . .”).

14 53. Upon information and belief, the probe has the purpose of influencing the
15 University in its application and understanding of church teaching, and encouraging the
16 University to take one side of a particular question of religious doctrine. The First
17 Amendment’s “Religion Clauses protect the right of churches and other religious
18 institutions to decide matters “‘of faith and doctrine’ without government intrusion,”
19 and prohibit “any attempt by government” to even “influence” such matters. *Our Lady*,
20 140 S. Ct. at 2060 (emphasis added).

21 54. The probe is not limited to a single dispute or employee, but seeks to
22 regulate and surveil a religious school’s relationships with all its employees and leaders.
23 Nothing in the letter places any constitutional limitation on the probe, including the
24 probe of ministerial employees and administrators, nor even acknowledges the principle
25 of religious autonomy for religious institutions, including the ministerial exception and
26 other constitutional limitations on the attorney general’s powers.

1 55. The letter closes by asking the University to preserve documents and sign
2 a certification, under penalty of perjury, attesting that it will do so. Attorneys from the
3 attorney general's office subsequently contacted University counsel directly to seek
4 assurances that the University had begun a litigation hold. A copy of those
5 communications is attached as Exhibit C. This certification indicates that the documents
6 requested in the letter are only the beginning, not the end, of the documents that the
7 attorney general will seek during the probe.

8 56. The probe interferes with the relationship between Seattle Pacific and the
9 leadership of the Free Methodist Church. For example, the letter seeks information
10 related to "administrators" of the University, which may include the University
11 President and its Trustees. The President must be a member of the Free Methodist
12 Church. The Trustees also include members of the Free Methodist Church and one of
13 the three elected Bishops of the Free Methodist Church. The probe also seeks documents
14 related to the University's policies and implementation of those policies, which may
15 include communications with the Bishop and with other leaders in the Free Methodist
16 Church.

17 57. The University is exempt from Title VII under 42 U.S.C. § 2000e-1(a) and 2
18 U.S.C. § 2000e-2(e).

19 58. The University is not an "employer" under the Washington Law Against
20 Discrimination (WLAD), since it is a religious organization not organized for private
21 profit. Wash. Rev. Code Ann. § 49.60.040.

22 59. The letter relies on the WLAD, but makes no mention of the religious
23 exemption to that law. Ex. A at 1. Although the Washington Supreme Court has called
24 the exemption into question under the privileges and immunities clause of the
25 Washington constitution, it has not addressed the federal constitutional questions raised
26 by that decision, and has recognized that "religious institutions are insulated from
27 government intrusion on matters of 'church government,' which includes religious

1 entities' internal management decisions, such as the selection of individuals who play
2 key roles." *Woods v. Seattle's Union Gospel Mission*, 197 Wash. 2d 231, 248 (2021), cert.
3 denied, 142 S. Ct. 1094 (2022).

4 60. The probe is being carried out without regard to those statutory
5 exemptions or Constitutional limitations.

6 61. The probe attempts to interfere with internal religious decision making.
7 For example, it interferes in the University's decisions regarding its relationship with the
8 Free Methodist Church, its relationships with ministerial employees, and its discussions
9 within the University community on the best way to live out its faith commitments.

10 62. The University responded to the letter and sought clarification on the
11 scope of the probe and the attorney general's interpretation of federal and state law. The
12 attorney general's office has not narrowed the probe, but instead objected that Seattle
13 Pacific did not provide the requested documents. Rather than provide responses to
14 serious questions of law and legal authority, the attorney general's office called them
15 "rhetorical questions." The response also emphasized the Attorney General's personal
16 oversight of the probe. *See* Exhibit C.

17 63. The attorney general aggressively and selectively prosecutes claims of
18 discrimination by religious individuals and entities, arguing that they are not protected
19 by the state or federal Constitutions. For example, the attorney general argued in favor
20 of penalizing Arlene's Flowers under the WLAD over First Amendment defenses, and
21 used it publicly as an example of the office's priorities. The attorney general has also
22 taken the position in the United States Supreme Court that other religious exemptions
23 and accommodations are unlawful.

24 64. The attorney general has not announced investigations into other religious
25 organizations in Washington to determine whether they use religious criteria in hiring
26 non-ministerial employees. Nor has he announced enforcement actions against any
27 small employers, who are also facially exempt from the WLAD. To Seattle Pacific's

1 knowledge, it is the only organization exempt from the definition of “employer” under
2 the WLAD that the Attorney General has investigated under the WLAD since the *Woods*
3 decision.

4 65. Without relief, the University will be subjected to and is already being
5 subjected to a government probe into internal religious matters, interference with
6 internal religious discussions and decisions, interference with the relationship with
7 ministerial employees, and chilling of religious exercise and free expression. Based upon
8 the letter and prior conduct by the attorney general’s office, the University believes that
9 if it does not comply with the unconstitutional probe, then it will face serious penalties
10 and litigation against Constitutionally protected actions.

11 *D. This Lawsuit*

12 66. After Seattle Pacific filed this lawsuit, the Attorney General responded to
13 the filing in a press release, attached as Exhibit D.

14 67. In that press release, the Attorney General justified his actions by pointing
15 to the many complaints his office received from members of the University community.

16 68. In that press release, the Attorney General also called for more complaints
17 to be filed against the University, saying “Anyone who believes they were subject to
18 possible employment discrimination by Seattle Pacific University should contact my
19 civil rights team.” Ex. D at 1.

20 69. Upon information and belief, the Attorney General had not previously
21 asked the public to file complaints against the University.

22 70. The Attorney General’s call for additional complaints was motivated by
23 Seattle Pacific’s actions in filing a federal civil rights lawsuit against the Attorney
24 General.

25 71. The Attorney General’s actions were intended to intimidate Seattle Pacific
26 and chill its speech, association, and religious exercise.
27

1 72. The Attorney General's actions were retaliation against Seattle Pacific for
2 exercising its rights under Section 1983 and the Petition Clause of the First Amendment.

3 73. The Attorney General's actions demonstrate that further investigations
4 and attempts to penalize Seattle Pacific are certainly impending.

5 74. The Attorney General also filed a motion to dismiss this lawsuit. In that
6 motion, the Attorney General made it clear that he plans to enforce the WLAD against
7 Seattle Pacific University with regard to non-ministerial employees, as decided by the
8 Attorney General. His motion stated: "while the First Amendment clearly protects the
9 University's employment practices with respect to its ministers, those protections do not
10 extend to discrimination against any [sic] the University's non-ministerial employees, to
11 whom the WLAD's prohibition of employment discrimination on the basis of sexual
12 orientation would apply." Dkt. 15 at 16.

13 75. This is contrary to the plain text of the WLAD, which exempts Seattle
14 Pacific. *See* RCW 49.60.040 (11). It is also contrary to the holding of *Woods*, which due to
15 its procedural posture, did not rule on the First Amendment defenses of the religious
16 employer. In opposing Seattle's Union Gospel Mission petition for certiorari, Mr. Woods
17 himself acknowledged just that:

18 Petitioner contends that the court's decision was "clear and uncomplicated:
19 the First Amendment, in the employment context, requires nothing more
20 than the ministerial exception." That is not correct. The court held only that,
21 as a matter of state constitutional law, the statutory religious exemption
22 from state anti-discrimination law could be applied at least in
circumstances where an employee's role was ministerial. It did not hold that
the First Amendment requires "nothing more."

23 Brief of Respondent Matthew S. Woods in Opposition to Petition for Certiorari at 16,
24 *Seattle's Union Gospel Mission v. Woods*, 142 S. Ct. 1094 (2022) (No. 96132-8). At least two
25 U.S. Supreme Court justices relied on this admission in concurring in the denial of
26 Seattle's Union Gospel Mission's petition for certiorari. *Seattle's Union Gospel Mission v.*
27 *Woods*, 142 S. Ct. 1094 (2022) (Alito, J. concurring in denial of certiorari) ("The state court

1 did not address whether applying state employment law to require the Mission to hire
2 someone who is not a co-religionist would infringe the First Amendment.”).

3 76. Although the Attorney General purports to disclaim an intent to enforce
4 the WLAD against ministerial employees, his demand for private employment
5 information related to every position at the University makes any such disclaimer
6 meaningless. Further, the Attorney General has refused to narrow the scope of the probe
7 or limit interference in the relationship with ministerial employees and applicants for
8 ministerial positions.

9 77. The Attorney General is a “person” under 42 U.S.C. § 1983 for purposes of
10 injunctive relief, and is sued pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

11 78. By crafting and applying its religious employment policies to further its
12 religious mission, Seattle Pacific University is engaging in a course of conduct affected
13 with a constitutional interest. That conduct is arguably proscribed by the WLAD,
14 according to the state’s attorney general. Seattle Pacific is facing a credible and
15 substantial threat of enforcement of the WLAD for its conduct, as the probe and the
16 attorney general’s subsequent statements demonstrate.

17 CLAIMS

18 Count I

19 Violation of U.S. Const. Amend. I: Free Speech and Free Exercise Clauses

20 42 U.S.C. § 1983

21 First Amendment Retaliation

22 79. All preceding paragraphs are incorporated by reference.

23 80. Government actors may not retaliate against citizens for the exercise of
24 their First Amendment rights.

25 81. Seattle Pacific University is engaged in the constitutionally protected
26 exercise of its religion, its speech, and its religious and expressive association.

27 82. The attorney general’s probe would deter a person of ordinary firmness
from continuing to exercise their First Amendment rights.

83. The attorney general's actions are a response to Seattle Pacific's constitutionally protected conduct.

84. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count II
Violation of U.S. Const. Amend. I: Establishment and Free Exercise Clauses
42 U.S.C. § 1983
Interference with Church Autonomy / Ecclesiastical Abstention

85. All preceding paragraphs are incorporated by reference.

86. Under the Free Exercise and Establishment Clauses of the First Amendment, religious groups have the "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 North America*, 344 U.S. 94, 116 (1952).

87. The University is a religious organization making decisions of internal governance, faith, and doctrine.

88. Defendant's probe targets and interferes with the University's religious governance and decision-making.

89. Defendant's probe and threats of litigation are an attempt to influence the University's decisions regarding faith and doctrine.

90. Defendant admits that the probe and threats of litigation were prompted by those in one faction of an ongoing dispute over religious doctrine and practice.

91. This violates both Religion Clauses, which "protect the right of churches and other religious institutions to decide matters " 'of faith and doctrine' " without government intrusion. . . . State interference in that sphere would obviously violate the free exercise of religion, and any attempt by government to dictate or even to influence such matters would constitute one of the central attributes of an establishment of religion. The First Amendment outlaws such intrusion." *Our Lady*, 140 S. Ct. at 2060.

92. Defendant's probe infringes on the University's First Amendment right to govern itself according to religious principles, frame its policies and doctrine, and select its employees and leaders according to those religious principles without government interference.

93. Application of the WLAD to Seattle Pacific's statement of faith and religious conduct standards for employees, regardless of ministerial status, would violate the Free Exercise Clause.

94. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count III
Violation of U.S. Const. Amend. I: Establishment and Free Exercise Clauses
42 U.S.C. § 1983
Church Autonomy: Improper Investigation into Religious Matters

95. All preceding paragraphs are incorporated by reference.

96. Under the Free Exercise and Establishment Clauses of the First Amendment, government may not engage in entangling inquiries into religious matters, since the "very process of inquiry" can "impinge on rights guaranteed by the Religion Clauses." *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979). In *Catholic Bishop*, that meant the National Labor Relations Board did not have jurisdiction over claims of unfair labor practices at religious schools. *See id.*; *see also Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 717-18 (1976) ("detailed review" of church proceeding was "impermissible under the First and Fourteenth Amendments").

97. Government actors may not intervene in an "internal ecclesiastical dispute and dialogue protected by the First Amendment." *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 659 (10th Cir. 2002).

98. Church autonomy also forbids the "forced disclosure" of religious organizations' "internal communications." *See Whole Woman's Health v. Smith*, 896 F.3d 362, 374 (5th Cir. 2018). Forcing the University to hand over these internal documents

1 would “interfere[] with [their] decision-making processes on a matter of intense
2 doctrinal concern” and intrude on their “self-government.” *See id.* at 373.

3 99. The University is a religious school engaging in ecclesiastical dispute and
4 dialogue and applying religious belief and doctrine to the selection and retention of
5 employees.

6 100. Defendant admits that the probe and threats of litigation were prompted
7 by those in one faction of an ongoing dispute over religious doctrine and practice.

8 101. Defendant’s wide-ranging probe into religious matters and hiring
9 practices will impinge upon the rights guaranteed by the Religion Clauses.

10 102. Absent injunctive and declaratory relief, the University will be irreparably
11 harmed.

12 **Count IV**
13 **Violation of U.S. Const. Amend. I: Establishment and Free Exercise Clauses**
14 **42 U.S.C. § 1983**
Ministerial Exception

15 103. All preceding paragraphs are incorporated by reference.

16 104. Defendant’s probe seeks to interfere with the relationship between the
17 University and its ministerial employees, including faculty.

18 105. Under the Free Exercise and Establishment Clauses of the First
19 Amendment, “[w]hen a school with a religious mission entrusts a teacher with the
20 responsibility of educating and forming students in the faith, judicial intervention into
21 disputes between the school and the teacher threatens the school’s independence in a
22 way that the First Amendment does not allow.” *Our Lady*, 140 S. Ct. at 2069.

23 106. Defendant’s intrusive probe into the University’s ministerial decisions
24 infringes on the University’s First Amendment right to be free from government
25 interference in its selection and retention of ministerial employees.
26
27

107. Defendant has not narrowed the probe, despite acknowledging that he is aware that Seattle Pacific has ministerial employees and has raised objections under the ministerial exception.

108. Application of the WLAD to Seattle Pacific University's ministerial employees would violate the First Amendment.

109. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count V
Violation of U.S. Const. Amend. I: Free Exercise Clause
42 U.S.C. § 1983
Not Generally Applicable¹

110. All preceding paragraphs are incorporated by reference.

111. The attorney general is selectively enforcing Washington law. State law vests enforcement power in the state Human Rights Commission, but instead Defendant has arrogated the power to investigate and enforce the WLAD, sidestepping the statutory process.

112. The attorney general does not state that any complaint has been received by a person who claims unlawful employment discrimination.

113. Yet the attorney general has launched an extensive probe into the University.

114. The University is not aware of any similar probes against other universities in the state, nor against other employers without receipt of an actual complaint.

115. The attorney general is not acting according to generally applicable policy, but is pursuing this probe based upon the publicly stated stances of the University.

¹ Seattle Pacific pleads this and further Free Exercise counts consistent with current law under *Employment Division v. Smith*, 494 U.S. 872 (1990). It reserves the right to argue at a later date that *Smith* should be overruled and that the Attorney General's actions are subject to strict scrutiny regardless of whether the law and its enforcement are neutral and generally applicable.

116. This is not a generally applicable policy, and therefore must face strict scrutiny under the Free Exercise Clause.

117. The attorney general does not have a compelling interest in the probe.

118. The probe is not the least restrictive means of pursuing the attorney general's interests.

119. Application of the WLAD to Seattle Pacific's ministerial employees would violate the Free Exercise Clause.

120. Application of the WLAD to Seattle Pacific's statement of faith and religious conduct standards for employees, regardless of ministerial status, would violate the Free Exercise Clause.

121. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count VI
Violation of U.S. Const. Amend. I: Free Exercise Clause
42 U.S.C. § 1983
Not Generally Applicable

122. All preceding paragraphs are incorporated by reference.

123. The attorney general claims to be applying the WLAD against the University.

124. The WLAD contains multiple exemptions. It exempts religious non-profit organizations and small employers from its prohibition on employment discrimination, private clubs and fraternal organizations from its prohibition on public accommodations discrimination, and religious crematories and mausoleums from its prohibition on public accommodations discrimination, among other exemptions.

125. As construed by the attorney general, the WLAD does not contain an exemption for the University's religious exercise of hiring employees who share its faith.

126. Therefore its application to the University's religious policies and decision-making must face strict scrutiny.

127. The attorney general does not have a compelling interest in the probe, nor in applying the WLAD to the University's religious employment practices.

128. The probe is not the least restrictive means of pursuing the attorney general's interests.

129. Application of the WLAD to Seattle Pacific's ministerial employees would violate the Free Exercise Clause.

130. Application of the WLAD to Seattle Pacific's statement of faith and religious conduct standards for employees, regardless of ministerial status, would violate the Free Exercise Clause.

131. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count VII
Violation of U.S. const. Amend. I: Establishment Clause
42 U.S.C. § 1983
Denominational Preference

132. All preceding paragraphs are incorporated by reference.

133. "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 (1982).

134. Defendant has treated the University differently due to its religious denominational affiliation.

135. Defendant has no compelling interest in treating the University differently due to its denominational affiliation.

136. Defendant has not used the least restrictive means available to achieve his interests.

137. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count VIII
Violation of U.S. Const. Amend. I: Free Exercise Clause
42 U.S.C. § 1983
Not Neutral

138. All preceding paragraphs are incorporated by reference.

139. The attorney general is using the powers of his office to pressure the University to change its religious beliefs and practices.

140. The attorney general is taking sides in a religious dispute.

141. The attorney general is selectively enforcing Washington law. State law vests enforcement power in the state Human Rights Commission, but instead Defendant has arrogated the power to investigate and enforce the WLAD, sidestepping the statutory process.

142. The attorney general does not state that any complaint has been received by a person who has experienced unlawful employment discrimination.

143. Yet the attorney general has launched a probe into the University.

144. The University is not aware of any similar probes against other universities in the state, nor against other employers without receipt of an actual complaint.

145. The Attorney General is selectively enforcing the WLAD against the University because of a religious dispute within the University community.

146. Defendant's actions are not neutral with regard to religion.

147. Defendant has treated the University differently with regard to its religious beliefs.

148. Defendant has treated the University differently due to its religious denomination.

149. Defendant has exceeded his power under state and federal law in order to punish the University for maintaining religious beliefs that Defendant opposes.

150. Defendant has no compelling interest in treating the University non-neutrally.

151. Defendant has not used the least restrictive means available to achieve his interests.

152. Application of the WLAD to Seattle Pacific in a non-neutral manner would violate the Free Exercise Clause.

153. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count IX
Violation of U.S. Const. Amend. I: Free Speech, Free Exercise
and Assembly Clauses
42 U.S.C. § 1983
Right of Assembly

154. All preceding paragraphs are incorporated by reference.

155. Seattle Pacific University chooses faculty, staff, and leaders who share its faith as part of its religious exercise.

156. The University is engaged in religious association and assembly with others who share its faith.

157. The University associates and assembles with the Free Methodist Church as an expression of its faith.

158. The attorney general's probe infringes on the University's First Amendment right "peaceably to assemble" to engage in otherwise lawful religious exercise and speech activities with persons of their choosing. *See Thomas v. Collins*, 323 U.S. 516, 530-40 (1945).

159. Application of the WLAD to Seattle Pacific's statement of faith and religious conduct standards for employees would violate the First Amendment.

160. Absent injunctive and declaratory relief, the University will be irreparably harmed.

Count X
Violation of U.S. Const. Amend. I: Free Speech and Free Exercise Clauses
42 U.S.C. § 1983
Right of Expressive Association

161. All preceding paragraphs are incorporated by reference.

1 e. Declare that the Attorney General cannot target Seattle Pacific by
2 instituting investigations or enforcement actions against it in a retaliatory or non-neutral
3 manner;

4 f. Issue a preliminary and then permanent injunction prohibiting the
5 attorney general, his assistants, deputies, employees, and those acting in concert with
6 him, from requiring Seattle Pacific to provide information as part of the current probe
7 and otherwise interfering in matters of church governance and the University's
8 relationships with ministerial employees;

9 g. Issue a preliminary and then permanent injunction prohibiting the
10 attorney general, his assistants, deputies, employees, and those acting in concert with
11 him, from enforcing the WLAD against Seattle Pacific's employment actions with regard
12 to ministerial employees;

13 h. Issue a preliminary and then permanent injunction prohibiting the
14 attorney general, his assistants, deputies, employees, and those acting in concert with
15 him, from enforcing the WLAD against Seattle Pacific's religious belief and conduct
16 requirements for employees, regardless of ministerial status;

17 i. Issue a preliminary and then permanent injunction prohibiting the
18 attorney general, his assistants, deputies, employees, and those acting in concert with
19 him, from retaliating against Seattle Pacific through investigations or enforcement
20 actions, or otherwise applying the law to Seattle Pacific in a targeted or non-neutral
21 manner;

22 j. Award Plaintiffs the costs of this action and reasonable attorney's fees; and

23 k. Award such other and further relief as the Court deems equitable and just.

24 ///

25 ///

26 ///

27 ///

1 DATED this September 2, 2022

2 THE BECKET FUND FOR RELIGIOUS
3 LIBERTY

4
5 By: /s/ Lori H. Windham

6 Lori H. Windham (admitted *pro hac vice*)
7 Daniel Benson (admitted *pro hac vice*)
8 1919 Pennsylvania Ave. NW, Ste 400
9 Washington, DC 20006
10 Phone: (202) 955-0095
11 lwindham@becketlaw.org
12 dbenson@becketlaw.org

13 ELLIS, LI & McKINSTRY PLLC

14 By: /s/ Nathaniel L. Taylor

15 Daniel J. Ichinaga, WSBA No. 13522
16 Nathaniel L. Taylor, WSBA No. 27174
17 Abigail St. Hilaire, WSBA No. 48194
18 1700 Seventh Avenue, Suite 1810
19 Seattle, WA 98101-1820
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23 ntaylor@elmlaw.com
24 asthilaire@elmlaw.com

25 *Attorneys for Seattle Pacific University*

Exhibit A



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Civil Rights Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104
(206) 464-7744

June 8, 2022

SENT VIA FEDEX AND EMAIL

Nicholas Glancy
Assistant Vice Principal for Risk Management and University Counsel
Risk Management, DH 250
509 West Bertona
Seattle, WA 98119
nglancy@spu.edu

RE: Employment practices at Seattle Pacific University

Dear Nicholas Glancy:

The Washington State Attorney General's Office (AGO) works to protect the civil rights of all Washingtonians, including the right to employment free from discrimination on the basis of any protected class, including religion and sexual orientation. The AGO has recently learned about possible discriminatory employment policies and practices by Seattle Pacific University (University) that may violate the Washington Law Against Discrimination (WLAD), RCW 49.60. We understand that you are the University's counsel. I am writing to inform you that the AGO is opening an inquiry to determine whether the University is meeting its obligations under state law.

Specifically, we have learned of information that suggests that the University may utilize employment policies and practices that permit or require discrimination on the basis of sexual orientation, including by prohibiting same-sex marriage and activity. *See Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 246, 481 P.3d 1060 (2021); RCW 49.60.180(3); RCW 49.60.180(4). At this stage of our inquiry, we have not made any determination as to whether the University has violated any law.

In order to facilitate our office's efforts to ensure that the University is in compliance with its legal obligations regarding workplace discrimination, we request that you provide the following documents and information:

ATTORNEY GENERAL OF WASHINGTON

Nicholas Glancy

June 8, 2022

Page 2

1. Produce any policies governing the hiring, promotion, discipline, and/or termination of University faculty, staff, and administrators, as it relates to their sexual orientation or status of being in a same-sex marriage and/or intimate relationship.
2. Identify and describe every instance in which the policies produced in response to Request No. 1 above have been applied in connection with a decision whether to hire, promote, discipline, and/or terminate any prospective, current, or former University faculty, staff, or administrator, as it relates to their sexual orientation or status of being in a same-sex marriage and/or intimate relationship. Produce any documents reflecting such decisions and provide the name, telephone number, and email address of each prospective, current, or former faculty, staff, or administrator to whom the University applied the policies produced in response to Request No. 1.
3. Produce any complaints received from any prospective, current, or former University faculty, staff, or administrator alleging that they were not hired or promoted, or were disciplined or terminated, because of their sexual orientation or status of being in a same-sex marriage and/or intimate relationship.
4. Produce all job descriptions that describe the job duties and requirements of the position, and the hiring criteria and/or job eligibility requirements, for University faculty, staff, and administrator positions. Please include, but do not limit your response to, the job descriptions that relate to the positions held or applied for by any individual identified in response to Request No. 2.

Please note that the relevant time period for the information requested above is from June 1, 2017, to the present. If there is information in addition to the items listed above that the University believes would aid the AGO in its inquiry, I encourage you to include it with your response. Please respond to this request by July 8, 2022.

Finally, I have enclosed a certification regarding the retention of documents. I request that the University maintain in their current forms all records, documents, files, and electronically stored material that may be relevant to this investigation. Such records, including those that are contained in computer systems or servers, should not be altered or destroyed pending completion of our investigation. I ask that you return copies of the certification signed by each University agent or employee who will be responsible for the production and retention of documents during this inquiry by June 22, 2022. The certification(s) may be submitted to me at the email address below.

Thank you in advance for your cooperation. If you have any questions, please feel free to contact me at daniel.jeon@atg.wa.gov or (206) 342-6437.

ATTORNEY GENERAL OF WASHINGTON

Nicholas Glancy

June 8, 2022

Page 3

Sincerely,



DANIEL J. JEON
Assistant Attorney General
Wing Luke Civil Rights Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 342-6437
daniel.jeon@atg.wa.gov

Enclosure

cc: Pete Menjares, Interim President (via email w/enc., president@spu.edu)
Donald Mortenson, Interim Vice President for Finance and Administration (via email w/enc., ofa@spu.edu)
Becky Tindall, Interim Human Resources Director (via email w/enc., rtindall@spu.edu)
Dean Kato, Board of Trustees Chair (via email w/enc., dean.kato@aol.com)

**CERTIFICATION
SEATTLE PACIFIC UNIVERSITY**

I, _____, hereby certify that I am an agent or employee of Seattle Pacific University (University), holding the position of _____, with authority to act on behalf of the University. I certify that I will not alter, destroy, or otherwise dispose of any records that comprise, refer, or relate to the documents requested in the Request for Information attached to the letter from the Washington State Attorney General's Office dated June 8, 2022. I have, in writing, instructed University agents and employees not to alter, destroy, or otherwise dispose of the aforementioned records.

This certification applies to all records in their current forms in the direct or indirect possession, custody, or control of the University, including written and electronic documents, postings to internet websites and social media sites, photographs, and audio and video recordings. I will immediately notify the Washington State Attorney General's Office (Attention: Daniel Jeon, Assistant Attorney General, telephone: (206) 342-6437; email: Daniel.Jeon@atg.wa.gov) if I become aware that any person or entity has altered, destroyed, or otherwise disposed of, or intends to alter, destroy, or otherwise dispose of, any such records.

Pursuant to RCW 5.50.050, I declare, under the penalty of perjury and the laws of the State of Washington, that the foregoing is true and correct.

Executed this _____ day of _____, 2022

Signature

Title

Exhibit B

Statement on Human Sexuality

 wiki.spu.edu/display/HR/Statement+on+Human+Sexuality

As a community of men and women committed to following Christ, Seattle Pacific University recognizes the centrality of biblical teaching in all matters of life including human sexuality. We recognize, as well, the diversity of opinions within our community when it comes to the interpretation of Scripture regarding this subject and many others. Recognizing our commonalities as well as our diversity, therefore, we affirm the following:

Human beings are created in the image of God, male and female, and are of inestimable worth. Because we are created in God's image, people must be treated with respect and dignity by all institutions in society whether male or female, young or old, rich or poor, believer or unbeliever, homosexual or heterosexual. This priceless value constitutes the theological and anthropological foundation of our discussions regarding human sexuality. We, therefore, affirm the fundamental worth of all human persons, including those with whom we disagree.

Human beings are created in the image of God, male and female. The explicit relational dimension of human beings and the inherent differentiation of gender are foundational to our understanding of creation itself. Our discussions and considerations of human sexuality, therefore, take place within the context of these assumptions. Human sexuality is both a relational truth and it is gender differentiated.

Human sexuality is intended by God to include more than the contemporary cultural emphasis upon physical, sexual experience. Our sexuality is intended by God to reflect the whole of our sensual and relational createdness. We, therefore, renounce the equation of sexuality with genital sex alone and the false representation of sexuality found in pornography. We believe that such an emphasis results in the dehumanization of all people, especially women and children.

We recognize the need to affirm the Christian virtues of holiness and godliness in this very significant dimension of being human. We assert that holiness and godliness as they relate to human sexuality require more than the avoidance of evil. These dimensions of spirit-filled character involve the positive celebration of who we are as created beings. Therefore, we are to interact with one another with great responsibility, respect, and with unselfish love.

The delight we experience through our sexual experience requires of us a sense of stewardship, a trust that extends not only to ourselves but also to others. Therefore, we remind ourselves, as well as those beyond our community, of the responsibility not to engage in the sexual exploitation or the sexual harassment of others. This stewardship is particularly important in the human institutions of church, work, friendship, marriage, and family.

In particular, we affirm the institutions of marriage and family as central to the purposes of God. We believe it is in the context of the covenant of marriage between a man and a woman that the full expression of sexuality is to be experienced and celebrated and that such a commitment is part of God's plan for human flourishing. Within the teaching of our religious tradition, we affirm that sexual experience is intended between a man and a woman.

We believe this is the ancient and historic teaching of Christian scriptures and tradition, including the teaching of Seattle Pacific's founding denomination, the Free Methodist Church. We believe this continues to be the teaching of the Christian Church around the world and remains the guiding light for our practice. We are also aware that this teaching is found in most other religious traditions as well. While we affirm the institution of marriage, we also recognize and affirm the call of some to singleness and celibacy.

Because the issues surrounding human sexuality are controversial, as a community of learning we recognize that our discussions and considerations regarding sexuality, whether in writing or in the classroom, must be treated with personal and spiritual sensitivity and with scholarly care. Therefore, we agree to evaluate our teaching and our pronouncements regarding sexuality in the light of the historic understanding of the Christian Church and the authority of the biblical witness. In this spirit we agree to submit our teachings and pronouncements to one another as followers of Christ.

Finally, recognizing the sinfulness and fallenness of our human nature, we acknowledge our need for God's grace and mercy in our actions, discussions, and considerations of human sexuality. We seek God's grace that we might rise above our human weaknesses and God's mercy that we might live in unity with one another in the midst of our brokenness and in response to the call of God upon our lives to love one another and thus fulfill the law of Christ.

Exhibit C

From: Jeon, Daniel (ATG) [REDACTED]@atg.wa.gov>
Sent: Monday, July 25, 2022 9:54 AM
To: Nathaniel L. Taylor <[REDACTED]@elmlaw.com>
Cc: Abigail St. Hilaire [REDACTED]@elmlaw.com>
Subject: RE: Seattle Pacific University

Nat:

Given our previous conversation and your request for an extension because of vacations and leadership transitions due to the end of an academic year, I am somewhat surprised that the substantive response provides no documents and little information that we had requested, and instead is largely counsel's arguments and rhetorical questions. AG Ferguson was personally informed of and granted the two-week extension, understanding that SPU was preparing a substantive response. Regarding a discussion this week, we will alert AG Ferguson of your response and respond in due course.

Thanks, hope you had a pleasant weekend as well.

Daniel

From: Nathaniel L. Taylor [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Sent: Friday, July 22, 2022 4:13 PM
To: Jeon, Daniel (ATG) [REDACTED] <[\[REDACTED\]@atg.wa.gov](mailto:[REDACTED]@atg.wa.gov)>
Cc: Abigail St. Hilaire [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Subject: RE: Seattle Pacific University

[EXTERNAL]

Daniel,

Thanks again for your patience. Attached is the substantive response. I'm available most of Tuesday; Wednesday morning; and most of Thursday to discuss.

Have a great weekend.

Nat

Ellis | Li | McKinstry
Nathaniel L. Taylor
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
Direct: [REDACTED]
Main: [REDACTED]
www.elmlaw.com

From: Jeon, Daniel (ATG) [REDACTED] <[\[REDACTED\]@atg.wa.gov](mailto:[REDACTED]@atg.wa.gov)>
Sent: Wednesday, June 29, 2022 4:27 PM
To: Nathaniel L. Taylor [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Cc: Abigail St. Hilaire [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Subject: RE: Seattle Pacific University

Nat,

Understood, thanks. And yes, a two week extension is fine. Please provide the substantive response by COB July 22.

Daniel

From: Nathaniel L. Taylor [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Sent: Wednesday, June 29, 2022 2:49 PM
To: Jeon, Daniel (ATG) [REDACTED] <[\[REDACTED\]@atg.wa.gov](mailto:[REDACTED]@atg.wa.gov)>
Cc: Abigail St. Hilaire [REDACTED] <[\[REDACTED\]@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Subject: RE: Seattle Pacific University

[EXTERNAL]

Daniel,

I apologize, I think we had a miscommunication. When we talked back on June 16, I acknowledged that your letter indicated that SPU should reasonably anticipate litigation. And SPU is implementing a litigation hold. But when I asked for the statutory authority for the certification, your office didn't offer one. Rather, you (or your colleague, I don't recall which) explained that some investigation targets are unsophisticated or unrepresented by counsel. That's not the case here. And I'm still unaware of any authority for the requested certification. Hopefully this email acknowledgment about the litigation hold is adequate.

Related, I'm also wondering if we can have short (week or two) extension on the deadline for a substantive response. Your investigation letter came right as the SPU academic year ended, a time when people go on vacation and there are leadership transitions. That slows the process. Thanks in advance for considering the request.

Nat

Ellis | Li | McKinsty
Nathaniel L. Taylor
1700 Seventh Avenue, Suite 1810
Seattle, WA 98101
Direct: [REDACTED]
Main: [REDACTED]
www.elmlaw.com

From: Jeon, Daniel (ATG) [REDACTED] [@atg.wa.gov](mailto:[REDACTED]@atg.wa.gov)>
Sent: Monday, June 27, 2022 1:18 PM
To: Nathaniel L. Taylor [REDACTED] [@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Cc: Abigail St. Hilaire [REDACTED] [@elmlaw.com](mailto:[REDACTED]@elmlaw.com)>
Subject: RE: Seattle Pacific University

Good afternoon, Nat and Abby:

Our June 8, 2022, request for information asked for copies of the corresponding certification by June 22, 2022. Our office has yet to receive any signed certifications. Please advise as to when we can expect those certifications.

Thanks,
Daniel

Exhibit D



Washington State (/)
Office of the Attorney General
Attorney General Bob Ferguson

(/)

Home (/) | News (/news) | News Releases (/pressrelease.aspx) | **Attorney General Ferguson confirms civil rights investigation of Seattle Pacific University**

Attorney General Ferguson confirms civil rights investigation of Seattle Pacific University



(https://www.atg.wa.gov)

FOR IMMEDIATE RELEASE:

Jul 29 2022

SEATTLE — Attorney General Bob Ferguson released a statement confirming that his office is investigating potential illegal discrimination by Seattle Pacific University's administration. The statement follows the University's lawsuit seeking to block the investigation (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/05540SPU.pdf).

"Seattle Pacific University admits that it refuses to hire gay faculty and staff. In May, Seattle Pacific University students and staff staged a sit-in and called for the removal of the University's board of trustees after they voted to keep in place school policies that prohibit employees from engaging in 'same-sex sexual activity.' Numerous Seattle Pacific University students, faculty, and others reached out to my office to file complaints or otherwise express deep concern that the University administration's policies illegally violate Washingtonians' civil rights.

"My office protects the civil rights of Washingtonians who have historically faced harmful discrimination. That's our job — we uphold Washington's law prohibiting discrimination, including on the basis of sexual orientation.

"My office respects the religious views of all Washingtonians and the constitutional rights afforded to religious institutions. As a person of faith, I share that view. My office did not prejudge whether Seattle Pacific University's employment policies or its actions are illegal. We responded to the complaints from concerned Washingtonians by sending the University a letter. The letter asked four questions (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/2022-06-08_SPU_RFI.pdf). The letter also invited the University to provide any additional information that it wanted my office to consider.

"We did not publicize the letter, nor did we announce our investigation. In response to our inquiry, Seattle Pacific University filed a federal lawsuit. The lawsuit demonstrates that the University believes it is above the law to such an extraordinary degree that it is shielded from answering basic questions from my office regarding the University's compliance with state law.

"Seattle Pacific University's attempt to obstruct our lawful investigation will not succeed.

"Anyone who believes they were subject to possible employment discrimination by Seattle Pacific University should contact my civil rights team at civilrights@atg.wa.gov (<mailto:civilrights@atg.wa.gov>)."

-30-

Washington's Attorney General serves the people and the state of Washington. As the state's largest law firm, the Attorney General's Office provides legal representation to every state agency, board, and commission in Washington. Additionally, the Office serves the people directly by enforcing consumer protection, civil rights, and environmental protection laws. The Office also prosecutes elder abuse, Medicaid fraud, and handles sexually violent predator cases in 38 of Washington's 39 counties. Visit www.atg.wa.gov (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.atg.wa.gov%2F&data=04%7C01%7Cbrionna.aho%40atg.wa.gov%7Cca1de901495e4dbe44e808d938325a7e%7C2cc5baaf3b9742c9bcb8392cad>) to learn more.

Media Contact:

Brionna Aho, Communications Director, (360) 753-2727; Brionna.aho@atg.wa.gov (<mailto:Brionna.aho@atg.wa.gov>)

General contacts: Click here (<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.atg.wa.gov%2Fcontact-us&data=02%7C01%7Cask4isd%40atg.wa.gov%7C0bf096ab891d45ee964608d812417366%7C2cc5baaf3b9742c9bcb8392cad34af3f%7C0%7C0%7C637279419610422508>)

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