No. 24-4101

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YOUTH 71FIVE MINISTRIES,

Plaintiff-Appellant,

v.

CHARLENE WILLIAMS, Director of the Oregon Department of Education, in her individual and official capacities, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Oregon
Case No. 1:24-cv-00399-CL

YOUTH 71FIVE MINISTRIES' EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL UNDER CIRCUIT RULE 27-3 RELIEF REQUESTED BY AUGUST 9, 2024

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CORPORATE DISCLOSURE STATEMENT

Youth 71Five Ministries is a religious, nonprofit corporation. It issues no stock and has no parent corporation.

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INTRODUCTION

Youth 71Five Ministries ("71Five") is a Christian, youth-mentoring ministry that has participated in Oregon's Youth Community Investment Grant Program for many years without issue. The Program, administered by the state's Department of Education, provides reimbursement grants to support existing services for at-risk youth. That included 71Five's programs until the Department changed the rules—now demanding that religious institutions hire those who reject their faith, including for their ministerial positions.

The sudden rule change hit 71Five hard. After the Department awarded 71Five grants for the 2023-25 cycle, an anonymous person complained that 71Five's website says the Christian ministry hires only Christians. Although that fact was well known and had never been a problem before, the Department kicked 71Five out of the Program and rescinded over $400,000 in grant awards. Worse, the Department singled out 71Five while giving a free pass—and millions of dollars—to secular organizations whose websites admit that they discriminate *when providing their services*. In contrast, 71Five serves everyone.

Besides ending the obvious (and ongoing) constitutional violations, an injunction pending appeal is vital because the Department's actions have forced the nonprofit ministry to spend hundreds of thousands of dollars—a sum that grows with each passing day—to continue critical grant-related programs and services. The financial strain has forced

71Five to forgo many ministry opportunities and prevented it from pursuing others, including making much-needed repairs to one of its youth centers, replacing worn bikes and safety equipment for its youth mountain-biking program, expanding its VoTech program to other needy communities, and hiring for an open position that must be filled this August to serve students when they return for the 2024-25 school year. What's more, the Department officials have argued (and the district court agreed) that they are entitled to qualified immunity. So if the Department has its way and 71Five is not reinstated to the Program soon, it will forever lose that money and have to cut several of its outreach programs serving at-risk youth.

The Court should grant an injunction pending appeal to end the ongoing constitutional violation and stop the irreparable harm.[1]

BACKGROUND

A. 71Five is a Christian, youth-mentoring ministry.

71Five is a Christian, youth-mentoring ministry in Medford, Oregon, that exists "to teach and share about the life of Jesus Christ." 3-ER-195–96. 71Five fulfills its mission through voluntary (and free) programs that provide at-risk youth with social interaction, vocational training, and one-to-one mentoring. 3-ER-196, 225–26. Its programs

[1] The Court should also expedite briefing and oral argument pursuant to Circuit Rule 27-12 to ensure that 71Five has a merits ruling well before the grant cycle ends in June 2025.

and services are open to everyone, and it does not require participation in any religious activities (such as Bible studies) as a condition to receiving its free services. 3-ER-196, 235.

71Five shares its faith through supportive and trusting relationships that develop between youth and its employees and volunteers. 3-ER-196. The ministry depends on staff and volunteers to faithfully teach and model its religious message, so it only hires employees and engages volunteers who share its faith. 3-ER-197. The ministry has about 30 employees and over 100 volunteers. 3-ER-197.

B. 71Five has for years successfully participated in Oregon's Youth Community Investment Program.

For years, 71Five has participated admirably in Oregon's Youth Community Investment Grant Program (the "Program"). 3-ER-201–202. That Program, administered by the state's Department of Education, offers reimbursement grants to support existing services for youth who are at risk of disengaging from school, work, and community. 2-ER-23, 3-ER-201. 71Five has used prior awards to provide valuable support and assistance to youth, purchase needed supplies and equipment, and partially cover personnel and operating costs. 3-ER-202. No one questions that 71Five has successfully fulfilled the Program's goals and purposes for all the years it has participated.

C. The Department suddenly excluded 71Five from the Program, and rescinded grant awards, because the ministry prefers employees who share its faith.

71Five applied for—and was awarded—grants for the 2023-25 grant cycle, which runs from July 1, 2023, to June 30, 2025. 3-ER-202. The Department first notified the ministry of the awards in July 2023. It was awarded a $220,000 grant to support its youth centers in West Medford and a $120,000 grant to support its "Break the Cycle" program, a mountain-biking program that serves youth in juvenile correction facilities. 3-ER-203, 205. 71Five also learned it would receive an additional $70,000 as a subgrantee to a grant the Department awarded to another organization. 3-ER-205.

But for the first time ever, the Department added a new provision prohibiting grantees from discriminating in their "employment practices, vendor selection, subcontracting, or service delivery with regard to race, ethnicity, religion, age, political affiliation, gender, disability, sexual orientation, national origin or citizenship status" ("New Rule"). 3-ER-204, 345. The New Rule was not based on any statute or regulation but added at the Department's discretion. Although 71Five saw the New Rule when completing its grant applications, it considered itself in compliance because it serves everyone, and it did not understand the Department to be asking it to give up its legally protected hiring practices. 3-ER-234–35. But when an anonymous person complained that 71Five's website said the ministry expects employees and volunteers to

share its faith (which has always been the case), the Department invoked the New Rule, rescinded over $400,000 in grants, and kicked the ministry out of the Program. 2-ER-180, 3-ER-236–38.

The Department made its "final" decision in mid-November, more than four months after the grant cycle began. 3-ER-408. And even then, the Department official delivering the bad news asked for "patience" while he "work[ed] on a more detailed, thoughtful, and meaningful response." 3-ER-406. But a more thoughtful response never came, and the Department refused to change its decision.

Since then, 71Five has been unable to seek reimbursement for over $145,000 spent since July 2023 to continue critical grant-related programs and services. 2-ER-24–25. And with its finances depleting, the nonprofit has been forced to forgo many ministry opportunities—a troubling trend that will get worse without an injunction. 2-ER-25. So far, because of the Department's unconstitutional actions, 71Five cannot fill an important open staff position, replace worn bikes and safety equipment for its "Break the Cycle" program, make critical building repairs at one of its youth centers, or expand existing ministries like its VoTech program to needy communities. 2-ER-25.

D. The proceedings below.

71Five's complaint alleges violations of its clearly established First Amendment rights to free exercise, religious autonomy (including

its ministerial hiring rights), and expressive association. 3-ER-241–46. It names the responsible Department officials in both their official and individual capacities and seeks declaratory and injunctive relief, as well as nominal and compensatory damages. 3-ER-222–23, 247.

71Five filed a motion for preliminary injunction shortly after filing its complaint in March 2023, and the officials moved to dismiss *only* the damages claims brought against them in their individual capacities based on qualified immunity. 3-ER-423–24. The district court denied 71Five's motion and granted the Departments'. 1-ER-20. Although "[q]ualified immunity is an affirmative defense to damage liability" and "does not bar actions for declaratory or injunctive relief," *Presbyterian Church (U.S.A.) v. United States*, 870 F.2d 518, 527 (9th Cir. 1989), the district court dismissed 71Five's *entire* case "with prejudice," 1-ER-20.

The district court entered final judgment on July 1, 2024, and 71Five filed its notice of appeal the same day. 1-ER-2. 71Five moved the district court for an injunction pending appeal two days later, which the district court denied on July 18. 3-ER-429.

LEGAL STANDARD

71Five is entitled to an injunction pending appeal because (1) it is likely to succeed on the merits of its claims, (2) it is enduring irreparable harm because of its exclusion from current and future grant programs, and (3) the balance of equities and public interest favor granting 71Five an injunction. *See Se. Alaska Conservation Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006) (outlining test for an injunction pending appeal).

ARGUMENT

I. 71Five is likely to succeed on the merits of its claims.

A. The Department's enforcement of the New Rule violates the Free Exercise Clause.

The Department's enforcement of the New Rule triggers strict scrutiny under the Free Exercise Clause for two reasons. First, it excludes 71Five from a public benefit program solely because of its religious character and exercise. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 475–76 (2020); *Carson v. Makin*, 596 U.S. 767, 778–80 (2022). Second, it burdens 71Five's religious exercise and is neither neutral nor generally applicable. *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021).

1. Excluding 71Five triggers strict scrutiny under *Trinity Lutheran*, *Espinoza*, and *Carson*.

The Free Exercise Clause has long "protect[ed] against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Carson*, 596 U.S. at 778 (cleaned up). And the Supreme Court has repeatedly held that a state may not exclude religious institutions from receiving otherwise available government funding because of their religious character or practice. *Trinity Lutheran*, 582 U.S. at 462; *Espinoza*, 591 U.S. at 475–76; *Carson*, 596 U.S. at 778–80.

Yet that is precisely what the Department has done here. The district court described the ministry's exclusion as based on its "employment practices," not its religious character or exercise. 1-ER-11. But that is a distinction without a difference. No one disputes that the Department excluded 71Five *solely* because the ministry prefers employees and volunteers who share its faith.

Such religious exercise is critical to the ministry's existence. Its ability to remain a Christian organization depends on having *Christian* employees and volunteers. Those who do not believe in the Christian faith cannot reasonably be asked to share it—let alone share it accurately and compellingly. And if 71Five cannot share its faith, its mission and message will change completely. It might still be a youth-mentoring organization, but it won't be a Christian one.

So the district court was wrong to say the exclusion "had nothing to do with [71Five's] religious character." 1-ER-11. The Department may have "known" in some general sense that 71Five was religious when it awarded the grants, *see* 1-ER-11, but that does not change the fact that it ripped them away after learning more about 71Five's religious character and exercise. There is no denying 71Five would have remained in the Program had it agreed to start hiring non-Christians for all positions, including leadership. But the First Amendment forbids forcing religious organizations to choose between "an otherwise available benefit program" and "remain[ing] a religious institution." *Trinity Lutheran*, 582 U.S. at 462. Because the Department's actions put 71Five to that choice, strict scrutiny applies.

2. The Department's enforcement of the New Rule also triggers strict scrutiny because it is not neutral or generally applicable.

Strict scrutiny also applies because the Department's enforcement of the New Rule is neither neutral nor generally applicable. *Fulton*, 593 U.S. at 533. A law is not neutral and generally applicable if it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way," or if it includes "a mechanism for individualized exemptions." *Id.* at 533–34 (cleaned up).

Here, the Department asserts an interest in ensuring "equitable access" to those programs and services funded by the grants. 2-ER-179;

see also Defs.' Resp. to Mot. for Prelim. Inj. 30, ECF No. 31 (claiming the Department has a "legitimate interest in ensuring that the programs and services it funds are delivered to youth in an inclusive environment"). But existing exceptions undermine this interest in far worse ways than 71Five's religious hiring practices ever would.

Consider that the Department allows secular grantees to discriminate in the *provision of their services*. Secular organizations freely participate in the Program despite limiting their services to "youth who have experienced girlhood," "African and African American families," and "marginalized immigrant Latine women." 2-ER-61, 110, 113, 135. In contrast, 71Five serves *everyone*, regardless of faith and background, and asks only that its employees and volunteers be committed to the ministry's mission. Yet 71Five alone is excluded. This makes no sense if ensuring "equitable access" or an "inclusive environment" for youth is the goal. 71Five already provides access to everyone. And nothing prevents Christians from creating an "inclusive environment." To conclude otherwise, with no evidence, betrays a lack of neutrality and reflects "animosity to religion or distrust of its practices." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993).

The district court excused the double standard by adopting the Department's characterization of the secular organizations' practices as "culturally responsive." 1-ER-9. But this Court has rejected such distinctions: "While inclusiveness is a worthy pursuit, it does not justify

… exceptions from the broad non-discrimination policies, which undermine their neutrality and general applicability and burden Free Exercise." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.* ("*FCA*"), 82 F.4th 664, 687 (9th Cir. 2023) (en banc). In other words, "good intentions do not change the fact that [the Department] is treating comparable secular activity more favorably than religious exercise." *Id.* at 688.

Nor was the district court correct to suggest that (maybe) the more favored secular organizations do not categorically "exclude[ ]" or "refuse[ ] services" to those outside their "target demographics." 1-ER-9. For one thing, the organizations don't describe themselves that way. One grantee geared towards girls responds to the question "Why not boys?" on its FAQ page. 2-ER-110. Another, named the "Black Parent Initiative," explains that it *only* "serve[s] African and African American families." 2-ER-113; *see* Black Parent Initiative, *About BPI*, https://perma.cc/7LSW-6CFP ("focused solely on supporting Black/African American families with children"). Yet another admits its "programming is designed for those who identify as girls regardless of their assigned sex at birth, those who are exploring their gender identity or expression, and/or those who are gender non-conforming or non-binary." 2-ER-141.[2]

[2] While not essential to its ruling, the district court said the Department did not get to "substantively respond" to these facts. 1-ER-9. But

Regardless, it does not matter if the secular grantees categorically exclude youth based on sex, race, or gender identity, or simply prioritize "target demographics." In *FCA*, this Court held en banc that a school district's nondiscrimination policies were not generally applicable when the district prohibited a religious student group from requiring its leaders to be Christians yet allowed a secular group to "*prioritize* acceptance of south Asian students." 82 F.4th at 678 (emphasis added). Such an exception "removes" non-discrimination policies "from the realm of general applicability." *Id.* at 688. That principle applies here.

3. The Department's actions fail strict scrutiny.

Because strict scrutiny applies, the Department's actions "must advance interests of the highest order and must be narrowly tailored in pursuit of those interests." *Carson*, 596 U.S. at 780 (cleaned up). The Department cannot rely on a "broadly formulated" interest in "equal treatment" or in "enforcing its non-discrimination policies generally," but must establish a compelling interest "in denying an exception" to 71Five. *Fulton*, 593 U.S. at 541 (cleaned up). The Department did not even try to carry this burden in the district court. Nor can it do so here.

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the Department responded in writing and defended the practices as "culturally responsive." 2-ER-90. The Complaint also provided notice by alleging the Department allowed for exceptions and had not "applied or enforced" the New Rule "consistently." 3-ER-245; *see Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990) ("[G]eneral allegations embrace those specific facts that are necessary to support the claim.").

There is no compelling governmental interest in forcing 71Five to choose between its religious character and exercise and participation in the Program. The Department previously awarded grants to the ministry without forbidding its preference for Christian employees, and the ministry has for years fulfilled successfully all the Program's goals and purposes. Nothing justifies the sudden exclusion.

To the contrary, the Department's "creation of a system of exceptions" undermines the "contention that its non-discrimination policies can brook no departures." *Fulton*, 593 U.S. at 542. And both federal and state law prove accommodation is not just possible but preferable in this context. *See* 42 U.S.C.A. § 2000e-1(a) (allowing religious organizations to prefer "individuals of a particular religion to perform work connected with the carrying on . . . of its activities"); O.R.S. § 659A.006(4) (allowing religious institutions "to prefer an employee" of the same religion). Those laws also show there are less restrictive alternatives that advance the government's purported interests while still respecting 71Five's religion.

B. Penalizing 71Five for exercising its religious hiring rights violates both Religion Clauses.

By penalizing 71Five for exercising its religious hiring rights, the Department also violates the ministry's religious autonomy. This autonomy, rooted in both Religion Clauses, gives 71Five "independence" to

decide "matters of [internal] government," *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952), and to require "conformity of [its] members ... to the standard of morals required of them," *Watson v. Jones*, 80 U.S. 679, 733 (1871). Two separate but similar protections apply here.

First, the Religion Clauses prevent the government from interfering with employment decisions for "ministers." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732 (2020). This freedom prohibits governmental action that "would operate as a penalty" on a religious organization's ministerial hiring decisions, such as the Department's actions here, not just cases brought by disgruntled employees who seek to "overturn[ ]" their "termination." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 194 (2012). 71Five's leadership, and many of its employees, fit comfortably within this "ministerial exception" because they are "entrusted with the responsibility of transmitting the [Christian] faith to the next generation." *Our Lady*, 591 U.S. at 754 (cleaned up); *see* 3-ER-197–99 (explaining religious job duties and functions); *Behrend v. S.F. Zen Center, Inc.*, __ F.4th __, 2024 WL 3435307, at *1 (9th Cir. July 17, 2024) (ministerial exception "broadly ensures that religious organizations have the freedom to choose 'who will preach their beliefs, teach their faith, and carry out their mission'") (cleaned up).

Second, the Religion Clauses protect 71Five's freedom to prefer coreligionists as employees. This encompasses all positions, not just ministers, but only shields employment decisions rooted in the organization's religious beliefs. *See Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 657–58 (10th Cir. 2002). Here, 71Five's "primary purpose" is to share its faith, 3-ER-196, 252, and it has determined that every position is essential to that mission, 3-ER-197. The First Amendment demands deference to that determination. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 653 (2000) (deference given "to an association's view of what would impair its expression").

The district court did not question either of these rights, only whether 71Five could raise them. The district court rejected 71Five's claims because, in its view, "the church autonomy doctrine, or ministerial exception, is an affirmative defense against suit by a disgruntled church employee, not a standalone right that can be wielded against a state agency." 1-ER-12. This is wrong.

For starters, it ignores the facts. This is not a pre-enforcement challenge; the Department kicked 71Five out of the Program. So 71Five "wield[s]" the church-autonomy doctrine, including the ministerial exception, as a "shield," not a "sword." 1-ER-13. In any event, Section 1983 empowers plaintiffs to assert an "action at law" against state officials who cause a "deprivation of any rights . . . secured by the Constitution." 42 U.S.C. § 1983. To carve out the First Amendment

right to religious autonomy from this statute, as the district court did here, contradicts its plain terms and relegates the rights of religious institutions to "second-class." *Shurtleff v. City of Bos.*, 596 U.S. 243, 261 (2022) (Kavanaugh, J., concurring).

C. Penalizing 71Five for preferring coreligionist employees violates its right to expressive association.

The district court ignored 71Five's expressive-association claim, even though it was fully briefed. But the Department's enforcement of the New Rule violates 71Five's right "to associate with others in pursuit of . . . educational [and] religious . . . ends." *Dale*, 530 U.S. at 647.

This right to expressive association includes the "freedom not to associate" with people who "may impair the [group's] ability" to express its views. *Id.* at 648. So when an association expresses a message, the First Amendment prohibits the government from forcing the association to admit those who disagree or would express a contrary view. *Id.* The right applies if (1) "the group engages in 'expressive association,'" and (2) "[t]he forced inclusion" of a person "affects in a significant way the group's ability to advocate public or private viewpoints." *Id.* at 648. 71Five satisfies both elements.

First, "[r]eligious groups" like 71Five "are the archetype of" expressive associations. *Hosanna-Tabor*, 565 U.S. at 200 (Alito, J., concurring). The ministry's purpose is "to teach and share about the life of Jesus Christ," 3-ER-196, and it "exists to share God's Story of Hope

with young people," 3-ER-196, 259. 71Five accomplishes this through likeminded staff and volunteers who affirm and communicate its faith through prayer, Bible study, and religious discussion. 3-ER-196–97.

Second, the New Rule would force 71Five to associate with staff and volunteers who do not hold the same religious views and thus cannot express the same message. Courts must "give deference to an association's view of what would impair its expression," *Dale*, 530 U.S. at 653, and the ministry here rightly believes it can express its message "only through staff and volunteers who are willing and able to faithfully teach the Bible and relationally share [their faith]," 3-ER-197. "The right to expressive association allows [71Five] to determine that its message will be effectively conveyed only by employees who sincerely share its views." *Slattery v. Hochul*, 61 F.4th 278, 288 (2d Cir. 2023).

Because the New Rule also burdens 71Five's right to expressive association, strict scrutiny applies for this reason too. And as explained, the Department cannot withstand "the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

II. 71Five will continue to suffer irreparable harm during this appeal without an injunction.

In First Amendment cases like this one, the likelihood-of-success factor is determinative because the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Yet 71Five's exclusion causes more irreparable harm by depriving the ministry of hundreds of thousands of dollars necessary to continue critical programs and services for at-risk youth. 71Five has spent over $145,000 since July 2023 to keep helping at-risk youth through its community youth centers and its mountain-biking program. 2-ER-24–25. That sum rises every day, and when the current grant cycle ends in June 2025, the ministry will have spent at least $300,000. 2-ER-24–25.

The district court minimized this by saying monetary damages do not constitute irreparable harm. 1-ER-15–16. But that misses the point. An inability to seek reimbursement for hundreds of thousands of dollars forces 71Five to forgo *future* ministry activities, which itself is a constitutional violation and irreparable harm. Indeed, because of the Department's actions, 71Five has been prevented from:

- Filling an open Campus Ministry Director position;
- Expanding its ministry, including its VoTech program;
- Making critical building repairs at one of its youth centers;
- Replacing worn bikes and purchasing needed bike equipment to maintain a safe and functional fleet;
- Providing additional trauma-informed care training for staff; and
- Helping the nonprofit organizations Life Art and Familia Unida recover the funds they spent on grant-related programs.[3]

[3] These two organizations were subgrantees to 71Five's grants and should have each received $20,000 last year. *See* 2-ER-25.

2-ER-25–26. If 71Five were reinstated to the Program and could seek reimbursement for its grant-related expenditures, it would do all of these things immediately. 2-ER-25.

Simply put, the Department's actions curtail 71Five's religious mission and deprives it of ministry opportunities it can never get back. That is irreparable harm that only an injunction can fix. *Cf. Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("[T]hreatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm.").

Moreover, the Department cannot both invoke qualified immunity against 71Five's request for damages and then say monetary damages are not irreparable. This Court has held that monetary injury *is* irreparable when sovereign immunity prevents the plaintiff from recovering damages. *Idaho v. Coeur d'Alene Tribe*, 794 F.3d 1039, 1046 (9th Cir. 2015); *see also Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 852 (9th Cir. 2009) (finding irreparable harm where the plaintiff "can obtain no remedy in damages against the state because of the Eleventh Amendment"). Yet the district court ignored this precedent.

The district court also overlooked that the New Rule doesn't just apply to the current grant cycle. It will be added as a condition to future grants, and the Department will again solicit applications for the Program in early 2025. 2-ER-179–80. Because 71Five "intends to apply for and participate in future grant programs," 3-ER-208, an injunction

pending appeal is the only way 71Five will be able to access the Program again when the next grant cycle opens.

III. 71Five satisfies the other injunction factors.

The balance of equities and public interest also tip heavily in the 71Five's favor. "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). It is "always in the public interest to prevent the violation of a party's constitutional rights." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citations omitted). And when a plaintiff has "raised serious First Amendment questions," the balance of hardships "tips sharply in the plaintiffs' favor." *Cmty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1059 (9th Cir. 2007) (cleaned up).

The equities and public interest favor the ministry, which has been wrongly stripped of grant awards and excluded from a government program. Oregon youth, families, and communities benefit from 71Five's efforts, and the Department's actions curtail that work. Meanwhile, the Department has no legitimate—much less compelling—interest in excluding the ministry because it prefers to hire people who share its faith, especially after many years of successful participation.

CONCLUSION

For these reasons, the Court should grant the motion and issue the requested injunction pending appeal.

Dated: July 19, 2024

Respectfully submitted,

s/Jeremiah Galus

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CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Circuit Rule 27-1(1)(d) because it does not exceed 20 pages, excluding parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: July 19, 2024

s/Jeremiah Galus
Jeremiah Galus
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2024, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I certify that all participants in the case are registered ACMS users, and that service will be accomplished by the ACMS system.

s/Jeremiah Galus
Jeremiah Galus
Counsel for Appellant