

No. 24-154

IN THE
Supreme Court of the United States

CATHOLIC CHARITIES BUREAU, INC., *et al.*,

Petitioners,

v.

WISCONSIN LABOR & INDUSTRY
REVIEW COMMISSION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF WISCONSIN

**BRIEF OF THE FREEDOM FROM
RELIGION FOUNDATION AS *AMICUS
CURIAE* IN SUPPORT OF RESPONDENTS**

SAMUEL T. GROVER
Counsel of Record
SAMANTHA F. LAWRENCE
HIRSH M. JOSHI
FREEDOM FROM RELIGION FOUNDATION
P.O. Box 750
Madison, WI 53701
(608) 256-8900
sgrover@ffrf.org

Counsel for Amicus Curiae

355571



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	2
I. Government inquiry into what a religiously-affiliated organization <i>does</i> and regulation of that organization’s secular activities does not entangle the state in religion	2
II. Catholic Charities’ proposed tests would allow all religiously-affiliated organizations, including six of the ten largest health systems in the U.S., to exempt themselves from unemployment insurance and numerous other government regulations.....	6
A. If accepted, Catholic Charities’ argument would equally extend to over 787,000 healthcare employees nationwide	6
B. Catholic Charities’ argument would logically extend to countless government regulations beyond Wisconsin’s unemployment insurance exemptions.....	11

Table of Contents

	<i>Page</i>
C. Expanding Wisconsin’s unemployment insurance exemption to any organization run by an entity with religious motivations or holding sincere religious beliefs would undermine the State’s well-established public policy goals.....	15
CONCLUSION	18

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Aguilar v. Felton</i> , 473 U.S. 402 (1985).....	3, 6
<i>Bethel Baptist Church v. U.S.</i> , 822 F.2d 1334 (3d Cir. 1987)	5
<i>Bob Jones Univ. v. U.S.</i> , 461 U.S. 574 (1983).....	4
<i>Dominican Nuns v. La Crosse</i> , 142 Wis. 2d 577 (1987)	14
<i>Green Bay & M. Canal Co. v. Outagamie Cnty.</i> , 76 Wis. 587 (1890).....	14
<i>Hernandez v. C.I.R.</i> , 490 U.S. 680 (1994).....	5
<i>Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.</i> , 565 U.S. 171 (2012).....	5
<i>Iowaska Church of Healing v. Werfel</i> , 105 F.4th 402 (11th Cir. 2024)	4
<i>Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.</i> , 493 U.S. 378 (1990).....	5

Cited Authorities

	<i>Page</i>
<i>Larkin v. Grendel's Den, Inc.</i> , 459 U.S. 116 (1982)	3
<i>Operton v. Lab. & Indus. Rev. Comm'n</i> , 2017 WI 46, ¶ 31, 375 Wis. 2d 1	15
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 140 S.Ct. 2049 (2020)	5
<i>Roemer v. Bd. of Pub. Works of Md.</i> , 426 U.S. 736 (1976)	5
<i>S. Ridge Baptist Church v. Indus. Comm'n of Ohio</i> , 911 F.2d 1203 (6th Cir. 1990)	5
<i>Sch. Dist. of Abington Twp. v. Schempp</i> , 374 U.S. 203 (1963)	3
<i>Serbian E. Orthodox Diocese v. Milivojevich</i> , 426 U.S. 696 (1976)	3
<i>Simpleville Music v. Mizell</i> , 451 F.Supp.2d 1293 (M.D. Ala. 2006)	13
<i>St. Raphael's Congregation v. City of Madison</i> , 2017 WI App. 85, 379 Wis. 2d 368	14
<i>Tony & Susan Alamo Foundation v. Secretary of Labor</i> , 471 U.S. 290 (1985)	3, 4

Cited Authorities

	<i>Page</i>
<i>U.S. v. Indianapolis Baptist Temple,</i> 224 F.3d 627 (7th Cir. 2000)	5
<i>Worldwide Church of God v. Philadelphia</i> <i>Church of God, Inc.,</i> 227 F.3d 1110 (9th Cir. 2000).....	13
 Statutes, Regulations and Other Authorities	
8 U.S.C. § 1101(a)(27)(C)(ii)(I-III)	12
17 U.S.C. § 110(3).....	13
26 U.S.C. § 3309(b)	11
26 U.S.C. § 6033(a)(3)(A)(i).....	11
26 U.S.C. § 6033(a)(3)(A)(iii).....	11
29 U.S.C. § 1002.....	11
42 U.S.C. § 2000e-1	12
8 C.F.R. § 204.5(m)(5)	12
31 C.F.R. § 515.566(a)	13
31 C.F.R. § 515.573(d)(3)	13
H.R. Rep. 94-1476 (94th Cong. 2nd Sess.) (1976).....	13

Cited Authorities

	<i>Page</i>
Wis. Stat. § 70.11(4)(a)	14
Wis. Stat. § 108.01(1)	15, 16
Wis. Stat. § 108.01(2)	16
Wis. Stat. § 108.02(15)(h)	5, 15
Wis. Stat. § 108.02(15)(h)(2)	3
<i>A Shared Statement of Identity</i> , CATHOLIC HEALTH ASS'N OF THE UNITED STATES 8, www.chausa.org/ mission/a-shared-statement-of-identity	10
CommonSpirit, www.commonspirit.careers/ (last visited Mar. 4, 2025)	7
<i>DWD History Timeline</i> , Dep't. of Workforce Dev., https://dwd.wisconsin.gov/dwd/history/ (last visited Mar. 1, 2025)	15
<i>Ethical and Religious Directives for Catholic Health Care Services</i> , UNITED STATES CONF. OF CATHOLIC BISHOPS (2018), https://bit.ly/2TfWnZw	10
<i>Research on Religious Healthcare Insts.</i> , UNIV. OF CA. SAN FRANCISCO, www.ansirh.org/ research/ongoing/research-religious- healthcare-institutions	7

Cited Authorities

	<i>Page</i>
Tess Solomon <i>et. al.</i> , <i>Bigger and Bigger: The Growth of Catholic Health Systems</i> , CMTY. CATALYST 5 (2020), www.communitycatalyst.org/wp-content/uploads/2022/11/2020-Cath-Hosp-Report-2020-31.pdf	7
<i>Top 10 largest health systems in the U.S.</i> , Definitive Healthcare, www.definitivehc.com/blog/top-10-largest-health-systems	7, 8

INTEREST OF AMICUS CURIAE¹

The Freedom From Religion Foundation is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason rather than faith, tradition, or authority. Founded in Wisconsin in 1978 as a 501(c)(3) nonprofit, FFRF has more than 41,000 members, including members in every state and the District of Columbia. FFRF's primary purposes are to educate about nontheism and to preserve the cherished constitutional principle of separation between religion and government. As a secular organization that promotes the separation of state and church as envisioned by the Constitution's Framers, FFRF offers a unique viewpoint on the socioeconomic dangers that arise when the government grants preferential treatment to religious organizations.

SUMMARY OF ARGUMENT

In order to determine whether an organization qualifies for the narrow religious exemption that Wisconsin added to its unemployment insurance program, the State must make a fact-based inquiry into the activities in which each applicant engages. In the case of the Petitioner-employers, those activities mirror activities performed by other, secular nonprofits. Catholic Charities incorrectly argues that the State's inquiry into what it *does* creates excessive entanglement between the government and

1. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

religion, and urges this Court to instead limit the State only to analyzing whether an applicant's motivations are religious, or whether its religious beliefs are sincerely held.

This Court has never held unconstitutional a religious exemption simply because it necessarily requires a fact-based inquiry into an organization's activities. Religious exemptions that require the government to engage in fact-based inquiries are commonplace, existing in numerous state and federal regulations beyond Wisconsin's unemployment insurance program. To accept Catholic Charities' argument would undermine the very purpose behind Wisconsin's unemployment insurance program. The logic of Catholic Charities' argument would also strip away numerous regulatory protections from employees at countless other religiously-affiliated nonprofit organizations, including the approximately 787,000 employees who work for the six multi-billion-dollar Catholic-affiliated healthcare systems that are among the ten largest health systems in the United States.

ARGUMENT

I. Government inquiry into what a religiously-affiliated organization *does* and regulation of that organization's secular activities does not entangle the state in religion.

The Petitioner-employers are five nonprofit organizations that provide secular services (collectively "Catholic Charities"). They seek to remove protections from their workers by exempting themselves from Wisconsin's unemployment program, because they claim

that all that is required for an exemption is a religious motivation for their work. The First Amendment claims advanced by Catholic Charities have been considered and rejected in numerous prior cases by this Court, and rightfully so—the First Amendment protects against government involvement in sacred matters, not from fact-based inquiries into an organization’s activities.

One of the core rationales underlying the First Amendment is preventing “a fusion of government and religious functions.” *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 126–27 (1982) (quoting *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 222 (1963)). The First Amendment prohibition on excessive entanglement in part seeks to safeguard religious organizations from “being limited by . . . governmental intrusion into *sacred matters*.” See *Aguilar v. Felton*, 473 U.S. 402, 410 (1985) (emphasis added); cf. *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709 (1976) (declining to decide “not a church property dispute, but a religious dispute” because it would create substantial danger of entangling the state in “essentially religious controversies”). The “sacred matters” contemplated by this Court in prior cases simply do not encompass fact-based, non-sacred regulatory inquiries, like those contemplated under Wis. Stat. § 108.02(15)(h)(2).

Government review of a religious organization’s activities for the purposes of taxation or other regulatory concerns does not constitute excessive entanglement. For instance, in *Tony & Susan Alamo Foundation v. Secretary of Labor*, this Court considered whether the Fair Labor Standards Act (FLSA)—which required religious organizations to keep and disclose records “of

. . . persons employed . . . [along with] their wages, [and] hours”—constituted excessive entanglement. 471 U.S. 290, 305 (1985). Such requirements, this Court found, “do not pose an intolerable risk of government entanglement with religion.” *Id.* The Establishment Clause, it continued, “does not exempt religious organizations from such secular governmental activity as fire inspections and building and zoning regulations . . . and the recordkeeping requirements of the [FLSA], while perhaps more burdensome in terms of paperwork, are not significantly more intrusive into religious affairs.” *Id.*

Other examples where the government may permissibly inquire into a religious organization’s activities in order to assess its “purpose” abound. Just last year, for instance, the Eleventh Circuit Court of Appeals approved of the IRS assessing a church’s intended activities, despite those activities being motivated by sincerely-held religious beliefs. *See Iowaska Church of Healing v. Werfel*, 105 F.4th 402 (11th Cir. 2024). Iowaska Church of Healing “is an organization whose members’ sincerely-held religious belief involves the consumption of Ayahuasca.” *Id.* at 406. Because Ayahuasca is a controlled substance and by statute the IRS can deny tax-exempt status to an organization “if its purposes *or activities* are illegal or otherwise contrary to public policy,” *id.* at 407 (citing *Bob Jones Univ. v. U.S.*, 461 U.S. 574, 591 (1983)) (emphasis added), the Eleventh Circuit had little difficulty in concluding that the IRS had correctly deemed the church ineligible for tax-exempt status.

When a statute requires only generally applicable administrative and record keeping requirements, it may be imposed on religious organizations without violating

the Establishment Clause. *See, e.g., Jimmy Swaggart Ministries v. Bd. of Equalization of Cal.*, 493 U.S. 378, 394–97 (1990) (state sales and use tax); *Hernandez v. C.I.R.*, 490 U.S. 680, 695–98 (1994) (federal income tax); *see also U.S. v. Indianapolis Baptist Temple*, 224 F.3d 627, 631 (7th Cir. 2000) (federal employment tax provisions); *S. Ridge Baptist Church v. Indus. Comm’n of Ohio*, 911 F.2d 1203, 1210 (6th Cir. 1990) (workers’ compensation program); *Bethel Baptist Church v. U.S.*, 822 F.2d 1334, 1340–41 (3d Cir. 1987) (social security tax). This Court has upheld such generally applicable government regulations even when coupled with direct government oversight and auditing. *See, e.g., Roemer v. Bd. of Pub. Works of Md.*, 426 U.S. 736, 764–65 (1976) (finding no excessive entanglement where state conducted audits to ensure state grants to religious colleges were not used to teach religion).

If a religious organization like Catholic Charities claims a special exemption to unemployment insurance, a fact-based inquiry into its operations is constitutionally permissible. Under Wis. Stat. § 108.02(15)(h), that would entail a simple showing that an organization is performing distinctively religious functions, as opposed to functions that are equally provided by secular entities. This Court has engaged in analogous fact-based review of the functions and employment status of employees when determining whether they qualify as “ministers.” *See, e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2067 (2020) (noting that *Hosanna-Tabor* did not establish a rigid test, but instead, “called on courts to take all relevant circumstances into account”); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 565 U.S. 171 (2012). A similarly minimal review of the secular

activities of a nonprofit claiming an exemption from the Wisconsin unemployment program does not threaten to excessively entangle religion and government. None of the statutory requirements touch, let alone intrude, “into *sacred matters*.” See *Aguilar*, 473 U.S. at 410 (emphasis added).

II. Catholic Charities’ proposed tests would allow all religiously-affiliated organizations, including six of the ten largest health systems in the U.S., to exempt themselves from unemployment insurance and numerous other government regulations.

This Court’s decision will reach far beyond the five Petitioner-employers. The decision likely will dictate whether employees at religiously-affiliated hospitals throughout Wisconsin, and nationally, will maintain their unemployment benefits. Catholic Charities offers no argument that would distinguish the Petitioner-employers from any other religiously-affiliated nonprofit organization, because there is no principled way to distinguish them. Accepting Catholic Charities’ argument would thus have a profound, detrimental impact on employees at every religiously-affiliated nonprofit, who are meant to be protected by government regulations similar to Wisconsin’s unemployment insurance program.

A. If accepted, Catholic Charities’ argument would equally extend to over 787,000 healthcare employees nationwide.

If this Court extends the narrowly crafted exemption to Wisconsin’s unemployment insurance program to the Petitioner-employers, Catholic Charities’ legal argument

would naturally extend to all other religiously-affiliated employers in the State and nationally. In Wisconsin, more than forty percent of hospital beds are at religiously-affiliated, mostly Catholic-run hospitals,² while nationally religiously-affiliated hospitals account for about twenty percent of hospital beds.³

More than half of the ten largest health systems in the U.S. are Catholic-owned or affiliated, whether ranked by net patient revenue, number of hospitals operated, or bed count.⁴ These major players—and major employers—in U.S. healthcare are:

- CommonSpirit Health, which employs “approximately 175,000 employees and 25,000 physicians and advanced practice clinicians” “across a system of 140 hospitals and more than 2,200 care centers serving 24 states”,⁵

2. Tess Solomon *et. al.*, *Bigger and Bigger: The Growth of Catholic Health Systems*, CMTY. CATALYST 5, 29 (2020), www.communitycatalyst.org/wp-content/uploads/2022/11/2020-Cath-Hosp-Report-2020-31.pdf.

3. *Research on Religious Healthcare Insts.*, UNIV. OF CA. SAN FRANCISCO, www.ansirh.org/research/ongoing/research-religious-healthcare-institutions.

4. *Top 10 largest health systems in the U.S.*, Definitive Healthcare, www.definitivehc.com/blog/top-10-largest-health-systems.

5. CommonSpirit, www.commonspirit.careers/ (last visited Mar. 4, 2025).

- Ascension Health, which operates “118 wholly owned or consolidated hospitals and 34 senior living facilities” and has approximately 128,000 employees across 17 states and the District of Columbia;⁶
- Trinity Health System, which has approximately 127,000 employees across 26 states;⁷
- Advocate Health, “the third-largest nonprofit integrated health system in the U.S.,” with approximately 150,000 employees across six states;⁸
- Providence Health, which employs approximately 122,000 caregivers across seven states;⁹ and
- Dignity Health, which has more than 60,000 caregivers and staff across 21 states.¹⁰

Each of the more than 787,000 employees working for these six multi-billion-dollar organizations would be at risk of losing their unemployment benefits overnight if this Court accepts Catholic Charities’ argument.

In this case, the Petitioner-employers perform functions that mirror those of secular nonprofits, receive government funding, and do not require employees or

6. *Supra* n. 4.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

program participants to be Catholic (or religious at all). Catholic Charities argues that nevertheless they should be exempt because the Diocese separately incorporated each of these nonprofit organizations “in accordance with Catholic teachings.” Pet. Br. at 47. This argument, which was not advanced below, is premised on the same flawed logic as Catholic Charities’ prior argument that it is the “parent” entity’s purpose in creating Catholic Charities that matters, rather than an evaluation of what Catholic Charities *does*. While it may be true that the Diocese created Catholic Charities and its sub-entities in order to satisfy the Diocese’s religious mission, there is nothing distinctively religious about the operations of the Petitioner-employers themselves. The only sense in which the employers are “religious” is indirectly, through their parent entity’s affiliation with the Catholic Church. None of these features distinguish the Petitioner-employers from the numerous other religiously-affiliated nonprofits that operate throughout the nation, including the six Catholic-affiliated healthcare organizations operating among the United States’ ten largest health systems.

Under the Petitioner-employers’ argument, any religiously-affiliated organization that can draw a connection between its operation and the religious mission of its parent entity would become exempt. Such connections would be trivially easy to make for religiously-affiliated hospital systems. Catholic-affiliated hospitals exist under the premise that providing healthcare services also advances the religious mission of the Catholic Church. The Catholic Health Association of the United States describes Catholic healthcare as “a ministry of the church

continuing Jesus’ mission of love and healing,”¹¹ while the United States Conference of Catholic Bishops directs that any “Catholic institutional health care service [must] . . . be animated by the Gospel of Jesus Christ and guided by the moral tradition of the Church.”¹²

In the present case, Catholic Charities has not identified any legal or factual basis for distinguishing its own situation from that of any other religiously-affiliated nonprofit organization, in Wisconsin or nationally. Because there are no grounds for limiting the legal arguments advanced by the Petitioner-employers to their own organizations, accepting their argument would immediately put thousands of Wisconsin employees at risk of losing protections under the State’s unemployment program. This would be a disastrous result that would undermine the Wisconsin legislature’s public policy reasons for implementing the unemployment program in the first place. *See* Sec. II.C., *infra*. But perhaps even more concerning, Catholic Charities’ arguments are also not logically limited to unemployment insurance, and could equally invalidate numerous other government regulatory programs that currently protect over 787,000 healthcare workers at Catholic-affiliated hospital systems throughout the nation.

11. *A Shared Statement of Identity*, CATHOLIC HEALTH ASS’N OF THE UNITED STATES 8, www.chausa.org/mission/a-shared-statement-of-identity (“As the church’s ministry of health care, we commit to . . . [s]erve as a Ministry of the Church. . .”).

12. *Ethical and Religious Directives for Catholic Health Care Services*, UNITED STATES CONF. OF CATHOLIC BISHOPS (2018), <https://bit.ly/2TfWnZw>.

B. Catholic Charities’ argument would logically extend to countless government regulations beyond Wisconsin’s unemployment insurance exemptions.

Numerous federal regulatory programs rely on an assessment of whether a church-controlled organization is being operated for religious purposes. The *amicus* brief submitted by Professor Christopher Lund identifies many such regulations, including:

- “ERISA’s religious exemption only applies to plans ‘established and maintained . . . by a church or by a convention or association of churches.’ 29 U.S.C. § 1002,” Lund *amicus* at 9;
- “FUTA’s religious exemption applies only to those employed by ‘a church or convention or association of churches,’ or employed by an organization “operated primarily for religious purposes” with such a parent. 26 U.S.C. § 3309(b),” *id.*;
- In tax regulation, the IRC carves out exemptions for churches and religious groups in a number of different ways, including, for example, 26 U.S.C. § 6033(a)(3)(A)(i) & (iii), which exempts “churches, their integrated auxiliaries, conventions or association of churches” and “the exclusively religious activities of any religious order” from having to file annual returns, *see id.*;
- The general church exemption to provisions in the Affordable Care Act, which was modeled on the above IRC exemption, *see id.*; and

- “Title VII, which exempts ‘religious corporation[s]’ from charges of religious discrimination” via 42 U.S.C. § 2000e-1, *see id.* at 10.

Applying the logic of Catholic Charities’ argument to any of these regulations would drastically expand their existing religious exemptions in ways that would undermine the very purpose of those regulations. And there are, of course, many other areas of law that would be potentially affected.

Catholic Charities’ “person-focused approach,” Pet. Br. at 31, could potentially sweep as far as the Immigration and Nationality Act, which classifies visa applicants who are “solely ministers” or have a “religious or vocational occupation” as “special immigrants.” *See* 8 U.S.C. § 1101(a)(27)(C)(ii)(I-III). United States Citizenship and Immigration Services requires that these applicants “conduct such religious worship and perform other duties usually performed by authorized members of the clergy of that denomination.” 8 C.F.R. § 204.5(m)(5). To qualify as a “religious occupation” an applicant’s duties must “primarily relate to a traditional religious function” and “clearly involve inculcating or carrying out the religious creed and beliefs of the denomination,” but does not include “primarily administrative or support” duties. 8 C.F.R. § 204.5(m)(5). Under Catholic Charities’ approach—where only an applicant’s motivations and not their duties can be scrutinized—if an immigrant says they are moving to the United States for religious purposes, that alone warrants granting their visa. Prohibiting the government from scrutinizing an applicant’s activities would convert this special immigrant visa into a major immigration loophole.

Catholic Charities' approach potentially undermines a religious use exemption within the Copyright Act as well. Otherwise copyrighted materials can be used by houses of worship during religious services. *See* 17 U.S.C. § 110(3). The religious exemption requires a judicial inquiry into what constitutes a "service" within the meaning of the statute. Congress intended this test to involve an inquiry into a church's conduct, as the legislative history reveals. *See* H.R. Rep. 94-1476 at 84 (94th Cong. 2nd Sess.) (1976) (noting that the exemption is not meant to cover "activities at a place of worship that are for social, educational, fund raising, or entertainment purposes"). And courts have accordingly interpreted the exemption narrowly. *See, e.g., Worldwide Church of God v. Philadelphia Church of God, Inc.*, 227 F.3d 1110, 1115 (9th Cir. 2000); *Simpleville Music v. Mizell*, 451 F.Supp.2d 1293 (M.D. Ala. 2006). Under Catholic Charities' recommended approach, however, any church could benefit from this narrow exemption by simply claiming that its use of copyrighted materials advances its religious mission.

Catholic Charities' "person-focused approach," would also potentially undermine a narrow religious exemption for Congress's Cuba embargo. As part of a centuries-long foreign policy, Americans are generally prohibited from doing business in Cuba; however, religious organizations may apply for an exemption to perform "religious activities," 31 C.F.R. § 515.566(a), and even to establish a physical presence in Cuba. 31 C.F.R. § 515.573(d)(3) (exemption only for "religious organizations engaging in religious activities in Cuba"). Catholic Charities' approach would prohibit the government from scrutinizing an applicant's actual planned activities, and instead require that an applicant's motivations be the only determining

factor in granting such a precious exemption. Under such an approach it is easy to imagine that the exemption could quickly swallow the rule.

Similarly, many Wisconsin-specific regulations would be immediately jeopardized if this Court adopts Catholic Charities' proposed tests. For instance, in order to qualify for a property tax exemption, religious or nonprofit organizations operating in Wisconsin must: 1) own the property, and 2) use it exclusively for exempt purposes. *See* Wis. Stat. § 70.11(4)(a). Wisconsin courts have had little difficulty in ensuring that the property tax exemption statute is being appropriately applied to churches. *See, e.g., Green Bay & M. Canal Co. v. Outagamie Cnty.*, 76 Wis. 587 (1890) (holding a vacant lot owned by a church was not tax exempt because it was not used for the legitimate purposes of the church); *Dominican Nuns v. La Crosse*, 142 Wis. 2d 577 (1987) (holding a chapel and convent were not exempt once they were no longer used for their original purpose); *St. Raphael's Congregation v. City of Madison*, 2017 WI App. 85, 379 Wis. 2d 368 (ruling that church property that included religious icons but lacked buildings was taxable). The property tax statute requires assessors, and ultimately courts, to review the use of religious property to ensure that it is actually being used for exempt purposes. This regulatory process dates back to at least the late 1800's and has never been held to violate the First Amendment or the rights of Wisconsin churches. Catholic Charities' proposed tests would undermine this tried-and-true system.

C. Expanding Wisconsin’s unemployment insurance exemption to any organization run by an entity with religious motivations or holding sincere religious beliefs would undermine the State’s well-established public policy goals.

Wisconsin became the first state in the nation to pass an unemployment compensation statute in 1932, several years ahead of the passage of the Social Security Act.¹³ The State’s articulated public policy goal of offsetting the potentially catastrophic economic effects of unemployment is now well-established. Wisconsin’s unemployment program is intended to combat the “heavy social cost” associated with unemployment, which “tends partially to paralyze the economic life of the entire state.” Wis. Stat. Ann. § 108.01(1). The unemployment insurance statute has been interpreted to “embody a strong public policy in favor of compensating the unemployed.” *Operton v. Lab. & Indus. Rev. Comm’n*, 2017 WI 46, ¶ 31, 375 Wis. 2d 1, 17. Therefore, exceptions to unemployment should be granted only in instances where the employer clearly falls within the exceptions outlined by the legislature in Wis. Stat. Ann. § 108.02(15)(h). A blanket rule that allows any employer with religious motivations or sincere religious beliefs to determine its own status would cast too broad a net, creating a presumption that all religiously-affiliated organizations are de facto exempt. Catholic Charities’ argument would undermine the Wisconsin legislature’s articulated policy of strictly limited exemptions.

13. *DWD History Timeline*, Dep’t. of Workforce Dev., <https://dwd.wisconsin.gov/dwd/history/> (last visited Mar. 1, 2025).

Catholic Charities’ interpretation runs counter to Wisconsin’s public policy interests in ensuring that unemployed workers receive compensation. In the early years of the Great Depression, the Wisconsin legislature recognized that unemployment is “an urgent public problem, gravely affecting the health, morals and welfare of the people of this state.” Wis. Stat. Ann. § 108.01(1). Granting an exemption to any religiously-affiliated organization that claims to have a religious motivation or sincere belief behind its activities would limit the State’s ability to control for the economic risk of widespread unemployment. This could have disastrous effects not just on the workers who lose their unemployment benefits, but also on the rest of the economy. As the State found, “[t]he decreased and irregular purchasing power of wage earners in turn vitally affects the livelihood of farmers, merchants and manufacturers. . . .” *See id.* Wisconsin thus implemented an unemployment insurance program to more fairly distribute the economic burdens resulting from unemployment, as well as decrease those burdens “as far as possible.” Wis. Stat. Ann. § 108.01(2).

Under Catholic Charities’ argument, all an organization would have to do to receive an exemption to the State’s unemployment program would be to draw a connection between its operation and the religious mission of its parent entity, or alternatively, simply state that its operation is motivated by sincerely held religious beliefs. As demonstrated above, religiously-affiliated nonprofits can easily make either of these showings. *See* Sec. II.A., *supra*. If accepted by this Court, Catholic Charities’ argument would allow major players in Wisconsin’s job market to exempt themselves if they so choose, despite the fact that they employ exclusively or primarily

secular workers and perform identical functions as their nonreligious counterparts. This result would have devastating effects on the State's articulated public policy reasons for adopting its unemployment program and would leave thousands of Wisconsin employees without unemployment protection.

If Catholic Charities' argument is then applied nationally, the same result would hold true for more than 787,000 healthcare workers at Catholic-affiliated hospitals around the country. If this Court determines that the government cannot require a fact-based inquiry into an organization's activities as a means of establishing religious exemptions, it would dramatically expand the religious exemptions found in numerous other federal regulatory schemes, with disastrous results that would undermine the very purposes of those regulations. The government would have no choice but to do away with the religious exemptions, in order to preserve the underlying laws.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Supreme Court of Wisconsin.

Respectfully submitted,

SAMUEL T. GROVER

Counsel of Record

SAMANTHA F. LAWRENCE

HIRSH M. JOSHI

FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750

Madison, WI 53701

(608) 256-8900

sgrover@ffrf.org

Counsel for Amicus Curiae