STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

ANNIE LAURIE GAYLOR, et al.,

Plaintiff,

v. Case No. 2025 CV 173

ST. RAPHAEL'S CONGREGATION, et al.,

Defendant.

BRIEF IN SUPPORT OF MOTION TO DISMISS

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I. Introduction and overview of why the Complaint must be dismissed

The Isthmus has been transformed by student housing. Where rundown duplexes and local landlords once catered to UW-Madison students' housing needs, that has all changed. Now, large apartment buildings and student dorms provide the bulk of that housing. In 2008, the Legislature exempted the following categories of student housing from paying taxes: the dorms (owned by the State) and sororities and fraternities. That was it. The next year, the Legislature expanded the exemption to include student housing owned by non-profits that met certain criteria. Over the past sixteen years, six different houses have qualified for the exemption—with only three of them being operated by religiously affiliated groups.

The Plaintiffs have sued the Defendants—the City and two of those religiously-affiliated groups—alleging that the exemption violates the law. As explained below, there are two principal problems with the Complaint. The first centers on the procedural demands for challenging a tax exemption; the second turns to the flaws underlying the Complaints' four legal theories.

Under the principle of constitutional avoidance, courts should begin with narrow procedural questions. When it comes to the individual Plaintiffs, the Complaint alleges that as taxpayers they have standing, but "taxpayer standing" only applies to challenging expenditures—*not* exemptions. That is, while a taxpayer can *always* challenge an illegal outlay from the public treasury, a taxpayer can't complain about how the State decides to fill its coffers.

Similarly, the institutional Plaintiff also lacks standing. For one, the Complaint doesn't allege that the Foundation has (or is) suffering an actual harm—it just says that the Foundation is not eligible to get the exemption if it decided to build student housing. But for standing purposes, the Foundation must be harmed—*i.e.*, it *has* student housing that qualifies for the exemption; it's paid the tax, which it doesn't believe it should; and it wants the money back. That's a recognized harm. But that's not the case here. Beyond that, the Foundation's Complaint has nothing to do with the exemption, but rather the sunset provision that the Legislature attached to it. The exemption would clearly be available to the Foundation if it met the criteria in 2013, but the time for non-profits to build student housing and receive an exemption has passed. What's more, the Complaint has failed to include essential parties—namely, the exemption's other beneficiaries and (importantly) the Department of Revenue. Those procedural deficiencies cannot be overcome by an amended pleading and are fatal to the Plaintiff's claims.

Moving beyond the procedural problems, the Complaint does not set out a basis for relief on the four counts. The exemption doesn't violate the Uniformity Clause, because that Clause doesn't (as a matter of law) apply to exemptions. What's more, the Equal Protection and Establishment Clause claims similarly fail because tax statutes are presumed constitutional—the Court simply has to imagine a rational basis. Here, the fact that non-profits (across the board) qualify for the exemption more than passes that mark. Finally, there aren't allegations sufficient to find a violation of the Private Bill Clause. That occurs when a legislator sneaks in some provision for the benefit of a single individual or group. The allegations set out that the exemption is anything but a Private

Bill. Here, (by its own pleading), the exemption was proposed and debated, and it passed; two years later, it was debated and repealed; and *after* it was repealed but before it could be signed, twenty legislators (from both sides of the aisle) petitioned the Governor to keep the exemption, and the repeal was vetoed. A debate over a tax exemption that raged over the course of years and that drew bipartisan calls for the Governor's veto is the precise opposite of internal logrolling.

In sum, the complaint must be dismissed. The Plaintiffs cannot proceed without standing and on the merits their claims cannot survive. In making the points below, the defense has tried to avoid all redundancy with the *very* fine briefs submitted by the other defendants. For some points, the defense has simply noted that it is adopting the other's position—no reason to waste ink or the Court's time and attention by copying-and-pasting what's been said. For others, the defense has simply supplemented a point here or there that inform the co-defendants' arguments for why this case must be dismissed.

II. The complaint's factual allegations and legal conclusions as they relate to Saint Raphael's.

The Complaint is well-written and provides a good overview of the exemption, its history, and the facts the Plaintiffs allege violate their rights. There are three named Defendants, and so some particular facts only relate to one or the other. Rather than giving an exhaustive overview of the Complaint as it relates to *all* of the defendants, what follows relates specifically to Saint Raphael's. There is some overlap with the other defendants' recitations, but not much.

A. The Legislature creates a tax exemption that non-profit organizations in Madison benefit from.

The Complaint begins with the unobjectionable. Saint Raphael's owns Lumen House student housing, and it has benefited from the exemption since 2014.[1] It then sets out the exemption's history, which began with the 2009 Budget Bill under then-Governor Doyle.[2] As originally introduced, it exempted all non-profit owned housing for students enrolled in public and private education—not just UW-Madison.[3] That point was debated and the Legislature narrowed the exemption to just facilities owned by non-profits and whose residents were comprised of 90% UW-Madison students.[4]

Two years later, the Legislature (now controlled by the Republicans) sought to repeal the exemption.[5] But (at least according to the Complaint's exhibits) twenty

[1] Compl. ¶ 17.
[2] *Id.* ¶¶ 18–32.
[3] *Id.* ¶ 20
[4] *Id.*
[5] *Id.* ¶ 22.

legislators signed a letter asking Governor Walker to veto the bill repealing it.[6] The legislators who asked for the veto came from both sides of the aisle.[7] Then two years after surviving the repeal, the Legislature *again* took up the exemption.[8] This time it was explicit that sororities and fraternities weren't covered, and it added a sunset provision.[9] The prior law did not contain one.[10] And so, the law was amended and henceforth the exemption would only apply to student housing that met the bill's requirements by July 2, 2013, or September 30, 2014 if the facility was located in a municipally designated landmark.[11] Here is the difference between the 2009 version and the 2013.

§ 70.11(3m) (2009–11)	**§ 70.11(3m) (2013–14)**
(a) All real and personal property of a housing facility for which all of the following applies:	(a) All real and personal property of a housing facility, not including a housing facility owned or used by a university fraternity or sorority, college fraternity or sorority, or high school fraternity or sorority, for which all of the following applies:
1. The facility is owned by a nonprofit organization.	1. The facility is owned by a nonprofit organization.
2. At least 90 percent of the facility's residents are students enrolled at the University of Wisconsin-Madison and the facility houses no more than 300 such students.	2. At least 90 percent of the facility's residents are students enrolled at the University of Wisconsin-Madison and the facility houses no more than 300 such students.
3. The facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public.	3. The facility offers support services and outreach programs to its residents, the public or private institution of higher education at which the student residents are enrolled, and the public.
	4. The facility is in existence and meets the requirements of this subsection on July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.

[6] Ex. B.
[7] Ex. B.
[8] Compl. ¶ 24.
[9] *Id.* ¶ 25.
[10] Wis. Stat. § 70.11(3m) (2009–11).
[11] Wis. Stat. § 70.11(3m) (2013–14).

With that sunset provision locking in the non-profits that could qualify, six entities fell under the exemption. These include not just the properties owned by the Defendants, the Lumen House and Pres House, but also: the Babcock House, the Association of Women in Agriculture House, the French House, and the Youth with a Mission Phos House—the final one is religiously affiliated.[12] To be clear, the City, which keeps a very close eye on what property isn't taxed, is the one that uncovered the French House and Phos House.[13] By any accounting, the beneficiaries of this exemption are non-profits (secular or religious), they all own housing for UW-Madison students, and they all offer support and outreach to their residents.

B. The legislature's long history of creating similar exemptions and the means of challenging them.

It's helpful to pause in this overview of the Complaint and very *briefly* address the legal principles that govern this suit. The exemption at issue here is not (to be sure) the first time the Legislature has exempted certain property from taxation, and it's certainly not the first time the Legislature's taxing decisions have been challenged.[14] From our first days as a territory to our initial days as a State, the government has had to raise revenue. And that's done through taxes. The question for the Legislature is always, of course, what gets taxed and what doesn't.[15]

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[12] R.31:12-13.
[13] *See id.*
[14] *State ex rel. State Ass'n of Y. M. C. A v. Richardson*, 197 Wis. 390 (1928).
[15] Jack Stark, *A History of Property Tax and Property and Relief in Wisconsin*, Wis. Blue Book 1991—1992 at 99; Jack Stark, *The Uniformity Clause of the Wisconsin Constitution*, 76 MARQ. L. REV. 577, 578 (1993).

Over the past century, the Legislature's exemptions have run the gamut. The initial laws exempted churches and religious property, schools, and *all* railroad property from the tax rolls.[16] There were even exemptions for photographs and wearable items.[17] Over the years, certain exemptions have phased in and out depending on the State's need for revenue and the Legislature's delicate policy questions.[18] Those range from whether to exempt church properties and cranberry bogs (answered: yes and yes) to whether to continue exempting sororities and the West Wisconsin Railway Company (answered: no and no).[19] But it's always the Legislature's call and that call can change from session to session, budget to budget.

Over the past 170 years, certain principles and procedures have developed around challenging the Legislature's taxing decisions.[20] First, a taxpayer can challenge an illegal expenditure by the State—even if the amount that it would practically affect the taxpayer is infinitesimal.[21] But a taxpayer can't challenge an exemption—they don't have standing.[22] Second, if someone believes that they shouldn't be subjected to a tax (that is, they qualify for an exemption), the proper course is to pay the tax under protest and

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[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] Wis. Stat. § 70.11(4a); Wis. Stat. § 70.11(47); Wis. Stat. § 70.11(3m).
[20] *See* Linda Sugin, *Tax Expenditure Analysis and Constitutional Decisions*, 50 HASTINGS L.J. 407, 412–13 (1999).
[21] *S. D. Realty Co. v. Sewerage Com. of Milwaukee*, 15 Wis. 2d 15, 22 (1961).
[22] *See Vill. of Slinger v. City of Hartford*, 256 Wis. 2d 859, 866 (2002); *Freedom from Religion Found., Inc. v. Lew*, 773 F.3d 815, 820 (7th Cir. 2014); *Olson v. Minnesota*, 742 N.W.2d 681, 685 (Minn. Ct. App. 2007); *Manzara v. Missouri*, 343 S.W.3d 656, 657 (Mo. 2011).

pursue a claim to the Department of Revenue and then the tax appeals commission.[23] The Department of Revenue and the commission can, of course, also address a tax's constitutionality.[24] Finally, all taxes embody a policy choice by the Legislature—society wants to promote home ownership and charitable giving, so the Legislature crafts an exemption; society wants to discourage smoking and clear-cutting timber, so it increases certain taxes or strips certain property of an exemption.[25] And when those policy choices are challenged, courts give the Legislature's choices great deference—they are presumed reasonable.[26] A court reviewing a challenge simply has to imagine a rational basis for the tax to be upheld.[27]

C. The Complaint alleges that the exemption violates the law.

That brief history brings us directly back to the Complaint. After laying out the exemption's history, the Complaint sets out the Plaintiffs' theories of standing and the relief sought—points that this whole case turns on. It alleges that the individual Plaintiffs are harmed by the exemption because under it, the City collects less revenue, meaning they have to pay more.[28] And it alleges that the Foundation is harmed because it would

[23] Wis. Stat. §§ 73.03(1) and (2); Wis. Stat. § 73.06(1); *Wis. Dep't of Revenue v. Menasha Corp.*, 311 Wis. 2d 579, 599–600 (2008).
[24] Wis. Stat. §§ 73.03(45) and § 73.01(4)(a); *N. States Power Co. v. Bugher*, 189 Wis. 2d 541, 559 (1995).
[25] *Columbus Park Hous. Corp. v. City of Kenosha*, 267 Wis. 2d 59, 64 (2003).
[26] *Madden v. Kentucky*, 309 U.S. 83, 85 (1940); *Nw. Airlines, Inc. v. Wis. Dep't of Revenue*, 293 Wis. 2d 202, 237 (2006).
[27] *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 311 (1997); *Nw. Airlines, Inc.*, 293 Wis. 2d at 237; *A. M. B. v. Cir. Court for Ashland Cnty. (In re Adopt. of M. M. C.)*, 411 Wis. 2d 389, 401 (2024).
[28] Compl. ¶ 61.

not be able to qualify for the exemption *if* it wanted to operate a housing program for UW-Madison students.[29]

After addressing standing, the Complaint alleges that the exemption violates the State Constitution in four ways. First, it alleges that the exemption violates the Uniformity Clause.[30] That provision mandates that "rules of taxation shall be uniform."[31] Next it alleges that the exemption violates the State Constitution's Equal Protection Clause, which ensures that all are treated equally under the law, and the Establishment Clause, which prevents adopting a state religion.[32] Finally, it alleges that the exemption is a "private bill" that the legislature did not "adequately consider."[33] As addressed in the co-defendants' briefs and as expressed below, the Complaint fails both procedurally and on the merits and must be dismissed.

III. The procedural deficiencies in the Complaint prevent this case from going forward.

The Plaintiffs ground their claims in the State Constitution, but the principle of constitutional avoidance counsels that before deciding constitutional issues, courts should decide the case on narrower, procedural grounds.[34] Here, the Plaintiffs do not have standing to bring these claims, they have not included indispensable parties, and to hold for them would violate the Pres House and Saint Raphael Parish's First Amendment

[29] *Id*. ¶ 62.
[30] *Id*. ¶ 74; Wis. Const. art. VIII, § 1.
[31] Wis. Const. art. VIII, § 1; *Nw. Airlines, Inc.*, 293 Wis. 2d at 235.
[32] Compl. ¶ 85; Wis. Const. art. I, § 1; Compl. ¶ 93; Wis. Const. art. I, § 18.
[33] Compl. ¶ 100–01; Wis. Const. art. IV, § 18.
[34] A. SCALIA & B. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 247 (2012); *Gabler v. Crime Victims Rights Bd.*, 376 Wis. 2d 147, 184 (2017).

Free Exercise rights. Thus, as expressed below, the Court should resolve this case on the procedural grounds (and dismiss it) before addressing the constitutional issues.

A. The individual Plaintiffs do not have taxpayer standing to challenge the exemption.

The Complaint alleges that the individual Plaintiffs are Madison taxpayers who were "harmed by this unequal taxation because the Exemption results in the plaintiffs paying higher property taxes than they otherwise would if the exempt properties were returned to the property rolls."[35] That is, they allege they have taxpayer standing.[36] But taxpayer standing does not attach to every taxing decision a person doesn't like.[37] Instead, Wisconsin courts have set out clear boundaries for what does and doesn't cut it—namely, taxpayers can challenge an illegal expenditure, but not an exemption.[38]

The law has been clear for well over a century that "[i]n order to maintain a taxpayer's action, it must be alleged that the complaining taxpayer and taxpayers as a class have sustained, or will sustain, some pecuniary loss."[39] For there to be a "pecuniary loss" the courts demand that there be "an expenditure of funds."[40] Courts have reasoned that "[a]ny illegal expenditure of public funds directly affects taxpayers and causes them to sustain a pecuniary loss."[41] To that point, courts have been clear: "Though the amount

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[35] Compl. ¶ 70.
[36] *Id.* ¶ 61.
[37] *Kaiser v. City of Mauston*, 99 Wis. 2d 345, 360 (Ct. App. 1980).
[38] *Fabick v. Evers*, 396 Wis. 2d 231, 239 (2021); *Freedom from Religion Found., Inc.* 773 F.3d at 820–21.
[39] *Fabick v. Evers*, 396 Wis. 2d at 238.
[40] *S. D. Realty Co.*, 15 Wis. 2d at 22; *Freedom from Religion Found., Inc.* 773 F.3d at 820; *Olson*, 742 N.W.2d at 685; *Manzara*, 343 S.W.3d at 660.
[41] *Tooley v. O'Connell*, 77 Wis. 2d 422, 438 (1977) (quoting *S. D. Realty Co.* 15 Wis. 2d at 22).

of the loss, or additional taxes levied, has only a small effect on each taxpayer, nevertheless it is sufficient to sustain a taxpayers' suit."[42]

Under that principle, taxpayers have had standing to sue concerning the illegal expenditure tied to building a bridge.[43] There, the proper bidding procedures weren't followed.[44] Taxpayers have had standing to challenge the Milwaukee Public Museum being transferred to a private company since that transfer was (in essence) an expenditure.[45] Taxpayers have also had standing to challenge the building of a tunnel across property for a private party's benefit—the tunnel, after all, wasn't free and building it constituted an expenditure.[46] And in each instance, public money was being spent; and in each instance, taxpayers could object.

By contrast, an exemption is not an expenditure, and there is no similar taxpayer standing for exemptions.[47] An exemption does not result in the government collecting any taxes.[48] And that which is not collected can't be spent.[49] So, when the only allegation is there's been an illegal exemption, taxpayer status alone will not constitute standing.[50] "A taxpayer does not have standing to challenge an ordinance merely because he or she disagrees with the legislative body."[51]

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[42] *S. D. Realty Co.*, 15 Wis. 2d at 22.
[43] *See Chippewa Bridge Co. v. Durand*, 122 Wis. 85 (1904).
[44] *Id.*
[45] *Hart v. Ament*, 176 Wis. 2d 694, 699–700 (1993).
[46] *S. D. Realty Co.*, 15 Wis. 2d at 22.
[47] *Tooley*, 77 Wis. 2d at 438.
[48] *Manzara*, 343 S.W.3d at 660.
[49] *Olson*, 742 N.W.2d at 685.
[50] *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011); *Freedom from Religion Found., Inc.* 773 F.3d at 820.
[51] *See Vill. of Slinger v. City of Hartford*, 256 Wis. 2d 859, 866 (2002).

There is, after all, a world of difference between the State's choice to expend funds and its decision to exempt funds.[52] To challenge the former, a taxpayer can simply assert that funds are going out of the treasury.[53] To challenge the latter, the Plaintiff cannot simply allege that the exemption means the government will get less revenue.[54] That type of speculation is not enough to confer standing.[55] And that is all that's alleged here. Thus, the individual Plaintiffs cannot bring this suit and it must be dismissed.

B. The Foundation lacks standing because there is no injury—they don't own a similar property for which they've been denied an exemption.

The Pres House's brief does a fine job of addressing why the Foundation lacks standing—the Foundation is only alleging in the subjunctive.[56] That's not enough. Rather, the Foundation must be harmed.[57] And the Complaint doesn't allege that it is. The Foundation doesn't operate student housing, and it doesn't allege that it operated student housing before the sunset provision kicked in. It simply doesn't claim that it's harmed by the exemption, which is standing's indispensable demand.[58]

Properly framed, the Foundation's claim is not really against the exemption, but the sunset provision. As originally drafted, it allowed non-profits (across the state) to rent property to college students.[59] That was amended to *only* include UW-Madison

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[52] *Manzara*, 343 S.W.3d at 659–60.
[53] *S. D. Realty Co.*, 15 Wis. 2d at 20.
[54] *See Olson*, 742 N.W.2d at 685.
[55] *See id*.
[56] R.35:9.
[57] *See Friends of the Black River Forest v. Kohler Co.*, 402 Wis. 2d 587, 593 (2022).
[58] *Id*.
[59] Compl. ¶ 20.

students.[60] Nothing that unlawfully discriminates against the Foundation there—the Foundation's hub is a stone's throw from the other entities and could easily attract UW-Madison students if the Foundation converted its building into student housing. The real problem the Foundation would have in taking up a student-housing endeavor (if it sought to avoid taxes) is the sunset provision. Under that provision, the exemption has been closed for a decade and over the past decade the Foundation hasn't done anything to claim that it should be entitled to that benefit.[61] Thus, the Foundation has not satisfied the demands for standing.[62] It has no personal interest in the controversy—it has not been injured. Thus, the Complaint must be dismissed for lack of standing.[63]

C. The Complaint has failed to join essential parties.

Both the Pres House and the City's briefs provide great arguments on this issue and there is little that can be added to this brief. But it's important to stress one additional point: if the Foundation believed it was entitled to the exemption and didn't get it and was thereby harmed, there's a procedure for that.[64] It is to pay the tax under protest and dispute it through the appropriate channels.[65] The proper bodies (the Department of Revenue and Tax Appeals Commission) can evaluate *both* whether the Foundation should get the exemption and whether the exemption somehow violates the law.[66]

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[60] *Id.*
[61] *Freedom from Religion Found., Inc.* 773 F.3d at 822.
[62] *Reetz v. Advocate Aurora Health, Inc.*, 405 Wis. 2d 298, 310 (Ct. App. 2022) (internal citations omitted).
[63] *Friends of the Black River Forest*, 402 Wis. 2d at 593.
[64] *Wis. Dep't of Revenue v. Menasha Corp.*, 311 Wis. 2d at 599–600.
[65] *Id.*; Wis. Stat. §§ 73.03(1) and (2), and 73.06(1).
[66] *Wis. Dep't of Revenue v. Menasha Corp.*, 311 Wis. 2d at 599–600; Wis. Stat. §§ 73.03(45) and 73.01(4)(a).

But therein lies the rub: the Foundation doesn't really want the exemption; it simply doesn't want the two named defendants to get it. After all, the Plaintiffs are fine with Babcock House and Alliance of Women in Agriculture receiving the exemption. And it's presumably fine with the French House. (No need to speculate about the Phos House). Yet the law doesn't allow for targeting the exemption for *one* group, and saying it's fine for another. The exemption is either legal for all who qualify or illegal for all who have qualified. Either way, as expressed in the co-defendants' briefs, the other beneficiaries need to be here and so does the Department of Revenue.[67] The absence of those parties prevents this matter from being fully adjudicated.[68]

D. To rule for the Plaintiffs would violate the Defendants' Free Exercise Rights.

The Pres House's brief tackles an important principle: constitutional avoidance.[69] If the Court finds that the exemption is unconstitutional as to the Pres House and Saint Raphael's Congregation, but upholds it for the sectarian non-profits who benefit from the exemption, that violates the Free Exercise Clause—both State and Federal.[70] There is no need to copy-and-paste what the Pres House has presented, but it's worth stressing the point made above: the other beneficiaries aren't here. If this is ruled unconstitutional for the religious groups, there is a distinct and unavoidable Free Exercise problem.[71] In

[67] R.35:2; R.31:10-13.
[68] R.35:2; R.31:10-13.
[69] R.35:24.
[70] *Carson v. Makin*, 596 U.S. 767, 778 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 465 (2017). *See State ex rel. Wis. Health Facilities Authority v. Lindner*, 91 Wis. 2d 145, 163 (1979).
[71] R.35:29.

deciding the constitutionality of the exemption, this Court must avoid the greater constitutional problem that would result from denying it for these targeted defendants, who are (very clearly) religious organizations.[72]

IV. The Complaint does not allege facts that constitute a plausible claim for relief.

Moving beyond procedure and into the merits, the Plaintiffs have alleged four substantive arguments to support their claim that the exemption is unconstitutional. They assert the exemption violates the Uniformity Clause, the Equal Protection Clause, the Establishment Clause, and the Private Bill Clause.[73] But the Complaint fails to allege facts that, taken as true, plausibly suggest Plaintiffs are entitled to relief.[74] The Pres House and the City have thorough citations and discussions of the applicable standard for a motion to dismiss—a standard this Court is very, *very* familiar with.[75] So there is no need to repeat it here.

A. The Uniformity Clause is not violated when the Legislature grants a complete exemption.

The Complaint alleges that the exemption violates the Uniformity Clause for two reasons: there is no uniform class created by the exemption, and there is no rational basis for exempting these specific properties.[76] The Uniformity Clause provides: "the rule of taxation shall be uniform … Taxes shall be levied upon such property … as the legislature

[72] *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197 (2009); *Clark v. Suarez Martinez*, 543 U.S. 371, 381 (2005); A. SCALIA & B. GARNER, READING LAW at 247.
[73] Compl. ¶ 4.
[74] *Id.* ¶ 4-9.
[75] R.35:10; R.31:4.
[76] Compl. ¶ 67.

shall proscribe."[77] And taxes comply with the Uniformity Clause if the Legislature classifies properties that should be taxed from properties that are wholly exempt.[78] There just can't be classification for partial tax—you're either getting taxed like everyone else or you're exempt like everyone in your class, but there is no in-between. As long as the distinction is held steady between what's taxable and what's exempt, the only requirement for upholding the classification is "reasonableness."[79] Here, the Complaint doesn't allege that the beneficiaries aren't fully exempt, thus the question becomes whether the classification is "reasonable."

The Legislature receives wide latitude when creating a tax classification.[80] For purposes of "taxation, even more than in other fields, legislatures possess the greatest freedom in classification."[81] Unlike courts, the Legislature benefits from intimate familiarity with local conditions.[82] Legislators understand their districts, and it's assumed that legislators have a legitimate reason for enacting laws—tax laws, in particular.[83] And thus, this presumption of constitutionality can only be overcome by a clear demonstration that the classification is outright hostile or discriminatory.[84]

Here, the Legislature created an exemption for student housing. Before the exemption's expansion, only dormitories and sorority and fraternity housing were

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[77] Wis. Const. art. VIII, § 1.
[78] *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427 (1967); *Nw. Airlines, Inc.*, 293 Wis. 2d at 235–36.
[79] *Gottlieb*, 33 Wis. 2d at 427.
[80] *Nw. Airlines, Inc.*, 293 Wis. 2d at 235–36.
[81] *Madden*, 309 U.S. at 85.
[82] *Id.*
[83] *Nw. Airlines, Inc.*, 293 Wis. 2d at 237.
[84] *Id.*

exempt.[85] The Legislature recognized a *particular* gap in housing needs for UW-Madison students and expanded the classification for non-profit organizations offering student housing and outreach. In creating that classification, there is no discrimination; the six qualifying houses have a wide range of purposes. Some are religious, others promote diversity and leadership in agriculture, and another focuses on language immersion.[86] In other words, by creating such a wide-ranging exemption for benevolent groups, the Legislature has done the exact opposite of creating a hostile or discriminatory classification. It's open to all: just be a non-profit organization, who houses UW Madison students, and does community outreach.

All legislative acts are presumed constitutional, but this presumption is at its apex for tax statutes.[87] A tax must merely be reasonably related to a legitimate government purpose.[88] For example, a tax exemption for an airport was reasonably related to benefitting Wisconsin's economy, and a tax exemption for a hospital was reasonably related to providing more affordable medical care to Wisconsin residents.[89] It's a low bar.[90] And the Plaintiffs haven't met their heavy burden of alleging that there's no legitimate government purpose served by this exemption.

Here, the tax exemption is reasonably related to a legitimate government purpose: namely, affordable student housing grounded in support from a pro-social community.

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[85] *Madden*, 309 U.S. at 85.
[86] Compl. ¶ 28; see R.31:12; R.35:1,18.
[87] *Nw. Airlines, Inc.*, 293 Wis. 2d at 216.
[88] *Id.*; *Norquist v. Zeuske*, 211 Wis. 2d 241, 250 (1997); *Madison General Hospital Ass'n v. Madison*, 92 Wis. 2d 125, 130 (1979).
[89] *Nw. Airlines, Inc.*, 293 Wis. 2d at 237; *Madison Gen. Hosp. Asso.*, 92 Wis. 2d at 132.
[90] *Nw. Airlines, Inc.*, 293 Wis. 2d at 237.

The Legislature recognized a potential benefit from exempting non-profits from operating student housing under a prohibitive tax burden. This classification places these non-profit housing options on equal financial footing with other UW-Madison housing options. It allows non-profit housing to provide valuable outreach programs that benefit both UW-Madison students, the Madison community, and Wisconsin at large when impacted students disperse across the State. This classification permits these organizations to create a "positive impact on economic development" in Madison, where economic well-being is *directly* related to a thriving campus.[91] And thus, the exemption is reasonably related to a legitimate purpose, and meets all standards set out under the Uniformity Clause.

B. The exemption does not violate the Equal Protection Clause.

Like many aspects of constitutional law, the Plaintiffs' four claims are interrelated and the analysis for one bleeds into another. Attempting to eschew redundancy, there is no reason to repeat what the Pres House has argued as it relates to the Equal Protection Clause.[92] Its analysis is correct. The standard turns on whether the exemption "bears a rational relationship to some legitimate government interest."[93] And that's a wide berth: the Court's obligation is to construct a rationale that might have influenced the legislature.[94] And regardless of any particular legislator's actual motivations, the question is: whether under "any state of facts that can be reasonably conceived," the

[91] *See id.* at 236.
[92] R.35:19.
[93] *Madison Teachers, Inc. v. Walker*, 358 Wis. 2d 1, 56 (2014).
[94] *Id.*

Legislature "could have rationally concluded that a number of legitimate governmental purposes are advanced by exempting" these non-profit housing facilities.[95]

As the Pres House set out in its brief (and what was argued in part IV.A above) that bar is easily passed. The Legislature could have rationally believed that residences like Pres House and Lumen House and Babcock House and the French House, which house students attending the state's flagship university, should be on the same footing as dorms on college grounds, fraternities, religious organizations, and the like. The fact that the exemption was narrowed to the state's flagship university is understandable. Madison, more than any other city, has limited options for growth—we're surrounded by two beautiful lakes. So, non-profits that offer programing and outreach for students in this tight market should be supported. Likewise, limiting the exemption with the sunset provision would rationally minimize market distortions. Thus, the exemption itself and the sunset provision clear that exceedingly low bar to survive a challenge under the Equal Protection Clause.

[95] *Nw. Airlines, Inc.*, 293 Wis. 2d at 232.

C. The exemption does not violate the Establishment Clause.

The Plaintiffs further allege that this exemption violates the Establishment Clause, because it was constructed to benefit religious organizations.[96] As the Pres House sets out in its brief, the exemption does not violate the Establishment Clause.[97] We agree—completely. But it's worth *briefly* stressing two points. First, the standard for an Establishment Clause claim doesn't come from plucking out a line from a newspaper article, and then claiming a neutral exemption (open to all) violates the Establishment Clause.

Tax exemptions for religious organizations have been around for a long time—since the beginning of both our Nation and our State.[98] As the Supreme Court noted in *Walz,* some fifty-five years ago: "All of the 50 States provide for tax exemption of places of worship, most of them doing so by constitutional guarantees."[99] Decades of precedent makes it clear that tax exemptions for religious organizations and activities don't violate the Establishment Clause.[100] That's because a tax exemption does not constitute "sponsorship, financial support, and active involvement of the [government] in religious activity."[101] An exemption (as explained above in the discussion of expenditures versus

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[96] Compl. ¶ 93.
[97] R.35:21.
[98] *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 676 (1970).
[99] *See id.*
[100] *Wis. Evangelical Lutheran Synod v. City of Prairie du Chien*, 125 Wis. 2d 541, 553–54, (Ct. App. 1985). *See also State ex rel. Reynolds v. Nusbaum*, 17 Wis. 2d 148, 159 (1962).
[101] *Walz*, 397 U.S. at 668.

exemptions) does not transfer part of the State's revenue to churches, it "simply abstains from demanding that the church support the state."[102]

That's been the law (clear and absolute) since the Supreme Court's decision in *Walz* and even before—the Supreme Court just made it pellucid in *Walz*.[103] There is nothing in the Complaint that would undermine or cause this Court to abandon those principles, especially since that precedent was forged in relation to exempting *explicitly* religious property.[104] And here the exemption is open to all non-profits. Every non-profit—they just have to meet the criteria. And three of the non-profits who benefit from the exemption are (for the last time) *not* religious. Thus, it's impossible to argue that the exemption violates the Establishment Clause.

D. The facts alleged do not turn the exemption into a private bill.

That leads to the final claim: that this constitutes a private bill and is unconstitutional. Section 18 provides that "[n]o private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title."[105] The Pres House's brief does an exceptional job setting out the standard and that it can't be met here. Nothing can (or should) be added to its argument.

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[102] *Id.* at 675. *See also Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 337 (1987).
[103] *Walz,* 397 U.S. 664 at 676; *Gaylor v. Mnuchin*, 919 F.3d 420, 434 (7th Cir. 2019); *In re Appeal of Springmoor, Inc.*, 348 N.C. 1, 2 (1998); *Haller v. Dep't of Revenue*, 556 Pa. 289, 290 (1999); see *Freedom from Religion Found., Inc.*, 773 F.3d at 820.
[104] *Walz*, 397 U.S. at 676.
[105] Wis. Const. art. IV, § 18.

V. Conclusion

The Complaint must be dismissed. As an initial matter, it should be dismissed because the Plaintiffs' lack standing. They don't have it as tax-payers, and the Foundation doesn't have it because it has not been harmed. What's more, the Plaintiffs' can't selectively sue the beneficiaries of the exemption who are religious and let the exemption go on for the others. To do so violates not only the demands of adding indispensable parties, but also it violates the Pres House and Saint Rapheal Congregation's First Amendment rights. What's more, this case should be dismissed on its merits. The four theories alleged in the Complaint aren't supported by the allegations made. The exemption simply doesn't violate any of the four alleged constitutional provisions. As such, the Complaint must be dismissed, and it should be dismissed with prejudice.

Dated this 10th day of March, 2025.

Respectfully submitted,

ST. RAPHAEL'S CONGREGATION, *Defendant.*

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