STATE OF WISCONSIN CIRCUIT COURT BRANCH 8 DANE COUNTY

ANNIE LAURIE GAYLOR, DAN BARKER, DAVID PETERSON, and FREEDOM FROM RELIGION FOUNDATION,

Plaintiffs,

v.

THE CITY OF MADISON, PRESBYTERIAN STUDENT CENTER FOUNDATION, and ST RAPHAEL'S CONGREGATION,

Defendants,

and

WISCONSIN STATE LEGISLATURE,

Intervenor-Defendant.

Case No. 25-CV-173

Hon. Frank D. Remington

INTERVENOR-DEFENDANT WISCONSIN STATE LEGISLATURE'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

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ARGUMENT

Filed to strip Presbyterian Student Center Foundation ("Pres House") and St. Raphael's Congregation ("Lumen House") of their property-tax exemptions, this case fails both at the threshold and on the merits. Dkt.4, ¶¶ 2–3. To begin, the tax code precludes declaratory actions and requires that would-be claimants exhaust a two-step process, which no Plaintiff did. Even with this exhaustion requirement set aside, this action is not justiciable. And proceeding to the merits (which this Court need not do), the Exemption: is reasonable, comporting with the uniformity clause and equal protection; does not grant religious preference; and is not a private or local bill.

Plaintiffs' arguments fail largely because they invoke the wrong legal standards. Contrary to Plaintiffs' claims, the court does not accept all allegations in a complaint as true. Dkt.61:15. Instead, courts reject "legal conclusions," even when "couched as . . . factual allegation[s]." *Data Key Partners v. Permira Advisers LLC* (*Data Key*), 2014 WI 86, ¶¶ 18–19, 25, 356 Wis. 2d 665, 849 N.W.2d 693 (citation omitted). So, for example, the conclusion that the Exemption caused the individual taxpayers to pay higher taxes (injury), Dkt.4, ¶¶ 2, 7, 54, 61, 70, must be rejected. Likewise, Plaintiffs' assertion that the court should not address a claim's merits at the dismissal stage, Dkt.61:17, is simply incorrect. Quite the contrary: "Plaintiffs must allege facts that, if true, plausibly suggest a violation of applicable law." *Data Key*, 2014 WI 86, ¶ 21. Thus, "the sufficiency of a complaint depends on substantive law that underlies the claim made because it is the substantive law that drives what facts must be pled." *Id.* ¶ 31 Finally, Plaintiffs are wrong that the court is limited on a motion to dismiss to only the allegations in the complaint. Dkt.61:15 & n.4, 47. In fact, the court also may take judicial notice of facts that meet the requirements of Wis. Stat. § 902.01. *See Yash Venture Holdings, LLC v. Moca Fin., Inc*., 116 F.4th 651, 659 n.11 (7th Cir. 2024) ("On a motion to dismiss, 'a court may consider, in addition to the allegations set forth in the complaint itself, . . . information that is properly subject to judicial notice.'" (citation omitted))[1]; *see also Rauch v. McNaughton*, 2024 WI App 56, ¶ 3 (unpublished); Dkt.45:10 n.5, 33

[1] The federal rule mirrors state law, *compare* Fed. R. Civ. P. 12(d), *with* Wis. Stat. § 802.06(2)(b), and thus federal case law is persuasive. *Luckett v. Bodner*, 2009 WI 68, ¶ 29, 318 Wis. 2d 423, 769 N.W.2d 504.

n.10, 41 n.16, 42 n.17. And, as this Court already recognized in this case, the court can consider relevant legislative history on a motion to dismiss. Dkt.63:11–13.

Because Plaintiffs' opposition brief does not (and cannot) rehabilitate their fatally flawed complaint, this case should be dismissed with prejudice.

I. PLAINTIFFS' CLAIMS ARE PROCEDURALLY BARRED

A. The Tax Code Bars Plaintiffs' Declaratory Action

Statutes that provide "adequate" judicial review foreclose declaratory actions. *Wis. Mfrs. & Com. v. Evers*, 2022 WI 38, ¶ 12, 401 Wis. 2d 699, 977 N.W.2d 374. This is especially true for tax claims: the Legislature has long established the policy that "certainty in tax collections is necessary for the continued function of government," so "persons who wish to contest the administration of the Wisconsin tax statutes must first pursue relief through available administrative remedies." *Hogan v. Musolf*, 163 Wis. 2d 1, 23–24, 25, 471 N.W.2d 216 (1991) (citation omitted); Dkt.45:11–17. Thus, the Foundation must first request a tax exemption, pay the tax, and file a claim with the City (it failed all three) before seeking judicial review. *See* Wis. Stat. § 74.35; Dkt.45:11–16.[2] And the individual taxpayers failed to follow the sole process for excessive-tax challenges: file an objection or claim with the City, then seek judicial review of the denial. Wis. Stat. § 74.37; Dkt.45:16–17. Even if they exhausted administrative review, they wrongly filed this separate case; their only option was to seek direct judicial review of the denied claim. Dkt.4, ¶¶ 56–59; Dkt.45:17.

Plaintiffs argue that to exhaust would have been futile, so they were free to jettison the statutory process and file this case. Dkt.61:30, 33.[3] But none of the cases Plaintiffs cite involves the statutes at issue here. Especially distinct is § 74.35 (exemptions), which explicitly states that its process is the exclusive method of review and explicitly prohibits declaratory relief, regardless of exhaustion. *See* Wis. Stat. § 74.35(2m). And the Wisconsin Supreme Court has explained that chapter 74's review provisions, including § 74.35 and § 74.37 (excessive assessments), are exclusive. *Hermann*

[2] The Foundation appears to have disclaimed its claim for an exemption—the only remedy to which it could possibly be entitled here—and therefore should be dismissed from the case. *See infra* Part I.B.1.

[3] Plaintiffs also argue that the City waived the exhaustion and exclusive remedy arguments, Dkt.61:32, but one defendant cannot waive another's argument. *Honeycrest Farms, Inc. v. Brave Harvestore Sys., Inc.*, 200 Wis. 2d 256, 267, 546 N.W.2d 192 (1996).

v. Town of Delavan, 215 Wis. 2d 370, 382–85, 392–94, 572 N.W.2d 855 (1998); *Hogan*, 163 Wis. 2d at 20–22, 24; *Metzger v. Wis. Dept. of Taxation*, 35 Wis. 2d 119, 126, 150 N.W. 2d 431 (1967). And these processes are frequently, as here, not futile. *See Hermann*, 215 Wis. 2d at 384–94. For example, here, had the individual taxpayers followed the proper procedures, the City "could have corrected each of the taxpayer's assessments," and, if the City failed to do so, "a court reviewing the [City's] decision in a certiorari action, upon finding the assessment violated the [constitution], could have remanded the assessment to the [City] for further proceedings consistent with that court's determination." *Id.* at 384. Like the taxpayers in *Hermann*, Plaintiffs rely on *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 529 N.W.2d 245 (Ct. App. 1995), to argue that their constitutional challenge is exempt from the statutory process. Dkt.61:30. But *Hermann* rejected that argument. 215 Wis. 2d at 389. The fact that the individual taxpayers cannot now seek judicial review because they failed timely to seek review of their denied claims does not permit them to file a declaratory action. *Jackson County Iron Co. v. Musolf*, 134 Wis. 2d 95, 103, 396 N.W.2d 323 (1986) (affirming dismissal for failure to exhaust).[4]

B. This Case Is Not Justiciable

Even if the tax code did not bar their claims, Plaintiffs have failed to allege a justiciable controversy under the Declaratory Judgments Act. Plaintiffs fail all four justiciability factors: (1) they lack a claim of right against Pres or Lumen House,[5] (2) they are not adverse to the City,[6] (3) they lack a legally protectable interest, and (4) the claims are not ripe.[7] Dkt.45:17–29; *Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 29, 309 Wis. 2d 365, 749 N.W.2d 211.

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[4] The Foundation also argues that it lacks "adequate relief" without an injunction, Dkt.61:33, but *Hogan* rejected that argument. 163 Wis. 2d at 20–21.

[5] Plaintiffs fail to respond to this argument and thus concede it. *United Co-op. v. Frontier FS Co-op.*, 2007 WI App 197, ¶ 39, 304 Wis. 2d 750, 738 N.W.2d 578 ("lack of response may be taken as concession").

[6] Contrary to Plaintiffs' claim, Dkt.61:22, the City is not adverse: it agreed it would like the Exemption eliminated (the cut would benefit it financially) and asserted only that it was the wrong person to sue, Dkt.64:5–6. That is nothing like *Tooley v. O'Connell*, 77 Wis. 2d 422, 437, 253 N.W.2d 335 (1977), where the defendant's failure to contest the asserted claim "would result in the loss of the ability to raise a large share of the funds necessary to operate [the] school system" and "would place the defendant[ ] in the position of failing to carry out its statutorily imposed duty."

[7] The Legislature has not conceded that the individual taxpayers have a ripe case, Dkt.61:28—they have no injury, and thus they have no injury that could be ripe. *See* Dkt.45:20–27, 28.

The "legally protectable interest" prong requires plaintiffs to allege standing. *Fabick v. Evers*, 2021 WI 28, ¶ 11, 396 Wis. 2d 231, 956 N.W.2d 856. "[P]laintiffs must show [1] that they suffered or were threatened with an injury to an interest [2] that is legally protectable" and thus susceptible of a "judicial remedy." *Krier v. Vilione*, 2009 WI 45, ¶ 20, 317 Wis. 2d 288, 766 N.W.2d 517. Federal law is "persuasive" because Wisconsin's "two-step standing approach [i]s conceptually similar" to federal standing. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, ¶¶ 17–18, 402 Wis. 2d 587, 977 N.W.2d 342 (citation omitted). Wisconsin also permits "taxpayer standing," which recognizes that a taxpayer "has a legal interest . . . to contest governmental actions leading to an illegal expenditure of taxpayer funds." *Fabick*, 2021 WI 28, ¶ 10. Plaintiffs fail both tests.

1. Plaintiffs lack zone-of-interests standing

The Foundation lacks standing because it alleges only hypothetical injury: that "if it were to invest in [student] rental properties," if it were to ask for the Exemption, and if the City were to deny its request, it would suffer an injury. Dkt.4, ¶ 62. These "'if I were to . . ., then I would . . .'" allegations "express[ ] a hypothetical situation." *Green v. Green*, No. 01-20-00663-CV, 2022 WL 3031346, at *5 (Tex. App. Aug. 2, 2022) (citing *The Chicago Manual of Style* § 5.137 (17th ed. 2017)). Because hypothetical injury is not enough to establish standing, *In re Delavan Lake Sanitary District*, 160 Wis. 2d 403, 413, 466 N.W.2d 277 (Ct. App. 1991), the Foundation's claims must be dismissed. Dkt.45:19–20. Additionally, the Foundation now disclaims any remedy of receiving the Exemption, Dkt.61:33, so it lacks "a personal stake in the outcome," is not "directly affected by the issues in controversy," and thus has no standing. *Vill. of Slinger v. City of Hartford*, 2002 WI App 187, ¶ 9, 256 Wis. 2d 869, 650 N.W.2d 81.

The individual taxpayers also lack standing. They fail to show that their property-tax bill changed as a "direct result" of the City's grant of the Exemption, *Friends of Black River Forest*, 2022 WI 52, ¶¶ 18, 21, and they fail to show how cutting the Exemption will "remedy" their harm (that is, lower their taxes), *Krier*, 2009 WI 45, ¶ 20. The taxpayers assert only a legal conclusion when they opine that they receive "higher property tax bills" because the City applies "the unlawful Exemption." Dkt.4, ¶ 54; *see also id.*, ¶¶ 2, 7, 61, 70. Under the proper legal standard, this

conclusion must be ignored, *see supra* p. 1, and the complaint lacks any other "allegations plausibly suggesting" that there is a link between the two. *Data Key*, 2014 WI 86, ¶ 26 (citation and emphasis omitted); *see* Dkt.45:20–24. Indeed, there are many reasons why one might pay a higher tax bill, including increased property values, increased municipal population requiring additional services, and myriad others. The individual taxpayers likewise failed to allege plausibly that cutting the Exemption will reduce their taxes, as it is at least just as likely the City would keep and spend the additional revenue. *See* Dkt.45:24–25; Dkt.64:6 (noting cut would benefit City).[8]

Plaintiffs' responses fall short. They assert that "the multi-pronged standing analysis" applies only to cases brought "under ch. 227," Dkt.61:25, but that is false. It governs all standing analyses, including in declaratory judgment actions, *Chenequa Land Conservancy, Inc. v. Vill. of Hartland*, 2004 WI App 144, ¶¶ 10–16, 275 Wis. 2d 533, 685 N.W.2d 573. Next, the Foundation asserts it had "little reason" to develop student housing because it would not qualify for the Exemption. Dkt.61:27. But it does not allege any facts plausibly showing that if it qualified for the Exemption, it would develop student housing, *see generally* Dkt.4; *see also* Dkt.45:19–20, and it cannot rely on pure hypotheticals. *In re Delevan Lake Sanitary Dist.*, 160 Wis. 2d at 413. The Foundation falls back on "policy considerations," Dkt.61:28, but policy cuts against it. *See Hogan*, 163 Wis. 2d at 25 (legislature has "limit[ed] . . . the legal remedies available to taxpayers" challenging the tax laws (citation omitted)). Finally, the individual taxpayers claim that the City admits that the Exemption increases their taxes. Dkt.61:25. Not so. The City asserts that the Exemption "reduce[s] revenue sources" and that "non-exempt properties" pay for services the exempt properties use, Dkt.31:9, but neither means that the individual taxpayers' bills change whenever a property is exempted. If anything, the City suggests that it would keep the money for itself when it asserts it would "benefit[ ] financially if this exemption is ruled unconstitutional." Dkt.31:10; *see* Dkt.64:6.

2. Plaintiffs lack taxpayer standing

To establish taxpayer standing, a plaintiff must identify an "illegal expenditure of public

[8] In fact, three of the individual taxpayers' four claims would lead to their paying higher taxes, so they certainly lack standing to raise those claims. Dkt.45:24–25.

funds." *S.D. Realty Co. v. Sewerage Comm'n*, 15 Wis. 2d 15, 21–22, 112 N.W.2d 177 (1961). The issue is not whether the action will "result in increased taxation," but whether there is an unlawful "disbursement" of government money. *Wagner v. City of Milwaukee*, 196 Wis. 328, 220 N.W.2d 207, 208 (1928). Here, Plaintiffs do not identify an illegal government expenditure; thus, they do not have standing as taxpayers. Dkt.45:25–27.[9]

Plaintiffs ask this court to invent new law by eliminating the illegal expenditure requirement, but this court is powerless to develop standing law in this manner. And, anyway, Plaintiffs fail to justify their rather ambitious request. *See* Dkt.61:25–26. Plaintiffs rely on *International Foundation of Employee Benefit Plans, Inc. v. City of Brookfield* and *Voters with Facts v. City of Eau Claire*, but *International Foundation* had nothing to do with standing, 95 Wis. 2d 444, 446, 290 N.W.2d 720 (Ct. App. 1980), and Plaintiffs cite to the *dissent* in *Voters with Facts*, which, in all events, restates the requirement that taxpayer standing be "based upon an unlawful *expenditure* of tax revenues." 2018 WI 63, ¶ 91, 382 Wis. 2d 1, 913 N.W.2d 131 (Bradley, R.G. and Kelly, J.J., dissenting) (emphasis added). Finally, Plaintiffs cite *Hart v. Amet*, but that case, too, involved an illegal *expenditure* of funds. 176 Wis. 2d 694, 698–700, 500 N.W.2d 312 (1993). Wisconsin law simply does not support Plaintiffs' argument.

II. PLAINTIFFS' CLAIMS ARE WITHOUT MERIT

Plaintiffs assert that "the merits" are not relevant on a motion to dismiss. Dkt.61:17, 34, 37, 38, 40, 51, 52. But the merits are exactly what the court considers when faced with a motion to dismiss "for failure to state a claim." Wis. Stat. § 802.06(2)(a)6.; *Data Key*, 2014 WI 86, ¶ 31. "[A] dismissal for failure to state a claim is a judgment on the merits." *Tietsworth v. Harley-Davidson, Inc.*, 2007 WI 97, ¶ 58, 303 Wis. 2d 94, 735 N.W.2d 418. If Plaintiffs cannot plead facts to support the "substantive law that underlies [their] claim[s]," *Data Key*, 2014 WI 86, ¶ 31, then they lose on the merits, *Tietsworth*, 2007 WI 97, ¶ 58. That is true here.

A. The Exemption Applies Uniformly to All in Its Scope

Wisconsin's Uniformity Clause allows property to be fully exempt from taxation when (1) the

[9] The Foundation does not allege that it pays taxes, Dkt.4, and so cannot possibly invoke taxpayer standing.

property is absolutely exempt, *Gottlieb v. City of Milwaukee*, 33 Wis. 2d 408, 420, 424–25, 147 N.W.2d 633 (1967), and (2) the classification of a property as wholly exempt bears a reasonable relation—shows a direct or indirect benefit to the taxpayer—to a legitimate purpose of government, *Madison Gen. Hosp. Ass'n v. City of Madison*, 92 Wis. 2d 125, 129–31, 284 N.W.2d 603 (1979).[10] If the court can conceive of any rational basis for a statute, the statute survives. *Porter v. State*, 2017 WI App 65, ¶ 30, 378 Wis. 2d 117, 902 N.W.2d 566.

The Exemption satisfies these requirements: (1) it fully exempts the properties[11] and (2) it is reasonably related to a legitimate government interest. At the very least, the court can conceive of a rational basis for the Exemption and, so, it must be upheld. *Id.* ¶ 30. The Legislature could have concluded that the benefits of offering this Exemption outweigh its costs, that the Exemption fills a gap in student housing options at the state's flagship university, and that the Exemption contains reasonable limits to maximize its benefits. Dkt.45:33–37.[12]

Plaintiffs suggest that the Court cannot determine whether there is a rational basis for the Exemption because this case is here on a motion to dismiss. Dkt.61:36–37. But whether a statute passes rational-basis scrutiny is a pure legal question that can be decided on a motion to dismiss, taking the facts alleged in the complaint as true. *Doering v. WEA Ins. Grp.*, 193 Wis. 2d 118, 125, 129–32, 140, 532 N.W.2d 432 (1995). And the Exemption "survive[s] rational basis review if [the court] can conceive of any rational basis" for it. *Porter*, 2017 WI App 65, ¶ 30.[13] Thus, taking the complaint's facts as true (as required on a motion to dismiss), the Court can and should still conclude that a rational basis exists for the Exemption. *See, e.g.*, *Doering*, 193 Wis. 2d 118 (holding statute constitutional under rational-basis analysis on a motion to dismiss).

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[10] Contrary to Plaintiffs' argument, *see* Dkt.61:36, they must, even at the motion-to-dismiss stage, show that the statute is unconstitutional beyond a reasonable doubt. *Voters with Facts*, 2018 WI 63, ¶¶ 65, 67 (using this standard at motion to dismiss stage).

[11] Plaintiffs do not dispute this. *See* Dkt.61:35.

[12] Plaintiffs fail to respond to several of the Legislature's arguments, Dkt.45:34–35, and thus concede them, *supra* p. 3 n.5.

[13] Plaintiffs rely on *Torphy*, but *Torphy* is distinguishable. *See* Dkt.61:37 (citing *State ex rel. La Follette v. Torphy*, 85 Wis. 2d 94, 108, 270 NW.2d 187 (1978)). It concerned a tax credit granted to individuals who improved their property, resulting in unequal taxes for properties assessed at the same value. *Id.* at 98, 108.

B. The Exemption Comports with Equal Protection

Wisconsin courts interpret Article I, Section 1 to provide the "same equal protection" rights secured by the federal Constitution. *Mayo v. Wis. Injured Patients & Fams. Comp. Fund*, 2018 WI 78, ¶ 35, 383 Wis. 2d 1, 914 N.W.2d 678. Under this analysis, when no fundamental right or protected class is implicated, a law is "upheld if there is any rational basis for the legislation."[14] *Id.* ¶¶ 28–29. Wisconsin courts analyze five criteria to determine if a statute survives rational basis review, which the Exemption comfortably satisfies. First, the Exemption creates distinctions that distinguish the class that receives the tax exemption from others. *Id.* ¶ 42; Wis. Stat. § 70.11(3m); Dkt.45:35–36. Second, the classification created by the Exemption is germane to the purpose of the law. *Mayo*, 2018 WI 78, ¶ 42; Dkt.45:35–36. Third, the Exemption's classification does not preclude additional participants. *Mayo*, 2018 WI 78, ¶ 42; Dkt.45:36–37. Fourth, the Exemption applies equally to all members of the class: all qualifying properties are exempt. *Mayo*, 2018 WI 78, ¶ 42; Dkt.45:35–36. Fifth, there is a reasonable suggestion that this legislation is for the public good—providing student housing and outreach services to serve those with diverse experiences and interests. *Mayo*, 2018 WI 78, ¶ 42; Dkt.45:35–36.

Plaintiffs assert that the presumptions and burdens associated with the rational-basis test do not apply at the motion to dismiss stage. Dkt.61:38 (citing *Thorp v. Town of Lebanon,* 2000 WI 60, ¶ 44, 235 Wis. 2d 610, 612 N.W.2d 59). But *Thorp* does not support a proposition that the rational-basis test itself does not apply—at most, it may support a proposition that there is no burden of proof beyond a reasonable doubt at the dismissal stage. *See Thorp v. Town of Lebanon*, 225 Wis. 2d 672, 692, 593 N.W.2d 878 (Ct. App. 1999). And even if *Thorp* could be read as Plaintiffs claim, more recent cases apply the rational-basis test—including its presumptions—at the motion to dismiss stage, *see, e.g.*, *Lornson v. Siddiqui*, 2007 WI 92, ¶¶ 13, 68–74, 302 Wis. 2d 519, 735 N.W.2d 55, and this court must follow these later cases, *Lemke v. Lemke*, 2012 WI App 96, ¶ 23, 343 Wis. 2d 748, 820 N.W.2d 470.

Plaintiffs also contend, citing *Nankin v. Village of Shorewood*, 2001 WI 92, 245 Wis. 2d 86,

[14] Plaintiffs do not dispute this standard applies. *See* Dkt.4, ¶¶ 20–21; Dkt.61:37, 39.

630 N.W.2d 141, that the fifth criterion is not satisfied. *See* Dkt.61:39. But, in *Nankin*, the Court concluded there was no basis for a classification between those living in a county with a population of 500,000 or more, and those in less populous counties, to prohibit those living in more populous counties from filing a certain claim against the taxation district. 2001 WI 92, ¶¶ 2–4, 43. Here, ample reason supports the distinction created by the Exemption. *See supra* Part II.A. Finally, to the extent Plaintiffs argue that the rational basis must appear in "the facts in Plaintiffs' Complaint," Dkt.61:39, this argument fails—a statute satisfies rational-basis scrutiny if the court can conceive of any such basis. *Porter*, 2017 WI App 65, ¶ 30. Accordingly, courts frequently dismiss equal protection claims at the motion to dismiss stage.[15]

C. The Exemption Does Not Prefer Religious Establishments or Modes of Worship

Wisconsin courts "interpret and apply" Article I, Section 18 of the Wisconsin Constitution consistent with "the United States Supreme Court cases interpreting the Establishment Clause of the First Amendment." *Jackson v. Benson*, 218 Wis. 2d 835, 876–77, 578 N.W.2d 602 (1998).[16] Under the applicable tests, the Exemption passes muster. The Exemption is neutral to religion and Plaintiffs may not impute an "illicit legislative motive" to invalidate the statute. *United States v. O'Brien*, 391 U.S. 367, 383 (1968); Dkt.45:38–39. Even if the Exemption specifically benefitted only religious entities, such exemptions are permissible. *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (citation omitted); Dkt.45:39–40.[17]

Plaintiffs assert the Exemption is not neutral because its "intent" "was to benefit the religious organizations." Dkt.61:42–43. But the test for neutral applicability concerns effect, *not* intent. *See O'Brien*, 391 U.S. at 384–85; *Jackson*, 218 Wis. 2d at 878.[18] The Exemption's *effect* is neutral:

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[15] *See Lornson*, 2007 WI 92, ¶ 74; *Czapinski v. St. Francis Hosp., Inc.*, 2000 WI 80, ¶ 32, 236 Wis. 2d 316, 613 N.W.2d 120; *Doering*, 193 Wis. 2d at 148–49.

[16] Wisconsin's Religion Clause offers more "expansive protections for religious liberty"—not fewer. *Compare Coulee Cath. Schs. v. Lab. & Indus. Rev. Comm'n, Dep't of Workforce Dev.*, 2009 WI 88, ¶ 60, 320 Wis. 2d 275, 768 N.W.2d 868 *with* Dkt.61:41.

[17] Plaintiffs fail to address the Legislature's arguments that the Wisconsin Constitution permits religious tax exemptions and so concede it. *See* Dkt.45:39–40; *supra* p. 3 n.5.

[18] More, Plaintiffs' allegations about the Exemption's intent, *see* Dkt.4, ¶¶ 21, 28, are legal conclusions the court is not bound to accept at the motion to dismiss stage. *See supra* p. 1.

any nonprofit can qualify if it meets the requirements of the Exemption, as Plaintiffs admit. *See* Dkt.4, ¶ 28. This fact defeats Plaintiffs' Religion Clause claims.

D. The Exemption Is Not a Private or Local Bill

To determine whether a bill violates Article IV, Section 18 of the Wisconsin Constitution, courts examine: (1) whether the bill deserves a presumption of constitutionality and (2) whether the bill is private or local, examining if "the provision relates to a state responsibility of statewide dimension." *See Davis v. Grover*, 166 Wis. 2d 501, 520–22, 524–25, 480 N.W.2d 460 (1992). The Exemption is entitled to a presumption of constitutionality because it was thoroughly considered, both when it was adopted and when it was amended. *See* Dkt.45:41–42. And the Exemption relates to a state responsibility of statewide dimension and has a direct and immediate effect on a specific statewide concern or interest. *Davis*, 166 Wis. 2d at 525; Dkt.45:42–44.

Plaintiffs assert that their complaint shows that the Exemption and its later amendment are private bills because those bills "were created to exempt two specific properties in the City of Madison." Dkt.61:47–48 (citing Dkt.4, ¶¶ 18–31). This is objectively false from the face of the Exemption and its real-world application.[19] *See supra* pp. 1–2. *Soo Line* does not support this argument, either. The court in *Soo Line* concluded that this statute was a private or local bill because it was targeted "to a specific geographical location" and "a specific entity." *Soo Line R. Co. v. Dep't of Transp.*, 101 Wis. 2d 64, 69, 76–77, 303 N.W.2d 626 (1981). While the Exemption has some limits in that it applies only to those housing UW-Madison students, Wis. Stat. § 70.11(3m), those limits are targeted to an issue of statewide concern rather than an individual, private entity. *See* Dkt.45:43–44. Finally, Plaintiffs' attempt to distinguish *Lake County* fail. *See* Dkt.61:48. Geographical scale is not the test. And, as the complaint notes, the Exemption applies to more than two religious nonprofits. *See* Dkt.4, ¶ 28.

CONCLUSION

This Court should dismiss the complaint with prejudice.

[19] Plaintiffs fail to respond to this argument, *see* Dkt.45:44, and so concede it, *see supra* p. 3 n.5.

Dated: May 12, 2025

Respectfully submitted,

Electronically Signed by Ryan J. Walsh

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