

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

CATHOLIC CHARITIES BUREAU, INC., BARRON COUNTY DEVELOPMENT SERVICES, INC.,  
DIVERSIFIED SERVICES, INC., BLACK RIVER INDUSTRIES, INC., AND HEADWATERS, INC.,

*Applicants,*

v.

STATE OF WISCONSIN LABOR AND INDUSTRY REVIEW COMMISSION, AND STATE OF  
WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT,

*Respondents.*

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**APPLICATION TO THE HONORABLE AMY CONEY BARRETT FOR AN  
EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF  
CERTIORARI TO THE SUPREME COURT OF WISCONSIN**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the undersigned counsel of record certifies that Applicant Catholic Charities Bureau, Inc. does not have a parent corporation and does not issue stock. Catholic Charities Bureau, Inc. is the parent corporation of Barron County Developmental Services, Inc., Diversified Services, Inc., Black River Industries, Inc., and Headwaters, Inc. None of these entities issue stock.

/s/ Eric C. Rassbach

## APPLICATION

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

Pursuant to Supreme Court Rule 13(5), Catholic Charities Bureau, Inc., Barron County Developmental Services, Inc., Diversified Services, Inc., Black River Industries, Inc., and Headwaters, Inc. (collectively, “Applicants”) respectfully request an extension by sixty days to and including Monday, August 12, 2024, for the filing of a petition for a writ of certiorari in this matter. Unless an extension is granted, Applicants’ deadline for the filing of the petition will be June 12, 2024.<sup>1</sup> This application is submitted more than ten days prior to the filing deadline.

In support of this request, Applicants state as follows:

1. The Supreme Court of Wisconsin issued its opinion on March 14, 2024, App.1.

This Court has jurisdiction under 28 U.S.C. 1257(a).

2. The relevant facts in this case are not in dispute. To comply with the Federal Unemployment Tax Act (FUTA), all states must operate their unemployment compensation programs consistent with numerous federal requirements. See 26 U.S.C. 3304(a). But under both federal and conforming Wisconsin law, service “[i]n the employ of \* \* \* an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or con-

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<sup>1</sup> The Supreme Court of Wisconsin issued its opinion on March 14, 2024, App.1, making the current deadline June 12, 2024. A sixty-day extension would result in a Sunday deadline (August 11, 2024), meaning the petition would be due the following Monday, August 12, 2024. See Sup. Ct. R. 30(1).

vention or association of churches” is exempt from the obligation to pay into Wisconsin’s unemployment compensation program. See 26 U.S.C. 3309(b)(1); Wis. Stat. 108.02(15)(h)(1)-(2). This case involves the Diocese of Superior’s separately incorporated charitable arm, Catholic Charities Bureau. It is undisputed that Catholic Charities and its sub-entities are “operated, supervised, controlled, or principally supported by a church.” App.3 n.3. The only dispute is whether they are “operated primarily for religious purposes.” App.3.

3. The Wisconsin Supreme Court agreed that Catholic Charities is motivated by a religious mission to serve those in need: “CCB and the sub-entities profess to have a religious motivation. \* \* \* We accept these statements at face value, and [Wisconsin] does not argue that these assertions of religious motivation are insincere, fraudulent, or otherwise not credible.” App.27. Instead—relying on an irrelevant state court ministerial exception precedent—the Wisconsin Supreme Court held that “in determining whether an organization is ‘operated primarily for religious purposes’ \* \* \* we must examine both the motivations *and the activities* of the organization.” App.23-26 (emphasis added) (citing *Coulee Catholic Schools v. LIRC*, 768 N.W.2d 868 (Wis. Sup. Ct. 2009)).

4. The court therefore assessed whether Catholic Charities was engaged in what *the court thought* were activities “typical” of an organization operated for religious purposes: “corporate worship services,” “evangelical outreach,” imbuing “program participants with the Catholic faith,” and supplying “religious materials to program participants.” App.25, 26, 28. Ignoring the fact that these activities would only be considered “typical” for some religious denominations, the court held that Catholic

Charities’ “activities are primarily charitable and secular” in nature because serving the poor and needy could be done “by organizations of either religious or secular motivations, and the services provided would not differ in any sense.” App.28-29; see also *id.* at 31 (“An objective examination of the actual activities of [Applicants] reveals that their activities are secular in nature.”). The Court thus concluded that Catholic Charities was not “operated primarily for religious purposes” because it serves people of all faiths and does not proselytize—two tenants of Catholic Charities’ faith. App.28-31.

5. The Wisconsin Supreme Court also rejected Catholic Charities’ First Amendment arguments. First, it “presume[d] that the statute is constitutional” and required Catholic Charities to “prove that the challenged statute has been applied in an unconstitutional manner beyond a reasonable doubt.” App.35. Then, under this deferential standard, the court explained that its interpretation of the unemployment compensation statute was constitutional because courts could “examin[e] the activities and motivations of a religious organization” through “a neutral and secular inquiry based on objective criteria” to determine whether an organization was operated primarily for religious purposes. App.39.

6. This case therefore raises at least two exceptionally important First Amendment questions. First, it raises the question whether civil courts violate the First Amendment when they decide that a religious organization is not “operated primarily for religious purposes” because it does not engage in proselytization or other “typical”

religious activities but does support the poor, hungry, and disabled for religious reasons. As the courts below acknowledged, courts are divided on this question. See App. 21 n.11; *Catholic Charities Bureau, Inc. v. Labor & Indus. Rev. Comm'n*, 987 N.W.2d 778 (Wis. Ct. App. 2023).

7. Second, the decision below separately raises the question whether state courts are permitted to apply an “unconstitutional beyond a reasonable doubt” standard of review when deciding questions of federal constitutional law. This is also the subject of a split of authority. See, e.g., Hugh Spitzer, *Reasoning v. Rhetoric: The Strange Case of “Unconstitutional Beyond a Reasonable Doubt”*, 74 Rutgers U.L. Rev. 1429, 1439-1456 (2022) (describing use of the standard in state court decisions and a split of authority).

8. Applicants’ counsel need additional time to prepare their petition in this case. Applicants’ counsel have had substantial briefing and argument obligations from March through May of this year, including:

- *Civil Rights Department v. Cathy’s Creations*, No. F085800 (5th App. Ct. Cal.) (brief filed May 24, 2024)
- *Mendham Methodist Church v. Morris County, N.J.*, No. 2:23-cv-02347 (D.N.J.) (preliminary injunction motion and opposition to motion to dismiss filed May 23, 2024)
- *Loffman v. California Department of Education*, No. 23-55714 (9th Cir.) (oral argument May 7, 2024)

- *Hilsenrath v. School District of the Chathams*, No. 23-3030 (3d Cir.) (brief filed May 1, 2024)
- *DiMeo v. Gross*, No. 280 EDA 2024 (Super. Ct. Pa.) (brief filed April 24, 2024)
- *Williams v. Fitzgerald*, No. 23-191 (U.S.) (brief filed April 18, 2024)
- *Garrick v. Moody Bible Institute*, No. 21-2683 (7th Cir.) (petition for rehearing en banc filed April 15, 2024)
- *Smith v. City of Atlantic City*, No. 23-3265 (3rd Cir.) (brief filed April 10, 2024)

9. Applicants' counsel also have several upcoming case-related obligations, including:

- *Garrick v. Moody Bible Institute*, No. 21-2683 (7th Cir.) (petition for writ of certiorari due July 29, 2024)
- *St. Joseph Parish v. Nessel*, No. 23-1860 (6th Cir.) (oral argument June 11, 2024)
- *Bella Health & Wellness v. Weiser*, No. 23-939 (D. Colo.) (depositions on June 11 & 12, 2024)
- *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, No. 23-1197 (U.S.) (brief due June 6, 2024)
- *Young Israel of Tampa v. HART*, No. 22-11787 (11th Cir.) (petition for certiorari due June 3, 2024)

- *Bella Health & Wellness v. Weiser*, No. 23-939 (D. Colo.) (expert report due May 31, 2024)

10. Applicants' counsel also have academic obligations during the relevant timeframe, including managing an international academic conference put on by the Centre for Law and Religious Freedom at Jagiellonian University in Kraków, Poland from June 2-6 and participating in an academic conference put on by the Religious Liberty Initiative at the University of Notre Dame from July 9-12.

11. For these reasons, Applicants respectfully request a sixty-day extension of time for counsel to prepare a petition that fully addresses the important issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

Respectfully submitted.

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